

BEFORE THE STATE ENGINEER OF OREGON

Harney County

IN THE MATTER OF THE DETERMINATION )  
OF THE RELATIVE RIGHTS TO THE USE )  
OF THE WATERS OF COW CREEK AND ITS )  
TRIBUTARIES. )

FINDINGS  
AND  
ORDER OF DETERMINATION

Now at this time the above-entitled matter coming on for consideration by the State Engineer, and it appearing that all evidence and testimony has been taken in the above-entitled proceedings, and the State Engineer having carefully considered all of such evidence and testimony and the engineering data and information gathered in accordance with law, and being now fully advised in the premises, makes and orders to be entered of record in his office the following

FINDINGS AND ORDER OF DETERMINATION

1.

That on the 16th day of April, 1936, there was filed in the office of the State Engineer an order of the Circuit Court of the State of Oregon for Harney County, dated April 8, 1936, in the case of Fred Haines, plaintiff, vs. First National Bank of Burns, Oregon, a defunct national banking association, Julian Byrd and P. G. Smith, Harry Withers, Ase H. Danforth, Ernest L. Smith, Jane N. Main, Harney Valley Improvement Company, a corporation, Oregon Western Colonization Company, a corporation, and State Land Board, defendants, directing that said cause be referred to the State Engineer for the purpose of adjudicating the relative rights of the various claimants to the use of the water from Cow Creek and its tributaries. That the State Engineer thereupon fixed a time for the making of the necessary surveys and examinations and the beginning and taking of such testimony as would enable him to determine the rights of the various claimants to the use of the waters from said stream as provided by law.

2.

That a notice was prepared by the State Engineer setting forth the date when the State Engineer or his assistants would begin investigation of the flow of said Cow Creek and its tributaries and the ditches diverting water therefrom, and said notice was published in two issues of the Burns Times-Herald, a newspaper published daily at Burns, Harney County, Oregon, and of general circulation in said county; said two issues being those of May 4 and May 11, 1936; the date of the last publication of notice being more than ten days prior to the date fixed for the beginning of the measurements of said stream by the State Engineer, as provided by law.

3.

That duly qualified assistants of the State Engineer did proceed, in accordance with the notice described in the preceding paragraph, to make examinations, surveys and measurements of said stream and its tributaries and of the ditches and canals or other works diverting water therefrom and surveys of the lands irrigated, and gathered such data and information as were essential to the proper determination of the relative rights of the parties interested. And the State Engineer did cause to be prepared a set of maps or plats, showing with substantial accuracy the course of said stream and its tributaries, the location of each ditch or canal diverting water therefrom, and the number of acres of land which had been irrigated in each legal subdivision; blue prints of said maps and plats being now on file and a part of the record herein.

4.

That as soon as practicable after the examination and measurements were completed as described in the preceding paragraph, the State Engineer did prepare a notice setting forth a place and time certain when he would begin the taking of testimony (statements and proofs of claim) as to the relative rights of the various claimants to the use of the waters of said stream and its tributaries; that said notice was published in two issues of the Burns Times-Herald, a newspaper published daily at Burns, Harney County, Oregon, and of general circulation in said county; said two issues being those of July 10 and July 17, 1936, and the last publication of said notice being more than thirty days prior to the first date fixed for the taking of claims by the State Engineer.

5.

That the State Engineer did send by registered mail to each person, firm or corporation claiming a right to the use of any of the waters of said stream, and to each person, firm or corporation owning or being in possession of lands bordering on or having access to said stream or its tributaries, insofar as said claimants and owners and persons in possession could reasonably be ascertained, a notice similar to such published notice, setting forth the date when the State Engineer or his authorized assistants would receive the statements and proofs of claim of the various claimants to the waters of said stream and its tributaries. That said notice was mailed at least thirty days prior to the date set therein for the receiving of claims in each instance. And the State Engineer did enclose with each of said notices a blank form upon which the claimant or owner could prepare in writing all the particulars necessary for the determination of his rights, under oath.

6.

That the times and places when and where the State Engineer, or his duly authorized assistants, should attend and receive the claims of the various parties were fixed as follows, to-wit:

On Tuesday, August 18, 1936, in the Circuit Court Room of the County Court House at Burns, Oregon;

And for a period of 15 days, beginning with Thursday, August 20, and ending with Thursday, September 3, 1936, at the office of the State Engineer in the State Office Building, Salem, Oregon.

That thereafter, the State Engineer did extend the time so fixed within which to file said statements and proofs of claim until the 9th day of September, 1936; that within said time claims to the use of the waters of said stream and its tributaries were filed by the following parties, to-wit:

Danforth, Asa H.  
Washington, Illinois

Drinkwater, C. W.  
Drewsey, Oregon

First National Bank of Burns, The  
c/o Charles A. Reynolds, Receiver  
Burns, Oregon

Haines, Fred  
Burns, Oregon

Harney Valley Improvement Company  
c/o Robert M. Duncan, Secretary  
Burns, Oregon

Main, Jane N.  
Burns, Oregon

McEwen, James M.  
Riverside, Oregon

Oregon & Western Colonization Company  
c/o Watson P. Davidson, President  
Pioneer Building  
St. Paul, Minnesota

Smith, Ernest L.  
Burns, Oregon

State Land Board of Oregon  
Salem, Oregon

7.

That the following-named persons were duly notified of the proceeding by registered mail and by publication of said notice, as shown by Paragraphs 4 and 5 hereof, and by the affidavits of publication and post office registry receipt in Volume I, Page 25, of the evidence herein, and each of them, although so notified, has failed, neglected and refused to appear herein and submit proof of a right to the use of the waters of said stream or its tributaries, if any they have or claim, and that such parties are in default, and that such default is here and now entered against them, and each of them, and said parties are hereby enjoined and inhibited from using or asserting any rights to the use of the waters of said stream, or any tributary thereof, except by, through or under the rights of the persons whose water rights are defined herein or under and by virtue of permits issued by the State Engineer:

Byrd, Julian  
Burns, Oregon

Smith, P. G.  
Burns, Oregon

Turnbull, Thomas  
c/o James McEwen  
Riverside, Oregon

Withers, Harry  
Burns, Oregon

8.

That after the completion of the taking of such statements and proofs of claim the State Engineer did, on the 10th day of September, 1936, give notice by registered mail to each of the various claimants to the use of the waters of said stream and its tributaries, that at the times and places named in said notice, to-wit:

On Tuesday, September 22, 1936, in the Circuit Court Room of the County Court House at Burns, Oregon.

And from Wednesday, September 23, to Tuesday, October 6, 1936, inclusive, (Saturday afternoons and Sundays excepted), at the office of the State Engineer at Salem, Oregon,

the testimony and proofs of claim theretofore filed would be open to public inspection.

That said notice did also state therein the county in which the determination of the State Engineer in said proceeding would be heard by the Circuit Court of the State of Oregon, to-wit: The County of Harney.

9.

That the State Engineer did, in accordance with said notice as described in the preceding paragraph, keep said claims open to public inspection at said times and places. That within the time fixed therefor the following contests were initiated by the filing with the State Engineer of notice of contest in writing:

CONTEST NO. 1

Oregon & Western Colonization Company,  
a corporation,

Contestant

v.

