

Harney County

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS TO THE USE OF THE)
WATERS OF MILL CREEK AND COFFEE POT)
CREEK AND THEIR 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 have been taken in the above-entitled proceeding, 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 fully advised in the premises, makes and orders to be entered of record in his office the following

FINDINGS AND ORDER OF DETERMINATION

1.

Coffee Pot Creek arises on the southeastern slope of the Blue Mountains within the northeastern part of Township 21 South, Range 32 East, W. M., Harney County, Oregon. The stream flows in a general southerly direction in a well defined channel, through a canyon to near the northeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 22 South, Range 32 East, W. M. Below this point the canyon widens gradually until it emerges onto the floor of Harney Valley.

Mill Creek arises in a high plateau area within the northeastern part of Township 22 South, Range 32 East, W. M., Harney County, Oregon, and flows in a well defined channel through a canyon in a general southerly direction to its confluence with Coffee Pot Creek within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, Township 22 South, Range 32 East, W. M., and will be considered as a tributary to Coffee Pot Creek hereafter.

The main channel of Coffee Pot Creek is well defined to near the center of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, Township 22 South, Range 32 East, W. M., where the channel enters a canal and continues in a general southerly direction to the approximate south line of Section 36, Township 22 South, Range 32 East, W. M., where the canal terminates at the north right-of-way line of State Highway No. 54. South of the highway, within Section 1, Township 23 South, Range 32 East, W. M., the flow is again consolidated into two natural channels which gradually disappear in the meadow areas.

Throughout the irrigated area north of State Highway No. 54, many small natural channels, ditches and temporary dams are in evidence and appear to be used to spread the water for the irrigation of the lands. Apparently none of these natural channels, ditches and dams are known or designated by names.

Coffee Pot and Mill Creek are not perennial streams, their run-off being derived almost wholly from melting snow and rains during the early months of the year. The run-off usually starts during the period of March 15 to April 15 and continues to about the first of June. No storage water is available and it is during the run-off period that the irrigation of the

land is accomplished. During this time, while the streams are in flood stage, the main channel is incapable of carrying the entire flow, resulting in the flooding of the lands and the irrigation thereof. The flood waters are controlled to a great extent by means of dikes, levies and ditches so as to confine the waters to the meadow areas where irrigation is practiced.

2.

That on the 29th day of October 1947, 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 October 18, 1947, in the case of Earl Withers and Edna G. Withers, his wife, and William H. Huggard and Blanche Alice Hahn, Plaintiffs, vs. Shelby Petersen, George H. Burns and Almed M. Burns, his wife, W. W. Thomson, J. R. Thomson, Ralph E. Reed, Darrell L. Howser, Lola M. Thayer, John Morgan, D. L. Bailey, and Hazel C. Bailey, his wife, and Glen Clemens, Defendants, directing that said cause be referred to the State Engineer in accordance with Section 116-801, O.C.L.A., for the purpose of adjudicating the relative rights of all water users from Mill Creek and Coffee Pot Creek and their tributaries. That the State Engineer thereafter fixed a time for making the necessary surveys and examinations and the beginning of taking of such testimony as would enable him to determine the rights of the various claimants to the use of the waters of Mill Creek and Coffee Pot Creek and their tributaries, as provided by law.

3.

That notice was prepared by the State Engineer setting forth the date on or about which the State Engineer or his assistants would begin the investigation of the flow of water in Mill Creek and Coffee Pot Creek and their tributaries, and ditches diverting water therefrom, and said notice was published in two issues of the Burns Times-Herald, a newspaper printed and published weekly at Burns, Harney County, Oregon, and of general circulation in said county, said two issues of said newspaper being those of April 16 and April 23, 1948, the date of the last publication being more than ten days prior to the date fixed for the beginning of the taking of measurements of said streams and their tributaries by the State Engineer, as provided by law.

4.

That duly qualified assistants of the State Engineer did proceed to make examinations, surveys and measurements of Coffee Pot Creek and surveys of the lands irrigated. And the State Engineer did cause to be prepared a map or plat, showing with substantial accuracy the location of said streams, the location of each ditch or canal or other works diverting water therefrom, and the number of acres of lands which had been irrigated in each legal subdivision, prints of said map or plat being on file and a part of the record herein.

5.

That as soon as practicable after the examinations 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 or his duly qualified assistants would begin the taking of testi-

mony (statements and proofs of claim) as to the relative rights of the various claimants to the use of the waters of said streams and their tributaries; that said notice was published in two issues of the Burns Times-Herald, a newspaper printed and published weekly, at Burns, Harney County, Oregon, and of general circulation in said county, said two issues of said newspaper being those of January 21 and January 28, 1949, the date of the last publication being at least thirty days prior to the first date fixed for the taking of statements and proofs of claim by the State Engineer.

6.

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 Mill Creek and Coffee Pot Creek and their tributaries and to each person, firm or corporation owning or being in possession of lands in, or bordering on, or having access to said streams or their tributaries, in so far 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 duly authorized assistants, would receive the statements and proofs of claim of the various claimants to the waters of said streams and their tributaries. That said notice was mailed at least thirty days prior to the date set therein for the receiving of such statements and proofs of claim in each instance. And the State Engineer did inclose 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 right, under oath.

7.

That the time and place when and where the State Engineer, or his duly authorized assistants, should attend and receive the statements and proofs of claim of the various parties, were fixed as follows:

On Thursday, March 17, 1949 in the Circuit Court Room of the County Court House at Burns, Oregon.

And for a period of 15 days, beginning with Monday, March 14, and ending with Monday, March 28, 1949 at the office of the State Engineer, in the State Office Building, Salem, Oregon.

That thereafter, on petition of certain interested parties, it appearing that further time was necessary in which to file said statements and proofs of claim, the State Engineer did, on the 28th day of March, 1949, enter an order directing that the time in which to file said statements and proofs of claim be, and the same thereby was extended and continued until the 28th day of April, 1949, and again on the 27th day of April, 1949 the State Engineer did enter another order directing that the time in which to file said statements and proofs of claims be, and the same thereby was extended and continued until the 28th day of May, 1949.

8.

That within the time specified in said notice and the extensions of said time granted by orders of the State Engineer, as set forth in paragraph 7 herein, the following named per-

sons, firms and corporations did submit statements and proofs of claim, which said statements and proofs of claim were all filed except that of Johnny Capp which was submitted by Henry L. Hess, U. S. District Attorney, Bert C. Boylan, Special Assistant, as Trustee on behalf of said Johnny Capp, an Indian, being statement and proof of claim No. 5, but upon which the statutory filing fee was not paid.

