

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)
SUCKER CREEK, A TRIBUTARY OF THE)
ILLINOIS RIVER.)
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FINDINGS OF FACT AND ORDER OF DETERMINATION.

Now on this 22nd day of January, 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, regular meeting of said Board, commenced and held on said day, and it appearing to the said Board that the evidence and proofs have been taken and completed herein, and investigations and surveys by the State Engineer have been completed and made, and having considered said evidence and proofs, and the said data compiled by said State Engineer, and being now fully advised in the premises, said Board now makes the following

FINDINGS OF FACT

I.

That Sucker Creek is a perennial stream with well defined and natural banks and channel, and is and at all times within the memory of man has been a natural, non-navigable watercourse, rising and having its source in mountainous and unsurveyed lands situated in Southern Josephine County, Oregon, and that said stream has, since time immemorial flowed, and continues to flow, down to and across townships 40 S. R. 6 W. W. M., 40 S. R. 7 W. W. M., and 39 S. R. 6 W. W. M., in a northerly and westerly direction and through and across township 39 S. R. 7 W. W. M., and sections 25, 24, 23, 22, 21, 28, 29, 32 and 31 of said township, and sections 36 and 35 of township 39 S. R. 8 W. W. M., and thence in a general northerly and westerly direction to the Illinois River, to which said stream is tributary in said Township 39, S. R. 8 W. W. M., in said Josephine County, Oregon.

II.

That Bolan Creek and East Fork of Bolan Creek, Bear Creek, Greyback Creek, Little Greyback Creek, Green Gulch, Yager Gulch and Cave Creek, are natural watercourses, tributary to and forming part of the annual supply of the waters in said Sucker Creek, in said County and State.

III.

That during the months of May, June, July, August, September and October of each year, the natural rainfall in the vicinity of said Sucker Creek is light, and the lands in the valley of said stream are arid in character, and become, during the crop growing period of each year, dry and unproductive without artificial irrigation, and that, in order to render the soils of said lands productive, it is and for many years has been

necessary to divert and use the waters of said Sucker Creek and its said tributaries, for the irrigation of the lands susceptible of irrigation therefrom, and that with such artificial irrigation, the said lands yield annually valuable crops of hay, alfalfa, grains, and vegetables, and produce pasturage for live stock.

IV.

That about the year 1854 the said lands through and across which said Sucker Creek was then and now is flowing were public, unoccupied lands of the United States, and the waters then flowing in said stream and its tributaries were free and unappropriated and subject to appropriation; that about the year 1854 and subsequent thereto, the claimants hereinafter named, or their predecessors in interest, settled upon the public lands of the United States susceptible of irrigation from said stream, or its tributaries, thereafter acquiring title thereto, and proceeded to reclaim and cultivate the same, and did commence and complete the construction of ditches, tapping said stream or its tributaries at various points thereon, and diverting the waters thereof through said ditches down to and upon said lands for the irrigation thereof, to the extent hereinafter set forth.

V.

That on the 13th day of September, 1909, there was filed in the office of the Board of Control a petition signed by A. J. Fulk and William Bunch, water users of said stream and claimants herein, and on the 31st day of September, 1909, there was filed in said office a similar petition, signed by W. L. Babcock, a water user and claimant herein, and on the 12th day of December, 1909, there was filed in said office a similar petition, signed by John W. Krauss, Deborah A. Krauss, and M. H. Gates, water users and claimants herein, each of which petitions requested a determination of the relative rights of the various claimants to the waters of said stream; and the said Board did, after full investigation and due consideration of said petitions, find the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants to the waters of said stream and the tributaries thereof, and accordingly made and entered its order in the records of said office, fixing a 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 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 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 thereof 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 by the State Engineer or for the taking of testimony therein, send by registered mail, to each person, firm, and corporation claiming a 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 rights 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 persons, firms and corporations were duly notified by registered mail and by publication of said notice as hereinbefore set forth, but that each and all 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 any they or any of them have or claimed, and that each of said parties are in default herein, and that said default should be and hereby is entered, to-wit: H. McCourt, F. T. Osborn, W. B. Coad, David Briggs, Geo. Benson, John Wells, F. J. Leonard, May Francis Bunch, J. S. Miller, Elmer Moore, John Hodgion, Jas. Oswald, H. H. Gibbs, H. A. Reed, John Griffin, Harry Anderson, Harry Sykins, Davis Russ, J. M. Sabin, F. W. Gibbs, B. F. Martin, G. W. Secklen, B. Griffin, Harry Lloyd, Chas. Cassad, Jno. Clemens, Alma Rundle, W. P. Anderson, Harry Hines and N. E. Leonard.

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

XIII.

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 claimants, as follows: J. D. Wimer vs. Mary E. Leonard; Geo. W. Dunn vs. Mary E. Leonard; Christiana Trefathen vs. Mary E. Leonard; J. E. Holland vs. Mary E. Leonard; Mary E. Leonard vs. John McDougall, Nettie Griffin, E. H. Wise, Christiana Trefathen; E. H. Wise vs. Mary E. Leonard; H. M. Garner vs. Alex White; Chas R. Williams vs. Ashby Fulk; J. W. Krauss vs. John McDougall; M. H. Gates vs. H. M. Sawyer; H. W. Sawyer vs. H. M. Garner; Geo. Wells vs. Ashby Fulk; H. A. Moore vs. Sucker Creek Irrigation Company; H. A. Moore vs. John McDougall; Grants Pass Banking and Trust Company vs. Custis Masterson; Geo. W. Dunn vs. John McDougall; by filing a statement and notice of contest, verified by the said contestant; and that said Division Superintendent did notify said contestants, and the persons whose rights were so contested, to appear before him at a time and place designated in said notice, due proof of the service of such notice of hearing being now on file herein and a part of the record hereof.

XIV.

That the contests of Mary E. Leonard against the rights claimed by John McDougall, Nettie Griffin, E. H. Wise; E. H. Wise vs. Mary E. Leonard; H. M. Garner against Alex White; Geo. Wells vs. Ashby Fulk; H. A. Moore vs. Sucker Creek Irrigation Company; H. A. Moore vs. John McDougall; and Geo. W. Dunn vs. John McDougall, were upon motion of the respective contestants therein, by their attorneys, withdrawn, at the time fixed for the hearing thereof, and the same were thereupon in all things dismissed.

XV.

That the contest of Grants Pass Banking and Trust Company against the rights claimed by Custis Masterson to the waters of Bolan Creek, a tributary of Sucker Creek, was duly set for hearing, and notice of the time and place thereof was duly and regularly given said contestant and said contestee more than thirty days prior thereto (and not more than sixty), in accordance with law, but that said contestant failed to appear at said time of hearing, or offer any further testimony in behalf of his said contest; and that the same was thereupon dismissed by the Superintendent.

XVI.

That the contests of J. D. Wimer, Geo. W. Dunn, Christiana Trefathen and J. E. Holland against the rights claimed by Mary E. Leonard and of Mary E. Leonard against the rights claimed by Christiana Trefathen; Chas. R. Williams against the rights claimed by Ashby J. Fulk; J. W. Krauss against the rights claimed by John McDougall; M. H. Gates against the rights claimed by F. W. Sawyer and sons; F. W. Sawyer and sons against the rights claimed by H. M. Garner, came duly and regularly on for hearing on the 8th day of May, 1911, and the 15th day of May, 1911, and the testimony offered by the respective parties to said contests was duly and regularly taken before and a transcript thereof made and filed with the Division Superintendent in the above entitled matter.

XVII.

That upon the completion of the taking of testimony in said contests, and of the taking of proofs and testimony in said original hearing and after the 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, with the secretary thereof.

XVIII.

That at the time of the hearing of said contests it was stipulated and agreed by and between all the parties to said contests, by and through their respective attorneys, that any of the testimony or evidence taken and introduced in any of the said contests might be deemed and considered as introduced in each of said contests, without reintroducing or reoffering it, and that any party in any of said contests, by his attorney, might examine witnesses on the stand, in any contest, for the purpose of his own contest.

XIX.

That E. H. Wise, claimant herein, did subsequent to the original hearing, and prior to the hearing of said contests, succeed, by purchase to all of the right, title and interest of Mary E. Leonard in and to the waters of said Bear Creek, and the lands upon which said waters are used for irrigation, and that the contests of Mary E. Leonard against the rights claimed by said E. H. Wise to the waters of Bear Creek, and the contest of E. H. Wise against the rights claimed by said Mary E. Leonard to the waters of said Bear Creek were, upon stipulation and agreement of the respective parties to said contests, at the time of the hearing thereof, in all things dismissed.

XX.

That the claimants George Wells, Roy Wells, T. H. Robinson, W. H. Wisecarver, Frank G. Meeker, L. A. Burnett, Joseph M. Seyferth, the heirs of John E. Seyferth, deceased, John W. Krauss, Chas. R. Williams, H. M. Garner, F. E. Barrett, W. L. Babcock, Christiana Trefathen, Edward S. Van Dyke, H. D. Norton, _____ Dean and _____ Dean, were for the purposes of further testimony and evidence as to their respective rights to the waters of Sucker Creek, joined as parties contestant to the contest of J. D. Wimer vs. Mary E. Leonard upon motion of their attorney of record, H. D. Norton.

XXI.

That from the testimony and evidence taken at said original hearing and in said contests herein it is found that Mary E. Leonard, claimant herein, has no right, title, or interest in or to the Holland Ditch, the Beach and Platter Ditch, or the Holland-Beach and Platter Ditch, or any part of either or any of said ditches, and has no rights of appropriation, or otherwise, to any of the waters of Sucker Creek diverted into or through said ditch.

XXII.

That in that certain suit in the Circuit Court of the State of Oregon for Josephine County, wherein a decree was entered of record in Circuit Journal Vol. 4, at page 450, in the county records of said Josephine County, the predecessors in interest of George W. Dunn, claimant herein, were plaintiffs, and one Alonzo Umphlett and Napoleon and Melvin Gates were defendants, it was ordered, adjudged and decreed that the plaintiffs therein and their predecessors in interest were (and had been) the owners of the ditch, watercourse and channel described therein as the Mulvaney Gulch ditch, and entitled to the sole and exclusive use of all of the waste and escape water from the ditch described therein as owned by one Holland (known as the Holland ditch) and were also entitled to the sole and exclusive use of all of the waters that flow from or are discharged from the mouth of said Holland ditch.

XXIII.

That said Mulvaney Gulch, so referred to in said decree, is a natural depression or ravine down through which water descends from the hills and mountains above during times of melting snow, or rains and floods, but that in and during the irrigation season of each year, the same would be dry and without water flowing therein, but that by reason of the irrigation of the lands of the various claimants herein and the waste water escaping from the various ditches diverting water from said Sucker Creek, a considerable amount of seepage and waste waters flow down the lower portions of said Mulvaney Gulch, and are picked up and diverted into an extension or division of that certain ditch hereinafter known and referred to as the Beach and Platter ditch, and, together with said waste waters discharged from the Holland ditch, referred to in said decree, are conducted down to and upon the lands of said Geo. W. Dunn, and used for the irrigation thereof, in connection with the waters of Sucker Creek, diverted through said Beach and Platter-Holland ditch (hereinafter referred to); and that said Geo. W. Dunn and his predecessors in interest have, each and every year diverted and used the said waters in Mulvaney Gulch, so formed by said seepage and waste waters and the waste waters of said Holland ditch, upon said lands for the irrigation thereof, in addition to the said waters so diverted from Sucker Creek.

XXIV.

