

BEFORE THE STATE WATER BOARD OF THE STATE OF OREGON

WATER DIVISION NO. 2. HOOD RIVER COUNTY.

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS OF THE VARIOUS)
CLAIMANTS TO THE WATERS OF NEAL CREEK)
AND ITS TRIBUTARIES, TRIBUTARY TO HOOD)
RIVER, IN HOOD RIVER COUNTY, OREGON.)
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Now on this 17th day of July, 1914, the above entitled matter coming on before the State Water Board of the State of Oregon, at a meeting of said board, commenced and held on said day, and it appearing to the said board, that all the evidence taken at the original hearing and subsequent thereto, has been duly filed in the office of the said board, and the said board having carefully considered all of the said evidence, proofs and testimony taken, and that the information and data gathered by the State Engineer, and being now fully advised in the premises, makes and orders to be entered of record in its office, the following

FINDINGS OF FACT

I.

That on the 2nd day of March, 1912, and the 14th day of August, 1912, there were filed in the office of the State Water Board of the State of Oregon, petitions signed by J. P. Thomsen and Ralph Root, respectively, both water users upon Neal Creek, a tributary of Hood River, requesting a determination of the relative rights of the various claimants to the waters of said stream, and that said petitioner J. P. Thomsen is a user of the waters of Neal Creek and its tributaries, as appears from the order of determination herein, and that thereupon the said State Water Board after full investigation and due consideration of said petitions, found the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants to the waters of said stream and its tributaries, and made and entered its order in the records of said office, fixing a time and place for the beginning and making of such an examination of said stream by the State Engineer, as would enable the said board to determine the rights of the said claimants, and also the time and place for the beginning and taking of testimony by the Superintendent of Water Division No. 2; that said time when said State Engineer, or his assistants did begin the examination of said stream was set by said order of said board for the 10th day of January, 1914, and the time when the Superintendent of Water Division No. 2 did attend and take the testimony of the various claimants, so set by said order of said board, as follows, to-wit: On Monday, the 12th day of January, 1914, at the hour of ten o'clock A.M., at the Court House in the town of Hood River, Hood River County, Oregon, and for a period of thirty days thereafter, at the office of the Superintendent of Water Division No. 2, in the City of La Grande, Union County, Oregon.

II.

That a notice was prepared by said board setting forth the date when the State Engineer or his assistants, would begin the investigation of the flow

of said stream, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of Water Division No. 2 would begin the taking of testimony as to the rights of the various claimants to the waters thereof, and said notice was published in the Hood River Glacier, a newspaper published at Hood River, Hood River County, Oregon, and of general circulation in the County of Hood River, Oregon, for a period of two consecutive weeks beginning on the 27th day of November, 1913, and ending on the 4th day of December, 1913, the date of the last publication of said notice being more than thirty days prior to the date fixed for the making of said examination and measurement of said stream and ditches by the State Engineer, and for the beginning of the taking of testimony by the Division Superintendent.

III.

That prior to the 12th day of December, 1913, the Superintendent of Water Division No. 2 did send by registered mail, to each person, firm and corporation claiming the right to use the waters of said stream, or any tributary thereof, and to each person, firm or corporation owning or being in possession of land, bordering on or having access to said stream or its tributaries, in so far as said claimants, owners, firms or corporations in possession could be reasonably ascertained, a similar notice to such published notice setting forth the date when the State Engineer would commence the examination of said stream and its tributaries, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of said Water Division would commence the taking of testimony as to the relative rights of the various claimants to the waters of said stream and its tributaries, and said Superintendent did enclose with each of said notices, a blank form upon which the said claimant or person in possession should present in writing all the particulars necessary for the determination of his rights to the waters of said stream, or a tributary thereof, under oath.

IV.

That due proof of publication of said notice and of the sending of said notice by registered mail has been made and is duly filed and is now a part of the record hereof.

V.

That upon the date named in said notice herein published and sent, and at the place specified therein, an assistant of the State Engineer did commence the examination of said stream and its tributaries, and the ditches diverting water therefrom, and the Superintendent of Water Division No. 2 did commence the taking of testimony as to the relative rights of said claimants, and did continue taking the same until completed; that the following named persons, firms and corporations were duly notified by registered mail, and by publication of said notice, as hereinbefore set forth, but that each of them, although so notified, have failed, neglected and refused to appear herein and submit proofs of their rights to said stream, if any they have or claim, and that each of said parties are in default, and that said default should be, and is hereby entered, to-wit: Marie Allen; R. Krahn; C. McCoy and Ralph Root.