Statement and Proof of Claim Number	Claimant
1	Duane L. and Hazel C. Bailey
2	Almeda M. and George H. Burns
3	Almeda M. and George H. Burns
4	Almeda M. and George H. Burns
5	Johnny Capp, by Henry L. Hess, United States District Attorney, and Bert C. Boylan, Special Assistant
6	Glen Clemens
7	Wm. H. Huggard and Blanche Alice Hahn
8	Darrell Howser and Lola M. Thayer
9	Darrell Howser and Lola M. Thayer
10	Darrell Howser and Lola M. Thayer
11	Ralph E. Reed
12	Ralph E. Reed
13	J. R. and W. W. Thomson
14	Earl W. and Edna G. Withers

9.

That the following persons were duly notified of the proceeding by registered mail and by publication of said notices, as set forth by paragraphs 3 and 5 hereof, as evidenced by the affidavits of publication and post-office registry receipts contained in Volume I of the evidence herein, and having failed, neglected and refused to appear herein and submit proof of a right to the use of the waters of said Mill Creek and Coffee Pot Creek and their tributaries, if any they have or claim such parties are in default; such default is here and now entered against them, and each of them, and such parties are hereby enjoined and inhibited from using or asserting any rights to the use of the waters of said streams or any tributary thereof included in this proceeding, except by, through or under the rights of persons whose water rights are defined herein, or under and by virtue of permits issued by the State Engineer.

Forbes, James S.	Burns, Oregon
Goodwin, I. S.	Burns, Oregon
McGowan, Burns	Burns, Oregon
Morgan, John	Burns, Oregon
Oregon & Western Colonization Co.	
	Pioneer Building, St. Paul, Minnesota
Petersen, Shelby	Burns, Oregon

10.

That after the completion of the taking of such statements and proofs of claims the State Engineer did, on the 28th day of June, 1949, give notice by registered mail to each of the various claimants to the use of the waters of Mill Creek and Coffee Pot Creek and their tributaries, that at the times and places designated in said notice, to-wit:

On Tuesday, July 12, 1949 in the Circuit Court
Room in the County Court House at Burns, Oregon,

And for a period of 10 days, beginning with Friday, July 15, 1949 and ending with Thursday, July 28, 1949, (Saturdays and Sundays excepted) at the office of the State Engineer in the State Office Building, Salem, Oregon.

the statements and proofs of claims theretofore filed would be open to public inspection.

That said notice did 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.

11.

That the State Engineer did, in accordance with said notice as described in the preceding paragraph, keep said statements and proofs of claims open to public inspection at said times and places.

That thereafter, on application of C. B. McConnell and Leland S. Duncan, Attorneys at Law, representing various claimants in this proceeding, for an extension of time within which to file statements of contest herein and it appearing that further time was necessary, the State Engineer did, on the 1st day of August, 1949, enter an order directing that the time in which to file statements of contest be, and the same thereby was extended to and including the 2nd day of September, 1949.

That within the time fixed therefore, as extended by order of the State Engineer, there was executed by all of the claimants herein who might be effected thereby and their respective attorneys a stipulation as to the Order of Determination by the State Engineer, said stipulation being quoted here in its entirety for reference herein.

BEFORE THE STATE ENGINEER OF OREGON

Harney County

IN THE MATTER OF THE DETERMINATION	:	<u>STIPULATION</u>
OF THE RELATIVE RIGHTS TO THE USE	:	
OF THE WATERS OF MILL CREEK AND	:	<u>AS TO ORDER OF DETERMINATION</u>
COFFEE POT CREEK AND THEIR TRIBUTARIES	:	
-----		<u>BY STATE ENGINEER</u>

This matter now being pending before the State Engineer on time for the filing of statements of contest, and all of the parties who have appeared in this matter, with the exception of the United States of America as Trustee for Johnnie Capps, being desirous that this matter be disposed of without the filing of contest so far as possible, and having mutually arrived at an agreement between themselves as to their respective rights in and to the use of the waters of the above creeks, hereby stipulate as follows:

That all of the claims filed in this proceeding shall be allowed by the State Engineer except as follows:

1. Proof No. 10 of Darrell Howser and Lola M. Thayer shall be withdrawn and the claim disallowed;

2. The claim of Ralph E. Reed, of Burns, Oregon, as set out in Proof No. 11, to the right to irrigate 60 acres of land in the S $\frac{1}{2}$ of Section 23 shall be considered as amended so as to read as follows:

Township 22, South of Range 32 E. W. M.

<u>Section</u>	<u>Subdivision</u>	<u>Acreage</u>
23	NE $\frac{1}{4}$ SW $\frac{1}{4}$	11.1
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	11.5
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	11.5
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	25.90
	Total	60.00

and the order of determination of the State Engineer shall describe the exterior boundaries of the land to which claimant is entitled to a water right so as to set out said 60 acres as follows:

a. Beginning at the Southeast Corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 22, South of Range 32, E., W.M., thence North (Mag. Var. 19°30' E) a distance of 2640 feet to the east and west midsection line, thence Westerly, S 89°54' W, a distance of 379.5 feet along said midsection line. Thence South (Mag. Var. 19°30' E) a distance of 2640 feet to the south line of said Section 23, thence easterly along the south line of said Section, a distance of 379.50 feet to the point of beginning; said tract containing 23 acres.

b. Beginning at a point on the South line of Section 23, said point being the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, thence due North (Mag. Var. 19°30' E), a distance of 2640 feet to a point on the east and west midsection line of said Section; thence N. 89°54' E, along said midsection line, a distance of 497.0 feet; thence in a southerly and southeasterly direction along the west bank of Coffee Pot Creek to its intersection with the South line of said Section 23. Thence west, along the south line of said Section a distance of 1276.06 feet to the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, the point of beginning; said tract containing 26.84 acres, more or less.

c. Beginning at the Southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23 and running thence North (Mag. Var. 19°30' E.), a distance of 886.0 feet to a point south of an existing ditch, thence N86°21' W, a distance of 922.0 feet where said course intersects the east bank of Coffee Pot Creek, thence southeasterly and following along the east bank of said Creek to a point of intersection with the South line of Section 23, thence East along the South line of said Section, a distance of 12 feet more or less to the point of beginning; said tract containing 10.16 acres, more or less.

ALTERNATE (to above metes and bounds description)

a. The east 379.5 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, containing 11.5 acres.

b. The east 379.5 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, containing 11.5 acres.

c. That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, lying west of Coffee Pot Creek, containing 11.1 acres.

d. That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, lying west of Coffee Pot Creek and containing 15.74 acres; also, that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, lying east of Coffee Pot Creek and bounded on the north by a line which runs N 86° 21' W, 922.0 feet from a point which is 886.0 feet due North (Mag. Var. 19°30' E.) from the Southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, and containing 10.16 acres.

3. That the claim of Ralph E. Reed, of Burns, Oregon, being Proof No. 11, to a right to irrigate 36 acres in the N $\frac{1}{2}$ of Section 23, and 4 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, of the before-described Township and Range shall be contested by claimants Earl W. Withers and Edna G. Withers, William H.