Fred Haines; Harney Valley Improvement  
Company, a corporation; Ernest L. Smith,  
and C. W. Drinkwater,

Contestees

CONTEST NO. 2

Fred Haines,  
v. Contestant

Jane N. Main,  
Contestee

CONTEST NO. 3

Fred Haines,  
v. Contestant

C. W. Drinkwater,  
Contestee

CONTEST NO. 4

Fred Haines,  
v. Contestant

Oregon & Western Colonization  
Company, Inc.,  
Contestee

CONTEST NO. 5

Fred Haines,  
v. Contestant

Asa H. Danforth,  
Contestee

CONTEST NO. 6

Fred Haines,  
v. Contestant

First National Bank of Burns, The  
Charles A. Reynolds, Receiver,  
Contestee

CONTEST NO. 7

Fred Haines,  
v. Contestant

Harney Valley Improvement Company,  
Inc.,  
Contestee

CONTEST NO. 8

State Land Board of Oregon,  
v. Contestant

Asa H. Danforth; C. W. Drinkwater;  
Fred Haines; Harney Valley Improvement  
Company, a corporation; Jane N. Main;  
Oregon & Western Colonization Company,  
a corporation, and Ernest L. Smith,  
Contestees

10.

That after the filing of said statements of contest the State Engineer did fix a time and place for the hearing of each of said contests, and did on the 6th day of November, 1936, serve notice of hearing of said contests on each of the parties to said contests, the date fixed for hearing being more than thirty days and less than sixty days from the date the notice of said hearing was served on said parties. That upon the date as fixed for the hearing of said contests, the taking of testimony was commenced before a duly authorized reporter and continued until each of said contests was fully heard, settled by stipulation, or otherwise disposed of.

11.

That due proof of the sending of the various notices by registered mail as hereinbefore set forth has been made and filed as a part of the record herein.

12.

Cow Creek rises on the southeastern slope of a spur of the Blue Mountains in a plateau in the southern part of Township 20 South, Ranges 32 and 33 East, W. M., Harney County, Oregon. The creek flows in a general southerly direction in a well-defined channel to the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 25, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., where the channel divides and the water from this point is carried in two canals. Above the north line of Section 10, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., Cow Creek flows through a deep canyon. Below said point, the canyon widens gradually until it emerges in the valley floor of Harney Valley or Basin. Below the center of said Section 10 and above the place where the natural channel of Cow Creek now terminates, there is a considerable area of agricultural land lying adjacent to the stream which is irrigated with water diverted from Cow Creek. The topography of this area is such that the waste and seepage waters from the irrigated land return to the stream and are available for use below.

It appears that prior to the construction of any irrigation works the channel of Cow Creek disappeared near the north line of Sections 35 and 36, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M. The water then spread over a considerable portion of these two sections and other land below which have a comparatively even topography with a general slope to the south, furnishing natural irrigation which produced native grasses valuable for hay, when harvested, and pasture.

After the land was settled, it appears that in order to distribute the water better for irrigation purposes two canals were constructed. The point of diversion is located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 25, said township and range, and the canals now carry all the water of Cow Creek, except during periods of extreme floods. One of these canals, known as the Poujade

Ditch, enters Section 36 near the northeast corner of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and is used to carry water for irrigation of land in this section and land to the south and east. The other canal, known as the Harney Valley Improvement Company Ditch, enters Section 35 at the northeast corner where the water is divided, a part of which is used to irrigate land lying east and south of the west line of Section 36, and the remainder for the irrigation of land lying west and south of this line.

The East Fork of Cow Creek has its source in a comparatively low elevation, lying east of Main Cow Creek, and flows in a general southerly direction in a well-defined channel into Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., where it enters the low lands of Harney Basin or Valley, below which point the main channel of Cow Creek divides into several channels, the surplus water draining into Cow Creek within Sections 25 and 26, above township and range.

Cow Creek is not a tributary of any stream or lake. The surplus water from the irrigated land flows in a general southerly direction, collects in the low places, and is dissipated by seepage and evaporation.

By executive order dated December 5, 1872, a hay reserve of 640 acres was established for military purposes at Camp Harney Military Post. The hay reserve included the area which is now a part of the E $\frac{1}{2}$ , Section 35, and the W $\frac{1}{2}$ , Section 36, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., and a part of the NW $\frac{1}{4}$ , Section 1, and the NE $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M.

On September 12, 1872, by executive order the Malheur Indian Reserve, which included land on Cow Creek, was established for the use of the Pai-ute and Snake Indians, and on July 23, 1880, the hay reserve was cancelled and made subject to said order of September 12, 1872. By executive order dated September 13, 1882, the land on Cow Creek was restored to the public domain along with other land in the Indian Reserve. The executive order of September 12, 1872, establishing the Indian Reserve, excepted therefrom such land as had passed or might pass to The Dalls Military Road or the Willamette Valley and Cascade Mountain Military Road.

For a time, the wild grass growing in the meadows of Cow Creek sink was cut by the few settlers in the country for the use of the cavalry unit stationed at the military reserve, or for the use of their own stock. The land was surveyed in 1883; the survey was approved and filed in the Lakeview Land Office in May, 1884; entries were made by settlers under the public land laws, and homes were established. The Willamette Valley and Cascade Mountain Wagon Road Company selected certain odd-numbered sections on July 17, 1884, insofar as its rights permitted. Some of these included land upon which homesteaders had settled with the intention of obtaining title from the United States but who subsequently either purchased the land from the road company or its successors or moved away. Eventually, all the land covered by this proceeding passed into private ownership and much of it was utilized for agricultural and stock raising purposes.

Contest No. 1

Oregon & Western Colonization Company,  
a corporation,

Contestant

v.

Fred Haines; Harney Valley Improvement  
Company, a corporation; Ernest L. Smith,  
and C. W. Drinkwater,

Contestees

Fred Haines

Contestee Fred Haines filed claim (Proof No. 3) for the use of water from Cow Creek with a date of priority of 1882 for stock water and for the irrigation of 373.6 acres of land in Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M. Contestant alleges that the right of said contestee was initiated and water was used first for the irrigation of said land in 1887 and is subject and subsequent to the rights of the contestant.

From the testimony, it appears that the land for which water is claimed by the contestee formed a part of the sinks of Cow Creek from which grass was cut for hay for the cavalry stationed at Fort Harney in the 1870's. On September 12, 1872, the land was included in the Malheur Indian Reservation, and, on December 5, 1872, a hay reserve was established which included a part of the N $\frac{1}{2}$  of Section 2. The hay reserve, except for land selected or to be selected by the road company, was included later in the Indian Reservation, and, on September 13, 1882, a part of the reservation which included the land of Contestee Fred Haines was restored to the public domain. The Haines' land covered by Proof No. 3 consists of five tracts which will be considered separately and will be referred to as the Jesse Bunyard, Haines Homestead, Lieu Land, Haines Desert Land, and Roy Bunyard Tracts.

