
Saturday, December 2nd, 1916.

In the matter of the Determination
of the Relative Rights to the Use
of the Waters of Chewaucan River
and its tributaries, a Tributary
of Lake Abert.

DECREE MODIFYING FINDINGS OF FACT
AND ORDER OF DETERMINATION OF STATE
WATER BOARD, AND AFFIRMING THE SAME
AS MODIFIED.

The State Water Board of Oregon having heretofore made its Findings of Fact and Order of Determination herein determining and establishing the several rights to the waters of the above named stream and its tributaries, and there having been filed with the Clerk of this Court on the 14th day of February, 1916, the original evidence filed with said Board and certified copies of the observations, measurements and maps of record in the State Engineer's Office in connection with such determination, together with a copy of the Findings of Fact and Order of Determination of said Board as the same appear of record in its office, and said Board having thereupon procured from this Court an order fixing the 15th day of May, 1916, as the time at which the determination herein would be heard by this Court, and notice of said hearing and of the time fixed therefor having been duly and regularly given to all parties interested in the manner and within the time required by law, and exceptions in writing to the Findings and Order of Determination of said State Water Board having been duly and regularly served in the manner required by law and filed herein prior to the time fixed for said hearing by the following parties and claimants, namely; Portland Irrigation Company, a corporation, Chewacan Land and Cattle Company, a corporation, Fred T. Elsey, Wm. H. Hotchkiss, Christina Schmidt and William Schmidt, E. S. McDonald and J. B. Elder, A. C. Hotchkiss, Frances J. Snider and Anna F. Jones as Executrices of the Last Will and Testament of George M. Jones, deceased, W. Y. Miller, Brattain Bros., a corporation John O'Callaghan and Dennis O'Callaghan, co-partners doing business under the name of O'Callaghan Bros., C. E. Campbell, H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small, H. A. Brattain, Fred Weidey, Anton Egli, Florence Jones, Cynthia I. McCall,

W. B. Parker, W. M. Dobkins, Harriet L. Random, M. C. Currier, M. H. Lauritzen, E. S. McDonald and J. B. Elder, co-partners doing business under the name of McDonald & Elder, and Annie Moss, and no other exceptions to said Findings or Order of Determination having been filed, and at the time fixed for said hearing, to-wit: on the 15th day of May, 1916, this Court having by an order duly given and made fixed the 28th day of August, 1916, at 10 o'clock A. M. as the time at which a hearing would be had upon said exceptions, and said matter having come on regularly to be heard on said 28th day of August, 1916, at the hour of 10 o'clock A. M., said Portland Irrigation Company and Northwest Townsite Company appearing at said hearing by their attorneys, C. E. S. Wood, Esq., Lionel R. Webster, Esq., and R. R. Johnson, Esq., said Chewacan Land and Cattle Company appearing at said hearing by W. Lair Thompson, Esq., and Walter Rothchild, Esq., its attorneys, and said Fred T. Elsey, Wm. H. Hotchkiss, Christina Schmidt and William Schmidt, E. S. McDonald and J. B. Elder, A. C. Hotchkiss and Frances J. Snider and Anna F. Jones as Executrices of the Last Will and Testament of George M. Jones, deceased, appearing at said hearing by W. Lair Thompson, Esq., their attorney, and said W. Y. Miller, Brattain Bros., a corporation, John O'Callaghan and Dennis O'Callighan, co-partners doing business under the name of O'Callaghan Bros., C. E. Campbell, H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small, H. A. Brattain, Fred Weidey, Anton Egli Florence Jones, Cynthia I. McCall, W. B. Parker, W. M. Dobkins, Harriet L. Random, M. C. Currier, M. H. Lauritzen, E. S. McDonald and J. B. Elder, co-partners doing business under the name of McDonald & Elder, and Annie Moss appearing at said hearing by A. E. Reames, their attorney, and no other persons or parties having appeared at said hearing and the Court having ordered that additional evidence might be introduced at said hearing, and all of the parties represented at said hearing having thereupon introduced evidence oral and documentary in addition to the evidence introduced before said State Water Board, and the Court having, with the consent of all parties represented at said hearing and in company with attorneys and representatives of all such parties made an inspection and view of said stream and its tributaries, the various ditches and canals diverting water therefrom and the lands irrigated or susceptible of irrigation therefrom, and the cause having been heretofore submitted to the Court for decision, and all of the evidence herein having been fully considered and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Findings of Fact and Order of Determination made herein by said State Water Board be and the same are hereby modified as hereinafter specified, and except as hereinafter modified, said Findings of Fact and Order of Determination are affirmed.