Huggard and Blanche Alice Hahn upon one ground only, namely that between the years 1932 and 1945 and when said land was then owned by the State of Oregon none of the waters of the above named creeks was applied to beneficial use upon said lands, although available for use. That said contest shall be submitted by the parties to the State Engineer upon briefs according to such directions as he shall make, and reserving to the parties the right to appeal any decision that the State Engineer may make in deciding said contest.

Attached to this stipulation and by reference thereto made a part hereof is original plat of Paul R. Revis, Registered Professional Engineer, describing the boundaries of the land in the S $\frac{1}{2}$ of Section 23 belonging to Ralph E. Reed, which aforesaid plat shows the land under the water right of Ralph E. Reed as set out in this stipulation, and which aforesaid plat is hereby approved and adopted by the parties hereto.

IN WITNESS WHEREOF, The parties hereto, and their respective Attorneys, have signed this stipulation at Burns, Oregon this 29th day of August, 1949.

(Sgd) RALPH E. REED

 Ralph E. Reed

(Sgd) GLEN CLEMENS

 Glenn Clemens

(Sgd) DUANE L. BAILEY

 Duane L. Bailey

(Sgd) HAZEL C. BAILEY

 Hazel C. Bailey

(Sgd) ALMEDA M. BURNS

 Almeda M. Burns

(Sgd) GEO. H. BURNS

 Geo. H. Burns

(Sgd) WILLIAM H. HUGGARD

 William H. Huggard

(Sgd) BLANCHE ALICE HAHN

 Blanche Alice Hahn

(Sgd) EARL WITHERS

 Earl W. Withers

(Sgd) EDNA WITHERS

 Edna G. Withers

(Sgd) PAT H. DONEGAN

 Attorney for Claimants Ralph E. Reed and
 Glenn Clemens.

(Sgd) LELAND S. DUNCAN

 Attorney for Claimants Duane L. Bailey and
 Hazel C. Bailey, Almeda M. Burns and Geo. H.
 Burns, William H. Huggard and Blanche Alice
 Hahn, and Earl W. Withers and Edna G. Withers.

(Sgd) C. B. McCONNELL

 Attorney for Claimants Darrell Howser and
 Lola M. Thayer, J. R. Thomson and W. W.
 Thomson.

(Sgd) DARRELL HOWSER

 Darrell Howser

Lola M. Thayer (Sgd) Lola M. Thayer

By: (Sgd) DARRELL HOWSER

 Darrell Howser

(Sgd) J. R. THOMSON

 J. R. Thomson

(Sgd) W. W. THOMSON

 W. W. Thomson

That thereafter, also within the time limit as extended by order of the State Engineer, one contest was initiated by the filing with the State Engineer of notice of contest in writing, said contest being in accordance with the aforementioned stipulation, and being:

CONTEST NO. 1

Earl W. Withers, Edna G. Withers, William H. Huggard and Blanche Alice Hahn,	v.	Contestants
Ralph E. Reed		Contestee

CONTEST NO. 1

Contestee Ralph E. Reed filed herein Statement and Proof of Claim No. 11 asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 4.0 acres of land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14; 19.9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 16.1 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 10.0 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 20.9 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, 18.8 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and 10.3 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 23, all within Township 22 South, Range 32 East, W. M. and water for domestic and stock use, with a date of priority of 1883.

To said Statement and Proof of Claim No. 11, Contestants Earl W. Withers, Edna G. Withers, William H. Huggard and Blanche Alice Hahn filed herein Statement of Contest No. 1 contesting the rights claimed by contestee in so far as they apply to the lands described in said statement and Proof of Claim No. 11 as 4.0 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14; 19.9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 16.1 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 23, all within Township 22 South, Range 32 East, W. M., and as a basis for contest, Contestants allege as follows:

That from the year 1932 to the year 1945, or for a period of more than 10 years in all, the lands above-described belonged to and title to the same was vested in the State of Oregon, acting by and through its State Land Board as the successor to the World War Veterans' State Aid Commission of the State of Oregon, and during said period of time there was never any water from either of the aforesaid streams or any of their tributaries used for irrigation purposes upon any part of said lands, although such water was available therefor, and consequently, under the provisions of Section 116-437, O.C.L.A., any right or interest that contestee or his predecessors in interest may have had or claimed in the waters of either of the aforesaid streams or any of their tributaries for irrigation of any of the lands above-described, prior to the year 1945, was abandoned and lost before the said year 1945.

To said Statement of Contest, Contestee Ralph E. Reed, by and through his attorney Pat.H. Donegan, has filed his answer wherein, in effect, he has admitted all allegations of contest except that the water right on the land in question has been lost under the provisions of Section 116-437, O.C.L.A., or under any law or statute, by reason of the non-user of the State of Oregon of the waters of Mill Creek and Coffee Pot Creek.

By the terms of said stipulation, the claim of contestee herein was to be contested " * * * upon one ground only, namely that between the years 1932 and 1945 and when said land was then owned by the State of Oregon none of the waters of the above named creeks (Mill Creek and Coffee Pot Creek) was applied to beneficial use upon said lands, although available for use."

It appears that all claimants in this proceeding who have signed said stipulation are agreed that none of the waters of Mill Creek and/or Coffee Pot Creek were beneficially used upon the lands in question during the period September 22, 1932 to April 26, 1945 while title to said lands rested in the State of Oregon.

The matter for determination is whether or not the State of Oregon is exempt from the provisions of Section 116-437, O.C.L.A.

This question, in so far as is known, has never been presented to our courts, however, in an opinion of the Attorney General of the State of Oregon to the State Reclamation Commission, in a similar situation, where the loss of appropriative water rights through nonuse for the statutory period, on lands owned by the State of Oregon, was the question in issue, the Attorney General held that the provisions and intents of Section 116-437, O.C.L.A. are operative against the State of Oregon and that the state may forfeit an appropriative water right through nonuser

It appears that the lands in question were covered with a heavy stand of old sage brush at the time of the inspection and survey in connection with this proceeding and that no evidence was observed of said lands ever having been irrigated.

It is held, therefore, that such water rights as may have accrued to the lands in question prior to the year 1932, have been forfeited for failure to use the water beneficially during the period beginning in 1932 and extending to the time of beginning of this proceeding.

13.

Duane L. Bailey and Hazel C. Bailey, Burns, Oregon

Claimants herein filed Statement and Proof of Claim No. 1 wherein they assert a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 24.1 acres in Lot 3 ($NE\frac{1}{4} NW\frac{1}{4}$), 29.8 acres in Lot 4 ($SE\frac{1}{4} NW\frac{1}{4}$) and 5.7 acres in Lot 5 ($NE\frac{1}{4} SW\frac{1}{4}$) all within Section 6, Township 23 South, Range $32\frac{1}{2}$ East, W. M. and water for domestic and stock use with a date of priority of 1884.

