

BEFORE THE BOARD OF CONTROL OF THE STATE OF OREGON

WATER DIVISION NO. 1. JOSEPHINE COUNTY.

IN THE MATTER OF THE DETERMINATION OF)
 THE RELATIVE RIGHTS TO THE WATERS OF)
 ALTHOUSE CREEK, A TRIBUTARY OF THE)
 ILLINOIS RIVER, IN JOSEPHINE COUNTY.)
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FINDINGS OF FACT AND ORDER OF DETERMINATION.

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Now on this 22nd day of January, A. D. 1912, the above entitled matter coming on to be heard and considered by the Board of Control of the State of Oregon, at an adjourned meeting of said Board, commenced and held on said day, present were: John H. Lewis, State Engineer, ex officio President; James T. Chinnock, Superintendent of Water Division No. 1; and Geo. T. Cochran, Superintendent of Water Division No. 2; and it appearing to the said Board that the evidence and proofs have been taken and completed herein, and investigations and surveys made by the State Engineer have been completed, and the board having considered said evidence and proofs and the said data compiled by the said State Engineer, and being now fully advised in the premises, said board now makes the following

FINDINGS OF FACT:

I.

That Althouse Creek is a natural water course and a non-navigable, perennial stream, lying and having its source in mountainous and unsurveyed lands in the southern part of Josephine County, Oregon, and that said stream has well defined banks and bed and channel, and since time immemorial has flowed, and continues to flow, down and across township 40 S. R. 8 W. W. M., township 40 S. R. 7 W. W. M., and township 41 S. R. 7 W. W. M., in a general northerly and westerly direction to the Illinois River, of which said stream is a tributary in said Josephine County, Oregon.

II.

That the west fork of Althouse Creek, The Run, and Hanniford Gulch form sources of water supply for said stream and are tributaries thereof.

III.

That during the months of May, June, July, August, September, and October of each year, the rainfall in the vicinity of Althouse Creek is light, and the lands susceptible of irrigation from said stream become dry and unproductive without artificial irrigation, and that in order to render the said lands productive it is and has been for many years necessary to use and divert the waters of said Althouse Creek and its tributaries for the irrigation of certain lands, and that with the said artificial irrigation the said lands yield annually valuable crops of hay, alfalfa, grain and vegetables and produce pasturage for cattle and horses.

IV.

That about the year 1856, the said lands through and across which said Althouse Creek was then flowing were public lands of the United States, and the waters then flowing in said Althouse Creek were free and unappropriated and subject to appropriation; that about said year 1856, and subsequent thereto at different times, the claimants to the waters of said stream hereinafter named, or their predecessors in interest, settled upon the public lands of the United States susceptible of irrigation upon said stream, or its tributaries, and proceeded to clear, reclaim and cultivate the said lands; that those claimants, or their predecessors, commenced the construction of ditches and completed the same down to and upon their lands and made appropriations of the waters of the said Althouse Creek, diverting those waters through their ditches down to and upon their lands and using the same for the irrigation thereof, and for other and beneficial purposes to the extent hereinafter set forth.

V.

That on the 4th day of June, 1909, there was filed in the office of the Board of Control of the State of Oregon a petition signed by R. P. George, P. P. Payne, and J. G. Houck, water users of the waters of Althouse Creek and its tributaries, requesting a determination of the relative rights of the various claimants to the waters of said stream.

That on the 28th day of October, 1908, there was filed in the office of the Board of Control a petition signed by W. H. Miller, as President of the Josephine-Klamath Development Company, a corporation, claiming the right to the use of the waters of said stream; that the said Board of Control, after investigation and consideration of said petitions, found the facts and conditions such as to justify a making of a determination of the relative rights of the various claimants to the waters of said stream and the tributaries thereof, and made and entered of record, in the records of its office, an order fixing the time and place for the beginning of the taking of testimony and the making of such examination as would enable it to determine the rights of said claimants.

VI.

That a notice was prepared by the said Board, setting forth the date when the State Engineer or his assistant would begin the investigation of the flow of said stream, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of Water Division No. 1, of Oregon, would begin the taking of testimony as to the rights of the various claimants to the waters thereof, and the said notice was published in two issues of the Oregon Observer, a newspaper of general circulation within Josephine County, Oregon, and printed and published at Grants Pass, in said county, the date of the last publication being more than thirty days prior to the date fixed for the making of said examination or measurement of said stream by the State Engineer, or the beginning of the taking of testimony by the Division Superintendent.

VII.

That the Division Superintendent of Water Division No. 1 of Oregon did, more than thirty days prior to the date fixed therein for the making of such examination, or for the taking of testimony therein, send by registered mail, to each person, firm, and corporation claiming the right to the use of any of the waters of said stream, or any tributary thereof, and to each person, firm and corporation owning or being in possession of lands bordering on or having access to said stream or its tributaries, in so far as such claimants, owners or persons in possession could be reasonably ascertained, a similar notice to such published notice, setting forth the said date when said State Engineer would commence the examination of said stream and its tributaries and the ditches diverting water

therefrom, and the time and place certain when the Superintendent of said Water Division would commence the taking of testimony as to the relative rights of the various claimants to said stream and tributaries, and that said Superintendent did enclose with each said notice a blank form on which said claimant, owner or person in possession should present in writing all the particulars necessary for the determination of his right to the waters of the stream or any tributary thereof, under oath.