Finding I of said Findings of Fact is hereby modified so that the same shall read as follows:

That the Chewaucan River is a non-navigable, perennial, natural water course and stream, with well defined bed, banks and channel, flowing in a general northerly direction toward the Upper Chewaucan Marsh where the waters of said river originally and naturally spread out and moved slowly over and across said Marsh without any well defined channel, in a southerly direction, and thence from said Upper Chewaucan Marsh at its lower end flowed and now flow through a well defined channel in what is known as "The Narrows" into the upper part of the Lower Chewaucan Marsh where the waters of said river originally and naturally spread over said Lower Marsh and moved slowly southerly and easterly to the lower end of said Marsh, where said waters gathered and now gather into a natural and well defined channel of said Chewaucan River and flow thence in said channel in a general southerly direction to Lake Abert, of which said water course is a tributary.

- II -

Finding II of said Findings of Fact is hereby modified so that the same shall read as follows:

That the rainfall in the Chewaucan Valley and in the vicinity of said stream and its various tributaries is insufficient for the production of profitable agricultural crops and grasses, and the lands in said valley susceptible of irrigation from said stream and its tributaries become dry, arid and unproductive without irrigation, and without irrigation are of little value; and in order to render said lands productive it is and has been at all times since the said lands have been utilized for the production of agricultural crops, necessary to use the waters of said stream and its tributaries for the irrigation of said lands, and with such irrigation the said lands yield annually profitable crops of hay, natural grasses, and the general agricultural crops usually grown in that altitude, and produce pasture for cattle, horses and other livestock.

- III -

Finding X of said Findings of Fact is hereby modified so that the same shall read as follows:

That the date fixed in the published Notice mentioned in Paragraph V of these Findings as the date when the State Engineer or his assistant would begin the investigation of the flow of said stream and the ditches diverting water therefrom was the 16th day of December, 1912. Prior to said date the State Engineer had caused to be made an examination of said stream and its tributaries and of various canals and ditches diverting water therefrom and an examination and approximate measurement of the lands irrigated and susceptible of irrigation from said stream and canals, which said observations

and measurements were made a matter of record in the office of said State Engineer and had also caused maps or plats to be prepared on the scale of two inches to the mile purporting to show the course of said stream and its tributaries and the location of various ditches and canals diverting waters therefrom and the legal subdivisions of land which had been irrigated or were susceptible of irrigation from the ditches and canals already constructed. The results of said observations and measurements are contained in the tabulation entitled "Information Collected by the State Engineer Relative to Various Canals from the Chewaucan River and its Tributaries", which is a part of the record herein, and the said maps are also part of the record herein. All of said data had been gathered and the surveys on which said maps were based had been made and said maps had been prepared before the said 16th day of December, 1912. Said maps and said tabulation were not prepared nor was the data upon which the same were based, nor was any data, information or purported data furnished by the State Engineer which has at any time been made a part of the record herein, gathered in any investigation which commenced at the date fixed in said published notice, nor in any investigation made pursuant to such published notice. Said maps were prepared and all purported data or information furnished by the State Engineer which has at any time been made a part of the record herein was obtained ex parte by said State Engineer and without notice to any of the parties herein of any investigation on which the same was based. Said maps are not correct and show upon their face that the same were not made as the result of or upon the basis of any data gathered or survey made in an investigation commencing on the 16th day of December, 1912, or at any time thereafter, or in any investigation made pursuant to such published notice, but on the contrary that the same are based entirely upon data gathered and surveys made prior to said 16th day of December, 1912.

- IV -

Finding XIV of said Findings of Fact is hereby modified so that the same shall read as follows:

Portland Irrigation Company, a corporation, as contestant, having filed a statement of contest herein against Chewacan Land and Cattle Company, a corporation, as contestee, and Chewacan Land and Cattle Company, a corporation, as contestant, having filed a notice of contest herein as against Portland Irrigation Company, a corporation, as contestee, and said Chewacan Land and Cattle Company, a corporation, as contestant, having filed a notice of contest against the Northwest Townsite Company, a corporation, as contestee, and said Northwest Townsite Company, a corporation, as contestant, having filed a notice of contest against Chewacan Land and Cattle Company, a corporation, as contestee, and Fred T. Elsey, as contestant, having filed a notice of contest herein as against the Portland Irrigation Company, a corporation, contestee, the above entitled contests came on for hearing pursuant to notice duly and regularly given, as more fully

appears from the record herein, on Wednesday the 1st day of July, 1914, at the hour of ten o' clock A.M., at the Court House in Lakeview, Lake County, Oregon, whereupon by stipulation for the purpose of taking the testimony in said various contests, the said contests were consolidated and the record taken therein was by said stipulation made available in each of said contests for the purpose of determination thereof. Additional evidence respective the matters and questions involved in said contests was offered by all of the parties to said contests, and was received by the Circuit Court on the hearing herein before said Court. The following facts are found as applicable particularly to the matters and rights involved in said contests and to the rights of the parties to said contests, to-wit:

1. Chewacan Land and Cattle Company was at the time of commencement of this proceeding, continuously since has been and now is, a corporation organized and existing under the laws of the State of California and duly licensed and authorized to do business in the State of Oregon, and was at all said times and is now the owner in fee and in the possession and entitled to the possession of those certain lots, pieces and parcels of land situate in the County of Lake, State of Oregon, which are more particularly described in the statement and proof "A" of said Chewacan Land and Cattle Company now on file herein, including all of the lands more particularly described as lands of said corporation in the tabulated statement in the order of determination herein.