In the determination of the relative rights to the use of the waters of Rattle Snake Creek and its tributaries, Harney County, Oregon, there was allowed in the name of claimant Isaac S. Goodwin, a right for the irrigation of, among other lands, 22.5 acres in Lot 3 ($NE\frac{1}{4} NW\frac{1}{4}$), 29.8 acres in Lot 4 ($SE\frac{1}{4} NW\frac{1}{4}$) and 5.7 acres in Lot 5 ($NE\frac{1}{4} SW\frac{1}{4}$), Section 6, Township 23 South, Range $32\frac{1}{2}$ East, W. M., said lands lying west of a low ridge beginning at the west line of Lot 4 ($SE\frac{1}{4} SW\frac{1}{4}$) of Section 31, Township 22 South, Range $32\frac{1}{2}$ East, W. M., and extending in a southeasterly direction to near the center of Section 6, Township 23 South, Range $32\frac{1}{2}$ East, W. M.

It appears that the lands for which claimants herein are asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for irrigation, are the same lands which have an adjudicated right from Rattle Snake Creek except that of the 24.1 acres in Lot 3 ($NE\frac{1}{4} NW\frac{1}{4}$) Section 6, 1.6 acres lies east of the low ridge previously mentioned.

It appears that the only ditch through which water could be diverted from Coffee Pot Creek for use upon the lands claimed, heads at a point near the northwest corner of the $NE\frac{1}{4} NW\frac{1}{4}$ of Section 36, Township 22 South, Range 32 East, W. M., and runs east along the section line to a point approximately three hundred feet west of the northeast corner of the $NW\frac{1}{4} NE\frac{1}{4}$, said Section 36, thence south to the roadside ditch along the north side of State Highway No. 54. It appears that the lands lying east of this ditch within the $S\frac{1}{2} SE\frac{1}{4}$ of said Section 36 are irrigated from this ditch and that the surplus and waste water from these lands is picked up near the southeast corner of said Section 36 in what is known as the Goodwin ditch, conveyed across State Highway No. 54 and onto the lands of claimant where the water is spread by means of smaller ditches for the irrigation of the lands.

It appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of the above described tract, except the 1.6 acres lying east of said ridge and that other claimants in this proceeding have agreed and stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein)

Claimants Duane L. Bailey and Hazel C. Bailey are allowed a supplemental right to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 22.5 acres in Lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$), 29.8 acres in Lot 4 (SE $\frac{1}{4}$ NW $\frac{1}{4}$) and 5.7 acres in Lot 5 (NE $\frac{1}{4}$ SW $\frac{1}{4}$), Section 6, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M. with a priority date of 1884, provided that under said supplemental right the quantity of water allowed herein together with the quantity allowed from Rattle Snake Creek for the same lands shall not exceed three acre-feet per acre during any irrigation season.

14.

Almeda M. Burns and Geo. H. Burns, Box 281, Burns, Oregon

Statements and Proofs of Claims No's 2 and 3 herein were filed by claimants Almeda M. Burns and Geo. H. Burns in which they have asserted a right to the use of the waters of Coffee Pot Creek and an unnamed tributary thereto, for the irrigation of 5.8 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, 0.5 acre in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 16.2 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, 3.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 23.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 14, Township 22 South, Range 32 East, W.M., with a date of priority of March 19, 1883.

Claimants Almeda M. Burns and George H. Burns also filed Statement and Proof of Claim No. 4 wherein they assert a right to the use of the waters of Coffee Pot Creek for the irrigation of 12.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, Township 22 South, Range 32 East, W.M. with a priority date of 1900.

It appears that the lands for which claimants are asserting a water right under Statements and Proofs of Claim No's 2, 3 and 4 lie along the channel of Coffee Pot Creek in a comparatively narrow strip, the irrigation thereof being accomplished by means of three unnamed ditches. One ditch diverts at the approximate northeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 22 South, Range 32 East, W.M. and is used to irrigate the land lying east of the main channel of Coffee Pot Creek, principally within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ said Section 13. A second ditch diverts toward the east at a point approximately 500 feet north and 300 feet west of the southeast corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, Township 22 South, Range 32 East, W.M., and is used to irrigate the land lying east of the channel of Coffee Pot Creek within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 14. The third ditch diverts from Coffee Pot Creek toward the west at a point approximately 400 feet west of the northeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 22 South, Range 32 East, W.M., extends along the west edge of the irrigated area lying west of the channel of Coffee Pot Creek and terminates within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, Township 22 South, Range 32 East, W.M. The unnamed tributary to Coffee Pot Creek, mentioned in Statements and Proofs of Claim No's 2 and 3, is intercepted by this ditch in the northern portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14.

It appears that beneficial use of the waters of Coffee Pot Creek and an unnamed tributary thereto, has been made in the irrigation of the lands claimed, that no contest has been filed herein against said claims and that other claimants herein have agreed and stipulated that these claims should be allowed. (See stipulation, paragraph 11 herein).

Claimants Almeda M. Burns and George H. Burns are allowed a right to the use of the waters of Coffee Pot Creek and an unnamed tributary thereto, for the irrigation of 5.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 0.5 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 16.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 3.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ and

23.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 14, Township 22 South, Range 32 East, W.M. with a date of priority of March 19, 1883 and a right to the use of the waters of Coffee Pot Creek for the irrigation of 12.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13, Township 22 South, Range 32 East, W.M. with a date of priority of 1900.

15.

Henry L. Hess, United States Attorney by Bert C. Boylan, Special Assistant as trustee for Johnny Capp, an Indian.

Statement of Claim No. 5 and amendment thereto was submitted by Henry L. Hess, United States Attorney, Bert C. Boylan, Special Assistant as Trustee for and on behalf of Johnny Capp, an Indian, wherein a right was asserted to the use of the waters of Mill Creek and Coffee Pot Creek for irrigation and domestic use on 47.3 acres of land in the NE $\frac{1}{2}$ of Section 12, Township 23 South, Range 32 East, W.M., with a priority date of September 21, 1897.

Said Claim No. 5 was submitted without the payment of the statutory filing fee. Subsequent to the receipt of said Claim No. 5 in the office of the State Engineer, claimants have neglected, failed and refused to pay the statutory filing fees as provided by Section 116-807, O.C.L.A., as amended by Chapter 88, Oregon Laws 1947, therefore said Claim No. 5 is not considered as filed and will be given no consideration in this proceeding.

16.

Glen Clemens, Burns, Oregon

Statement and Proof of Claim No. 6 was filed herein by claimant Glen Clemens asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 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 $\frac{1}{4}$ and 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 35, Township 22 South, Range 32 East, W.M. with a date of priority of 1886 and 40.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 8.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 3.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 33.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, Township 22 South, Range 32 East, W.M., with a date of priority of 1888.

