

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Harney and Malheur Counties

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS TO THE USE OF THE)
WATERS OF WHITEHORSE AND WILLOW CREEKS)
AND THEIR TRIBUTARIES)
-----)

FINDINGS OF FACT

AND

ORDER OF DETERMINATION

The 1983 Oregon Legislature passed Senate Bill 225 requiring the Water Policy Review Board (now the Water Resources Commission) to consider 75 potential minimum flow points on streams recommended by the Oregon Department of Fish and Wildlife and the Department of Environmental Quality. The evaluation of the requests was completed in 1985. Among the streams considered were Whitehorse and Willow Creeks.

Consideration of these minimum flows caused Roy Naftzager, owner of the Whitehorse Ranch, to submit two applications covering the ranch's use of water from Whitehorse and Willow Creeks. These applications were received on May 6, 1985, and designated as file numbers 68340 and 68341.

The applications contained the following remarks:

"The Whitehorse Ranch has a vested water right dating from approximately 1869 to date. However, rather than prove the existence of that water right at this time, the Whitehorse Ranch has elected to file for new water rights. In the event that this new water right is not prior in time to any other water right, including those claimed by the State of Oregon, the 1869 water right will be proven and relied upon."

Application 68340 specifies the use of 73.325 cfs of water from Willow Creek for the irrigation of 3,082 acres, while Application 68341 lists the use of 88.25 cfs of water from Whitehorse and Little Whitehorse Creeks for the irrigation of 3,828 acres.

If this historic use of water was subjected to the adjudication process, it appears that a reasonable and valid claim may be made to the extent outlined in the applications, but passing judgement on the validity of the claims is the responsibility of the court. As a claim to an undetermined vested right, this use could create some administrative problems, as provisions of statutes, opinions of the Attorney General and several court cases preclude the Director from distributing water for which no priority has been established or affirmed.

Because the quantities of water being proposed for diversion and use were substantial, Applications 63340 and 63341 were referred to the Water Resources Commission at its meeting of December 19, 1986, for public interest determination.

Department staff identified two alternatives:

1. Grant the permits for the quantity of water requested in the applications, as a reflection of the long-standing usage and to provide a record of the use until the adjudication process is completed.
2. Hold the permits in abeyance, but direct the Water Resources Director to make a priority of initiating an adjudication of these streams, and allocate resources of the agency toward that end.

The Director recommended alternative 2 which was passed unanimously by the Water Resources Commission.

The above-entitled matter coming for consideration by the Water Resources Director, and it appearing that all evidence and testimony have been taken in this proceeding, and the Director having carefully considered all such evidence, testimony, engineering data and information gathered in accordance with the law, and being fully advised in the premises, makes and orders to be entered of record in his office the following:

FINDINGS OF FACT AND ORDER OF DETERMINATION

-1-

Whitehorse and Willow Creeks are perennial streams located in a closed desert basin of Harney and Malheur Counties, Oregon. Neither Whitehorse nor Willow Creeks have ever been monitored for streamflow. A very few individual streamflow measurements are of record. In times of extreme flow, the creeks are tributary to Coyote Lake, a dry lake in Township 34 South, Range 37 East, Willamette Meridian. During normal flow all the water is appropriated for irrigation. They are bounded on the west by Trout Creek; the west and north by unnamed intermittent streams and the Alvord Desert; the east by Antelope Creek, also a tributary of Coyote Lake and the south by the McDermitt Creek drainage. The watershed covers approximately 327 square miles.

Whitehorse Creek rises in the NE 1/4, Section 11, Township 40 South, Range 40 East, Willamette Meridian, at an elevation of about 7500 feet in the Oregon Canyon Mountains. It flows northwesterly approximately 16 miles to the Whitehorse Ranch diversion point, where in time of normal flow all the water is appropriated. The primary tributaries are Cottonwood Creek, Doolittle Creek, Fifteenmile Creek and Little Whitehorse Creek. The highest point in the watershed is 8,000 feet. The diversion point is at approximately 4,580 feet elevation. The stream gradient is quite steep to the confluence with Fifteenmile Creek, where it flattens to about 0.85% grade at the diversion.

Willow Creek rises in the SE 1/4, Section 21, Township 40 South, Range 38 East, Willamette Meridian, at 7,600 feet elevation in the Trout Creek Mountains. It flows generally north 19 miles to the Whitehorse Ranch diversion point, where in times of normal flow all the water is appropriated. Willow Creek has no major tributaries. The highest point in the watershed is 8,000 feet. The diversion point is at 4,460 feet elevation. The stream gradient is quite steep in the upper reaches flattening to about 0.8% at the diversion.

very steep fault-block mountains. Streams are confined to narrow canyons. Lower in the foothills, the land generally is a tilted volcanic cap with exposed rimrocks. Below the foothills is a large plain of unconsolidated alluvium. It is this plain and the lower canyon reaches which are irrigated.

Precipitation averages about 8 1/2 inches per year. Heavy spring streamflow is derived from snowmelt. Springs supply some streamflow year round. There is no tree cover except scattered aspen groves, mahogany, juniper and some willows along the streambottoms. The unirrigated areas support sagebrush and native grasses. Irrigated fields are in meadow grass hay and alfalfa.

-2-

On the 19th day of December 1986, a petition was filed for the determination of the waters of Little Whitehorse Creek, Whitehorse Creek and Willow Creek, signed by Britt Lay, Foreman and Arthur B. Cherry, Vice-President, Whitehorse Ranch, users of said stream, petitioners praying that a determination of the relative rights of the various claimants to the waters of said stream system be made by the Water Resources Director in accordance with the provisions of the Oregon Water Rights Act.

