

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MALHEUR.

In the Matter of Determination of the Relative Rights of the Various Claimants to the waters of Willow Creek, a Tributary of Malheur River, and its Tributaries, in Malheur County, Oregon.

DECREE

The order of determination of the board of control having been filed on October 11, 1912, with the County Clerk of Malheur County, Oregon, in which the rights of the various claimants to water of Willow Creek are determined, by order of the Court December 17, 1912, was set as the day for hearing of arguments on the exceptions to such findings; and it appearing at such hearing that the following exceptions had been filed, to-wit: by the Willow River Land and Irrigation Company; the Eastern Oregon Land Company; the Malheur Irrigation Company, Limited; I. W. Hope and John Turner; D. K. Worsham; S. A. Lofton; W. R. and S. A. Lofton; Frank O'Neill; C. T. Locey; Lower Willow Creek Water Users' Association; J. N. Woodcock; James Morfitt and Alice Williams; W. J. Scott and Frank O'Neill; W. R. Lofton; W. J. Scott; J. H. Wolfe; J. H. Rose; Andrew S. Fields; J. T. Logan; R. F. Van Buren; Mrs. S. D. Duncan; that after hearing of arguments of Counsel for the respective exceptors, the court being fully advised in the premises,

It is ORDERED, ADJUDGED and DECREED that the findings of fact and order of determination of the board of control heretofore filed in the office of the county clerk of this county, on October 11, 1912, is hereby confirmed in all things except as in this decree modified or set aside.

1.

That Finding 16 is confirmed except as to the date of priority of the Company or Lockett Ditch; that the date of priority of this ditch is fixed at 1877 instead of 1873, as stated in the fifth subdivision of Finding 16.

2.

That Finding 24 is confirmed except as to the lands of S. V. Hess, H. S. Eldredge, J. W. McCulloch, W. P. Harris, M. G. and I. W. Hope. The amount of water is limited to 6 acre-inches during the irrigating season.

3.

Finding 29 is confirmed except as follows:

(a) The Finding as to David K. Worsham is confirmed as to amounts, length of season, and lands irrigated and is modified to the extent that the date of priority is made 1884 instead of 1885; second, that the right to the use of waters of Long Creek, Fish Creek, Big Grouse, Little Grouse, Alder, Crooked, Rackaby, Porter Gulch and quartz Gulch is allowed for irrigation as well as mining. That the finding of the board of the right for mining is confirmed as to date but is modified so as to include 275 inches or 6.88 cubic feet per second; second, the right to use the waters of all the creeks, namely, Long Creek, Fish Creek, Big Grouse, Little Grouse, Alder, Crooked, Rackaby, Porter Gulch and Quartz Gulch is allowed for mining; third, that the place of use shall not be limited to Sections 29 and 32, but at any point in the vicinity of that ditch that will permit the water to flow back into the stream above the head of other ditches which have heretofore been below the discharge of the same.

(b) The finding as to T. J. Brosnan will be modified to the extent that he is entitled to water for 40 acres in the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  instead of the SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , and 27.31 acres in the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 23, Township 17 South, Range 44 E. W. M.; confirmed as to other lands.

✓ (c) The Findings as to James Morfitt are confirmed except that the 15 acres in the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  and 30 acres in the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  and 15 acres in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  in Section 31, Township 13 South, Range 41 E., W. M., will take a date of priority from Willow Creek the same as the remainder of the land. The claimant, therefore, will be entitled to a priority of that date for the irrigation of such lands except when he is able to obtain sufficient water from Rich Creek under the priority of 1897 for the irrigation thereof.

✓ (d) The finding of the board as to Alice Williams will be confirmed.

✓ (e) The finding as to A. R. Van Buren is confirmed except that he is entitled to water for 40 acres in the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  and 4 $\frac{1}{2}$  acres in the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 25, Township 14 South, Range 38 East, W. M., through what is known as the Ricker Ditch; also that he is entitled to water for 40 acres in the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  and 40 acres in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 25 through two ditches diverted from the main stream of Willow Creek in 1885. The priority of the right is fixed as 1885 as to all these lands. This is in addition to the amount allowed by the findings of the board of control. The total amount of water allowed is 2.14 cubic feet per second.

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✓ (f) The finding as to J. T. Logan will be confirmed except that the amount of irrigated area in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 13, Township 15 South, Range 42 East, should be 37 instead of 17 acres, and the total amount of water awarded him will be increased accordingly, to 2.18 cubic feet per second instead of 1.92 feet per second.

✓ (g) The finding as to W. J. Scott will be confirmed except that the ten acres in the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 30, Township 16 South, Range 43 E., W. M., will be added to the irrigated area; also modified to correct a mistake in description wherein it appears in the finding of the board that claimant is entitled to water for 35 acres in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 26. This is modified so as to read "35 acres in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 36," same township and range, namely, township 16 south, range 43 east, W.M. Also the totals will be increased accordingly; the total acreage being 300.4 and the total amount of water allowed will be 3.75 cubic feet per second.

✓ (h) The finding as to the Willow River Land and Irrigation Company will be confirmed except that the date of priority under the Lockett or Company Ditch will be changed to 1877.