VIII.

That due proof of the publication of said notice and of the sending of said notices by registered mail has been made and duly filed and is now a part of the record hereof.

IX.

That upon the date named in said notice so published and sent, at the place therein specified, the said Division Superintendent did commence the taking of testimony as to the relative rights of said claimants, and did continue the taking of the same until completed.

X.

That the following named firms, corporations and persons were duly notified by registered mail and by publication of said notice as hereinbefore set forth, but that they and each of them, although so notified, have failed, neglected and refused to appear herein and submit proof of their rights to the waters of said stream, if they or any of them may have claims, and that each of said parties are in default herein, and that said default should be and hereby is entered, to-wit: Leander Henry; C. A. Hervey, H. B. Ritenour; A. N. Meredith; Geo. Young; Inez H. Dabney; Fred Muree; Fred Hervey; W. O. Kohler, Mary J. Charley; Geo. E. Houck; W. B. Kittermann; G. L. Layman, C. N. Koehler; W. H. Carter; Wade & Hall, M. E. Leonard; H. E. Hinds; D. Houck; J. G. Houck; Stephen Rinsky; E. M. Robertson; Melvin Pierce, W. W. Dry; R. S. Knapp.

XI.

That upon the completion of the taking of testimony, as aforesaid, the said Superintendent at once gave notice, by registered mail, to each of the various claimants to the waters of said stream and its tributaries, that at a time and place named in the notice, not less than ten days thereafter, all of said evidence would be open to the inspection of the various claimants or owners, and that said Division Superintendent did, in accordance with said notice, keep said evidence open to inspection at said place for a period of ten full days; and that said notice did also set forth the county in which the determination of the Board of Control would be heard by the Circuit Court, to-wit: The Circuit Court of the State of Oregon for the County of Josephine.

XII.

That at the time specified in said notice, the duly qualified assistant of the State Engineer did proceed to make an examination of said stream and its tributaries and of the works diverting water therefrom, and a measurement of the discharge of said ditches and canals and the carrying capacity thereof, and an examination and approximate measurement of the lands irrigated and susceptible of irrigation from said ditches and canals, which said observations and measurements were made a matter of record in the office of said State Engineer; that the State Engineer did prepare a plat and map on a scale of not less than one inch to the mile, showing with substantial accuracy the course of said stream and its tributaries, the location of each ditch and canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or are susceptible of irrigation from the ditches and canals already constructed; blue print

copies of said maps, duly certified to by said State Engineer, being now on file herein and a part of the record hereof.

XIII.

That upon the completion of the taking of testimony herein, in the original hearing, as hereinbefore set forth, contests were duly and regularly initiated against the rights claimed by various of said parties as follows:

Geo. W. Dun vs. Mary Ellen Leonard.

R. P. George vs. Geo. W. Dunn.

Mary E. Leonard vs. Geo. W. Dunn, B. F. Masten, C. A. Trefathen, R. P. George, Hila A. C. Houck, P. P. Payne.

Hila A. C. Houck vs. Geo. W. Dunn.

Hila A. C. Houck vs. Mary Ellen Leonard.

That said contestants filed their statements and notices of contest, verified by the said contestants, with the Division Superintendent of Water Division No. 1, who notified said contestants and the person whose rights were so contested to appear before him at the time and place designated in said notice, due proof of said notice of said meeting being now on file and a part of the records herein.

XIV.

The contests of Mary Ellen Leonard vs. P. P. Payne and C. A. Trefathen came regularly on for hearing and were, upon motion of said contestant, in all things dismissed.

XV.

The contests of Geo. W. Dunn vs. Mary Ellen Leonard; R. P. George vs. Geo. W. Dunn and Mary Ellen Leonard; Hila A. C. Houck vs. Geo W. Dunn and Mary Ellen Leonard; Mary Ellen Leonard vs. R. P. George, George Dunn and Hila A. C. Houck, came regularly on for hearing on the 9th day of May, 1911. The testimony was taken in said contests and a transcript thereof was made and filed with the Division Superintendent herein, the same being in and a part of the record hereof.

XVI.

That upon the completion of the taking of testimony in said contests and proofs and testimony in the original hearing herein, and after inspection thereof by all claimants interested, as provided by law, all of said testimony and evidence so taken was filed in the office of the Board of Control by said Division Superintendent in person.

XVII.

That at the time of the hearing of said contests it was stipulated and agreed by and between all parties thereto by and through their respective attorneys, that any evidence taken in said contests might be used in any of the other contests, and that the testimony of each witness may be deemed and considered as a part of the record in any other contest without any formal introduction thereof in such case; and that the Althouse Mining Company and James Sowell should be added as party contestees in the said contest of Mary Ellen Leonard vs. Geo. W. Dunn et al.

XVIII.

That one Ed Lind did, subsequent to the commencement of these proceedings and prior to the hearing of these contests, succeed to all the right, title and interest of the claimant herein, P. P. Payne.

XIX.

That from the testimony taken in said contests it is found and determined:

1. That about the year 1856, the predecessors of R. P. George and Hila A. C. Houck, claimants herein, commenced and within a reasonable time completed the construction of a ditch from a point on Sucker Creek down to and upon the lands of the said Houck, hereinafter described, and that portion of the lands of the said George herein referred to as the Pixley Donation Land Claim.

