

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR DOUGLAS COUNTY

In the Matter of the Determination)	DECREE MODIFYING THE FINDINGS AND
of the Relative Rights to the Use)	ORDER OF DETERMINATION OF THE
of the Waters of Cow Creek and its)	STATE ENGINEER AND DECREE AFFIRM-
Tributaries, a Tributary of the)	ING SAME AS MODIFIED.
Umpqua River.)	

The above entitled cause coming on for final hearing and disposition and the Court having considered all exceptions to the Findings and Order of Determination of the State Engineer filed in these proceedings, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that Paragraph 11, page 9 of said Findings and Order of Determination be, and the same is hereby modified to read as follows:

Contest No. 1

M. Hull and J. Ogden,
Contestants,

vs.

W. B. Garrett and C. O. Garrett,
Contestees.

This contest was directed against proof No. 20, wherein contestees claimed a right to irrigate 19.3 acres from Quines Creek, with a date of priority of July 24, 1862. The contest was settled by the following stipulation:

In settlement of the above entitled matter, it is hereby stipulated that the rights of contestants and contestees shall be and remain as set forth in their respective claims filed herein, except

(a) That Contestees' right to irrigate seven (7) acres in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) and three (3) acres in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), Section One (1), Township 33 South, Range 5 West, shall relate back to 1870 for its priority date and the rights of contestants in and to the waters of the west fork of Quines Creek to the extent of the quantity of water allowed contestants in these proceedings, shall be prior and superior to any rights which contestees may have in and to the waters of Quines Creek.

As to all other matters and things set forth in the claims of the respective parties hereto, the rights of said parties shall be and remain as set forth in said claims

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the date of priority of W. B. Garrett and C. O. Garrett to irrigate 3.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ and 5.5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, T. 33 S. R. 5 W., W. M., shall be 1862 and the tabulation in Paragraph 20 of

the Findings and Order of Determination of the State Engineer shall be modified in accordance herewith.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Paragraph 12, Page 9 of the Findings of Fact and Order of Determination of the State Engineer be, and it is hereby modified to read as follows:

(12)

Contests Nos. 2, 3, 4:

Contest No. 2.	C. J. Sether and O. G. Sether, Contestants,
	vs.
	Geo. W. Turner and Mildred S. Turner, Contestees.
Contest No. 3.	C. O. Garrett, Contestant,
	vs.
	Geo. W. Turner and Mildred S. Turner, Contestees.
Contest No. 4.	Cow Creek Irrigation Company, Contestant,
	vs.
	Geo. W. Turner and Mildred S. Turner, Contestees.

The above contests were directed against proof No. 85, wherein contestees claimed a right to irrigate 30 acres of land from Cow Creek through the Cow Creek Irrigating Company Ditch with a priority date of 1902. An inchoate right was claimed for fifteen of the thirty acres, and it was the contention of the contestants that the contestees had never irrigated the lands for which a water right was claimed and that the lands could not be irrigated by gravity flow.

In 1902 the Cow Creek Irrigating Company entered into a contract with the predecessors of the contestees, wherein it was agreed that in part consideration of the granting of a designated right of way for its ditch across the lands of contestees, that the company would furnish the predecessor of contestees the free use of twenty-five miners inches of water from said ditch. It appears that the grade of the ditch as constructed across the lands of the contestees is of such a character that it required checks to be placed in the channel of the ditch in order to raise the water level therein and permit the water to be diverted on the lands of contestees. It is contended by the contestants that the checking of the ditch causes the water to raise and back up in the ditch to such an extent that the water overflows its banks and prevents the users below the lands of contestees from getting their allowed quantity of water.