Jesse Bunyard Tract (NE $\frac{1}{4}$ , Section 2): It appears that Henry Thomas filed Declaratory Statement No. 1288 for the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and Lots 1 and 2, Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., on September 8, 1884, alleging settlement on August 27, 1884. J. O. Bunyard filed Declaratory Statement No. 2314 on the same land on July 14, 1886, alleging settlement on June 20, 1886. On October 7, 1892, Bunyard made final proof for the land in the S $\frac{1}{2}$  NE $\frac{1}{4}$  and Lots 1 and 2 (NE $\frac{1}{4}$ ), Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M.

It further appears that in 1886 Bunyard cut grass for hay on the NE $\frac{1}{4}$ , Section 2; that he fenced this tract in 1887, and that the land has been irrigated and in continuous use since it was settled upon first by Mr. Bunyard. No testimony was offered which indicated that he succeeded to the interests of Henry Thomas.

The contestee is allowed a right to the use of water from Cow Creek for the irrigation of 39.5 acres in Lot 1, 39.5 acres in Lot 2, 40 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and 40 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1886, as tabulated herein.



Haines Homestead Tract (NW $\frac{1}{4}$ , Section 2): It appears that Henry Thomas made timber culture entry of the S $\frac{1}{2}$  NW $\frac{1}{4}$  and Lots 3 and 4 (NW $\frac{1}{4}$ ), Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., on September 8, 1884; that in 1893 Fred Haines contested this entry which was cancelled on September 1, 1894; that on June 29, 1895, Fred Haines made homestead entry of said tract, and that patent was issued on January 27, 1904.

It further appears that in 1894 the contestee took possession of this tract, fenced it and cut the grass thereon for hay, and that since that time he has been in continuous possession thereof and has utilized the grass grown as a result of irrigation.

The contestee is allowed a right to the use of water from Cow Creek for the irrigation of 39.4 acres in Lot 3, 23.4 acres in Lot 4, 40 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and 34.3 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1894, as tabulated herein.

Lieu Land Tract (W $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 2): It appears that on December 23, 1884, M. M. Cushing filed Declaratory Statement No. 1464, alleging settlement on the N $\frac{1}{2}$  SW $\frac{1}{4}$  and the N $\frac{1}{2}$  SE $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., on December 13, 1884. Apparently, Mr. Cushing did not comply with the provisions of the act as patent was not issued to him.

It further appears that on January 18, 1900, Fred Haines made soldiers' additional homestead entries for the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 2, which were rejected in July, 1900. The W $\frac{1}{2}$  SW $\frac{1}{4}$  of said section was selected by the State of Oregon on April 1, 1901, as lieu land. On May 1, 1901, this tract was deeded to Etta Horton by the State of Oregon.

The testimony does not show when first use was made of the grass growing on this tract as a result of the land being flooded so as to constitute an appropriation of the water; however, it will be assumed that some beneficial use of the native grass was made at the time the land passed into private ownership.

The contestee is allowed a right to the use of water from Cow Creek for the irrigation of 34.4 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 10.2 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1901, as tabulated herein.

Haines Desert Land Tract (NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 2): It appears that the E $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., was filed on by Fred Haines under the Desert Land Act on January 24, 1900, and patent was issued to him on January 26, 1906. The only evidence submitted covering the early irrigation of the SW $\frac{1}{4}$ , Section 2, indicated that a dike near the north line was constructed prior to 1904 for the purpose of flooding the ground lying north thereof. No testimony was offered showing that Fred Haines succeeded to any water rights which may have been secured through this early construction, nor was any testimony offered indicating the first date when water was used by Haines or his predecessors. It is assumed, however, that the water was put to beneficial use after the tract passed into private ownership.

The contestee is allowed a right to the use of the water of Cow Creek for the irrigation of 5.6 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , said Section 2, with a priority date of 1900, as tabulated herein.

Roy Bunyard Tract (SE $\frac{1}{4}$ , Section 2): It appears that the SE $\frac{1}{4}$ , Section 2, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., was filed upon by Roy Bunyard on May 13, 1901, and patent was issued on April 11, 1907. It was purchased by the contestee from Roy Bunyard about 1905 or 1906. It further appears that at the time of purchase most of it was in brush with a very small piece in meadow. At no time has hay been cut on the place, but what little feed there was in meadow was depastured.

A right to the use of the water of Cow Creek is allowed the contestee for the irrigation of 13.5 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 14 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , said Section 2, with a priority date of 1906, as tabulated herein.

#### Harney Valley Improvement Company

Contestee Harney Valley Improvement Company filed Proof No. 4, claiming a right for the use of water from Cow Creek, with a priority date of 1880, for the irrigation of 90.4 acres in Section 31, Township 22 South, Range 33 East, W. M., and 327 acres in Section 35, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M. Contestant alleges that its rights were initiated prior to the true date of the initiation of the rights of contestee which, contestant asserts, were initiated and water used first to irrigate contestee's land in 1884.

It appears that approximately all the area in Section 35, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., for which a water right is claimed in this proceeding, was included in the hay reserve established December 5, 1872, and formed a part of the sinks of Cow Creek from which the grass growing as a result of the land being flooded was cut for hay in the 1870's, for the use of the cavalry stationed at Fort Harney. In 1880, the hay reserve was cancelled; on July 17, 1884, Section 35 was selected by the Willamette Valley and Cascade Mountain Wagon Road Company, and patent for the NW $\frac{1}{4}$  was issued on February 10, 1894, and for the SW $\frac{1}{4}$  and E $\frac{1}{2}$ , on August 27, 1898.

It was stipulated in the proceedings that the title to Section 35 was included in the grant from the United States Government to the Willamette Valley and Cascade Mountain Wagon Road Company in 1866 where it remained until shortly prior to 1912 when it was passed to the Harney Valley Improvement Company, an Oregon corporation, and that the Harney Valley Improvement Company is now the owner thereof.

It appears from testimony introduced during the hearing that in 1884 Smith Goodspeed occupied the SW $\frac{1}{4}$ , Section 35, and Seth Bowers, the E $\frac{1}{2}$  of the section, and that they had harvested sufficient hay to sell 250 tons in March, 1885. Most of the hay, according to the testimony, was raised on Section 35. The Curtis boys appeared to have occupied the SE $\frac{1}{4}$  about 1885 and put up hay for several years thereafter. Bowers, who retained the NE $\frac{1}{4}$  of the section, contested the right of the road company to the land and, having failed to establish his claim, left in 1896. It further appears that the Curtis boys and Smith Goodspeed moved from Section 35 about the same time, having harvested the crop each year prior to leaving, and that

each year since then the property has been occupied and wild grass harvested for hay when sufficient water was available for irrigation.

The question to be determined in this case is whether a water right initiated by a trespasser inures to the owner of the land when the trespasser leaves or is dispossessed and no evidence is presented which shows that he transferred his water right to the owner of the property.

It does not appear that the Supreme Court of Oregon has passed directly on this question, although in the case of Seward v. Pacific Livestock Company, 49 Ore. 157, it is stated that when a trespasser constructed a ditch and used it to irrigate road company land without authority and later sold his interest to his brother who secured a lease of the land the water right was owned probably by the landlord or tenant.