VI.

That upon the completion of the taking of testimony by the Superintendent of Water Division No. 2, said Superintendent did, on the 19th day of March, 1914, give notice by registered mail to each of the said claimants to the waters of said stream and its tributaries, that at the time and place named in said notice, to-wit: at the Court House, in the City of Hood River, Hood River County, Oregon, from Monday the 30th day of March, 1914, until Friday, the 3rd day of April, 1914, inclusive, and at the office of the Superintendent of Water Division No. 2, in the City of La Grande, Union County, Oregon, from Saturday the 4th day of April, 1914, until Friday the 9th day of April, 1914, inclusive, all of said evidence would be opened to the inspection of the various claimants or owners, and that said division superintendent did, in accordance with said notices attend at said times and places, and keep said evidence open to inspection for a period of ten full days, (exclusive of Sundays) and said notice did also state forthwith, the county in which the determination of the said Water Board would be held by the Circuit Court, to-

wit: the Circuit Court of the State of Oregon, for Hood River County, due proof of the holding of said inspection and of the sending of said notices, by registered mail, being filed herewith.

VII.

That at the time specified in said original notice, a duly qualified assistant of the State Engineer of the State of Oregon, did proceed to make an examination of said stream and its tributaries, and all of the ditches diverting water therefrom, and all of the lands irrigated, and susceptible to irrigation, from said ditches and canals, together with the measurements thereof, which observations and the measurements were made a matter of record in the office of the State Engineer, and said engineer did prepare a plat and a map, on a scale of measurement of two inches to the mile, showing with substantial accuracy the course of said stream and its tributaries, and the location of the various ditches diverting water therefrom, and the legal subdivisions of land which had been irrigated, or were susceptible to irrigation from said ditches and canals, already constructed, blue prints and copies of said maps, and information duly certified to by said engineer, being now on file herein, and a part of the records hereof.

VIII.

That no contests were filed with the Superintendent of Water Division No. 2, within five days after the close of inspection of the statements and proofs of claims of the various claimants to the waters of said stream.

IX.

That Neal Creek and its tributaries form a perennial stream with well defined bed and banks, wholly within Hood River County, Oregon, having its source in the foothills north of Mt. Hood, and flowing in a northerly direction, and empties its waters into Hood River.

X.

That the soil of the watershed of Neal Creek varies to some extent, but is principally a clay loam, underlaid in some localities with gravel; that the principal crops raised are fruit, hay, vegetables, berries, and garden truck; that irrigation is necessary in order to produce said crops, and that three acre feet of water per acre, per season, is a sufficient amount of water for such irrigation.

XI.

That all claimants herein to water for irrigation shall be entitled to use such water for stock and domestic purposes; that the rights of use for stock and domestic purposes herein confirmed, entitles the owner of such right to divert and use such a quantity of water as is reasonably necessary for his household, and for stock use. For stock use, the amount of water diverted and used shall not exceed the rate of one-fortieth ($1/40$) of a cubic foot per second, for each one thousand head of stock, and the quantity diverted for irrigation purposes during the irrigation season shall include, when it is so diverted, such an amount as may be reasonably necessary for said stock and domestic purposes, and the right to divert and use the waters of said stream and its tributaries for stock and domestic purposes, continues throughout the year.

XII.

That in order to irrigate the lands economically it is necessary to have a sufficient head of water; that three acre feet is sufficient water to irrigate each acre of land; that the use of water for irrigation purposes shall be confined to the irrigation season beginning with May 1st and ending with October 1st of each year;

