

BEFORE THE STATE ENGINEER OF OREGON

Harney County

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS TO THE USE)
OF THE WATERS OF ROCK CREEK AND ITS)
TRIBUTARIES, HARNEY COUNTY)

FINDINGS OF FACT
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 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 OF FACT AND ORDER OF DETERMINATION

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The several unnamed tributaries forming the headwaters of Rock Creek rise within the southwest portion of Township 21 South, Range 33 East, W.M., in the lower elevations of the mountains forming the divide between the headwaters of the Malheur River and Silvies River.

These several channels bear in a general southerly direction to consolidate into one main channel within Section 9, Township 22 South, Range 33 East, W.M., designated as Rock Creek. From the consolidation of the several channels into the main channel of Rock Creek, the stream flows through one channel in a southerly direction to the approximate east quarter corner of Section 32, same township and range, where the channel flattens out at the edge of a cultivated field and the water spreads for a considerable distance toward the west.

The borrow pit along the north side of U. S. Highway No. 20 (Burns-Vale Highway) collects the water and it is then conducted into the borrow pit along the south side of said highway through eight culverts within Section 32, Township 22 South, Range 33 East, W.M.

From the borrow pit along the south side of the highway, the water flows south through two natural channels within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 32, and an old irrigation ditch constructed about the year 1913, in connection with Permit No. 1515 issued by the State Engineer to a Mr. Chas. Books, for the irrigation of lands in the NW $\frac{1}{4}$, Section 8, Township 23 South, Range 33 East, W.M. Said ditch is located along the north-south center line through Section 32, Township 22 South, Range 33 East, W.M., and Sections 5 and 8, Township 23 South, Range 33 East, W.M.

The two natural channels and the irrigation ditch consolidate within the N $\frac{1}{2}$ of said Section 8, and from this point one ditch or channel bears in a southwesterly direction to its confluence with a channel of Cow Creek near the center of Section 19, Township 23 South, Range 33 East, W.M. The channels through the N $\frac{1}{2}$ of Section 8 and the channel through the S $\frac{1}{2}$ of Section 8, Section 17, Section 18 and Section 19 are indistinct and meander through the sagebrush, without showing any evidence of sustained stream flow. In places, the channel broadens into a shallow swale and in places, is confined to a small ditch about 18 inches wide and a foot deep. General appearances would indicate that the channel primarily carries surface drainage water (rain and melting snow) from the immediately surrounding area, and not a sustained stream flow from either Rock Creek, or the tributary drainage from the east, Little Rock Creek. It would appear that the waters of Rock Creek originating north of U. S. Highway No. 20 would flow through Sections 5, 8 and 17 only in unusually wet years. During unusually wet years, waters from Rock Creek, Cow Creek, Rattlesnake Creek and other drainages to the west flood out over broad areas of sagebrush land south of U. S. Highway No. 20 and course southward to their junction with Nine Mile Slough and thence into Malheur Lake. The waters commingle as they spread southward over several sections of land and it would be extremely difficult to accurately measure the quantities from each source. There are substantial channels from Cow Creek, Rattlesnake Creek and Nine Mile Slough which indicates that the majority of the water comes from these sources with substantially larger drainages.

Throughout said Section 19 and continuing southwesterly, the channels flatten out forming meadow areas of a "shoe-string" nature, to within Section 36, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., where the waters enter a larger depression area which extends northerly into Section 26, and thence again southerly into Section 34. From Section 34, the main channel bears directly south through the W $\frac{1}{2}$ SE $\frac{1}{4}$ of the section. Another smaller channel bears west through the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33. Both of these channels have been obstructed by dikes apparently constructed to hold the water within the depression areas to promote the growth of natural wild grasses, rushes and tules.

Another depression area within the E $\frac{1}{2}$ of Section 32, and the W $\frac{1}{2}$ of Section 33, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., appears to be fed from the runoff of Rattlesnake Creek.

Rock Creek is not a perennial stream, its runoff being derived almost wholly from melting snow and rains and flows during the runoff season which usually lasts only for three or four weeks and occurs during the months of February to May, depending upon the season.

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That on the 13th day of February, 1962, an Order of the Circuit Court for Harney County, Oregon, dated and signed by Honorable Jeff D. Dorroh, Jr., was received in the office of the State Engineer, referring to the State Engineer for final determination and adjudication pursuant to the provisions of ORS 539.020, of the waters of Rock Creek and its tributaries. The suit of Harry Withers, et al, Plaintiffs vs. B. B. Clark, being Case No. 4004, has been pending in the Circuit Court of Oregon, Ninth Judicial District, since 1951, and after taking additional testimony, an Opinion of the Court was entered on the 3rd day of October, 1953, holding that the testimony and evidence thus far adduced was insufficient for a proper determination of the issues involved; additional hearings were held by the Court and while the evidence was still inadequate for proper determination it was clear that additional parties were involved and that there should be a complete adjudication; the Court referred this matter to the State Engineer, who proceeded to make necessary surveys and examinations and to take such evidence and testimony as would enable him to determine the relative rights of the various claimants to the waters of Rock Creek and its tributaries.

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That a notice was prepared setting forth the date when the State Engineer, or his assistants, would begin the investigation of the flow of said Rock Creek and its tributaries and the ditches diverting water therefrom, and said notice was published in the Burns Times-Herald, a newspaper of general circulation in Harney County, Oregon, as defined by ORS 539.030, in two successive and consecutive weeks, being April 26 and May 3, 1962, the date of the last publication of said notice being more than ten days prior to the date set for the beginning of the investigation and measurements of said stream by the State Engineer or his assistants, as provided by law.

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That the State Engineer did send by certified mail to each person, firm or corporation owning or being in possession of lands in, or bordering on or having access to said stream or its tributaries, in so far as said claimants and owners and persons in possession could reasonably be ascertained, a notice similar to such published notice, and included therewith an explanatory statement and a blank form upon which the claimant or owner could prepare in writing his notice of intention to file a statement and proof of claim of his right to the use of the waters of said Rock Creek and its tributaries, if any he had.

The following named persons, firms or corporations were duly notified of the proceedings by certified mail, as provided by law, of the commencing of the investigation by the State Engineer, or his duly authorized assistants, and were furnished an explanatory statement and pamphlet of information and a form upon which to declare their notice of intention to file a claim to the use of the waters of said Rock Creek and its tributaries:

Adams, Afton B. & Maisie	904 Bridge Street, Winnemucca, Nevada
Baird, H. F. & Mable J.	963 Hiatt Street, Lebanon, Oregon
Calvert, E. J.	P. O. Box 5216, Pasadena, California
Catterson, E. R. & Eathel	Drewsey, Oregon
Chambers, Katie I.	% J. C. Temple, Burns, Oregon
Corcoran, Donald W. & Bobbie Marie	1022 N. Court Street, Burns, Oregon
Cramer, William D. & Wendell Gronzo	Burns, Oregon
Culp, Arthur & Mabel	P. O. Box 372, Mt. Vernon, Oregon
Dryer, Donald A.	525 Corbett Building, Portland, Oregon
Flores, Natale	% John Ventimiglia, 1293 Farrington Drive, San Jose, California
Freitag, B. S. L.	2269 Republic Avenue, Costa Mesa, California
Gloster, Bibabee, et al	% Theresa Gloster, 90 Pine Hurst Avenue, New York 35, New York
Gloster, F. W.	893 Neil Avenue, Columbus, Ohio
Goodman, Bernie & Al	Mt. Vernon, Oregon
Hendricks, Leopoline	% Pauline Kirk, 7813 S. E. Strawberry Lane, Portland 22, Oregon
Henion, Joseph H.	P. O. Box 5216, Pasadena, California
Hoffeditz, John M.	2536 15 th Street, Seattle 44, Washington
Hopkins, Myrtle M.	1645 East 32nd Street, Tacoma 4, Washington
Johnson, Kenneth A.	Vale, Oregon
McGee, Jack & Leona	Burns, Oregon
McLain, Mrs. Mary M.	P. O. Box 9261, Portland 16, Oregon
Marshall, C. H. & Maxine	Drewsey, Oregon
Menzell, Paul & Erma	406 Iris Street, Redwood City, California
Miley, E. C., Trustee for Rogers & Goodman	% Rogers & Goodman, Athena, Oregon
Miller, Charles N. & Howard N.	% Neil Miller, Lawen, Oregon
Miller, Neil	Lawen, Oregon
Mitschelen, Jacob H.	3820 S. Michigan Street, South Bend 14, Indiana
Moe, Lawrence F.	1924 East 105 th Street, Cleveland, Ohio
Moe, Mary A.	203 West Howe, Seattle 99, Washington
Muecke, Hugo H. & Marie M.	2826 S. E. Taylor Street, Portland, Oregon
Nichandros, G. C. & Dorothy M.	444 East 14 th Street, San Leandro, California
Oard, Richard, Etta, Eva N. & James	Crane, Oregon
Oswalt, Frank E.	Winnemucca, Nevada
Oswalt, Howard C.	1518 N. McAllister Avenue, Tempe, Arizona
Paddock, J. E. & Winifred W.	2819½ River Road, Eugene, Oregon
Patrick, E. J. Jr. & Bonnie	Route 1, Box 114, Clackamas, Oregon
Patrick, Marry Jo & J. R. Reeves	Route 1, Box 114, Clackamas, Oregon
Rankin, A. A.	% Myrtle M. Hopkins, 1645 East 32nd Street, Tacoma 4, Washington
Raycraft, Geo. W. & Florence O.	329 Bond Street, Bend, Oregon
Raycraft, Grace	3410 41st Avenue S.W., Seattle 16, Washington

Saunders, Harold D., et al	% Ruth Saunders Leopold, 6505 S. E. Scott Drive, Portland 15, Oregon
Seely, Leon & Elsie May	Lawen, Oregon
Smith, Frank & Viola	Burns, Oregon
Swezea, Aloha M.	1004 Nob Hill Avenue, Seattle, Washington
Temple, J. C.	Burns, Oregon
Tyler, Lester E.	Burns, Oregon
Ventimiglia, Leo & Rose	% John Ventimiglia, 1293 Farrington Drive, San Jose, California
Vickers, Jesse E. & Lyle Vickers	Burns, Oregon
Vickers, Lyle E. & Helen R.	Burns, Oregon
Vogler, Henry Conrad Jr. & Pearl E.	Burns, Oregon
Wheeler, Mrs. Emeral M.	5514 S. Vickery Road, Tacoma 4, Washington
Welcome, Eleanor Mae	Diamond, Oregon
Whitney, Alfred B.	10100 Columbus Avenue, Sepulveda, California
Whitney, Arthur S.	Burns, Oregon
Whitney, Emma T., Estate of	% Arthur S. Whitney, Burns, Oregon
Withers, Earl	Burns, Oregon
Withers, Harry A.	Burns, Oregon
Withers, Harry A. Jr.	Burns, Oregon
Workman, W. B.	% Mrs. Wm. Workman, R.R. 2, New Carlisle, Indiana

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That all of said certified notices, addressed as tabulated in the preceding finding, which addresses were secured from the records of the County Assessor and Tax Collector of the county in which the property is located, were delivered to the addressee by the Post Office Department.