In the present case, no testimony was offered which indicated that Bowers, Goodspeed or the Curtis brothers attempted to transfer the water right from the road company land and it is, therefore, deemed to have continued to be appurtenant to the land upon which it was used and to have inured to the benefit of the landlord.

The contestee is allowed a right to the use of the water of Cow Creek for the irrigation of 29.5 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 14.0 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 27.5 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 40.0 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 10.7 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 10.1 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , 35.2 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 40.0 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 40 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 40 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 40.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 35, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1884, as tabulated herein.

The SW $\frac{1}{4}$ , Section 31, Township 22 South, Range 33 East, W. M., was selected by the Willamette Valley and Cascade Mountain Wagon Road Company on July 18, 1884, and it appears that in 1906 a ditch was constructed which could serve the tract but that said tract has never been irrigated from this source. From the limited testimony offered, it further appears that in the past this tract has been irrigated with the waste water from the irrigated fields above and then only during a year of heavy run-off. No evidence was given indicating when water was used first on this tract nor was any evidence offered disputing the date claimed by the contestee.

The contestee is allowed a right to the use of water from Cow Creek which flows off the irrigated fields to the west of Section 31 as surplus or as waste, for the irrigation of 6.8 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 25.0 acres in Lot 3, 34.6 acres in Lot 4, and 24.0 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 31, Township 22 South, Range 33 East, W. M., with a date of priority of 1884. The foregoing right is set forth in the tabulation herein.

#### Ernest L. Smith

Contestee Ernest L. Smith filed a claim (Proof No. 8) for the use of water from Cow Creek for stock and for the irrigation of 80 acres in the E $\frac{1}{2}$  NE $\frac{1}{4}$ , Section 26, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of October 27, 1885.

Contestant claims that no part of the land has been irrigated nor has the water of Cow Creek been put to beneficial use. It appears that this land was filed on by Wm. H. Mahon on October 27, 1885, and a patent was issued to him by the United States on April 16, 1891. The evidence given indicates that for a number of years a part of the tract along the creek was in natural meadow and water was diverted from Cow Creek for irrigation by means of temporary dams. At times, waste water flowing off irrigated land to the north would be utilized also. Later, the meadow land was plowed and cultivated. It further appears that while the land which is now grown up to weeds and sage brush has been cultivated more or less in the last twenty years the owners have depended upon natural precipitation for moisture and have not diverted water for irrigation when it was available, as did their neighbors to the north and south. Accordingly, no right will be allowed under this claim.

#### C. W. Drinkwater

On September 30, 1936, C. W. Drinkwater filed a petition with the State Engineer to intervene in this proceeding. It appeared that the petitioner was user of water from East Cow Creek and, although duly served with notice of said proceeding, because of illness failed to file statement and proof of claim within the time fixed in the notice of said proceeding.

On October 6, 1936, the State Engineer ordered that the petition be allowed and the claim be received and filed; also, that a notice of filing the claim, with a copy thereof, be given to each claimant to the use of the waters of Cow Creek and its tributaries.

Copies of the order and of the notice of filing claim were sent to all of said claimants by registered mail on October 6, 1936, and fifteen days were given in which to file protest thereto. No objections to said order or notice of filing were received by the State Engineer within the time limit set in the notice.

Contestee C. W. Drinkwater filed Proof No. 10, claiming a right to the use of water from Cow Creek for domestic and stock purposes and for the irrigation of 94 acres in the  $W\frac{1}{2}$ , Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1882.

Contestant alleges that not to exceed 24 acres have been irrigated and that the first use of water for irrigation of land was in 1884. The Drinkwater land consists of the W. H. Mahon and the Goodspeed tracts, both of which were included in the Indian Reserve established on September 12, 1872, and restored to the public domain on September 13, 1882. Each of the tracts is considered separately.

W. H. Mahon Tract ( $N\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 24): From the evidence presented, it appears that Patrick Mahon lived on the above-described tract probably as early as 1881, although no evidence was introduced to show that he attempted to file thereon as public land after it was restored to the public domain on September 13, 1882. It appears, however, that he did file a water right location notice with the county on October 16, 1882, claiming all the water in Cow Creek for stock and agricultural purposes, but no evidence was

presented to show that he posted the notice in conformity to the custom prevailing at that time. According to the testimony given, Patrick Mahon left the locality some time between 1884 and 1887. It appears that W. H. Mahon filed on the  $N\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., on November 10, 1887, and a patent was issued to him on March 15, 1894. Testimony given indicates that there were from four to eight acres of natural meadow in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 24, but, apparently, no farming was done until after W. H. Mahon filed on the place. No evidence was presented to show that W. H. Mahon secured any possessory rights which may have been established prior to the date of his filing.

It appears that while in 1900 two ditches were used to irrigate land on the east and west sides of East Cow Creek they have not been used for many years and no trace of them remains. The method of irrigation followed since 1910, or even earlier, has been by flooding with water diverted from the creek by dams placed therein and by sub-irrigation.

Testimony was given that at one time there were approximately 100 acres irrigated and sub-irrigated, but, evidently, this area included the land owned formerly by Smith Goodspeed and which is now a part of the contestee's property. It appears that 75 acres of this area were plow land and the greater part thereof was sub-irrigated and 25 acres were in meadow which, apparently, enjoyed the benefit of the direct application of water through flooding. It further appears that because of the limited run-off of East Cow Creek for a number of years the contestee has dry-farmed a considerable part of the cultivated area and used the available water to irrigate the meadows.

The contestee is allowed a right to the use of water from East Cow Creek for the irrigation of 13.8 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 10 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and 30 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1888, as tabulated herein.

Goodspeed Tract (SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , and S $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 24): On August 5, 1884, Wm. H. Mahon made timber culture entry on the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , and the S $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M. This entry was cancelled by relinquishment on June 15, 1889. On June 15, 1889, Chas. Gowne filed on the same land under the timber culture law and his entry was cancelled on June 25, 1894. On August 14, 1894, Smith Goodspeed filed on the tract and patent was issued to him on December 18, 1897. No evidence was offered which indicates that Goodspeed acquired any rights which may have been appurtenant to this property prior to his filing, but it appears that water has been utilized, when available, to irrigate the meadow each year after the land was entered by Smith Goodspeed and that a part of the land once irrigated has been dry-farmed for several years because of the shortage of water in East Cow Creek.

The contestee is allowed a right to the use of the water from East Cow Creek for the irrigation of 10.2 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 10 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 10 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , and 10 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 24, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1895, as tabulated herein.

Contest No. 2

Fred Haines,

Contestant

v.

Jane N. Main,

Contestee

Contestee Jane N. Main filed a claim (Proof No. 5A) for the use of the water of the East Fork of Cow Creek for stock and for the irrigation of 50.2 acres in the  $W\frac{1}{2}$ , Section 13, Township 22 South, Range  $32\frac{1}{2}$  East, W. M., with a priority date of 1884, and a claim (Proof No. 5B) for the use of the water from main Cow Creek for stock water and for the irrigation of 262.3 acres in the  $NW\frac{1}{4}$   $NW\frac{1}{4}$ ,  $S\frac{1}{2}$   $NW\frac{1}{4}$ , and  $SW\frac{1}{4}$ , Section 36, Township 22 South, Range  $32\frac{1}{2}$  East, W. M., with a priority date of 1884. The claim covers two separate tracts of land, one of which is hereinafter referred to as the Pirie Tract, and the other, as the School Section.

