

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

KLAMATH COUNTY

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS TO THE USE)
OF THE WATERS OF SWAN LAKE AND ITS)
TRIBUTARIES.)

DECREE MODIFYING THE
FINDINGS AND ORDER OF
DETERMINATION OF THE
STATE ENGINEER AND
AFFIRMING SAME AS
MODIFIED.

The above entitled matter comes before the Court at this time for consideration of the Findings and Order of Determination of the State Engineer of Oregon and for the entry of Decree.

It appears that, since the entry of the Findings and Order of Determination of the State Engineer, Maude E. Liskey has been substituted for Dave Liskey, deceased, and that John A. Marshall and William F. Marshall, grantees and successors in interest, have been substituted for Hattie E. Marshall.

It further appears that exception to the Findings and Order of Determination of the State Engineer has been duly made, served and filed by the aforesaid John A. Marshall and William F. Marshall, which, omitting the title of the cause, reads as follows, to-wit:

"Come now John A. Marshall and William F. Marshall, grantees and successors in interest to Hattie E. Marshall and substituted parties herein, and except to the Findings and Order of Determination of the State Engineer in the following particulars:

I

"That the Findings Statement and Proof of Claim No. 27, paragraph two, page 40 of said Findings, provide as follows:

"It appears that beneficial use of the waters of Cabin Creek has been made to the extent of the irrigation of 70.0 acres of land, and that no contest has been filed herein to said Statement and Proof of Claim No. 27, therefore, subject to the provisions of paragraph 27 herein, a right is allowed to the use of the waters of Cabin Creek for the irrigation of 9.0 acres in Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), 4.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 30; 38.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), 17.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 37 South, Range 10 East, W. M., with a date of priority of 1870."

II

"That the said application of Hattie E. Marshall herein contained application, which was uncontested, and proof attached for water rights with 1870 priority for irrigation of:

SW $\frac{1}{4}$ SE $\frac{1}{4}$	Sec. 30	15 acres;
SW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 31	9 acres;
NW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 31	38 acres.

III

"That said Findings and Order of Determination of the State Engineer fails to allow said water right.

"WHEREFORE, Exceptors move the Court for an Order setting time for hearing of the within exception.

(sgd.) John A. Marshall

(sgd.) William F. Marshall "

It further appears to the Court that stipulations were entered into by and between interested parties herein, which stipulations, omitting the title of the cause, read as follows, to-wit:

"The undersigned, CLARENCE HUMBLE, Attorney for Albert R. Devincenzi and Irene J. Devincenzi, A. C. YADEN, Attorney for Dave Liskey and D. D. Liskey, and J. H. CARNAHAN, Attorney for H. Douglas Whiteline, do hereby stipulate and agree that they have no objections to the Exceptions filed by John A. Marshall and William F. Marshall in the within matter and do hereby agree to an amendment of the Findings and Order of Determination of the State Engineer filed herein by including in Finding No. 27 the following described real property:

SW $\frac{1}{4}$ SE $\frac{1}{4}$	Sec. 30	15 acres;
SW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 31	9 acres;
NW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 31	38 acres.

"Dated this 26 day of October, 1950.

(sgd.) Clarence Humble
Attorney for Albert R. Devincenzi
and Irene J. Devincenzi

(sgd.) A. C. Yaden
Attorney for Dave Liskey and D. D.
Liskey, Maude E. Liskey by substitu-
tion, L. M. Hankins & Lloyd L. Hankins

(sgd.) J. H. Carnahan
Attorney for H. Douglas Whiteline "

"It is STIPULATED and AGREED by and between all the parties hereto as follows:

"That one of the parties interested herein, to-wit: Dave Liskey, is now deceased and all of his rights and interests involved herein have passed to and are now held and owned by said Maude E. Liskey, who has been substituted herein for and in the place and stead of said Dave Liskey as a party plaintiff herein.

"That the State Engineer's Findings and Determination as heretofore made and filed in the matter of the Adjudication of the Waters of Swan Lake and its tributaries, including Anderson Creek and Meadow Lake, shall be affirmed by the Circuit Court and said Findings and Determination may be changed and/or amended so as to effectuate the agreement and stipulation of the parties hereto, if any change or modification is required or needed. That the said decree shall embrace the following:

"That all claimants to the use of water who hold State Engineer's permits for the appropriation thereof, shall have the right to use such water in accordance with their dates of priority as established by said permits or water rights and in accordance with the laws of the State of Oregon covering the same, whether claim for same has been filed in these proceedings or not."

"H. Douglas Whiteline may make such use of the waters of Anderson Creek and its tributaries, including surplus storage in Whiteline Reservoir, as he sees fit, and may apply the same to the irrigation of such lands as he may designate and which the State Engineer has allowed or may allow, the said other parties to this stipulation hereby expressly waiving any and all right to such waters, or the use thereof, on the lands aforesaid or those to which transferred or to the construction of the Whiteline Reservoir in Sec. 23, T. 37 S., R. 9 E., W. M., in accordance with the plans and specifications therefor on file in the office of the State Engineer.