The Water Resources Director fixed a time for the making of the necessary surveys and examinations and the beginning of the taking of such testimony as would enable him to determine the relative rights of the various claimants to the use of the waters of Whitehorse and Willow Creeks and their tributaries, as provided by law.

-3-

A notice was prepared by the Water Resources Director setting the date on which the Water Resources Director, or his assistants, would begin the investigation of the flow of water in Whitehorse and Willow Creek and their tributaries, and the existing works for the utilization of the waters thereof; and said notice was published in two issues of the Burns Times-Herald, published each Wednesday, and in The Malheur Enterprise, published each Wednesday. The newspapers are of general circulation in their localities and complete coverage of Whitehorse and Willow Creeks drainage basin was obtained. Notices were published on May 13 and May 20, 1987, the date of the last publication being more than ten days prior to the date fixed for the beginning of the taking of measurements and the making of investigations of the stream system by the Water Resources Director, as provided by law.

-4-

The Water Resources Director sent by certified mail to each person, firm or corporation owning or being in possession of lands in or bordering on, or having access to said streams or their tributaries, insofar as said claimants and owners and persons

in possession could reasonably be ascertained, a notice similar to the published notice. Included was an explanatory statement and a blank form upon which the claimant or owner could prepare in writing a notice of intention to file a statement and proof of claim of their right to the use of the waters of said Whitehorse and Willow Creeks and their tributaries, if any he had.

-5-

The following named persons, firms or corporations were duly notified of the proceeding by certified mail, as provided by law, of the commencing of the investigations by the Water Resources Director, or his duly authorized assistants, and were furnished an explanatory statement and pamphlet of information and a form upon which to declare their notice of intention to file a claim to the use of the waters of Whitehorse and Willow Creeks and their tributaries:

BALCH, Shirley	(See Brandt, Robert C.)
BASTEN, Louis N. c/o Michael Basten	1658 12th Ave., San Francisco, CA 94122
BELT, Harold C.	10553 Roundtree Rd., Los Angeles, CA 90064
BOAZ, Rodger E. & Roberta	17617 Victory Blvd., Van Nuys, CA 91406
BONALY, Joseph G.	2620 E. Hwy. 60, Valrico, FL 33594
BRANDT, Robert C. & BALCH, Shirley	16918 Hwy. 99E, Woodburn, OR 97071
BRILL, Mary Louise Estate c/o Santa Monica Bank	P.O.Box 1320, Santa Monica, CA 90406
BROWN, Lizzie C. c/o Robert Blackburn	2036 Guyson St., Lomita, CA 90717
BROWN, Maxine House & HYMER, Kenneth C.	SE 171 Wildwood Drive, Shelton, WA 98584
CALDERWOOD, Estella	Andrews Star Rt Box 16, Burns, OR 97720
CARINI, Dorothy	(See Matesans, Esther)
CHANDLER, Geo W. c/o W.L. Chandler	7326 Richmond, Darien, IL 60559
CHAPMAN, Vadis D. & HALISKI, Jean	8324 NE Humboldt St., Portland, OR 97220
CHRISTENSEN, L. Derral	Rt. 1, Box 174, Delta, UT 84624
CLARK, Julie Q., NTFY Prop Tax Service Co.	1560 Broadway, Suite 730, Denver, CO 80202
COOK, Wesley & RUSHMAN, Beatrice Margaret	5141 Pacific Ave., Long Beach, CA 90848
DEFENBAUGH, Gary & Doris	Fields, OR 97710
DOANE, Rose	(See Dombrowsky et al)
DOMBROWSKY, Joseph; DOMBROWSKY, Marguarite H.;	740 Lawndale St., Medford, OR 97501
DOMBROWSKY, Marguarite Agnes; DOMBROWSKY, Paul;	
DOMBROWSKY, Michael and DOANE, Rose c/o	
DOMBROWSKY, Michael	
DOUGLAS, Allan E. Trustee	18319 Karen Drive, Tarzana, CA 91356
DUNIGAN, W.L. c/o Mrs. J. Studebaker	10000 Birch Lane, Wichita, KS 67212
ELLINGER, Christian	2315 East Circle Drive, St. Joseph, MO 64505
EVERETT, Amelia A.	Lyons, NE 68038
FARLEY, J. Richard and Carole	1201 Dove St. #300, Newport Beach, CA 02660-2810
FATHERS, Lloyd L.	2726 NE 143rd, Seattle, WA 98125
FEELHAVER, Minerva & MOSS, Mitzi	514 N. Swope, Colorado Springs, CO 80900
FOX, Alberta F. c/o John B. Fox	Lawton, OK 73507
GONSIOR, Frances G. & Judy	Rt. 2, Box 29, Genoa, NE 68640
HALISKI, Jean	(See Chapman, Vadis D.)
HAMILTON, J.G. c/o Loraine VanMeter	910 Kansas Ave., Goodland, KS 67735
HARNEY COUNTY	450 N. Buena Vista, Burns, OR 97720
HAST, Herbert H. c/o Whitehorse Ranch, Inc.	4201 Wilshire Blvd Rm. 240 Los Angeles CA 90005
HORNER, Bryan T.	2017 W. 50th St. Shawnee Mission, KS 66205
HYMER, Kenneth C.	(See Brown, Maxine House)
HUMBOLT LAND & LIVESTOCK CO.	Andrews St Rt. Box 16, Burns, OR 97720
ISGAR, Chester H. & Bobbie	9119 W F-8, Lancaster, CA 93534
JETT, ARCHIE, L. & Betty Lo	12400 Hwy 234, Gold Hill, OR 97525