Pirie Tract: It appears from the testimony that James Pirie, the half-brother of the contestee, settled on East Cow Creek in 1884 and took the first step to secure the  $SE\frac{1}{4}$   $NW\frac{1}{4}$  and  $E\frac{1}{2}$   $SW\frac{1}{4}$ , said Section 13, on August 23 of that year. The first step to secure title to the  $NW\frac{1}{4}$   $NW\frac{1}{4}$ , Section 13, was taken by him on November 7, 1884, and on October 4, 1888, he filed on the  $NE\frac{1}{4}$   $NW\frac{1}{4}$ , Section 13, as desert land. Subsequently, he secured patent to these entries. The testimony indicates that Pirie had some livestock when he settled on East Cow Creek; that there was some natural wild hay meadow on the land; that in 1885 James Pirie had made considerable improvements in addition to this natural advantage, and that water has been used every year to irrigate for hay or pasture.

Accordingly, the contestee is allowed a right to the use of water from East Cow Creek for the irrigation of 0.6 acre in the  $NW\frac{1}{4}$   $NW\frac{1}{4}$  with a date of priority of 1885; 23.0 acres in the  $SE\frac{1}{4}$   $NW\frac{1}{4}$ ; 9.8 acres in the  $NE\frac{1}{4}$   $SW\frac{1}{4}$ , and 13.8 acres in the  $SE\frac{1}{4}$   $SW\frac{1}{4}$ , with a date of priority of August 23, 1884; 3.0 acres in the  $NE\frac{1}{4}$   $NW\frac{1}{4}$ , all in Section 13, Township 22 South, Range  $32\frac{1}{2}$  East, W. M., with a date of priority of 1889. The contestee's right as above set out is tabulated herein.

School Section: The testimony offered in support of contestee's claim under Proof No. 5B indicates that the land in Section 36, Township 22 South, Range  $32\frac{1}{2}$  East, W. M., formed a part of the Cow Creek sinks from which the grass growing as a result of the land being flooded was harvested for hay for military purposes at Fort Harney in the 1870's. The land was included in the Malheur Indian Reservation on September 12, 1872, and on September 13, 1882, was restored to the public domain. It appears that Section 36, having been segregated as a school section, was sold by the State of Oregon on June 6, 1884, to Lester N. Riley, Lilos L. Perkins, H. C. Perkins, and Thomas Wilson. According to the testimony, it was the property of Devine and Toddhunter in 1885 and was owned and fenced by Jones and Poujade, stockmen, in 1886; that hay was put up on the  $W\frac{1}{2}$ , Section 36, by one Mahon for his own use in 1886, and that Mr. Jones made a deal with him to get a portion of it after it was in the stack. Apparently, the first beneficial use made of the water after the land passed into private ownership was at that time.

The contestee is allowed a right to the use of the water from Cow Creek for the irrigation of 22.3 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 40.0 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 40.0 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 40.0 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 40.0 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 40.0 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , and 40.0 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 36, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1886, and said right is tabulated accordingly.

15.

Contest No. 3

Fred Haines,

Contestant

v.

C. W. Drinkwater,

Contestee

The area allowed a water right and the date of priority thereof, covering the land of the contestee in Section 24, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., are set forth in the findings under Contest No. 1.

16.

Contest No. 4

Fred Haines,

Contestant

v.

Oregon & Western Colonization Company,  
Inc.,

Contestee

Contestee Oregon & Western Colonization Company, Inc., filed a claim (Proof No. 7) for the use of the water of Cow Creek for stock purposes and for the irrigation of 587.4 acres in Sections 1 and 3, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1882. The claim is contested as to date of priority, number of acres involved, and other matters set out in the statement and proof of claim.

The claim covers two separate tracts, each of which is referred to by section number.

Section 1: Testimony was given that wild hay was cut from the meadows forming a part of Section 1 for the use of the United States Cavalry stationed at Fort Harney in the 1870's. The section was selected by the Willamette Valley and Cascade Mountain Wagon Road Company on July 17, 1884, and patent was issued for the S $\frac{1}{2}$  on February 10, 1894, and for the N $\frac{1}{2}$ , on August 27, 1898. It appears that George Thompson was living on the land in 1885, but no evidence was offered showing that the natural meadow was utilized after it passed to private ownership until 1886 when the testimony shows that the Gates brothers and George Thompson cut hay therefrom. It further appears that the area in meadow in 1886 and in 1936 was about the same.

Accordingly, the contestee is allowed a right to the use of the water from Cow Creek for the irrigation of 37.8 acres in Lot 1, 39.8 acres in Lot 2, 29.2 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 33.0 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 39.7 acres in Lot 3, 39.6 acres in Lot 4, 40.0 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 40.0 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 30.5 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 27.3 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 5.0 acres in the

SW $\frac{1}{4}$  SW $\frac{1}{4}$ , 30.2 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 24.3 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 25.2 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 31.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 27.1 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , all in Section 1, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1886, as tabulated herein.

Section 3: Evidence concerning Section 3, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., was very meager. It appears that the section was selected by the Willamette Valley and Cascade Mountain Wagon Road Company on July 17, 1884, and that patent to the E $\frac{1}{2}$  was issued on February 10, 1894. According to the testimony, some time prior to 1893 a dike had been constructed west of the NW $\frac{1}{4}$ , Section 2, and it was thought that Section 3 had been used ever since about 1888. No evidence of canals or ditches was found leading to the NE $\frac{1}{4}$ , Section 3, when the survey was made under the direction of the State Engineer in June, 1936, for this proceeding. It was apparent that for its irrigation this tract depends upon the waste and surplus water flowing off the irrigated fields to the east and northeast.

The contestee is allowed a right to the use of water from Cow Creek which flows off the irrigated fields to the east of Section 3 as surplus or as waste, for the irrigation of 20.3 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 30.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 28.5 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 8.3 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 0.1 acre in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 3, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of 1888, as tabulated herein.

17.

Contest No. 5

Fred Haines,

Contestant

v.

Asa H. Danforth,

Contestee

Contestee Asa H. Danforth filed a claim (Proof No. 1) for the use of the water from the West Branch of Cow Creek and springs rising on his land for stock and for the irrigation of 380.4 acres in Sections 10, 14, and 23, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1882. The claim is contested as to date of priority, number of acres involved, and other matters set out in the statement and proof of claim.

The property includes land owned formerly by Chas. M. Bush, Chas. Gowne, James F. Mahon, and the Willamette Valley and Cascade Mountain Wagon Road Company.

Eventually, James F. Mahon became the owner of these tracts which were acquired later by Danforth. The tracts will be considered separately and will be referred to as the Bush, Mahon School Land, Gowne, Mahon Timber Culture Tracts, and the Road Land.

It appears that a part of the property which bordered on Cow Creek was subject to natural overflow during the spring run-off which resulted in meadows from which grass was cut for hay or which were depastured.



