

BEFORE THE STATE WATER BOARD OF OREGON

WATER DIVISION NO. 1.

KLAMATH COUNTY.

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS TO THE WATERS)
OF ANNA CREEK, A TRIBUTARY OF WOOD)
RIVER, IN KLAMATH COUNTY, OREGON.)

Now on this 14th day of April, 1915, at a regular meeting of the State Water Board, commenced and held on said day, the above entitled matter regularly coming on for hearing, and for the making and entry of findings of fact and an order of determination therein by said Board, on motion of James T. Chincock, Superintendent of Water Division No. 1 of the State of Oregon, and the Board having carefully and fully considered the testimony and the evidence herein, and all of the statements and proofs of claim of the various claimants on file herein, and being now fully advised in the premises, now makes the following as its

F I N D I N G S O F F A C T :

(1)

That Anna Creek, otherwise known and referred to as Annie Creek, is a natural non-navigable water course, wholly within the County of Klamath and State of Oregon, and tributary to Wood River, in said County and State.

(2)

That during the irrigation season, as hereinafter defined, the rainfall within the area of lands irrigated from said stream, and in the vicinity thereof, is insufficient for the proper production of profitable agricultural crops on the lands irrigated therefrom, and said lands are arid in character, and become, during the crop growing period of each year, dry and unproductive without artificial irrigation, and in order to render said lands productive and for the profitable growing of crops thereon, it is, and always has been, since the first use of water thereon from said stream, as hereinafter set forth, necessary to divert and use the waters of said stream for the irrigation of the said lands, susceptible of irrigation therefrom, and with such irrigation said lands yield annually valuable crops of hay, natural grasses, grain, and vegetables, and produce pasturage for live stock.

(3)

That Frederick H. Page, Estelle Francis Page, Frederick S. Stratton, Grace G. Stratton, W. T. Burns, F. L. Burns, Richard Melhase, Mary Melhase, D. W. Ryan, and Belle Ryan, were, at the time of the commencement of these proceedings, the owners of lands irrigated by the diversion of the waters of said stream, and that said Frederick H. Page, Frederick S. Stratton, F. L. Burns, Richard Melhase, and D. W. Ryan, were at said time, and ever since have been, and now are water users upon said stream, and the owners of lands irrigated by the waters thereof; and that on the 2nd day of June, 1912, there was filed in the office of the Board of Control of the State of Oregon, and now the State Water Board of the State of Oregon, a petition, signed by the above named persons, and said water users,

requesting a determination of the relative rights of the various claimants to the waters of said stream and its tributaries by the said State Water Board.

(4)

That thereafter and upon investigation, the said Board found the facts and conditions such as to justify the making of a determination of the rights of said various claimants, and thereafter, an order was entered by said Board in its records, fixing a time for the taking of testimony and for the making of such examination as would enable it to determine the rights of said various claimants.

(5)

That the said Board prepared a notice, setting forth the date when the State Engineer of Oregon would begin an investigation of the flow of said stream and of the ditches diverting water therefrom, and the place and time certain when the Superintendent of Water Division No. 1, in which said stream is situate, would begin the taking of testimony as to the rights of the parties claiming water therefrom, and thereafter said notice was duly published according to law in two issues of a newspaper of general circulation in said Klamath County, Oregon, and published therein, said dates of publication being May 4th, 1914, and May 11th, 1914, the date of the last publication of said notice being more than thirty days prior to the beginning of the taking of testimony by said Superintendent, as fixed in said notice: to-wit: the 16th day of June, 1914; or the time fixed in said notice for the examination of said stream by the said State Engineer, or his assistant, to-wit: the 15th day of June, 1914; proof of the publication of said notice being a part of the record herein.

(6)

That on the 4th day of May, 1914, and more than 30 days prior to the date fixed in said notice for the beginning of the taking of testimony by said Superintendent, as aforesaid, or the measurement and examination of said stream and the ditches diverting water therefrom, by said State Engineer, the division Superintendent of Water Division No. 1 of Oregon did send notices by registered mail to each person, firm or corporation, claiming the right to the use of any of the water of said stream, and to each person, firm or corporation owning or being in possession of lands bordering on and having access to said stream and its tributaries, so far as such claimants and owners and persons in possession could be reasonably ascertained, a similar notice to such published notice, setting forth the date when said State Engineer or his assistant would begin the making of an examination of said stream and the ditches diverting water therefrom, and also the date when the Superintendent would take testimony as to the rights to the waters of said stream, due proof of the mailing of said notices being on file and a part of the record herein; that said superintendent did enclose, in addition to said notice, and therewith, a blank form, on which said claimant so notified might present in writing all the particulars necessary for the determination of his right to the waters of said stream, and which would show a compliance with the law in acquiring such right; a copy of said blank form being a part of the proof of service of such notice, and in the record herein.

(7)

That upon the date named in said notice the assistant to the State Engineer of Oregon did proceed to make an examination of said stream and the works diverting water therefrom, including the measurement of said stream and the carrying capacity of the various ditches and canals, and examination of the irrigated lands; and an approximate measurement of the lands irrigated or susceptible of irrigation from the various ditches and canals; which said observations and measurements have been reduced to writing and made a matter of record in the office of said State Engineer, together with maps or plats showing with substantial accuracy the course of said stream, location of each ditch or canal diverting water therefrom, and the legal subdivision of lands which have been irrigated or which are susceptible of irrigation

from ditches and canals already constructed; copies of said observations, measurements, maps and data duly certified to being on file and a part of the record herein.

(8)

That upon the date named in the aforesaid notice, the Superintendent of Water Division No. 1 of Oregon (as more fully appears from his certificate on file and now a part of the record herein) began the taking of testimony in the above entitled matter and continued the same to completion; and the following named persons offered and submitted proof of their rights to the use of the waters of the above named stream to-wit:

L. A. Brannon; F. L. Burns; E. R. Cardwell; Robert Connor; L. W. Copeland; E. Denton; F. M. Denton; Geo. M. Denton; Henry J. Gorden; L. A. Harbaugh; Mrs. Louis Hessig; Geo. C. Hill; George A. Lisk; Henry B. Loosley; Richard Melhase; J. W. McDonough; R. A. Moon; S. G. Moshier; W. E. Nicholson; L. E. Sturgis; Frederick H. Page; James Pelton; Horace Pelton; Meta M. Pelton; D. W. Ryan; W. C. Sanderson; Harvey L. Scott; L. C. Sisemore; Frederick S. Stratton; and Abner Weed.

(9)

That each of the above named claimants set forth the particulars necessary for a determination of their rights to the waters of said stream, in writing, together with such other facts as tended to show a compliance with the law in acquiring such rights; and each of said claimants did certify to his said statements under oath; and said proofs are now a part of the record herein; and said Superintendent did take such testimony and evidence as was offered on behalf of said claimants or either of them, and caused the oral testimony of all witnesses called on behalf of said claimants to be taken in shorthand and duly transcribed and the same is now a part of the record herein.

