

(TROUT CREEK - HARNEY COUNTY.)

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF HARNEY.

EDWIN B. HILL, CHARLOTTE E. STURGEON, ROSE  
E. DOAN, MELVIN DOAN, JOHN McLEAN, FRED  
ALLEN, E. J. CATLOW, E. M. SCHROEDER, DAVE  
DEFENBAUGH, D. D. DEFENBAUGH, LEWIS DEFENBAUGH,  
KATE DEFENBAUGH, ADAM DEFENBAUGH, FRANK ADRIAN,  
JOHN BEATTY, MARY BEATTY, CARL A THOMSEN, and  
HARVEY W. McALLISTER,

Plaintiffs,

vs.

THE AMERICAN LAND & LIVE STOCK COMPANY, a  
Corporation, C. E. THOMAS and L. W. WALTER,  
a Partnership Doing Business as Thomas &  
Walter, JOHN POLANDER, C. S. ALLGARD, PA-  
CIFIC LIVE STOCK COMPANY, a Corporation;  
H. J. BAMPFORD, A. W. QUINCY, J. E. ROUNSE-  
VELLE, SARAH K. WIGGINS, MICHAEL J. WOODS,  
JOSEPH KRALIK, BLANCHE LYNDALL, E. J. DEAN,  
G. HENRY GILS, W. S. ESTELL, CORNELIUS MAN-  
DEVILLE, NORMAN J. ROSS, HARRY SLOUGH,  
OSCAR CHRISTOPHERSON, S. WATERFALL, WILLIAM  
J. KENNEDY, LYDIA E. FRYER, HUBERT WYNHOFF,  
P. E. CARLTON, E. A. HOMES, HENRIETTA C.  
BATES, HILDING RYDEN, GEORGE H. MILLER,  
GUSTAVE O. SCHREIBER, F. L. WHELPLY, MARY  
J. WULSTEIN, WILLIAM KENT, WILLIAM T. STYLES,  
CLARENCE F. CLARK, F. E. PEPPER, ARNOLD E.  
ARCHIBALD, LAWRENCE CLARK, VELEDA M. BEAL,  
and ROBERT SCOTT.

Defendants.

D E C R E E .

NOW AT THIS TIME, this matter coming on for final hearing, the  
testimony having been heretofore taken and reported by the referee, R. W.  
Eckhardt, plaintiffs appearing by J. W. Biggs and G. A. Rembold; the defendant,  
Pacific Live Stock Company, appearing by E. F. Treadwell and John L. Rand, and  
the remaining defendants appearing by P. J. Gallagher and J. W. McCulloch; and  
the matter having been argued and partially submitted to the Court heretofore,  
and it appearing to the Court that there was a necessity of taking further  
evidence as between certain of the plaintiffs to this action, namely: Edwin  
B. Hill, E. J. Catlow, Melvin Doan, Rose E. Doan and Charlotte E. Sturgeon;  
and the same having been resubmitted for the taking of testimony as between  
these named plaintiffs, J. S. Cook appearing for Edwin B. Hill in the taking  
of such additional testimony, and Charles W. Ellis appearing for the other

named plaintiffs; and the additional testimony having been submitted on the 20th day of October, 1915; and the Court having read the testimony and heard the argument of Counsel and being now fully advised in the premises, and based upon the findings of fact and conclusions of law herein,

It is considered, ordered, adjudged and decreed, that the rights of the various parties claimant to the waters of Trout Creek and its tributaries, Little Cottonwood and Willow Creek, are adjudicated and determined as follows, including the name of claimant, amount of water and priority of right, the name of the ditch through which the same is used, the stream from which the water is taken and the description of land that has been irrigated therefrom:

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
Frank Adrian <i>change in point of divi. - Sp. Or. Vol 2 p. 31</i>	1889	3.5	140		Upper North Lower North South	Trout	140 a. in S $\frac{1}{2}$ NE $\frac{1}{4}$ ; Sec. 16 S $\frac{1}{2}$ NW $\frac{1}{4}$ ; N $\frac{1}{2}$ SW $\frac{1}{4}$ ; Sec. 17 SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 18 T. 39 S.R. 37 E.W.M.
Fred Allen	1902	.5	20		North Ditch A.L. & L. System	Trout	20 a. in SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 11 T. 39 S. R. 35 E. W. M.
C. S. Allgard ( and C.J.Allgard)						Trout	SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 16 W $\frac{1}{2}$ SW $\frac{1}{4}$ , Lots 3 and 4 T. 38 S. R. 35 E., SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 35 T. 37 S.R. 33 E., W.M. Permit No. 201 held valid; appropriation not complete.
Arnold E. Archibald	1884	.25	10			Trout	10 a. in NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 14 T. 39 S.R. 35 E., W.M.
Henrietta C. Bates <i>T-3590 &amp; POU 52A</i>	1884	.125	5			South Branch of Trout	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 36 T. 39 S.R. 35 E. W.M.
Veleda M. Beal	1884	.25	10			Trout	SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24 T. 39 S.R. 35 E., W.M.
John C. Beaty	1901 (Prior to miners A.L. & L. Co inches transferees and Carl A. Thomsen)	46				Trout	<i>and 78, 78, - Sec. Ord 5, 11, 604</i> S $\frac{1}{2}$ N $\frac{1}{2}$ Sec. 15 T. 39 S.R. 35 E.W.M.
Mary Beaty	1887 (Prior to A.L. & L. Co. Transferees)	80 Miners inches	60		No. 1 No. 2	Trout	60 a. in NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 25 SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 26 T. 39 S.R. 36 E.W.M.
W. O. Billings <i>T 2660</i>	1914				<i>This right transferred - See Special Order Record Vol. 1, p. 14 &amp; 15</i>		N $\frac{1}{2}$ SW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 31 T. 39 S.R. 36 E. W. M. Permit certificate No. 2165 of State Engineer held valid; appropriation not complete. <i>(Cert. No. 2165)</i>