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That duly qualified assistants to the State Engineer did proceed to make examinations, surveys and measurements of said Rock Creek and its tributaries, and of ditches, canals and other works diverting water therefrom, and surveys of the land irrigated or benefited by natural flooding, and gathered such other data and information as were essential to the proper determination of the relative rights of the parties interested, which observations and measurements were reduced to writing and made a matter of record in his office. The State Engineer did cause to be prepared a set of maps or plats, showing with substantial accuracy, the location of all streams in the drainage basin, the location of each canal, ditch or other means of conveyance of appropriated water and the points of diversion thereof, and the number of acres of land being irrigated or naturally benefited in each legal subdivision, or character of use of water, prints of said maps or plats being on file and a part of the record herein.

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That as soon as practicable after the examinations and measurements were completed, the State Engineer did prepare a notice setting forth a place and time certain when he would begin the taking of statements and proofs of claim as to the relative rights of the various

claimants to the use of the waters of Rock Creek and its tributaries; that said notice was published in two issues of the Burns Times-Herald, printed and published at Burns, Harney County, Oregon, being August 16 and 23, 1962. 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.

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That the State Engineer did send by certified mail to each person, firm or corporation who had filed a declaration of intention to file a claim to the use of the waters of Rock Creek and its tributaries in the proceeding, in response to the notice described in Finding 5 above, a notice similar to such published notice described in the preceding finding, setting forth the date when the State Engineer, or his authorized assistants, would receive the statements and proofs of claim of the various claimants to the use of the waters of said stream and its tributaries. That said notice was mailed at least thirty days prior to the date set therein for the receiving of such statements and proofs of claim in each instance. And the State Engineer did include 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, and a pamphlet of information for water users in connection with the preparation of their statements and proofs of claim and with the adjudication of water rights.

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That the times and places where the State Engineer, or his duly authorized assistants, did appear and receive the statements and proofs of claim of the various parties, were fixed in said notice as follows:

On Tuesday, September 25, 1962, at the County Courthouse in Burns, Oregon.

And for a period of 20 days beginning with Wednesday, September 26, and ending with Tuesday, October 23, 1962, at the office of the State Engineer, 516 Public Service Building, Salem, Oregon.

That thereafter, it appearing that further time was necessary in which to file said statements and proofs of claim, the State Engineer did, on the 15th day of October, 1962, enter an order directing that the time in which to file said statements and proofs of claim be extended and continued through and including the 31st day of October, 1962. It later appearing that this time was insufficient, the State Engineer did, on the 31st day of October, enter an order extending the time through and including the 7th day of January, 1963.

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That the following named persons, firms or corporations who had filed their notice of intention to file a statement and proof of claim, were duly notified by certified mail, as provided by law, of the commencing of the taking of statements and proofs of claim of their rights to the use of the waters of Rock Creek and its tributaries:

Corcoran, Mr. & Mrs. Donald	Burns, Oregon
Dryer, Mr. Donald A. "Pine Creek Ranch"	Drewsey, Oregon
Hopkins, Mrs. Myrtle M.	1645 East 32nd Street, Tacoma 4, Washington
Kirk, Pauline	7813 Strawberry Lane, Portland 22, Oregon
McGee, Mr. & Mrs. Jack	Burns, Oregon
Marshall, Culver H.	P. O. Box 9, Drewsey, Oregon
Miley, Edward G.	P. O. Box 85, Athena, Oregon
Nichandros, Mr. Gust C.	% John M. Thorpe, 22572 Main Street, Hayward, California
Patrick, Mr. & Mrs. James E. Jr.	Route 1, Box 114, Clackamas, Oregon
Reeves, Mr. & Mrs. J. R.	550 Central Avenue, Lebanon, Oregon
State Land Board	State Capitol Building, Salem, Oregon
Swezea, Mrs. Aloha M.	1004 Nob Hill Avenue N., Seattle 9, Washington
Tyler, Mr. Lester	P. O. Box 693, Burns, Oregon
Vogler, H. C. Jr.	P. O. Box 1033, Burns, Oregon
Whitney, Alfred B.	10100 Columbia Avenue, Sepulveda, California
Withers, Earl	Burns, Oregon
Withers, Harry A. Jr.	Burns, Oregon
Workman, Mrs. William	Route 2, New Carlisle, Indiana

That all of said notices sent by certified mail to the above-listed persons, firms or corporations at said addresses, appear to have been delivered by the Post Office Department to the addressee.

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That in response to said notice to file statements and proofs of claim, the following named persons, firms or corporations did submit to the State Engineer statements of their respective claims:

Corcoran, Donald W. & Bobbie M.	Burns, Oregon
Marshall, Culver H.	Drewsey, Oregon
Meadowland Ranches, % Henry C. Vogler III, President	P. O. Box 1033, Burns, Oregon
State Land Board	State Capitol Building, Salem, Oregon
Withers, Earl; Jack & Leona McGee	Burns, Oregon
Withers, Harry A. Jr.	Burns, Oregon

That all of said claimants submitted statements and proofs of claim which were in ample form and were accompanied by the statutory fees and were filed by the State Engineer.

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That all persons, firms or corporations to whom notices were sent by certified mail, as tabulated under Findings 5 and 11 above, and who have failed, neglected or refused to appear herein and submit proof of a right or claim to the use of the waters of Rock Creek and its tributaries, initiated prior to the adoption of the Oregon Water Code on February 24, 1909, now the Oregon Water Rights Act, if any they have or claim, 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 Rock Creek 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, as provided by law.

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That after the completion of the taking of such statements and proofs of claim, the State Engineer did on January 18, 1963, give notice by certified mail to each of the various claimants to the use of the waters of said Rock Creek and its tributaries, as provided by law, that at the times and places named in said notice, to wit:

On Thursday, February 14, 1963, in the Harney County Courthouse at Burns, Oregon.

And for a period of ten days beginning with Monday, February 18, 1963, and ending with Monday, March 4, 1963, (Saturdays, Sundays and holidays excepted) at the office of the State Engineer, 516 Public Service Building, Salem, Oregon.

the statements and proofs of claim theretofore filed would be open to public inspection between the hours of 8:00 o'clock A.M. and 12:00 M. and from 1:00 o'clock P.M. to 5:00 o'clock P.M. on each of said days. That said notice did state therein the county in which the determination of the State Engineer would be heard by the Circuit Court of the State of Oregon, to wit: the County of Harney.

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That the State Engineer did, in accordance with said notice as described in the preceding Finding No. 14, keep said statements and proofs of claim open to public inspection at said times and places.

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That the time set by law for the filing of statements of contest, within fifteen days after the expiration of the period for public inspection, would expire on March 19, 1963, and it appearing that additional time was required by certain parties to properly prepare and file their statements of contest, the State Engineer did, on the 18th day of March, 1963, enter an order directing that the time within which to file statements of contest, be extended, as provided by law, and the same was thereby extended and continued to include the 8th day of April, 1963. That within the time therefore, as extended by order of the State Engineer, the following contests were initiated by the filing with the State Engineer of notices of contest, in writing: (contests numbered from transcript of hearing)

<u>CONTEST NO. 1</u>	Harry A. Withers, Jr.	Contestant
	vs.	
	Donald W. & Bobbie M. Corcoran	Contestee
 <u>CONTEST NO. 2</u>	 Harry A. Withers, Jr.	 Contestant
	vs.	
	Meadowland Ranches, Inc.	Contestee
 <u>CONTEST NO. 3</u>	 Donald W. & Bobbie M. Corcoran	 Contestant
	vs.	
	Earl Withers, Jack & Leona McGee	Contestees
 <u>CONTEST NO. 4</u>	 Donald W. & Bobbie M. Corcoran	 Contestant
	vs.	
	Harry A. Withers, Jr.	Contestee
 <u>CONTEST NO. 5</u>	 Donald W. & Bobbie M. Corcoran	 Contestant
	vs.	
	State of Oregon, State Land Board	Contestee
 <u>CONTEST NO. 6</u>	 Donald W. & Bobbie M. Corcoran	 Contestant
	vs.	
	Culver H. Marshall	Contestee
 <u>CONTEST NO. 7</u>	 Donald W. & Bobbie M. Corcoran	 Contestant
	vs.	
	Meadowland Ranches, Inc.	Contestee

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That after the filing of said statements of contest, the State Engineer did fix a time and place for the hearing of each of said contests, and did, on the 1st day of September 1964, serve notice of said contests, by certified mail, on each of the parties to said contests and on their respective counsel, the date fixed for the hearing being more than thirty days and less than sixty days from the date the notice of said hearing was served on said parties and their counsel.

That the date and time and place set for said hearing was defined in said notice as: Tuesday, October 13, 1964 at the hour of 9:30 o'clock A.M., in the Basement Hearing Room of the County Courthouse at Burns, Harney County, Oregon.

That upon the date and at the time and place fixed, the hearing of contests was commenced before the State Engineer, and his authorized assistants, and was concluded Thursday, October 15, 1964. (held in Circuit Court Room - not Basement as recorded)

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

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Rock Creek is a small drainage basin in comparison to other adjacent streams in Harney Valley, such as Cow Creek, Rattlesnake Creek, Coffeepot Creek and Poison Creek. The basin should be described in two separate areas. The upper area, north of U. S. Highway 20 (Burns-Vale Highway) comprises approximately 18 square miles with the maximum elevation being 4,895 feet mean sea level. The terrain is steep, rocky, grazing land. The lower area, south of U. S. Highway 20 is on the floor of Harney Valley. The exact drainage boundaries of the lower area are difficult to distinguish due to the nearly flat nature of the valley floor.

From the testimony of many witnesses in the hearing on contests and the records in the case of Withers vs. Clark, being No. 4004-E, the flow of Rock Creek usually starts earlier than the adjacent streams. The runoff, which is derived from snow melt and/or rain, occurs as early as the month of February, but ordinarily starting during the month of March and lasting a period of from twenty to forty days.

The amount of runoff from this drainage basin, the rate of flow and the distance these waters will travel is affected by the depth of snow in the lower area, the condition of the soil - whether it is frozen or not, and the climatological condition causing the runoff, such as sunny days and cold nights or a warm rain (Chinook). If the soil in the lower area is frozen and covered with snow when the runoff occurs, the distance this water will travel is greatly increased. Similar conditions on the lower areas of Little Rock Creek, Cow Creek and Rattlesnake Creek drainages contributes considerably to the total runoff reaching those lands claimed as irrigated in the lower area.

The record is not precise on the early channel conditions, but in any event since the construction on Highway 20 in about 1937, when many culverts were installed and borrow pits were excavated on both sides of the highway, the flow of Rock Creek, above and below said

highway, tends to spread over large areas of ground before these waters can flow southward to any of the lands claimed as irrigated by any appropriators, except the Corcorans. As a result of the spreading and the lack of a real channel or ditch the waters of the upper basin in most years does not flow down to the lands claimed as irrigated in the lower basin. A large amount of waste is evident from such spreading.

From the Remarks of the Court, pages 101 and 102, in the Arguments of Counsel dated November 6, 1952:

"As I say, I want to go through these cases more carefully in this thing, but it does seem to me, just at first blush, if, under the law there is a way to protect the Withers' rights without too much loss of water, or without a wasteful means of using that water, and without too much detriment to the man who is actually trying to make a very high beneficial use of the water, I would be inclined to do that. I am not saying that will be the decision, but my moral sentiments go along that line."

"In the year 1950, my recollection was that there was some 50 cubic feet of water came down there. In the flood of 1951, it went to about 61, I believe. Now, if there would be a matter in which some 6 or 7 feet could be used, it would then give a large surplus of water to irrigate from the other lands."