(10)

That upon the completion of the taking of said testimony as aforesaid, the Superintendent of Water Division No. 1 of Oregon gave notice by registered mail to the above named claimants, by depositing said notices in the post office on the 17th day of September, 1914, that at the time and place named in said notice, all of said evidence taken as aforesaid would be open to the inspection of said claimants and all other persons interested during said time aforesaid, said period for inspection being more than ten days after the giving of said notice by registered mail as aforesaid, and thereupon said Superintendent did open said evidence to inspection at said places and as fixed in said notice and kept the same open to inspection for a period of ten days (excluding Sundays); and it was set forth and stated in said notice that the determination of said State Water Board in the above entitled matter would be heard by the Circuit Court of the State of Oregon for Klamath County, in which county said stream is wholly situate. Due proof of the mailing of said notices and the holding of said inspection being on file and a part of the record herein.

(11)

That after the period for inspection as aforesaid the evidence in the original hearing before the Superintendent and the evidence taken in all contests was duly transmitted by the said Superintendent in person to said State Water Board and filed with said Board in its office at Salem, Oregon.

That heretofore and subsequent to the filing with the Board herein of said petition requesting the determination of the rights to the above named stream, the hereinafter named claimants to said waters entered into an agreement in writing relative to the usage of said waters and priority and extent of their respective rights to the use of said waters, which agreement is now on file and a part of the record herein and is as follows to-wit:

"This indenture made and entered into this day of 1913 between the several parties hereto, and

WITNESSETH:

"THAT WHEREAS certain questions have arisen relative to the user of the waters of ANNA CREEK, a stream flowing from near the base of Crater Lake, Klamath County, Oregon, and

"WHEREAS under the laws of the State of Oregon, and the regulations of the Board of Control, all users of water are requested, if possible, to amicably agree among themselves as to their respective rights; and

"WHEREAS the parties hereto are desirous of settling all questions that may be involved relative to the use of such water; and

"WHEREAS the parties hereto are desirous of using this agreement in any pending application for adjudication as to the rights of such waters before the Board of Control, or in any suit now instituted or hereafter to be instituted in any Court of competent jurisdiction relative to the user of the waters of said Anna Creek,

"NOW THEREFORE, the parties agree among themselves that the amount of waters and the priority of right of usage to such waters of ANNA CREEK are as follows, and which amount and priority are also the recognition of the rights to which the respective parties and ditches had prior thereto under any and all laws been conclusively entitled.

"(A) The first prior right in point of time and amount covers the so-called SHATTUCK DITCH with right of usage dating from November, 1883, touching ANNA CREEK at a point about one-half mile northeast of the northeast corner of Township 33 South of Range 7 $\frac{1}{2}$ East of Willamette Meridian. Said Shattuck ditch was and is entitled to a flow of 30.5 sec. feet and which water irrigates approximately 1500 acres.

"(B) The second admitted prior right in point of time and amount covers the so-called MELHASE DITCH, with right of usage dating from October, 1889, tapping Anna Creek at a point about 20 yards South of the Northeast corner of the Southeast quarter of the Southwest quarter of Section 10, Township 33 South, Range 7 $\frac{1}{2}$ East Willamette Meridian.

"The amount of water to which said Melhase ditch was at all times and is entitled, equals sixty sec. feet, or a flow of water 12 inches deep under a pressure of six inches, approximating 2304 miners inches. The Melhase ditch irrigates approximately two thousand acres of land. The owners of the Melhase Ditch while owning and being entitled to 2304 miner's inches hereby waive the right to all waters of Anna Creek in excess of 2000 miner's inches or 52 sec. ft.

"(C) The third admitted prior right in point of time covers the so-called ANNA CREEK DITCH with right of usage dating from May 1st, 1891, tapping Anna Creek from same head as the so-called Shattuck Ditch, and diverting from same at a point about ninety rods from the head of Anna Creek, the measurement for water being the same as for Shattuck Ditch, namely 30.5 sec. feet, and irrigating to exceed 1700 acres.

"(D) The fourth admitted prior right in point of time covers the so-called STORMER Ditch with the right of usage dating from tapping Anna Creek at a point about 100 feet northwest of the northeast corner of northwest quarter of northwest quarter of Section 5, Township 33 South, Range 7 $\frac{1}{2}$ East

Willamette Meridian, the measurement for water being 34 sec. feet, and irrigating to exceed 1450 acres.

"(E) The fifth admitted prior right in point of time covers the so-called "MARTIN DITCH" with right of usage dating from November, 1898, tapping Anna Creek at a point 300 feet south of the northeast corner of northwest quarter of Section nine, Township 33 South, Range $7\frac{1}{2}$ East W. M., the measurement for water being 11.3 sec. feet and irrigating to exceed 425 acres.

"(F) The sixth admitted prior right in point covers the so-called "LOOSELEY DITCH" with right of usage dating same as Martin Ditch, and taking water from said head, diverting from Looseley Ditch at a point about 300 feet from diversion at Anna Creek, the measurement for water being 1.2 sec. feet, and irrigating about fifty acres.

"(G) The seventh admitted prior right in point of time covers the so-called "LOOSELEY-STREETER AND CARDWELL DITCH" with right of usage dating from 1901, tapping Anna Creek at a point near the northwest corner of northeast quarter of Section 9, Township 33 South, Range $7\frac{1}{2}$ East W. M., the measurement for water being 2.6 feet and irrigating 100 acres.

"(H) The eighth admitted prior right in point of time covers the so-called "GORDEN-MOON DITCH" with right of usage dating from 1902, tapping Anna Creek at a point
the measurement for water being 8 sec. feet, and irrigating to exceed 320 acres.

"(I) The ninth prior right in point of time covers the so-called "GORDEN-DENTON DITCH" with right of usage dating from April, 1904, tapping Anna Creek at a point 200 yards southeast of northwest corner southwest quarter, northwest quarter section 5, Township 33 South Range $7\frac{1}{2}$ East W. M., the measurement for water being 5.5 sec. feet, and irrigating to exceed 250 acres.

"(J) The tenth prior right in point of time covers the so-called "COPELAND DITCH," with right of usage dating from 1905, tapping Anna Creek at same head as so-called Shattuck Ditch and diverting from same point about one-quarter mile from where Shattuck Ditch diverts from Anna Creek. Said Copeland Ditch is allowed a measurement equivalent to 2.6 sec. ft. for each 100 acres irrigated.

"(K) The eleventh prior right in point of time covers the so-called "WEEKLY DITCH" with right of usage dating from 1906, tapping Anna Creek at a point near the center of northeast quarter of northeast quarter of Section 9, Township 33 South, Range $7\frac{1}{2}$ East W. M., said ditch being allowed a measurement equivalent to 3.9 sec. feet and irrigates 150 acres.

"(L) The twelfth prior right in point of time covers the so-called "HENRY GORDEN DITCH" with right of usage dating from 1909, tapping Anna Creek at a point
said ditch is allowed a measurement equivalent to 2.6 sec. feet, for each 100 acres irrigated.