Bush Tract: It appears that Charles M. Bush filed declaratory statement covering the E $\frac{1}{2}$  SE $\frac{1}{4}$ , Section 10, and the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 14, on November 20, 1884, giving October 30, 1882, as the first date of settlement. Mr. Bush again filed on the same land on November 17, 1886, and a patent was issued to him on June 4, 1890.

No testimony was given concerning this tract but it seems that a part of the land bordering on Cow Creek is subject to natural overflow during high water and the meadow resulting therefrom is used for hay or for pasture. It is assumed that beneficial use was made of the water by Bush during the spring following his first date of settlement.

A right is allowed for the irrigation of 10.8 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 6.4 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 10, and 0.1 acre in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 14, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1883, as tabulated herein.

Mahon School Land Tract: No testimony was given concerning this tract, but it appears that the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 10, was an indemnity school selection which was selected by the State of Oregon on December 22, 1905, and for which patent was issued on June 10, 1907. The land was sold under contract about 1906 and deed was issued by the State to James F. Mahon on June 13, 1911.

A right is allowed for the irrigation of 0.6 acre in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 10, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1906, as tabulated herein.

Charles Gowne Tract: It appears that Charles Gowne preempted the E $\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 14, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., on August 23, 1887, and secured a patent thereto dated January 18, 1892.

The limited testimony which was given concerning this tract indicates that Gowne was engaged in the livestock business as a partner of James F. Mahon, and it appears that part of his preemption claim which bordered on Cow Creek was subject to overflow resulting in meadows from which grass grown was either cut for hay or depastured.

A right is allowed for the use of water from Cow Creek for the irrigation of 7 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 0.1 acre in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 26 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 12 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 14, Township 23 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of August 23, 1887, as tabulated herein. The contestee is also given the right to the exclusive use of springs rising on the foregoing tract.

Mahon Timber Culture Tract (N $\frac{1}{8}$  of Road Land in Section 23): It appears that on July 17, 1884, James F. Mahon filed a timber culture claim for the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , and SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 14, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., for which patent was issued on December 4, 1894.

From the testimony given, it appears that James F. Mahon located on Cow Creek about 1881 and engaged in the livestock business; that by 1884 he had built a house and barn in the NE $\frac{1}{4}$ , Section 23, and, evidently, had cut hay in 1883 from meadows in Sections 23 and 14 above the house; that dams and ditches were constructed and used to divert the water from Cow Creek

to land other than the meadow, and the irrigation program appears to have been extended from year to year until the area under irrigation in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , and S $\frac{1}{2}$  SE $\frac{1}{4}$ , Section 14, and the NE $\frac{1}{4}$ , Section 23, reached its present proportions.

Subsequent to the settlement of James F. Mahon on the NE $\frac{1}{4}$ , Section 23, the Willamette Valley and Cascade Mountain Wagon Road Company on July 17, 1884, selected the E $\frac{1}{2}$  of said section under the road grant. Patent was issued for the NE $\frac{1}{4}$  on August 27, 1898, and for the SE $\frac{1}{4}$ , on April 12, 1901. Mahon continued to make his home in the NE $\frac{1}{4}$  after the road company made its selection and he received a deed thereto on June 24, 1899.

The contestee is allowed a right to the use of water from Cow Creek for the irrigation of 6.5 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 24.8 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 36.7 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , 12.3 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 14; 21.1 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 21.6 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 20 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and 24.6 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 23, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority date of 1883, and said right is tabulated accordingly. The contestee is also allowed the right to the exclusive use of springs rising on the foregoing tracts.

S $\frac{1}{2}$  of Road Land in Section 23: Testimony was introduced which indicated that the SE $\frac{1}{4}$ , Section 23, was leased by the road company to George Buchanan in the early 1890's and that he raised some crops and cut hay from a natural meadow in the south end thereof for several years. After it was deeded to Mr. Mahon on December 27, 1904, a ditch in the NE $\frac{1}{4}$ , Section 23, was extended south to cover that quarter-section and, eventually, the irrigated area reached its present proportions.

The contestee is allowed a right to the use of water from Cow Creek for the irrigation of 17.2 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 18.6 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 23, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a priority of 1905, and 14.1 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and 22 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , said Section 23, with a priority date of 1891, as tabulated herein. The contestee is also allowed the right to the exclusive use of springs rising on the foregoing tracts.

Contestee offered evidence of water right locations recorded in Volume "C", Water Rights, Pages 13, 16, and 17 of the records of Harney County. One of them, signed by John J. Mahon, dated and received for recording on October 16, 1882, claims 500 inches of water from Cow Creek. Three other notices are signed by J. J. Mahon, dated and recorded October 16, 1882, and claim water from Cow Creek and springs. No evidence was offered showing that James F. Mahon succeeded to any rights which may have been acquired by John J. or J. J. Mahon by reason of recording the foregoing notices, nor was any evidence offered to show that John J. or J. J. Mahon posted the notices as was the customary practice at that time.

The contestee asks that the irrigable area of the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 23, be increased from 17.2 acres to 36 acres. There is no evidence that the additional area claimed has ever been irrigated and the higher elevation of this area indicates that it would not have been practical to irrigate it from the ditches as constructed. Contestee also claims 20 acres in

the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 30 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 14; 24 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 24 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 23, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M. There is no evidence of past irrigation on the ground which would justify allowing a greater irrigable area than shown on the map prepared under the direction of the State Engineer.

18.

Contest No. 6

Fred Haines,

Contestant

v.

First National Bank of Burns, The  
Charles A. Reynolds, Receiver,

Contestee

The contestee filed Proof No. 2, claiming a riparian right, stock water, and domestic use, and stating in said proof that water was put to beneficial use first in 1916. The contestant asked for a dismissal of the contest because of a stipulation between the contestant and contestee that the latter's claim is for stock water and water for domestic purposes; that the contestee makes no claim for water for irrigation purposes, and that the proof covers land lying in the canyon above the irrigated area depicted on the State Engineer's map where the channel flows naturally through the land described.

Inasmuch as the claimant does not show that it or its predecessors made beneficial use of the water prior to February 24, 1909, the claim is denied. The claimant may initiate a water right, if it so desires, by making proper application to the State Engineer.

19.

Contest No. 7

Fred Haines,

Contestant

v.

Harney Valley Improvement Company,  
Inc.,

Contestee

The contestee's rights involved in this contest are included in Contest No. 1 and defined therein.

20.

Contest No. 8

State Land Board of Oregon,

Contestant

v.

Asa H. Danforth; C. W. Drinkwater;  
Fred Haines; Harney Valley Improvement  
Company, a corporation; Jane N. Main;  
Oregon & Western Colonization Company,  
a corporation, and Ernest L. Smith,

Contestees

Findings covering the lands of the foregoing contestees have been made and may be

found under the contests as set out below:

Asa H. Danforth	Contest No. 5	Proof No. 1
C. W. Drinkwater	" " 1	" " 10
Fred Haines	" " 1	" " 3
Harney Valley Improvement Company	" " 1	" " 4
Jane N. Main	" " 2	" " 5A & 5B
Oregon & Western Colonization Company	" " 4	" " 7
Ernest L. Smith	" " 1	" " 8

#### State Land Board of Oregon

The State Land Board of Oregon filed Proof No. 9A, claiming the right to the use of water from Cow Creek for stock and for the irrigation of 360 acres in the E $\frac{1}{2}$  and the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 36, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., with a date of priority of June, 1884. The right was not contested and, therefore, is allowed as claimed and as tabulated herein.