that the water master of the district in which said stream is situated shall in no case limit the diversion of any water user under this decree to a flow for irrigation purposes, of less than one-eightieth ($1/80$) of a second foot for each acre of land irrigated, during the irrigation season. That said water master shall arrange such system or systems of rotation as may be best applicable without infringement on other prior rights, to-wit: (1) By giving a greater flow of water than said one-eightieth of a second foot to an appropriator for a proportionately less time than said four months, provided that the amount of water taken by any appropriator during any irrigation season does not exceed three acre feet, and provided further, that no appropriator take more than one acre foot in any one period of thirty days, or, (2) Where two or more appropriators agree as between themselves as to the manner and system of rotation in the use of water by distributing the water in accordance with such agreement, or, (3), In the absence of any such agreement, by arranging such appropriators in groups or systems of rotation, first giving the appropriator who is first in priority a quantity of water equal to the combined appropriations of all the appropriators in said group or system, for a length of time bearing the same ratio to the whole time required to make the complete rotation through the whole group of appropriators, as the appropriation of said first appropriator bears to the combined appropriations of said appropriators, and shall next serve the next appropriator next in priority, with a like quantity of water for his proportionate time, and so on, until all appropriators in said group or system are served, then the distribution of water shall be repeated in the same manner throughout the irrigation season. That in case two or more appropriators in a group or system have the same priority, then said water master shall apportion said waters as between such appropriators, in such a manner as to best distribute said water.

XIII.

In all cases in this decree wherein the right to use water from more than one source for the same land is confirmed, the amount of water herein determined for said right may be used from either or both of said sources, so long as the amount of water taken does not exceed the volume named in this decree, and each source may be used to supplement the other in furnishing said amount of water.

XIV.

That the rights of appropriation hereby confirmed are appurtenant to the lands herein described for irrigation purposes, and the rights of use of the waters of said stream and its tributaries, by virtue of such rights of appropriation are limited and confined to the irrigation of the lands herein described to the extent of said lands as herein set forth, and the priorities herein confirmed confer no right of use of the waters of said stream and its tributaries on the lands other than those specified tracts to which such rights of appropriation are herein set forth as appurtenant, and each and every person shall be hereby, and is prohibited, restrained, and enjoined from diverting and using water from said stream on such other lands without lawful permit from the State Engineer.

XV.

That if any person, firm or corporation uses or desires to use the natural channel of said Neal Creek or any of its tributaries to convey the water of any other ditch or stream, said person, firm, or corporation shall install such measuring devices for the measuring of water as the Superintendent of the Division, or the Water Master of the district in which such water is used, may order, and upon the proper installation of such measuring devices, and upon the receipt of notice in writing, giving the date when it is proposed to discharge such water from said ditch or stream into Neal Creek, or any of its tributaries, the volume of water so

discharged and the name of all persons and ditches entitled to its use. The water master of the district in which such water is situated or used, shall measure said water into Neal Creek, or into such tributary as the same may be emptied, and so adjust the headgates of all ditches upon the stream or watercourses not entitled to the use of such water from said ditch or stream, as will enable those having the right to secure the volume of such water to which they are entitled, and said water master shall measure such volume of water to the persons or ditches so entitled to the same, less such an amount as said water master may determine has been lost by seepage and evaporation. This Finding shall not give any person, firm, or corporation, so desiring to use said natural channel of Neal Creek, any further right or title to any of the waters of Neal Creek and its tributaries, other than is in these Findings set forth, nor shall this determination affect any rights as may appear in any future determination of the relative rights of any ditch or stream from which such water is or may be diverted.

XVI.

That William Ashley Sunday claims the right to the use of water from Neal Creek for the irrigation of thirty-eight (38) acres of land situated in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 25, Tp. 2 N., R. 10 E.; that F. C. Sexton claims the right to the use of the water of Neal Creek for the irrigation of 25 acres of land situated in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 25, Tp. 2 N. R. 10 E.; that Abbott L. Clarke claims the right to the use of the waters of Neal Creek for the irrigation of ten acres of land situated in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 25, Tp. 2 N., R. 10 E.; that G. C. Farmer claims the right to the use of the waters of Neal Creek for the irrigation of ten acres of land situated in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 25, Tp. 2 N., R. 10 E.; that said above named parties entered into a stipulation as to the manner and order in which the water from Neal Creek for said lands shall be divided; that said stipulation was duly filed with the Superintendent of Water Division No. 2, and that in accordance with said stipulation it is hereby ORDERED, ADJUDGED and DECREED, that the water hereby awarded to the above named claimants shall be divided in the following order, as follows, to-wit: William Ashley Sunday is prior in time and first in right to the use of water in such an amount per acre, as is herein provided, for the irrigation of 14 acres of land as above described; that F. C. Sexton is next prior in time and next in right entitled to the use of water in such an amount, as is herein provided, per acre, for the irrigation of 25 acres of land as above described; that Abbott L. Clarke, G. C. Farmer, and William Ashley Sunday for the remaining 24 acres of his 38 acres above described, are each entitled without priority one over the other, to the use of the waters of Neal Creek in such an amount per acre, as is herein provided for the irrigation of the above described land respectively, --(Abbott L. Clarke, five acres; G. C. Farmer, ten acres; William Ashley Sunday, 24 acres. This stipulation shall not be enforced so as to infringe upon the water rights of any parties not joining therein.