"If I establish a right for the Withers', then I have got that question of a right on that Miller land, which will come up in another suit like this, then maybe follow that with a right to the Indian land."

"Then we come in here in Sections 5 and 8, where you speak of your swamp, and you have got those lands. I don't know whether there is going to be a claim there or not."

Continuing in the Remarks of the Court, entered November 6, 1952, on the Withers vs. Clark case, at page 104, Judge Biggs commented, "Instead of putting a bridge to that highway and letting the water go down, if I remember correctly, they have five culverts that went along almost a period of a mile. When that water came down, that water would have still spread through that highway over a period of almost a mile. Whether it spread before 1937, I don't know," and he further comments on pages 104-105, "If that condition did occur, and the Withers permitted that to occur and never did anything to remedy it, are they bound then, by a situation that they have permitted to exist over a period of 15 years?" Also from the Remarks of the Court at page 105, "There are thousands of acres, probably, or hundreds of acres, that could be irrigated if the Withers' land was better irrigated than it is now, with the water going to waste."

From the Opinion of the Court, dated October 3, 1953, at page 6, Judge Biggs comments, "Irrigation in Harney County from time immemorial has been generally by the flood

or overflow system, and the water has never been utilized to the highest degree of beneficial use. That condition has arisen by the fact that the waters in Harney County have never been impounded and distributed to the users under a controlled system." And on page 8 the Court states that "As the defendant (Clark) is desirous of, and is now attempting to make a beneficial use of the waters of Rock Creek, it will be necessary for the plaintiffs (Withers) to acquire, construct and maintain a more economical use of the waters of Rock Creek if they hope to maintain their water right." And on page 9, "There is practically no testimony in this case as to how a more economical use can be made of the waters of Rock Creek for the benefit of the plaintiffs. There will have to be a well-defined ditch showing a place of appropriation, carrying the amount of water necessary to irrigate that land, taking into consideration the evaporation and seepage that would occur over the distance that it is transported from the place of appropriation to the plaintiffs' lands."

The State Engineer finds himself in the same dilemma as the late Judge Biggs expressed in his opinion of October 3, 1953, namely that in spite of a very massive amount of testimony and evidence presented by the contestants and contestees there is a shocking lack of essential data, and much of the testimony is conflicting although in most instances it is from the negative side or lack of personal knowledge. This lack of personal knowledge from ranchers and cattlemen who have spent many years of their life running cattle on the ground is almost unbelievable. It can be partially explained only by a consideration of the overall characteristics of the land and its use. The claimed irrigated land in the lower area is naturally flooded, classified as meadow, but of relatively low value when related to other meadowlands in the area. The owners have done almost nothing to spread or control the water and very little direct effort to reap the benefits. A few dikes have been placed in the swales, through the meadows, flooding the low spots several feet deep in order to raise the water to the higher spots. No diversion dams, headgates, ditches or spreader dikes in the usual sense have been constructed or utilized and no regulated control by man is made over the water when it is running into these meadows of the lower area. These properties have no occupants and apparently have not been lived on since the mid 1930's. Testimony was given to imply that there were hay meadows, but giving it the most beneficial interpretation, it is not valid since hay was cut only occasionally with the primary use of such grass as has been grown being for late summer or fall pasture.

It is clear from a review of all of the pertinent facts that most, if not all of the water supply for many years past for the lower area has come from Rattlesnake Creek, Cow Creek, Nine Mile Slough and the immediate surrounding terrain. The lower meadow area

totals 1,484 acres and is reported to flood several feet deep. If an average depth of one and one-half feet is used, this would total 2,226 acre feet or two and one-half times the total recorded flow of 906 acre feet in 1964. Continued stream gaging and observations since the hearing would indicate 1964 was an average year.

The records show that in 1964 no water from Rock Creek reached the lower Basin meadowlands.

No record of the flow of Rock Creek, except for the year 1964, was available at the time of the hearing. Clarence Young (October 12-14, 1964 Tr-235) made a current meter measurement of some 35 to 37 cubic feet per second below the Clark Reservoir, the date of this measurement was not stated. The Opinion of the Court states, ". . . some estimates have been made during the last two or three years, and the seasonal runoff is from 45 to 60 second feet per season." Clarence Young (p. 119, Transcript of Proceedings January 7-9, 1957) testified that in his opinion the average length of runoff would be 30 to 40 days, mostly during March and April; with no estimate of daily stream flow.

A Stevens type A continuous water-stage recorder was installed in the channel of Rock Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 22 South, Range 33 East, W.M., approximately one-quarter mile above the high water line of Clark Reservoir by Merle Clark, Watermaster District 10, this recorder was operated from January 17 to May 7, 1964, (see tabulation). The mean daily discharge for March was 9.27 cubic feet per second, total discharge of 287.4 cubic feet per second or 470 acre-feet; for the month of April the mean daily discharge was 5.62 cubic feet per second, the total discharge being 168.4 cubic feet per second or 334 acre-feet. The maximum instantaneous discharge was 254.0 cubic feet per second at 4:00 P.M. on March 30, the highest daily discharge being 71.0 cubic feet per second on March 30, and 79.0 cubic feet per second on March 31. The total runoff for this period of record was 906 acre-feet. There was no flow in the creek from January 17 to March 3, and from May 4 to 7, during the time the recorder was operating.

Chris Wheeler, State Engineer, made an aerial survey of the Rock Creek Watershed on April 17, 1964, at which time some water was crossing the highway, mostly from the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 32, Township 22 South, Range 33 East, W.M., and traversing nearly due south from the south quarter corner for about one and one-quarter miles and then disappearing. Some water was observed in pothole swales covering a large area which appeared to be primarily immediate surface drainage. A substantial quantity of water from surface drainage and Cow Creek passed into the flooded parts of Sections 1, 2, 11 and 12, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

A field examination of Rock Creek discharge was made by Mr. Wheeler accompanied by Merle Clark, Watermaster District 10, on June 24, 1964. Sagebrush had been cleared and dirt roads graded in an east-west direction across Sections 5 and 8, Township 23 South, Range 33 East, W.M., which had filled and obliterated any channels or ditches of Rock Creek in this area. There was no evidence of any water from Rock Creek crossing the road grades on the south edge of Section 5.

The 906 acre-feet of runoff, as measured above the Clark Reservoir during 1964, apparently was lost or wasted for irrigation, except that which may have been applied to the Corcoran lands.

It appears from the records that no direct attempt was made to prevent or curtail the use of the waters of Rock Creek on some 200 acres of the land now owned by Corcoran, until the injunction was filed, being Circuit Court Case No. 4004; that the Withers, nor their predecessors or successors in interest, have made no attempt since about 1917, to clean or construct any ditches or diversions to convey or control the waters of Rock Creek from its source to their lands, except some dikes placed near or upon their lands; that the present owners of the lands south and below the lands of Corcoran, being Harry A. Withers, Jr., Earl Withers, Jack and Leona McGee, State Land Board, Meadowland Ranches Inc. and Culver H. Marshall, who submitted statements and proofs of claim in The Matter of the Determination of the Relative Rights to the Use of the Waters of Rock Creek and its Tributaries, a tributary of Nine Mile Slough, have been content for many years to accept the waters that reached their lands, from any source, for the benefit of such lands as claimed, that any water rights they may have are in the nature of a privilege which has never been exercised to detrimentally affect lands claimed as irrigated in the upper area north of U. S. Highway 20.

Due to the physical conditions and the means of utilizing the waters of Rock Creek, the lands involved herein will be divided into two parts for administrative purposes; the upper area lying north of U. S. Highway 20 and the lower area lying south of the highway. Water coming from the upper area travels very slowly, meandering here and there through sloughs or depressions, or spreading out in a wide sheet. So much water is required to fill up this intervening country that none would reach the lands claimed in the lower area, except during extremely good water years, even if all the water in the upper area were released. The record does not show any instance prior to the instigation of the Withers vs Clark suit of any user in the lower area having claimed a superiority of right to any user in the upper area. The lands in the lower area of the Rock Creek drainage which are benefited by natural flooding, practically at no expense or effort by the claimants, is a wasteful use of water. The ease with which the claimants have been able to utilize this water has been their own good fortune. It is not a right, but merely a privilege to be enjoyed only until rendered impracticable by a fuller development and use of the unappropriated waters.

By agreement of Counsel for Contestants and Contestees and By Jack McGee, representing himself and Mr. Earl Withers, it was stipulated that testimony by George V. Naderman called as a witness on behalf of the State Engineer (October 12-14, 1964 Tr 85-87 and 169); by Mr. Merle Clark, Watermaster District 10, (p. 171 and 175) called as a witness on behalf of Donald W. and Bobbie M. Corcoran; Mr. Clarence Young (p. 178) called as a witness on behalf of Jack and Leona McGee and Earl Withers; Mr. Jack Withers (p. 246-247) called as a witness on behalf of Jack and Leona McGee and Earl Withers; Mr. Earl Withers (p. 317) called as witness on behalf of Jack and Leona McGee and himself; and Mr. Donald W. Corcoran (p. 330) called as a witness on behalf of himself and Bobbie M. Corcoran, would be considered in any of the proceedings on contest, except as to Meadowland Ranches, Inc.

By agreement of Counsel for Contestants and Contestees it was stipulated that the entire records, so much of it exists in the case of Withers vs. Clark, Circuit Court Case No. 4004-E, together with all exhibits offered and received during the course of that particular suit and transcripts of testimony of some of the witnesses made in 1957, which constitutes a part of this official file, and the arguments of Counsel, which were transcribed by the Honorable Judge Biggs, be offered to the State Engineer in connection with the cross contests of Donald W. and Bobbie M. Corcoran vs. Harry A. Withers, Jr. (p. 395).

CONTEST NO. 1

Harry A. Withers, Jr.

Contestant

vs.

Donald W. and Bobbie M. Corcoran

Contestees

Contestees, Donald W. and Bobbie M. Corcoran, being represented by Pat H. Donegan, Attorney at Law, Burns, Oregon and at time of hearing on contests by Harry Spencer, Attorney at Law, Burns, Oregon filed Statements and Proofs of Claim No. 1, 2, 3 and 4 claiming a right to the use of the waters of Rock Creek and its tributaries, a tributary of Ninemile Slough for irrigation of the following tabulated lands:

Claim No. 1

1887	4.7 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
	Section 16
	27.5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$
	34.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$
	39.4 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
	Section 20

Claim No. 2

1896	39.6 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
	Section 20

Claim No. 3

1887	11.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$
	37.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
	20.9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$
	15.7 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
	7.6 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
	Section 21

Claim No. 4

1887	18.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
	25.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$
	12.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
	Section 28

all in Township 22 South, Range 33 East, W.M. (for a total of 292.9 acres) by appropriation, diversion and use by construction of a dam on channel of Rock Creek between SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, Township 22 South, Range 33 East, W.M., by construction of a ditch and extension of a ditch and by natural irrigation by subbing.

To said Statements and Proofs of Claim, Harry A. Withers, Jr., filed Statement of Contest No. 1, being represented by Mr. William D. Cramer of the firm of Cramer and Gronso, Attorneys at Law, Burns, Oregon. The pertinent part of the issues set forth therein are as follows:

- A.- That the contestant alleges that none of the described real properties were irrigated from the waters of Rock Creek prior to 1905 and many of said lands were not irrigated prior to February 24, 1909, that the State Engineer should deny to the contestee the priorities requested in their claim.
- B.- That the evidence introduced in the case of Withers vs. Clark, No. 4004-E of the Circuit Court of Oregon, Harney County on the question of priority should be considered in this hearing.