KNODLE, Jack M. & Mildred
LAFFERTY, Charles Raymond
LANDAU, Charles & Judith
LAUSER, Ron & Shirley
KEHRMAN, Philip
LUENING, Mrs. C.F. c/o Katherine Knowles, Agt.
MATESANS, Esther & CARINI, Dorothy
MILLER, Robert J.
MORRELL, Adam c/o Wm. J. Baird, John C. Burke,
Father Flanagan's Boys Home
MOSS, Mitzi
MOWRY, Wm E. & Eunice c/o Clifford J. Mowry
NAFTZGER, Roy E. Jr.
NAFTZGER, Roy E. Jr.
NAGY, Emery & Dorothy
NETTLETON, C. Joseph; NETTLETON, Margaret;
NETTLETON, Dorothy; NETTLETON, Mahlon;
NETTLETON, Helen; c/o Anne M. Lyon
OLSEN, Marguerite M.
OLSON, Godfrey E.
OREGON CANYON RANCH
OREGON, STATE OF, DIVISION OF STATE LANDS
ORLANDO, Chincy; ORLANDO, Don; ORLANDO, Frank;
ORLANDO, Ida Rose
OSBORNE, A.E. c/o Walter J. Nicol
PARKERSON, Jack
PARPART, Louis
PAULSON, Belden H.
PEARSON, Chester c/o S.C. Mohler & S. Lewis
PEGG, Mrs. Chester J. c/o Mrs. Donald C. Enoch
PETERS, Gordon & Joanne
PETKER, Marvin
QUINLAN, C., NTFY A.D. Blackard
QUINLAN, Charles P., NTFY Prop Tax Service Co.
QUINLAN, Thomas R., NTFY Prop Tax Service Co.
RITTENHOUSE, Robert R. Sr, & RITTENHOUSE,
Edithanne
RUSHMAN, Beatrice Margaret
SAUER, Vonnie c/o Whitehorse Ranch, Inc.
SCHOOL DISTRICT #33
SCHRIVEN, Chas M. c/o Roy Scriven
SEARS, Charles Jr., NTFY Doris Sears Weeks
SHARP, Lillian B.
SINCLAIR, K., NTFY A.D. Blackard
SMITH, Dorothy M.
TALBERT, Robert S.
TAYLOR, Frederick
TILLERY, Billy G.
TODD, Dale L. & Vanica
US DEPARTMENT OF INTERIOR, BUREAU OF LAND
MANAGEMENT
US DEPARTMENT OF INTERIOR, BUREAU OF LAND
MANAGEMENT
US DEPARTMENT OF INTERIOR, BUREAU OF LAND
MANAGEMENT
US DEPARTMENT OF INTERIOR, REGIONAL SOLICITOR
US DEPARTMENT OF JUSTICE, US ATTORNEY
US DEPARTMENT OF JUSTICE, US ATTORNEY GENERAL
UNITED LAND & DEVELOPMENT
VOGEL, Carl A.
WATT, Roy c/o Motor R.A.

5917 Meadowbrook Lane, Lincoln, NE
68510
P.O. Box 4826, Canyon Lake, CA 92380
Rt. 1 Box 62, Port Townsend, WA 98368
7939 St. Jones Rd, Vancouver, WA
98665-1022
P.O.Box 4, Genoa, NV 89411-0004
P.O.Drawer 490, Clovis, NM 88101-8901
1446 W Palm Drive, Oxnard, CA 93030
Rt. 1, Box 812AA, Prineville, OR 97754
Boys Town, NE 68010
(See Feelhaver, Minerva)
4301 38th Ave., Sacramento, CA 95824
4201 Wilshire Blvd Room 240, Los
Angeles, CA 90010
9601 Wilshire Blvd Suite 205, Beverly
Hills, CA 90210
18546 Sherman Wy Suite 100, Reseda, CA
91335
7212-1/2 Interlaaken Drive SW, Tacoma,
WA 98499
106 East 19th, Grand Island, NE 68801
91 White St, West Haven, CT 06516
P.O. Box 103, McDermitt, NV 89421
1445 State Street, Salem, OR 97310
20780 Boyce Lane, Saratoga, CA 95070
5132 Rudy Lane, Las Vegas, NV 89120
Box 5214, Walnut Creek CA 94596
816 Olive, Hebron, NE 68370
2602 E. Newberry Blvd., Milwaukee,
WI 53211
1202 N 3rd, Arkansas City, KS 67005
2015 S Pine St. Englewood, FL 33533
Box 535, Rancho Sante Fe, CA 92067
200 S. Madison St., Hugoton, KS 67951
1924 S. Utica Suite 720 Denver, CO
80202
1560 Broadway, Suite 730, Denver, CO
80202
1560 Broadway, Suite 730, Denver, CO
80202
151 Black Point Lane, Santa Cruz, CA
95062
(See Cook, Wesley)
4201 Wilshire Blvd Rm 240, Los
Angeles, CA 90005
Fields, OR 97710
Cuprum Star Route, Council, ID 83612
211 W 31st St, Kearney, NB 68847
10216 105th Drive, Sun City, AZ
85351
1924 S. Uttca, Suite 720, Denver, CO
80202
P.O. Box 5227, Montalvo, CA 93003
69 Cottonwood Circle, Rolling Hills
Estates, CA 90274
P.O. Box 2117, Del Mar, CA 92014
21807 Robledo Road, Palo Cedro, CA
96073
P.O. Box 155, Church Rock, NM 87311
74 S. Alvord St., Burns, OR 97720
P.O. Box 700, Vale, OR 97918
Oregon State Office, P.O.Box 2965
Portland, OR 97208
Lloyd 500 Building, Suite 607, 500
NE Multnomah Street, Portland, OR
97232
312 US Courthouse, 620 SW Main Street
Portland, OR 97205
Department of Justice, Washington DC
20000
5280 Macleay Road SE, Salem, OR 97301
P.O. Box 494, Gainesville, FL 32602
Healey, KS 67850