*Corrected by court
to read "Abbott L.
Clarke, ten acres"
(see page 461)*

XVII.

That the name and address of each appropriator of water from said Neal Creek, arranged alphabetically, together with the date of relative priority of each of such appropriations, the maximum flow for irrigation purposes in cubic feet per second of time in case no rotation be arranged, and provided in each case that the total quantity of water for irrigation is limited to three acre feet per acre during each year; the number of acres to which such appropriation is applied, and to which such water is appurtenant; the use or uses for which such water was appropriated and is now applied; the name of the ditch or ditches through which such appropriation is diverted; the name of the stream or streams from which such appropriation is diverted; and a description of the legal sub-divisions in which such irrigated land is situated and to which land such water right is appurtenant, arranged in tabulated form and set opposite the name and post office address of each such appropriator, are as follows, to-wit:

Neal Creek

NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	Stream	DESCRIPTION OF LAND OR PLACE OF USE
51449 CANCELED Spec. Or. V. 36, p. 610 * 0.8 ac. NW 1/4 NE 1/4 Atwater, Phillip D. Route #1, Box 142, Hood River, Ore.	1903	.07 3.30	5 3 HP.	Irrig., Power, Dom. & stock	Private	Spring Trib. to Neal Creek	* 5 acres in NW 1/4 NE 1/4; Sec. 24, Tp. 2 N. R. 10 E., W. M.
5 3833 Clarke, Abbott L. Hood River, Ore. See Paragraph XVI herein.	March, 1901	.13	10	Irrig., Dom. & stock		Neal Creek	10 acres in NE 1/4 SE 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M.
Cutler, Frank W., and Asa B., Hood River, Ore.	Jan. 31, 1914. Permit No. 1893.	.13	10	Irrig., Dom. & stock	Cutler	Lenz Creek	10 acres in NE 1/4 SE 1/4; Sec. 26, Tp. 2 N. R. 10 E., W. M.
5 3835 Farmer, G. C., 1815 Morgan Place, Hollywood, Calif. See Paragraph XVI, herein.	March, 1901.	.13	10	Irrig.		Neal Creek	10 acres in NE 1/4 SE 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M.
5 3836 Con. No. 51448 Fike, Wilson Hood River, Ore.	1862	.07 11.	5 20 HP	Irrig., Power, Dom. & stock - (Power claim abandoned) See Power Ch. 7th. 788)	Harbison - Mill * 2.2 acres CANCELED	Neal	* 5 acres in NE 1/4 NW 1/4; Sec. 24, Tp. 2 N. R. 10 E., W. M.
5 3837 Friday, F. P. Hood River, Oreg.	1905	1.8	2 1/2 HP	Power		Lenz Creek	Location in NW 1/4 NW 1/4 Sec. 26, Tp. 2 N., R. 10 E., W. M.
5 3838 Gates, L. J., Hood River, Ore.	Oct. 18, 1871	.03	2 1/2	Irrig., Dom. & Stock	Corum	Neal Creek	2 1/2 acres in NW 1/4 SE 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M.
5 3839 Masiker, Carson C. R.F.D. #1, Box 84, Hood River, Ore.	1895	.14	11	Irrig., Dom. & stock	Masiker	Neal Creek	11 acres in SW 1/4 NE 1/4; Sec. 36, Tp. 2 N. R. 10 E., W. M.
	1910	.05	Hyd. Ram.	Dom.		Neal Creek	SW 1/4 NE 1/4, Sec. 36, Tp. 2 N. R. 10 E.
	1908	.02	1 1/2	Irrig., Dom. & stock	Garden	Neal Creek	1 1/2 acres in SW 1/4 NE 1/4; Sec. 36, Tp. 2 N. R. 10 E., W. M.
5 3840 Masiker, Marie C. R.F.D. No. 1, Hood River, Ore.	1906	.03	2 1/2	Irrig., Dom. & stock	Marie Masiker	Neal Creek	2 1/2 acres in SW 1/4 SE 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M.
5 3841 McCully, J. D. Hood River, Ore.	1908	.04	3	Irrig.		Lenz Creek	3 acres in SE 1/4 NW 1/4; Sec. 24, Tp. 2 N. R. 10 E., W. M.
Superseded by 54016 Cert. No. 46634 Trs. Sp. Or. V. 41376 Mohr, Susan, for Estate of John A. Mohr, Hood River, Ore.	1883	.29	23	Irrig. Dom. & Stock	Mohr	Neal Creek	23 acres in NW 1/4 SE 1/4; Sec. 24, Tp. 2 N. R. 10 E., W. M.
	1883			Supplemental supply for above lands	Spring	Spring No. 2.	
	1901			Supplemental supply for above lands	Spring	Spring No. 1.	
Menefee, Frank Indianapolis, Ind.	1890	.29	22	Irrig., Dom. & stock		Trib.	22 acres in SW 1/4 NE 1/4; Sec. 24, Tp. 2 N. R. 10 E., W. M.
Superseded by 67241 & 67242 Shelley, Troy, Hood River, Ore. (See court decree, pg. 469) T-6225 D 20D	Aug. 1896	.31 .19	25 15	Irrig., Dom. & stock		Spring branch Spring Branch	10 acres in NE 1/4 NW 1/4; Sec. 36; 15 acres in SE 1/4 SW 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M. 5 acres in NE 1/4 NW 1/4, Sec. 36; 10 acres in SE 1/4 SW 1/4; Sec. 25, Tp. 2 N. R. 10 E., W. M.