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
P. E. Carlton	1884	.125	5			South Branch of Trout	S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 T. 39 S.R. 35 E.W.M.
Edwin J. Catlow	1884	5.125	205			Cottonwood	W $\frac{1}{2}$ W $\frac{1}{2}$ Sec. 14 NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23 T. 39 S.R. 35 E., W.M. and 5 a. in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 22, same township and range, described: Beg. at NE cor. said Sec. 22, thence W. 645 ft; thence S. 330 ft; thence E. 645 ft; thence N. 330 ft. to place of beginning.
Oscar Christopher-son	1884	.25	10			Trout	E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 14 T. 39 S.R. 35 E.W.M.
Clarence F. Clark PC 82-1 D (all)	1884	.125	5			South Branch of Trout	N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 T. 39 S.R. 35 E.W.M.
Lawrence Clark <del>CANCELED</del> Spec. Or. V. 25 p. 208	1884	.125	5			South Branch of Trout	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 T. 39 S.R. 35 E.W.M.
E. J. Dean	1884	.5	20			South Branch of Trout	W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26 T. 39 S.R. 35 E.W.M.
Adam D. Defenbaugh	1897	.575	23		East Ditch West Ditch	Trout	23 a. in W $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 26 SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 23 T. 39 S.R. 37 E.W.M.
✓ David Defenbaugh	1908	3.375	135		East Ditch West Ditch	Trout	135 a. in W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 22 E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 21 T. 38 S.R. 35 E.W.M. <i>Transferred - See Special Order Return p. 14.</i>
D. D. Defenbaugh	1889	2.65	106		Upper North Lower North South	Trout	106 a. in N $\frac{1}{2}$ SE $\frac{1}{4}$ ; S $\frac{1}{2}$ NE $\frac{1}{4}$ ; Sec. 17 T. 39 S.R. 37 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
D. D. Defenbaugh	1895	1.3	52		Upper North Lower North South	Trout	28 a. south of Trout Creek and 24 a. north of Trout Creek, all in $S\frac{1}{2}NW\frac{1}{4}$ , $N\frac{1}{2}SW\frac{1}{4}$ , Sec. 16 T. 39 S. R. 37 E.W.M.
	1888	.675	27			Trout	27 a. in $NW\frac{1}{4}NW\frac{1}{4}$ ; Sec. 23 $N\frac{1}{2}NE\frac{1}{4}$ ; $NE\frac{1}{4}NW\frac{1}{4}$ ; Sec. 22 T. 39 S.R. 37 E.W.M.
Kate Defenbaugh	1902	.525	21			Trout	21 a. in $E\frac{1}{2}SW\frac{1}{4}$ Sec. 23 T. 39 S.R. 37 E.W.M.
Lewis Defenbaugh	1892	.425	17		East Ditch West Ditch	Trout	17 a. in $SW\frac{1}{4}SW\frac{1}{4}$ ; Sec. 15 $NW\frac{1}{4}NW\frac{1}{4}$ ; Sec. 22 T. 39 S.R. 37 E.W.M.
Melvin M. Doan	1897	2.	80			Trout and Willow $\frac{1}{2}$ from each	40 a. in $SE\frac{1}{4}SW\frac{1}{4}$ ; Sec. 33 T. 38 S. . 35 a. in Lot 3, 5 a. in $SE\frac{1}{4}NW\frac{1}{4}$ ; Sec. 4 T. 39 S., all of R. 35 E., W. M.
	1899	3.	120			Trout and Willow $\frac{1}{2}$ from each	120 a. in Lot 2, Sec. 4 T. 39 S., $NE\frac{1}{4}SW\frac{1}{4}$ ; $W\frac{1}{2}SE\frac{1}{4}$ ; Sec. 33 T. 38 S. all of R. 35 E., W. M.
	1902	1.875	75			Willow	75 a. in $W\frac{1}{2}SW\frac{1}{4}$ ; $SW\frac{1}{4}NW\frac{1}{4}$ ; Sec. 4 T. 39 S.R. 35 E.W.M.
Rose E. Doan							$SE\frac{1}{4}SW\frac{1}{4}$ ; $W\frac{1}{2}SE\frac{1}{4}$ ; $SW\frac{1}{4}NE\frac{1}{4}$ ; Sec. 4, T. 39 S.R. 35 E., W.M., State Engineer's permit held valid; appropriation not complete.
W. S. Estell	1884	.25	10				$SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ ; Sec. 29 T. 39 S.R. 36 E., W.M.
Lydia E. Fryer	1884	.125	5			South Branch of Trout	$N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$ ; Sec. 36 T. 39 S.R. 35 E.W.M.

*Amended  
see  
decree  
P. 319 Vol 13*

*See  
C. E. Doan  
Vol. 13, P. 211.*

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
G. Henry Gil*	1884	.25	10				NE $\frac{1}{2}$ NE $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 29 T. 39 S.R. 36 E.W.M.
Edwin B. Hill	1907			(State Engineer's permit held valid; appropriation not complete)			S $\frac{1}{2}$ SW $\frac{1}{4}$ ; Sec. 31 T. 39 S., NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 6 T. 40 S., all of R. 36 E., NE $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 1 T. 40 S. R. 35 E.W.M. <i>cont 6064</i>
		193 acre feet				Little Cottonwood Pueblo	Permit 409 and Reservoir Permit 52 of State Engineer held valid; appropriation not complete
		500 acre feet					
		2000 acre feet c.f.p.c.				Trout	
	1884	a. 3	120				E $\frac{1}{2}$ SE $\frac{1}{4}$ ; NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 24 T. 39 S.R. 35 E.W.M.
William J. Kennedy	1884	.25	10			Trout	E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 14 T. 39 S.R. 35 E.W.M.
William Kent PC 82-18 (all)	1884	.125	5			South Branch of Trout	S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 T. 39 S.R. 35 E.W.M.
Joseph Kralik	1884	.25	10			South Branch of Trout	E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 36 T. 39 S.R. 35 E.W.M.
Blanche Lyndall CANCELED Spec. Or. V. 25, p. 29	1884	.025	1			South Branch of Trout	South one-tenth of NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 25 T. 39 S.R. 35 E.W.M.
Cornelius Mandeville	1884	.25	10			Trout	E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 29 T. 39 S.R. 36 E.W.M.
Harvey W. McAllister	1884	2.	80			Trout	W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 24 T. 39 S.R. 35 E.W.M.
John McLean 61994	1895	4.325	173			Trout	173 a. in S $\frac{1}{2}$ SE $\frac{1}{4}$ ; Sec. 28 N $\frac{1}{2}$ NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 33 T. 38 S.R. 35 E.W.M.