2. At the time this proceeding was commenced said Chewacan Land and Cattle Company was and now is the owner of all of said lands described in Exhibit "B" attached to its said statement and proof of Claim "A", and said Exhibit "B" is a detailed and correct statement of the deraignment of title to the lands described therein. Said Exhibit "B" correctly shows the dates at which title to the several tracts or parcels of land therein described passed from the United States, or the State of Oregon, the nature of said lands with respect to the origin of title thereto (that is, whether school lands, school indemnity selections, swamp and overflowed lands, or otherwise) and the various mesne conveyances whereby title was derived by said claimant from the patentee or original grantee. The facts stipulated in that certain stipulation and agreement by and between said Chewacan Land and Cattle Company and the said Portland Irrigation Company and others, filed herein on the 3rd day of July, 1914, dated as of that day, and now a part of the record herein, are true, and said stipulation and agreement is hereby referred to and made by reference a part of these findings. Said Chewacan Land and Cattle Company since the commencement of this proceeding has acquired the following described lands situate in the Lower Chewacan Marsh:

South 1/2 of South 1/2 of Southwest 1/4 of Northwest 1/4 of Section 30,
Township 34 South, Range 20 East;

South 1/2 of South 1/2 of Northwest 1/4 of Northwest 1/4 of Section 31,
Township 34 South, Range 20 East;

South 1/2 of North 1/2 of Northeast 1/4 of Northwest 1/4; North 1/2 of North 1/2 of Southwest 1/4 of Northeast 1/4; North 1/2 of North 1/2 of Southwest 1/4 of Southeast 1/4; North 1/2 of South 1/2 of Southeast 1/4 of Northeast 1/4 of Section 32, Township 34 South, Range 20 East;

South 1/2 of South 1/2 of Southeast 1/4 of Northwest 1/4;
North 1/2 of South 1/2 of Northeast 1/4 of Southwest 1/4;
North 1/2 of South 1/2 of Northwest 1/4 of Southeast 1/4;
South 1/2 of South 1/2 of Northeast 1/4 of Southeast 1/4
of Section 33, Township 34 South, Range 20 East;

South 1/2 of North 1/2 of Southwest 1/4 of Southwest 1/4; and
North 1/2 of South 1/2 of Southwest 1/4
of Southwest 1/4 of Section 34, Township 34 South, Range 20
East of ^{the} Willamette Meridian, all in Lake County, Oregon.

Sections 16 and 36 in Township 33 South, Range 19 East, Willamette Meridian, were surveyed and the survey approved by the Government of the United States of America through its proper officers in the year 1874.

3. All of said lands of said Chewacan Land and Cattle Company are contiguous and form a single large tract or parcel of land, and the several tracts composing the same were granted by the United States or by the State of Oregon to said plaintiff or its predecessors in interest at different times and under different public land laws. All of the facts stated in Exhibit "B" attached to Statement and Proof of Claim "A" of said Chewacan Land and Cattle Company are true.

4. Said Chewacan Land and Cattle Company is the owner of certain lands within the boundaries of what are known as the Upper and Lower Chewacan Marshes, in said county, and also of certain lands contiguous to and adjoining said marsh lands not within the boundaries of said marsh, and known as uplands, all of said lands within said Upper and Lower Chewacan Marshes and all of said Uplands owned by said Chewacan Land and Cattle Company and by it claimed to be irrigated land are susceptible of irrigation with the waters of said Chewacan River and have been for many years past and now are irrigated therewith. The Upper Chewacan Marsh is an area of comparatively level land situate in Townships 33 and 34 South, Range 19 East, W. M., Lake County, Oregon, including about 14,343 acres within its boundaries, and the Lower Chewacan Marsh is an area similar in character, south of said Upper Marsh, comprising about 7,792 acres. Both of said marshes in their natural condition were covered with water or marsh grasses mixed with other vegetation such as commonly grows upon marsh lands.

5. Under the natural conditions prevailing in said locality prior to any attempt at reclamation of said lands within said marshes, said Chewacan River flowed

in its natural channel in an easterly direction through Sections 19, 18, and 17 in said Township 33, to near the section line between Sections 8 and 17 in said Township, where the waters flowing in said river and natural channel ceased to flow within well defined banks or channel, and spread out over the surface of the area known as the Upper Chewaucan Marsh, moving slowly southerly, without defined or any channel, over and across said marsh a distance of several miles, to the lower end thereof, where, in about Section 13 said Township 34, said waters gathered into a natural channel and flowed in a southerly course through the same; said channel or course being known as "The Narrows", and thence to the head of the said Lower Chewaucan Marsh in about Section 30, Township 34 South Range 20 East, W.M., where the waters spread out over the surface of said Lower Marsh, without channel or without being confined in any well defined banks, and moved slowly southerly over and across said Lower Marsh to Sections 2 and 11 of Township 35 South, Range 20 East, where the said waters again flowed into a natural channel, known as the Chewaucan River, or Lower Chewaucan River, and thence through and along said natural channel to Lake Abert, to which said waters are naturally tributary.