It appears that water for the irrigation of claimants lands is derived from flood waters of Coffee Pot Creek and other waters diverted from Coffee Pot Creek for the irrigation of upper lands, which flow across the SE $\frac{1}{4}$ of Section 26 and onto the NE $\frac{1}{4}$ of Section 35, Township 22 South, Range 32 East, W.M. in two natural channels, one entering said Section 35 approximately 450 feet east of the N $\frac{1}{4}$ corner thereof, and the other and larger channel, entering Section 35 approximately 350 feet east of the northwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 35. From this latter channel, a ditch runs east along the north line of Section 35 to the northeast corner thereof, and another ditch runs west along the north line of Section 35, intercepting the first mentioned channel, to the N $\frac{1}{4}$ corner of Section 35, thence south along the north-south center section line, terminating in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 35.

It appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of claimants lands, as above described, that no contest has been filed in this proceeding against said claim and that other claimants herein have agreed and

stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein)

A right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 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 $\frac{1}{4}$ and 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 35, Township 22 South, Range 32 East, W.M. with a date of priority of 1886 and 40.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 8.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 3.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 33.5 acres in SE $\frac{1}{2}$ SE $\frac{1}{4}$, Section 35, Township 22 South, Range 32 East, W.M. with a date of priority of 1888.

17.

William H. Huggard and Blanche Alice Hahn, Burns, Oregon.

Claimants Huggard and Hahn filed herein Statement and Proof of Claim No. 7 wherein a right is asserted to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 33.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 27.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 26.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 30.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.6 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 32.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 28.4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36, Township 22 South, Range 32 East, W.M., and water for domestic and stock use with a priority date of 1884.

In the determination of the relative rights to the use of the waters of Rattle Snake Creek and its tributaries, Harney County, Oregon, a right was allowed in the name of Great Northern Casket Company, Inc. for the irrigation of, among other lands, 28.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, Township 22 South, Range 32 East, W.M.

It appears that of the 33.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, Township 22 South, Range 32 East, W.M. for which a right is asserted herein, 28.5 acres in the northeast portion of said subdivision and lying east of a certain dike as shown on the adjudication map prepared under the direction of the State Engineer in this proceeding, are the same lands that have an adjudicated right from Rattle Snake Creek.

It appears that water for the irrigation of claimants lands is diverted from Coffee Pot Creek at two points, the upper diversion being at a point approximately 150 feet north of the northwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township 22 South, Range 32 East, W.M., from which point a ditch runs south along the section line to the southwest corner of Section 36, said township and range. The second point of diversion is at a point near the northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 36 from which point a ditch runs east along the north line of said Section 36.

It further appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of the lands claimed, that no contest has been filed herein against said claim and that other claimants in this proceeding have agreed and stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein).

A right is herein allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 5.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 27.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 26.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 30.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$,

40.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.6 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 32.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, and 28.4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, and a supplemental right for the irrigation of 28.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, all within Section 36, Township 22 South, Range 32 East, W.M. with a priority date of 1884, provided that under said supplemental right the quantity of water allowed herein together with the quantity allowed from Rattle Snake Creek for the same lands shall not exceed three acre-feet per acre during any irrigation season.

18.

Darrell Howser and Lola M. Thayer, Burns, Oregon.

Statement and Proof of Claim No. 8 was filed herein by claimants Darrell Howser and Lola M. Thayer wherein they have asserted a right to the use of the waters of Coffee Pot and Mill Creeks and all tributaries thereto for the irrigation of 40.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 8.2 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 25 and 33.8 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 26, Township 22 South, Range 32 East, W.M., and water for domestic and stock use with a priority as of the spring of 1882.

Claimants have asserted in said Claim No. 8 that water is diverted from the main channel of Coffee Pot Creek by means of a dam located at the north line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, Township 22 South, Range 32 East, W.M.

Said dam was not observed at the time of the inspection and survey of the lands hereunder and is not shown on the map prepared under the direction of the State Engineer in connection with this proceeding. It appears that said dam is utilized to divert the waters of Coffee Pot Creek for the irrigation of part of the lands claimed within the SE $\frac{1}{4}$ of said Section 26, the remainder thereof being irrigated by waters from irrigated lands above, flowing across the old Burns-Harney road through two culverts located approximately 300 feet west and 600 feet west respectively from the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 26.

It appears that water for the irrigation of the lands claimed within the SW $\frac{1}{4}$ of Section 25, Township 22 South, Range 32 East, W.M. is diverted from the main channel of Coffee Pot Creek at a point approximately 150 feet north of the northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 25, and conveyed by ditch around the north edge of the irrigated area.

It appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of the lands as claimed and above described, that no contest has been entered herein against said claim and that other claimants in this proceeding have agreed and stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein).

Therefore, a right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 40.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 8.2 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 25 and 33.8 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 26, Township 22 South, Range 32 East, W.M. with a date of priority of 1882.

Statement and Proof of Claim No. 9 was filed herein by Claimants Darrell Howser and Lola M. Thayer in which they have asserted a right to the use of the waters of Coffee Pot and Mill Creeks, and all tributaries thereto, for the irrigation of 15.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 29.6

acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 37.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 22 South, Range 32 East, W.M., and water for domestic and stock use with a date of priority as of the spring of 1884.

It appears that water for the irrigation of claimants lands under this proof, is diverted from the main channel of Coffee Pot Creek where said channel crosses the north line of Section 26, Township 22 South, Range 32 East, approximately 400 feet west of the north-quarter corner of said Section 26. From this diversion point a ditch runs west to the northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 26, thence south to the old Burns-Harney road and east along the north side of said road to discharge into two natural channels approximately 600 feet and 300 feet west respectively from the southeast corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 26. From the main diversion from Coffee Pot Creek, above described, another ditch runs east along the section line to the foothill where it turns south along the foothill.

It appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of the land as claimed, that no contest has been filed herein against said claim and that other claimants in this proceeding have agreed and stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein)

Accordingly, a right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 15.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 29.6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 37.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 22 South, Range 32 East, W.M. with a priority date of 1884.

Statement and Proof of Claim No. 10 was filed by claimants Darrell Howser and Lola M. Thayer wherein they have asserted a right to the use of the waters of Coffee Pot and Mill Creeks, and all tributaries thereto, for the irrigation of 19.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 25.4 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, Township 22 South, Range 32 East, W.M. and water for domestic and stock use with a date of priority as of the spring of 1946.

Claimants Darrell Howser and Lola M. Thayer are parties to a certain stipulation filed in this proceeding, entitled "Stipulation as to Order of Determination by the State Engineer", quoted in paragraph 11 herein, wherein it is provided that "Proof No. 10 of Darrell Howser and Lola M. Thayer shall be withdrawn and the claim disallowed."

Statement and Proof of Claim No. 10 is therefore considered as having been withdrawn and of no further force or effect and a determination thereon by the State Engineer is deemed unnecessary.