160 Ac. Trsf. - Sp. Or.  
Vol. 5, p. 257

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
George H. Miller	1884	.25	10			Trout	$W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ ; Sec. 14 T. 39 S.R. 35 E.W.M.
C. K. Oleson	1884	.5	20			Trout	$W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ ; Sec. 24 T. 39 S.R. 35 E.W.M.
F. E. Pepper	1884	.25	10			South Branch of Trout	$SW\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$ ; Sec. 25 T. 39 S.R. 35 E.W.M.
John Polander							$S\frac{1}{2}SE\frac{1}{4}$ Sec. 29 $N\frac{1}{2}NE\frac{1}{4}$ ; $NE\frac{1}{4}NW\frac{1}{4}$ ; $S\frac{1}{2}NW\frac{1}{4}$ ; $N\frac{1}{2}SW\frac{1}{4}$ Sec. 32, <i>1983</i> T. 39 S.R. 36 E.W.M., Permit of State Engineer held valid; appropriation not complete.
Norman J. Ross	1884	.25	10			Trout	$W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$ ; Sec. 29 T. 39 S.R. 36 E.W.M. <i>Ch. in pt. of div. and place of use: Sp. Or. Vol. 8, p. 295.</i>
James E. Rounseville <i>61924</i>	1884	1.	40		Old Canal and North Ditch	Trout	$NE\frac{1}{4}SE\frac{1}{4}$ ; Sec. 29 T. 39 S.R. 36 E.W.M.
	1884	.125	5			Trout	$S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M.
	1909	1.5	60	<i>20 ac. frst. - Sp. Or. Vol. 6, p. 46 T2654</i>		South Branch of Trout	60 a. in $N\frac{1}{2}NW\frac{1}{4}$ ; $W\frac{1}{2}NE\frac{1}{4}$ Sec. 31 T. 39 S.R. 36 E.W.M.  $W\frac{1}{2}SW\frac{1}{4}$ ; $SE\frac{1}{4}SW\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M., Permit No. 1440 held valid; appropriation not complete.
Tusnelde Rounseville	1884	.25	10				$SW\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ ; Sec. 29 T. 39 S.R. 36 E.W.M.
Hilding Ryden	1884	.5	20			Trout	$S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M.
Gustave O. Schreiber T 2659	1884	.5	20			Trout	$E\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$ ; Sec. 13 T. 39 S.R. 35 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
E. M. Schroeder	1884	.5	20			Trout	W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 24 T. 39 S.R. 35 E.W.M.
O. C. Schroeder							W $\frac{1}{2}$ Sec. 20 T. 39 S.R. 36 E.W.M. Permit No. 1298 held valid; appropriation not complete.
Robert Scott	1884	.5	20			Trout	W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M.
Harry Slough	1884	.125	5			Trout	S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M.
Charlotte E. Sturgeon	1905	.3	12		M.M. Doan	Trout	12 a. in SE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 4 SW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 3 T. 39 S.R. 35 E.W.M.
	1903	3.5	140		M.M. Doan	Trout	140 a. in SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 3 E $\frac{1}{2}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 4 T. 39 S.R. 35 E.W.M.
William T. Styles	1884	.275	11			Trout	SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ & South one-tenth of NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 13 T. 39 S.R. 35 E.W.M.
C. E. Thomas and L. W. Walter (Transferees of American Land & Livestock Co.)	1884	54.0875	2163.5			Trout	Little Cotton-wood 80 a. in E $\frac{1}{2}$ SW $\frac{1}{4}$ 32 a. in SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 14 40 a. in NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 23 T. 39 S.R. 35 E.W.M. 7 a. in W $\frac{1}{2}$ SW $\frac{1}{4}$ 8 a. in SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 28 T. 39 S.R. 36 E. 15 a. in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 32 $\frac{1}{2}$ a. in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 26 a. in SE $\frac{1}{4}$ NW $\frac{1}{4}$ 30 a. in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 a. in NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; 40 a. in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29 50 a. in Sec. 19 all in T. 39 S.R. 36 E. 320 a. in W $\frac{1}{2}$ 160 a. in SE $\frac{1}{4}$ 80 a. in S $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 24 160 a. in SE $\frac{1}{4}$ 160 a. in NE $\frac{1}{4}$ Sec. 23. 80 a. in E $\frac{1}{2}$ SE $\frac{1}{4}$ 40 a. in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 32 a. in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 80 a. in S $\frac{1}{2}$ NE $\frac{1}{4}$ 5 a. in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 39 a. in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 15 a. in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 14