That the claimants herein, James E. Holland, Christiana Trefathen and George W. Dunn are, and their predecessors in interest were, joint owners and tenants in common in the Holland Beach and Platter ditch, from the point of diversion thereof on Sucker Creek, down to the point of division of said ditch into the Holland ditch and the Beach and Platter ditch, their respective undivided interests therein being: James E. Holland, one-half; Christiana Trefathen, one-fourth; Geo. W. Dunn, one-fourth. That said James E. Holland is the sole owner of said Holland ditch from its point of division, as aforesaid, down to its point of termination, and entitled at all times to the sole and exclusive use thereof; and that said Geo. W. Dunn and Christiana Trefathen are joint owners and tenants in common of said Beach and Platter ditch, from its point of division as aforesaid down to the point of termination of use by said Christiana Trefathen, and from said point down to the point of termination of said ditch, and throughout the extension of the same down to and upon his said lands, the said Geo. W. Dunn is the sole owner thereof and entitled to the exclusive use thereof.

XXV.

That each of said claimants, James E. Holland, George W. Dunn and Christiana Trefathen, are entitled to the use of said Holland-Beach and Platter ditch for the diversion of the waters of said Sucker Creek, in accordance with their respective interests therein, and their rights of appropriation of said waters of Sucker Creek, as hereinafter found and determined, and are required to maintain and operate said ditch in accordance with their respective interests therein.

XXVI.

That Christiana Trefathen is the owner of the SW $\frac{1}{4}$ of Section 33, Tp. 39 S. R. 7 W. W. M., except that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section owned by George W. Dunn, as part of a donation land claim, as hereinafter described; that said lands were patented to one Calvin Baine on August 15th, 1865, and that said Baine was the predecessor in interest of said Christiana Trefathen; that prior to any other appropriation of the waters of said Sucker Creek, and at a time when said stream was flowing ^{wholly} through public lands of the United States, and the waters thereof were wholly and entirely free and subject to appropriation, the predecessors in interest of said Christiana Trefathen and said Baine, went upon the said public

domain and commenced the construction of a ditch, tapping said stream at a point in about the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Tp. 39 S. R. 7 W. W. M., and thereafter completed the same down to and upon the said above described lands, then public lands, and commenced the irrigation thereof, about the year 1856, and appropriated the waters then flowing in the natural channel of said stream, diverting the same down through said ditch to and upon said lands, and thereafter reclaimed and cultivated said lands; that the said predecessors of said claimant did complete and perfect an appropriation of the waters of said stream for the irrigation of fifty-six (56) acres of the above described lands, by gradual increase of the irrigated area thereof, within a reasonable time after the construction of said ditch, and that the use of the waters of said stream for the irrigation of said lands and for stock and domestic purposes has been continuous, from the initiation thereof down to the present time, and constitutes the first right to the waters of said stream and first order of priority of appropriation thereto.

XXVII.

That James E. Holland is the owner in fee simple of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, all in Township 39 S. R. 7 W. W. M. comprising about 140 acres of land, and that about the year 1857, the predecessors in interest of said Holland commenced and completed the construction of a ditch, tapping Sucker Creek at a point in about the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, Tp. 39 S. R. 7 W. W. M., and diverting the waters flowing in the natural channel of said stream down to and upon the above described lands, and commenced the irrigation of said lands with the water so diverted, and within a reasonable time and by gradual increase of the irrigated area of said lands, completed and perfected rights of appropriation of the waters of said stream for the irrigation of 88 acres of the said lands; and that said use for irrigation purposes has been a continuous and uninterrupted use down to the present time.

XXVIII.

That George W. Dunn is the owner in fee simple of Donation Land Claim No. 38 and No. 39, in Tp. 39 S. R. 7 W. W. M., and Donation Land Claims 40 and 41, and Lots 1 and 2 in Tp. 40 S. R. 7 W. W. M.; that said Donation Land Claim No. 40 is part of Sections 4 and 5 and in Township 40 S. R. 7 W. W. M., and Donation Land Claim No. 38 is part of Section 32, Tp. 39 S. R. 7 W. W. M., and that one C. H. Beach, predecessor of said claimant, acquired title thereto by patent from the United States dated June 5th, 1866; that Donation Land Claim No. 39 is parts of Sections 32 and 33, Tp. 39, S. R. 7 W. W. M., and Donation Land Claim No. 41 is part of sections 4 and 5, Tp. 40 S. R. 7 W. W. M., and lots 1 and 2 are parts of Section 5, Tp. 40 S. R. 7 W. W. M., and that one A. H. Platter, a predecessor of said claimant, acquired title thereto by patent from the United States, dated October 20, 1864, and patent dated August 7th 1866; that said C. H. Beach and A. H. Platter settled upon the said above described lands about or prior to the year 1857, and about the year 1857 commenced and completed the construction of an extension of the said ditch hereinbefore referred to as constructed down to the lands of said Christiana Trefathen and appropriated the waters flowing in the natural channel of Sucker Creek into the head of said ditch, diverting them down through the same and through said extension to the land above described, and used the same for the irrigation of said lands and for stock and domestic purposes, and by gradual increase of the irrigated acreage of said lands, within a reasonable time after the first diversion of said waters, completed and perfected a right of appropriation of the waters of said stream for stock and domestic purposes and for the irrigation of ninety-one (91) acres thereof; and about said year 1857 supplemented said appropriation of the waters of Sucker Creek with the waters flowing in Mulvaney Gulch result-

ing from seepage and the waste waters from said Holland ditch, as hereinbefore set forth.

XXIX.

That some years prior to the commencement of this proceeding, the heads of the said Holland ditch and of the said ditch down to the lands of said claimants Trefathen and Dunn were changed to a new point of diversion, without substantial or any injury or interference with the prior or subsequent rights of other appropriators or water users, and that thereby the waters of said stream were diverted into a joint ditch and conducted down for a distance of about one-fourth mile to a point of division, and the waters flowing therein divided and conducted into said Holland ditch and said Beach and Platter ditch to the lands of said Trefathen and Dunn, and that said ditch, from its point of division to the point of diversion from Sucker Creek is herein referred to as the Holland-Beach and Platter ditch.

XXX.

That Geo. W. Dunn, James E. Holland and Christiana Trefathen should be deemed and considered as having prevailed in their said contests against the rights claimed by said Mary E. Leonard in and to the said Holland-Beach and Platter ditch, or said Holland and Beach and Platter ditch, and are entitled to have refunded to them the contest deposit required by law deposited by each of them.

XXXI.

That from the testimony and evidence taken in the contest of F. W. Sawyer, Freeling G. Sawyer, and Clarence F. Sawyer, against the rights claimed by H. M. Garner, claimant herein, it is found and determined:

1. That F. W. Sawyer, Freeling G. Sawyer, and Clarence F. Sawyer, claimants and contestants, are co-partners, and that F. W. Sawyer is the owner in fee simple of the $W\frac{1}{2}$ of the $SW\frac{1}{4}$ and lots 4 and 5, of Section 25, and the $NW\frac{1}{4}$ of the $NW\frac{1}{4}$ and lot 3 of Section 36, all in Township 39 S. R. 8 W. W. M., and that the said lands were patented to the predecessors of said claimant on the 7th day of August, 1866, by the United States.

2. That in the year 1866, the predecessors of said claimant, F. W. Sawyer, signed articles of incorporation of the Farmers Irrigating and Milling Company, for the construction of a canal or ditch for irrigating and milling purposes, and commenced and completed the construction of said ditch, tapping Sucker Creek at a point in the $SW\frac{1}{4}$ of Section 29, Tp. 39 S. R. 7 W. W. M., and thereby diverted the waters of Sucker Creek down to and upon said above described lands and used the same for the irrigation thereof; that thereafter and by gradual increase of the irrigated area of said lands, the said predecessors, within a reasonable time after the commencement and completion of said ditch, brought under cultivation and irrigation twenty-eight (28) acres of the above described lands, to which extent said lands were irrigated continuously with the waters of said stream diverted through said ditch, more or less thereafter each and every year up to the year 1899; that the testimony and evidence taken disclose, during said time, periods of years when said lands were not irrigated with the waters of Sucker Creek, diverted through said ditch, but fails to establish non user thereof for a period of ten consecutive years, or that there was in fact, at any time during said period of use, an intention to abandon said use or the right acquired thereby; and that the use to the extent herein set forth has been fairly continuous, and sufficient to establish a right to said waters as of the said date 1866.

3. That about the year 1899, the said F. W. Sawyer enlarged the said ditch and changed the course thereof, increasing the carrying capacity of the same, and their said appropriation of the waters of Sucker Creek, and commenced the irrigation of additional lands of the above described premises, and continued to gradually increase the irrigated area of said premises until within a reasonable time thereafter about twenty-five (25) acres in addition to the lands irrigated prior to 1899 were being irrigated with the waters of said stream diverted through said ditch, and thereby completed and perfected a second appropriation of the waters of Sucker Creek of date 1899 for the irrigation of said additional lands.

4. That H. M. Garner, claimant and contestant herein, is the owner in fee simple of the SE¹₄SE¹₄, Section 30, Tp. 39 S. R. 7 W. W. M., and that the said lands were patented by the United States to his predecessor in interest on the 5th day of May, 1893, subject to vested and accrued rights for mining, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as recognized by the local customs, laws and decisions of courts; that the said ditch hereinbefore referred to (and known herein as the Chapman ditch) crossed the said premises as originally and now constructed, and that, commencing about the year 1893, the said predecessor of said Garner used the waters flowing in the said ditch at different times for the irrigation of said lands, by permission of the owners thereof, but that said use never ripened into a title or right to the waters of said Sucker Creek, and that said Garner or his predecessor did not acquire a right or title to the waters of said stream, diverted into said ditch until about the year 1902, as hereinafter set forth.

5. That about the year 1902 the predecessors in interest of said Sawyer entered into an indenture or agreement of lease with the contestee, Garner, whereby it was agreed that said contestee Garner should have the right, for the term of ninety-nine (99) years to enlarge and maintain that portion of said Chapman ditch extending through his premises to a capacity of one-third larger than the original capacity of said ditch, and the right to use and enjoy the surplus waters of said ditch over and above the present capacity of said ditch extending on from the premises of the said Garner to the premises of said contestant's predecessors, the said predecessors of these contestants reserving unto themselves the right to the use of the first waters diverted into said ditch, and the first right to use said ditch to its full capacity from the premises of said Garner down to and upon their said premises; and that at such times as the said contestant's predecessors were not using said water or all thereof to the said full capacity of said portion of said ditch, it was agreed that said Garner should have the right to the use of the surplus in said ditch; said Garner, in full satisfaction of all rents required to be paid by the lessee, to furnish and contribute one-fourth of the work and materials required to maintain the dam at the head of said ditch and in keeping his portion of said ditch on his premises in good repair.

6. That pursuant to said agreement said Garner did, in accordance with the terms thereof, deepen the channel of said ditch and improve the same, thereby increasing the carrying capacity of said ditch, and did, each and every year thereafter, furnish and contribute the work and materials required in cleaning out and maintaining said ditch in accordance with the terms and conditions of said lease.

7. That in said year 1902, said H. M. Garner did appropriate the waters of Sucker Creek into the head of said ditch and divert and use the same for the irrigation of about twelve (12) acres of land of the above described premises, and has, each and every year since said time, irrigated the said lands with the waters of said stream, diverted through said ditch.

8. That the rights of said F. W. Sawyer are prior in time and prior in right to those of said H. M. Garner, as to their respective rights of appropriation through said ditch, but that said H. M. Garner is entitled to divert and use the amount or quantity of water from the natural flow of Sucker Creek into said ditch and down and upon his said lands, necessary for the irrigation of said twelve acres, as hereinafter limited in the order of determination herein, at all times, when said contestant's rights of appropriation through the same have been satisfied by the diversion of such amount of water as they may be entitled to divert and use under the order of determination herein, subject to the relative rights of all other claimants to the waters of Sucker Creek, prior in right and time.

9. That said contestee, H. M. Garner, shall be considered as having prevailed in said contest to the extent hereinbefore set forth, and entitled to have refunded the amount deposited by him as required by law as a contest deposit during the taking of testimony in said contest; and the said F. W. Sawyer shall be considered as having prevailed in the contest of M. H. Gates against F. W. Sawyer et al., heretofore filed herein, and the said contest dismissed.

