

BEFORE THE STATE WATER BOARD OF THE STATE OF OREGON.

WATER DIVISION NO. 2

UMATILLA COUNTY.

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS OF THE VARIOUS)
CLAIMANTS TO THE WATERS OF JOHNSON) FINDINGS OF FACT.
CREEK, A TRIBUTARY OF PINE CREEK, IN)
UMATILLA COUNTY, OREGON.)

Now, on this 12th day of April, 1916, the above entitled matter coming on before the State Water Board of the State of Oregon, at a meeting of said Board, commenced and held on said date, and it appearing to said Board that all the evidence and testimony taken in the above entitled proceeding has been duly filed in the office of said Board, and the said Board having carefully considered all of the said evidence, proofs and testimony taken, and the information and data gathered by the State Engineer, and being now fully advised in the premises, makes and orders to be entered of record in its office, the following

FINDINGS OF FACT:

I.

That on the 28th day of July, 1913, there was filed in the office of the State Water Board of the State of Oregon, a petition signed by Howard Evans, a water user upon said stream, requesting a determination of the relative rights of the various claimants to the waters of said stream, and that said petitioner is now a user of the waters of the said Johnson Creek and its tributaries, a tributary of Pine Creek, as appears from the order of determination herein. That thereupon the said State Water Board, after a full investigation and due consideration of said petitions, finding the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants of the waters of said stream and its tributaries thereto, made and entered its order in the records of said office, fixing a time and place for the beginning and making of such an examination of said stream by the State Engineer, as would enable the said Board to determine the rights of the said claimants, and also the time and place for the beginning of taking of testimony by the Superintendent of Water Division No. 2. That said time and place when said State Engineer or his assistants should begin the examination of said stream was set

by said order of said Board, for the 27th day of March, 1915, and the time when the Superintendent of Water Division No. 2 should attend and take the testimony of the various claimants was set by order of said Board on Tuesday the 30th day of March, 1915, at the City Hall in the town of Freewater, Umatilla County, Oregon.

II.

That on the 23rd day of February, 1915, the Superintendent of Water Division No. 2 did send by registered mail, to each person, firm and corporation claiming a right to use the water of said stream, or any tributary thereof, and to each person, firm and corporation owning or being in possession of land bordering on or having access to said stream or its tributaries, in so far as said claimants, owners, firms or corporations in possession could be reasonably ascertained, a notice setting forth the date when the State Engineer would commence the examination of said stream and its tributaries, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of said Water Division would commence the taking of testimony as to the relative rights of the various claimants to said stream and its tributaries, and said Superintendent did enclose with each of said notices, a blank form upon which the said claimant or person in possession, should present in writing all the particulars necessary for the determination of his rights to the waters of said stream, or a tributary thereof, under oath; that due proof of the sending of said notice by registered mail has been made and is duly filed and is now a part of the record hereof.

III.

That at the time specified in said original notice, a duly qualified assistant of the State Engineer of the State of Oregon, did proceed to make an examination of the said stream and its tributaries, and all of the ditches diverting water therefrom, and of the lands irrigated and susceptible to irrigation from said ditches and canals, together with the measurements thereof, which observations and measurements were made a matter of record in the office of the State Engineer, and the State Engineer did prepare a plat and map on a scale of measurement of 800 feet to one inch, showing with substantial accuracy the course of said stream and its tributaries, and the location of the various ditches diverting water therefrom, and the legal subdivisions of land which had been irrigated or which were susceptible to irrigation from said ditches and canals already constructed, blue prints and copies of said maps and information duly certified to by the State Engineer being now on file herein and a part of the record hereof.

That statements and proofs of claimants to the use of the waters

of said stream and its tributaries were filed with the Superintendent of Water Division No. 2, by the following persons, firms and corporations, to-wit: Mary Allen, J. B. Baldwin, Annie E. Davis, John Davidson, Howard Evans, W. F. Gentry, Florence Gentry, May Gentry, Ray Gentry, Fred Hodgen, Hudson Bay Grange Hall Company (by D.J.Kirk), Mrs. Alice Lawson, Kyle McDaniel, John and Ida Nelis, Chas. Morrill, Melissa Messinger, Joseph Pool, Wm. Record, C. W. Records, C. R. Offner.