(Tr 3012) chg. place of use  
retvsf of part of  
Sp. Or. Vol. 29, P. 73

40 a. first see  
Sp. Or. Vol. 2 page 128

Transferred,  
Special Order  
Record  
Vol. 4, p. 211.  
Sec. 24  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 24, 46-A

20 a. Tr. Sp. Or. Vol. 4, P. 253  
10 a. Tr. Sp. Or. Vol. 4, P. 170

C. E. Thomas and  
L. W. Walter (Continued)

Particular lands designated on which water to be used. - See Misc. Records of State Engr., Vol. 1, p. 553.

Part of rights transferred - See Special Order Record, p. 18, Vol. 1,

34 a. in NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
40 a. in SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 13  
34 a. in SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
20 a. in NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
24 a. in SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 11  
200 a. in Sec. 25  
200 a. in Sec. 36  
40 a altogether in  
E $\frac{1}{2}$ NE $\frac{1}{4}$ ; W $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 26  
T. 39 S.R. 35 E.W.M.  
(EXCEPT all acreage included in above description which are herein granted to other claimants, transferees of the American Land and Live-stock Company and Thomas & Walters.)

Sp. Ov. Vol. 4 p. 253  
See Special Order Vol. 1 p. 18 50 170

Carl A. Thomsen

1903

5  
Miner's  
Inches

4.5

Trout

4 $\frac{1}{2}$  a. in NW $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; S $\frac{1}{2}$ NW $\frac{1}{4}$ ; Sec. 14  
T. 39 S.R. 37 E.W.M.

Sebastian Urcanqui  
and  
Melvin M. Doan

1904

(Prior Miner's  
to A.L.& L.Co.  
transfer-  
ees)  
c.f.p.s.

20  
inches

20

Trout

20 a. in S $\frac{1}{2}$ SE $\frac{1}{4}$ ; Sec. 24  
NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 25  
T. 39 S.R. 36 E.W.M.

S. Waterfall

1884

1.

40

Trout

E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 24  
T. 39 S.R. 35 E.W.M.

F. L. Whelply  
T2656

1884

.125

5

South  
Branch  
of Trout

S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 36  
T. 39 S.R. 35 E.W.M.

Sarah K. Wiggins

1884

.05

2

Trout

North two-fifths of  
N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; Sec. 24  
T. 39 S.R. 35 E.W.M.

Michael J. Woods  
PC 82-1C (A11)

1884

.25

10

South  
Branch  
of Trout

E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; Sec. 25  
T. 39 S.R. 35 E.W.M.

Mary Wulstein

1884

.125

5

Trout

N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; Sec. 24  
T. 39 S.R. 35 E.W.M.

