

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 MIDDLE )  
BRANCH OF MUD CREEK, A TRIBUTARY OF )  
EAST BRANCH OF MUD CREEK, IN UMA- )  
TILLA COUNTY, OREGON. )  
----- )

FINDINGS OF FACT .

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:

1.

That on the 11th day of March, 1914, there was filed in the office of the State Water Board of the State of Oregon, a petition signed by Maria Halverson, F. E. Kralman, N. McDonald, H. A. Megy, Wm. Swash, Admr., Bade Bros., F. J. Meihoff, A. Behnke and G. W. Smiley, water users upon said stream, requesting a determination of the relative rights of the various claimants to the waters of said stream, and that said petitioners are now users of the waters of the said East Branch of Mud Creek and its tributaries, 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 and 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 Free-water, Umatilla County, Oregon.

2.

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.

3.

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 of irrigation from said ditches and canals, together with the measurements thereof, which observations and the measurements were made a matter of record in the office of the State Engineer, and the State Engineer did prepare a plat and a 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 records 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:

Alexander, J. E.	Hodgen, Mrs. Alice by Geo. R. Hodgen	Meihoff, F. J.
Bade, Fritz		Robinson, C. E.
Baker, J. A.	Hodgen, Mrs. Malinda J. by Edward Hodgen	School District #72 by F.E.Kralman.
Behnke, Otto	Johnson, Matilda	
Behnke, Alfred	Kralman, Fred	Smiley, C. E.
Behnke, Herman	Johnson, L. P.	Smiley, G. W.
Dixon, Mrs. Elizabeth	Lockwood, F. M.	Smitten, R. F. by W.L.Stirling
Estoup, Geo. H.	Martin, L.	Swash, Wm., Admr. of Estate of Eva Swash.
Estoup, M.	McDarnald, N.	
Halverson, Maria	Markman, Mrs. Caroline	Taylor, Chas. M.
	Megy, H. A.	

4.

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, State of Oregon, from Thursday the 9th day of December 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.

5.

That after the close of the public inspection of the statements and proofs of claim of the various claimants to the use of the waters of said stream, no contests were filed with the Superintendent of Water Division No. 2; that such contests were avoided by stipulations and agreements entered into by the various claimants, and copies of such stipulations and agreements are on file herein.

6.

That Middle Branch of Mud Creek and its tributaries, form a perennial stream with well defined bed and banks, wholly within the County of Umatilla, State of Oregon, rising mainly from springs in Section 28, Twp. 6 N.R. 35 East, and flowing in a northerly direction about two miles to its junction with East Branch of Mud Creek. That the flow of said stream is relatively constant owing to the fact that its supply is derived from springs, and that the mean discharge is about five second feet, or 200 miners inches; that during the irrigation season, little, if any of its waters reach the East Branch of Mud Creek, all being diverted and consumed above, in the irrigation of the lands as hereinafter set forth.

That the soil varies from a fine loam or volcanic ash, to a type containing gravel in variable quantities, and where drainage is poor, the soil is often badly alkaline. It is, in general, underlaid with a more or less impervious hard-pan, and the topography is such that irrigation by the flooding method is easily accomplished.

7.

That all claimants herein for water for irrigation shall be entitled to use such water for stock and domestic purposes. That the rights of use for stock and domestic purposes is hereby confirmed, and entitle 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, and the right to divert and use the waters of said stream and its tributaries for stock and domestic purposes, continues throughout the year.

8.

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 us-<sup>ing</sup> water from said stream on such other land, without lawful permit from the State Engineer.

9.

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 the next in order of right, and so on down to the date of the latest date of 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 as it was wont to flow in its natural course without hinderance or diversion thereof, and those having subsequent rights of appropriation are entitled to use such water and to divert the same to the extent of their rights of 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.

10.

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 is 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.

11.