State Water Board

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NEAL CREEK

NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	Stream.	DESCRIPTION OF LAND OR PLACE OF USE
<i>Superseded by</i> Cert. No. <u>32229 & 46669</u> Trs. Sp. Or. V. 15 p. 436	Oct. 1871	.25	19.9	Irrig., Dom. & Stock	Sexton-Thomsen	Neal Creek	12.8 ac. in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 1.7 ac. in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 2.6 ac. in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 2.8 ac. in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 25, Tp. 2 N. R. 10 E., W. M.
Sexton, F. C. Hood River, Ore.	1871	.02	1.2	Irrig., Dom. & stock	Corum	Two Springs	1.2 ac. in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 25, Tp. 2 N. R. 10 E., W. M.
	June 3, 1912. Permit No. 1283	.36	29.	Irrig., Dom. & Stock	Sexton	Neal Creek	4 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 25 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 25, Tp. 2 N. R. 10 E., W. M.
53846 Sunday, William A. Winona Lake, Ind. See Paragraph XVI herein.	March 1901	.45	38.	Irrig., Dom. & Stock	Sunday	Neal Creek	9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; 29 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 25, 2 N. R. 10 E., W. M.
<i>Superseded by</i> Cert. No. <u>49253</u> Trs. Sp. Or. V. 14 p. 336 T-5886 Add'l MOD 27 th & NESE	1871	.81	65	Irrig., Power , stock, Dom.	Sexton & Thomsen	Neal Creek	2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 36 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 27 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 25, Tp. 2 N. R. 10 E., W. M.
			Hyd. Ram				

Power Canceled
Sp. Or. Vol. 23 pp. 300

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NEAL CREEK

And the State Water Board being fully advised in the premises, it is hereby

CONSIDERED and ORDERED that the relative rights to the waters of Neal Creek, a tributary of Hood River, be and the same are hereby adjudicated and determined in accordance with and as set out in the foregoing findings.

John H. Lewis,
State Engineer and President of the State Water Board.

James T. Chinmook
Superintendent of Water Division No. 1.

Geo. G. Cochran
Superintendent of Water Division No. 2.

ATTEST:

M. F. Mers
Secretary.