Hubert Wynhof

1884

.125

5

Trout

S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; Sec. 24  
T. 39 S.R. 35 E.W.M.



Where an allowance has been made for a portion of an entire section or any subdivision of such section, without making any more definite description, the water may be used on any portion of such section or subdivision, and where, as in the case of purchasers from the American Land and Livestock Company, an allowance is made for water for the irrigation of the premises included in such purchase, the owners of the land may provide for distributing the water on the land of such purchaser, provided that the amount distributed does not exceed the total amount allowed for the subdivision in which such purchased land is located.

*Stock*

All claimants herein granted water for irrigation shall be entitled to use such water for stock and domestic purposes. The rights of use for stock and domestic purposes hereby confirmed entitle the owner of such right to divert and use such quantity of water as is reasonably necessary for his household and stock use; and for stock use the amount so diverted and used shall not exceed the rate of one-fortieth of a cubic foot per second for each one thousand head of stock; and the quantity diverted for irrigating purposes during the irrigating season shall include, when it is so diverted, such 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.

The irrigating season for lands irrigated from Trout Creek, Little Cottonwood Creek, and Willow Creek begins on the 15th day of March and continues until the 1st day of October of each year, except where a different date has been fixed in the former decrees of this court in the cases of *Beaty v. Thomsen*, *American Land and Livestock Company v. Thomsen*, and *American Land and Livestock Company v. John Lubbinga*.

*M<sup>c</sup>Kee*

The amount of water allowed for each acre of land during any irrigating season shall not exceed three acre feet, except as to the lands of J. C. Beaty, Mary Beaty, Sebastian Urcanqui and Melvin M. Doan, transferees of John Lubbinga; and Carl A. Thomsen, in which cases the amount shall be as fixed in the foregoing tabulation herein.

The decree of this court heretofore rendered in the suit of *Beaty v. Thomsen*, *American Land and Livestock Company, v. Thomsen*, *American Land and Livestock Company v. John Lubbinga*, are herein and hereby confirmed.

As to the relative priority of water rights, otherwise than as expressly found and decreed herein, where two or more have the same date of relative priority, such rights are equal in every respect with the earliest rights of that

year in which said rights are dated. When water becomes short said water shall be divided, so far as practical, pro rata among said rights of equal date, so long as all prior rights are supplied and the water flowing in the creek will reach to such head gates.

The order of the rights of the respective appropriators of the waters of Trout Creek and its tributaries, and in which order 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 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 beneficial use in connection with the irrigation of their respective lands, at all times, as against those having subsequent rights, without let or hindrance.

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

The rights of appropriation hereby confirmed are appurtenant to the lands herein described for irrigation purposes, and the rights of use of waters of said stream and its tributaries by virtue of such rights of appropriation are limited and confined to the irrigation of lands herein described, to the extent of said lands as herein set forth; and the priorities herein confirmed confer no right ~~on~~ use of waters of said stream and its tributaries on any lands other than those specific tracts to which such rights of appropriation are herein set forth as appurtenant.

For lands to be irrigated as described in the findings herein, the amount of water to which each claimant shall be entitled for the irrigation of such land shall not exceed a continuous flow of one-fortieth of a cubic foot per second, or one miner's inch, for each acre of said lands during the irrigating season, as fixed in this decree, and shall not in any event exceed three acre feet per acre during any irrigating season.

The distribution of this water according to this decree and the laws of the State will be left to the Water Board, the Division Superintendent and the Water Master appointed for the territory including the lands for which the water rights are hereby determined, in the same manner as if this determination has been originally commenced before the Water Board of the State of Oregon; and such officers shall have the same power and authority to administer the laws of this State in reference to the rights herein adjudicated as if the same had been commenced and first determined by the State Water Board.

The owner or owners of any ditch or canal shall maintain to the satisfaction of the Division Superintendent of the division in which the rights herein are located, a substantial head-gate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the Water Master; and such owners shall construct and maintain, when required by the Division Superintendent or the Water Master, suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water master in determining the amount of water that is to be diverted into such ditch from the stream, or taken from it by the various users.