The contestants concede the right of contestees to the use of twenty-five inches of water but considerable differences exist between the parties as to the means

employed to divert the water from the ditch. The contract was silent as to the place on the company's ditch that the contestees might divert the water. The Company attempted to prevent the contestees from making cuts in its ditch for the purpose of getting the water, and the contestees appealed to the State Engineer who advised the contestees as to how the diversion might best be accomplished so as to interfere as little as possible with the other users from the ditch. The contestees followed the suggestions offered and the contestant company sought to restrain the contestees from interfering with the ditch. The Court dismissed the suit and held the contestees were entitled to the water and that it could be diverted in accordance with the advice of the State Engineer.

At the hearing of this contest the parties hereto stipulated that the water during the irrigation season of 1929 be distributed under the direction of the State Engineer, which was done to the satisfaction of all parties in accordance with the following report of C. E. Stricklin, Assistant State Engineer:

"June 13, 1929.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

Acting under your directions, Tom Pearce, Watermaster District No. 16, and I, on the 3rd, 4th and 6th inst., made an examination and survey of the Cow Creek Irrigation Company's ditch to determine the amount of work necessary to be done in order to operate the ditch so that water can be delivered to Mr. Turner. The following are my conclusions and recommendations:

1. That by constructing a new turnout at Station 27 (referred to in the testimony taken before the State Engineer in the Adjudication Proceedings as Station No. 19) at an elevation of approximately 0.65 foot below the bottom of the old turnout and holding the water surface to an elevation of approximately 2 feet above the bottom of the check at Station 27 + 60, Mr. Turner will be able to divert sufficient water to irrigate, with some additional leveling, all of his land north of the Pacific Highway and below the canal.
2. That by raising the water surface to an elevation of 2 feet above the bottom of a check at Station 27+60, the lower end of the flume located below Stations 13+22 and 14+19 will be approximately 0.35 of a foot lower and the lower bank of the canal immediately below the flume will be some 2 or 3 tenths of a foot lower than the water surface.
3. That by raising the water surface approximately 2.2 feet above the bottom of the new check located immediately below the highway crossing at Mr. Turner's Gas Station, Mr. Turner will be able to divert sufficient water to irrigate all of his land below the canal in the east end of the tract south of the highway. The canal above this check will be of sufficient height that no work will be required except one short stretch which Mr. Turner has agreed to raise.
4. In order to irrigate the land in the west end of the tract south of the Pacific Highway it will be necessary to divert the water from the canal at the check located near Station 27+60 and carry the water across the Pacific Highway in a pipe line or divert water from the canal a short distance above the Pacific Highway crossing.

Mr. Turner stated that he can divert water for the irrigation of this tract when the water surface is 2 feet above the bottom of the check at Station 27+60. In other words it will not be necessary to raise the water surface above that required to divert water for the irrigation of the lands north of the highway. While we did not locate this lateral, the data submitted by Mr. H.L.Eppstein in the Adjudication Proceedings indicates that this can be done. If a rotation system is to be used it is believed it is preferable to divert water above the Highway, thus avoiding the expense of crossing the Pacific Highway. However, if Mr. Turner is to receive his water in a continuous rate of flow it is recommended that the water be diverted at the check near Station 27+60, so as to reduce the number of measuring devices and reduce the administrative cost.

5. WORK TO BE DONE:

In order to raise the water surface 2 feet above the bottom of the check located at Station 27+80 it will be necessary to raise the sides of the flume located between Stations 13+22 and 14+19 approximately 6 inches and to raise the lower bank of the canal immediately below the flume approximately 1 foot for a distance of about 150 feet. In order to divert water at the turnout located immediately below the Pacific Highway crossing at Mr. Turner's Gas Station, the sides of the new check should be raised approximately 6 inches. Mr. Turner was authorized by me to proceed with the installation of turnouts at Stations 27+10 and 45+20 and to raise the banks of the canal at the low place a short distance above Mr. Turner's Gas Station. The turnouts to be established by Mr. Turner are to have a width of 2 feet and the elevation of the bottom of the turnouts were located approximately on the ground.