2. That the predecessors of Hila A. C. Houck did thereafter, and within a reasonable time, commence the irrigation of the said lands now owned by her and gradually increased the acreage of the lands irrigated until within a reasonable time about one hundred acres thereof were being irrigated through the said ditch; that thereafter, commencing about the year 1895, said claimant's predecessors increased the acreage irrigated from said ditch to the extent of twenty-eight acres in addition to said lands previously irrigated, and have added to the irrigated acreage each year until at the present time there are about one hundred and twenty-eight acres of said lands irrigated from said ditch with the waters of Althouse Creek, which have been so irrigated for the past ten years.

3. That one Pixley, a predecessor in interest of said R. P. George, settled upon a portion of the lands now owned by said George, and about the year 1856, commenced the irrigation of the said lands with the waters of Althouse Creek, diverted through said ditch, and thereafter gradually increased the acreage until about one hundred acres had been irrigated from said ditch; that said Pixley thereafter acquired title to said lands, and the same are herein referred to and known as the Pixley Donation Land Claim, and that said R. P. George has succeeded to all the right, title and interest of the said Pixley in and to said ditch and water right by virtue of various mesne conveyances; that about the year 1870, one Hopkins, a predecessor of the said George settled upon a portion of the lands now owned by said George, and thereafter acquired title thereto, and commenced the irrigation of said lands with the waters of Althouse Creek, diverted through said ditch (herein known as the Houck and George ditch), and gradually increased the irrigated acreage of the said lands, until about ninety-six acres thereof were irrigated; that said R. P. George has succeeded to all the right, title and interest of said Hopkins in and to said lands and water rights connected therewith by virtue of mesne conveyances.

4. That about the year 1858, the predecessors in interest of Geo. W. Dunn, the claimant herein, commenced the irrigation of the lands now owned by said Dunn, hereinafter described, with the waters of Althouse Creek through a ditch then used and constructed about that year for mining purposes, and within a reasonable time gradually increased the irrigated acreage of said lands until about one hundred and twenty-five acres were being irrigated under said ditch with the waters of Althouse Creek.

5. That the predecessors of Mary Ellen Leonard, claimant herein, about the year 1858, commenced the irrigation of the lands now owned by said claimant, as hereinafter described, with the waters of Althouse Creek, diverted through a ditch then being used for mining purposes, and by the construction of an extension of the said ditch down to and upon said lands; and thereafter gradually increased the acreage irrigated until about fifty acres thereof were being irrigated with the waters diverted through said ditch.

6. That the said ditch so used by said predecessors of Dunn and Leonard, and hereby referred to as the Beech and Platter-Leonard ditch, was constructed about said year of 1857, from a point on Althouse Creek, and water was first diverted and used through said ditch for mining purposes; and

about the year 1858 said ditch was extended across and out of the Althouse Creek watershed, and the waters of Althouse Creek diverted through said ditch and used for mining purposes and for the irrigation of the said lands of Dunn and Leonard.

7. That said claimants Dunn and Leonard, and their predecessors, have each and every year since about 1858 used the waters of Althouse Creek, diverted through their said ditch for the irrigation of their lands and for stock and domestic purposes, and each of said claimants has by virtue of various mesne conveyances an undivided one-half interest in and to said ditch and entitled to divert the waters of said stream into the same for the irrigation of their lands to the extent hereinafter set forth.

8. That the claimants, R. P. George and Hila A. C. Houck, are each the owner of an undivided one-half interest in and entitled to the use of said Houck and George ditch for the irrigation of their said lands and for stock and domestic purposes and are entitled to divert the waters of Althouse Creek into the head thereof to the extent hereinafter set forth in the Order of Determination.

9. That the said R. P. George and Hila A. C. Houck should be considered to have prevailed as against Mary Ellen Leonard and Geo. W. Dunn in their respective contests, and that said George W. Dunn should be considered as having prevailed as against Mary Ellen Leonard; that the said parties so prevailing shall be entitled to have refunded to them the fees deposited by them with the Superintendent upon the taking of testimony in said contests, as provided by law.

XX.

That the order of priorities of the various claimants to the waters of Althouse Creek and its tributaries is as follows, to-wit:

1. That R. P. George for the irrigation of one hundred acres and stock and domestic use is entitled to a priority date of 1856, and Hila A. C. Houck for the irrigation of one hundred acres is entitled to a priority date of 1856, and the rights of said claimants are equal in point of time and constitute the first right to the waters of Althouse Creek and its tributaries.

2. That Geo. W. Dunn and Mary Ellen Leonard are entitled to a priority date of 1858 for the irrigation of their said lands and for stock and domestic purposes to the extent hereinafter set forth, and their said rights constitute the second order of priority and appropriation of the waters of Althouse Creek and its tributaries, and are equal in point of time.

3. That the rights of said R. P. George for the irrigation of ninety-six acres of his said lands, initiated by the appropriation of the waters of said stream in the year 1870, are entitled to a priority of that date and constitute the third order of priority of appropriation of the waters of said stream.

4. That J. E. Sowell, or his predecessors, having initiated a right of appropriation to the waters of said stream for irrigation purposes in about the year 1869, to the extent hereinafter set forth, through the Hanniford ditch, is entitled to a priority as of that year, and his said rights constitute the fourth order of priority of appropriation in and to the waters of said stream.