"This Stipulation and the matters contained herein shall be deemed and held as covenants running with the lands of said Whiteline, as said Whiteline lands are more fully described in the Findings of the said State Engineer, and as covenants running with or against the lands of said plaintiffs insofar as the waters of Anderson Creek and its tributaries are concerned, and which may be affected hereby, said lands of said Whiteline being in Sections 15, 22 and 23, T. 37 S., R. 9 E., W. M., at Two Mile,, and in Sections 19, 20 and 28, T. 37 S., R. 10 E., W. M., and said Liskey and Hankins lands are fully described in the Findings of said State Engineer, reference to which is hereby respectfully made.

"The Court willing, the notice of hearing and hearing provided for in and by Section 116-812 O. C. L. A., shall be, and the same hereby is, waived, dispensed with and excused, and the Court may now, if willing, enter its Final Decree deciding and settling for all time said water adjudication proceedings and water rights.

"Dated this 29 day of August, 1950.

(sgd.) A. C. Yaden
Attorney for

D. D. Liskey

Maude E. Liskey, substituted
herein for Dave Liskey, dec'd.
L. M. Hankins, Lloyd L. Hankins

(sgd.) J. H. Carnahan
Attorney for
H. Douglas Whiteline."

And the Court having duly considered the exception of John A. Marshall and William F. Marshall and the foregoing stipulations entered into between Clarence Humble, Attorney for

and on behalf of Albert R. Devincenzi and Irene J. Devincenzi, A. C. Yaden, Attorney for and on behalf of D. D. Liskey, Maude E. Liskey by substitution, L. M. Hankins and Lloyd L. Hankins, and J. H. Carnahan, Attorney for and on behalf of H. Douglas Whiteline, relative to aforesaid exception of John A. Marshall and William F. Marshall; and between A. C. Yaden, Attorney for and on behalf of D. D. Liskey, Maude E. Liskey, substituted herein for Dave Liskey, deceased, L. M. Hankins and Lloyd L. Hankins and J. H. Carnahan, Attorney for and on behalf of H. Douglas Whiteline, relative to the affirmation of the Findings and Order of Determination of the State Engineer of Oregon in this proceeding, finds as follows:

That the exception of John A. Marshall and William F. Marshall relative to the exclusion of certain lands by the Findings and Order of Determination of the State Engineer under Statement and Proof of claim No. 27, be allowed and that said Findings and Order of Determination of the State Engineer should be modified as prayed for in said Exception and in accordance with the said stipulation relating thereto;

That the Findings and Order of Determination of the State Engineer be further modified by the inclusion therein of an additional paragraph relating to the rights of claimants in this proceeding who hold State Engineer's Permits for the appropriation of the waters herein involved, regardless of whether claim for such State Engineer's Permits has been filed in this proceeding or not, as prayed for in said stipulation relating to the affirmation of said Findings and Order of Determination of the State Engineer.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Findings and Order of Determination of the State Engineer be, and the same hereby are corrected and modified in the following particulars:

(a) The second paragraph of Finding 26 under Statement and Proof of Claim No. 27, page 40, of said Findings and Order of Determination of the State Engineer, hereby is amended to include the acreage prayed for in the aforesaid Exception so as to read as follows:

It appears that beneficial use of the waters of Cabin Creek has been made to the extent of the irrigation of 132.0 acres of land, and that no contest has been filed herein to said Statement and Proof of Claim No. 27, therefore, subject to the provisions of paragraph 27 herein, a right is allowed to the use of the waters of Cabin Creek for the irrigation of 9.0 acres in Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), 4.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 15.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30; 9.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), 17.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 37 South, Range 10 East, W. M., with a date of priority of 1870.

(b) That the tabulation of the lands allowed a water right under Proof No. 27, on page 48 of said Findings and Order of Determination be and the same hereby is amended accordingly.

(c) That paragraph 27 of said Findings and Order of Determination be, and the same hereby is modified by the inclusion of an additional sub-paragraph on page 43 thereof, said sub-paragraph to read as follows:

All Claimants to the use of water herein, who hold State Engineer's permits for the appropriation of the waters of Swan Lake or its tributaries, shall have such water rights thereunder as is provided by law, and the right of such appropriator shall be completed and established in the manner provided by law for the completion of such rights, whether claim for such permits has been filed in this proceeding or not.

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

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED, that, based upon the said Findings and Order of Determination of the State Engineer as amended and modified herein, the various claimants are entitled to the use of water as determined in these findings and this decree; and they, and each of them, their successors and assigns, and all persons claiming under them, are hereby enjoined and prohibited from the use of water under this proceeding, other than as herein provided.

ENTERED in open Court this 11th day of December, 1950.

/s/ Chas. H. Combs
Chas. H. Combs, Circuit Judge

STATE OF OREGON)
) ss.
County of Klamath)

I, Chas. F. DeLap, Clerk of the Circuit Court in and for Klamath County, State of Oregon, do hereby certify that the foregoing copy of DECREE MODIFYING THE FINDINGS AND ORDER OF DETERMINATION OF THE STATE ENGINEER AND AFFIRMING SAME AS MODIFIED has been by me compared with the original and that this is a correct transcript therefrom and of the whole of such original thereof as the same appears on file and of record at my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court the 12th day of December, 1950.

CHAS. F. DeLAP, Clerk of Circuit Court
By- Ethel Lehner, Deputy.