The Contestees, Donald W. and Bobbie M. Corcoran did not accept the land as shown irrigated on the State Engineer's map and submitted three maps prepared by Paul R. Revis, Registered Professional Engineer, which show their exceptions, said maps accompanied their Statements and Proofs of Claim. In Contest No. 1, the contestant, Harry A. Withers, Jr., in Paragraph III states the contestee has claimed a total of 298.1 acres, although they generally claimed water rights for only 292.9 acres. As the total acreage claimed by Contestee in Statements and Proofs of Claim have tabulated only 292.9 acres, this part of said contest is not valid.

The testimony and evidence presented either to the Court or to the State Engineer in the hearing on contests is not clear as to the priority of the contestee. Transcript of Proceedings in the Case No. 4004, dated January 7 - 9, 1957 at pages 23 and 24, we find the following statement by Pat Donegan, Counsel for B. B. Clark in the above case: "In January of 1900 the owner of the Ward - Oard - McGowan tract of land (now Corcoran) filed a notice in the office of the County Clerk in which he stated or claimed that he had irrigated the land involved

here for a period of 10 years last passed from the waters of Rock Creek. That notice, I think, from a contemporaneous construction, should be sufficient to establish the right that is sought as to that particular acreage. That only involves something less than 200 acres of land, Your Honor." Also: "The testimony is clear throughout the entire case, that that water was used every year without any question by the Withers up until the filing of the complaint in this case, and that was filed against the dam."

At page 8 of same transcript from testimony presented by Price Cochran as witness for Withers said testimony was summed as follows by Mr. William D. Cramer: "In other words that takes us up to 1900, when the land was still held by the Oards, and there was no irrigation from Rock Creek, according to the testimony of the only witness present on the land at that time." At page 11, same transcript, it is stated: "I will point out also that Dick Eichner testified that he lived just below the Rock Creek Ranch up to 1918 and that the Rock Creek Ranch up to that time irrigated no more than 80 acres from Rock Creek, which was just below the house."

Testimony given by Archie McGowan June 7-8, 1951 in the Withers vs. Clark case states that when the property in question was purchased by the witness and Judge Rector in 1910 from James Oard, there was a large rock dam in Rock Creek in the SW $\frac{1}{4}$, Section 16, Township 22 South, Range 33 East, W.M., with a ditch extending therefrom to a point near the NE corner of Section 20, thence South following the section line between Sections 20 and 21 terminating near the NE corner of Section 29 in said Township and Range.

Testimony of Jack Withers (October 12-14, 1964 Tr-272) states that: several years in the 1930's when no water available to our lands; (p. 293) a waste of water if it would not reach lands below Corcoran; (p. 325) a little water got to Withers' lands most years except 1918, 1924 and 1934.

The testimony of Donald W. Corcoran at page 340, Hearings on Contests states that a bridge and headgate washed out in 1952 being in the main channel of Rock Creek, which was used to raise the level of the water and this caused some lands in Section 20 to be sub-irrigated. This land is not being irrigated at the present time.

The testimony before the Court does not refute the dates of priority claimed by the Corcorans and there was no testimony refuting such dates in the hearing of contest. Therefore, the dates of priority claimed should be allowed.

It appears that beneficial use of the waters of Rock Creek has been made, insofar as practicable within the terms of the injunction, for irrigation of 225.6 acres of land, said rights being more specifically determined in Finding 27 and set out and described in the tabulation of water rights under Finding 42 herein.

Application No. R-24221 was filed on October 19, 1949 in the name of B. B. Clark, for the construction of a reservoir in Sections 16 and 21, Township 22 South, Range 33 East, W.M., to store 984.6 acre feet of water from Rock Creek for irrigation. Application No. 24227, filed October 24, 1949 is for the appropriation of 17.2 cubic feet per second of water from Rock Creek and reservoir for the irrigation of 1,376.1 acres.

Issuance of the permits approving these applications has been withheld as the result of the suit of Harry Withers, et al, Plaintiffs, vs. B. B. Clark, Defendant, being Case No. 4004 in the Circuit Court of Oregon, Ninth Judicial District.

Since the Court has referred the matter to the State Engineer for adjudication and final determination of the waters of Rock Creek and its tributaries, and this matter being concluded in this proceeding, it appears permits should be issued to Donald W. and Bobbie M. Corcoran, successors in interest to B. B. Clark, approving the applications.

Representatives from the State Engineer's office made a survey of the reservoir and irrigated land on September 14, 1972. The reservoir capacity was found to be 372 acre feet of water.

Therefore, Corcorans will be issued a permit approving Application R-24221 for the storage of 372 acre feet of the waters of Rock Creek and a permit approving Application 24227 for the appropriation of water from Rock Creek and reservoir for irrigation purposes. In the event it is desired to enlarge said reservoir in the future, new application with plans and specifications for the enlargement should be submitted to the State Engineer and approved as provided in ORS 537.160 and 537.300.

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<u>CONTEST NO. 2</u>	Harry A. Withers, Jr.	Contestant
	vs.	
	Meadowland Ranches, Inc.	Contestee
<u>CONTEST NO. 7</u>	Donald W. & Bobbie M. Corcoran	Contestant
	vs.	
	Meadowland Ranches, Inc.	Contestee

By agreement of Counsel for Contestants and Contestee, and by Mr. Vogler it was stipulated that Contest No. 2 and No. 7 should be combined and heard as one issue, and that any evidence and testimony adduced on behalf of one Contest should be used on behalf of the other Contest.

Contestee, Meadowland Ranches, Inc., a corporation, by Henry C. Vogler, III, its President, filed herein Statements and Proofs of Claims (No. 6 to 17, inclusive) asserting a right to the use of the waters of Rock Creek and its tributaries for irrigation of 504.5 acres within Sections 28, 29, 30 and 31, Township 23 South, Range 33 East, W.M.; Sections 32, 33, 34 and 35, Township 23 South, Range 32½ East, W.M.; and Section 5, Township 24 South, Range 32½ East, W.M., by diversion and use and natural flooding, with dates of priority of 1891, 1902, 1906 and 1907.

For a specific description of the lands for which a water right is claimed herein, and dates of priority, reference is made to Statements and Proofs of Claim Nos. 6 to 17 inclusive, wherein such lands are tabulated.

To said Statements and Proofs of Claim, Harry A. Withers, Jr. filed Statement of Contest No. 2 being represented by Mr. William D. Cramer, of the firm of Cramer and Gronso, Attorneys at Law, Burns, Oregon, and Donald W. and Bobbie M. Corcoran, filed Statement of Contest No. 7, being represented by Pat H. Donegan, Attorney at Law, Burns, Oregon, and at time of hearing on Contests by Harry Spencer, Attorney at Law, Burns, Oregon. The pertinent part of the issues set forth therein are as follows:

- 1.- (Withers) That the 133.5 acres of land within Section 33, Township 23 South, Range 32½ East, W.M. is irrigated primarily from Cow Creek and Rattlesnake Creek and receive water from Rock Creek only as a supplemental supply, and such rights from Rock Creek as the contestee may have are inferior to and subject to priority of Contestant.
- A.- (Corcoran) To deny the statements that the contestee or its predecessors, used the waters of Rock Creek for irrigation or any other beneficial purposes, on the dates claimed, or any other dates or times whatsoever, that any use made was after said waters had left its channel and ceased to constitute a water course, but had comingled with snow waters not subject to appropriation.
- B.- That if the contestee ever had a right to the use of waters of Rock Creek it had long since lost it by non-use and abandonment.
- C.- That neither the contestee, nor any of his predecessors have, between the years of 1900 and 1950 ever objected to or interfered with the manner in which the contestants and their predecessors have irrigated, and have failed to make any beneficial use to the waters of Rock Creek.
- D.- That should it be determined that the contestee has any rights that the irrigated acreage should be limited to the amount of acreage their predecessors claimed in their pleadings in the case of Withers vs. Clark being No. 4004-E.
- E.- That Contestees and their predecessors, have made no effort to acquire, construct or maintain a more economic use of the waters of Rock Creek, since the Opinion of the Court, which was made on the 3rd day of October, 1953, which ruled that there exists a "vast waste of water" in the Contestee's method of irrigation.

All the testimony adduced at the hearing in support of these claims was presented by Henry C. Vogler, III, President of Meadowland Ranches, Inc. from this testimony and the information filed in the claims, most of the various dates of priority claimed by Meadowland Ranches, Inc., are dates recorded as Desert Land Entry and Homestead Act when the lands were settled upon.

Predecessors and patentees cut and stacked hay from meadow lands which were irrigated by natural flooding or by a few levees built years ago. Most of these lands were acquired by Vogler in 1951, and since that time no hay has been cut, the lands have been used for pasture only. No ditches or other works have been constructed, but a few levees and checks were built in recent years. No evidence was presented that water was used for irrigation prior to 1950 (see p. 30 and 45). Mr. Vogler stated (p. 20) that the waters comingle below Highway 20, "Rattlesnake Creek gets into Rock Creek and Cow Creek after it leaves Highway 20, they are pretty much comingled." Also (p. 23) he stated that if the waters of Cow Creek were shut off the entire project would suffer.

It appears from the testimony presented in this Contest, that the lower basin is generally divided in terms of supply of water. The lands in Sections 32 and 33, Township 23 South, Range 32½ East, W.M., under claims 13 to 17, inclusive, receive their supply from waters of Ninemile Slough, Coffeepot and Rattlesnake Creeks, that these waters join the overflow from Rock Creek and Cow Creek in Sections 33 and 34, Township 23 South, Range 32½ East, W.M. Therefore, while the claim for the lands in said Sections 32 and 33 will be allowed, it will not operate to require any release of water from the meadow lands located to the east containing the overflow from Rock Creek and Cow Creek.

It appears that some benefit has been derived from the comingled waters that have reached the lands of Contestee, in Sections 28, 29, 30 and 31, Township 23 South, Range 33 East, W.M., and Sections 34 and 35, Township 23 South, Range 32½ East, W.M., under claims 7 to 12 inclusive by natural flooding and use of some dikes to hold and spread this water onto their lands to assist in the production of pasture on the meadow lands, but that nothing has been done to distribute the water in an efficient manner thereby wasting a vast amount of water before it can be applied to the land; that a more economical and practicable method was never accomplished; therefore, the right to the use of these waters can only be considered as a privilege.

The rights to the use of the waters of Rock Creek as claimed by Contestees in their Statements and Proofs of Claim (No. 6 to 17, inclusive), subject to Finding No. 33, is more particularly determined in Finding 29 and set out in the tabulation of water rights under Finding 42 herein.

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CONTEST NO. 3

Donald W. & Bobbie M. Corcoran

Contestants

vs.

Earl Withers, Jack and Leona McGee

Contestees

Contestees, Earl Withers, Jack and Leona McGee filed herein Statement and Proof of Claim No. 19 asserting a right to the use of the waters of Rock Creek and its tributaries, a tributary of Ninemile Slough for irrigation from the run-off in the spring for 262.7 acres of land located in Sections 27, 34 and 35, Township 23 South, Range 32½ East, W.M., through a big ditch at start, then a smaller ditch, then in a natural slough and waterway to these lands, with a date of priority of March 17, 1900.

For a specific description of the lands for which a water right is claimed herein, reference is made to Statement and Proof of Claim No. 19.