IV.

That upon the completion of the taking of testimony by the Superintendent of Water Division No. 2, said Superintendent did, on the 16th day of November, 1915, give notice by registered mail to each of the various claimants to the waters of said stream and its tributaries, that at the time and place named in said notice, to-wit: beginning on Monday the 6th day of December, 1915, and ending on Monday the 20th day of December, 1915, (Sundays excepted) from 9 A.M. to 12 M., and from 2 P.M. to 5 P.M., at the following places in Umatilla and Union counties, State of Oregon, to-wit: at the Commercial Club Rooms in Freewater, Umatilla County, Oregon, from Monday the 6th day of December, 1915, to Wednesday the 8th day of December, 1915, inclusive, and at the office of the Superintendent of Water Division No. 2, in La Grande, Union County, Oregon, from Thursday the 9th day of December, 1915, to Monday the 20th day of December, 1915, inclusive, all of said evidence would be open to inspection to the various claimants and owners, and that said Division Superintendent did keep said evidence open to inspection at said times and places for a period of 13 days, and said notice did also set forth the county in which the determination of the Water Board would be held by the Circuit Court, to-wit: Circuit Court of the State of Oregon, for Umatilla County, due proof of the holding of said inspection and of the sending of said notices by registered mail being filed herein.

V.

That the following contests were duly filed with the Superintendent of Water Division No. 2, within five days after the close of public inspection of the statements and proofs of claimants of the various claimants to the waters of said river:

VI.

Contest No. 1. Fred Hodgen, John Davidson, Annie E. Davis, Mary Allen, W. F. Gentry, Alice Lawson, Hudson Bay Grange, John Nelis, Chas. Morrill, Melissa Messinger, Joseph Poole, Wm. Records, C. W. Records, Willfley & Offner, a co-partnership, plaintiffs and contestants, vs. J. B. Baldwin, defendant and contestee. Contestee, J. B. Baldwin, filed a statement wholly withdrawing his

claim to the waters of Johnson Creek.

VII.

Contest No. 2. Fred Hodgen, John Davidson, Annie E. Davis, Mary Allen, W. F. Gentry, Alice Lawson, Hudson Bay Grange, John Nelis, Chas. Morrill, Melissa Messinger, Joseph Poole, Wm. Records, C. W. Records, Willfley & Offner, a co-partnership, plaintiffs and contestants, vs. Howard Evans, defendant and contestee. Contestants filed a stipulation withdrawing said contest on condition that the rights of contestee were subsequent to the rights of the contestants, and the rights are so tabulated.

VIII.

Contest No. 3. Fred Hodgen, John Davidson, Annie E. Davis, Mary Allen, W. F. Gentry, Alice Lawson, Hudson Bay Grange, John Nelis, Chas. Morrill, Melissa Messinger, Joseph Poole, Wm. Records, C. W. Records, Willfley & Offner, a co-partnership, plaintiffs and contestants, vs. Kyle McDaniel, defendant and contestee. Contestants filed a statement withdrawing said contest on the ground that the rights of the contestee were subsequent to the rights of all the contestants, and the rights are so tabulated.

IX.

That on the 10th day of March, 1910, an agreement was entered into by and between Louis Hodgen as administrator of the Estate of J. C. Hodgen, C. W. Records, and Susie Records, his wife, as parties of the first part, William Records and Myrtle Records, his wife, John Davidson and Nettie Davidson, his wife, Chas. Morrill and Emily Morrill, his wife, parties of the second part, Alice Lawson and R. Lawson, her husband, J. S. Hoskins and Alice Hoskins, his wife, parties of the third part, -- wherein, based on the assumption that the parties to the agreement had the exclusive right to use all the natural flow of the waters of Johnson Creek, it was agreed as follows:

That beginning with April 1st of each year, the irrigation season should be divided into rotation periods of nine days each; during the first three days of the period all of the natural flow of Johnson Creek was to be used by the parties of the first part; during the next three days the parties of the second part were entitled to its exclusive use, and during the last three days the parties of the third part were to use it all, and so on, with the further provision that all of the parties to the agreement were entitled to a reasonable amount of water for stock and domestic use at all times, and that to provide for this purpose, a sufficient amount of water should be left in the natural channel of Johnson Creek.