"(M) The thirteenth prior right in point of time covers the so-called "SCOTT DITCH" with right of usage dating from 1910, tapping Anna Creek at a point
said ditch is allowed a measurement equivalent to 2.6 sec. feet for each 100 acres irrigated.

"SECOND: The parties hereto agree that the above mentioned appropriations, thirteen in number, as users and ditches specified therein, are the only ones entitled to use the waters of Anna Creek and in the amount set forth and that each priority as set forth takes precedent over all other rights in the order above enumerated.

"THIRD: Should hereafter any person claim priority or seniority other than as set forth above owing to any change in conditions or in the user of the

water, such claim shall not be valid unless the person so desiring the change shall serve written notice thereon on any and all parties that his new taking and user is adverse as to all other parties, whereupon, and not otherwise, the statute of Limitations will commence to run.

"FOURTH: It is agreed that no ditch shall be allowed to carry more water per 100 acres to be irrigated, than the so-called "MELHASE DITCH," or 2.6 sec. feet per 100 acres. Further, that the use of water shall be economical and notwithstanding any rights no more shall be taken than may be actually beneficially used and appropriated.

"FIFTH: Notwithstanding the quantity of 2000 cubic inches of water per second to which the owners of Melhase Ditch are entitled, the owners of such latter water expressly agree that they will only use the amount necessary for the irrigation of their lands, and will exercise the utmost economy in the use of such waters to the end that they may use only such amount of water necessary for their lands so that the upper users of Anna Creek waters may be benefited thereby. This provision providing economy in the use of waters, shall apply to all appropriators or users of Anna Creek waters, and not merely to those of the Melhase Ditch.

It is understood that if the users of the Melhase Ditch waters acquire elsewhere in any manner the right to have the flowage down such Melhase Ditch of 2000 cubic inches per second, then the owners of the waters of such Melhase Ditch will hereafter abandon any claim or right to the waters of Anna Creek. Further, as to any portion of water acquired elsewhere the Melhase Ditch owners will hereafter abandon a like amount of Anna Creek waters. All or any users of Anna Creek waters may at any time begin suit in injunction or otherwise, to prevent the appropriation and user of waters hereafter to be taken out of Anna Creek to their detriment, the cost of such action to be determined among the owners of Anna Creek waters according to their priority of user, and further in accordance with the amount of appropriation.

It is further understood that this agreement shall bind so many of the parties hereto as sign the same regardless of whther other appropriators or users of Anna Creek waters fail or decline to sign this agreement, the purpose being that it shall, as to any contracting parties settle their rights, and be introduced as evidence in any section, in court, or in any proceeding before the State Board of Control."

(13)

That on the 10th day of December 1913, the following named persons and claimants herein signed said agreement and duly acknowledged the same, to-wit: W. E. Nicholson (and Mrs. W. E. Nicholson); L. W. Copeland (and Mrs. L. W. Copeland); George A. Lisk (and Lora P. Lisk); James Pelton (and Mrs. James Pelton); L. C. Sisemore (and Anna O. Sisemore); H. B. Looseley (and Anna M. Looseley); L. A. Brannon (and Mrs. L. A. Brannon); M. F. Looseley (and Mrs. M. F. Looseley); D. W. Ryan (and Mrs. Belle Ryan); Richard Melhase (and Mrs. Richard Melhase) W. T. Burns (and Blanch L. Burns); F. L. Burns; Henry Gorden (and Ora Gorden); James L. Gorden (and Emma L. Gorden); Frank Denton; R. A. Moon (and Mrs. R. A. Moon); Asa Fordyce; Harvey L. Scott (and Mrs. Harvey L. Scott); L. M. Streeter (and Mrs. L. M. Streeter); Geo. C. Hill (and Mrs. L. A. Hill). That on the 13th day of January, 1914, said agreement was signed and acknowledged by Horace Pelton and Mrs. Horace Pelton. That on the 26th day of February, 1914, the said agreement was signed and acknowledged by E. R. Cardwell and Mrs. E. R. Cardwell. That on the 24th day of February, 1914, said agreement was signed and acknowledged by G. M. Denton and Olive Denton, and F. S. Stratton and Grace G. Stratton. That on the 21st day of February, 1914, said agreement was signed and acknowledged by E. M. Leever and Mrs. E. M. Leever. That on the 26th day of December, 1913, said agreement was signed and acknowledged by Abner Weed and Rachel C. Weed (by Abner Weed, her attorney in fact); and on the 10th day of December, 1913, said agreement was signed and acknowledged by F. H. Page (and Estelle F. Page).

(14)

That from the evidence and testimony herein it appears that the soil of the various tracts of land under the several ditches is of the same general character, consisting principally of a light, and fine pumice and sandy soil, or what is generally known as volcanic ash intermingled in places with dark sand loam. There appears to be practically no gravel in the surface soil, and the soil is of a very great depth. The crops raised consist of wild meadow grasses, timothy and clovers of various kinds, and grain, most of which are cut and cured for hay. Portions of the irrigated lands are used for pasture, and it is the general practice to utilize practically all of these lands for pasturage purposes after the grasses have been cut and removed.

(15)

The general method of irrigation followed by the water users herein named is by the flooding system, and it is the practice to apply the water to the wild hay crops principally during May, June and July. The irrigation season generally commences subsequent to the first of May, but in some years the water is applied in April. After irrigation has commenced, water is applied almost continuously by some water users until about the 15th of July, after which the hay is cut and the water turned off until the hay is removed, when the water is again applied in smaller quantities for the irrigation of pasture. The irrigation season closes prior to the first of October. Other water users apply the water to the wild grasses about once every ten or twelve days, usually keeping the water on from two to four days, when it is turned off for about a week and again applied, and so on throughout the season until the hay is ready for cutting. After the hay has been cut and removed, the practice has been to apply the water about once in every three weeks until the fall rains set in.

(16)

The timothy and other tame grasses and clovers are irrigated three times, commencing the first to the middle of May. Very little water is applied to the grain, and not more than one irrigation is required to irrigate it. The better practice seems to be not to irrigate the grain except in very dry seasons, when a small quantity of water should be applied to start the growth properly.

(17)

Referring to the agreement hereinbefore set forth, the Board adopts the same as a part of its findings herein, respecting the priority of the various rights of said claimants who signed said agreement, and relative to other facts set forth by said agreement, except as herein otherwise found and determined; and based upon said agreement, the statements and proofs of claims herein, the evidence on file herein, and the maps, data and measurements herein made by the State Engineer, the Board makes the following findings relative to the construction and ownership of ditches, lands irrigated under each ditch, capacity of said ditches, and other facts material to a determination of the relative rights herein, to-wit:

1.- SHATTUCK DITCH: This ditch and water right is owned by Robert Connor, George W. Denton, George A. Lisk, W. E. Nicholson, and L. W. Copeland, as tenants in common, and said ditch taps Anna Creek at a point in the NE¹/₄SW¹/₄ of Section 31, Twp. 32 S. R. 7¹/₂ E. W. M., conducting the waters thereof down to and upon the lands of said claimants, and serves to irrigate a total area of 1422 acres of said lands; that said ditch was constructed in the year 1883, and is admitted to have the first right of priority of appropriation to the waters of said stream.