To said Statement and Proof of Claim, Donald W. and Bobbie M. Corcoran filed Statement of Contest No. 3, being represented by Pat H. Donegan, Attorney at Law, Burns, Oregon and at time of hearing on contests by Harry Spencer, Attorney at Law, Burns, Oregon. The pertinent part of the issues set forth therein are as follows:

- A.- That the contestants make the files and pleadings of the case of Withers vs. Clark, being No. 4004-E, Circuit Court of Oregon, Harney County, the evidence and exhibits introduced at the trials, and the Opinion of Honorable M. A. Biggs, the Trial Judge, a part of this statement.
- B.- To deny the statements contained in the claim of the contestees that they, or their predecessors, used the waters of Rock Creek for irrigation or other beneficial purposes on the dates claimed, or any other dates or times whatsoever, that they have never made any appropriation of these waters from any channels of said creek or any ditch or water course thereof. That any appropriation of these waters was made after aforesaid waters had left its channel and ceased to constitute a water course, but had comingled with snow waters and surface run-off not subject to appropriation.
- C.- That the Court in its opinion filed in the case of Withers vs. Clark, ruled that there exists a "vast waste of water" in the contestees system of irrigation, that they have made no effort to acquire, construct and maintain a more economic use of the waters of Rock Creek since the ruling of the Court which was made on the 3rd day of October, 1953, and any rights which they may have acquired have been lost by reason of non-use, neglect, delay and laches.
- D.- That neither the contestees, nor any of his predecessors have, between the years 1900 and 1950 ever objected to or interfered with the manner in which the contestants and their predecessors have irrigated lands described in their Statements and Proofs of Claim and any rights that may be adjudicated to contestees in this proceedings, should be declared inferior and subject to contestees' vested water rights.

From the testimony adduced at the hearing on contests and the records and transcript of testimony in the case of Harry Withers, et. al. vs. P. B. Clark, being Case No. 4004-E, in the Circuit Court of the State of Oregon, Harney County, and the Opinion of the Court in this case, it appears that:

- 1.- The contestees made no effort to construct and maintain a more economical use of the waters of Rock Creek by constructing a ditch from any channel of this creek to their lands, as stated in the Opinion of the Court, dated the 3rd day of October, 1953, although a survey of this proposed ditch was made. The contestees continued the use of an old ditch which was built sometime about 1900, cleaned about the years 1905, 1908 and 1912 with no other effort being made since that time for cleaning or enlarging this ditch nor the various channels or other water courses from the source to their lands, thus a "vast waste of water" was continued during the years 1954 to 1964, by allowing the claimed waters to overflow into sagebrush lands and used whatever water was naturally collected in the slough and drainage way leading to their lands.

- 2.- That to irrigate the lands as claimed by the contestees, under the system as used these many years past, the flow of the waters from Rock Creek, or any other source, must pass through and overflow part of the lands of the State Land Board located in the Northerly part of Section 36, Township 23 South, Range 32½ East, W.M. and part of the lands of Meadowland Ranches, Inc., located in Sections 19 and 30, same Township and Range, thus these lands which were irrigated by this uncontrolled overflow would have priorities at least equal to, or perhaps prior to, those as claimed by the contestees.
- 3.- That in the "poor water years", that is years during which there is not a heavy snow pack both on the valley lands South of Highway 20 and the hills of this drainage basin, there is not sufficient flow from the waters of Rock Creek to reach the lands of the contestees, and that the drainage waters of other stream basins are necessary to comeingle before these lands are entirely or partially irrigated.
- 4.- The Honorable M. A. Biggs, Judge of the Circuit Court, Harney County, made these comments (see Remarks of Court, p. 100, November 6, 1952): "If there is a water right there (Withers' lands) now, the Court has got to find some more economical use of the water than the way it has been used." (Also p. 104) "Instead of the highway putting in a bridge and letting that water go down, they have five culverts along a period of a mile. Whether it spread (the water of Rock Creek) before 1937, I don't know. If this condition did occur since 1937 and the Withers permitted it to occur and never did anything to remedy it, are they bound, then, by a situation that they permitted to exist over a period of 15 years?" (From Opinion of the Court, p. 6) Irrigation in Harney County from time immemorial has been generally by the flood or overflow system, and the water has never been utilized to the highest degree of beneficial use.
- 5.- As stated by Mr. Justice Bean in the Silvies River Case (1925) 115 Or. 27, at page 66: "Nature has been very generous to contestants in this case. Many acres have been irrigated for them practically without expense or effort on their part. But the system is wasteful and more economical methods must be employed to keep pace with modern developments."
- 6.- The State Engineer (page 18, Warner Lakes Findings) stated: "The ease with which contestants have been able to divert their water has been their own good fortune. It was not a right, but merely a privilege to be enjoyed only until rendered impracticable by a fuller development and use of the unappropriated waters."
- 7.- Transcript of Proceedings in Withers vs. Clark, dated January 7-9, 1957, at page 25, by Pat Donegan: "But the record is absolutely certain that as far as the 200 acres of the original Ward-Oard lands, (now Corcoran) that land has used the waters of Rock Creek every year unchallenged by the Withers and from that use it made a first priority as to that land." At page 14, same transcript, William D. Cramer, Counsel for plaintiffs (Withers) said this irrigation of perhaps 200 acres by McGowan (Corcoran) "didn't take anything away from the plaintiffs by adverse possession, because the Court has held, and it seems clear under the testimony, that there was enough water for the McGowan tract up to 200 acres also."

It appears that some beneficial use of the waters of Rock Creek, or water from any and all other sources, that have reached the lands of contestees has been made since the year about 1900 by natural flooding and construction of some dikes to hold and spread this water onto their lands to assist in the production of hay and pasture on the meadowlands but that nothing has been done since about 1912 to efficiently conduct and distribute this water onto their land, that a vast amount of water is wasted before it can be applied to the irrigable acres, that a more economical and practicable method had been found necessary by the Court, but was never accomplished, that the right to the use of these waters can only be considered as a privilege. The right to the use of the waters of Rock Creek as claimed by Contestees in their Statement and Proof of Claim No. 19, subject to Finding 33, is more particularly determined in Finding 31 and set out in the tabulation of water rights under Finding 42 herein.

CONTEST NO. 4

Donald W. and Bobbie M. Corcoran

Contestants

vs.

Harry A. Withers, Jr.

Contestee

Contestee, Harry A. Withers, Jr., through the firm of Cramer and Gronso, Attorneys at Law, Burns, Oregon, filed herein Statement and Proof of Claim No. 20, asserting a right to the use of the waters of Rock Creek and its tributaries, a tributary of Ninemile Slough for irrigation by natural flow, levees in sloughs and Withers Ditch of 238.3 acres of land located in Sections 26 and 35, Township 23 South, Range 32½ East, W.M. with a date of priority of 1894.

For a specific description of the lands for which a water right is claimed herein, reference is made to Statement and Proof of Claim No. 20, wherein such lands are tabulated.

To said Statement and Proof of Claim, Donald W. and Bobbie M. Corcoran filed Statement of Contest No. 4, being represented by Pat H. Donegan, Attorney at Law, Burns, Oregon, and at time of hearing on Contests by Harry Spencer, Attorney at Law, Burns, Oregon. The pertinent part of the issues set forth therein are as follows:

- A.- That most of the issues have heretofore been litigated in the Circuit Court of the State of Oregon, Harney County, being No. 4004-E, Withers vs. Clark, that contestants make the files and pleadings of this case, the evidence and exhibits introduced at the trials, and particularly the written opinion of Honorable M. A. Biggs, a part of this statement by reference thereto. That if the contestee has any water rights the acreage should be limited to each legal subdivision to no more than his predecessors claimed in their pleadings.
- B.- Contestants deny the statements contained in the claim of the contestee that he, or his predecessors, used the waters of Rock Creek for irrigation or other beneficial purposes on the dates therein claimed, or any other dates or times whatsoever. That they have never made any appropriation of the waters of Rock Creek from any of the channels of said creek, or any ditch or water course thereof. That any use was made after said waters had left its channels and ceased to constitute a water course.
- C.- That the system of the contestee in wetting his land, is so uncertain, uneconomical, wasteful, and unreasonably inefficient as to not constitute beneficial use. That the Court in its opinion in the case of Withers vs. Clark ruled there exists a "vast waste of water" and "a beneficial use of the water has not been made by the plaintiffs (contestee) over the many years past." That the contestee has not, notwithstanding the Opinion of the Court, made any effort to acquire, construct and maintain a more economical use to the waters of Rock Creek.
- D.- That neither the contestee has, nor any of his predecessors have, between the years 1900 and 1950 ever objected to or interfered with the manner in which the contestants, and their predecessors have irrigated their lands, nor claimed any rights superior to those claimed by the contestants and their predecessors.

From the testimony adduced at the hearings on contests and the records and transcript of testimony in the case of Harry Withers, et. al. vs. B. B. Clark, being Case No. 4004-E, in the Circuit Court of the State of Oregon, Harney County, and the Opinion of the Court in this case, it appears that:

- 1.- The contestees made no effort to construct and maintain a more economical use of the waters of Rock Creek by constructing a ditch from any channel of this creek to their lands, as stated in the Opinion of the Court, dated the 3rd day of October, 1953, although a survey of this proposed ditch was made. The contestees continued the use of an old ditch which was built sometime about 1900, cleaned about the years 1905, 1908 and 1912 with no other effort being made since that time for cleaning or enlarging this ditch nor the various channels or other water courses from the source to their lands, thus a "vast waste of water" was continued during the years 1954 to 1964, by allowing the claimed waters to overflow into sagebrush lands and used whatever water was naturally collected in the sloughs and drainageway leading to their lands.
- 2.- That to irrigate the lands as claimed by the contestees, under the system as used these many years past, the flow of the waters from Rock Creek, or any other source, must pass through the overflow part of the lands of the State Land Board located in the Northerly part of Section 36, Township 23 South, Range 32½ East, W.M. and part of the lands of Meadowland Ranches, Inc., located in Sections 19 and 30, same Township and Range, thus these lands which were irrigated by this uncontrolled overflow would have priorities at least equal to, or perhaps prior to, those as claimed by the contestees.
- 3.- That in the "poor water years", that is years during which there is not a heavy snow pack both on the valley lands South of Highway 20 and the hills of this drainage basin, there is not sufficient flow from the waters of Rock Creek to reach the lands of the contestees, and that the drainage waters of other stream basins are necessary to come in before these lands are entirely or partially irrigated.
- 4.- The Honorable M. A. Biggs, Judge of the Circuit Court, Harney County, made these comments (see Remarks of Court, Arguments of Counsel, p. 100, November 6, 1952): "If there is a water right there (Withers' lands) now, the Court has got to find some more economical use of the water than the way it has been used." (Also p. 104) "Instead of the highway putting in a bridge and letting that water go down, they had five culverts along a period of a mile. Whether it spread (the water of Rock Creek) before 1937, I don't know. If this condition did occur since 1937 and the Withers permitted it to occur and never did anything to remedy it, are they bound, then, by a situation that they permitted to exist over a period of 15 years?" (From Opinion of the Court, p. 6) Irrigation in Harney County from time immemorial has been generally by the flood or overflow system, and the water has never been utilized to the highest degree of beneficial use.
- 5.- As stated by Mr. Justice Bean in the Silvies River Case (1925) 115 Or. 27, at page 66: "Nature has been very generous to contestants in this case. Many acres have been irrigated for them, practically without expense or effort on their part. But the system is wasteful and more economical methods must be employed to keep pace with modern developments."
- 6.- The State Engineer (page 18, Warner Lakes Findings) stated: "The ease with which contestants have been able to divert their water has been their own good fortune. It was not a right, but merely a privilege, to be enjoyed only until rendered impracticable by a fuller development and use of the unappropriated waters."
- 7.- Transcript of Proceedings in Withers vs. Clark, dated January 7-9, 1957 at page 25, by Pat Donegan: "But the record is absolutely certain that as far as the 200 acres of the original Ward-Oard lands, (now Corcoran) that land has used the waters of Rock Creek every year unchallenged by the Withers and from that use it made a first priority as to that land." At page 14, same transcript, William D. Cramer, Counsel for plaintiffs (Withers) said this irrigation of perhaps 200 acres by McGowan (Corcoran) "didn't take anything away from the plaintiffs by adverse possession, because the Court has held, and it seems clear under the testimony, that there was enough water for the McGowan tract up to 200 acres also."