WATTLES, Bruce E.	8930 Liberty Road South, Salem, OR 97306
WEILLS, Jordan T. & Ned D.	2817 Aloma, Wichita, KS 67211
WHITEHORSE RANCH, INC.	4201 Wilshire Blvd, Los Angeles, CA 90005
WHITEHORSE RANCH, INC. c/o Cliff S. Bentz, Attorney-at-Law	P.O. Box S, Ontario, OR 97914
WILKINSON RANCHES	P.O. Box 245, McDermitt, NV 89421
WILLIN, Arthur C. & Doris	1970 Oakland Hills Drive, Corona, CA 91720
WOODS, Allin J. c/o Joseph H. Woods	3100 Whisper Dr NW, Bremerton, WA 98312
ZIMMERMAN, Evan and Tillie	P.O. Box 528, McDermitt, NV 89421

-6-

All certified notices, addressed as tabulated in the preceding finding, which addresses were secured from the records of the County Assessor and Tax Collector of the county in which the property is located, were apparently delivered to the addressee by the Post Office Department except those hereinafter tabulated, which were returned by the Post Office Department bearing a notation as to the reason for nondelivery as shown by the statement following the name:

BOAZ, Rodger E. & Roberta	Unclaimed
CALDERWOOD, Estella	Addressee Unknown
FOX, Albert F. c/o John B. Fox	Insufficient Address
NAGY, Emergy & Dorothy	No Forwarding Order
QUINLAN, C. NTFY A.D. Blackard	No Such Number
SCRIVEN, Chas M. c/o Roy Scriven	Addressee Unknown
SHARP, Lillian B.	Forward Expired
SINCLAIR, K., NTFY A.D. Blackard	No Such Number

-7-

The foregoing list of names was again checked with the records, telephone directories and by personal contact with persons residing in the area; and a second attempt was made to give notice, by certified mail, to the following named persons at the addresses listed as follows:

DOUGLAS, Allan E., Trustee	18319 Karen Drive, Tarzana, CA 91356
ELLINGER, Christian	2315 East Circle Dr., St. Joseph, MO 64505
FARLEY, J. RICHARD & Carole	1201 Dove St., #300, Newport Beach, CA 92660-2810
LAFFERTY, Charles Raymond	P.O. Box 4826, Canyon Lake, CA 92380
LAUSER, Ron & Shirley	7939 St. Jones Road, Vancouver, WA 98665-1022
MATESANS, Esther & CARINI, Dorothy	1446 W. Palm Drive, Oxnard, CA 93030
WILKINSON RANCHES	P.O. Box 245, McDermitt, NV 89421

-8-

The foregoing list of names was again checked with the records, telephone directories and by personal contact with persons residing in the area; and a third attempt was made to give notice, by certified mail, to the following named persons at the addresses listed as follows:

BELT, Harold C.

10553 Roundtree Road, Los Angeles, CA
90064

BRILL, Mary Louise Estate c/o Santa Monica Bank
HORNER, Bryan T.

P.O. Box 1320, Santa Monica, CA 90406
2017 W. 50th St. Shawnee Mission, KS
66205

TODD, Dale L. & Vancia

P.O. Box 904, Belen, NM 87002

-9-

Qualified assistants to the Water Resources Director proceeded to make examinations, surveys and measurements of said Whitehorse and Willow Creeks and their tributaries, and of ditches, canals and other works diverting water therefrom, surveyed the lands irrigated and gathered such other data and information as were essential to the proper determination of the relative rights of the parties interested. These observations and measurements were reduced to writing and made a matter of record in the Director's office. The Water Resources Director had a map or plat prepared, showing with substantial accuracy, the location of all streams in the drainage basin, the location of each canal, ditch or other means of conveyance of appropriated water and the points of diversion thereof, and the number of acres of land being irrigated in each legal subdivision, or other character of use of water. Prints of the maps or plats are on file and are a part of the record herein.

-10-

As soon as practicable after the examination and measurements as described in the preceding finding were completed, the Water Resources Director prepared a notice setting a place and time when he would begin the taking of statements and proofs of claim as to the relative rights of the various claimants to the use of the waters of said Whitehorse and Willow Creeks and their tributaries. The notice was published in two issues (August 17, and August 24, 1988) of the Malheur Enterprise, printed and published weekly in Vale, Malheur County, Oregon, and was also published in two issues (August 24, and August 31, 1988) of the Burns Times-Herald, printed and published weekly in Burns, Harney County, Oregon.

-11-

The Water Resources Director sent by certified mail to each person, firm or corporation who had filed a declaration of intention to file a claim to the use of the waters of Whitehorse and Willow Creeks and their tributaries in this proceeding, in response to the notice described in Finding 4 above, a notice similar to such published notice described in the preceding finding, setting forth the date when the Water Resources Director, or his authorized assistants, would receive the statements and proofs of claim to the use of the waters of said streams and tributaries. The notice was mailed at least thirty days prior to the date set for receiving said statements and

the claimant or owner could prepare in writing all the particulars necessary for the determination of his right, under oath; and a pamphlet of information for water users in connection with the preparation of their statement and proof of claim.

-12-

The times and places where the Water Resources Director, or his duly authorized assistant did appear and receive the statements and proofs of claim of the various parties, were fixed in said notice as follows:

On Tuesday, September 27, 1988, in the Basement Meeting Room, Harney County Courthouse, Burns, Oregon;

And for a period of five days, beginning Monday, October 10, 1988, and ending Friday, October 14, 1988, at the office of the Water Resources Department, 3850 Portland Road N.E., Salem, Oregon.

-13-

The following named persons, who filed their notice of intention to file a statement and proof of claim, were duly notified by certified mail, as provided by law, of the commencing of the taking of statements and proofs of claim of their rights to the use of the waters of Whitehorse and Willow Creek and their tributaries.