XXXII.

That from the evidence and testimony taken in the contest heretofore initiated by Chas. R. Williams against the rights claimed by Ashby J. Fulk to the waters of Sucker Creek, it is found and determined:

1. That Ashby J. Fulk is the owner jointly with his wife, of those certain premises, known as the Briggs Donation Land Claim, situated in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, Tp. 8 W. W. M., patented to the predecessors of said claimants by the United States on May 19th, 1866, and that said Sucker Creek flows in a general westerly and northerly direction by and across said premises, and that said lands are riparian in character, and consist of about 330 acres, more or less.

2. That William Bunch, claimant herein, is the owner of about sixty (60) acres of land situated in the N $\frac{1}{2}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 39 S. R. 8 W. W. M., and said Sucker Creek flows over and across said lands, and the said lands are riparian in character; that the date when said lands were patented to said claimant, or his predecessor, does not appear from the testimony or proofs herein.

3. That about the year 1857 the predecessors in interest of said claimants, Fulk and Bunch, commenced the construction of a ditch, tapping Sucker Creek at a point in the SW $\frac{1}{4}$ of Section 31, Tp. 39 S. R. 7 W. W. M., below the points of diversion of the ditches of all other claimants as herein set forth, and thereafter and within a reasonable time completed the construction of said ditch down to and upon the lands of said Bunch and the lands of said Fulk below, and diverted the waters of Sucker Creek down to and upon said lands, reclaiming certain portions thereof and irrigating the same with the waters of said stream; that said Fulk's predecessors did gradually reclaim and bring under irrigation from time to time additional lands of the above mentioned premises, until, within a reasonable time after the construction of said ditch, about one hundred (100) acres had been brought under irrigation; and that thereafter said lands were so irrigated, more or less continuously, each and every year up to the present time; that said Bunch or his predecessors, commencing about said year 1857, gradually increased the irrigated acreage of lands of the above mentioned premises until within a reasonable time about forty-seven acres (47)

thereof had been and were being irrigated with the waters of Sucker Creek diverted through said ditch; and that said lands to that extent have been more or less continuously irrigated each and every year up to the present time; that said diversion through said ditch (herein known as the Briggs-Tamery ditch) was and is a diversion of the waters of Sucker Creek; that said Fulk and his wife are jointly the owners of a two-thirds interest, and said Bunch of a one-third interest in and to said ditch.

4. That said Ashby J. Fulk should be considered to have prevailed in said contest and to be entitled to have refunded the amount deposited by him required by law as a contest deposit.

XXXIII.

That J. D. Wimer, a claimant herein, initiated a contest against the rights claimed by Mary Ellen Leonard in and to the waters of Sucker Creek, and that from the testimony and evidence taken therein it is found and determined:

1. That Mary Ellen Leonard is the owner of those certain described lands, known herein as the Caldwell Place, and described as the SW $\frac{1}{2}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, and the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 29, all in Township 39 S. R. 7 W. W. M., which said lands were conveyed to said claimant's predecessors on June 5th, 1866, by patent from the United States; that Sucker Creek flows over and across said lands in a general southerly and westerly direction, and the said lands are riparian in character.

2. That about the year 1857 the said Mary Ellen Leonard's predecessors in interest commenced the construction of a ditch, tapping Sucker Creek in about the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, Tp. 39 S. R. 7 W. W. M., below the points of diversion of the Johnson and Leonard Ditch, Seyferth ditch, Wimer ditch, Holland-Beach and Platter ditch, Lewis ditch, Wisecarver ditch, McDougall Ditch, Gates-McCann (or Sucker Creek Irrigation Company ditch) Green ditch, Baldwin ditch, and the Grayback ditch from Grayback Creek, the Wells-Barrett, or Old Kelly and Anderson ditch, and the ditches diverting water from Bear Creek, a tributary, and the respective diversions of the various parties diverting water through said ditches, as hereinafter or hereinbefore set forth, and did thereafter reclaim and irrigate a portion of said lands, not exceeding fifteen acres in area, by the diversion of the waters of Sucker Creek down through said ditch to and upon the lands above mentioned; and that said lands have been, to said extent, since said time, continuously irrigated, more or less, down to the present time.

3. That Mary Ellen Leonard is the owner in fee simple of those certain lands, known herein and referred to as the Home Place, described as follows: the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 31; and the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 32; all in Tp. 39 S. R. 7 W. W. M., in Josephine County, Oregon.

That of the above described lands, one A. J. Adams made homestead entry and filing on the N $\frac{1}{2}$ SE $\frac{1}{4}$; SW $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31, Tp. 39 S. R. 7 W. W. M., in the year 1871, and patent was issued to said Adams in the year 1878, pursuant to such homestead entry, settlement, filing and residence on said land, and upon due and proper proof thereof.

That the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Tp. 39 S. R. 7 W. W. M., was patented to Lawrence Leonard by United States patent regularly and duly issued in the year 1870.

That the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of the same section was patented to C. H. Beach and others, by United States patent issued in the year 1869; also the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32; and SW $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 32, same Tp. and Range.

That in 1875 one David Watters made homestead settlement and filed on the SW $\frac{1}{4}$ Section 32, same Tp. and Range, and settled and resided on said land, but died before final proof was made thereon; and after his death, proof was duly and regularly made, and on May 16th, 1888, patent was issued, duly and regularly, and delivered to the heirs of said Watters, under and pursuant to his said homestead settlement and filing.

That after the issuance of patent in each case to all of said lands, and prior to the beginning of these proceedings, all of the above described premises were by mesne conveyances, duly and regularly conveyed to Mary Ellen Leonard, and that she is now the owner in fee simple thereof.

4. That in the year 1865, the predecessors in interest of said claimant Mary Ellen Leonard, commenced and thereafter, with due diligence, completed the construction of a ditch, tapping Sucker Creek at a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 Tp. 39 S. R. 7 W. W. M., and diverted the waters of Sucker Creek down to and upon the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 31, said township and range, and commenced the use of the waters of said stream for the operation of a sawmill, situated on said last mentioned premises; and that said ditch is now known and referred to herein, as the Mill Race ditch, and as originally and now constructed taps the stream at a point below the said above mentioned Caldwell ditch, diverting water to said Caldwell Place.

5. That Sucker Creek flows through and across said premises above described as the Home Place, and the said lands are riparian thereto and in character.

6. That commencing about said year 1865, said claimant's predecessors appropriated the waters of said stream for irrigation purposes, and diverted the same down through said ditch to and upon the said lands of said Home Place, and gradually increased the irrigated area thereof, until, within a reasonable time thereafter, one hundred and twenty-five acres had been and were being irrigated with the waters so diverted; and that said use, to said extent, has been a reasonable use of the said waters for the irrigation of said lands, and for stock and domestic purposes, each and every year, down to the present time.

7. That the use of the waters of said stream for the operation of said sawmill was, many years prior to the commencement of these proceedings, changed to a use of said waters for irrigation of said lands, without any or substantial injury to the subsequent rights of appropriators of the waters of said stream; and that, for more than ten years, the use of the waters of said stream for the development of power or the operation of said sawmill has been abandoned, and the rights of the said claimant is now confined to a use for the irrigation of said lands to the extent herein set forth.

8. That said claimant's predecessors and this claimant, Mary Ellen Leonard, at all times, have, and do now claim a right to the waters of said stream by virtue of prior appropriation thereof, and not as riparian owner, and did and this claimant now does, elect, both in this proceeding, and by diversion and use under appropriation through said Caldwell ditch and the said Mill Race ditch, to claim the waters of said stream by appropriation thereof, for stock and domestic purposes and for the irrigation of said lands.

9. That J. D. Wimer, a claimant herein, is the owner in fee simple of a strip four (4) chains North and South and 20 chains East and West on the North side of the NE $\frac{1}{4}$ of Section 33, Tp. 39 S. R. 7 W. W. M., and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27; and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 28, Tp. 39 S. R. 7 W. W. M.; that said lands were patented to the predecessor in interest of said Wimer on May 1st, 1866; that about the year 1874,

the predecessors of said claimant commenced and thereafter and within a reasonable time completed the construction of that certain ditch known as the Wimer ditch, tapping Sucker Creek at a point in about the NE¹/₄SE¹/₄ of Section 22 Tp. 39 S. R. 7 W. W. M., and diverting the waters of said stream, conducting them down to and upon said above described lands and using the same for the irrigation thereof, and by gradual increase of the area irrigated therefrom, brought under cultivation and reclaimed eighty-five (85) acres of the said land, within a reasonable time, which lands, to said extent, have been irrigated with the waters of said stream diverted through said ditch, continuously down to the present time.

10. That Sarah J. Seyferth owns the E¹/₂ of Section 33, Tp. 39 S. R. 7 W. W. M., excepting the N¹/₂ of the NE¹/₄; also commencing at the southeast corner of the NE¹/₄ of the NE¹/₄ of said section 33; thence south four(4) chains; thence west 40 chains; thence north 4 chains; thence east 40 chains to the place of beginning; that the SE¹/₄ was patented by the United States to the predecessor of said claimant in 1860; that the NE¹/₄ of said Section 33 was patented to the predecessor of said claimant, by the United States in 1860; that Frank O. Meeker and L. E. Burnett have succeeded to all the right, title and interest of Joseph Seyferth, a claimant herein, since these proceedings were commenced, and are the owners of the following described premises: commencing 4 chains south of the northeast corner of section 33, Tp. 39 S. R. 7 W. W. M.; thence west 40 chains; thence south 20 chains; thence west 40 chains; thence north 20 chains to the place of beginning; that said lands were patented to the predecessors of said claimants on December 15th, 1860, by the United States; also a strip on the south side 4 chains wide, patented to the predecessor of said claimants December 15th, 1860; that about the year 1868, the predecessors of said claimant, Sarah J. Seyferth, and said claimants, Meeker and Burnett, commenced and completed the construction of that certain ditch known herein as the Seyferth ditch, tapping Sucker Creek at a point in about the NE¹/₄SE¹/₄ of Section 22, Tp. 39 S. R. 7 W. W. M., and diverting the waters flowing in the natural channel of said stream conducting the same down to and upon the above described lands, and using the same for the irrigation thereof, and by gradual increase of the irrigated area of said lands, within a reasonable time thereafter brought under cultivation and were irrigating with said waters diverted through said ditch one hundred and fifty-eight and a half (158¹/₂) acres of the said lands described above as belonging to said Sarah J. Seyferth, and thirty-nine and a half (39¹/₂) acres of the above described lands of said claimants, Meeker and Burnett, and thereafter said lands were and have been continuously irrigated with the waters of said stream, diverted through said ditch, down to the present time.

11. That George and Roy Wells, claimants, are the owners of the following described premises: the S¹/₂ of the SW¹/₄ of Sec. 20. and the S¹/₂ of SE¹/₄ of Sec. 19, Tp. 39, S. R. 7 W. W. M., patented by the United States to a predecessor in interest of said claimants on May 1st, 1866; also the NW¹/₄NW¹/₄ of Sec. 29, Tp. 39 S. R. 7 W. W. M., patented by the United States to a predecessor in interest on May 1st, 1869; also the NE¹/₄ of Sec. 30, Tp. 39 S. R. 7 W. W. M., patented to a predecessor on December 15th, 1860; also the NE¹/₄SE¹/₄ of Sec. 30, Tp. 39 S. R. 7 W. W. M., patented to a predecessor on May 20th, 1873; that F. E. Barrett, claimant owns the NE¹/₄ of NE¹/₄, Sec. 25, Tp. 39 S. R. 8 W. W. M., patented to a predecessor on May 1st, 1869; also lots 1 and 2, Sec. 30, Tp. 39 S. R. 7 W. W. M., patented to a predecessor on March 10th, 1883; also the SW¹/₄ and N¹/₂ of SE¹/₄ of Sec. 19, and N¹/₂ NW¹/₄ of Sec. 30, Tp. 39 S. R. 7 W. W. M., being Donation Land Claim No. 729 of Peter Ganyard; Don. Cert. Not. No. 729, dated April 18, 1864, and showing settlement on Dec. 23, 1854; that about the year 1873, the predecessors in interest of said claimants, George and Roy Wells, and F. E. Barrett, commenced and completed the construction of that certain ditch known herein as the Wells-Barrett ditch, but formerly known as the Kelly and Anderson ditch, and tapped Sucker Creek at a point on the north bank of said stream

in about the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 22, Tp. 39 S. R. 7 W. W. M., and diverted and conducted the waters of said stream, flowing in the natural channel thereof, down to and upon the above described lands, and commenced the irrigation of said lands, and within a reasonable time thereafter by gradual increase of the irrigated area brought under cultivation and reclaimed and irrigated one hundred and fifty-five (155) acres of the said above described lands of said George and Roy Wells, and fifty (50) acres of the said lands, above described, of said Barrett, and that said lands have been so irrigated each and every year continuously with the waters of Sucker Creek, diverted through said ditch, down to the present time.