6. At a point near the section line between Sections 23 and 24, Township 33 South, Range 18 East, a natural channel or water course, known as Small Creek and so referred to in the record herein, extends from said river in a southeasterly direction through said Section 24 and Sections 30, 31 and 32, Township 33 South, Range 19 East, W. M., and originally a part of the waters of said Chewaucan River, in the natural conditions prevailing prior to any artificial diversion or interference therewith, flowed into said Small Creek and through the same, down to said Upper Chewaucan Marsh, where the same spread out over a part of said marsh and commingled with the waters flowing over and across said marsh. A number of natural channels diverge from said Small Creek, including Paisley Slough and certain branches thereof known as Jones Slough and Fisher Slough, these channels originally and under natural conditions receiving waters from the river and conducting the same down to and into said Upper Chewaucan Marsh.

7. As early as the year 1885 the predecessors in interest of said Chewaucan Land and Cattle Company began to use the waters of said Chewaucan River and to make beneficial use of said waters in the irrigation of said marshes, claiming the right so to do, and in said year and continuously since the said company and its predecessors in interest have by means originally of the natural overflow of the waters of said river over said marshes, and later by artificial diversion, regulation and distribution of said waters, used waters of said River in the irrigation of said marshes and put said waters to beneficial use thereon for the irrigation thereof and for the watering of livestock thereon. In the said year 1885 the predecessors in interest of said company began to cut and harvest the wild grasses growing over a portion of said marshes and to remove the hay therefrom and to pasture cattle upon said marshes, and in said year and thereafter con-

structed various ditches and canals for the purpose of more effectively accomplishing the irrigation of said marshes and the drainage thereof after the irrigation season.

8. In the year 1901 the Chewaucan Land and Cattle Company initiated the construction of large works under a general plan for the artificial diversion, regulation, control, and distribution of the waters of the Chewaucan River, to provide and assure the better irrigation of said lands at the proper season for the purpose of producing a better growth of grasses upon said land and larger crops of hay thereon, and for the purpose also of assuring a more rapid and better drainage of said lands during the non-irrigating season. This plan and the works constructed in pursuance of it involved the control, regulation and diversion of the flow of said Chewaucan River at or near the point where it enters said Upper Marsh, and thereby the irrigation of the lands of said claimant in said marsh, as well as the irrigation of said claimant's lands in The Narrows and in the Lower Chewaucan Marsh was controlled, regulated and more effectively accomplished.

In pursuance of said general plan, and about the month of October, 1901, said claimant commenced to construct, and in October, 1902, completed a canal in the Lower Chewaucan Marsh, known and referred to as the Lower Outside Canal, extending along the easterly borders of said Lower Marsh from The Narrows. In November, 1901, said claimant constructed and completed a dam and certain headgates near the southerly end of The Narrows at the head of said Lower Outside Canal, and in said dam, gates were installed to control the flow of the water through and around said dam into said Lower Marsh, and to control the flow of said water into and through said canal.

In the month of April, 1902, and as a part of said plan, claimant commenced to construct, and in July, 1902, completed the construction of a canal situate along the easterly side of the Upper Chewaucan Marsh, known and referred to herein as the Outside Canal. In the months of August and September, 1902, and as a part of said general plan said claimant constructed and completed a levee approximately four thousand feet in length along the southerly side of the said Chewaucan River and following its general course westerly from the point where said river naturally discharges into said Upper Marsh. In September and October, 1907, said claimant extended said levee from its then terminus through Sections 17, 18 and a portion of Section 19, Township 33 South, Range 19 East, Willamette Meridian, to its present terminus in said Section 19.

In June, 1902, and as a part of said plan, claimant constructed a headgate at the head of the Outside Canal to control the flow of the water from said Chewaucan River into said Outside Canal.

In June, 1902, and as a part of said plan, said claimant constructed and completed a headgate at the point where the Chewaucan River flows into said Upper Chewaucan Marsh.

In the summer and fall of the year 1902 said claimant did certain preliminary work for the construction of the canal known and referred to herein as the Center Canal, extending from the upper portion of said Upper Marsh down through said Upper Marsh to the lower end thereof.

In September, 1903, and as a part of said plan, said claimant began to construct, and in December, 1903, completed the construction of said Center Canal, and in the month of December, 1903, claimant constructed and completed an intake headgate near the head of said Center Canal to control the flow of water therein.

In September, 1903, and as a part of said plan, a dam was constructed by said claimant (for itself and certain other persons) in The Narrows on or near the south line of Section 19, Township 34 South, Range 20 East, Willamette Meridian, with gates therein for the regulation of the flow of water through said dam. In the year 1910 a third headgate was constructed in said dam to assist with the regulation of the flow of water in the channel of said river and over the Lower Marsh below said dam.