When it may be necessary for the protection of other water users the Division Superintendent may require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such head-gate, flumes, or measuring devices after ten days'

notice, the Division Superintendent may close such ditch and the same shall not be opened or any water diverted from the source of supply until the requirements of the Division Superintendent as to such head-gate, flumes, or measuring device have been complied with.

A measuring device shall be placed, under the supervision of the Division Superintendent and Water Master of the district, in Trout Creek at a point below the head of the South Branch or canal of Trout Creek and above the irrigation ditches of what is known as the Trout Creek Ranch, or the lands owned by Thomas & Walter; and there shall also be put in a measuring device at some convenient point immediately below all of the ditches and irrigation system used by the said Thomas & Walter for the said Trout Creek Ranch; and such intermediate measuring devices as may, in the judgment of said Division Superintendent and Water Master, be necessary and proper for the measurement of the waters of such streams diverted through any intermediate head-gates or ditches.

MCKEY

A head-gate shall always be maintained at the head of the South Branch or canal of Trout Creek, somewhere near the dividing line between the NW $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 28, Township 39 South, Range 36 East, W. M., and such head-gate shall be kept closed at all times when the water of Trout Creek is needed for the irrigation of any of the lands below such head-gate; but at such times as the water is not needed for beneficial use for the purposes herein determined by any lower water users, including the lands owned by Thomas & Walter, known as the Trout Creek Ranch, such amount may be allowed to flow through such head-gate as may be necessary for the use of all appropriators or users therefrom; and the said channel may be used for the purpose of conveying the waters of all prior and subsequent appropriators, or by any person desiring to use the said channel for the purpose of conducting waters through the same. Such head-gate shall be installed or maintained at the joint expense of those using waters through such channel, and the expense thereof shall be divided pro rata among the users of such channel according to the respective amounts of water so appropriated by such water users through such channel. Such measuring device shall be installed as may be thought necessary and proper by the Division Superintendent for the measurement of the waters used through such South Channel.

The entire flow of the streams, the rights to whose water is herein adjudicated, after the irrigation season commences shall be subject to diversion

and use for irrigation purposes to the extent of the amount to which each user is entitled in the order of the priorities herein decreed. Any surplus water over and above the combined needs of all the water users having prior rights for irrigation during the irrigation season may be stored or appropriated under the laws of the State.

The temporary injunction heretofore granted in this case is hereby dissolved, and each and every party to this suit and those claiming by, through, or under them are hereby enjoined from using the water of any of the stream, the rights to which have been herein determined, in any manner or amount contrary to the provisions of this decree.

A certified copy of this decree shall be prepared by the Clerk of this Court without charge and filed in the office of the State Engineer, as soon as the same can be conveniently done.

Each party to this case shall pay his own costs.

*Filed and entered:  
Feb. 23, 1916  
R.T. Hughet, Clerk.*

*[Signature]*  
Circuit Judge.

STATE OF OREGON )  
 ) ss  
County of Harney. )

I, R. T. HUGHET, County Clerk and Clerk of the County Court of the above named County and State, do hereby certify that the foregoing copy of "CIRCUIT COURT DECREE", has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original "CIRCUIT COURT DECREE" as the same appears of record at my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 1st day of May, A. D. 1916

10¢ Internal Revenue  
Stamp attached and  
cancelled.

R. T. HUGHET, COUNTY CLERK.

By G. N. Jameson, Deputy.

(SEAL)

STATE OF OREGON )  
 ( SS  
County of Marion. )

I, M. F. MERS, Secretary of the State Water Board of the State of Oregon do hereby certify that the above copy of Decree of the Circuit Court of the State of Oregon for Harney County, was received in the office of the State Water Board and entered of record herein on the 6th day of May, 1916.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the State Water Board of Oregon, this 6th day of May, 1916.

*M. F. Mers*  
Secretary of the State Water Board.  
TROUT CREEK, HARNEY COUNTY