BENTZ, Cliff
NAFTZGER, Roy E., dba Whitehorse Ranch
TUCKER, Sam

US DEPARTMENT OF INTERIOR, BUREAU OF LAND
MANAGEMENT, ATTN: Paul M. Vetteruk
US DEPARTMENT OF INTERIOR, OFFICE OF THE
SOLICITOR, ATTN: Susan Driver

P.O.Box "S", Ontario, OR 97914
Whitehorse Ranch, Fields, OR 97710
105 N. Main, Milton-Freewater, OR
97862
P.O. Box 2965, Portland, OR 97208

Pacific Northwest Region, 500 NE
Multnomah Street, Suite 607,
Portland, OR 97232

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

-14-

In response to said notice to file statements and proofs of claim, the following named persons, firms or corporations did submit to the Water Resources Director statements and proof of their claims:

WHITEHORSE RANCH

Fields, OR 97710

which was in ample form and was accompanied by the statutory fees and was filed with the Water Resources Director.

All persons, firms or corporations to whom notices were sent by certified mail, as tabulated under Findings 5 and 13 above, who failed, neglected or refused to appear herein and submit proof of a claim or right to the use of the waters of Whitehorse and Willow Creeks and their tributaries, initiated prior to the adoption of the Oregon Water Code on February 24, 1909, now the Oregon Water Rights Act, if any they have or claim, are in default. Such default is here and now entered against them, and each of them and such parties are hereby enjoined and inhibited from using or asserting any rights to the use of said Whitehorse or Willow Creeks or any tributary thereof, included in this proceeding, except by, through or under the rights of persons whose water rights are defined herein, or under and by virtue of permits issued by the Water Resources Director, as provided by law.

After the completion of the taking of such statement and proof of claim, the Water Resources Director did, on the 20th day of December, 1988, give notice by certified mail to each of the various claimants to the use of the waters of Whitehorse and Willow Creek and their tributaries, as provided by law, that at the times and places named in said notice, to wit:

For a period of five days, beginning Monday, January 30, 1989, and ending Friday, February 3, 1989, at the office of the Water Resources Department, 3850 Portland Road N.E., Salem, Oregon;

And for a period of five days beginning Monday, February 6, 1989, and ending Friday, February 10, 1989, at the office of the Water Resources Department, 3850 Portland Road N.E., Salem, Oregon.

the statement and proof of claim theretofore filed would be open to inspection between the hours of 8:00 a.m. to 12:00 noon and from 1:00 p.m., to 5:00 p.m., on each of said days. That said notice did state therein that the determination of the Water Resources Director would be heard by the Circuit Court of the State of Oregon, for Harney County.

The Water Resources Director did, in accordance with the notice as described in the preceding Finding No. 16, keep the statement and proof of claim open to inspection at said times and places.

The time set by law for filing of statements of contest, within fifteen days after the expiration of the period of open inspection, expired February 25, 1989, and no additional time was requested for filing such statement of contests and no contests were initiated by filing with the Water Resources Director. The statement and proof of claim are more particularly set out in the following paragraph.

Proof #1

WHITEHORSE RANCH

County: Harney and Malheur

Basin Number: 12

Source: Whitehorse and Willow Creeks

Tributary to: Closed Basin

Source Type: Stream

Diversion Point Location: Whitehorse Creek: within Lot 16, Section 31, T37S, R37E, W.M., 2450' north and 3050' east of the Southwest corner of said Section 31.

Willow Creek: within the NW1/4 SW1/4, Section 15, T37S R36E, W.M., 4625' west and 2750' south of the Northeast corner of said Section 15.

Use: Irrigation and Livestock

Date of Initiation: 1883

Place of Use Location: See tabulation in Finding #30

Whitehorse Ranch, Britton Lay, Manager, submitted Proof #1 claiming a right to the water of Whitehorse and Willow Creeks for the irrigation of 5,777.3 acres and stock water for 3,500 head of cattle.

Much written evidence was submitted with this claim, including deed descriptions and patent records, extensive historical writings, and statements and affidavits from knowledgeable individuals. From evidence presented, the present day ranch was established in 1869, on the site of an abandoned military post. The earliest land patents presented as evidence were dated 1883. Subsequent patents range from 1894 to 1983, with the majority of the irrigated land patented not later than 1912. The hay meadows are contiguous and flat, such that any water diverted at the upper ends tends to spread out and irrigate the entire area with little human effort. It is reasonable that the areas now irrigated have been so irrigated since 1883.

Lawrence W. Miller, former Whitehorse Ranch buckeroo, provided a signed statement in support of the claim. He asserted personal knowledge of irrigation practices from 1929 forward and hearsay knowledge of irrigation prior to 1929.

Quentin (Stubb) Currey, former Whitehorse Ranch buckeroo, provided a signed statement also in support of the claim, asserting personal knowledge of irrigation since 1919.

Timotea Echanis, a ranch neighbor from 1912 until 1923, provided an affidavit in support of the ranch claims.

Ken Bentz, Malheur County rancher and an employee of Whitehorse Ranch from 1947 until 1961, provided an affidavit supporting the claim and asserting that without irrigation the land would be desert.

The Water Resources Department staff classified 4,232.2 acres as irrigated from the diversion point on Whitehorse Creek. This diversion point is a concrete dam which channels all the water in the creek either through a series of corrugated metal pipes into ditches or over splashboards into a main ditch which redirects the water to lands further north.

The staff classified 850.4 acres as irrigated from the diversion point on Willow Creek. This diversion point is also a concrete dam with corrugated metal pipe and splashboards appropriating all the water in Willow Creek.