6. PLAN OF OPERATING DITCH:

The most practical way of operating the canal from both the cost of operating and conservation of water is to deliver the water by rotation. Mr. Turner to use water every seventh day and when he is through remove all checks and allow the water to flow down the canal unobstructed. Mr. Pearce will establish a datum 2 feet above the bottom of the check at Station 27+30 and 2.2 feet above the bottom of a check located at Station 45+20, the understanding being that Mr. Turner is not to raise the water surface above these elevations. Mr. Pearce will also fix a definite schedule of rotation.

7. DOING WORK:

The material and labor required in raising the sides of the flume and checks, and raising the canal banks should be done by the Cow Creek Irrigation Co., distributing the cost in accordance with the stipulation entered into.

Yours very truly,

(Sgd) CHAS. E. STRICKLIN,
Ass't. State Engineer."

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Said ditch shall hereafter be maintained and operated in accordance with said report and their water users therefrom bound thereby subject to the authority of the State Engineer to prevent the wasting of water and to promote and secure the economic use and equitable distribution of water among the users of water from said ditch in accordance with their respective rights as established and determined in these proceedings.

During the hearing it was stated by the attorney for the contestants that the reason the acreage claimed by contestees was contested was due to claim being made for certain acreage above the ditch. The contestees acknowledged this to be an error, and asked that the claim be amended in this respect so as to show the lands in the proper forty-acre tracts as shown by a map filed by contestees and introduced as an exhibit in these proceedings.

The contestees will be allowed the right to the use of that quantity of water necessary for the irrigation of 30 acres of land, as described in the tabulation hereinafter made a part of these Findings, with a diversion of 25 miners inches for said purpose. Contestees will also be allowed two years from the time these findings are filed with the Circuit Court within which to apply the water to beneficial use upon the lands for which an inchoate right is claimed and herein allowed, which time may, upon good cause shown, be extended upon application made to the State Engineer.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that the name of J.E.Hartle be substituted for the name of Frank Crews at page 19, paragraph 20, of said Findings and

Order of Determination, and that the name of Frank Crews be substituted for the name of C. H. Hartle at page 21, paragraph 20, of said Findings and Order of Determination.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as modified in this Decree, the Findings of Fact and Order of Determination of the State Engineer in this cause, be and the same hereby are, AFFIRMED.

Said Findings and Order, as modified herein by this Court, are adopted as the final Decree in this cause, and all persons filing claims in said adjudication, their successors, agents and assigns are enjoined from using the water of said stream or tributaries, or any thereof, other than as therein provided.

ENTERED in open Court this 14th day of Aug. 1930.

J. W. Hamilton Judge.

STATE OF OREGON)
County of Douglas) ss.

I, Roy Agee, County Clerk of the above named county, ex-Officio Recorder and Clerk of the County and Circuit Courts for said county, do hereby certify that the foregoing copy of Decree Modifying the Findings and Order of Determination of the State Engineer and Decree affirming same as modified, has been by me compared with the original record thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears on file in my office and custody.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 14th day of August, 1930.

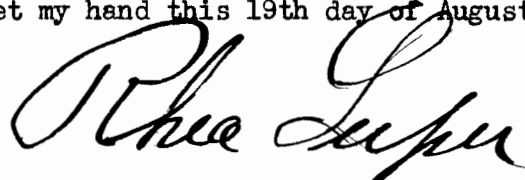
Roy Agee, County Clerk,
By Leota Wilson, Deputy.

(SEAL)

STATE OF OREGON)
County of Marion) ss

I, RHEA LUPER, State Engineer of the State of Oregon, do hereby certify that the foregoing copy of Decree Modifying the Findings and Order of Determination of the State Engineer and Decree Affirming the Same as Modified, dated August 14th, 1930, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Cow Creek and its Tributaries, a Tributary of the Umpqua River, is a true and correct copy of such Decree as received in this office on August 16th, 1930, and entered of record herein on August 19th, 1930.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August, 1930.



Rhea Luper,
State Engineer.