12. That M. H. Gates is the owner of Lots 1 and 2 in Section 31, Tp. 39 S. R. 7 W. W. M., comprising about 74 acres, deeded by the State of Oregon by School Land Deed dated August 8, 1889; that John Krauss is the owner of Lot 2 and the S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 36, Tp. 39 S. R. 8 W. W. M., under State Deed of the State of Oregon, dated September 17th, 1904; that Deborah A. Masters, the widow of Henry Masters, deceased, is now the wife of said John Krauss, and is in possession of Lot 1 of Sec. 36, by virtue of her dower right, and by deeds is the present owner of a one-fourth interest in said premises, and that the heirs at law of said Henry Masters, deceased, to-wit: John L., Stephen A., and Harrison J., Masters, own the remaining three-fourths interest therein; that Henry M. Garner, claimant, is the owner of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 31, Tp. 39 S. R. 7 W. W. M.; that about the year 1893 or prior thereto, the said M. H. Gates, H. M. Garner, and Henry Masters, deceased, were the owners of one-third of the capital stock of the Redlands Ditch and Irrigation Company, an Oregon corporation, since dissolved, and that upon the dissolution of said corporation, said incorporators succeeded to equal and undivided one-third interests each in the ditch and water rights of said corporation, as hereinafter set forth; that about the year 1893, the said corporation commenced and completed the construction of that certain ditch, known herein as the Redlands ditch, tapping Sucker Creek at a point in about the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, Tp. 39 S. R. 7 W. W. M., and conducted and diverted the waters of said stream, flowing in the natural channel thereof, down to and upon the above described lands, and put the same to beneficial use for irrigation, stock, and domestic purposes, and commencing about the year 1894, gradually increased the irrigated area of the said lands, until, within a reasonable time thereafter, about one hundred and six (106) acres were being irrigated with the waters of said stream diverted through said ditch; and that thereafter said lands were continuously irrigated down to the present time; that said claimants are tenants in common in the said ditch and water right.

13. That W. L. Babcock, claimant, owns the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 36, Tp. 39 S. R. 8 W. W. M., deeded by the State of Oregon to his predecessor in interest on April 15th, 1875; also the SW $\frac{1}{4}$ of Sec. 31, Tp. 39 S. R. 7 W. W. M., patented to his predecessor by the United States on June 20th, 1876; that said Sucker Creek flows down over and across said lands, and the same are contiguous and adjacent thereto and riparian in character; that Sarah G. Gibbs, claimant, is the owner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 6, Tp. 40 S. R. 7 W. W. M., and the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 1, in Tp. 40 S. R. 8 W. W. M.; that about the year 1893, the predecessors of said claimants commenced and completed the construction of a ditch, known herein as the Kieffer ditch, tapping said stream at a point in about the SE $\frac{1}{4}$ of Section 31, Tp. 39 S. R. 7 W. W. M., and diverted the waters flowing in the natural channel of said stream, conducting the same down to and upon said lands, and using the same for the irrigation thereof, to the extent hereinafter set forth; and that said use for irrigation purposes has been a continuous use down to the present time; that by gradual increase of the irrigated area thereof, said claimant Gibbs, or her predecessor, brought under cultivation and reclaimed with the waters so diverted fifteen and a half (15 $\frac{1}{2}$) acres of said above described lands; and that said W. L. Babcock, by gradual increase of the irrigated area, within a reasonable time, brought under cultivation and reclaimed with the waters

so diverted through said ditch, about thirty-seven (37) acres in addition to the lands of said Babcock, theretofore irrigated and reclaimed with the waters of said stream, diverted through the Trumble ditch, as hereinafter set forth.

14. That Samuel and Hattie Miller are the owners of certain lands situated in the SW $\frac{1}{4}$ of Sec. 36, Tp. 39 S. R. 8 W. W. M., and the NW $\frac{1}{4}$, Section 1, Tp. 40 S. R. 8 W. W. M., and that said lands were deeded to the predecessors of said claimants by the State of Oregon, by State Deeds, one dated in 1890, confirming a deed of the County School Superintendent dated February 20th, 1864, to the W $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 1, Tp. 40 S. R. 8 W. W. M., and W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 36, Tp. 39 S. R. 8 W. W. M., and one dated Jan. 17th, 1886, to the NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 36, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, Tp. 39 S. R. 8 W. W. M., dated March 31, 1879; that about the year 1872 the predecessors in interest of said Hattie and Samuel Miller, and of said W. L. Babcock, commenced and completed the construction of that certain ditch known and referred to herein as the Trumble ditch, tapping Sucker Creek at a point in about the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 31, Tp. 39 S. R. 7 W. W. M., and diverted the waters of said stream, conducting the same down to and upon the above described lands, and upon the lands of the said Babcock, as hereinbefore described; that the predecessors of said Babcock at about said time commenced the irrigation of said lands, and by gradual increase of the irrigated area thereof, within a reasonable time after the construction of said ditch, brought under cultivation and irrigated and reclaimed about twenty-five acres of said lands; and that the predecessors of said Samuel and Hattie Miller, and said claimants, commenced the irrigation of the said premises above described, and by gradual increase of the irrigated area thereof, brought under cultivation, within a reasonable time, and reclaimed and irrigated about one hundred acres of said lands; that said lands, to the extent herein set forth, have been continuously irrigated each and every year down to the present time.

15. That Gravelly Slough, herein referred to, is a natural depression, wherein by reason of the irrigation of the lands of the various claimants herein by the diversion of the waters of Sucker Creek, seepage and waste waters from said lands and the ditches irrigating the same, have gathered; and that about the year 1903, W. L. Babcock, and Samuel C. and Hattie Miller, or their predecessors, commenced and completed the construction of that certain ditch known herein as the Gravelly Slough ditch, tapping said Gravelly Slough, and diverting and using the seepage and waste waters therein through said ditch for the irrigation of their said lands, thereby supplementing their said respective appropriations of the waters of Sucker Creek, as hereinbefore set forth; that in addition to said seepage and waste waters, said Hattie and Samuel Miller divert and use the waters of certain springs on the banks of Sucker Creek, tapped by said Trumble ditch, and thereby supplementing the flow in said ditch appropriated from Sucker Creek as aforesaid.

16. That Sucker Creek flows down and over and across the said above described lands of said Samuel and Hattie Miller, situated in the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 36, Tp. 39 S. R. 8 W. W. M. and that the same are riparian in character.

17. That W. H. Wisecarver, claimant, is the owner of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 27, and the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 28, all in Tp. 39 S. R. 7 W. W. M., conveyed by the United States to his predecessor by patent dated August 15th, 1876; that one Ada Erb has succeeded to all the right, title and interest of the claimant herein H. A. Moore, in and to the following described lands: the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, Tp. 39 S. R. 7 W. W. M.; that about the year 1889 the predecessors of said Wisecarver, and said Ada Erb, claimants, recorded in Vol. 5, Miscellaneous Mining Records of Josephine County, Oregon, at page 411 a notice of claim to 100 inches of the waters of Sucker Creek to be taken out in a ditch just below the Beach and Platter and Baine's ditch, and to be used for irrigating purposes; that about said time the said predecessors of said claimants commenced and completed the construction of said ditch, diverting the waters of Sucker Creek down to and upon said above described lands, and commenced the irrigation thereof, and thereafter, gradually in-

creasing the irrigated area thereof, until sixty-five and a half acres of the said Wisecarver lands, and twelve (12) acres of the said Ada Erb lands were irrigated with the waters of said stream, diverted through said ditch within a reasonable time.

18. That Charles R. Williams is the owner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 32, Tp. 39 S. R. 7 W. W. M., conveyed to his predecessor by the United States by patent dated in 1897; that said predecessor settled upon said lands in 1890, and thereafter made homestead entry thereon. That J. E. Lewis is the owner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Tp. 39 S. R. 7 W. W. M.; that the predecessors of said Lewis acquired title to said lands prior to 1875; that about the year 1875 the predecessors in interest of said Lewis and said Williams commenced and completed the construction of that certain ditch known herein as the Gilmore ditch, tapping Sucker Creek at a point about the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, Tp. 39 S. R. 7 W. W. M., and diverting the waters flowing in the natural channel thereof, conducting the same down to and upon the above described lands; that about the year 1876 said claimant Lewis, or his predecessors, commenced the irrigation of said above described premises with the waters diverted through said ditch, and acquired a one-half interest in said ditch, and at about that time appropriated the said waters of Sucker Creek through said ditch, and commenced and gradually increased the irrigation of said lands, until within a reasonable time thereafter about ten acres of said lands were being irrigated with the waters diverted through said ditch; that the predecessor of said Williams, one Gilmore, settled upon said above described lands about the year 1875 or 1876, and constructed the above named ditch down to and upon said lands, and commenced the irrigation thereof, and thereafter there was a gradual increase of the irrigated acreage of said lands by said Gilmore and his successors in interest, the predecessor of said claimant, Williams, until about nineteen (19) acres of said lands were being irrigated with the waters diverted through said ditch; that the irrigation of the said lands of Lewis and Williams has been reasonably continuous, and the gradual increase of irrigated acreage made within a reasonable time after the year 1876.

19. That the predecessors of said James E. Lewis settled upon the following described lands prior to the year 1875, and that said claimant is now the owner thereof, to-wit: the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 32, Tp. 39 S. R. 7 W. W. M.; that about the year 1875, the said predecessors commenced and completed the construction of that certain ditch known herein as the Lewis ditch, tapping Sucker Creek at a point in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 22, Tp. 39 S. R. 7 W. W. M., and diverted the waters of Sucker Creek into the head of the same, down to and upon the said above described lands, for the irrigation thereof, and thereafter and within a reasonable time, by gradual increase in the irrigated area of said lands reclaimed, cultivated and irrigated about thirty-six (36) acres thereof; that said irrigation has been fairly continuous down to the present time.

20. That T. H. Robinson, claimant, is the owner of the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 22, Tp. 39 S. R. 7 W. W. M., entered in the land office on March 2, 1893, and patented to the predecessor of said claimant on May 25th, 1900, by the United States; that about the year 1898 the predecessor of said claimant commenced and completed the construction of that certain ditch known as the Green ditch, tapping Sucker Creek at a point in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 23, Tp. 39 S. R. 7 W. W. M., on the north bank of said stream, and diverted the waters flowing in the natural channel down to and upon said above described lands for irrigation purposes, and thereafter, by gradual increase in the irrigated area of said lands, brought under cultivation and reclaimed and irrigated with the waters so diverted about thirty (30) acres thereof, within a reasonable time after the construction of said ditch; and that said irrigation and use has been continuous since said time down to the present time.