5. That the predecessors in interest of Ed Lind and J. E. Sowell, claimants herein, having initiated and completed rights of appropriation to the waters of Althouse Creek in 1876 by the construction of a ditch, known as the Sowell and Payne ditch, are entitled to a priority as of that date and to equal and undivided rights in said ditch, and their said rights of priority are equal in point of time and constitute the fifth order of priority herein.

6. That about the year 1883, the predecessors in interest of James Spence, a claimant herein, commenced and thereafter completed

the construction of that certain ditch known as the Spence Ditch from a point on Althouse Creek down to and upon the lands now owned by said Spence as hereinafter described, and about that year commenced the irrigation of said lands and gradually increased the irrigated acreage thereof until about sixty-seven acres were being irrigated.

7. That about the year 1883, Samuel and Hattie Miller initiated rights of appropriation through that certain ditch known as the Spence and Mathewson ditch for irrigation, domestic and stock purposes, and within a reasonable time brought under cultivation and irrigation seventeen acres of their said lands, as hereinafter described, and are entitled to rights of appropriation as of the year 1883.

8. That the said claimant, James Spence, and the claimants, Samuel and Hattie Miller, are entitled to equal rights of priorities in the waters of Althouse Creek, and their said rights as of the date of 1883 constitute the sixth order of priority of appropriation of the waters of said stream.

9. That about the year 1892, the predecessors in interest of Mary A. Morey, a claimant herein, commenced and thereafter completed the construction of the Morey ditch from a point on Althouse Creek down to and upon the lands now owned by this claimant and diverted the waters of Althouse Creek through said ditch and used the same for the irrigation of said lands and gradually increased the irrigated acreage thereof until about fifteen acres were being irrigated; and that the right of the said claimant is entitled to a priority date of 1892, and constitutes the seventh order of priority in and to the waters of said stream.

10. That about the year 1895, the predecessors in interest of Hila A. C. Houck, as hereinbefore set forth, commenced the irrigation and thereafter reclaimed and irrigated about twenty-eight acres of land now owned by said claimant in addition to the lands theretofore irrigated by the diversion and use of the waters of Althouse Creek through the said Houck and George ditch, and that said right is entitled to a priority date for the irrigation of said lands as are hereinafter described as of 1895, and constitutes the eighth order of priority of appropriation in and to the waters of said stream.

11. That about the year 1898, one James Skeeters, a claimant herein, commenced the irrigation of and thereafter reclaimed and irrigated by a gradual increase of the irrigated area about thirty acres of land as hereinafter described, by diverting and using the waters of Althouse Creek through that certain ditch known as the North Houck ditch, and that said claimant is entitled to a priority date of 1898.

12. That about said year 1898, the Althouse Mining Company, a corporation, commenced the use of the waters of Althouse Creek, diverted through a ditch known as the Hansen ditch for the irrigation of about twenty acres of land hereinafter described, and for placer mining purposes, and that the rights of the said claimant should be given a priority date of 1898, and together with the rights of the said James Skeeters, constitutes the ninth order of priority herein.

13. That at the time of the original hearing herein, W. D. Hunt was a claimant to the waters of Althouse Creek and was diverting and using the waters of said stream through the Hunt ditch for the irrigation of his lands; that said Hunt failed to appear at said original hearing and submit proof of his rights to the waters of said stream, but did, on the 4th day of October, 1911, appear before the Superintendent of Water Division No. 1 and tendered to said Superintendent a statement and proof of claim, which said statement and proof of claim was received subject to objections by claimants interested; that it appears from said statement and proof of claim that said Hunt has initiated rights of appropriation to the waters of Althouse Creek for the irrigation of about forty acres of land; that said right should be and is subsequent in point of time to the rights of the various claimants of the waters of said stream for irrigation purposes,

and should be given a priority date as of the year 1900, and as of such date constitutes the tenth order of priority herein.

14. That M. and W. Goldsby, claimants, about the year 1908 appropriated the waters of Althouse Creek and diverted and used the same through that certain mining ditch known as the Gold Center ditch for placer mining purposes for the operation of those certain mines hereinafter described, and that the rights of the said claimants in and to the waters of said stream are entitled to a priority date of 1908, and constitute the eleventh order of priority of appropriation in and to the waters of said stream.

15. That about the year 1859, the predecessors of C. A. Trefathen, a claimant, initiated a right of appropriation to the waters of that certain tributary of Althouse Creek known as the Run Gulch for mining purposes; that about the year 1897, John Ortman and Andrew Maag initiated rights of appropriation to the waters of said tributary for mining purposes by diversion and use thereof through the Maag ditch; that about the year 1898, H. B. Connors and Harry Floyd, claimants, initiated rights of appropriation to the waters of said tributary for mining purposes through the Connors and Floyd ditch; that said parties should receive priority dates of 1859, 1897 and 1898, respectively, and that the said C. A. Trefathen has the first right and order of priority, John Ortman and Andrew Maag the second order of priority and H. B. Connors and Harry Floyd the third order of priority in and to the waters of The Run, a tributary of said Althouse Creek for mining purposes upon the mining claims hereinafter described.