That a stipulation was entered into by and between H. F. Smitten, C. M. Taylor, Fritz Bade, Malinda J. Hodgen, Alice L. Hodgen, Estate of Eva Swash, J. A. Baker, G. W. Smiley, C. E. Smiley, Maria Halverson, H. A. Megy, Caroline Markman, Alfred Behnke, Otto Behnke, F. J. Meihoff, L. P. Johnson, Matilda Johnson and N. McDannald, whereby the following agreement was had:

(a) That the year 1893 would be taken as the earliest priority date of any right to the use of water from the Middle Branch of Mud Creek, and that under this date Alice L. Hodgen was entitled to irrigate 13.75 acres; Malinda J. Hodgen 15 acres; H. A. Megy 14 acres; N. McDannald 15 acres; J. A. Baker 40 acres; Estate of Eva Swash 75 acres; Charles M. Taylor 10 acres; R. F. Smitten 27.6 acres; L. Martin 10 acres; L. P. Johnson 5 acres; Matilda Johnson 4 acres; Caroline Markman 1 acre; Otto Behnke 3 acres; Alfred Behnke 4 acres; Herman Behnke 3 acres; M. Estoup 13 acres; Fritz Bade 3 acres; C. E. Smiley 4 acres; George Estoup 5.2 acres; Maria Halverson 2.5 acres. That the second date of priority would be of the year 1894, and that under this date Otto Behnke is entitled to sufficient water for the irrigation of 12 acres; Alfred Behnke for 6.5 acres; Herman Behnke for 7 acres; George Estoup for 1.5 acres; L. P. Johnson for 3 acres; Caroline Markman for 3 acres; Matilda Johnson for 6 acres. That under the priority date of 1896, School District #72 should be entitled to sufficient water for the irrigation of 1.5 acres; Maria Halverson for the irrigation of 18.5 acres, and Fred Kralman for 5 acres. That Fritz Bade would be entitled to irrigate 6 acres under a priority date of 1901. That L. Martin would be entitled to irrigate 8 acres under a priority date of 1902. That F. J. Meihoff would be entitled to irrigate 9 acres under a priority date of 1905, C. E. Robinson 1 acre of the year 1906, Alice L. Hodgen 8 acres of the year 1905,

and the Estate of Eva Swash 10 acres of the year 1907.

(b) That all claimants using water from springs tributary to the Main Middle Branch of Mud Creek were entitled to the exclusive use of the waters of said springs as against all users diverting water from the Main Middle Branch of Mud Creek, but that such claimants were not entitled to divert water from the Main Stream as a supplemental supply to said springs except when the discharge of said springs was insufficient for the proper irrigation of their lands, when used economically.

(c) That R. F. Smitten is entitled to sufficient water for the irrigation of 27.6 acres of the year 1893 as hereinbefore set forth, and that for the remainder of his land, being 46 acres, water shall be allowed of the date immediately subsequent to the priority of the other claimants herein, to-wit: of the year 1908, provided, that said lands shall be reclaimed on or before December, 1920.

(d) That the irrigation season should not be limited to the summer months, but should continue throughout the whole calendar year. That in accordance with said stipulation and agreements the rights of the parties thereto are as set forth in the tabulated statement herein.

12.

That the appropriation for the irrigation of the lands owned by R. F. Smitten, claimant herein, was initiated in the year 1893, and has not yet been completed. That due diligence has not been exercised in the completion of this appropriation, and that therefore the date of priority for the lands of said R. F. Smitten that have been reclaimed and irrigated is of the year 1893 as set forth in the tabulation herein, but that the date of priority of said Smitten lands that have not been reclaimed shall be, and is, subsequent to all other claims herein, to-wit: of the date of 1908 for the irrigation of 46 acres, situated in Fruitvale Tract, Section 21, Twp. 6 N. R. 35 East; provided further, that said R. F. Smitten shall complete said appropriation, including the construction work and the application of water to a beneficial use, on or before December 1, 1920.

Upon the expiration of said time, the State Water Board shall, after due notice, cause proof to be taken of such application of water to a beneficial use, and shall grant such water right certificate as said Water Board may ascertain that said R. F. Smitten, or his successors in interest are entitled to receive by virtue of such proof.

13.

That C. E. Smiley, G. W. Smiley, Mrs. Elizabeth Dixon and J. E. Alexander, have developed a water supply by cutting trenches through a swamp situate on the lands of M. Estoup in the Northeast Quarter of Section 28, Twp. 6 N. R. 35 East, thereby increasing the drainage from said swamp. That C. E. Smiley is entitled to sufficient of said water for the irrigation of 5.5 acres of the date of priority of 1890; G. W. Smiley for 21.5 acres of the date 1890. J. E. Alexander is entitled to sufficient water for the irrigation of 9 acres, and Mrs. Elizabeth Dixon for the irrigation of 14 acres, both of the date of priority of 1900.

14.