✓ (i) The finding as to H. S. Eldredge will be confirmed except that the total amount of water allowed will be .55 cubic feet per second. The finding as to S.V. Hess is confirmed, except that he is allowed  $\frac{4}{5}$  (four-fifths) cu. ft. per second instead of the amount mentioned in the said finding; J. W. McCulloch is allowed .25 cubic foot per second instead of the amount stated in the finding of the board of control. William P. Harris is allowed .23 cubic foot per second instead of 1.13. M. G. and I. W. Hope are allowed .4 cubic foot per second of the date of 1887, instead of the amount stated in the finding.

✓ (j) The finding of the board of control as to the right of M. G. Hope and J. W. Hope to 18.5 cubic feet per second for the irrigation of 1480 acres of land from Turner Creek is dated 1904 instead of 1905.

✓ (k) The date of the Willow River Land and Irrigation Company's right through the Daugherty Ditch for 2 cubic feet per second for the irrigation of 160 acres of land from Turner Creek is fixed at 1904 instead of 1898.

✓ (l) The finding of the board of control as to the right of J. N. Woodcock is confirmed except that the date of priority of his right to .38 cubic feet per second for the irrigation of 30 acres of land is placed at 1880 instead of 1881.

(m) The irrigation season in all of the claims mentioned in Finding 29 will begin on Lower Willow Creek on the 15th day of February and continue until the first of September; on Upper Willow Creek, from the first of April to the first of September. The users of water on Upper Willow Creek will be entitled to the first use of the water over all claimants on Lower Willow Creek subsequent to June first of each season; and by Lower Willow Creek is meant all of that portion of that creek below the canon.

After the irrigating season begins, it appears from the evidence that all of the natural flow of Willow Creek is demanded for irrigation of premises of the respective claimants of the water of said stream for irrigation; therefore the entire flow of Willow Creek after the irrigation season opens shall be used for irrigation purposes until the amount

to which each user is entitled has been supplied according to his priority. Any surplus amount over the combined needs of the water users from this stream for irrigation during the irrigation season may be stored as surplus water.

5.

The irrigation season on Lower Willow Creek shall commence on the 15th of February, provided the ground is in a condition that irrigation will be beneficial; the irrigation season shall not in any event commence, and water shall not be required to be distributed to the lands of any water user, until the frost has left the ground and the use of the water for irrigation will be beneficial to the land. This must be left largely to the discretion of the water master, who will supply irrigators with water on Lower Willow Creek at any time after the 15th of February if it appears that the land is in condition to be benefited at that time by irrigation.

6.

Three acre-feet shall be the limit to be used by any irrigator during the irrigation season; but this amount can be distributed to the water users in such quantities as will best enable the appropriators to obtain the full amount of water to which they are entitled; that is to say, during the season when water is most plentiful a larger amount than a flow of one-eightieth of a cubic foot per second per acre may be allowed the water users, and it shall in each case be left largely to the discretion of the water master, who shall endeavor to distribute the same in a manner to best accommodate the needs of the water users.

7.

The claim of Melville D. Kelley as asked for in his petition is allowed during, and only during such season of the year as the water of Black Creek would not, if uninterrupted by him, reach Willow Creek, to the extent of one cubic foot per second for the irrigation of 80 acres of land, as follows: 20 a. in SW $\frac{1}{2}$  NW $\frac{1}{4}$ , 25 a. in NE $\frac{1}{2}$  NW $\frac{1}{4}$ , 10 a. in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 25 ac. in SE $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 12, Twp. 16 S. R. 41 E.W.M.

Done in Chambers at Ontario, Oregon, October 25, 1913.

DALTON BIGGS,  
Circuit Judge.

ENDORSEMENT:-

Filed Oct. 27, 1913  
John P. Houston, County Clerk.

STATE OF OREGON        )  
                          )        ss.  
County of Malheur.    )

I, JOHN P. HOUSTON, County Clerk and ex-officio Clerk of the Circuit Court of the County and State aforesaid, do hereby certify that the foregoing copy of DECREE in the matter of determination of the Relative Rights of the Various Claimants to the Waters of Willow Creek, a tributary of Malheur River, and its tributaries in Malheur County, Oregon, has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original decree as the same appears on file and of record in Circuit Court Journal G, page 130 and 131 at my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of March, 1914.

(SEAL OF THE CIRCUIT COURT, MALHEUR COUNTY)

John P. Houston,  
Clerk.

State Water Board  
Order Record ~~Board of Control~~ State of Oregon

WILLOW CREEK - MALHEUR COUNTY

STATE OF OREGON, )  
( SS.  
County of Marion. )

I, M. F. MERS, Secretary of the State Water Board of the State of Oregon, do hereby certify that the foregoing copy and transcript of Journal Entry was received in the office of the State Water Board, on the 6th day of March, 1914, and entered of record herein on this 6th day of March, 1914.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the State Water Board of the State of Oregon, this 6th day of March, 1914.

*M. F. Mers*

Secretary of the State Water Board of the State of Oregon.