It appears that some beneficial use of the waters of Rock Creek, or water from any and all other sources, that have reached the lands of contestee, has been made since the year about 1894 by natural flooding and construction of some dikes to hold and spread this water onto their lands to assist in the production of hay and pasture on the meadowlands but that nothing has been done since about 1912 to efficiently conduct and distribute this water onto their lands,

that a vast amount of water is wasted before it can be applied to the irrigable acres, that a more economical and practicable method had been found necessary by the Court, but was never accomplished, that the right to the use of these waters can only be considered as a privilege. The right to the use of the waters of Rock Creek as claimed by Contestees in their Statement and Proof of Claim No. 20, subject to Finding 33, is more particularly determined in Finding 32 and set out in the tabulation of water rights under Finding 42 herein.

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CONTEST NO. 5

Donald W. and Bobbie M. Corcoran

Contestant

vs.

State of Oregon, State Land Board

Contestee

Contestee, State of Oregon, State Land Board by T. G. Barnard, Clerk, filed herein Statement and Proof of Claim No. 18 asserting a right to the use of Rock Creek and its tributaries, a tributary of Ninemile Slough for irrigation of 396.4 acres within Sections 26, 27 and 36, Township 23 South, Range 32½ East, W.M., by appropriation by diking, holding and spreading of the water to the irrigable meadowlands, with a date of priority of 1902.

For a specific description of the lands for which a water right is claimed herein, and the dates of priority, reference is made to Statement and Proof of Claim No. 18, wherein such lands are tabulated.

To said Statement and Proof of Claim, Donald W. and Bobbie M. Corcoran filed Statement of Contest No. 5 being represented by Pat H. Donegan, Attorney at Law, Burns, Oregon, and at time of hearing on Contests by Harry Spencer, Attorney at Law, Burns, Oregon. The pertinent parts of the issues set forth therein are as follows:

- A.- To deny the statements that the contestee, or its predecessors, used the waters of Rock Creek for irrigation or other beneficial purposes on the date claimed, or any other dates or times whatsoever; that any use that may have been made was after said waters had left its channels and ceased to constitute a water course, but had comingled with the snow waters of Harney Valley, Oregon, so as to constitute surface and snow waters not subject to appropriation.
- B.- That if the contestee or its predecessors ever had a right to the use of the waters of Rock Creek it had long since lost it by non-use and abandonment.
- C.- That the system of contestee in wetting its land, if it ever had one, is so uncertain, uneconomical, wasteful and inefficient as to not constitute a means of irrigation of water to a beneficial use under the Water Laws of Oregon
- D.- That contestee has never, for more than 50 years past, objected to or interfered with the manner in which the contestant and their predecessors have irrigated their lands, nor claim any right superior to those claimed by the contestant, and any rights that may be adjudicated to it in these proceedings are inferior to contestants' water rights.

Mr. T. G. Barnard, representing the State Land Board, appeared in behalf of the Contestee and declined to testify as a witness after the opening statement in which he took exception to contestants portion of Contest wherein it was stated the right had long since been

lost by non-use and abandonment. Most of the testimony adduced at the hearing in support of this claim was presented by Mr. Harry Withers, Jr. as a lessee of part of these lands. Mr. Miller of Miller Brothers, as lessee of the remainder of the lands, was not present to testify. It was stipulated by counsel for Contestant and by Mr. Bernard, representing Contestee, that any evidence and testimony by Mr. George Naderman, called as witness by the State Engineer, should also apply to this contest. (Tr-86, 170 October 12-14, 1964) Mr. Withers' testimony was in regard to the use and source of the water and use of the lands in Sections 26 and 27, Township 23 South, Range 32½ East, W.M., that he or his father had leased these lands prior to 1935, (later said 1921, p. 82) that some hay had been stacked in the "old days" but is now used primarily for fall pasture (p. 79 and 82). The water used to irrigate this part of the lands of State Land Board is from the same source as that used on the lands of Mr. Withers (p. 77-79), and is controlled by use of dikes to hold and spread the water (p. 81), these dikes being built about 10 to 15 years ago. No testimony as to use of lands from 1909 until 1921 when leased by Mr. Withers' father (p. 83). No work or labor required to put water on these lands, existing dikes used (p. 83). As the Miller Brothers were not present at this hearing, no testimony was secured relative to irrigation of lands in Section 36, Township 23 South, Range 32½ East, W.M., which lands were involved in this Contest. Testimony of Mr. Naderman (p. 120-122) most of the water that gets onto State Land Board and Withers' lands is from Cow Creek; during years of excessive run-off, waters of Rock Creek would also reach there. "In my opinion there is not sufficient flow from Rock Creek proper to do much good without the aid of Cow Creek run-off." (p. 122)

It appears from the testimony presented in this Contest, that some beneficial use of the waters of Rock Creek, or water from any and all other sources that have reached the lands of Contestee, has been made by natural flooding and construction of some dikes to hold and spread this water onto their lands to assist in the production of pasture on the meadowlands but that nothing has been done to efficiently conduct and distribute this water onto their land, that a vast amount of water is wasted before it can be applied to the irrigable acres, that a more economical and practicable method was never accomplished, that the right to the use of these waters can only be considered as a privilege. The right to the use of the waters of Rock Creek as claimed by Contestees in their Statement and Proof of Claim No. 18, subject to Finding No. 33, is more particularly determined in Finding 30 and set out in the tabulation of water rights under Finding No. 42 herein.

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CONTEST NO. 6

Donald W. and Bobbie M. Corcoran

Contestants

vs.

Culver H. Marshall

Contestee

Contestee, Culver H. Marshall, filed herein Statement and Proof of Claim No. 5 asserting a right to the use of the waters of Rock Creek and its tributaries, a tributary of Ninemile Slough, for irrigation by flood water and seasonal use by more or less temporary dams and dikes of 80 acres within Section 4, being parts of Lots 3 and 4 and the S½ NW¼, Township 24 South, Range 32½ East, W.M., with a date of priority of 1890.

For a specific description of the lands for which a water right is claimed herein, reference is made to Statement and Proof of Claim No. 5, wherein such lands are tabulated.

Contestee Marshall, although being duly notified by registered mail as to this contest and the date set by the State Engineer for the hearing thereon, was not present, at the designated time, either in person or by counsel, and did not appear in defense of his Statement and Proof of Claim, is deemed and declared to be in default, such default is here and now entered against him and said asserted claim to the use of the waters of Rock Creek and its tributaries, as set out in Statement and Proof of Claim No. 5 herein, is denied.

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Donald W. & Bobbie M. Corcoran submitted Proofs No. 1, 2, 3 and 4 claiming rights to the use of the waters of Rock Creek for irrigation purposes.

Proof No. 1 claims the right to the irrigation of 105.8 acres, being 4.7 acres in SW¼ SW¼, Section 16, 27.5 acres in NE¼ NE¼, 34.2 acres in SE¼ NE¼, and 39.4 acres in NE¼ SE¼, Section 20, Township 22 South, Range 33 East, W.M., with a date of priority of 1887.

The State Engineer's investigation classified 102.9 acres as irrigated being 1.8 acres in SW¼ SW¼, Section 16, 27.5 acres in NE¼ NE¼, 34.2 acres in SE¼ NE¼, and 39.4 acres in NE¼ SE¼, Section 20, Township 22 South, Range 33 East, W.M.

The claimants did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Paul R. Revis, Registered Professional Engineer, showing the additional 2.9 acres claimed as irrigated in SW¼ SW¼, Section 16.

The land in question was re-inspected by representatives of the State Engineer's office and no additional land was found irrigated. Therefore, the claim asserting the irrigation of more than 1.8 acres in the SW¼ SW¼, Section 16, Township 22 South, Range 33 East, W.M., is hereby denied.

Proof No. 2 claims the right to the irrigation of 39.6 acres in SE¼ SE¼, Section 20, Township 22 South, Range 33 East, W.M., with a date of priority of 1896. The State Engineer has classified 39.6 acres as irrigated in SE¼ SE¼, Section 20.

Proof No. 3 claims the right to the irrigation of 92.5 acres being 11.3 acres in NE¼ NW¼, 37.0 acres in NW¼ NW¼, 20.9 acres in SW¼ NW¼, 15.7 acres in NW¼ SW¼, and 7.6 acres in SW¼ SW¼, Section 21, Township 22 South, Range 33 East, W.M., with a date of priority of 1887.

The State Engineer's investigation classified 77.3 acres as irrigated, being 1.7 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 37.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 20.9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 15.7 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, and 2.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 22 South, Range 33 East, W.M.

The claimants did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Paul R. Revis, Registered Professional Engineer, showing the location of the additional 9.6 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, and 5.6 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 16, claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer and no additional land was found irrigated. Therefore, the claim to the irrigation of more than 1.7 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, and 2.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 22 South, Range 33 East, W.M., is hereby denied.

Proof No. 4 claims the right to the irrigation of 55.0 acres, being 18.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 25.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 12.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, Township 22 South, Range 33 East, W.M., with a date of priority of 1887.

The claimants did not accept the map prepared by the State Engineer as correct which classified the irrigation of 2.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, and 3.4 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, and submitted a map prepared by Paul R. Revis, Registered Professional Engineer, showing the location of the additional 49.2 acres claimed as irrigated. This land was re-inspected and no additional land was found irrigated. Therefore, the claim to the irrigation of more than 2.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, and 3.4 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16, Township 22 South, Range 33 East, W.M., is hereby denied.

The point of diversion from Rock Creek is located near the southeast corner of SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 16, Township 22 South, Range 33 East, W.M. The ditch flows southwesterly to the line between Sections 20, and 21 and thence south terminating near the northeast corner of Section 29. A spreader dike is located near the south line of NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20. A second dike is located on the south line of Section 20.

It appears these claimed rights should be limited to a rate of diversion of not to exceed 5.64 cubic feet per second from Rock Creek for the irrigation of 225.6 acres being 2.57 cubic feet per second for the irrigation of 102.9 acres with a date of priority of 1887 for Proof No. 1; 0.99 cubic feet per second for the irrigation of 39.6 acres with a date of priority of 1896 for Proof No. 2; 1.93 cubic feet per second for the irrigation of 77.3 acres with a date of priority of 1887 for Proof No. 3; and 0.15 cubic feet per second for irrigation of 5.8 acres with a date of priority of 1887 for Proof No. 4. Claimants rights are more particularly described and set out in the tabulation of water rights under Finding No. 42 herein.