16. That about the year 1888, the predecessors of J. L. Sowell commenced and completed a construction of the Sowell ditch, diverted and used the waters of Hanniford Gulch, a tributary of said Althouse Creek, and thereafter diverted and used the waters of said gulch for the irrigation of about nine acres of land, as hereinafter described. That said claimant is entitled to a priority date of 1888 for irrigation purposes and the said right constitutes the first right to the waters of said Hanniford Gulch.

17. That about the year 1907, the Josephine-Klamath Development Company, a corporation, initiated rights of appropriation to the waters of the West Fork of Althouse Creek for placer mining purposes upon the placer mining claims hereinafter described, and thereafter diverted and used the said West Fork, a tributary of said Althouse Creek for said purposes.

XXI.

That the rights of the Josephine-Klamath Development Company initiated by Application No. 359, on October 21, 1909, and F. W. Gibbs, et al., initiated under Application No. 475, on January 17, 1910, and John Apple initiated under Application No. 1084, on November 19, 1910, and permits issued to the said applicants, shall be completed in accordance with the terms and conditions of the permits issued to said appropriators by the State Engineer of the State of Oregon.

That the rights of T. W. Gibbs et al., under application No. 475, W. C. Mankins and John Apple under Application No. 1112, and A. C. Hooper under Application No. 1114 to the waters of Johnson's Gulch, a tributary of Althouse Creek, shall be completed and perfected in accordance with the terms and conditions of the permits granted said parties by the State Engineer.

XXII.

That the mining season or period during which water is diverted from said stream and used for mining purposes commences about November 1st and ends about June 1st of each year, and that water has been diverted and used by the various parties hereinafter named in respect to their respective rights for

mining purposes from said Althouse Creek or its tributaries during said season, and that during the irrigation season as hereinafter set forth, the rights of the parties hereinafter named with respect to their respective rights, diverting and using the waters of said stream for irrigation purposes, are prior in time and prior in right to the use of the waters of said stream and its tributaries for mining purposes, and that no rights to the waters of Althouse Creek for mining purposes have been acquired or should be confirmed prior to the year 1909 for the diversion of the waters of said stream or its tributaries during the months of June, July, August, September and October of each year, except in so far as such diversion and use shall not interfere with the irrigation of lands below the point of diversion thereof; provided, however, that the diversion of water for mining purposes during the irrigation season, when the waters diverted are returned to the stream from whence diverted or to the channel of said Althouse Creek above the points of diversion of those parties diverting water for irrigation purposes hereinafter named in respect to their respective rights, should not be deemed an interference with the use of the waters of said stream for irrigation purposes, and that the parties having rights to the use of the waters of said stream for said mining purposes shall at all times have a right to divert and use during the irrigation season any surplus waters over and above quantities herein respectively confirmed for irrigation purposes.

XXIII.

That the irrigation season in the vicinity of Althouse Creek commences about the first of April of each year and ends about the 1st day of November of each year, and that the use of the waters of said stream for irrigation purposes is hereby confined to said season.

XXIV.

That the parties hereinafter named diverting water for domestic and stock purposes have, under their respective appropriations, a right to divert the waters of said stream for said purposes at all times throughout the year; but that during the irrigation season the waters diverted for irrigation purposes should include the waters diverted for domestic and stock use.

XXV.

That the soil of the lands irrigated with the waters of said stream and its tributaries is composed largely of mixed sandy clay loam, and the principal crops produced are alfalfa, grain, hays, vegetables and garden truck, or diversified crops; that the character and kind of crops raised, nature of the soil, the methods and use of the waters of said stream and the climatic conditions prevailing in the vicinity of said lands and streams do not require at the present time for beneficial irrigation of said lands a greater amount of water diverted into and measured at the head of the respective ditches than at the rate of one cubic foot of water per second of time for each fifty acres so irrigated.

XXVI.

That a system of rotation in the use of water has been in use among the appropriators of small amounts of water from said stream more or less for many years, adding greatly to the duty which said water may be made to perform and increasing the service and economization of water supply, and that in order to secure a proper beneficial use of said waters, said appropriators should be arranged in groups or systems of rotation, in the absence of an agreement among the several appropriators as to a method of rotation.

Based upon the foregoing FINDINGS OF FACT, the Board of Control now makes the following

ORDER OF DETERMINATION:

I.

That each and all of the following named parties are in default herein and have no right, title or interest in or to the waters of said stream, or any tributary thereof, and are barred and estopped from hereafter asserting any right, title or interest in or to said waters, to-wit: Leander Henry; C. A. Hervey; H. B. Ritonour; A. N. Meredith; Geo. Young; Inez H. Dabney; Fred Muree; Fred Hervey; W. O. Kohler; Mary J. Charley; Geo. R. Houck; W. B. Kittermann; G. L. Layman; C. N. Koehler, W. H. Carter; Wade & Hall; M. E. Leonard; H. E. Hinds; D. Houck; J. C. Houck; Stephen Rinsky; E. M. Robertson; Melvin Pierce; W. W. Dry; R. S. Knapp.

II.