21. That Charles J. Johnson, deceased, was at the time of the commencement of these proceedings, the owner of the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 34, Tp. 39 S. R. 7 W. W. M.; that about May, 1911, the said claimant died, and that C. O. Johnson, E. A. Johnson, W. A. Johnson, and M. A. Brady, are heirs

at law of said deceased and the owners of said premises; that said lands were entered as a homestead by said Johnson on June 3rd, 1891; and patent, conveying the same to him was issued by the United States on October 18th, 1898; that about the year 1897, the predecessor of said claimant, J. D. Wimer, one William Leonard, and this claimant Charles J. Johnson, commenced and completed the construction of that certain ditch known as the Johnson and Leonard ditch, and tapped said Sucker Creek at a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 22, Tp. 39 S. R. 7 W. W. M., and diverted the waters flowing in the natural channel of said stream into said ditch down to and upon the said above described lands for the irrigation thereof; that by gradual increase of the irrigated area of said lands, within a reasonable time, about sixty (60) acres of the same were brought under cultivation and reclaimed and irrigated with the waters so diverted and that said use has been continuous down to the present time.

22. That John C. and Jessie Lowden appeared and made proof of claim to a right to the use of the waters of said stream, but that at said time Samuel and Hattie Miller were the owners of the premises described in said proof (and as hereinbefore described) and said claimants Lowden were in possession of said lands and water rights under a contract to purchase; that said Millers are still the owners of said premises and water rights and ditches appurtenant thereto; that the Spence and Mathewson ditch, mentioned in said proof, diverts the waters of Althouse Creek and Democrat Gulch, and is not involved in these proceedings.

Based upon the foregoing findings, the Board of Control concludes as a matter of law that Mary Ellen Leonard, and her predecessors, at all times have, and she now does elect to claim by virtue of appropriation of the waters of said stream, and has a right of appropriation through the Caldwell ditch, as of the priority date of 1857, and through the Mill Race ditch, as of the priority date of 1865, for irrigation, stock and domestic purposes, to the extent set forth in the above findings, and as hereinafter set forth in the order of determination herein; and that said rights are subsequent and subordinate to, in point of time and right, all prior rights of appropriation, as herein set forth, but prior and superior in point of time to all subsequent rights of appropriation, as herein set forth; and that said subsequent and subordinate rights of appropriation are entitled to the surplus waters flowing in the natural channel of said stream, over and above the amount required to satisfy the said appropriations of said Mary Ellen Leonard, and those claimants whose rights are prior thereto; that said claimant, Mary Ellen Leonard, shall be deemed and considered to the extent herein set forth to have prevailed in said contest of J. D. Wimer against the rights claimed by her and is entitled to have refunded to her all amounts deposited by her upon the taking of testimony in said contests.

XXXIV.

That from the testimony taken in the contest of J. W. Krauss against the rights claimed by John McDougall, it is found and determined that said John McDougall is the owner of about sixty (60) acres of land in the SW $\frac{1}{4}$ of Section 22, Tp. 39 S. R. 7 W. W. M., susceptible of irrigation from said Sucker Creek; that said lands were patented to said John McDougall about the year 1881; that prior to that time, and since 1859, or about that time, said lands, then public lands, were occupied by various parties and water from Sucker Creek was diverted on said lands through a slough, by damming said stream and forcing said waters into the same and down and upon said lands where it was used for irrigation purposes, to the extent of the irrigation of a small garden, about one acre in area; that commencing about the year 1880, said claimant gradually increased the irrigated acreage of said lands until within a reasonable time thereafter, about ten acres were being irrigated from said slough, with the waters of Sucker Creek diverted into the same; that about the year 1905, said claimant commenced and completed the construction of that certain ditch, known herein as the McDougal ditch, and thereafter increased said irrigated acreage, gradually, and each year until at the present time about twenty-five (25) acres altogether are being irrigated with the waters of said stream diverted into said ditch, or fifteen (15) acres in addition to the lands irrigated prior to said year 1905; that said claimant is proceeding with reasonable diligence to clear and reclaim his said

lands, but has not yet had sufficient time within which to fully apply the waters appropriated through said ditch in said year 1905 to the sixty (60) acres above mentioned, and should be allowed a reasonable further time within which to complete and perfect such appropriation and fully apply said waters to beneficial use; that said lands are riparian in character and the said stream flows down, over and across the same.

XXXV.

That about the year 1858, the predecessors in interest of A. M. McVey, Ora Smith, Alex White and J. R. White commenced the construction of a ditch, herein known as the White ditch, down to and upon the lands owned by said claimants in Section 30, Tp. 39 S. R. 7 W. W. M. and Sec. 25, Tp. 39 S. R. 8 W. W. M., and thereafter completed the same, and appropriated and diverted the waters flowing in the natural channel of said stream into said ditch, conducting the same down upon said lands, for the irrigation thereof, and within a reasonable time thereafter brought under cultivation, and reclaimed and irrigated said lands, to the extent in the order of determination herein set forth; and that the use of said waters through said ditch by said claimants and their predecessors has been fairly and reasonably continuous each and every year down to the present time.

XXXVI.

That the Sucker Creek Irrigation Company is an association and co-partnership composed of N. W. Gates, Dora M. Lampton, Ed. McCann, and J. D. Barnett; that Dora M. Lampton and M. W. Gates are the owners of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 32, in Tp. 39 S. R. 7 W. W. M.; that Ed McCann owns the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Tp. 40 S. R. 7 W. W. M.; that J. B. Barnett owns the N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 33, in Tp. 39 S. R. 7 W. W. M.; that about the year 1875 the predecessors of said Ed. McCann constructed a ditch, diverting the waters of Sucker Creek, down to and upon said lands, and commenced the irrigation thereof, and thereafter and within a reasonable time, brought under cultivation and reclaimed and irrigated about fifty (50) acres of the said lands, of the said McCann; that the predecessors of said Barnett commenced the irrigation of his said lands, with the waters diverted through said ditch, about the year 1875 and thereafter and within a reasonable time brought under cultivation, and reclaimed and irrigated about forty (40) acres thereof; that the predecessors of said Gates and Lampton commenced the irrigation of their said lands with the waters diverted through said ditch about the year 1882, and thereafter and within a reasonable time, brought under cultivation and reclaimed and irrigated about thirty (30) acres of said lands; that about the year 1892 the said claimants, or their predecessors, constructed that certain ditch known as the Gates-McCann ditch (or Sucker Creek Irrigation Ditch) tapping Sucker Creek at a point in about the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M. and thereafter the said above described lands were irrigated through said Gates-McCann ditch; that said change in ditch and point of diversion does not appear to have been to the injury of other appropriators or water users, subsequent or prior to the rights of said claimants; that the irrigation of said lands has been reasonably continuous at all times down to the present time.

XXXVII.

That T. A. Glynn, Mrs. T. A. Glynn, H. H. Kellogg, Robert J. Kellogg, and James Kellogg, claimants, are tenants in common in and the owners of the following described lands and ditches and water rights appurtenant thereto, to-wit: Fifteen (15) acres situated in the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M., and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, Tp. 39 S. R. 7 W. W. M.; that about the year 1882, the predecessors of said claimants constructed the ditch known herein as the Reed ditch, appropriated the waters of Sucker Creek, at a point on said stream in about the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M., and di-

verted the waters of said stream down upon said lands, and thereafter and within a reasonable time reclaimed, brought under cultivation and irrigated fifteen (15) acres as above described, by gradual increase of the irrigated acreage of said lands; and that said irrigation has been reasonably continuous down to the present time.

XXXVIII.

That G. W. Baldwin, claimant is the owner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 24, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 23, Tp. 39 S. R. 7 W. M., and that about the year 1894 constructed a ditch appropriating, diverting and using the waters flowing in a small gulch, tributary to said Sucker Creek, for the irrigation of his said lands; and thereafter and about the year 1895 constructed two small ditches, tapping Sucker Creek at a point in about the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24, Tp. 39 S. R. 7 W. M., and known herein as the Baldwin ditches and appropriated and diverted the waters of Sucker Creek, and supplementing same with the waters flowing in said Gulch, within a reasonable time reclaimed and irrigated about twelve (12) acres; that in about the year 1907 said claimant supplemented his said appropriation from Sucker Creek with the waters of Little Grayback Creek, a tributary of Sucker Creek, by appropriation of the same and diversion into the little Grayback ditch, constructed that year, and is proceeding to reclaim about fifty acres in addition to the lands already irrigated with the waters so appropriated; that said claimant has not yet had sufficient time within which to fully perfect and complete his said appropriation of the waters of Little Grayback Creek, and should be allowed a reasonable time within which to clear, reclaim and cultivate the remainder of his said lands, susceptible of irrigation therefrom, as of a priority date of 1907.

XXXIX.

That in the year 1854, the lands through and across which said Sucker Creek was then and now is flowing were public lands of the United States, and the waters of said stream were free and unappropriated and subject to appropriation, and that commencing about that year, and at intervals of time thereafter, the claimants herein named, at the times herein set forth, initiated and thereafter perfected rights of appropriation to the waters of said stream, diverting the same down upon lands non riparian in character, as well as upon lands riparian to said stream, and using the same for the irrigation thereof; and that said riparian owners have elected, and now do elect to claim rights in and to the waters of said stream and its tributaries, above their points of use, under and by virtue of appropriation thereof, subject to all prior rights therein, initiated by appropriation thereof, and that for more than thirty years said riparian owners have been diverting and using the waters of said stream by virtue of such appropriations; that for a period of time, from the year 1856 down to the present time, the various claimants to the waters of said stream, above the lands of riparian owners diverting water from the same, or their respective points of diversion, have been diverting and using the said waters for the irrigation of non riparian lands, thereby diminishing substantially the annual flow down to and upon said lands, under a claim of right, continuously each and every year, openly and notoriously, and adversely as against all claims of said riparian owners by virtue of their said riparian ownership below the points of diversion of said claimants, and in a manner hostile thereto; that by virtue of their election to claim under and by appropriation of the waters of said stream, each and all of said riparian owners have abandoned whatever rights they may have had by virtue of their riparian ownership.

XL.

That in about the year 1862 the Grants Pass Banking and Trust Company, a corporation, or its predecessors in interest, initiated rights of appropriation to the waters of Bolan Creek, a tributary of Sucker Creek, for mining purposes, and thereafter supplemented said rights by the appro-

priation of the waters of the East Fork thereof, in the year 1902; and that said appropriations constitute the first right to the waters of said Bolan Creek and said East Fork, to the extent hereinafter set forth.

XLI.

That in about the year 1905, Custis Masterson, claimant, appropriated the waters of Bolan Creek for mining purposes, thereafter diverting and using the same, to the extent hereinafter set forth, and that said right constitutes the second right to the waters of said Bolan Creek.

XLII.

That one E. H. Wise, claimant, is the owner of one hundred and fifty (150) acres in the $E\frac{1}{2} SW\frac{1}{4}$ and $SW\frac{1}{2} SW\frac{1}{4}$, Sec. 21 and $NW\frac{1}{2} NW\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M., and that about the year 1857, the predecessors in interest of said claimant constructed that ditch known herein as the Middleworth ditch, tapping Bear Creek, a tributary of said Sucker Creek, in about the $SW\frac{1}{2} SE\frac{1}{4}$ of Sec. 16, Tp. 39 S. R. 7 W. W. M., and appropriated the waters of said Bear Creek, diverting the waters of said stream down to and upon said lands, and thereafter by gradual increase of the irrigated acreage, cultivating, reclaiming and irrigating sixty three (63) acres of said lands, within a reasonable time; and that said irrigation has been reasonably continuous down to the present time; that about 1855, the predecessors of said Wise constructed the Emerson ditch, and thereafter the Allen ditch, and commenced the reclamation of the $SE\frac{1}{2} NW\frac{1}{4}$, said section, Tp. and Range, now owned by said claimant, and by appropriation of said waters and diversion and use thereof, and a gradual increase in the irrigated acreage of said lands, within a reasonable time, reclaimed, brought under cultivation and irrigated eighteen acres of the last above described tract; and that said irrigation has been reasonably continuous down to the present time; that the rights of appropriation of the said Wise constitute the first right to the waters of said Bear Creek.