Additionally, 707.8 acres were found to be irrigated by the commingled waters of both Whitehorse and Willow Creeks.

The claim is in agreement with the maps prepared by the Water Resources Department staff and a preliminary tabulation of irrigated acres prepared prior to the taking of claims. During the course of re-tabulating the irrigated acres for this document, 13.1 acres were found to have been mapped but not tabulated in the Water Supply and Water Use Report nor included in the Whitehorse Ranch claim. Since the claim is based on the maps as drawn, it is recommended that the findings be for a total of 5,790.4 irrigated acres, being 4,232.2 acres irrigated from Whitehorse Creek, 850.4 acres irrigated from Willow Creek and 707.8 acres irrigated from the commingled waters of Whitehorse and Willow Creeks.

It appears this claimed right should be limited to a rate of diversion not to exceed 106.0 cubic feet per second from Whitehorse Creek, 21.3 cubic feet per second from Willow Creek and an additional 17.7 cubic feet per second from the combined sources for irrigation purposes with a date of priority of 1883.

Since the Whitehorse Ranch appropriates all the water in Whitehorse and Willow Creeks year-around and since there are no natural channels existing below the ranch's diversion points, all water available is usable for stock water and there is no need to assign a separate rate and duty for stock water.

Claimant's right is more particularly described and set out in the tabulation of water rights under Finding #30 herein.

-20-

DUTY OF WATER, HEAD OF WATER, FOR IRRIGATION USE

Taking into consideration all of the various elements and conditions having a bearing on the quantity of water essential for the irrigation of crops within Whitehorse and Willow Creeks and their tributaries, the duty of water, except where particularly defined in specific findings herein, is fixed at not to exceed 3.0 acre-feet per acre during any one irrigation season.

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

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

-21-

DUTY OF WATER FOR RIGHTS EVIDENCED BY PERMITS AND CERTIFICATES

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

-22-

RIGHTS UNDER PERMITS ISSUED BY THE WATER RESOURCES DIRECTOR

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

-23-

DOMESTIC USE

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

-24-

STOCK USE BY DIVERSION

Where a claimant in this proceeding asserted a right to the use of water for stock purposes by diversion and it was allowed herein, it is to be understood that the claimant has a right to the use of the water for such animals as are essential to the proper sustenance of the family and also water for stock when the claimant is engaged in

the raising of livestock or when the claimant takes livestock for pasturage and is limited to the use of such quantity of water as is necessary for the number of stock claimed; provided that where the claimant was allowed a right for irrigation use through the same ditch, pipeline, or other means of conveyance, no additional water shall be diverted for stock use while water is being diverted for irrigation purposes.

-25-

HEAD GATES AND MEASURING DEVICES

The owner or owners of any ditch, pump, pipeline or other means of diversion and conveyance, whether the rights are determined in this proceeding or subsequently initiated and perfected, shall maintain to the satisfaction of the watermaster a substantial head gate at the point of diversion. It shall be constructed so that it can be set and locked or closed and locked by the watermaster. In the distribution of water, the watermaster may require the installation of suitable head gates or measuring devices, and such owner or owners shall construct and maintain such suitable head gates or measuring devices as may be necessary to assist the watermaster to determine the quantity of water that is to be diverted into said ditch, pipeline or other means of conveyance, from the spring, stream or other source of supply.

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

-26-

IRRIGATION SEASON

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

-27-

PLACE OF MEASUREMENT

The place of measurement of the water to which any appropriator of the waters of Whitehorse and Willow Creeks and their tributaries is entitled, whether such appropriation was determined in this proceeding, or was initiated by the filing of an application with the Water Resources Director, hereby is fixed to be at the point of diversion from the stream or source of supply.

-28-

RIGHTS APPURTENANT TO LAND

The rights to the use of the waters of Whitehorse and Willow Creeks and their tributaries for irrigation purposes, as herein confirmed, are appurtenant to the lands herein described in connection with such rights, and are limited and confirmed to the irrigation of the lands described and the priorities of rights confirmed confer no right to the use of the waters of said stream and its tributaries on any lands other than those specified tracts to which such rights are herein set forth as appurtenant.

The rights to the use of water for other useful and beneficial purposes as herein confirmed are appurtenant to the lands and place of use as herein described and the priorities and rights confirmed confer no rights to the use of the water of said Whitehorse and Willow Creeks or any of their tributaries on any land other than those specified tracts to which such rights are set forth herein as appurtenant.

Each and every person, association or corporation, or their respective successors in interest, shall be prohibited, restrained and enjoined from diverting and using water from said stream or any of its tributaries on any other lands without lawful permit first obtained from the Water Resources Director.

-29-

DIVERSION GOVERNED BY PRIORITIES AND BENEFICIAL USE

Except as otherwise determined herein, the order of rights of the respective appropriators of the waters of Whitehorse and Willow Creeks and their tributaries, and the order in which they are entitled to divert and use said water shall be according to the date of relative priority of the rights as determined and set forth herein, and the first in order of time according to the date of relative priority shall be first in order of right, and so on down to the latest priority. Those having prior rights are entitled to divert and use the waters of said stream and its tributaries, when necessary for the irrigation of their respective lands, or other useful and beneficial purposes for which they were allowed a right of use, and in accordance with such right at all times against those having rights of subsequent priority. Whenever the water is not required for beneficial use by the appropriator having such prior right to its use for the purpose for which such water was appropriated, he must and shall permit it to flow down the natural channel of the stream as it was wont to flow in its natural course. Those having subsequent rights are entitled to the use of said waters and to divert the

same to the extent of their respective rights, according to the order of priority of their respective rights. At all times the water diverted by the appropriator whose rights have been determined herein shall be beneficially and reasonably used without waste. No rights of appropriation are hereby confirmed to divert a greater quantity of water into the head of the ditch, pump, pipeline, or other means of conveyance of the appropriator having a valid right to divert the water than such appropriator can beneficially use for the purpose to which the water is to be used, in accordance with such right.