Culver H. Marshall submitted Proof No. 5 claiming a right to the use of the waters of Rock Creek for the irrigation of 80 acres in the NW $\frac{1}{4}$ of Section 4, Township 24 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of July 1, 1889.

The State Engineer's map shows only 1.0 acre in Lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) Section 4 as being naturally flooded. The claimant did not submit a map showing the location of the land irrigated in each legal subdivision.

This claim was contested by Donald W. and Bobbie M. Corcoran. Contestee Marshall, although duly notified of the date set by the State Engineer for hearing of said contest, failed to appear in defense of his claim.

Therefore, the asserted claim to the use of the waters of Rock Creek, as set out in Proof No. 5 is denied.

Meadowland Ranches, Inc., by Henry C. Vogler III, submitted Proofs No. 6 to 17 inclusive, claiming rights to the use of the waters of Rock Creek for irrigation purposes.

Proof No. 6 claims the right to the irrigation of 102.5 acres, being 29.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 37.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 9.6 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 26.5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, Township 23 South, Range 33 East, W.M., with a date of priority of June 26, 1906.

Proof No. 7 claims the right to the irrigation of 3.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28, Township 23 South, Range 33 East, W.M., with a date of priority of December 9, 1902.

Proof No. 8 claims the right to the irrigation of 19.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 23 South, Range 33 East, W.M., with a date of priority of December 9, 1902.

Proof No. 9 claims the right to the irrigation of 21.9 acres, being 9.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 12.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, Township 23 South, Range 33 East, W.M., with a date of priority of June 29, 1907.

Proof No. 10 claims the right to the irrigation of 23.7 acres, being 6.5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 17.2 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, Township 23 South, Range 33 East, W.M., with a date of priority of May 12, 1902.

Proof No. 11 claims the right to the irrigation of 28.4 acres, being 21.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 7.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of April 11, 1907.

Proof No. 12 claims the right to the irrigation of 34.2 acres, being 1.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 26.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 6.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of August 31, 1907.

The State Engineer's map, which the claimant has accepted as correct for proofs 6 to 12 inclusive, shows 233.2 acres of land naturally flooded, being the same acreage as described in the above claims. Therefore, claimant is allowed a right for the benefit of 233.2 acres by natural flooding, being 102.5 acres in Section 28, Township 23 South, Range 33 East, W.M., with a date of priority of June 26, 1906; 3.5 acres in Section 28, Township 23 South, Range 33 East, W.M., with a date of priority of December 9, 1902; 19.0 acres in Section 29, Township 23 South, Range 33 East, W.M., with a date of priority of December 9, 1902; 21.9 acres in Section 30, Township 23 South, Range 33 East, W.M., with a date of priority of June 29, 1907; 23.7 acres in Section 31, Township 23 South, Range 33 East, W.M., with a date of priority of May 12, 1902; 28.4 acres in Section 34, Township 23 South, Range 32½ East, W.M., with a date of priority of April 11, 1907; 34.2 acres in Section 35, Township 23 South, Range 32½ East, W.M., with a date of priority of August 31, 1907.

Proof No. 13 claims the right to the irrigation of 37.7 acres, being 16.0 acres in NE¼ NE¼, 5.0 acres in NW¼ NE¼, 5.2 acres in SW¼ NE¼, 11.5 acres in SE¼ NE¼, Section 32, Township 23 South, Range 32½ East, W.M., with a date of priority of April 11, 1907.

The State Engineer's investigation classified 28.3 acres of land as naturally flooded, being 11.1 acres in NE¼ NE¼, 2.0 acres in NW¼ NE¼, 1.3 acres in SW¼ NE¼, 13.9 acres in SE¼ NE¼, Section 32, Township 23 South, Range 32½ East, W.M.

The claimant did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Mr. Clarence Young, Harney County Surveyor, showing the location of an additional 4.9 acres in NE¼ NE¼, 3.0 acres in NW¼ NE¼, 3.9 acres in SW¼ NE¼, Section 32, claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer's office and no additional land was found naturally flooded. Therefore, the claim asserting the irrigation of more than 11.1 acres in NE¼ NE¼, 2.0 acres in NW¼ NE¼, 1.3 acres in SW¼ NE¼, Section 32, Township 23 South, Range 32½ East, W.M., is hereby denied.

Proof No. 14 claims the right to the irrigation of 98.1 acres, being 32.75 acres in NE¼ SE¼, 13.2 acres in NW¼ SE¼, 13.4 acres in SW¼ SE¼, 38.75 acres in SE¼ SE¼, Section 32, Township 23 South, Range 32½ East, W.M., with a date of priority of March 5, 1906.

The State Engineer's investigation classified 73.8 acres of land as naturally flooded, being 27.0 acres in NE¼ SE¼, 7.3 acres in NW¼ SE¼, 20.0 acres in SW¼ SE¼, 19.5 acres in SE¼ SE¼, Section 32, Township 23 South, Range 32½ East, W.M.

The claimant did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Mr. Clarence Young, Harney County Surveyor, showing the location of an additional 5.75 acres in NE¼ SE¼, 5.9 acres in NW¼ SE¼, 19.25 acres in SE¼ SE¼, Section 32,

claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer and no additional land was found naturally flooded. Therefore, the claim to the irrigation of more than 27.0 acres in NE½ SE½, 7.3 acres in NW½ SE½, 19.5 acres in SE½ SE½, Section 32, Township 23 South, Range 32½ East, W.M., is hereby denied.

Proof No. 15 claims the right to the irrigation of 58.5 acres, being 20.0 acres in NW½ NW½, 24.0 acres in SW½ NW½, 14.5 acres in SE½ NW½, Section 33, Township 23 South, Range 32½ East, W.M., with a date of priority of Spring 1891.

The State Engineer's investigation classified 55.9 acres of land as naturally flooded, being 22.6 acres in NW½ NW½, 23.3 acres in SW½ NW½, 10.0 acres in SE½ NW½, Section 33, Township 23 South, Range 32½ East, W.M.

The claimant did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Mr. Clarence Young, Harney County Surveyor, showing the location of an additional 0.7 acre in SW½ NW½ and 4.5 acres in SE½ NW½, Section 33, claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer and no additional land was found naturally flooded. Therefore, the claim to the irrigation of more than 23.3 acres in SW½ NW½ and 10.0 acres in SE½ NW½, Section 33, Township 23 South, Range 32½ East, W.M., is hereby denied.

Proof No. 16 claims the right to the irrigation of 75.0 acres, being 24.2 acres in NE½ SW½, 23.0 acres in NW½ SW½, 25.3 acres in SW½ SW½, 2.5 acres in SE½ SW½, Section 33, Township 23 South, Range 32½ East, W.M., with a date of priority of Spring 1891.

The State Engineer's investigation classified 38.7 acres of land naturally flooded, being 18.6 acres in NE½ SW½, 15.6 acres in NW½ SW½, 2.0 acres in SW½ SW½, 2.5 acres in SE½ SW½, Section 33, Township 23 South, Range 32½ East, W.M.

The claimant did not accept the map prepared by the State Engineer as correct and submitted a map prepared by Mr. Clarence Young, Harney County Surveyor, showing the location of an additional 5.6 acres in NE½ SW½, 7.4 acres in NW½ SW½, 23.3 acres in SW½ SW½, Section 33, claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer and no additional land was found naturally flooded. Therefore, the claim to the irrigation of more than 18.6 acres in NE½ SW½, 15.6 acres in NW½ SW½, 2.0 acres in SW½ SW½, Section 33, Township 23 South, Range 32½ East, W.M., is hereby denied.

Proof No. 17 claims the right to the irrigation of 2.0 acres in NE½ NE½, Section 5, Township 24 South, Range 32½ East, W.M., with a date of priority of June 29, 1907.

The State Engineer's investigation did not classify any acreage as naturally flooded in NE½ NE½, Section 5, Township 24 South, Range 32½ East, W.M.

The claimant submitted a map prepared by Mr. Clarence Young, Harney County Surveyor, showing the 2.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, claimed to be irrigated. The land in question was re-inspected by representatives of the State Engineer and none was found to be naturally flooded.

Therefore, the asserted claim as set out in Proof No. 17 is denied.

The claimant is allowed rights under Proofs 13 to 16 inclusive, for the benefit of 185.1 acres by natural flooding, being 25.9 acres in Section 32, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of April 11, 1907; 67.2 acres in Section 32, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of March 5, 1906; 53.3 acres in Section 33, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of Spring 1891; 38.7 acres in Section 33, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of Spring 1891.

The rights to the use of the waters of Rock Creek as herein allowed are subject to Finding No. 33 and are more particularly described and set out in the tabulation of water rights under Finding No. 42 herein.

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The State Land Board, State of Oregon, by T. G. Barnard, Clerk, submitted Proof No. 18 claiming a right to the use of the waters of Rock Creek for the irrigation of 396.4 acres, being 12.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 22.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 36.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 21.9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26; 21.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 7.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 19.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 18.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 12.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27; 20.6 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 5.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 32.8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 31.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 11.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 25.8 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 37.7 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 16.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 6.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 16.4 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36; all in Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of 1902.

The State Engineer's map, which the claimant has accepted as correct, shows 396.4 acres of land naturally flooded, being the same acreage as described above in the claim.

These lands are naturally flooded during the runoff period and are aided by dikes constructed on the south line of SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, and the north and west lines of NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27 and by one dike constructed across a low area in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36, all in Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

Therefore, claimant is allowed a right for the benefit of 396.4 acres by natural flooding with a date of priority of 1902, subject to the provisions of Finding No. 33. Claimants right is more particularly described and set out in the tabulation of water rights under Finding No. 42 herein.

Earl Withers, Jack McGee and Leona McGee submitted Proof No. 19 claiming a right to the use of the waters of Rock Creek for the irrigation of 262.7 acres, being 32.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 15.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27; 28.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 29.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 33.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 38.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 29.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34; 10.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, and 7.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35; all in Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of March 17, 1900.

The State Engineer's map, which the claimants have accepted as correct, shows 260.5 acres of land naturally flooded, being 32.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 15.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27; 28.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 29.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 38.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 33.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 38.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 29.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34; 7.8 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 7.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35; all in Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

These lands are naturally flooded during the runoff period and are aided by dikes constructed on the north and west line of NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27, the west line of E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 34, and near the south line of N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 34, Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

The State Engineer's map does show a total of 10.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, however, the claimants own only the southwesterly half of this forty to which 7.8 acres is appurtenant. Therefore, it appears this claimed right should be limited to the benefit of 260.5 acres by natural flooding with a date of priority of March 17, 1900, subject to the provisions of Finding No. 33. Claimants right is more particularly described and set out in the tabulation of water rights under Finding No. 42 herein.

Harry A. Withers, Jr. submitted Proof No. 20 claiming a right to the use of Rock Creek for the irrigation of 238.3 acres, being 38.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 32.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.2 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 40.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, 40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 30.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 18.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, and 3.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35; all in Township 23 South, Range 32 $\frac{1}{2}$ East, W.M., with a date of priority of 1894.

The State Engineer's map classifies 234.3 acres of land as naturally flooded, being 38.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 32.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.2 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 40.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26; 40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 30.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 14.8 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, and 2.2 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35; Township 23 South, Range 32 $\frac{1}{2}$ East, W.M.

The claimant "have examined" the map prepared by the State Engineer but did not accept it as correct, nor did they submit a map prepared by a surveyor covering the parts objected to. The State Engineer's map does show 10.0 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35. However, the claimant only owns the Northeasterly half of this forty to which 2.2 acres are appurtenant.