In the year 1903, and as a part of said plan, and at the time of the construction of the dam last mentioned, claimant constructed (for itself and certain other persons) a ditch, known and referred to herein as the Brattain-ZX Ditch. Said ditch was first finished from its intake to the point where it intersects the westerly line of Section 30 in Township 34 South, Range 20 East. In October and November, 1903, said claimant constructed an extension of said Brattain-ZX Ditch, consisting of canals known and referred to as the East Branch Brattain-ZX Ditch, and the Lower Center Canal. The construction of the dam last above mentioned and of the said Brattain-ZX Ditch and its branches, and the maintenance and use thereof, as well as the construction of the Lower Outside Canal and its appurtenant headworks, was provided for in those certain agreements referred to more particularly in the statements and proofs of the said Chewacan Land and Cattle Company on file herein.

In the year 1910, and in pursuance of the agreements last mentioned, an extension of said Brattain-ZX Ditch was constructed from the intersection of said Brattain-ZX Ditch with the west line of Section 30, Township 34 South, Range 20 East, Willamette Meridian, to a point in the Northwest 1/4 of the Southwest 1/4 of Section 1, Township 35 South, Range 19 East, Willamette Meridian, said extension being known and referred to herein as the West Branch Brattain-ZX Ditch.

In addition to the larger works and structures herein before mentioned, said claimant has from time to time during and since the year 1901 constructed, maintained and used various other ditches, levees, weirs, dams, gates and other structures for the regulation and utilization of the waters of said Chewacan River in connection with the works more specifically above mentioned. Some of said latter structures consisted merely of temporary dams and other devices used during each irrigation season, located at different

places from time to time, and in different years, their construction and use being dependent upon and controlled by conditions which vary from season to season and during each season.

In the month of September, 1901, claimant constructed, completed, and has since maintained and used a levee known and referred to herein as the White House Levee for the purpose of controlling the irrigation of lands lying between said levee and said Outside Canal, and certain other lands lying south of said levee. In the month of April, 1903, said claimant constructed and completed, and has since maintained and used certain gates in the west bank of said Outside Canal, and a weir therein, for the purpose of regulating the flow of and utilizing water from said Outside Canal for the irrigation of land adjacent thereto. In the said month of April, 1903, claimant constructed and completed and has since used and maintained, a ditch and headgate to divert water from said Outside Canal known and referred to herein as the White House Ditch, constructed and used for the purpose of controlling the flow of water through said Outside Canal for the irrigation of certain lands of said claimant lying between said White House Ditch and said Outside Canal.

In the month of August, 1902, claimant constructed and completed, and has since maintained and used, a gate at the southerly end of the Outside Canal for the purpose of controlling the discharge of water from said canal. In addition to these works, various boxes have been installed at various points in said canals and in the White House and Red House Levees for the purpose of regulating the flow of water utilized in the irrigation of said lands.

In the month of April, 1909, a weir and gate was constructed in the Center Canal for the purpose of controlling and distributing the waters over claimant's lands lying west of said canal, which had theretofore been irrigated through cuts made in the west bank of said canal. In the year 1903 a headgate was constructed for the purpose of regulating the flow of water through the East Branch of Brattain-ZX Ditch and through the Center Canal, and in November, 1902, said claimant constructed a weir and two gates in the Lower Center Canal to distribute water over certain of its lands. All of said works have, since their construction, been used by claimant to provide and secure the diversion, control, regulation and distribution of the waters of the Chewaucan River in the irrigation of said lands during the proper season therefor, and in the watering of claimant's livestock pastured upon said lands.

9. Said Chewaucan Land and Cattle Company is the owner of a right to take from and use water for domestic purposes from the T. J. Brattain, or Bagley Ditch, to the extent of and not exceed^{ing} eight miners inches in volume, whenever said ditch is conveying water. On the 15th day of December, 1868, one T. J. Brattain was, by virtue of a valid appropriation of the waters of said river through what is known as the Bagley, or

Brattain Ditch, entitled to divert and use an amount of water in excess of eight miners inches, continuous flow, of the waters of said river, and by conveyances the said Chewacan Land and Cattle Company has become the owner and is entitled to take out and use for domestic purposes from said Bagley or Brattain Ditch, running through Section 6, Township 34 South, Range 19 East, Willamette Meridian, not to exceed eight miners inches, or one-fifth of one cubic foot per second, continuous flow, of the waters of said river, diverted through said ditch whenever the said ditch is carrying water.