That the hereinafter named claimants are entitled to divert and use the waters of Althouse Creek, or its tributaries, whence their respective appropriations are diverted to the extent and for the purposes hereinafter specified in the order of their respective priorities, and all other persons, firms, and corporations, and all owners of land riparian to said Althouse Creek or any of its tributaries, are barred and forever estopped from hereafter asserting any rights which may have been heretofore acquired to the waters of said stream or any tributary thereof, and shall be deemed and held to have forfeited all rights to the use of said waters which may have been heretofore claimed by them, except, however, those rights which have been initiated or may hereafter be initiated under and by virtue of application made to the State Engineer and permit issued by him, which said rights shall, in all cases, be completed and perfected in accordance with the terms and conditions of said permits from the State Engineer and the laws of the State of Oregon.

III.

That the following named claimants to the waters of Althouse Creek, or its tributaries, are entitled to a decree and to the issuance of a certificate of water right in accordance therewith, determining, establishing and confirming their several rights to the use of the waters of said stream as of the date of relative priority, and to the amount of cubic feet per second, for the particular use or uses for which said appropriations were made, and if for irrigation, for the irrigation of the number of acres through the ditch or ditches, upon the lands or place of use of said claimants, as hereinafter described, as such date, amount, number of acres, use, ditch or ditches, and land or place of use are hereunder set forth or described in tabulated form opposite the respective names of said claimants under said Althouse Creek, or the particular tributary where such appropriations are diverted, to-wit:

	4	2711 ^{1/2}	Althouse Mining Co., a corporation, Oakland, California (961 8th St.)	1898	0.4	20	Irrigation	Hansen	20 acres in SW ¹ / ₄ SE ¹ / ₄ and SE ¹ / ₄ SE ¹ / ₄ , Sec. 5, Tp. 40 S. R. 7 W. W. M.
				1898	4.		Mining, November to July	Hansen	Placer mines situated in SW ¹ / ₄ and SE ¹ / ₄ of Sec. 5, and NW ¹ / ₄ , Sec. 8, Tp. 40 S. R. 7 W. W. M.
	4	2712	Geo. W. Dunn, Ashland, Oregon.	1858	2.2	110	Irrigation, domestic & stock	Beach, Platter & Leonard	20 acres in NW ¹ / ₄ NW ¹ / ₄ ; Sec. 4; 20 acres in NE ¹ / ₄ NE ¹ / ₄ ; 40 acres in SE ¹ / ₄ NE ¹ / ₄ ; 20 acres in SW ¹ / ₄ NE ¹ / ₄ ; 10 acres in NW ¹ / ₄ NE ¹ / ₄ ; Sec. 5; Tp. 40 S. R. 7 W. W. M., being portions of Donation Land Claims 40 and 41, and lots 1 and 2, in Tp. 40 S. R. 7 W. W. M.
T-2911	4	2713	R. P. George, Kerby, Oregon.	1856	2.	100	Irrigation, domestic & stock.	Houck & George	36 acres in SW ¹ / ₄ NE ¹ / ₄ ; 3 acres in NW ¹ / ₄ NW ¹ / ₄ ; 39 acres in SW ¹ / ₄ NW ¹ / ₄ ; 37 acres in SE ¹ / ₄ NW ¹ / ₄ ; 20 acres in NE ¹ / ₄ SW ¹ / ₄ ; 39 acres in NW ¹ / ₄ SW ¹ / ₄ ; 12 acres in SE ¹ / ₄ SW ¹ / ₄ ; Sec. 13; Tp. 40 S. R. 8 W., W. M.
T-5519	4	2714	M. & W. Goldsby, Holland, Oregon.	1870	1.72	86	Mining, November to July	Gold Center	Mining claims, situated in NE ¹ / ₄ SW ¹ / ₄ , Sec. 12, Tp. 41 S. R. 7 W., W. M.
T-2911	4	2715	Hila A. C. Houck, Kerby, Oregon.	1856 1895	2. 0.56	100 28	Irrigation, domestic & stock.	Houck and George.	39 acres in SE ¹ / ₄ NE ¹ / ₄ ; 10 acres in NE ¹ / ₄ SE ¹ / ₄ ; Sec. 13; Tp. 40 S. R. 8 W., W. M.; 3 acres in NE ¹ / ₄ NW ¹ / ₄ ; 30 acres in NW ¹ / ₄ NW ¹ / ₄ ; 36 acres in SW ¹ / ₄ NW ¹ / ₄ ; 6 acres in SE ¹ / ₄ NW ¹ / ₄ ; Sec. 18; Tp. 40 S. R. 7 W. W. M.
			W. D. Hunt--see following page.						
	4	2716	Mary Ellen Leonard, Kerby, Oregon.	1858	0.96	48	Irrigation, domestic & stock	Beach, Platter & Leonard.	13 acres in NW ¹ / ₄ NE ¹ / ₄ ; * 24 acres in NE ¹ / ₄ NW ¹ / ₄ ; 11 acres in SE ¹ / ₄ NW ¹ / ₄ ; Sec. 4; Tp. 40 S. R. 7 W., W. M.
			Mary Ellen Leonard, Kerby, Oregon.	1858	4.		Placer mining, November to July.	Beach, Platter & Leonard.	Emerald Tunnel Gold Placer claims and placer ground situated in SE ¹ / ₄ and SW ¹ / ₄ ; Sec. 4, and NE ¹ / ₄ , Sec. 9, and NE ¹ / ₄ and NW ¹ / ₄ , Sec. 4, Tp. 40 S. R. 7 W., W. M.
	4	2717	Ed. Lind, Kerby, Oregon.	1876	1.26	63	Irrigation	Sowell & Payne	35 acres in SE ¹ / ₄ SE ¹ / ₄ ; 10 acres in NE ¹ / ₄ SE ¹ / ₄ ; 10 acres in Lot 3 in SW ¹ / ₄ SE ¹ / ₄ ; Sec. 7; 4 acres in Lot 3, in NE ¹ / ₄ NW ¹ / ₄ ; 4 acres in Lot 4, in NW ¹ / ₄ NE ¹ / ₄ ; Sec. 18; Tp. 40 S. R. 7 W. W. M.
			Samuel and Hattie Miller--see following page.						
	4	2718	Mary A. Morey, Holland, Oregon.	1898	0.3	15	Irrigation	Morey	10 acres in NE ¹ / ₄ NE ¹ / ₄ ; Sec. 13; 3 acres in SW ¹ / ₄ SW ¹ / ₄ ; Sec. 7; and 2 acres in SE ¹ / ₄ SE ¹ / ₄ ; Sec. 12; Tp. 40 S. R. 7 W., W. M.
	4	2719	Joseph Skeeters, Holland, Oregon.	1898	0.6	30	Irrigation	North Houck	30 acres in SE ¹ / ₄ SW ¹ / ₄ ; Sec. 7; Tp. 40 S. R. 7 W., W. M.
	4	2720	J. E. Sowell, Holland, Oregon.	1876	0.08	4	Irrigation	Sowell & Payne	4 acres in NW ¹ / ₄ SW ¹ / ₄ ; Sec. 8; Tp. 40 S. R. 7 W., W. M.
			J. E. Sowell, Holland, Oregon.	1869	0.24	12	Irrigation	Hanford	12 acres in SW ¹ / ₄ SW ¹ / ₄ ; Sec. 8, Tp. 40 S. R. 7 W., W. M.
	4	2721	Samuel and Hattie Miller, Kerby, Oregon.	1883	0.34	17	Irrigation, domestic & stock	Spence & Mathewson	5 acres in NW ¹ / ₄ NW ¹ / ₄ ; and 12 acres in SW ¹ / ₄ NW ¹ / ₄ ; Sec. 1; Tp. 40 S. R. 8 W., W. M.