2.- ANNIE CREEK DITCH: That the Annie Creek ditch is owned by E. Denton, James Pelton, Horace and Meta M. Pelton, and W. C. Sanderson, and Abner Weed, as tenants in common; and that said claimants were formerly the owners of shares of stock in the Annie Creek Ditch Co., a corporation, organized under the laws of

the State of Oregon; but said corporation appears to no longer have corporate existence, and corporate existence is not claimed for it herein. That said ditch serves to irrigate 1640 acres of the lands of said claimants, as well as a portion of the lands of W. C. Sanderson, the area of which is not absolutely definite and certain, for the reasons hereinafter set forth, but which does not appear to exceed 100 acres. That said Annie Creek ditch was constructed in the year 1891 and completed in 1892, and has admittedly the third right of priority to the waters of said stream.

3.- That said Annie Creek ditch consists for almost its entire length of a natural depression or slough, which was formerly known as Annie Creek Slough; and that in said years 1891 and 1892 the predecessors in interest of the said owners of said Annie Creek ditch and water right commenced the diversion of said Anna Creek into said slough, or depression, and have since controlled and maintained the same during the irrigating season, by diverting the waters of said stream into and through the head of said Shattuck ditch to a point a few hundred feet below the intake of said Shattuck ditch, where the water in the head of said Shattuck ditch is about equally divided between the said Shattuck ditch and said Annie Creek ditch, and the portion belonging to said Annie Creek ditch is diverted into and down said Slough or depression to the lands of the owners of said ditch; and that considerable quantities of water draining from the country through which said Annie Creek Slough passes, finds its way into the same, and becomes a part of the flow of water utilized by said claimants for irrigation purposes.

4.- That W. C. Sanderson, claimant herein, has submitted evidence and testimony respecting his claim to the use of the waters of Anna Creek, from which it appears that he is the owner of four shares of stock issued by the said Annie Creek ditch Co., formerly a corporation, and said corporation appears to have had a capital stock of 75 shares; and it appears that by virtue of said four shares of stock said Sanderson is entitled to not to exceed $4/75$ of the appropriation formerly owned by said corporation. That the former holders of stock in said corporation are now the owners of said ditch and water right as tenants in common therein, and that W. C. Sanderson has based his claim to a right to the use of the waters of said stream upon the ownership of said four shares of stock, or a $4/75$ interest in said ditch and water right as a tenant in common with other stockholders therein.

That it appears from the testimony offered by said Sanderson in his own behalf, as well as the maps of the State Engineer herein, that the greater portion of the lands for which he claims a right to the use of said waters, are irrigated by waste water from the lands of James Pelton, a claimant herein, above and contiguous to said Sanderson lands, and by the waters of Seven Mile Creek, a stream not involved herein; and it further appears that there has been no well defined system of ditches on said Sanderson lands, nor any systematic use of water thereon, the waters from adjoining lands naturally working its way down, onto and over said Sanderson place, and irrigating it, and that not to exceed 100 acres are actually irrigated by diversion from said Annie Creek ditch, the remainder of said lands being irrigated by said waste waters, or sub irrigated, or irrigated by diversion from Seven Mile Creek.

That the right of said Sanderson to divert and use the waters of said Anna Creek does not exceed one second foot, when based either upon the ownership of said four shares of stock, or upon the area of land actually benefited by direct diversion from said stream.

5.- That the maximum carrying capacity of the head works or intake of said Shattuck ditch, and through which said ditch and said Annie Creek ditch receives their supplies, does not exceed 40 second feet, or 1600 inches, miner's measurement, and the same is required to serve an area of 3052 acres, and to supply said Sanderson lands with the amount to which entitled by virtue of said $4/75$ interest in said Annie Creek water right.

6.- MELHASE DITCH: That the Melhase ditch was constructed by Richard, Fred, and Gus Melhase, J. W. McCoy, one Cronemiller, and one Nesler, in the years 1889 and 1890, diverting the waters of Anna Creek at a point in the $SE\frac{1}{4}$ $SW\frac{1}{4}$, Sec. 10, Twp. 33 S. R. $7\frac{1}{2}$ E. W. M., near the mouth of said stream, and the waters diverted

through said ditch were first used for irrigation during the year 1890; and the entire area now irrigated undersaid ditch in 1971 acres. That F. L. Burns, Richard Melhase, Frederick H. Page and Frederick S. Stratton, D. W. Ryan, and L. C. Sisemore are now the owners of said ditch and water right, and tenants in common therein, and the successors in interest therein of said original appropriators and constructors of said ditch and water right, and that said water right is entitled, admittedly, to the second priority of appropriation of the waters of said stream.

7.- That it was the original and first intention of the said appropriators, in constructing said ditch, to tap Wood River above the mouth of Anna Creek, and divert and appropriate the waters of said Wood River; but upon completion of said ditch to said Anna Creek, the plans and intentions of said appropriators in this respect were changed, and an appropriation of the waters of said Anna Creek was made by them; but it now appears that the owners of said ditch and water right desire, if possible, to supplement their rights of appropriation of the waters of Anna Creek, by a supplemental appropriation of said waters of said Wood River, as originally intended by them, and, without abandoning in any way any right to the waters of Anna Creek, to the extent their needs are supplied by the diversion of Wood River waters, to permit the use of Anna Creek waters by those appropriators diverting water from the latter stream above the head of said Melhase ditch.

8.- That the maximum carrying capacity of said Melhase ditch does not exceed forty second feet, or 1600 inches, and it appears that said ditch irrigates a total area of 1971 acres.

9.- STORMER DITCH: That the Stormer ditch was constructed in the year 1892, and that as so constructed it was intended to and eventually did irrigate the lands of Henry J. Gordon, James L. Gordon, and Horace and Meta M. Pelton, as described hereinafter in the order of determination herein; that about the year 1898 and prior to the construction of the Martin ditch, or appropriation of water through said Martin ditch, as hereinafter related, said Stormer ditch was enlarged and extended so as to cover and irrigate the lands of F. M. Denton, W. E. Nicholson, James Pelton and D. W. Ryan.

10.- That the maximum carrying capacity of said Stormer ditch does not exceed 25 second feet, or 1000 inches, and the total area irrigated thereby is 1406 acres; and that said ditch is entitled to the fourth priority of appropriation of the waters of said stream.

11.- MARTIN DITCH: That the Martin ditch is admittedly entitled to the fifth priority of appropriation of the waters of said stream, and was constructed in November, 1892, but subsequent to said enlargement and extension of said Stormer ditch as above related; that it covers the lands of L. A. Braman, Mrs. Louis Hessig, Geo. C. Hill, Henry B. Loosley, and L. G. Moshier, and serves to irrigate a total area of 431 acres; and the maximum carrying capacity of the same is about nine second feet, or 360 inches.

12.- LOOSLEY DITCH: This ditch, which is referred to by that name in said agreement herein, and is admitted to have the same right of usage and priority as said Martin ditch, is a lateral from said Martin ditch, and serves to irrigate the lands of said Henry B. Loosley, referred to above as irrigated under said Martin ditch.