19.

Ralph E. Reed, Burns, Oregon.

Statement and Proof of Claim No. 11 was filed herein by claimant Ralph E. Reed, asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 4.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14; 19.9 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 16.1 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 10.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 20.9 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 18.8 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 10.3 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 23, Township 22 South, Range 32 East, W.M., and water for domestic and stock use

with a date of priority of 1883.

The rights asserted in Statement and Proof of Claim No. 11 for the above described lands within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 23, Township 22 South, Range 32 East, W.M., were heretofore disposed of under Contest No. 1, paragraph 12 herein.

Relative to the remainder of the acreage for which a right for irrigation is asserted in said claim, the stipulation quoted in paragraph 11 herein provides that said claim shall be considered to be amended as to the description of acreage so as to read: 11.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 11.5 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 11.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ and 25.9 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 23, Township 22 South, Range 32 East, W.M.; said stipulation further provides that "the order of determination of the State Engineer shall describe the exterior boundaries of the land to which claimant is entitled to a water right" by a metes and bounds description.

It appears that two diversion points have been maintained for the diversion of water from the main channel of Coffee Pot Creek for the irrigation of the lands under this claim. The upper diversion being at the line fence approximately 500 feet east of the approximate northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, Township 22 South, Range 32 East, W.M., from which point a ditch runs west along the line fence. The second diversion is approximately 150 feet downstream from which point a ditch runs southeasterly.

It appears that the lands as described by the amended description contained in said stipulation, lie within the area shown on the State Engineer's Adjudication map and being classified thereon as, irrigated, and that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of said lands.

Therefore, and in accordance with the provisions of said stipulation, a right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 11.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 11.5 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 11.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, and 25.9 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 23, Township 22 South, Range 32 East, W.M. with a date of priority of 1883. Said lands are more explicitly described by the metes and bounds description of their exterior boundaries as set forth in the tabulation herein. (Page 23)

Claimant Ralph E. Reed also filed Statement and Proof of Claim No. 12 herein, asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 4.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14; 18.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 16.1 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 27.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 28.9 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 34.8 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 39.7 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ and 5.7 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 23, Township 22 South, Range 32 East, W.M., and water for domestic and stock use, with a date of priority of June 21, 1947.

It appears that the rights asserted under Statement and Proof of Claim No. 12 are based upon an application made by claimant herein, to the State Engineer for permit to appropriate the public waters of the State of Oregon which application was received in the office of the State Engineer on June 21, 1947, was filed and assigned number 22660. On September 30, 1947, permit was issued therefor and recorded in State Record of Permits,

Claimant herein must rely upon the perfection of the right designated under his permit, as recorded in State Record of Permits, Vol. 44, Page 17886, in the manner provided by law for the completion thereof.

20.

J. R. and W. W. Thomson, partners as Thomson Bros., Burns, Oregon.

Claimants J. R. and W. W. Thomson filed herein Statement and Proof of Claim No. 13 asserting a right to the use of " * * * water from Coffee Pot and Mill Creeks for a portion of the irrigation of the lands hereinafter described as same are intermingled from the water coming to the premises from the flow of Rattlesnake Creek." The lands for which a right for irrigation is asserted in said Claim No. 13 are tabulated therein as: 34.68 acres in Lot 3 (NE $\frac{1}{4}$ SW $\frac{1}{4}$), 35.03 acres in Lot 4 (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 $\frac{1}{4}$, 15.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 15.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 7, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., for which a priority of 1884 is claimed.

It appears that the Adjudication map prepared under the direction of the State Engineer does not show the lands for which a right is asserted under Statement and Proof of Claim No. 13 and that at the time of preparation of said Claim No. 13, a map showing the area of lands for which a right was to be asserted, was not available. At a later date a map, prepared by M. V. Dodge, Registered Professional Engineer, was submitted to accompany said claim, said map showing the irrigated lands in the sub-divisions listed in said Claim No. 13 to be: 9.7 acres in Lot 3 (NE $\frac{1}{4}$ SW $\frac{1}{4}$) 20.5 acres in Lot 4 (SE $\frac{1}{4}$ SW $\frac{1}{4}$), no irrigated lands in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 37.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 37.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 5.7 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 7, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

It appears that the lands for which a water right is asserted under this claim are meadow lands lying in the path of natural drainage of the flood waters of Mill and Coffee Pot Creeks intermingled with the flood waters of Rattlesnake Creek in their progress south toward Harney Basin, that the only water which reaches these lands is flood and surplus water from irrigated lands above during years of abundant run-off. Claimants have asserted that ditches and dikes have been constructed for the purpose of controlling said waters and distributing same over the lands claimed.

It appears that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of the lands shown as irrigated on claimants map, during years when the run-off was great enough to reach said lands. It further appears that no contest against said claim has been filed herein and that other claimants in this proceeding, have agreed and stipulated that this claim should be allowed. (See stipulation, paragraph 11 herein).

A right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 9.7 acres in Lot 3 (NE $\frac{1}{4}$ SW $\frac{1}{4}$), 20.5 acres in Lot 4 (SE $\frac{1}{4}$ SW $\frac{1}{4}$), 37.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 37.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 5.7 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 7, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M. with a priority date of 1884, said right to be subsequent and inferior to all

other rights of like priority date, herein allowed.

21.

Earl W. Withers and Edna G. Withers, Burns, Oregon.

Statement and Proof of Claim No. 14 was filed herein by claimants Earl W. Withers and Edna G. Withers asserting a right to the use of the waters of Mill Creek and Coffee Pot Creek for the irrigation of 18.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 8.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 0.3 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 14.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 30.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 21.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 21.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 35.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 0.4 acre in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 8.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 7.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 33.4 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 19.5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 14.2 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, all within Section 1, Township 23 South, Range 32 East, W.M., and water for domestic and stock use, with a priority date of 1884.

The adjudication map prepared from a survey made under direction of the State Engineer, does not show classified as irrigated, all of the lands for which a right is claimed herein.

It appears that water for the irrigation of the lands claimed under this proof is diverted from Coffee Pot Creek through the same works which serve the Huggard and Hahn lands, hereinbefore described under paragraph 17, in addition to the main channel of Coffee Pot Creek, now confined to a canal or ditch, and that all of the water of Mill and Coffee Pot Creeks, except that which may be diverted and used as described under paragraph 13 herein, flows over the lands of claimants herein in its progress southward toward Harney Basin. Water diverted through the Huggard and Hahn ditch and conveyed along the west line of Section 36, Township 22 South, Range 32 East, W.M. to the southwest corner thereof where a 48 inch Armco culvert conducts the water across State Highway No. 54 and into a natural channel which extends southerly to within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township 23 South, Range 32 East W.M. where a dike diverts the water east and onto the irrigated meadow. Other waters of Coffee Pot Creek which reach the south line of said Section 36 and State Highway No. 54, cross said highway through three culverts located approximately 950 feet west, 400 feet west and 1100 feet east, respectively from the quarter section corner between the aforesaid sections 36 and 1 and thence onto claimants lands.