That C. R. Offner is now the successor in interest to J. S. Hoskins

and Alice Hoskins, his wife, in the lands irrigated by him, and W. F. Gentry is the successor in interest to J. S. Hoskins and Alice Hoskins, his wife, for the lands irrigated by him. That Fred Hodgen is the successor in interest to the Estate of J. C. Hodgen, That John Nelis is the successor in interest to Wm. Records and Myrtle Records, his wife, to the NE $\frac{1}{4}$ NE $\frac{1}{4}$; Section 30, Tp. 6 N. R. 35 East, and that Melissa Messenger is the successor in interest to Wm. Records and Myrtle Records, his wife, for the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, Tp. 6 N. R. 35 East. That the Hudson Bay Grange, A. Davis, and the partners, Florence Gentry, May Gentry and Ray Gentry, each now own a part of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 30, and therefore each is successor in interest in part to Alice Lawson and R. Lawson, her husband, and as such each is entitled to the same date of priority as said Alice Lawson, in accordance with the terms of said agreement.

That the said agreement was an acknowledgment by the parties thereto that their rights were equal, at least as to the date of priority, and as the area irrigated by each of the parties of the first, second and third part is approximately equal, the agreement is in fact a practical attempt to divide the water to which the parties are collectively entitled in proportion to the area irrigated by each.

That water shall be distributed according to said agreement, but the owners of the land irrigated under said agreement may change the same at any time by filing a written agreement with the water master making such change. In case the water master finds that distribution of water under said agreement or any subsequent agreement is impracticable, or is contrary to the system of distribution established by said water users, or interferes with the rights of other users, then this agreement shall not be enforced but the water shall be distributed in accordance with the system established by the water master.

X.

That Johnson Creek and its tributaries form a perennial stream with well defined bed and banks, rising from springs in Section 29, Tp. 6 N. R. 35 East, and flows in a northwesterly direction a distance of about two miles. Originally it may have been a tributary of Pine Creek, but for many years past all of the water has been used on the lands of claimants herein. The normal flow supplied by springs is from three to four second feet. The lands irrigated adjoin the stream on both sides, and the soil is generally a clay-loam with occasional gravelly spots. The total area that has been irrigated is approximately 370 acres.

XI.

That all claimants herein for water for irrigation shall be entitled to use such water for stock and domestic purposes. That the right of use for

stock and domestic purposes is hereby confirmed, and entitles the owner of such right to divert and use such a quantity of water as is reasonably necessary for his household and stock use, and for stock use the water so diverted and used shall not exceed the rate of one-fortieth of a cubic foot per second for each one thousand (1,000) head of stock, and the quantity diverted for irrigation purposes during the irrigation season shall include such an amount as may be reasonably necessary for said stock and domestic purposes. The right to divert and use the waters of said stream and its tributaries for stock and domestic purposes continues throughout the year.

XII.

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

XIII,

That the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and the order in which they are entitled to divert and use the said water shall be, and is, according to the date of relative priority of the right 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 the next in order of time is next in order of right, and so on down to the date of the latest priority, and those having prior rights are entitled to divert and use the waters of said stream and its tributaries when necessary for the beneficial irrigation of their respective land or other useful and beneficial purposes for which they are accorded a right of use at all times, as against those having subsequent rights, without let or hinderance, and whenever water is not required by the appropriator for the purpose for which such water was appropriated, said appropriator may 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 let or hinderance, or diversion thereof, and those having

subsequent rights of appropriation are entitled to use such water and divert the same to the extent of their rights or appropriations, according to the order of their priority date of right; and at all times the water diverted shall be beneficially, economically, and reasonably used without waste, by those having the right to do so by reason of their priority date of right, and no rights of appropriation are hereby confirmed to divert a greater quantity of water into the head of the ditch or ditches having a valid right to divert such water, than such appropriator can beneficially use for the purpose to which the water is to be put, and in no event shall the quantity of water diverted exceed the quantity herein determined as the quantity to which such appropriator is entitled for the proper and beneficial irrigation of his land, and which has actually been put to a beneficial use.