13.-LOOSLEY-STREETER-AND CARDWELL DITCH: This ditch is owned by E. R. Cardwell, Mrs. Louis Hessig, and L. M. Streeter as tenants in common, and was constructed in 1901, serves to irrigate 106 $\frac{1}{2}$ acres, and has a carrying capacity of not to exceed 2 $\frac{1}{2}$ second feet, or 100 inches. Said ditch diverts the waters of said stream at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 4, Twp. 33 S. R. 7 $\frac{1}{2}$ E. W. M., and is admitted to have the sixth priority of appropriation of the waters of said stream.

14.- GORDEN MOON DITCH: This ditch, admittedly entitled to the seventh priority of appropriation of the waters of said stream, diverts the waters thereof at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, of Section 3, Twp. 33 S. R. 7 $\frac{1}{2}$ E. W. M., and serves to irrigate a total area of 180 acres. That said ditch is owned by R. A. Moon,

James L. and Henry J. Gorden, as tenants in common, and has a carrying capacity of not to exceed 3.0 second feet; and that said ditch was constructed in the year 1902.

15.- GORDEN DENTON DITCH: The Gorden Denton ditch was constructed in 1904, and is admitted to have the eighth priority of appropriation of the waters of said stream, and is owned jointly, as tenants in common, by E. Denton and L. A. Harbaugh, and serves to irrigate 302 acres; that said ditch has a carrying capacity of not to exceed 5.0 sec. ft.

16.- COPELAND DITCH: The Copeland ditch was constructed in 1905, as a lateral from the Shattuck ditch, for the purpose of irrigating a tract of 25 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 31, Twp. 32 S. R. 7 $\frac{1}{2}$ E. W. M., and by virtue of said agreement these lands are entitled to the ninth priority of appropriation of the waters of said stream; and that said lands are owned by L. W. Copeland, and are described in the order of determination herein as irrigated from the Shattuck ditch, with a priority of 1905.

17.- WEEKLY DITCHES: L. M. Streeter is the owner of two ditches known as the Weekly ditches, diverting the waters of Anna Creek, at points in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 10, Twp. 33 S. R. 7 $\frac{1}{2}$ E. W. M., and that said ditches were constructed in the year 1906, and serve to irrigate a total area of 125 acres of land belonging to said Streeter, and are entitled to the tenth priority of appropriation of the waters of said stream.

18.- HENRY GORDEN DITCH: The construction of this ditch was commenced prior to 1909, and for the purpose of establishing its priority date, said priority is hereby found to be 1907, and to constitute the eleventh priority of appropriation herein; that said ditch is owned by Henry J. Gorden, and serves to irrigate 40 acres, and has a carrying capacity of approximately 1.0 second foot.

19.- SCOTT DITCH: The Scott ditch was commenced in the year 1908, and completed in 1910, and is owned by Harvey L. Scott. Said Scott ditch taps the stream above all of the other ditches herein described, in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 31, Twp. 32 S. R. 7 $\frac{1}{2}$ E. W. M. The lands irrigated under this ditch are composed of very fine pumice sand, requiring greater quantities of water for proper irrigation than lands of other claimants herein.

That the said lands under said ditch are timbered in character, and considerably more effort and labor is required to clear the same and render them productive than in the case of the prairie lands of those claimants irrigated from other ditches, as described herein. That when these proceedings were commenced, said Scott had succeeded in clearing 45 acres under said ditch, and had rendered such area fit for cultivation and had irrigated the same; and that he expects and intends, in addition thereto, to prepare for cultivation, and to clear and irrigate 45 acres, now covered with brush and timber. That said Scott should be entitled to a reasonable time within which to perfect and complete his inchoate right and make final beneficial use of his initiated appropriation; and that in view of the natural obstacles to be overcome, he should be entitled to four years from January 1, 1915, within which to complete and perfect the same; and on and after January 1, 1919, the superintendent of said division should take proof as to the extent to which said water have been applied to said land and final certificate of water right should be issued accordingly. That said Scott ditch has a carrying capacity in excess of 3.0 second feet.

(18)

Considering the maximum capacities of the various ditches, it is evident that most of the claimants have not diverted or used, in the past for the irrigation of their several tracts, to exceed one second foot for each 80 acres of land irrigated, and the character of the soil, its depth, and the fact that most of these lands have been irrigated for a considerable length of time and are not raw lands, and further considering the general climatic conditions, the Board is of the opinion that, except as to the lands of H. L. Scott, the lands herein described do not require for proper and beneficial irrigation, and for the profitable production of the crops grown thereon, a quantity of water, during the irrigation season, ⁱⁿ excess of three (3) acre feet for each acre thereof, to be delivered in continuous flow

at a rate not to exceed one eightieth of a cubic foot per second for each acre thereof, or the equivalent thereof when used in rotation; and that a limitation in accordance with this finding is amply justified by the evidence herein.

That the lands of H. L. Scott are different in character, the soil thereof is more porous, and said lands are situated higher up and above the lands irrigated by other claimants, requiring a greater quantity per acre for proper irrigation. That for the irrigation of the lands of said H. L. Scott, not to exceed four acre feet, per acre, or, in continuous flow, not to exceed one sixtieth of a second foot per acre, is required.

(19)

That rotation in the use of water, particularly among the several users of small quantities of water, and as between those using water from the same ditch, has been in use, more or less, for a number of years, on this stream; and a proper rotation system as among said water users will add greatly to the duty of water, and be beneficial to the water users. That for the purpose of securing a reasonable and beneficial rotation in the use of water, the decree herein should provide for the arrangement of the water users in groups or systems of rotation, and the distribution of the water in periods of time, when necessary to secure the most beneficial use of the waters diverted, rather than in continuous flow, in the absence of an agreement among the several water users as to the manner or method by which the distribution shall be made.

(20)

That heretofore and within the time provided by law, James Pelton, a claimant herein, filed a statement of contest as against the rights claimed by J. W. McDonough herein, to the use of the waters appropriated through the said Stormer Ditch, and thereafter, and prior to the hearing of said contest, said contestant and contestee entered into a written stipulation, whereby said contestee, J. W. McDonough, withdrew his said claim to a right to the use of the waters of Anna Creek through said Stormer Ditch, and relinquished his claim to a right to the use of said waters; and pursuant to said stipulation said contest is hereby dismissed; and said J. W. McDonough is hereby found to have no right of usage of the waters appropriated for the said Stormer Ditch; but his right to the use of waste waters from the Annie Creek Ditch was not involved in said contest and has not been contested herein.

BASED upon the foregoing findings of fact, the Board makes the following

ORDER OF DETERMINATION

(1)

That the hereinafter named claimants are entitled to divert and use the waters of said stream in the order of their respective priorities, as hereinafter set forth, in the amount of water to which each of said claimants is hereinafter determined to be entitled; and all other persons than those hereinafter named, having had notice of the pendency of these proceedings, as provided by law, are in default herein, and are hereafter not entitled to assert any right to the waters of said stream, or divert the waters of the same as against the hereinafter named appropriators thereof.

