

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. )

No. 3189  
FINDINGS OF FACT  
AND  
DECREE

The above entitled matter comes before the Court at this time for consideration of the supplemental findings of the State Engineer of Oregon and for the entry of Decree. The claim of Jane N. Main, and her successors in interest, being represented by C. B. McConnell, their attorney, and the Court finds:

1. That the above entitled matter was instituted by the filing of a verified complaint in the Circuit Court of the State of Oregon for Harney County by Fred Haines as Plaintiff against all users of the waters of Cow Creek and its tributaries as defendants, and on the 16th day of April, 1936 an Order was entered in said suit directing that said cause and matter be referred to the State Engineer of Oregon for the purpose of adjudicating the relative rights of the various claimants to the use of the waters of Cow Creek and its tributaries in the entire water shed all located in Harney County, State of Oregon.

2. That thereupon proceedings were had before the State Engineer consisting of his survey, preparation and filing of maps thereof of the water shed of said stream system, and various hearings upon due notice were had, and on the 22nd day of June, 1938 the State Engineer made his Findings and Order of Determination, and the same were filed in the original suit in the Circuit Court of the State of Oregon for Harney County, June 27, 1938, and duly recorded in the water right records in the office of the Clerk of said county.

3. That on September 29, 1938 exceptions to the Findings and Order of Determination were made and filed by claimants Jane N. Main, Asa H. Danforth and Oregon and Western Colonization Company, a corporation, by and through their attorney C. B. McConnell.

4. That said exceptions were submitted to and considered by the Hon. Charles W. Ellis, Judge of said Circuit Court, and on April 12, 1939 said Court made and filed his opinion reciting therein that an order should be entered remanding the Findings and Order of Determination to the State Engineer for the purpose of taking further testimony and making further determination as to the exceptions of Jane N. Main involving her claimed priority of use under the rights

awarded to her of 1884 instead of 1886 as set forth in the Order of Determination; and said opinion further provided that after the State Engineer reported back his further Findings and determination and at the proper time thereafter the Court should enter its order denying and overruling the exceptions of the exceptors denominated Nos. 1, 3, 4, 5 and 6 in the opinion.

5. That said order of reference to the State Engineer was made April 17, 1939 and filed in the above entitled proceedings April 19, 1939, and further proceedings were had under said reference and testimony taken in support of the claim of Jane N. Main, and on July 31, 1939 supplemental findings were made by the State Engineer and same were duly filed herein August 1, 1939; that said findings affirmed the former and original Findings and Order of Determination of the State Engineer.

That since the death of the said Charles W. Ellis, Circuit Judge, various references of the above entitled matter have been made and same is now regularly before this Court for its consideration of said opinion and supplemental findings and for the entry of final decree.

6. That in consideration of the claim of Jane N. Main under said supplemental finds it appears to the Court that said second reference of the claim to the State Engineer under the order provided for in said opinion of the late Judge Charles W. Ellis was made for the purpose of taking further proof to the fact as to whether or not the waters of Cow Creek had been beneficially used on the westerly portion of Section 36, Township 22 South, Range 32 $\frac{1}{2}$  E. W.M., Harney County, Oregon, described in the claim of Jane N. Main at the times and in the manner as on the lands in the easterly portion of said section of land as described in the claim of the State Land Board under which the relative date of priority of use of 1884 was granted under an apparent stipulation of certain attorneys for various claimants made at the time of taking of the original testimony on the claims before the State Engineer.

And it further appearing to the Court from the supplemental findings and from the testimony introduced at the hearing on said second reference that there has not been since the first settlement and use of said section of land any distinction or difference of use of water for irrigation and domestic purposes as to the westerly and easterly portions of said section, and that the Court now finds that the lands described in the claim of Jane N. Main should be awarded the same date of relative priority as the lands described in the claim of the State Land Board, and

that the Decree entered herein should modify the Findings and Order of Determination and allow the claim of Jane N. Main the date of relative priority of use as of 1884.

7. The Court further finds that the opinion of Circuit Judge Charles W. Ellis filed April 12, 1939 should be approved and judiciously affirmed in all respects and things other than as to the modification of the original order of determination as to the date of priority of the claim of Jane N. Main.

And the Court now being fully advised in the premises and all matters having been considered and determined does enter its Decree herein.

DECREE

It is hereby ORDERED, ADJUDGED and DECREED that the Findings and Order of Determination filed herein June 27, 1938 be and the same are hereby modified by changing the date of the relative priority of the claim of Jane N. Main as the same appears in paragraph 14,5B on page 26 of said Order of Determination, from 1886 to 1884, and claimant is decreed a right as so modified.

It is hereby further ORDERED that the County Clerk of Harney County, Oregon make notation on the record of the original Order of Determination indicating thereon the modification of the claim of Jane N. Main as above decreed.

It is further ORDERED and DECREED that exception No. 1 to the right awarded to the Harney Valley Improvement Company, a corporation, and the exception No. 3 made by the Oregon & Western Colonization Company, a corporation, and the exception No. 4 made by Asa H. Danforth, and the exception No. 5 as to the place of measuring water and installation of headgates and measuring devises as recited in paragraph 24 of said Order of Determination, and exception No. 6 as to stock and domestic use as recited in paragraph 25 of the Order of Determination, be and the same are hereby denied.

It is hereby ORDERED, ADJUDGED and DECREED that the Findings and Order of Determination filed with the Clerk of Harney County, State of Oregon, June 27, 1938 and recorded in Book K, pages 383-396 inclusive, as above modified, be and the same are in all respects affirmed and are hereby made and adopted as the final decree in and to the relative rights to the use of the waters of Cow Creek and its tributaries.

Dated, Burns, Oregon, this 2nd day of September, 1947.

(Sgd) M. A. Biggs  
Circuit Judge

STATE OF OREGON     )  
                          ) ss.  
County of Harney    )

I, Wm. M. Carroll, County Clerk and Clerk of the Circuit Court of the County and State aforesaid, do hereby certify that the foregoing copy of FINDINGS OF FACT AND DECREE - Circuit Court #3189 has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original Findings of Fact and Decree as the same appears of record at my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said

Court, this 26th day of September, 1947


Wm. M. Carroll Clerk.

By (Sgd) Milfred Currey Deputy.

STATE OF OREGON     )  
                          ) ss.  
County of Marion    )

I, CHAS. E. STRICKLIN, State Engineer of Oregon, do hereby certify that the foregoing certified copy of FINDINGS OF FACT AND DECREE of the Circuit Court dated September 2, 1947, in the matter of the determination of the relative rights to the use of the waters of Cow Creek and its tributaries, was received in this office and entered of record herein on this 29th day of September, 1947.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of September, 1947.

  
Chas. E. Stricklin  
Chas. E. Stricklin, State Engineer