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54312

* 229.00. CANCELED Spec. Or. V. H. C. P. 30

Chin pt. 2^d div.
Sp. Or. Vol. 8, p. 166

4 2718
Circuit Court, No. 2936
conforms order in Min. Bk. p. 387

44002
53633

Ch. P. No. of Dec. 10, 1898
Sp. Or. Vol. 23, p. 335

Order Record=Board of Control=State of Oregon

	NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	DESCRIPTION OF LAND OR PLACE OF USE
4 2722	James Spence, Kerby, Oregon.	1883	1.34	67	Irrigation, domestic & stock	Spence & Mathewson	34 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 29 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 2; Tp. 40 S. R. 8 W., W. M.; 4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 35; Tp. 39 S. R. 8 W., W. M.
4 2725	W. D. Hunt, Kerby, Oregon.	1900	0.8	40	Irrigation	Hunt <i>Pt. of div. changed Sp. Or. Vol. 5, p. 561</i>	20 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 27; 10 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 34; Tp. 39 S. R. 8 W., W. M.
<u>HANNIFORD GULCH.</u>							
4 2723	J. L. Sowell, Kerby, Oregon	1888	0.2	9	Irrigation	Sowell	9 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 18, Tp. 40 S. R. 7 W., W. M.
<u>WEST FORK OF ALTHOUSE.</u>							
4 2724	Josephine-Klamath Development Co., a corporation, 215 Oregonian Bldg. Portland, Oregon.	1907	10.		Placer Mining November to July	Company	160 acres of Placer Mining ground, situated in Tp. 40 S. R. 7 W., W. M., and known and described as Josephine- Klamath Development Company mining claims; situate on unsurveyed lands, in what would be about the S $\frac{1}{2}$ SE $\frac{1}{4}$; Sec. 28; and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 33, Tp. 40 S. R. 7 W., W. M.
<u>THE RUN.</u>							
4 2725	H. C. Connors and Harry Floyd, Holland, Oregon.	1898	4.		Mining, November to July	Connors & Floyd	Little Homestead and Surprise Mining Claims, situated on unsurveyed lands in what would be about the E $\frac{1}{2}$ NE $\frac{1}{4}$; Sec. 27; Tp. 40 S. R. 7 W., W. M.; and embracing about forty acres.
4 2726	John Ortman and Andrew Maag, Holland, Oregon.	1897	4.		Mining, November to July	Maag	Frank Le Claire, Louise Le Claire and Hope Mining Claims, situated on unsurveyed lands, in the Althouse Mining District, in what would be about the SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 22, and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 27, Tp. 40 S. R. 7 W., W. M.
4 2727	C. A. Trefathen, Holland, Oregon.	1859	4.		Mining, November to July		The Democrat Mining Claim, in Sec. 4, Tp. 40 S. R. 7 W., W. M.

*Per Board Order p 351 & 352 2/20/20 Succession
of minerals.*

IV.