(2)

That except as otherwise provided in this order of determination, none of the claimants shall be entitled to divert a quantity of water in excess of one-eightieth of one second foot in continuous flow, or an aggregate quantity during the irrigation season herein defined in excess of three acre feet, for each acre of land actually irrigated, to be measured at the intake of the several ditches; but in the case of H. L. Scott, the Board finds that he is entitled to not to

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exceed one-sixtieth of one second foot, or an aggregate quantity of not to exceed four acre feet during an irrigation season, for each acre irrigated; and that E. R. Cardwell, James L. Gorden, and S. G. Moshier, each owning less than 80 acres of irrigated land, are entitled to an irrigating head large enough for practical use and therefore said James L. Gorden and said S. G. Moshier each shall not be limited to a head of water less than one second foot, and said E. R. Cardwell shall not be limited to a head of water less than one-half second foot, for the area irrigated by them; and further that the total volume diverted by each during the irrigating season shall not exceed three acre feet for each acre irrigated.

(3)

That the following named claimants to the waters of Anna Creek are entitled to a decree and to a certificate of water right in accordance therewith, determining and establishing and confirming their several rights to the use of the waters of said stream, as of the date of relative priority, and in the amount in cubic feet per second (from April 1st to July 20th of each year, and thereafter until the close of the irrigation season, one-half of the amount so specified), for the irrigation of the number of acres, through the ditch or ditches, upon the hereinafter described lands, as such date, amount, number of acres, use, ditch or ditches, and lands, are hereunder set forth or described, in tabulated form, opposite the name of the claimant entitled to the right thereby defined, to-wit:

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
76310 E. Denton, Ft. Klamath, Ore. F-1955 ΔPOU 1582 Ac	1891	2.00	160	Irrigation, domestic and stock	Annie Creek	Anna Creek	40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 20: 40 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 29: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1904	1.77	142	Irrigation, domestic and stock	Gorden-Denton	Anna Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 22 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 5: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
F. M. Denton, Ft. Klamath, Ore.	April 1898	3.26	261	Irrigation, domestic and stock	Stormer	Anna Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 7 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 24 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 9: 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 30 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 8: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
George M. Denton, Ft. Klamath, Ore.	1883	1.00	80	Irrigation, domestic and stock	Shattuck	Anna Creek	40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 6: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
Henry J. Gorden, Ft. Klamath, Ore.	1902	0.88	70	Irrigation, domestic and stock	Gorden-Moon	Anna Creek	30 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 5: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1907	0.50	40	Irrigation, domestic and stock	Henry Gorden	Anna Creek	40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 5: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1892	1.63	130	Irrigation, domestic and stock	Stormer	Anna Creek	40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 4: 32 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 18 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 5: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
James L. Gorden, Ft. Klamath, Ore.	1892	0.85	58	Irrigation, domestic and stock	Stormer	Anna Creek	24 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 34 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 9: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1902	0.15	10	Irrigation, domestic and stock	Gorden-Moon	Anna Creek	10 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 5: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.

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
L. A. Harbaugh, Ft. Klamath, Ore.	1904	2.00	160	Irrigation, domestic and stock	Garden-Denton	Anna Creek	40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 8: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
Mrs. Louis Hessig Ft. Klamath, Ore.	1901	0.46	36 $\frac{1}{2}$	Irrigation, domestic and stock	Loosley-Streeter-Cardwell	Anna Creek	25.75 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 10.75 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 9: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	November 1898	0.64	51	Irrigation, domestic and stock	Martin	Anna Creek	15 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 30 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 6 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 9: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
George C. Hill, Ft. Klamath, Ore.	November 1898	1.60	128	Irrigation, domestic and stock	Martin	Anna Creek	40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 15: 35 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 13 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 16: Twp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
53000 80582 George A. Lisk, Ft. Klamath, Ore.	1883	2.00	160	Irrigation, domestic and stock	Shattuck	Anna Creek	12 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1: Twp. 33 S. R. 6 E.W.M. 28 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 6: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
Henry B. Loosley, Ft. Klamath, Ore.	1898	0.25	20	Irrigation, domestic and stock	Small ditches	Anna Creek	20 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 9: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	November 1898	0.83	66	Irrigation, domestic and stock	Martin	Anna Creek	40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 20 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 6 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 9: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
J. W. McDonough, Ashland, Ore.	1892	4.00	320	Irrigation, domestic and stock	Annie Creek	Waste water from Annie Cr. ditch	40 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 29: 40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 32: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.

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
2 1151 Richard Melhase Ft. Klamath, Ore. <i>cert # 1101 recorded, approved by the court on 11-12-1897</i>	1889	4.00	320	Irrigation, domestic and stock	Melhase	Anna Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 28: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
2 1152 R. A. Moon, Ft. Klamath, Ore.	1902	1.25	100	Irrigation, domestic and stock	Gorden-Moon	Anna Creek	10 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 20 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 30 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 5: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
2 1153 S. G. Moshier, R.F.D. No. 1, Springfield, Ore.	November 1898	1.00	65	Irrigation, domestic and stock	Martin	Anna Creek	16 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 33 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 16 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 9: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
2 1154 W. E. Nicholson (and L.E.Sturgis, Everill, Wash.) Ft. Klamath, Ore.	April 1898	2.00	160	Irrigation, domestic and stock	Storner	Anna Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 21: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
1 1155 W. E. Nicholson, Ft. Klamath, Ore	1883	6.00	480	Irrigation, domestic and stock	Shattuck	Anna Creek	40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 7: 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 80 acres in S $\frac{1}{2}$ SE $\frac{1}{4}$; Sec. 18: 160 acres in SW $\frac{1}{4}$; Sec. 17: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
2 1156 Frederick H. Page, 614 Jackson St., Portland, Ore. and Frederick S. Stratton, 1477 Harriston St. Oakland, Cal. <i>cert # 1106 recorded, approved by the court on 11-12-1897</i>	1889	10.64	851	irrigation, domestic and stock	Melhase	Anna Creek	640 acres in Sec. 33: 160 acres in E $\frac{1}{2}$ of E $\frac{1}{2}$ Sec. 32: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M. 40 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 7 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 4: Tp. 34 S. R. 7 $\frac{1}{2}$ E.W.M.