XLIII.

That the predecessor of Nettie Griffin, claimant initiated rights of appropriation in the waters of Bear Creek in the year 1906, by the construction of a ditch, tapping said stream and diverting the waters thereof down and upon the lands of said claimant in the $NE\frac{1}{2} NW\frac{1}{4}$ of Sec. 21, Tp. 39 S. R. 7 W. W. M. for the irrigation thereof, and that within a reasonable time the irrigated acreage of said lands has been increased to five (5) acres; that said use has been continuous down to the present time; that about the year 1893 said claimant's predecessors initiated rights of appropriation of the waters flowing in Green Gulch, a tributary of said Bear Creek, by the construction of the Clark ditch, diverting said waters down to and upon the $NE\frac{1}{2} NW\frac{1}{4}$ of Sec. 21, Tp. 39 S. R. 7 W. W. M., and thereafter and within a reasonable time reclaiming, bringing under cultivation and irrigating fifteen (15) acres of said lands with the waters so diverted; that the rights of said claimant to the waters of Bear Creek constitute the second right thereto; and to the waters of Green Gulch the first right thereto; that said use has been continuous down to the present time.

XLIV.

That one Ed Lind is the owner of twenty-five (25) acres of lands situated in the $NE\frac{1}{2} NW\frac{1}{4}$ and $NW\frac{1}{4} NE\frac{1}{4}$ of Sec. 31, Tp. 39 S. R. 6 W. W. M., and one S. Leon Grimmett is the owner of the $SE\frac{1}{2} NE\frac{1}{4}$ Sec. 25, and Lot 3, Sec. 25, Tp. 39 S. R. 7 W. W. M.; that about the year 1897 the pre-

decessors of said Lind constructed that certain ditch known as the Grayback ditch, tapping Grayback Creek, a tributary of said Sucker Creek, and appropriating and diverting the waters flowing in the natural channel thereof down to and upon the said lands of said Lind and thereafter and within a reasonable time brought under cultivation and reclaimed and irrigated with the waters so diverted thirteen (13) acres of said lands, and that said irrigation has been reasonably continuous down to the present time; that about the year 1903 said Grayback ditch was extended, by the predecessors of said Grimmett, down to and upon his said lands, and the waters flowing in the natural channel of said stream appropriated and diverted into said ditch down and upon said lands, and thereafter, and within a reasonable time, by gradual increase of the irrigated area, eighteen (18) acres of said lands were brought under cultivation, reclaimed and irrigated with the waters so diverted; and that said use has been a continuous one down to the present time; that the rights of said Ed Lind constitute the first right to the waters of said stream, and the rights of said Grimmett constitute the second right thereto.

XLV.

That H. G. Siskron in about the year 1908 appropriated the waters flowing in Yager Gulch, a tributary of said Sucker Creek, to the extent hereinafter set forth, for mining purposes, and that said right constitutes the first right to the waters flowing in said gulch.

XLVI.

That about the year 1894, one J. C. Sowell, claimant, commenced and completed the construction of the Sowell ditch, diverting and using the waters of Braggs Creek or Slough, and within a reasonable time reclaimed and irrigated about $2\frac{1}{2}$ acres situated in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 36, Tp. 39 S. R. 8 W. W. M.; that said use for irrigation purposes has been reasonably continuous and the right of said claimant constitutes the first right to the waters of said slough; that said slough or creek is formed by the seepage waters and waste waters draining and wasting from the lands irrigated from the said Sucker Creek, and the right to said seepage and waste waters is a right to so much thereof as there may be in said slough after a proper and economical use of the waters of Sucker Creek upon the lands from which the same seep or drain, by those entitled to divert and use the waters of said stream.

XLVII.

That the irrigation season in the valley of said Sucker Creek commences about the 1st of April of each year and ends about the 31st day of October, and that the rights of appropriation herein defined are confined and limited, for irrigation purposes, to said irrigation season.

XLVIII.

That the use of water for domestic purposes continues throughout the year, in an amount sufficient to supply the domestic and household needs of the appropriator, and for watering a reasonable number of cattle, horses and stock, but during the irrigation season water for irrigation purposes includes the amount to which such appropriators and water users are entitled for their stock and domestic purposes.

XLIX.

That the soil of the lands irrigated with the waters of said stream and its tributaries is largely composed of red clay and portions thereof are of a gravelly nature, and the principal crops produced are hay, grain, wheat, potatoes and garden vegetables; that the character and kind of crops raised, nature of the soil, methods of use of the waters of said stream and the general climatic conditions prevailing in the vicinity of said stream are such that said lands do not require for the beneficial irrigation thereof, a greater amount of water, diverted into and measured at the head of the respective ditches, than the rate of one cubic foot of water per second of time for each fifty (50) acres irrigated.

L.

That prior to February 24th, 1909, the claimants named in paragraph 7 of the Order of Determination herein had prepared and were commencing to clear, reclaim and cultivate certain portions of their lands, as hereinafter described, which were susceptible of irrigation from said Sucker Creek, or its tributaries, and were intending and about to divert the waters of said stream into their ditches for the irrigation of the said lands, as soon as the same should be cleared, which had not theretofore been irrigated by them; and that by the construction of lateral ditches said claimants were proposing to complete the reclamation of their said lands in so far as the same could be irrigated from said ditches; that said claimants have been and now are proceeding in good faith and with reasonable diligence to complete the reclamation of their said lands, but that the evidence, testimony and proofs fail to disclose the date, or approximate date, when said claimants, or any of them, commenced in each case the prosecution of the work of reclaiming said additional lands, but that in each case it was long subsequent to and after the lapse of many years after the completion of the rights of appropriation of the above named parties to the extent set forth in paragraph No. 3, of the Order of Determination herein; that since the time the rights of appropriation of the various claimants, as set forth in Paragraph No. 3 were initiated, many ditches have been constructed and diversions made and intervening appropriations completed; that it appears to the Board that there has been a lack of diligence on the part of each of said claimants in bringing their lands under cultivation and in the application of water to the same, and that none of said lands have any greater or further rights of appropriation as to the date of priority set opposite their respective names in said paragraph No. 3 than to the extent therein set forth, and that any further increase of the irrigated area of said lands was the initiation of a new right of appropriation; that said claimants have accordingly initiated rights of appropriation prior to 1909, which are at the present time incomplete and inchoate and they should be given a reasonable time within which to complete the same; and it appears that the priority of the rights should be and is equal as of the date of initiation and right and relative priority of the year 1908, except as to the uncompleted and unperfected rights of appropriation of John McDougall, which are entitled to a priority date of 1905; that said rights of appropriation should by the exercise of due diligence be completed and perfected prior to January 1st, 1915, and the water completely applied to beneficial use during the irrigation season of the year 1914 and that such time is a reasonable time within which such rights should be completed; and to the extent that said rights shall be completed prior to January 1st, 1915, the same shall be deemed to relate back to the year 1908, as of the date of relative priority of the right and to have priority over all rights of appropriation initiated subsequent to the year 1908, and to the extent that said rights shall be completed within the time limited, they shall be deemed equal as to priority.

LI.

That under a proper method or system of use of the waters of said stream and its tributaries for irrigation purposes, the said uncompleted and unperfected rights of appropriation, as set forth in the preceding findings will not require for the proper irrigation of the lands to be irrigated thereunder to exceed the rate of one second foot for each eighty acres thereof, and said claimants, as soon as the said lands shall be reclaimed, should be allowed to divert the said waters of Sucker Creek and its tributaries in an amount not to exceed said rate, whenever there may be any surplus in the natural channel of said stream, over and above the amount required by completed and perfected appropriations, as hereinbefore set forth.

LII.

That a system of rotation in the use of water has been in use among the various appropriators of small amounts of water from said stream, and by those diverting water through one and the same ditch, more or less, for many years, and that said custom of rotation in the use of

the waters of said stream adds greatly to the duty which said water may be made to perform and increases the service and conserves and economizes the supply, and that in order to secure a proper beneficial use of said waters, a decree should be entered providing for a system of rotation in the use of water among the several appropriators, and permitting the same, under the supervision and direction of the water master of the district in which said stream may be situated, and the Board of Control.

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: H. McCourt, F. T. Osborn, W. B. Coad, David Briggs, George Benson, John Wells, F. J. Leonard, May Francis Bunch, J. S. Miller, Elmer Moore, John Hogdon, James Oswald, H. H. Gibbs, ^{H. A. Reed} John Griffin, Harry Anderson, Harry Sykins, David Russ, J. M. Sabin, F. W. Gibbs, B. F. Martin, G. W. Secklen, B. Griffin, Harry Lloyd, Charles Coad, John Clemens, Alma Rundle, W. P. Anderson, Harry Hines and N. E. Leonard.

II.

That the hereinafter named claimants are entitled to divert and use the waters of Sucker 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 that all other persons, firms and corporations, heretofore claiming any right, title or interest in or to the waters of said stream or its tributaries, or owning or being in possession of lands bordering on or having access to said stream or its tributaries, are barred and estopped from hereafter asserting any rights which may have been heretofore acquired by them to the waters of said stream or its tributaries, and shall be deemed to have forfeited all rights to the use of said waters, which may have been heretofore claimed by them.

III.

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

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
<u>SUCKER CREEK</u>						
4424 P. 2 45156 57717 W. L. Babcock, Kerby, Oregon.	1893 1872	0.75 0.5	37 25	Irrigation	Keiffer Trumble	4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 10 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 26 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 2 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 31, Tp. 39 S. R. 7 W. W. M.; 20 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 36, Tp. 39 S. R. 8 W. W. M. ✓
7122 (also Vol. 5, p. 397) G. W. Baldwin, Holland, Ore.	1895	0.25	12	Irrigation & domestic	Baldwin	4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 23; 8 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 24; Tp. 39 S. R. 7 W. W. M. ✓
7123 (also Vol. 5, p. 397) Francis E. Barrett, Kerby, Oregon.	1873	1.	50	Irrigation	Wells-Barrett	35 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 10 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 30; Tp. 39 S. R. 7 W. W. M.; 5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 25; Tp. 39 S. R. 8 W. W. M. ✓
38310 33022 7124 (also Vol. 5, p. 397) William M. Bunch, Kerby, Oregon.	1857	0.94	47	Irrigation	Briggs-Tannery	5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 34 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 8 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 36, Tp. 39 S. R. 8 W. W. M. ✓
7128 (also Vol. 5, p. 397) J. B. Barnett, Kerby, Ore.	1875	0.8	40	Irrigation, domestic & stock.	Gates-McCann	40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 33; Tp. 39 S. R. 7 W. W. M. ✓
7129 (also Vol. 5, p. 397) Ada Erb, Ashland, Ore.	1889	0.24	12	Irrigation	Wisecarver	8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 28; Tp. 39 S. R. 7 W. W. M. ✓
7129 Geo. W. Dunn, Ashland, Ore.	1857	1.82	91	Irrigation domestic & stock	Holland-Beach & Platter	21 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; 20 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 32; 10 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 33; Tp. 39 S. R. 7 W. W. M., being parts of D.L.C.No.38 and D. L. C. No. 39; 20 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 4; 20 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 5; Tp. 40 S. R. 7 W. W. M., being parts of D. L. C. No. 40 and D. L. C. No. 41. ✓
7129 A. J. Fulk, Kerby, Ore.	1857	2.04	102	Irrigation domestic & stock	Briggs-Tannery	26 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; 37 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 30 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 35, Tp. 39 S. R. 8 W. W. M. ✓
7130 (also Vol. 5, p. 397) Supers. by 52059-60561 H. M. Garner, Kerby, Ore.	1902	0.25	12	Irrigation & domestic	Chapman	8 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, 4 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, Tp. 39 S. R. 7 W. W. M. ✓
7131 (also Vol. 5, p. 397) Dora M. Lampton, Kerby, Ore.	1882	0.58	29	Irrigation domestic & stock.	Gates-McCann	10 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 19 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 32, Tp. 39 S. R. 7 W. W. M. ✓
7131 Sarah E. Gibbs, Kerby, Ore.	1893	0.31	15 $\frac{1}{2}$	Irrigation	Keiffer	9 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 6, Tp. 40 S. R. 7 W. W. M.; 6 $\frac{1}{2}$ acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 1, Tp. 40 S. R. 8 W. W. M. ✓
7132 T. A. Glynn, Mrs T. A. Glynn, Robt. Kellog H. H. Kellog & James M. Kellog, McCloud, Calif.)	1882	0.30	15	Irrigation	Reed	8 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; 4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 21; 3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 28, Tp. 39 S. R. 7 W.W.M. ✓
7137 James E. Holland, Holland, Ore.	1856	1.6	88	Irrigation	Holland-Beach & Platter	36 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 33; 32 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 20 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, Tp. 39 S. R. 7 W. W. M. ✓
7137 ESTATE of Charles J. Johnson, Decd. C. O. Johnson, E. A. Johnson W. A. Johnson & M. A. Brady, heirs at law, Holland, Ore.	1897	1.2	60	Irrigation	Johnson-Leonard	36 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 24 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 34, Tp. 39 S. R. 7 W. W. M. ✓