That what is known as Behnke Springs, rises in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Sec. 22, Twp. 6 N. R. 35 East, and flows in a well defined natural channel, having both bed and banks, in a northwesterly direction. That for many years past the waters from said spring have not been allowed to reach the Middle Branch of Mud Creek, but that all of said water has been diverted and used for irrigation and other purposes on that part of the land comprising the Behnke Estate, now owned by Herman Behnke, Alfred Behnke, Matilda Johnson and Otto Behnke. That said owners are entitled to enjoy the exclusive use of said waters as against every one else, and as between themselves of equal priority date and in the extent as set forth in the tabulation herein.

That L. P. Johnson and Caroline Markman are also owners of land which was originally a part of the Behnke Estate but that none of the water from said Behnke Spring has been used on their land, and that therefore, they have no right to the use of said water.

15.

That the amount of water to be used for the irrigation of the lands described in the tabulation herein is limited to a continuous flow of not to exceed 1/80th of one second foot for each acre of land, throughout the year. 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 the 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 by this decree, and provided further, that the amount of water taken by the appropriator shall not exceed 1 acre foot during any 30 day period; or

SECOND, where two or more appropriators agree as between themselves as to the manner of said rotation in the use of water, said water master shall distribute water to which they are collectively entitled in accordance with such agreement, 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 appropriations of 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 and shall next serve another appropriator with a like quantity of water for his proportionate time and so on until all the appropriators in such group or system are served. 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.

16.

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 or uses for which such water was appropriated and is now applied, the name of the ditch or ditches through which such appropriation is diverted, and a description of the legal subdivisions 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>MIDDLE BRANCH OF MUD CREEK</u>							
2-1717 Alexander, J. E. Freewater, Ore.	1900	0.13	9	Irrigation	Main Spring Ditch	Springs	9 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1727 Bade, Fritz Walla Walla, Wash.	1893	0.04	3	Irrigation	Bade	Middle Branch of Mud Creek	9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1901	0.08	6				
2-1728 Baker, J. A. Freewater, Ore.	1893	0.50	40	Irrigation	Baker	Middle Branch of Mud Creek	40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1729 Behnke, Otto Freewater, Ore.	1893	0.04	3	Irrigation	Behnke & Spring Branch	Middle Branch of Mud Creek & Behnke Spring Branch	2.3 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 8 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.09	7.3				
	1875	0.06	4.8	Irrigation	Behnke Spring	Behnke Spring	4.8 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1730 Behnke, Alfred Freewater, Ore.	1893	0.05	4	Irrigation	Behnke & Spring Branch	Behnke Spring Branch & Middle Branch of Mud Creek	1.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; 5.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.03	2.4				
	1875	0.05	4.1	Irrigation	Behnke & Spring Branch	Behnke Spring Branch	0.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; 3.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1731 Behnke, Herman Freewater, Ore.	1893	0.04	3.0	Irrigation	Behnke & Spring Branch	Middle Branch of Mud Creek	7.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.05	4.2				
	1875	0.04	2.8	Irrigation	Behnke & Spring Branch	Behnke Spring	2.8 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1732 Dixon, Mrs. Elizabeth, Freewater, Ore.	1900	0.18	14	Irrigation		Springs	14 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1733 Estoup, M. Freewater, Ore.	1893	0.16	13	Irrigation	Private	Spring & Middle Branch of Mud Creek	13 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.
2-1735 Estoup, George H. Freewater, Ore.	1894	0.02	1.5	Irrigation	House	Middle Branch of Mud Creek	1.5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.