That all rights to the use of the waters of said stream, and its tributaries, as herein and hereby confirmed for irrigation purposes are limited to a period each year commencing about the 1st of April and ending the 31st day of October of each year, and all rights to the use of the waters of said stream, and its tributaries, as herein confirmed for mining purposes, are limited to a period of use, commencing with the 1st day of October and ending the 1st day of June of each year.

V.

That the rights for domestic and stock purposes as hereby confirmed entitle the owner of such right to divert and use such amount of water as is reasonably necessary for his household and stock use, and the amount so diverted and used for stock purposes shall not exceed the rate of one-fortieth ($1/40$) of a cubic foot per second of time for each one thousand (1,000) head of stock; that the amount diverted for irrigation purposes during the irrigation season shall include such amount as may be necessary for said stock and domestic purposes, and that the right to divert and use said water for domestic and stock purposes as herein and hereby confirmed continues throughout the year.

VI.

That the rights herein confirmed for irrigation purposes are confined and limited to the irrigation of the lands herein described, and the waters appropriated are and shall remain appurtenant to said lands, as provided by law.

VII.

That the waters of said stream and of the tributaries thereof shall be diverted under the rights of appropriation hereby confirmed in the order of the dates of relative priority of the respective rights of appropriation, as hereinafter set forth; and at all times when the waters of said stream, or its tributaries, are not required by those parties having prior rights thereto, the same shall be at the disposal of and subject to the use of those parties entitled to subsequent rights of priority in the order of their priority rights; and at all times the waters diverted by those having a right to do so shall be beneficially, economically, and reasonably used, without waste, and no rights of appropriation are hereby confirmed to divert a greater amount of water into the head of the ditch through which said water is diverted than the claimant entitled thereto can beneficially use for the purposes of his appropriation, and in no event shall the amount so diverted exceed the rate of one (1) cubic foot per second of time to each fifty (50) acres of land actually irrigated; it being understood, and the rights of the parties are hereby confirmed upon this basis, that the amounts to which said appropriators are entitled by virtue of their appropriations as herein confirmed, do not exceed at any time such amount as is reasonably necessary for beneficial use in connection with their said rights, and that beneficial use in all cases and at all times shall be and is the measure and the limit of their said rights of appropriation, and the right is hereby reserved at future times to limit the said rights of appropriation to a less amount of water than herein confirmed in accordance with the amount required for beneficial use as the same may hereafter be determined by the Board of Control or the court in future investigations.

VIII.

That a system of rotation in the use of water among the several appropriators of small amounts of water in the same neighborhood, or through the same ditch, has been in use, more or less, upon said stream and its tributaries and adds greatly to the duty which said water may be

made to perform, and that in the absence of an agreement between such appropriators arranging for such rotation and the manner in which such water shall be used in rotation, the water master of the water district in which said stream and its tributaries may hereafter be situated shall arrange such appropriators in groups or systems of rotation, first giving the appropriator who is first in priority an amount of water equal to the combined appropriations of all the appropriators in said group or system for a length of time bearing the same ratio to the whole time required to make a complete rotation through the whole group of appropriators as the appropriation of the said first appropriator bears to the combined appropriations of said appropriators, and shall next serve the next appropriator in priority with a like amount of water for his proportionate time, and so on, until all the appropriators in said group are served; then the distribution of water shall be repeated in the same manner throughout the irrigation season; that in case of two, or more, appropriators in said group or system having the same priorities, then the said water master shall distribute the water as between those appropriators having the same priorities to the one whose ditch taps the stream nearest its source, first, and the next lower down, next, and so on; and in case of two, or more, appropriators having equal priorities and diverting water through the same ditch, the said water master shall distribute the water as between said appropriators to the one whose lands are first covered by said ditch and nearest the head thereof, first, and to the next lower down on said ditch, next, and so on; and where two, or more, appropriators agree as between themselves as to a manner and system of rotation in the use of their water, the said water master shall distribute the water in accordance with such agreement; provided, always, that such arrangement into groups or systems of distribution under such agreements shall not interfere with the prior rights of any appropriator not a member of such a group or system.

IX.

That none of the parties prevailing in the contests hereinbefore mentioned shall recover costs or disbursements.

By Order of the Board of Control of the State of Oregon, made and entered at an adjourned, regular meeting of said Board, commenced on the 15th day of November, A. D. 1911, and adjourned until January 22nd, 1912, at Salem, Oregon.

Dated this 22nd day of January, 1912.

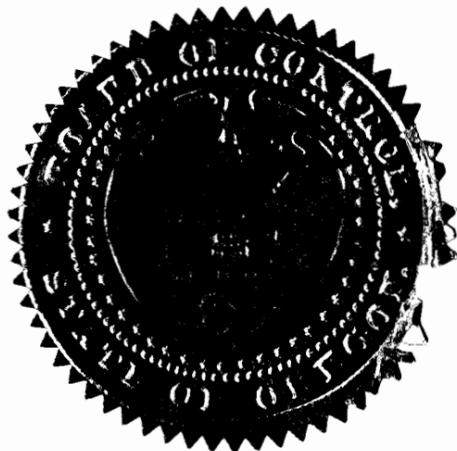
BOARD OF CONTROL OF THE STATE OF OREGON

By

John H. Lewis
State Engineer, President.

James T. Chinnock
Superintendent of Water Division No. 1.

Geo. Lockman
Superintendent of Water Division No. 2.



Attest:

M. B. Wann
Secretary.