No contest against said claim has been filed herein and other claimants in this proceeding have agreed and stipulated that this claim should be allowed from which it would appear that beneficial use has been made of the waters of Mill and Coffee Pot Creeks in the irrigation of all the lands as claimed.

Accordingly, a right is allowed to the use of the waters of Mill and Coffee Pot Creeks for the irrigation of 18.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 8.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 0.3 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 14.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 30.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 21.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 21.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 35.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 0.4 acre in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 8.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 7.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 33.4 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 19.5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 14.2 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1, Township 23 South, Range 32 East, W.M., with a date of priority of 1884.

Former Decree of Court.

In a decree of the Circuit Court of the State of Oregon for Harney County, dated October 15, 1930 by W. W. Wood, Circuit Judge, in the case of Hannah Houser, Lola Stenger, Mary Vickers, Sarah Kilburne, Ethel Myers, Agnes Myers, Ella Loggan, Tom Howser and S. R. Howser; and S. R. Howser as Administrator of the estate of Andrew W. Howser, deceased, Plaintiffs, v. William F. Oltman, Robert C. Lowe and Joseph Wilkerson, Defendants, the court determined the priority date of the lands then owned by plaintiffs and defendants but did not definitely describe the acreage within each smallest legal subdivision. Said lands are herein allowed priority dates as specified in said decree but the description of said lands shall be as determined by the findings under Proofs No's 8 and 9, paragraph 18 herein and Proof No. 11, paragraphs 12 and 19 herein.

Quantity of Water Available.

On April 18, 1948 a staff gage was installed on the channel of Coffee Pot Creek at a point about one-quarter mile below the confluence of Mill Creek, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, Township 22 South, Range 32 East, W.M. Thereafter several measurements of flow were secured during the run-off period of the years 1948 and 1949. The results of these measurements are presented in the following table.

Meas. No.	Date	Gage-height in feet	Discharge in second-feet
1	April 18, 1948	1.09	21.7
2	April 20, 1948	1.40	44.9
3	April 30, 1948	1.10	20.6
4	March 18, 1949	0.91	12.4
5	April 6, 1949	1.23	32.7
6	April 7, 1949	1.16	24.0
7	April 13, 1949	1.08	22.2
8	April 18, 1949	1.16	28.1
9	April 28, 1949	0.86	9.97

From the above measurements it may be seen that the flow of water in Coffee Pot Creek varies quite materially and is of comparatively short duration.

Irrigation Season

The source of practically all of the water which flows in Mill Creek and Coffee Pot Creek is from melting snow and rain during the run-off period and as the drainage area lies at a comparatively low elevation there is normally little or no water available for irrigation after June 15. Storage of the early run-off waters has not been provided and the irrigation of the lands must of necessity be accomplished during the run-off period when the water is available and should commence as early as water may be beneficially applied to the land. For this reason no definite irrigation season is fixed.

Duty of Water and Head of Water

Taking into consideration all testimony and evidence introduced in this proceeding,

together with the time and manner of run-off, the character of the lands and crops grown, the acreage for which rights are allowed and the quantity of water available, the duty of water is fixed so as not to exceed two and one-half acre-feet per acre irrigated during any year and the head of water shall not exceed one-fourtieth of a cubic foot per second per acre irrigated, except where rotation is practiced as hereinafter provided.

26.

Installation of Head-gates and Measuring Devices, Place of Measurement of Water, Waste Water.

Whenever it shall become necessary in the distribution of water, the watermaster having jurisdiction herein, may require the installation and maintenance of suitable head-gates or measuring devices. The construction of such head-gates or measuring devices shall be approved by the watermaster and the cost of such construction and maintenance shall be borne by the appropriator or appropriators benefited thereby.

The water to which each appropriator herein is entitled for the irrigation of his lands shall be measured at the point of diversion of such water from the main stream and in the case of an appropriator who uses waste water from the lands of an upper appropriator, such waste water shall be measured at the point of entrance to the lands of such lower appropriator or as near thereto as is practical.

All waste water shall be controlled so as to be available for use by lower appropriators.

27.

Stock and Domestic Use.

It appears that practically all of the claimants to the use of the waters of Mill Creek and Coffee Pot Creek and their tributaries in this proceeding have springs, or shallow wells equipped with windmills from which they satisfactorily secure water for stock and domestic use. During a considerable portion of each year Mill Creek and Coffee Pot Creek are dry and no water would be available from this source, therefore, no water in addition to that allowed for irrigation of the lands will be allowed for stock and domestic use.

28.

Rotation.

To secure a sufficient rate of flow or head of water, the watermaster may arrange such system or systems of rotation as may be best applicable: (1) By giving a greater amount of water to a water user for a proportionately less time, provided that the giving of such greater amount does not infringe upon the rights affirmed by this proceeding or any rights subsequently initiated; (2) Where two or more water users agree as between themselves as to the manner of said rotation in the use of water and such agreement is in writing and filed by such water users with the watermaster, and such rotation system shall not interfere with the prior rights of any water user not included in such rotation plan, the watermaster shall, if possible, distribute the water according to such agreement.

To secure a sufficient head of water where there is no agreement providing for a system of rotation, the watermaster may arrange such water users in groups or systems of rotation; first, giving the water user who is first in priority in such group a quantity of water equal to the combined appropriations of all water users in said group or system, for a length of time bearing the same ratio to the whole time required to make the complete rotation of the whole group of water users as the said appropriation of said water user bears to the combined appropriations of said group, and next, serving the water user in said group next in priority, with a like quantity for his proportionate time, and so on until all the water users of the said group or system are served, then the distribution of water may be repeated in the same manner throughout the remainder of the period during which water is available and may be beneficially applied; provided, that no system of rotation shall be established by the watermaster without the consent of the water users, except by order of the Circuit Court after an opportunity to be heard; provided, always, that such arrangement of groups or systems of rotation shall not interfere with prior rights of any water user not a member of such group or system.

The total quantity of water measured at the source of supply where rotation is practiced shall not exceed two and one-half acre-feet per acre during any year.

29.

Rights Appurtenant to Land.

The rights to the use of water for irrigation purposes as hereby confirmed are appurtenant to the lands herein described, and the rights to the use of the waters of Mill Creek and Coffee Pot Creek and their tributaries by virtue of such rights are limited and confined to irrigation of the lands described herein to the extent of said lands herein set forth, and the priorities of rights herein confirmed confer no right of use of the waters of said streams and their tributaries on any lands other than those specified tracts to which such rights are herein set forth as appurtenant, and each and every person, association, or corporation shall be and hereby is restrained and enjoined from diverting and using water from said streams or their tributaries on such other lands without lawful permit first obtained from the State Engineer.