*Ch. Pt. of Div. Sp. Or. Vol. 10, p. 41.*

MIDDLE BRANCH OF MUD 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
1735 Estoup, George H. (continued)	1893	0.07	5.2	Irrigation	House	Middle Branch of Mud Creek	5.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.
1736 Halverson, Maria Freewater, Ore.	1893	0.03	2.5	Irrigation	Private	Middle Branch of Mud Creek	21 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 20; Tp. 6 N.R. 35 E.W.M.
	1896	0.23	18.5				
1737 Hodgen, Mrs. Alice L. Hillyard, Wash. by Geo. E. Hodgen, Freewater, Ore.	1893	0.18	13.75	Irrigation	Upper	Middle Branch of Mud Creek	21.75 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1905	0.01	8				
1738 Hodgen, Mrs. Malinda Huntsville, Wash. by Edward Hodgen, Freewater, Ore.	1893	0.19	15	Irrigation		Middle Branch of Mud Creek	10 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
1739 Johnson, Matilda Freewater, Ore.	1893	0.05	4	Irrigation	Behnke Spring Branch & Ditch	Middle Branch of Mud Creek & Behnke Spring Branch	6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.03	2	Irrigation			
	1875	0.05	4	Irrigation	Behnke Spring Branch & Ditch	Behnke Spring	4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
1740 Johnson, L. P. Freewater, Ore.	1893	0.07	5	Irrigation	Behnke	Middle Branch Mud Creek	8 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.04	3				
1741 Kralman, F. E. Freewater, Ore.	1896	0.06	5	Irrigation	Private	Middle Branch Mud Creek	5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 16; Tp. 6 N.R. 35 E.W.M.
1742 Lockwood, F. M. Walla Walla, Wash.	1893	0.50		Supplemental to water right from East Branch of Mud Creek, for leaching alkali and winter irrigation, from Sept. 1st to April 1st only.			40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 17; 10 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 16; Tp. 6 N.R. 35 E.W.M.
1743 Martin, L. Freewater, Ore.	1893	0.13	10	Irrigation		Middle Branch of Mud Creek	10 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; 10 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1902	0.13	10				
					ch. pt. of Div. Sp. Or. Vol. 11 p. 507		
1744 Markman, Mrs. Caroline Freewater, Ore.	1893	0.01	1	Irrigation	Behnke	Middle Branch of Mud Creek	4 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
	1894	0.04	3				

MIDDLE BRANCH OF MUD 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
2-1745 McDamald, N. Freewater, Ore.	1893	0.19	15	Irrigation		Middle Branch of Mud Creek	15 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1746 Megy, H. A. Freewater, Ore.	1893	0.18	14	Irrigation		Middle Branch of Mud Creek	14 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1747 Meihoff, F. J. Freewater, Ore.	1905	0.11	9	Irrigation	Meihoff	Middle Branch of Mud Creek	9 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 20; Tp. 6 N.R. 35 E.W.M.
2-1748 Robinson, C. E. Freewater, Ore.	1906	0.01	1	Irrigation		Middle Branch of Mud Creek	1 acre in NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.
2-1749 School District #72 by F.E.Kralman Freewater, Ore.	1896	0.02	1.5	Irrigation		Middle Branch of Mud Creek	1.5 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1750 Smiley, C. E. Freewater, Ore.	1893 1890	0.05 0.07	4 5.5	Irrigation		Mud Creek Springs	9.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.
2-1751 Smiley, G. W. Freewater, Ore.	1890	0.27	21.5	Irrigation		Springs	21 $\frac{1}{2}$ acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 28; Tp. 6 N.R. 35 E.W.M.
2-1752 Smitten, R. F. Houston, Texas. by W.L.Stirling Walla Walla, Wash. (See paragraph 12)	1893 1908	0.35	27.6 46	Irrigation Right to be perfected Dec. 1920.	Smitten & Swash	Middle Branch of Mud Creek	11 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 13 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; 3.6 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M. Fruitvale Tract in Sec. 21; Tp. 6 N.R. 35 E.W.M.
2-1753 Swash, Wm., Admr. Estate of Eva Swash, deceased. Freewater, Ore.	1893 1907	0.90 0.13	75 10	Irrigation	#5,4,3,2,1	Middle Branch of Mud Creek	* 30 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; 10 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; 5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 E.W.M.
							<i>* change in pt. of div. for 23 ac. Sp. Div. 7, p 514</i>
	1893	0.25		Power & domestic	Ram	Middle Branch of Mud Creek	Operating Ram on Lot 3, Fruitvale Tract. Water to be returned to stream at place of use.
2-1754 Taylor, Chas. M. 212 No. 2nd Street, Walla Walla, Wash.	1893	0.13	10	Irrigation		Middle Branch of Mud Creek	10 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 21; Tp. 6 N.R. 35 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 MIDDLE BRANCH OF MUD CREEK, a tributary of East Branch of Mud Creek, be, and the same are hereby adjudicated, determined and settled, in accordance with the foregoing findings. It is further CONSIDERED and ORDERED, that each and every appropriator holding permits from the State Engineer of Oregon, for the appropriation of water from MIDDLE BRANCH OF MUD 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.

*John W. Lewis*  
State Engineer, and President  
of State Water Board.

*James T. Chimock*  
Superintendent of Water Division No. 1.

*Geo T Cochran*  
Superintendent of Water Division No. 2.

ATTEST:

*M. F. Myers*  
Secretary of State Water Board.