-30-

ORDER OF DETERMINATION

To summarize and supplement the specific finding herein, the rights of the claimants to the use of the waters of Whitehorse and Willow Creeks and their tributaries as determined are arranged in tabulated form with the date of relative priority of such appropriation, the quantity or rate of flow of the water allowed such appropriator, the number of acres to be irrigated by such appropriation, the use or uses to which such water is applied, the means by which the water so appropriated has been diverted, the name of the stream or other source from which the water is appropriated and diverted, and the description of the lands upon which the water has been used and is fixed as appurtenant; the tabulated right of each appropriator being set opposite and following his name and post office address, as stated in his statement and proof of claim as follows:

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Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
WHITEHORSE RANCH Fields, OR 97710 (Proof #1) (Finding #19)	1883	106.0	4232.2	Irrigation & Stock	Unnamed	Whitehorse Creek	0.6 acre Lot 18 20.5 acres Lot 19 4.5 acres Lot 20 Section 30 0.5 acre Lot 4 30.7 acres Lot 5 6.7 acres Lot 6 7.1 acres Lot 8 6.5 acres Lot 9 Section 31 T. 37 S. R. 37 E., W.M. 1.4 acres Lot 3 (NE1/4 NW1/4) 32.8 acres Lot 4 (NW1/4 NW1/4) 6.8 acres SW1/4 NW1/4 2.9 acres NW1/4 SW1/4 2.9 acres SW1/4 SW1/4 Section 1 40.3 acres Lot 1 (NE1/4 NE1/4) 40.3 acres Lot 2 (NW1/4 NE1/4) 40.0 acres SW1/4 NE1/4 40.0 acres SE1/4 NE1/4 40.2 acres Lot 3 (NE1/4 NW1/4) 40.2 acres Lot 4 (NW1/4 NW1/4) 24.0 acres SW1/4 NW1/4 22.2 acres SE1/4 NW1/4 5.0 acres NE1/4 SW1/4 0.4 acre SE1/4 SW1/4 40.0 acres NE1/4 SE1/4 40.0 acres NW1/4 SE1/4 37.9 acres SW1/4 SE1/4 40.0 acres SE1/4 SE1/4 Section 2 40.2 acres Lot 1 (NE1/4 NE1/4) 40.2 acres Lot 2 (NW1/4 NE1/4) 39.7 acres SW1/4 NE1/4 31.5 acres SE1/4 NE1/4 40.1 acres Lot 3 (NE1/4 NW1/4) 40.1 acres Lot 4 (NW1/4 NW1/4) 40.0 acres SW1/4 NW1/4 40.0 acres SE1/4 NW1/4 24.3 acres NE1/4 SW1/4 28.0 acres NW1/4 SW1/4 6.9 acres SE1/4 SW1/4 15.8 acres NE1/4 SE1/4 18.9 acres NW1/4 SE1/4 38.9 acres SW1/4 SE1/4 34.6 acres SE1/4 SE1/4 Section 3 36.5 acres Lot 1 (NE1/4 NE1/4) 5.1 acres Lot 2 (NW1/4 NE1/4) 11.4 acres SE1/4 NE1/4 0.9 acre NE1/4 SE1/4 Section 4 39.0 acres NE1/4 NE1/4 24.7 acres NW1/4 NE1/4 18.7 acres SW1/4 NE1/4 14.1 acres SE1/4 NE1/4 0.7 acre NE1/4 NW1/4 1.1 acres SE1/4 NW1/4 Section 10 40.0 acres NE1/4 NE1/4 31.0 acres NW1/4 NE1/4 36.0 acres SW1/4 NE1/4 40.0 acres SE1/4 NE1/4