XIV.

That the specification of a definite amount of water per acre in these findings shall not be taken as granting that specific amount of water, but shall only be taken as a rule and guide for the water master in distributing a maximum amount of water to any water user, and it shall be in the discretion of such water master to cut down the amount of water given for any particular tract of land and turn the amount of water to other land, at any time that such land becomes fully irrigated upon a less amount of water, or such water be not economically or beneficially used; and the water master shall have the right in his discretion to cut off the supply of water for any land at any time when the flow of water becomes inadequate to supply such land in addition to prior rights.

XV.

That the amount of water to be used for the lands described in the tabulation herein, is limited to a continuous flow of not to exceed the amount set opposite the name of each user, but that to get a sufficient head of water, the water master of the district in which such water is situated shall arrange such a system or systems of rotation as may be best applicable, either

FIRST, by giving a greater amount of water to an appropriator for a proportionately shorter period of time, provided, that the giving of such greater amount does not infringe upon any of the rights confirmed in these findings, and provided further, that the amount of water taken by the appropriator shall not exceed one acre foot during any thirty day period; or

SECOND, where two or more appropriators agree as between themselves as to the manner of said rotation and use of water, said water master shall distribute water to which they are collectively entitled in accordance with such agree-

ment, provided always, that such arrangement into groups or systems of rotation shall not interfere with the prior right of any appropriator not a member of such group or system, and provided further, that such agreement shall be in writing, and filed by said appropriators with the water master; or

THIRD, in the absence of such agreement between such appropriators arranging for such rotation or manner in which such water shall be used in rotation, the water master shall arrange such appropriators in groups or systems, first giving to one appropriator in such group, a quantity of water equal to the combined appropriation of all the appropriators in said group for a number of hours bearing the same ratio to the whole number of hours required to make the complete rotation through the whole group of appropriators, as the amount of the appropriation by such appropriator bears to the amount of the combined appropriations of the appropriators arranged in such group or system. The determination of whom shall be first served in said group or system of appropriators shall be left to the judgment of the water master.

XVI.

It is hereby further ordered, adjudged and decreed that the name and postoffice address of each appropriator of water from said stream, in alphabetical order, together with the date of relative priority of each appropriation, the amount of such appropriation in cubic feet per second, the number of acres of land to which such appropriation is applied and to which such water is appurtenant, the use of uses for which such water was appropriated and is now applied, the name of the ditch or ditches through which such appropriation is diverted, and a description of the legal subdivision in which such irrigated land is situated, with the number of acres in each such subdivision, arranged and set forth in tabulated form, opposite the name of each appropriator, are as follows:

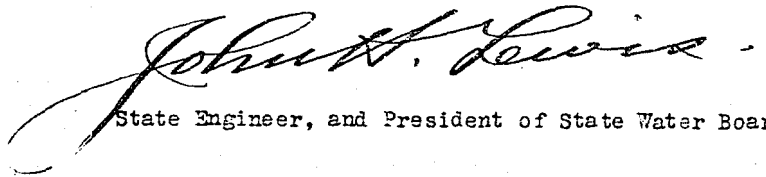
Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount cubic feet per second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
<u>JOHNSON CREEK</u>							
2-1709 Allen, Mary Freewater, Ore.	1905	0.01	0.50	Irrigation		Johnson Creek	0.50 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 19; Tp. 6 N.R. 35 E.W.M.
2-1710 Davis, Annie E. Freewater, Ore.	1892	0.04	3	Irrigation		Johnson Creek	1.7 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 1.3 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
2-1711 Davidson, John Vincent, Ore.	1892	0.49	39	Irrigation	Davidson	Johnson Creek	39 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
2-1809 Evans, Howard Freewater, Ore.	June 3, 1913	0.31	24.8	Irrigation	Evans	Johnson Creek	16.53 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$; 8.27 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 19; Tp. 6 N.R. 35 E.W.M.
				(State Engineer's Permit #1181)			
2-1713 Gentry, W. F. Freewater, Ore.	1892	0.01	0.25	Irrigation	Johnson	Johnson Creek	0.25 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 24; Tp. 6 N.R. 34 E.W.M.
2-1714 Gentry, Florence Gentry, May Gentry, Ray Freewater, Ore.	1892	0.01	0.50	Irrigation		Johnson Creek	0.5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
Superseded by 45001 2-1715 Hodgen, Fred Vincent, Ore. T 3369 CANCELED Sp. Or. V 34 p. 28	1892	0.58	46.5	Irrigation		Johnson Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$; 6.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 29; Tp. 6 N.R. 35 E.W.M.
				65 Ac CANCELED Sp. Or. V 34 p. 234			
2-1716 Hudson Bay Grange Hall Company, by D.J.Kirk Freewater, Ore.	1892	0.01	1	Irrigation	Lawson	Johnson Creek	1 acre in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
2-1726 Lawson, Mrs. Alice Freewater, Ore.	1892	0.47	37.5	Irrigation	Record Davidson Lawson	Johnson Creek	325 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$; 12.5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
				ch. Pl. 1 Div. Sp. Or. Vol. 13 p. 177			
2-1718 McDaniel, Kyle Adams, Ore.	1905	0.22	17.5	Irrigation	Private	Johnson Creek	17.5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 24; Tp. 6 N.R. 34 E.W.M.
2-1719 Messenger, Melissa Freewater, Ore.	1892	0.23	18	Irrigation		Johnson Creek	18 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
				T-4298 Δ P00 + 11 Sp. Or. V32, P451			
2-1720 Morrill, Chas. Freewater, Ore.	1892	0.03	2.5	Irrigation		Johnson Creek	2.5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 29; Tp. 6 N.R. 35 E.W.M.
2-1721 Nelis, John & Ida Glendive, Mont.	1892	0.08	6	Irrigation		Johnson Creek	6 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
				T-4298 Δ P00 + 11 Sp. Or. V32, P451			

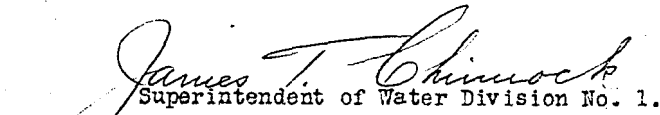
JOHNSON CREEK

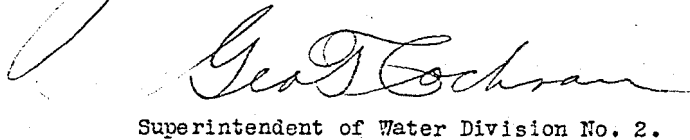
Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount cubic feet per second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
2-1722 Pool, Joseph Freewater, Ore.	1892	0.06	5	Irrigation		Johnson Creek	5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 29; Tp. 6 N.R. 35 E.W.M.
2-1723 Records, Wm. Freewater, Ore.	1892	0.50	40	Irrigation		Johnson Creek	40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$; Sec. 30; Tp. 6 N.R. 35 E.W.M.
2-1724 Records, C. W. Freewater, Ore.	1892	0.55	43.8	Irrigation		Johnson Creek	34.8 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$; 9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 29; Tp. 6 N.R. 35 E.W.M.
2-1725 Wilfley, A. A. Route 2, Freewater, Ore. and Offner, C. R. Walla Walla, Wash.	1892	0.98	78.5	Irrigation	Johnson	Johnson Creek	18.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$; 26.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$; 33.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 24; Tp. 6 N.R. 34 E.W.M.

And the State Water Board being fully advised in the premises,
it is hereby CONSIDERED and ORDERED, that the relative rights to the use of the
waters of JOHNSON CREEK and its tributaries, be, and the same are hereby ad-
judicated, determined and settled, in accordance with the foregoing findings.

It is further CONSIDERED and ORDERED, that each and every appro-
priator holding permits from the State Engineer of Oregon, for the appropriation
of water from Johnson Creek and its tributaries, shall have such water right
thereunder as is provided by law, and the rights of such appropriators shall
be established in the manner provided by law for the issuing of water right
certificates in such cases.


State Engineer, and President of State Water Board.


Superintendent of Water Division No. 1.


Superintendent of Water Division No. 2.

ATTEST:


Secretary of State Water Board.