10. Small Creek is a branch of the Chewacan River and a natural channel, as hereinbefore set forth. Prior to any artificial regulation for diversion of the waters of said creek by said Chewacan Land and Cattle Company, or other claimants, the water from said Chewacan River flowed into and through said Small Creek, and down over and across certain lands owned by said Chewacan Land and Cattle Company, through various natural channels and branches, and naturally overflowed said lands. Since about the year 1885 a headgate and a dam have been maintained in the Chewacan River by the said Chewacan Land and Cattle Company, and others, for the purpose of diverting the waters of said river into Small Creek and of controlling and regulating the flow thereof into said stream. Continuously since about 1880, headgates have been maintained in said Small Creek at its junction with what is known as the Bagley Ditch, to regulate the flow of the water through said Small Creek from its junction with said Bagley Ditch. Said dam and said Small Creek headgate have been maintained and repaired by said Chewacan Land and Cattle Company, acting in common with other persons and claimants herein, or their predecessors, and said claimants have, for more than twenty years, controlled and regulated the flow of water into and through said Small Creek and into and through Paisley Slough, another branch of said river. In September and October, 1910, said Chewacan Land and Cattle Company constructed a ditch upon its lands known and referred to as the Jones Ditch, tapping Small Creek in the Northwest 1/4 of the Southwest 1/4 of Section 32, Township 33 South, Range 19 East, Willamette Meridian, and thence running easterly to an intersection with that certain ditch known herein as the Stock Ditch, constructed by the claimant in the year 1902. In September, 1907, the said Stock Ditch was enlarged and extended throughout its course, and in 1910 said Stock Ditch was enlarged throughout its entire length below its junction with the Jones Ditch to approximately the same dimensions as those of said Jones Ditch. In September and October, 1911, said claimant Chewacan Land and Cattle Company constructed a levee extending along the northerly boundary of its said lands in Section 32, Township 33 South, Range 19 East, Willamette Meridian, the purpose and effect of which levee was and is to more effectively control and divert into said Jones Ditch all of the waters of said Small Creek at the point where it enters the lands of said claimant. The lands of said claimant described in the tabulated statement herein as irrigated by the waters of said Small Creek have been irrigated since the con-

struction of said Jones Ditch by openings in the southerly bank of said Jones Ditch, and by openings in the Jones Levee, which permit the waters to flow from said ditch and through said levee onto the land irrigated by such waters.

11. Paisley Slough is a natural water course and a branch of Small Creek, as hereinbefore set forth. Said Slough enters the lands of said Chewacan Land and Cattle Company at a point in Section 32, Township 33 South, Range 19 East, W. M. That portion of the waters flowing in said Paisley Slough which are derived from Small Creek are diverted through the natural channel of said Slough at its head in Small Creek by a dam and headgate at the junction of Small Creek with the main channel of said Chewaucan River. The waters are diverted from said Small Creek by a headgate in said creek and a headgate in said Bagley Ditch at the junction of Small Creek and said Bagley Ditch, whereby the waters are diverted from said Small Creek into said Paisley Slough. Continuously for more than fifteen years last past the said dam in said river, and said gates in Small Creek at its junction with said Bagley Ditch, have been maintained, repaired and used to control the amount of water flowing into and through Small Creek and into and through Paisley Slough, and for more than ten years prior to the commencement of this proceeding said Chewacan Land and Cattle Company has diverted through said Small Creek and through said Paisley Slough a portion of the waters of said Chewaucan River, and has conducted the same to the land of said claimant for the irrigation of said lands and the growing of crops thereon. In the months of November and December, 1887, the predecessors in interest of said claimant constructed a dam in said Chewaucan River for the purpose of diverting certain waters of said river into Paisley Slough through a channel from said river connecting with said Slough. In the fall of 1902 said claimant, in common with other persons, began the construction of works for the purpose of changing the point of said diversion to the point where the same is now situated, and constructed a weir in the channel of said river, and a ditch known as the Jones-Innis-ZX Ditch, connecting Paisley, Jones and Fisher Sloughs with the channel of said river at said weir, and in October, 1903, constructed and completed certain gates at the junction of said ditch and Slough, and has since, in common with other persons and their successors in interest, maintained and used the same for the purpose of regulating the flow of water into said Paisley Slough and into Jones and Fisher Sloughs, branches thereof. The waters conducted through said Paisley Slough which are used upon the lands of said claimant are carried over and distributed upon the lands of said claimant by the Vaquero, or Stock Ditch. Such waters have been used by claimant Chewacan Land and Cattle Company and its predecessors in interest for irrigation and stock purposes since 1885.

12. Jones and Fisher Sloughs are natural water courses and branches of said Paisley Slough, and in the year 1884 a predecessor in interest of said Chewacan Land and Cattle Company constructed various headgates and boxes in Jones and Fisher Sloughs and the

various branches and channels thereof, and by means thereof irrigated certain lands then owned by said predecessors and now owned by said claimant. Such of the waters of said sloughs as are used by said Chewacan Land and Cattle Company are utilized by being carried through said Jones-Innis-ZX Ditch and Fisher and Jones Sloughs, and by being turned out of the latter and their branches and channels upon the land to be irrigated by boxes and other openings and by dams in the channel of said Sloughs and the minor branches thereof, and by ditches leading therefrom.