The State Land Board of Oregon filed Proof No. 9B, claiming the right to the use of water from Cow Creek for stock and for the irrigation of an estimated area of 100 acres in the NW $\frac{1}{4}$ , Section 6, Township 23 South, Range 33 East, W. M., with a priority date of 1903. A map prepared under the direction of the State Engineer shows an irrigated area of 99.5 acres in 1936.

The claimant is allowed a right to the use of water from Cow Creek for the irrigation of 20.3 acres in Lot 3, 35.8 acres in Lot 4, 37.0 acres in Lot 5, and 6.4 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 6, Township 23 South, Range 33 East, W. M., with a priority date of 1903. The foregoing right is tabulated accordingly.

21.

#### WATER SUPPLY AND MEASUREMENTS

Cow Creek rises in the hills in the southern part of Township 20 South, Ranges 32 and 33 East, W. M., and flows in a general southerly direction in a well-defined channel until it reaches the southeast part of Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., where during its flood stage it spreads out in a fan shape and disappears gradually. The run-off starts usually about the middle of March and continues until the middle of June. During that period, the water is utilized for irrigation, some land being so situated that ditches are required, while other land is either subject to overflow or requires only temporary dams in the creek to raise the water to a sufficient height to flood the same.

East Cow Creek has its source in Township 21 South, Range 32 $\frac{1}{2}$  East, W. M., and flows in a general southerly direction until during its flood stage its waters commingle with those of Cow Creek in the southeastern part of Township 22 South, Range 32 $\frac{1}{2}$  East, W. M. Its season of run-off is shorter than that of Cow Creek and in the summer of a normal year there is not sufficient water to reach the main stream.

The only water measurement of the discharge of Cow Creek which appears of record was made under the direction of the State Engineer on May 7, 1937. This measurement was made in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 14, Township 22 South, Range 32 $\frac{1}{2}$  East, W. M., above the Danforth ranch and shows a discharge of 13.3 cubic feet per second.

There is no record of a measurement on East Cow Creek, and on May 7, 1937, when the main creek was measured there was no water in East Cow Creek.

The watermaster shall distribute the waters of Cow Creek and East Cow Creek as separate streams and the priority dates on one stream shall not affect the distribution of water on the other.

22.

#### SEASON

Both Cow Creek and East Cow Creek have an unstable run-off, relying as each one does on the winter's snow covering watersheds of limited areas and comparatively low elevation. Years have occurred when a generous supply of water was available for irrigation; others when a near drought condition existed. In order to take advantage of the water while it is available, the irrigators start using it as soon as the spring floods occur, placing temporary dams in the creeks to flood their land where this can be done or diverting the water through ditches to the higher elevations impossible to reach by flooding in a year of ordinary run-off. The heavy run-off is over generally by the middle of April and by the middle of June or first of July there is little or no water available for irrigation.

Inasmuch as there are no reservoirs constructed on Cow Creek to store the early run-off or the surplus water which may be available and as it is necessary that advantage be taken of the limited run-off as it occurs, no limitation will be placed upon the irrigation season.

23.

#### DUTY AND HEAD OF WATER

Taking into consideration the quantity of water available, the time of run-off, the character of the land and the crops grown, together with all testimony and evidence produced in this proceeding, the duty of water is fixed not to exceed three acre-feet per acre in any one year, and the head of water up to April 20 of each year is fixed not to exceed one-fortieth of a cubic foot per second for each acre and for the balance of the year is not to exceed one-sixtieth of a cubic foot per second for each acre, except when rotation is practiced as herein provided.

24.

#### PLACE OF MEASURING WATER AND INSTALLATION OF HEAD-GATES AND MEASURING DEVICES

The water which any party to this proceeding is entitled to use shall be measured at the point of diversion from the stream. Head-gates and suitable measuring devices shall be installed and maintained at each place of diversion from the stream. These head-gates and measuring devices shall be approved by the watermaster and each water user shall bear the expense of constructing and maintaining his own head-gates and measuring devices. Where the head-gates and measuring devices are owned or used by two or more parties, the cost of construction of said head-gates and measuring devices shall be apportioned equally to all lands having water rights

and served by these structures. In regulating the quantity of water diverted by an appropriator, the watermaster shall take into account the quantity of water being received by such appropriator's land as waste or overflow water from the land above. In case the water flowing in the channel of a stream or ditch sinks or fails to flow down the channel so as to be of benefit to an appropriator having the prior right to its use, the watermaster shall allow the diversion thereof by the next appropriator in order of priority who can make a beneficial use of such water.

25.

#### STOCK AND DOMESTIC USE

It appears that most of the claimants to the use of the water of Cow Creek secure their stock and domestic water from shallow wells. It further appears that the supply from this source is adequate and that during a considerable part of each year Cow Creek is dry and no water is available from that source; therefore, no water in addition to that allowed for irrigation purposes will be allowed for stock and domestic purposes.

26.

#### ROTATION

The watermaster of the district in which Cow Creek and its tributaries are situated may arrange such system or systems of rotation as may be best applicable to the conditions arising from time to time in the distribution of water on such streams. When two or more appropriators agree between themselves as to a system of rotation, the watermaster shall distribute water to them in accordance with such agreement, provided that in so doing he does not interfere with the rights of other appropriators.

27.

#### APPURTENANCY

That the rights to the use of water for irrigation purposes hereby confirmed are appurtenant to the lands herein described, and the rights of use of the waters of said stream and its tributaries by virtue of such rights are limited and confined to the irrigation of the lands described herein to the extent of said lands herein set forth, and the priorities of right herein confirmed confer no right of use of the waters of said stream and its tributaries on any lands other than those specified tracts to which such rights are herein set forth as appurtenant, and each and every person shall be and hereby is prohibited, restrained and enjoined from diverting and using water from said stream and its tributaries on such other lands without lawful approval first obtained from the State Engineer.

PRIORITIES

That the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and in which order they are entitled to divert and use the said water except as otherwise provided herein, shall be and is according to the date of the relative priority of the right as herein set forth and determined, and the first in order of time according to the date of relative priority shall be and is the first in order of right, and so on, down to the date of the latest priority, and those having prior rights are entitled to divert and use the waters of said stream and its tributaries, when necessary for beneficial use in connection with the irrigation of their respective lands, or other useful and beneficial purposes for which they are decreed a right of use, at all times and against those having subsequent rights, without let or hindrance, and whenever the water is not required by the appropriator having a prior right to its use for the purpose for which said water was appropriated, he must and shall permit it to flow down the natural channel of the stream as it was wont to flow in its natural course, without hindrance or diversion thereof, and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights of appropriation, according to the order of priority of their rights; and at all times the waters diverted shall be beneficially, economically, and reasonably used without waste by those having a right to do so by reason of the priority of their rights, and no rights of appropriation are hereby confirmed to divert a greater quantity of water into the head of the ditch or ditches of the appropriator having a valid right to divert the water, than such appropriator can beneficially use for the purposes to which the water is to be put.