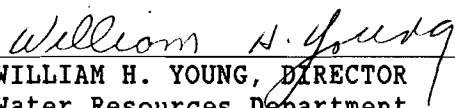
Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
							12.0 acres NW1/4 NW1/4
							25.5 acres SW1/4 NW1/4
							22.7 acres SE1/4 NW1/4
							32.1 acres NE1/4 SW1/4
							0.4 acre NW1/4 SW1/4
							2.4 acres SW1/4 SW1/4
							36.8 acres SE1/4 SW1/4
							28.7 acres NE1/4 SE1/4
							37.0 acres NW1/4 SE1/4
							38.6 acres SW1/4 SE1/4
							33.8 acres SE1/4 SE1/4
							Section 11
							8.6 acres NW1/4 NW1/4
							32.6 acres SW1/4 NW1/4
							1.1 acres SE1/4 NW1/4
							0.3 acre NE1/4 SW1/4
							30.2 acres NW1/4 SW1/4
							1.7 acres SW1/4 SW1/4
							Section 12
							12.6 acres NW1/4 NW1/4
							32.9 acres SW1/4 NW1/4
							0.8 acre SE1/4 NW1/4
							20.0 acres NE1/4 SW1/4
							40.0 acres NW1/4 SW1/4
							34.8 acres SW1/4 SW1/4
							31.6 acres SE1/4 SW1/4
							Section 13
							34.7 acres NE1/4 NE1/4
							35.4 acres NW1/4 NE1/4
							20.7 acres SW1/4 NE1/4
							38.6 acres SE1/4 NE1/4
							24.6 acres NE1/4 NW1/4
							0.2 acre NW1/4 NW1/4
							2.6 acres SE1/4 NW1/4
							20.2 acres NE1/4 SE1/4
							3.5 acres SE1/4 SE1/4
							Section 14
							22.7 acres NW1/4 NE1/4
							40.0 acres SW1/4 NE1/4
							3.5 acres SE1/4 NE1/4
							18.3 acres NE1/4 NW1/4
							4.2 acres NW1/4 NW1/4
							8.3 acres SE1/4 NW1/4
							14.4 acres NE1/4 SW1/4
							15.7 acres SE1/4 SW1/4
							10.0 acres NE1/4 SE1/4
							40.0 acres NW1/4 SE1/4
							40.0 acres SW1/4 SE1/4
							9.6 acres SE1/4 SE1/4
							Section 24
							2.5 acres NE1/4 NE1/4
							39.6 acres NW1/4 NE1/4
							36.3 acres SW1/4 NE1/4
							7.6 acres SE1/4 NE1/4
							10.1 acres NE1/4 NW1/4
							1.8 acres SE1/4 NW1/4
							30.2 acres NE1/4 SE1/4
							14.9 acres NW1/4 SE1/4
							0.1 acre SW1/4 SE1/4
							24.6 acres SE1/4 SE1/4
							Section 25
							0.1 acre NE1/4 NE1/4
							Section 36
							T. 37 S. R. 36 E., W.M.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
WHITEHORSE RANCH Fields, OR 97710 (Proof #1) (Finding #19)	1883	21.3	350.4	Irrigation & Stock	Unnamed	Willow Creek	40.0 acres NE1/4 NE1/4 23.4 acres NW1/4 NE1/4 15.9 acres SW1/4 NE1/4 40.0 acres SE1/4 NE1/4 40.0 acres NE1/4 SE1/4 14.8 acres NW1/4 SE1/4 11.5 acres SW1/4 SE1/4 40.0 acres SE1/4 SE1/4 Section 33 640.0 acres Section 34 640.0 acres Section 35 40.0 acres NE1/4 NW1/4 40.0 acres NW1/4 NW1/4 40.0 acres SW1/4 NW1/4 39.2 acres SE1/4 NW1/4 24.5 acres NE1/4 SW1/4 40.0 acres NW1/4 SW1/4 40.0 acres SW1/4 SW1/4 17.9 acres SE1/4 SW1/4 Section 36 T. 36 S. R. 36 E., W.M. 11.3 acres NW1/4 SW1/4 36.4 acres SW1/4 SW1/4 1.1 acres SE1/4 SW1/4 Section 3 17.9 acres NE1/4 SW1/4 23.8 acres SE1/4 SW1/4 19.5 acres NE1/4 SE1/4 11.0 acres NW1/4 SE1/4 19.3 acres SW1/4 SE1/4 39.0 acres SE1/4 SE1/4 Section 4 40.0 acres NE1/4 NE1/4 32.9 acres NW1/4 NE1/4 17.9 acres SW1/4 NE1/4 40.0 acres SE1/4 NE1/4 8.4 acres NE1/4 NW1/4 40.0 acres NE1/4 SE1/4 27.1 acres NW1/4 SE1/4 11.8 acres SW1/4 SE1/4 33.7 acres SE1/4 SE1/4 Section 9 7.6 acres NE1/4 NW1/4 40.0 acres NW1/4 NW1/4 40.0 acres SW1/4 NW1/4 29.4 acres SE1/4 NW1/4 37.8 acres NE1/4 SW1/4 40.0 acres NW1/4 SW1/4 40.0 acres SW1/4 SW1/4 35.7 acres SE1/4 SW1/4 Section 10 0.1 acre NW1/4 NE1/4 2.8 acres SW1/4 NE1/4 32.7 acres NE1/4 NW1/4 40.0 acres NW1/4 NW1/4 35.3 acres SW1/4 NW1/4 31.2 acres SE1/4 NW1/4 Section 15

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
WHITEHORSE RANCH Fields, OR 97710 (Proof #1) (Finding #19) (Finding #19)	1883	17.7	707.8	Irrigation & Stock	Unnamed	Comingled Whitehorse and Willow Creeks	6.4 acres NE1/4 NE1/4 0.3 acre SE1/4 NE1/4 Section 16 T. 37 S. R. 36 E., W.M. 0.4 acre NW1/4 SW1/4 Section 3 3.5 acres NE1/4 NE1/4 34.8 acres NW1/4 NE1/4 40.0 acres SW1/4 NE1/4 28.6 acres SE1/4 NE1/4 39.7 acres NE1/4 NW1/4 31.1 acres NW1/4 NW1/4 17.7 acres SW1/4 NW1/4 40.0 acres SE1/4 NW1/4 20.6 acres NE1/4 SW1/4 2.8 acres NW1/4 SW1/4 19.6 acres NE1/4 SE1/4 28.0 acres NW1/4 SE1/4 Section 4 T. 37 S. R. 36 E. W.M. 16.6 acres NW1/4 NE1/4 24.1 acres SW1/4 NE1/4 40.0 acres NE1/4 NW1/4 40.0 acres NW1/4 NW1/4 34.7 acres SW1/4 NW1/4 40.0 acres SE1/4 NW1/4 40.0 acres NE1/4 SW1/4 35.1 acres NW1/4 SW1/4 36.8 acres SW1/4 SW1/4 40.0 acres SE1/4 SW1/4 25.2 acres NW1/4 SE1/4 28.5 acres SW1/4 SE1/4 Section 33 T. 36 S. R. 36 E., W.M.

The Water Resources Director of Oregon, hereby CONSIDERS AND ORDERS that the relative rights of the various claimants to the use of the waters of Whitehorse and Willow Creeks and their tributaries, be and the same are hereby determined and settled as set forth in the foregoing Findings and Order of Determination.

Dated at Salem, Oregon, this 27 day of April, 1989.


WILLIAM H. YOUNG, DIRECTOR
Water Resources Department

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