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
James Pelton, Ft. Klamath, Ore.	April 1898	3.94	315	Irrigation, domestic and stock	Stormer	Anna Creek	34 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 46 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 80 acres in E $\frac{1}{2}$ NW $\frac{1}{4}$; 35 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 25 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 15 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 16: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1891	6.50	520	Irrigation, domestic and stock	Annie Creek	Anna Creek	35 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 80 acres in S $\frac{1}{2}$ NE $\frac{1}{4}$; 160 acres in NW $\frac{1}{4}$; 160 acres in SE $\frac{1}{4}$; Sec. 17: 5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 15 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 25 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 16: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
Horace and Meta M. Pelton, Gold Hill, Ore.	1892	2.00	160	Irrigation, domestic and stock	Stormer	Anna Creek	80 acres in E $\frac{1}{2}$ NE $\frac{1}{4}$; Sec. 8: 80 acres in W $\frac{1}{2}$ NW $\frac{1}{4}$; Sec. 9: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	1891	9.63	770	Irrigation, domestic and stock	Annie Creek	Anna Creek	20 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 5: 80 acres in W $\frac{1}{2}$ SE $\frac{1}{4}$; 30 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 6: 160 acres in NE $\frac{1}{4}$; 160 acres in SE $\frac{1}{4}$; Sec. 7: 80 acres in W $\frac{1}{2}$ NW $\frac{1}{4}$; 160 acres in SW $\frac{1}{4}$; 80 acres in W $\frac{1}{2}$ SE $\frac{1}{4}$; Sec. 8: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
D. W. Ryan, Ft. Klamath, Ore. <i>1897 1104 acres of land in 240 to the Pelton estate by deed of 1897 of D. W. Ryan to D. W. Ryan 1897 1104 acres of land in 240</i>	1899	3.00	240	Irrigation, domestic and stock	Melhase	Anna Creek	40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$; 160 acres in SE $\frac{1}{4}$; Sec. 21: 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 22: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	April 1898	0.50	40	Irrigation, domestic and stock	Stormer	Anna Creek	40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 21: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.

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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
<p>76154 T-77552 POA W. C. Sanderson, Ashland, Ore. <i>Part cancelled by order approving T-7755 Vol 53, ps 672</i></p>	1891	1.00	320	Irrigation, domestic and stock (Supplemental)	Annie Creek	Anna Creek	160 acres in NE $\frac{1}{4}$; 160 acres in SE $\frac{1}{4}$; Sec. 20: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
<p>7713 Harvey L. Scott -- See paragraph 10, page 21.</p>							
<p>L. C. Sizemore, Ft. Klamath, Ore. <i>Part cancelled by order approving T-7755 Vol 53, ps 672</i></p>	1889	0.85	68	Irrigation, domestic and stock	Melhase	Anna Creek	28 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 21: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
	April 1898	3.53	282	Irrigation, domestic and stock	Stormer	Anna Creek	80 acres in S $\frac{1}{2}$ SW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 16: 12 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; 30 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; 80 acres in N $\frac{1}{2}$ NW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 21: Tp. 33 S. R. 7 $\frac{1}{2}$ E.
<p>Frederick S. Stratton -- See under Page & Stratton.</p>							
<p>L. M. Streeter, Ft. Klamath, Ore.</p>	1901	0.63	50	Irrigation, domestic and stock	Loosley-Streeter-Cardwell	Anna Creek	20 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 30 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 10, Tp. 33 S.R. 7 $\frac{1}{2}$ E.
	1906	1.56	125	Irrigation, domestic and stock	Weekly (two ditches)	Anna Creek	10 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; 40 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 20 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; 15 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 40 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 10: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.
<p>Abner Weed, Weed, Calif.</p>	1891	2.38	190	Irrigation, domestic and stock	Annie Creek	Anna Creek	80 acres in W $\frac{1}{2}$ NW $\frac{1}{4}$; 40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 32: 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 29: 20 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 30: 10 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 31: Tp. 33 S. R. 7 $\frac{1}{2}$ E.W.M.

(4)

That the limitations of paragraph 11 of this order of determination are not applicable to the rights claimed by W. C. Sanderson herein; and the rights of said W. C. Sanderson, as to quantity of water, are hereby determined upon the basis of the proportionate quantity of water to which he is entitled by virtue of the ownership of four shares of stock of a total of 75 shares of stock, in the Annie Creek Ditch Co., a corporation, or $4/75$ of the total appropriation to which said ditch is entitled, or the combined appropriations of the various joint owners thereof, who were formerly shareholders in said corporation; and that the amount of water set opposite the name of said Sanderson, represents the proportionate amount to which he is entitled by virtue of his said ownership of said shares of stock.

(5)

That the rights of J. W. McDonough, as above set forth, are limited to the use of such waste water and overflow water from said Annie Creek Slough, for the irrigation of his said lands, as may seep, percolate or waste to the place or point whence diverted or used on said lands, after the proper and economical irrigation of the lands from which said waste and overflow waters waste or overflow, by those entitled in the first instance to divert and use the waters of said stream; but in all cases the right of said McDonough to the use of said waste and overflow waters is subject and subordinate to the rights of appropriation from the exercise of which such seepage, waste and overflow waters result, and no rights in said claimant in or to the use of the waters of said Anna Creek, or to make direct diversion thereof, are hereby recognized, under his claim herein.

(6)

That if the claimants above named, owning jointly the Melhase ditch and water right, acquire a right to the use of the waters of Wood River, or elsewhere, to the extent above set forth, to which the combined appropriations of said claimants are entitled, by appropriating the waters of said Wood River, or other sources of water supply, to supplement the above appropriations of the water of said Anna Creek, to the extent that said claimants through said Melhase ditch by such acquired right secure a supply of water to supplement their said appropriation of Anna Creek waters, whether wholly or partly equal to the said appropriation from Anna Creek, then the owners of said ditch shall not be entitled to the waters of said Anna Creek, as against upper diversions by those claimants lawfully entitled to divert the same, as hereinbefore specified, beyond the quantity of water required to make up the full and complete quantity of water required by the owners of said Melhase ditch, as in the tabulated statement herein set forth; but the use by said owners of said Melhase ditch, of the waters from said Wood River, or other source, in lieu of the waters of said Anna Creek, and the use by said other claimants of the waters of said Anna Creek, to which said Melhase ditch is entitled, in accordance with this paragraph, shall not be deemed to create in any of said upper users any prescriptive or adverse rights as against said Melhase ditch, or any other than a permissive use by said upper users, under the provisions of this paragraph, and to this extent the said upper users shall be entitled to divert and use the waters of Anna Creek, when not required by said Melhase ditch, and the water master to be hereafter appointed within the district within which such stream and said lands shall be situate, shall apportion the waters of Anna Creek, in accordance with this paragraph, to said upper ditches in the order of priority of the same, taking into consideration such quantity of water as said Melhase ditch shall be receiving from said Wood River or other source of supply than Anna Creek, and, if necessary, permit the diversion and use by said upper ditches of the waters of Anna Creek to that extent.

(7)

That all of the rights to the use of the waters of said stream, as herein confirmed, are limited to the use of the waters naturally flowing in said stream, and the diversion thereof from said stream, during a period each year commencing the first day of May and ending the first day of November, which period constitutes the irrigation season during which said waters may be diverted and used for irrigation purposes; and all rights to the use of the waters of said stream for domestic and stock purposes entitle the owner of such right to such amount of water as is reasonably necessary for household, domestic and stock use, and for stock use the amount diverted and used shall not exceed the rate of one fortieth of a cubic foot per second for 100 head of stock; but the quantity to which any claimant shall be entitled for stock and domestic use shall not be in any event less than one half cubic foot per second of time; and the right to divert and use the waters of said stream for stock and domestic purposes continues throughout the year; but during the irrigation season the quantity of water to which each claimant herein is entitled for irrigation purposes shall also include the quantity required for stock and domestic purposes.