TABULATION

That except as otherwise modified herein, the rights of the various appropriators of water from Cow Creek and its tributaries arranged in a tabulated form, with the dates of relative priority of such appropriations, the number of acres to which such appropriations are applied and are now limited, the use or uses to which said water is applied, the name of the ditch or other means by which the water so appropriated has been diverted, the name of the stream or other source from which the water has been used, and the description of the lands upon which the water has been used, the tabulated rights of each appropriator being set opposite and following his name and post office address, are as follows, to-wit:

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
15526 Danforth, Asa H. Washington, Illinois C. B. McConnell, Agent Burns, Oregon Proof 1 (Findings, Paragraph 17)	1883		17.3	Irrigation	Dams and unnamed ditches	Cow Creek	10.8 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 6.4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10; 0.1 acre in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 1 (Findings, Paragraph 17)	1883		167.6	Irrigation	Dams and unnamed ditches	Cow Creek and springs rising on claimant's land	6.5 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 24.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 36.7 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 12.3 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14; 21.1 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 21.6 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 20.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 24.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 1 (Findings, Paragraph 17)	Aug. 23, 1887		45.1	Irrigation	Dams and unnamed ditches	Cow Creek and springs rising on claimant's land	7.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 0.1 acre in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 26.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 1 (Findings, Paragraph 17)	1891		36.1	Irrigation	Dams and unnamed ditches	Cow Creek and springs rising on claimant's land	14.1 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 22.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 23, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 1 (Findings, Paragraph 17)	1905		35.8	Irrigation	Dams and unnamed ditches	Cow Creek and springs rising on claimant's land	17.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 18.6 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 23, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 1 (Findings, Paragraph 17)	1906		0.6	Irrigation	Dams and unnamed ditches	Cow Creek	0.6 acre in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
15527 Drinkwater, C. W. Drewsey, Oregon Proof 10 (Findings, Paragraph 13)	1888		53.8	Irrigation	Dams and unnamed ditches	East Cow Creek	13.8 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 10.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 30.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 10 (Findings, Paragraph 13)	1895		40.2	Irrigation	Dams and unnamed ditches	East Cow Creek	10.2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 10.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
First National Bank of Burns, The c/o Charles A. Reynolds Receiver Burns, Oregon Proof 2 (Findings, Paragraph 18)				(Claim denied)			



Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
15528 Haines, Fred Burns, Oregon Proof 3 (Findings, Paragraph 13)	1886		159.0	Irrigation	Bunyard Ditch, dams, levees, and unnamed ditches	Cow Creek	39.5 acres in Lot 1 39.5 acres in Lot 2 40.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 2, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 3 (Findings, Paragraph 13)	1894		137.1	Irrigation	Bunyard Ditch, dams, levees, and unnamed ditches	Cow Creek	39.4 acres in Lot 3 23.4 acres in Lot 4 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 34.3 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 2, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 3 (Findings, Paragraph 13)	1900		5.6	Irrigation	Bunyard Ditch, dams, levees, and unnamed ditches	Cow Creek	5.6 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 3 (Findings, Paragraph 13)	1901		44.6	Irrigation	Bunyard Ditch, dams, levees, and unnamed ditches	Cow Creek	34.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 10.2 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 3 (Findings, Paragraph 13)	1906		27.5	Irrigation	Bunyard Ditch, dams, levees, and unnamed ditches	Cow Creek	13.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 14.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
15529 Harney Valley Improvement Company, Inc. c/o Robert M. Duncan Secretary Burns, Oregon Proof 4 (Findings, Paragraph 13)	1884		327.0	Irrigation	Hanley Ditch	Cow Creek	29.5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 14.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 27.5 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 10.7 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.1 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.2 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 4 (Findings, Paragraph 13)	1884		90.4	Irrigation	Waste water from lands to west		6.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 25.0 acres in Lot 3 34.6 acres in Lot 4 24.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 31, T. 22 S., R. 33 E., W.M.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
15530 Main, Jane N. Burns, Oregon Proof 5A (Findings, Paragraph 14)	Aug. 23, 1884		46.6	Irrigation	Dams and unnamed ditches	East Cow Creek	23.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 9.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 13.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 5A (Findings, Paragraph 14)	1885		0.6	Irrigation	Dams and unnamed ditches	East Cow Creek	0.6 acre in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 5B (Findings, Paragraph 14)	1886 1884		262.3	Irrigation	Dams, dikes, and unnamed ditches	Cow Creek	22.3 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 5A (Findings, Paragraph 14)	1889		3.0	Irrigation	Dams and unnamed ditches	East Cow Creek	3.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
15531 McEwen, James M. Riverside, Oregon Proof 6	1883		42.8	Irrigation	Dams and unnamed ditches	Cow Creek	10.4 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 10.7 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 9.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 10.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 2.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T. 20 S., R. 33 E., W.M.
15532 Oregon & Western Colonization Company, Inc. Pioneer Building St. Paul, Minnesota Proof 7 (Findings, Paragraph 16)	1886		499.7	Irrigation	Dams, dikes, and unnamed ditches	Cow Creek	37.8 acres in Lot 1 39.8 acres in Lot 2 29.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 33.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 39.7 acres in Lot 3 39.6 acres in Lot 4 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 30.5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 27.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 5.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 30.2 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 24.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 25.2 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 31.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 27.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Proof 7 (Findings, Paragraph 16)	1888		87.7	Irrigation	Surplus and waste water from lands to east		20.3 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 30.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 28.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 8.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Smith, Ernest L. Burns, Oregon Proof 8 (Findings, Paragraph 13)	June, 1884		360.0	(Claim denied)	Poujade Ditches	Cow Creek	40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36, T. 22 S., R. 32 $\frac{1}{2}$ E., W.M.
15533 State Land Board of Oregon Salem, Oregon Proof 9A (Findings, Paragraph 20)	1903		99.5	Irrigation	Levees, dams, dikes, and unnamed ditches	Cow Creek	20.3 acres in Lot 3 35.8 acres in Lot 4 37.0 acres in Lot 5 6.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 6, T. 23 S., R. 33 E., W.M.
15534 Proof 9B (Findings, Paragraph 20)							

All water rights which were initiated after February 24, 1909, on which date the Oregon Water Code became effective, are evidenced by permits issued by the State Engineer or by final water right certificates based upon the completion of rights under such permits. Each and every appropriator holding such a permit or certificate for the use of water from said stream and its tributaries shall have such rights thereunder as are provided by law, and such rights shall be perfected in the manner provided by law for the completion thereof.

And the State Engineer of Oregon, being fully advised in the premises, it is hereby CONSIDERED and ORDERED that the relative rights of the various claimants to the use of the waters of Cow Creek and its tributaries be and the same are hereby determined and settled as set forth in the foregoing Findings and Order of Determination.

Dated at Salem, Oregon, this 22nd day of June, 1938.



CHAS. E. STRICKLIN

State Engineer