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
7159 (Abol. S. p. 394) Alex White, Kerby, Ore.	1858	1.4	70	Irrigation	White	12 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 25, Tp. 39 S. R. 8 W. W. M.; 30 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 25 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 3 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 30, Tp. 39 S. R. 7 W. W. M.
7142 (Abol. S. p. 398) J. R. White, Kerby, Ore.	1858	2.	100	Irrigation	White	35 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; 7 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 35 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 16 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 30, Tp. 39 S. R. 7 W. W. M.; 3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 25, Tp. 39 S. R. 8 W. W. M.
7160 (Abol. S. p. 397) Charles R. Williams, Holland, Ore.	1876	0.38	19	Irrigation	Gilmore	19 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 32, Tp. 39 S. R. 7 W. W. M.
49102 57360 57364 7161 (Abol. S. p. 394) J. D. Wimer, Holland, Ore.	1874 T-3197 A POD part	1.7	85	Irrigation	Wimer	27 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27; 9 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 36 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 28; 7 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 3 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 33, Tp. 39 S. R. 7 W. W. M.
49104 7162 (Abol. S. p. 394) W. H. Wisecarver, Holland, Ore.	1889	1.31	65 $\frac{1}{2}$	Irrigation	Wisecarver	19 $\frac{1}{2}$ acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 5 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 27; 34 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 7 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 28; Tp. 39 S. R. 7 W. W. M.

BEAR CREEK:

7135 Nettie Griffin, Kerby, Ore.	1906	0.1	5	Irrigation	Daisy	5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Tp. 39 S. R. 7 W. W. M.
56426 4877 485 E. H. Wise, Kerby, Ore.	1855	0.36	18	Irrigation domestic & stock	Allen & Emerson	18 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 21, Tp. 39 S. R. 7 W. W. M. <i>Ch. Pt. of Div. 573, 573 dom. canceled Vol. 21 p. 141</i>
T-3191 E. H. Wise, Kerby, Ore.	1857 1895	1. 0.28	50 13	Irrigation	Middleworth	26 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 18 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 16 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 21, 3 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 28, Tp. 39 S. R. 7 W. W. M. <i>Ch. Pt. of Div. 573, 573</i>

BOLAN CREEK:

7134 Grants Pass Banking & Trust Co., a corpora- tion, Grants Pass, Ore.	1862	6.		Mining	Ditch & Flume	100 acres of placer mining ground, embracing the Jose- phine, Challenge, Lodi, Blue Bird and McCoy Placer Mines in Tp. 40 S. R. 6 W. W. M.
7143 Custis Masterson, Holland, Ore.	1905	2.		Mining	Masterson	Slide Mining Claim, in Tp. 40 S. R. 6 W. W. M.
7134 Grants Pass Banking & Trust Co., a corpora- tion, Grants Pass, Ore.	1902	2.		<u>EAST FORK OF BOLAN CREEK:</u> Mining	Ditch & Flume	To supplement the appropriation of this claimant from Bolan Creek, for the mines hereinbefore described.

GRAYBACK CREEK:

7136 S. Leon Grimmett, Holland, Ore.	1903	0.36	18	Irrigation	Grayback	18 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 25, Tp. 39 S. R. 7 W. W. M.
7141 Ed. Lind, Holland, Ore.	1897	0.26	13	Irrigation	Grayback	8 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 31; Tp. 39 S. R. 6 W. W. M.

GREEN GULCH.

7135 Nettie Griffin, Keroy, Ore. 1893 0.05 2 Irrigation Clark 15 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21; Tp. 39 S. R. 7 W. W. M.
 1905 0.26 13

YAGER GULCH:

7132 H. G. Siskron, Holland, Ore. 1908 2. Mining & Power January January Mining & Milling claims, situated in about the SE $\frac{1}{4}$ of Sec. 12, Tp. 40 S. R. 7 W. W. M. The right for power purposes is limited to the development of five (5) theoretical horse power.

CAVE CREEK:

7124 Frank B. Barrick, Holland, Ore. 1907 0.05 2 Irrigation Barrick For the irrigation of 1 acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, Tp. 39 S. R. 7 W. W. M., and 1 acre in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 1, Tp. 40 S. R. 7 W. W. M.; for mining fifteen (15) acres of placer mining ground situated in Sec. 1, Tp. 40 S. R. 7 W. W. M., and Sec. 6, Tp. 40 S. R. 6 W. W. M., and known as the Hearst Placer claims.
 1907 2.5 mining

LITTLE GRAYBACK:

7122 (Also Vol. 5 p. 397) G. W. Baldwin, Holland, Ore. 1907 12 Irrigation Baldwin For the irrigation of the lands of this claimant as hereinbefore described as irrigated from Sucker Creek, to supplement said right from Sucker Creek.

BALDWIN GULCH:

7122 (Also Vol. 5 p. 397) G. W. Baldwin, Holland, Ore. 1894 12 Irrigation Baldwin For the irrigation of the lands of this claimant as hereinbefore described as irrigated from Sucker Creek, to supplement said right to the waters of Sucker Creek.

The rights of appropriation of said G. W. Baldwin to the waters of Little Grayback and Baldwin Gulch, are supplementary to the rights of appropriation of said claimant to the waters of Sucker Creek, and the total amount to which such claimant is entitled for the irrigation of said lands, from the three sources of supply, shall not exceed the amount to which he is entitled from said Sucker Creek, as hereinbefore set forth.

(42 certificates issued on Sucker Cr. 4/11/24)
 H.S.

IV.

That the following named claimants and appropriators of the waters of Sucker Creek are further entitled to a decree and certificates of water rights in accordance therewith, determining and establishing their several rights to the use of seepage and waste waters resulting from the use of the waters of Sucker Creek for the irrigation of the lands hereinbefore described, by the hereinbefore named appropriators; that the said following named claimants are entitled to a right to use the seepage and waste waters hereinafter described to supplement their respective rights of appropriation from Sucker Creek, as hereinbefore set forth; but the total amount of said seepage and waste waters, to which said claimants are entitled, shall not exceed, together with their said respective appropriations diverted from the waters flowing in the natural channel of said stream, the amount hereinbefore specified as the amount to which such appropriations of the waters of Sucker Creek are entitled; the name of the claimant, date of relative priority of the right, place whence such waste and seepage waters are diverted, the name of the ditch through which the same are diverted, and a description of the lands to which, together with said appropriations from Sucker Creek, said seepage and waste waters so diverted and used are appurtenant, being as follows, to-wit:

NAME AND POST-OFFICE ADDRESS OF CLAIMANT:	DATE OF RELATIVE PRIORITY	PLACE OF DIVERSION:	NAME OF DITCH:	DESCRIPTION OF LANDS TO WHICH APPURTENANT:
W. L. Babcock, Kerby, Ore.	1903	Gravelly Slough	Babcock	The lands of this claimant, as the same are described in paragraph No. III hereof.
Geo. W. Dunn, Ashland, Ore.	1857	Mulvaney Gulch and waste waters from the Holland ditch.	Beach & Platter	The lands of this claimant, as the same are described in paragraph No. III hereof.
Samuel & Hattie Miller, Kerby, Ore.	1903 1878	Gravelly Slough Springs in SE $\frac{1}{4}$ Sec. 36, Tp. 39 S. R. 8 W. W. M.	Babcock	The lands of these claimants, as the same are described in paragraph No. III hereof.

That claimant, J. G. Sowell, is entitled to a decree and the issuance of a water ^{right} certificate determining and establishing his right to the waters of Braggs Creek or Slough, resulting from seepage and waste waters from the irrigated lands above, as of the date of relative priority of 1894, for the irrigation of two and one half (2 $\frac{1}{2}$) acres of his lands, situated in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26, Tp. 39 S. R. 8 W. W. M., in an amount not to exceed 0.08 of a second foot.

V.

That the right of the said parties to the use of seepage and waste waters is limited to the use of such seepage and waste waters, seeping, percolating or wasting to the place or point whence diverted, after the proper and economical irrigation of the lands from which the same drain, and a proper economical and beneficial use of said waters by those entitled to divert the waters of Sucker Creek, as hereinbefore set forth; but that in all cases and in any event the said rights to seepage and waste waters are subordinate and subject to the rights of appropriation from the exercise of which such seepage and waste waters result, and no rights in said claimants to seepage and waste waters are hereby confirmed in or to the waters of Sucker Creek.

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VI.

That the parties hereinafter named, having prior to 1909 commenced the reclamation of certain portions of their lands, as set forth in Finding No. 50 hereof, are entitled to a decree fixing the time when said lands shall be reclaimed and the water appropriated therefor applied to beneficial use; that it having been found by the exercise of reasonable diligence in the continued prosecution of the work of reclamation that all of said lands should be reclaimed and the waters appropriated fully applied to beneficial use during the irrigation season of 1914, and that such time is a reasonable time for the completion of such appropriations, it is hereby determined that on or after January 1st, 1915, the Superintendent of Water Division No. 1 shall take proof and evidence as to the completion of said rights of appropriation as herein set forth, upon notice to each of said claimants prior to the taking of said proofs, duly and regularly given by registered mail; and thereafter the Board of Control shall enter its order and issue certificates of water right to said claimants to the extent that said rights shall have been completed and the water applied to beneficial use during the irrigation season of 1914; and to the extent that said claimants shall not have applied the water to beneficial use within said time, in accordance with their rights as herein set forth, they shall be held and deemed to have abandoned and forfeited their said inchoate rights by reason of lack of diligence; the name of each of said claimants, with his postoffice address, the date of relative priority of the appropriation, if the same shall be completed in accordance herewith, the name of the ditch or ditches through which said appropriation is to be diverted, and a description of the lands to be irrigated, together with the number of acres thereof, being as follows, to-wit:

W. L. Babcock	1908	120	Trumble Keiffer	SW $\frac{1}{4}$ Sec. 31; Tp. 39 S. R. 7 W. W. M. and SE $\frac{1}{4}$ Sec. 36, Tp. 39 S. R. 8 W. W. M.
W. L. Babcock	1908		Gravelly Slough	A right to supplement the waters of Sucker Creek, with the waste waters in Gravelly Slough, upon the lands above described.
G. W. Baldwin,	1908	48	Baldwin	S $\frac{1}{2}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 25, Tp. 39 S. R. 7 W., W.M.
G. W. Baldwin	1907		Little Greyback	A right to supplement the waters of Sucker Creek, with the waters of Little Greyback Creek, for the irrigation of the above described lands.
Francis E. Barrett	1908	60	Wells-Barrett	NE $\frac{1}{4}$, Sec. 25; Tp. 39 S. R. 8 W. W. M. & Lots 1 & 2, Sec. 30, Tp. 39 S. R. 7 W. W. M.; SW $\frac{1}{4}$ & SE $\frac{1}{4}$, Sec. 19 and N $\frac{1}{2}$ NW $\frac{1}{4}$; Sec. 30; Tp. 39 S. R. 7 W. W. M.
A. J. Fulk	1908	40	C. J. Howard	Sec. 35, Tp. 39 S. R. 8 W. W. M.
H. M. Garner	1908	20	Chayman	SE $\frac{1}{4}$ Sec. 30; and SW $\frac{1}{4}$ Sec. 29, Tp. 39 S. R. 7 W. W. M.
Sarah E. Gibbs	1908	16	Kieffer	NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 6, Tp. 40 S. R. 7 W. W. M. & NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 1, Tp. 40 S. R. 8 W. W. M.
James E. Holland	1908	60	Holland-Beach & Platter	NW $\frac{1}{4}$ Sec. 33 & SE $\frac{1}{4}$ Sec. 32, Tp. 39 S. R. 7 W. W. M.
Mary Ellen Leonard	1908	260 240	Caldwell Mill Race	260 acres in S $\frac{1}{2}$ NW $\frac{1}{4}$; Sec. 28, SW $\frac{1}{4}$ Sec. 28 & W $\frac{1}{2}$ SE $\frac{1}{4}$; Sec. 29; Tp. 39 S. R. 7 W. W. M., known as the Caldwell Place & 240 acres SW $\frac{1}{4}$ & E $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 32, & SE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$; Sec. 31, Tp. 39 S. R. 7 W. W. M.
J. E. Lewis	1908	24	Gilmore Lewis	NE $\frac{1}{4}$, Sec. 32, Tp. 39 S. R. 7 W. W. M.
Samuel & Hattie Miller	1908 1908	160	Trumble Gravelly Slough	SW $\frac{1}{4}$ & SE $\frac{1}{4}$, Sec. 36, Tp. 39 S. R. 8 W. W. M. & NW $\frac{1}{4}$, Sec. 1, Tp. 40 S. R. 8 W. W. M. A right to supplement the appropriation from Sucker Creek, with waste and seepage waters in Gravelly Slough, and springs in the West line of the Babcock lands above described, for the irrigation of the lands of said claimants above described.
Frank O. Meeker & L. A. Burnett	1908	40	Seyferth	NE $\frac{1}{4}$ Sec. 33, Tp. 39 S. R. 7 W. W. M.
Ora Smith	1908	30	White	SE $\frac{1}{4}$ & NW $\frac{1}{4}$, Sec. 25, Tp. 39 S. R. 8 W. W. M.
T# 5-184 J. G. Sowell	1908	18	Sowell from Braggs Slough	A right to seepage and waste waters in Braggs Slough (but not to the waters of Sucker Creek) for the irrigation of 18 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 26, Tp. 39 S. R. 8 W. W. M.
J. B. Barnett	1908	40	Gates-McCann	N $\frac{1}{2}$ NW $\frac{1}{4}$; Sec. 33, Tp. 39 S. R. 7 W. W. M.
F. W. Sawyer	1908	80	Chapman	W $\frac{1}{2}$ SW $\frac{1}{4}$ & Lots 4 & 5, Sec. 25 & NW $\frac{1}{4}$ NW $\frac{1}{4}$ & Lot 3 of Sec. 26, Tp. 39 S. R. 8 W. W. M.
Geo. W. Dunn	1908	40	Holland-Beach & Platter	SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 33, Tp. 39 S. R. 7 W. W. M.; NW $\frac{1}{4}$ NW $\frac{1}{4}$, and Lots 1 and 2, Sec. 4; and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 5, Tp. 40 S. R. 7 W. W. M.
A. J. Fulk	1908	100	Briggs-Tannery	NE $\frac{1}{4}$ & SE $\frac{1}{4}$ & NW $\frac{1}{4}$, Sec. 35, Tp. 39 S. R. 8 W. W. M.
Ed. McCann	1908	20	Gates-McCann	NE $\frac{1}{4}$ of Sec. 6 & NW $\frac{1}{4}$ Sec. 5, Tp. 40 S. R. 7 W. W. M.

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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
M. W. Gates & Dora M. Lampton	1908		20		Gates-McCann	NW $\frac{1}{4}$ SE $\frac{1}{4}$ & N $\frac{1}{2}$ SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 32, Tp. 39 S. R. 7 W.7.M.
Christiana Trefathen	1908		40		Holland-Beach & Platter	SW $\frac{1}{4}$ Sec. 33, Tp. 39 S. R. 7 W. W. M. ✓
George & Roy Wells	1908		160		Wells-Barrett	SE $\frac{1}{4}$ Sec. 19; NE $\frac{1}{4}$ & SE $\frac{1}{4}$ Sec. 30, NW $\frac{1}{4}$ Sec. 29; SW $\frac{1}{4}$ Sec. 20; Tp. 39 S. R. 7 W. W.M.
Alex White	1908		30		White	SW $\frac{1}{4}$ & SE $\frac{1}{4}$ Sec. 30, Tp. 39 S. R. 7 W. W. M. & SE $\frac{1}{4}$ Sec. 25, Tp. 39 S. R. 8 W. W. M. ✓
J. R. White	1908		80		White	NW $\frac{1}{4}$ Sec. 30 & SE $\frac{1}{4}$ Sec. 25, Tp. 39 S. R. 7 W.W.M. ✓
Chas. R. Williams	1908		21		Gilmore	SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, Tp. 39 S. R. 7 W. W. M. ✓
J. D. Wimer	1908		75		Wimer Johnson & Leonard	SW $\frac{1}{4}$ Sec. 27 & SE $\frac{1}{4}$ Sec. 28, Tp. 39 S. R. 7 W. W. M. ✓
W. H. Wisecarver	1908		90		Wisecarver	NW $\frac{1}{4}$ Sec. 27; & NE $\frac{1}{4}$ Sec. 28, Tp. 39 S. R. 7 W. W. M. ✓
Ada Erb	1908		80		Wisecarver	SE $\frac{1}{4}$ & NE $\frac{1}{4}$ Sec. 28, Tp. 39 S. R. 7 W. W. M. ✓
John McDougall	1905		40		McDougall	SW $\frac{1}{4}$ Sec. 22, Tp. 39 S. R. 7 W. W. M. ✓
Redlands Ditch & Irrigation Co.	1908		50		Redlands	NE $\frac{1}{4}$ Sec. 31 & NE $\frac{1}{4}$ Sec. 30, Tp. 39 S. R. 7 W. W. M. ✓

BEAR CREEK:

E. H. Wise	1908		20		Allen-Emerson	SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 21 Tp. 39 S. R. 7 W. W. M. ✓
E. H. Wise	1908		85		Middleworth	SW $\frac{1}{4}$ & NW $\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M. ✓

GRAYBACK CREEK:

E. Leon Grimmett	1908		18		Grayback	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25 Tp. 39 S. R. 7 W. W. M. and Lot 3, Tp. 39 S. R. 6 W. W. M. ✓
Ed Lind	1908		12		Grayback	NE $\frac{1}{4}$ NW $\frac{1}{4}$ & NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 31, Tp. 39 S. R. 6 W. W. M. ✓

GREEN GULCH:

Nettie Griffin	1908		10		Clark	NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 21, Tp. 39 S. R. 7 W. W. M. ✓
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VII.

That the foregoing and above described uncompleted rights of appropriation, as set forth in paragraph 6 hereof, entitle the said claimants therein named, or their successors in interest, as soon as the land described, or any portion thereof, shall be reclaimed and made ready for irrigation, to divert the waters flowing in the natural channel of said stream or tributary whence such diversion is to be made, as of the date of relative priority set forth, in so far as there may be any surplus waters flowing, naturally in said stream, over and above the quantity required to satisfy all prior rights of appropriation, as hereinbefore set forth; but the quantity diverted by said claimant, for the irrigation of said reclaimed lands, shall not exceed, as a maximum quantity, the rate of one cubic foot per second to each eighty acres thereof, or proportionate part thereof, in accordance with the extent of the lands actually irrigated, and in no event shall exceed the quantity actually required and beneficially used for the proper irrigation of lands, which are actually reclaimed and ready for irrigation; and the right to complete the said appropriations and irrigate said lands is limited to the ditches as at present constructed, or in process of construction, and to the irrigation of lands under said ditches, which are susceptible of irrigation therefrom, by the construction of proper laterals and sub-ditches, without material or substantial enlargement of the ditches herein named, described as the ditches through which appropriations are, or are to be, diverted; and the right of the said claimants to further increase the area of lands irrigated under the inchoate rights of appropriation herein and hereby confirmed, shall, after the irrigation season of 1914, cease; and said time is hereby declared to be a reasonable time which which said appropriations should be completed and the water appropriated completely applied to beneficial use.

VIII.

That all rights to the use of said stream, and its tributaries, as herein confirmed, or of said seepage and waste waters for irrigation purposes, are limited to the use of the waters naturally flowing in said stream during a period each year commencing the 1st day of April and ending the 31st day of October, which period constitutes the "irrigation season" during which said waters may be diverted and used for irrigation purposes; that 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 commencing the 1st day of October of each year and ending the 1st day of July of each year, and such period constitutes the "mining season," during which water may be diverted and used for mining purposes.

IX.

That 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 for stock use the amount so diverted and used shall not exceed the rate of one-fortieth of a cubic foot per second for each 1000 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 waters for domestic and stock purposes, as herein and hereby confirmed, continues throughout the year.

X

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; and that the rights of the claimants herein for mining purposes are limited to use in connection with the mines served by the waters appropriated as hereinbefore described.

XI.

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 hereinbefore set forth; and at all times when the waters of said stream or tributaries

are not required by those parties having prior rights thereto, the same shall be at the disposal of and subject to use by 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 such water is diverted, than the claimant entitled thereto can beneficially use for the purpose of his appropriation, and in no event shall the amount so diverted exceed the rate of one cubic foot per second of time to each fifty (50) acres of land actually irrigated, for the rights of appropriation confirmed in paragraph No. 3 hereof, or the rate of one cubic foot per second of time for each eighty acres of land irrigated for the rights of appropriation to be completed and perfected in accordance with the provisions of paragraph No. 6 hereof.

XII.

That the rights of the Combination Gold Mining Co., a corporation of Ritzville, Washington, initiated in the year 1908, for mining purposes, are as yet uncompleted, as to the appropriation of said claimants of the waters of Sucker Creek for mining purposes, for use in connection with the following described mining claims: The Lone Star No. 1, Mohawk and Mohawk Fraction, Combination and Gold Bar, situate on unsurveyed lands, in what is Sec. 1, Tp. 40 S. R. 7 W. W. M.; that the rights of the said claimant should be completed by January 1st, 1914; and that said time is a reasonable time within which such right should be completed and the water fully applied to beneficial use; that the right of said claimant is subject and subordinate, during the irrigation season, to the rights of appropriation of the respective claimants hereinbefore named, diverting water for irrigation purposes under paragraphs Nos. 3 and 6 hereof; that on or after January 1st, 1914, the Superintendent of Water Division No. 1 should, upon notice to said claimant, take proof and evidence as to the completion of said right of appropriation of said claimant, and the Board of Control shall thereafter enter an order and issue certificate of water right in accordance therewith, confirming and establishing said right to the extent that it shall have been completed within said time.

XIII.

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 such rotation, the water master of the water district in which such 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 the complete rotation through the whole group of appropriators, as the appropriation of the first appropriators 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 two or more appropriators have equal priorities and divert 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 the manner and system of rotation in the use of their water, the said water master shall distribute the water in accordance with such

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agreement; provided, always, that such arrangement into groups or systems, or distribution under such agreements, shall not interfere with the prior rights of any appropriator not a member of such group or system.

XIV.

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 H. ...
Superintendent of Water Division No. 1.

Geo. G. ...
Superintendent of Water Division No. 2.

Attest:

M. B. ...

Secretary.