(8)

That the waters of said stream shall be diverted under the rights of priority hereby confirmed, in the order thereof, according to the dates of the several rights, and at all times when those having prior rights shall not require the use of their appropriations, or only part thereof, the waters of said stream shall be at the disposal of and subject to the use of those claimants having subsequent rights, in their priority order; and for the purpose of carrying into effect this principle, rotation in the use of water may be required as among the several claimants, when, by reason of scarcity, there shall not be a sufficient supply to supply the needs of all, in the event of simultaneous diversions; and that in the absence of an agreement among the various claimants, arranging for such rotation and the manner in which such water shall be used in rotation, the water master of the district in which such stream is situated, shall arrange such appropriators in groups or systems of rotation, first giving to the appropriator who is first in priority an amount 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 the said first appropriators bears to the combined appropriations of said appropriators, in said groups, and shall next serve the next appropriator in point of priority, with a like amount of water for his proportionate length of time, and so on, until all the appropriators in said group are served; then the distribution of water shall be repeated in the same manner throughout the irrigation season; that in case of two or more appropriators in said group or system having the same priorities, then the said water master shall distribute the water as between those appropriators having the same priorities to the one whose ditch taps the stream nearest its source first, and the next lower down, next, and so on; and in case two or more appropriators have equal priorities and divert water through the same ditch, the water master shall distribute the water as between said appropriators to the one whose lands are first covered by said ditch and nearest the head thereof, first, and to the next lower down on said ditch, next, and so on; and the provisions of this paragraph shall be applicable to groups or systems of ditches, jointly owned, as well as individually owned; and where two or more appropriators agree as between themselves as to the manner and system of rotation in the use of water, the said water master shall distribute the water in accordance with such agreement; provided always that such arrangement into groups or systems of rotation, or distribution under such agreements, shall not interfere with the prior rights of any appropriator not a member of such group or system, or a party to such agreement.

(9)

That the rights hereby confirmed for irrigation purposes are confined and limited to the irrigation of the lands hereinbefore described, and the

waters appropriated as in the tabulated statement set forth are and shall remain appurtenant to said lands as provided by law.

(10)

That H. L. Scott, claimant herein, initiated a right of appropriation of the waters of said stream in 1908, through the Scott Ditch for irrigation purposes and is entitled to complete the same, and is entitled to a reasonable time within which to make actual beneficial application of the waters appropriated by him through the Scott Ditch, and that by the exercise of due diligence the lands under said ditch described hereinafter, should be entirely cleared and water applied thereto, prior to January 1, 1919; that the lands irrigated at the present time are described as 10 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 35 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$; and the lands to be irrigated are described as 20 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$; 20 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$; and 5 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$; all in Section 31, Twp. 32 S. R. 7 $\frac{1}{2}$ E.W.M. That on or after January 1, 1919, the Superintendent of Water Division No. 1, shall take proof or evidence as to the extent to which said claimant has cleared and reclaimed said lands to be irrigated, and applied the water thereto for proper and beneficial irrigation; and a water right certificate shall be issued to said claimant in accordance with such proof, but for not to exceed the quantity of water required for the irrigation of lands actually cleared and under irrigation prior to said date; and shall be entitled to a quantity of water not to exceed one-sixtieth of a cubic foot per second, or four acre feet in the aggregate for each acre thus actually irrigated.

(11)

That the limitation as to quantity herein contained is determined upon the basis of the quantity set forth in each case being delivered in continuous flow, or the equivalent thereof in acre feet during the entire irrigation season when used under a proper system of rotation, or in periods of time, and alternately, rather than continuously; and the quantity in acre feet to which said claimants are respectively entitled shall not exceed three acre feet for each acre of land to which a water right is described as appurtenant, and to which water is actually applied for beneficial purposes, except as otherwise herein limited; but nothing herein contained shall be construed as permitting the enlargement of existing ditches beyond the present maximum capacity of the same, or so as to entitle the owners of any of the ditches described herein to divert any greater quantity of water than said ditches as at present constructed will divert and carry, except in the event that new and additional appropriations shall be made for additional lands, not described herein, and to which a water right is not hereby made appurtenant from said stream.

(12)

That the rights of appropriation hereby confirmed, are appurtenant to the lands herein described, and for irrigation purposes, the rights of use to 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 hereinbefore set forth; and the priorities herein confirmed confer no right of use of the waters of said stream, and its tributaries, on other lands than those specified tracts to which such rights of appropriation are herein set forth as appurtenant.

(13)

That the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and in which order they are entitled to divert and use said water, shall be and is according to the dates of the relative priorities of the rights as herein set forth and determined, and the first in order of time according to the date of relative priority shall be and is the first in order of right; and so on down to the date of the latest priority;

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ANNA CREEK

and those having prior rights are entitled to divert and use the waters of said stream, and its tributaries, when necessary for beneficial use in connection with the irrigation of their respective lands, or other useful and beneficial purpose for which they are decreed a right of use, at all times, as against those having subsequent rights without let or hindrance; but the priorities herein determined and the priorities of the rights of appropriation hereby confirmed, confer no right of use of the waters appropriated upon other lands than those to which the same are appurtenant, and for the benefit of which such appropriations were initiated, and the waters diverted for the irrigation thereof; and whenever the water is not required by the appropriator having a prior right to its use for irrigation purposes, for the beneficial irrigation of his premises, or other beneficial use, he must and shall permit it to flow down in the natural channel of the stream as it was wont to flow in its natural course, without hindrance or diversion thereof, and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights of appropriation, according to the order of their priority rights, and at all times the water diverted shall be beneficially, economically, and reasonably used, without waste, by those having a right to do so by reason of the priority of their rights, and no rights of appropriation are hereby confirmed to divert a greater quantity of water into the head of the ditch, or ditches, of the appropriator having a valid right to divert the water, than such appropriator can beneficially use for the irrigation of his premises or for other purposes to which water is to be put, and in no event shall the quantity diverted exceed the quantity herein confirmed and set forth as the quantity to which such appropriator is entitled, as the same is necessary for the necessary and proper irrigation of his land and has been actually put to beneficial use. Whenever the waters appropriated by those having prior rights are not required by them for irrigation or other beneficial purposes, said water shall be at the disposal and subject to the use of those having later and subsequent rights, in the order of their respective priorities.

BY ORDER OF THE STATE WATER BOARD OF THE STATE OF OREGON, made and entered at a regular meeting of the State Water Board commenced and held on the 14th day of April, 1915, at the office of said Board, in the State House, at Salem, Oregon.

STATE WATER BOARD OF THE STATE OF OREGON

By *John H. Lewis*
JOHN H. LEWIS,
State Engineer, President.

James T. Chinnock
JAMES T. CHINNOCK,
Superintendent of Water Division No. 1.

Geo. D. Cochran
GEO. D. COCHRAN,
Superintendent of Water Division No. 2.

(SEAL OF STATE WATER BOARD)

ATTEST:

M. F. Mers
M. F. MERS
Secretary.