Therefore, the claimed right should be limited the benefit of 234.3 acres by natural flooding with a date of priority of 1894, subject to the provisions of Finding No. 33. Claimant's right is more particularly described and set out in the tabulation of water rights under Finding No. 42 herein.

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DUTY OF WATER, HEAD OF WATER, FOR IRRIGATION USE

Taking into consideration the quantity of water available, the time of runoff, the character of the land and the crops grown, together with all testimony and evidence produced in this proceeding, for purposes of distribution, the upper and lower basins, separated by U. S. Highway 20, through the south half of Sections 31, 32 and 33, Township 22 South, Range 33 East, W.M., shall be treated as separate stream basins.

The duty of water for the upper basin is hereby fixed at not to exceed 3.0 acre-feet per acre during any one irrigation season.

The rate of flow or head to be diverted for the upper basin, where not specifically stated in a specific finding herein or definitely fixed in a permit or certificate of water right, hereby is fixed at not to exceed 1/40 of one cubic foot per second for each acre irrigated.

The duty of water for the lower basin is hereby fixed at not to exceed 1.5 acre feet per acre during any one irrigation season.

There shall be no specific rate of flow or head to be diverted for the lower basin where the rights for irrigation are by natural flooding. The natural flooding is not a right but merely a privilege to be enjoyed only until rendered impracticable by a fuller development and use of the unappropriated waters.

Said privilege authorizes and it is hereby authorized that the claimants of the lower basin may maintain the system of dam and dikes as existing and shown on the map of the State Engineer prepared in connection with this proceeding to flood the meadows as shown therein in the manner and method which has been carried out in the past, but specifically does not carry with it the right to compel the passage of water down the drainageways to the detriment of other users in accordance with permits and certificates issued by the State Engineer or by Decree of the Court.

It is further provided that the quantity of water which a claimant whose right has been determined herein shall be entitled to divert at any time shall be determined on the basis of the acreage actually prepared for irrigation and to which water may be beneficially applied in the production of crops.

DUTY OF WATER FOR RIGHTS EVIDENCED BY PERMITS AND CERTIFICATES

Claimants who have asserted rights to the use of the waters of Rock Creek and its tributaries, based upon a certificate of water right issued by the State Engineer, recognized herein, or upon a permit issued by the State Engineer, which right has not yet been perfected, are limited to the quantity of water and rate of diversion set out in such certificate or permit. Provided, that the quantity of water for irrigation use, unless otherwise provided in the certificate of water right or permit, is limited to 3.0 acre-feet per acre for each acre or fraction thereof, irrigated during any one irrigation season.

RIGHTS UNDER PERMITS ISSUED BY THE STATE ENGINEER

Subject to the terms and conditions and modifications herein, each and every appropriator of the waters of Rock Creek and its tributaries, who has initiated a right to the use of said waters by filing an application with the State Engineer for a permit, where the right has not been confirmed by the issuance of a certificate of water right, or where in the specific findings herein no reference is made to a certificate of water right, whether a claim was filed in this proceeding or not, shall have such rights thereunder as provided by law, and such rights shall be perfected in the manner provided by law for the completion thereof.

STOCK USE

No claim for stock use was filed in this proceeding, therefore, it is not provided for in these findings.

HEAD-GATES AND MEASURING DEVICES

The owner or owners of any ditch, pump, pipeline or other means of diversion and conveyance, whether the rights are determined in this proceeding or subsequently initiated and perfected, shall maintain to the satisfaction of the watermaster a substantial head-gate at the point of diversion, which shall be constructed so that it can be set and locked or closed and locked by the watermaster. And when in the distribution of water by the watermaster, he may

require the installation of suitable head-gates or measuring devices, such owner or owners shall construct and maintain such suitable head-gates or measuring devices as may be necessary to assist the watermaster to determine the quantity of water that is to be diverted into said ditch, pipeline or other means of conveyance, from the spring, stream or other source of supply.

If the owner or owners shall refuse or neglect to install such head-gates or measuring devices after ten days written notice, the watermaster may close and post such ditch, pump, pipeline or other means of conveyance and the same shall not be opened or any water diverted from the source of supply under the penalties prescribed by law for the illegal opening of head-gates lawfully closed, until the requirements of the watermaster as to such head-gates or measuring devices have been complied with.

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IRRIGATION SEASON

The irrigation season for Rock Creek and its tributaries hereby is fixed as commencing on March 1 and ending September 1, of each year; provided, however, that as irrigation depends upon climatic conditions and changes in the season, the season hereby fixed shall not prevent water users awarded a right herein to use the water of Rock Creek and its tributaries for the purpose of irrigation according to their relative rights of priority, and its quantities as fixed herein, at other times when such will be a beneficial use to the crop grown when the ground is not frozen and the same can be used without needless waste.

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PLACE OF MEASUREMENT

The place of measurement of the water to which any appropriator of the waters of Rock Creek and its tributaries is entitled, whether such appropriation was determined in this proceeding, or was initiated by the filing of an application with the State Engineer, hereby is fixed to be at the point of diversion from the stream or source of supply.

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RIGHTS APPURTENANT TO LAND

The rights to the use of the waters of Rock Creek and its tributaries for irrigation purposes, as herein confirmed, are appurtenant to the lands herein described in connection with such rights, and are limited and confined to the irrigation of the lands described herein, and the priorities of rights confirmed confer no right to the use of the waters of said stream and

its tributaries on any lands than those specified tracts to which such rights are herein set forth as appurtenant, and each and every person, association or corporation, or their respective successors in interest, shall be and hereby are prohibited, restrained and enjoined from diverting and using water from said stream or any of its tributaries on any other lands without lawful permit thereto first obtained from the State Engineer.

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DIVERSIONS GOVERNED BY PRIORITIES AND BENEFICIAL USE

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

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ORDER OF DETERMINATION

To summarize and supplement the specific findings herein, the rights of the claimants to the use of the waters of Rock Creek and its tributaries as determined herein, are arranged in tabulated form, with the date of relative priority of such appropriation, the quantity or

rate of flow of the water allowed such appropriator, the number of acres to be irrigated by such appropriation, the use or uses to which such water is applied, the means by which the water so appropriated has been diverted, the name of the stream or other source from which the water is appropriated and diverted, and the description of the lands upon which the water has been used and is fixed as appurtenant; the tabulated right of each appropriator being set opposite and following his name and post office address, as stated in his statement and proof of claim as follows:

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
49303 Corcoran, Donald W. & Bobbie M. Burns, Oregon (Proof No. 1) (See Findings 21 and 27)	1887	2.57	102.9	Irrigation	Craft or Ward Ditch	Rock Creek	1.8 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16 27.5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 34.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 39.4 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20 T. 22 S., R. 33 E., W.M.
49304 (Proof No. 2) (See Findings 21 and 27)	1896	0.99	39.6	Irrigation	Ward Ditch	Rock Creek	39.6 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20 T. 22 S., R. 33 E., W.M.
49305 (Proof No. 3) (See Findings 21 and 27)	1887	1.93	77.3	Irrigation	Craft or Ward Ditch	Rock Creek	1.7 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 37.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 20.9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 15.7 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 2.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21 T. 22 S., R. 33 E., W.M.
49306 (Proof No. 4) (See Findings 21 and 27)	1887	0.15	5.8	Irrigation	Ditch	Rock Creek	2.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 3.4 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28 T. 22 S., R. 33 E., W.M.
Marshall, Culver H. Drewsey, Oregon (Proof No. 5)	(Claims denied, see Findings 26 and 28)						
49307 Meadowland Ranches, Inc. Box 1033 Burns, Oregon by: Henry C. Vogler III, President (Proof No. 6) (See Findings 22, 29 and 33)	June 26, 1906		102.5	Natural Flooding		Rock Creek	29.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 37.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 9.6 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 26.5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28 T. 23 S., R. 33 E., W.M.
49308 (Proof No. 7) (See Findings 22, 29 and 33)	Dec. 9, 1902		3.5	Natural Flooding		Rock Creek	3.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28 T. 23 S., R. 33 E., W.M.
49309 (Proof No. 8) (See Findings 22, 29 and 33)	Dec. 9, 1902		19.0	Natural Flooding		Rock Creek	19.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29 T. 23 S., R. 33 E., W.M.
49310 (Proof No. 9) (See Findings 22, 29 and 33)	June 29, 1907		21.9	Natural Flooding		Rock Creek	9.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30 T. 23 S., R. 33 E., W.M.
49311 (Proof No. 10) (See Findings 22, 29 and 33)	May 12, 1902		23.7	Natural Flooding		Rock Creek	6.5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 17.2 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 31 T. 23 S., R. 33 E., W.M.
49312 (Proof No. 11) (See Findings 22, 29 and 33)	April 11, 1907		28.4	Natural Flooding		Rock Creek	21.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.

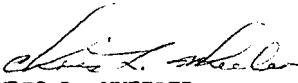
Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
49313 (Proof No. 12) (See Findings 22, 29 and 33)	Aug. 31, 1907		34.2	Natural Flooding		Rock Creek	1.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 26.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 6.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
49314 (Proof No. 13) (See Findings 22, 29 and 33)	April 11, 1907		25.9	Natural Flooding		Rock Creek	11.1 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 2.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 1.3 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 11.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 32 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
49315 (Proof No. 14) (See Findings 22, 29 and 33)	Mar. 5, 1906		67.2	Natural Flooding		Rock Creek	27.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 7.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 13.4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 19.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
49316 (Proof No. 15) (See Findings 22, 29 and 33)	Spring 1891		53.3	Natural Flooding		Rock Creek	20.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 23.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 10.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
49317 51446 (Proof No. 16) (See Findings 22, 29 and 33)	Spring 1891		38.7	Natural Flooding		Rock Creek	18.6 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 15.6 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 2.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 2.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
(Proof No. 17)	(Claim denied, see Findings 22 and 29)						
49318 State Land Board State of Oregon Salem, Oregon (Proof No. 18) (See Findings 25, 30 and 33)	1902		396.4	Natural Flooding		Rock Creek	12.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 22.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 36.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 21.9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26 21.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 7.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 19.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 18.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27 20.6 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 5.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 32.8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 31.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 11.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 25.8 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 37.7 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 16.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 6.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 16.4 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 20.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.

CANCELED Spec. Or. V. 36, p. 306
CANCELED Spec. Or. V. 36, p. 306

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
49319 Withers, Earl McGee, Jack & Leona Burns, Oregon (Proof No. 19) (See Findings 23, 31 and 33)	Mar. 17, 1900		260.5	Natural Flooding		Rock Creek	32.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27 28.8 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 29.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 38.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 33.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 38.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 29.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34 7.8 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.3 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35 T. 23 S., R. 32 $\frac{1}{2}$ E., W.M.
49320 Withers, Harry A., Jr. c/o Cramer & Gronso Burns, Oregon (Proof No. 20) (See Findings 24, 32 and 33)	1894		234.3	Natural Flooding		Rock Creek	38.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.2 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26 40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 30.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 14.8 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 2.2 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35 T. 23 S., R. 32 $\frac{1}{2}$ 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 Rock Creek and its tributaries, be and the same are hereby determined and settled as set forth in the foregoing Findings and Order of Determination.

Dated at Salem, Oregon, this 18th day of September, 1973.


CHRIS L. WHEELER
State Engineer