30.

Diversions Governed By Priorities and Beneficial Use.

The order of the rights of the respective claimants of the waters of Mill Creek and Coffee Pot Creek and their tributaries, and in which order they are entitled to divert and use said water, shall be and is according to the relative priority of the rights 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 streams and their tributaries, when necessary for beneficial use in connection with the irrigation of their respective lands for which they are allowed a right of use, at all times

against those having subsequent rights, without let or hinderance, and whenever the water is not required by the claimant 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 or ditch through which conveyed to lower appropriators without let or hinderance, and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights, 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 the use of such water, and no rights of appropriation are hereby confirmed to divert a greater quantity of water into the head of the ditch, canal or conduit of the claimant having a valid right to divert the water than such claimant can beneficially use for the purpose to which the water is to be put.

31.

To summarize and supplement the specific findings herein, the rights of the claimants to the use of the waters of Mill Creek and Coffee Pot Creek and their tributaries, as defined herein, are arranged in tabulated form with the dates of relative priority of such appropriations, the number of acres to which such appropriations are appurtenant, the use to which said water is applied, the name of 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 water has been used; the tabulated rights of each appropriator being set opposite and following his name and post office address, 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
Bailey, Duane L. and Hazel C. Burns, Oregon Proof No. 1 (Findings paragraph 13) <i>20696</i>	1884		58.0	Supplemental Irrigation <i>Primary Right from Rattlesnake Cr.</i>	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	22.5 acres in Lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) 29.8 acres in Lot 4 (SE $\frac{1}{4}$ NW $\frac{1}{4}$) 5.7 acres in Lot 5 (NE $\frac{1}{4}$ SW $\frac{1}{4}$) Section 6, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Burns, Almeda M. and George H. Box 281, Burns, Oregon Proofs No's. 2 & 3 (Findings paragraph 14) <i>20697</i>	March 19 1883		48.7	Irrigation	Unnamed dams, dikes and ditches	Coffee Pot Creek	5.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.5 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 16.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 3.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 23.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T. 22 S., R. 32 E., W.M.
Proof No. 4 (Findings paragraph 14)	1900		12.0	Irrigation	Unnamed dams, dikes and ditches	Coffee Pot Creek	12.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, T. 22 S., R. 32 E., W.M.
Capp, Johnny an Indian by Henry L. Hess, United States Attorney Bert C. Boylan, Special Assistant, Trustees Proof No. 5 (Findings paragraph 15)	Filing fees not paid and claim not filed.						
Clemens, Glen Burns, Oregon Proof No. 6 (Findings paragraph 16) <i>20698</i>	1886		160.0	Irrigation	Unnamed dikes and ditches	Mill and Coffee Pot Creeks	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 $\frac{1}{4}$ Section 35, T. 22 S., R. 32 E., W.M.
	1888		84.8	Irrigation	Unnamed dikes and ditches	Mill and Coffee Pot Creeks	40.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 8.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 3.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 33.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35, T. 22 S., R. 32 E., W.M.
Huggard, Wm. H. and Hahn, Blanche Alice Burns, Oregon Proof No. 7 (Findings paragraph 17) <i>20699</i>	1884		408.3	Irrigation	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	5.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 27.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 38.5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 26.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 30.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 39.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.6 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 28.4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36, T. 22 S., R. 32 E., W.M.
				Supplemental Irrigation	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	28.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, T. 22 S., R. 32 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
Howser, Darrell and Thayer, Lola M. Burns, Oregon Proof No. 8 (Findings paragraph 18) Proof No. 9 (Findings paragraph 18) Proof No. 10 (Findings paragraph 18)	1882 1884 Claim withdrawn.		282.0 120.1	Irrigation Irrigation	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	40.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8.2 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 25, 33.8 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 26, T. 22 S., R. 32 E., W.M. 15.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 29.6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 38.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 37.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T. 22 S., R. 32 E., W.M.
Reed, Ralph E. Burns, Oregon Proof No. 11 (Findings paragraph 19)	1883		60.0	Irrigation	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	11.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 11.5 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 11.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 25.9 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, T. 22 S., R. 32 E., W.M.
							Land for which a water right is allowed under Proof No. 11 is more explicitly described by metes and bounds description of exterior boundary as follows: a. Beginning at the Southeast Corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, Township 22, South of Range 32, E. W.M., thence North (Mag. Var. 19°30' E) a distance of 2640 feet to the east and west midsection line, thence Westerly, S 89°54' W, a distance of 379.5 feet along said midsection line. Thence South (Mag. Var. 19°30' E) a distance of 2640 feet to the south line of said Section 23, thence Easterly along the south line of said Section, a distance of 379.50 feet to the point of beginning; said tract containing 23 acres. b. Beginning at a point on the South line of Section 23, said point being the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, thence due North (Mag. Var. 19°30' E), a distance of 2640 feet to a point on the east and west midsection line of said Section; thence N 89° 54' E, along said midsection line, a distance of 497.0 feet; thence in a southerly and southeasterly direction along the west bank of Coffee Pot Creek to its intersection with the South line of said Section 23. Thence west, along the south line of said Section a distance of 1276.06 feet to the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, the point of beginning; said tract containing 26.84 acres, more or less. c. Beginning at the Southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23 and running thence North (Mag. Var. 19°30' E.) a distance of 886.0 feet to a point south of an existing ditch, thence N86°21' W, a distance of 922.0 feet where said course intersects the east bank of Coffee Pot Creek, thence southeasterly and following along the east bank of said Creek to a point of intersection with the South line of Section 23, thence East along the South line of said Section, a distance of 12 feet more or less to the point of beginning; said tract containing 10.16 acres, more or less.
Proof No. 12 (Findings paragraph 19)							Application No. 22660 Permit No. 17886

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
Thomson, J. R. and W. W. Burns, Oregon Proof No. 13 (Findings paragraph 20) 20702	1884		109.9	Irrigation	Unnamed dikes, and ditches	Mill and Coffee Pot Creeks	9.7 acres in Lot 3 (NE $\frac{1}{4}$ SW $\frac{1}{4}$) 20.5 acres in Lot 4 (SE $\frac{1}{4}$ SW $\frac{1}{4}$) 37.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 37.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 5.7 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 7, T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
Withers, Earl W. and Edna G. Burns, Oregon Proof No. 14 (Findings paragraph 21) 20703	1884		312.1	Irrigation	Unnamed dams, dikes and ditches	Mill and Coffee Pot Creeks	18.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 8.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 0.3 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 14.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 30.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 39.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 21.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 21.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 35.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 0.4 acre in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 8.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 7.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 33.4 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 19.5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 14.2 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T. 23 S., R. 32 E., W.M.

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 Mill Creek and Coffee Pot Creek and their 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 14th day of March , 1950.


CHAS. E. STRICKLIN
State Engineer