13. In about the year 1902 said Chewacan Land and Cattle Company commenced the construction of a weir in the Chewacan River and completed the same in the fall of 1903, and in the months of September and October, 1903, constructed a portion of the Red House Ditch from its intake near said weir, and completed the same throughout its present length to said Outside Canal in May, 1904. The headgate at the intake of said Red House Ditch was constructed and completed in the month of April, 1906, and a headgate near the eastern end of said ditch was constructed in the month of April, 1910. During and since the year 1904 water diverted by said Red House Ditch has been put by said claimant to beneficial use for the irrigation of its lands and the watering of its cattle. Said Red House Ditch between its intake and that certain diversion gate situate about 200 yards northerly of said intake (which diversion gate is shown on Exhibit "A" of Chewacan Land and Cattle Company accompanying its Statements and Proofs herein as Intake Headgate No. 5 situate in the Northwest 1/4 of the Northwest 1/4 of Section 19, Township 33 South, Range 19 East) is owned as follows: An undivided 2/3rds interest therein by Chewacan Land and Cattle Company; and an undivided 1/3rd interest therein by Fred T. Elsey (successor in interest of E. O. Lamb), and Cynthia I. McCall (as successor in interest to J. E. Mitchell-Innes and C. L. Mitchell-Innes), and that portion of said Red House Ditch situate northerly of and beyond said Intake Headgate No. 5 (that is, between said Intake Headgate No. 5 and the junction of said Red House Ditch with the Upper Outside Canal in the Southeast 1/4 of the Southwest 1/4 of Section 9, Township 33 South, Range 19 East) is owned entirely by Chewacan Land and Cattle Company.

14. Avery Creek is a natural channel and water course, also known as Moss Creek, flowing through Section 22 and into Section 15, Township 34 South, Range 19 East, Willamette Meridian, and into said Upper Marsh. Since about the year 1885, the said Chewacan Land and Cattle Company has by means of small ditches distributed the waters of said creek over the lands described in the tabulated statement herein as irrigated thereby by means of said ditches, and thereby appropriated a sufficient quantity of water for the proper irrigation of said lands from said creek.

15. A portion of the lands of said Chewacan Land and Cattle Company situate in said Upper Marsh in Sections 3, 4, 5, 8, 9, 10, 15, and 16, Township 34 South, Range 19 East, Willamette Meridian, including approximately 2600 acres, is shown as

non-irrigated land upon the maps prepared by the State Engineer which are part of the record herein. The fact is that said area is and at all times has been irrigated by said Chewacan Land and Cattle Company and its predecessors in interest in the same manner and with the same works as other lands in said Upper Chewaucan Marsh contiguous thereto, and that by means of such irrigation said company and its predecessors in interest have grown and now grow valuable crops of hay and pasturage thereon. Said area (except approximately four acres thereof situate in or near Section 5, Township 34 South, Range 19 East, Willamette Meridian, on which are small ponds caused by the flow of certain small springs thereon) is fully reclaimed and produces valuable pasturage and hay. Valuable hay grasses grow over said entire area and of the entire growth on said area a large percentage and over two-thirds consists of crops of hay grasses and other crops valuable as pasturage for cattle. Said Chewacan Land and Cattle Company and its predecessors in interest have for more than twenty years past used said area for the growth of crops thereon and for the pasturage of cattle. The irrigation of said area is necessary for the production of crops thereon, and the use of water for such irrigation has been and is a beneficial use.

16. The Chewaucan River is a natural, non-navigable stream and water course, and from time immemorial has had its source and origin upon public lands of the United States of America, and now rises and has its source upon said public lands, and flows thence northerly through, over and across public lands of the United States of America for several miles, and a considerable portion of the lands riparian to said stream and its tributaries above said Upper Chewaucan Marsh are the property of the United States of America.

17. All of the lands owned and irrigated by said Chewacan Land and Cattle Company and situate in or adjacent to the Upper Chewaucan Marsh are lands which border upon and are riparian to the main channel of the Chewaucan River where the same flows through Sections 8, 17, and 18, Township 33 South, Range 19 East, or defluent channels of said river such as Small Creek, Paisley Slough, Fisher Slough and Jones Slough, or are lands which are contiguous to and are held in the same ownership as and which form a single tract with lands so bordering upon said main or defluent channels. All of the lands owned by said Chewacan Land and Cattle Company in The Narrows which are irrigated or susceptible of irrigation are riparian to or bordering upon the Chewaucan River in said Narrows. All of the lands of said Chewacan Land and Cattle Company in said Lower Chewaucan Marsh are riparian to and bordering upon the channel of said Chewaucan River either where the same flows in The Narrows or where the same flows through Sections 2 and 11 in Township 35 South, Range 20 East. Such of the lands owned by said Chewacan Land and Cattle Company and by it irrigated as were not originally riparian to and bordering upon said stream or its divergent channels are contiguous to and held in single ownership

with other lands owned by said company which are riparian to and immediately border upon said stream or its said divergent channels. Said Chewacan Land and Cattle Company has elected, in the event that it is bound to elect between its claims or rights based upon riparian ownership and its claims or rights based upon appropriation, diversion and use, to claim its rights based upon and acquired by appropriation, diversion and use, and its rights as determined in these Findings of Fact and in the Order of Determination herein are those which are based upon and have been acquired by appropriation, diversion and use, and are not rights based upon or acquired by riparian ownership.

The lands described as irrigated lands in the Statement and Proof of Claim of Fred T. Elsey (being 30 acres in the Southeast 1/4 of the Southeast 1/4 of Section 18; 39 acres in the Northeast 1/4 of the Northeast 1/4 of Section 19; 14 acres in the Northwest 1/4 of the Northeast 1/4 of Section 19; and 9 acres in the Northwest quarter of the Northwest 1/4 of Section 20, all in Township 33 South, Range 19 East, W. M.) are lands which are riparian to and border upon the Chewacan River. The main channel of said river flows through said lands, and said lands were before any artificial diversion of the waters of said stream naturally irrigated by said waters, and have since such diversion been irrigated by said waters. Said Fred T. Elsey is entitled to a right, based upon riparian ownership, to the continued use of water for said lands, which right is coordinate with and has the same priority as the rights of the earliest users of the water of said stream; but said claimant has no right to insist upon the continued flow across or by his land of more water than is necessary to provide him with the amounts herein determined as reasonable and necessary for these purposes, and will not be injured by the diversion of such waters as are not necessary to assure to him the natural flow of the stream to the extent that the same has been by him for these purposes required and used.

18. The Northwest Townsite Company is the owner of certain water rights through certain ditches diverting water above the head of said Upper Marsh. About the year 1881 the predecessors in interest of said Northwest Townsite Company constructed a ditch known as the Drink Water, or Little Conn Ditch, tapping said stream on the south side in the SE 1/4 of Section 23, Township 33 South, Range 18 East, W. M., and thereafter the waters of said stream were diverted down through said ditch and conducted upon the lands of said claimant described in the tabulated statement herein and utilized for the irrigation thereof. About the year 1886 the predecessors in interest of said Northwest Townsite Company constructed what is known as the Mill Ditch, tapping said stream on the north bank thereof in the Northeast 1/4 of the Southeast 1/4 of Section 23, Township 33 South, Range 19 East, W. M., and diverted the waters of said stream through said ditch and utilized the waters so diverted for domestic, power and irrigation purposes upon the lands and in the mill described in the tabulated statement in the order of determination herein. By virtue of said diversion as aforesaid through said Little Conn and through

said Mill Ditch, the predecessors in interest of said Northwest Townsite Company appropriated the waters of said stream in quantities reasonably necessary for the purposes of said appropriation. For the development of power at said mill described in the tabulated statement herein, said Northwest Townsite Company is entitled (subject to the rights of other persons having prior rights) to divert and use not to exceed thirty cubic feet per second, continuous flow, but is not thereby entitled to consume said quantity of water, or to change the place of use or the character of said use to any other or a different use, but should return the said waters so diverted after use to said stream, without substantial diminution in quantity, at its point of present return near the center of the south line of the Southeast 1/4 of the Northwest 1/4 of Section 24, Township 33 South, Range 18 East, W. M.

In the year 1885 the predecessors in interest of said Northwest Townsite Company commenced the construction of the Lower Conn Ditch, tapping said stream on the south side at a point near the southeast corner of the Northwest 1/4 of the Southwest 1/4 of Section 24, Township 33 South Range 18 East, W. M., and completed said ditch, and by means thereof diverted the waters of said stream through said ditch and utilized the same for the irrigation of said lands and for domestic purposes. In the year 1903 the point of diversion of the said ditch was changed to a point on the south side of the main channel of said stream in the Southeast 1/4 of the Northeast 1/4 of the said Section 24, and a ditch was constructed leading from said point of diversion to said premises, which said ditch has been used ever since in the irrigation of said premises as the same are described in the tabulated statement in the Decree herein.

In the year 1896 the predecessor in interest of said Northwest Townsite Company commenced the construction of a ditch known herein as the Conn Ditch, from a point on the north side of said stream near the southwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 27, Township 33 South Range 18 East, W. M., down to and upon the lands described in the tabulated statement in the Decree herein as irrigated therefrom, and by means of said ditch diverted waters of said stream down to and upon said lands, and utilized the waters so diverted for the irrigation of said lands and for domestic purposes.

By virtue of the construction of said Conn Ditch, and said lower Conn Ditch, and the diversion and use of water through the same as aforesaid, the predecessors in interest of said Northwest Townsite Company did appropriate a portion of the waters of said stream to an amount necessary for the proper and reasonable irrigation and domestic requirements of said appropriator for the irrigation of said lands and for domestic purposes.

At no time prior to the year 1913 was more than 160 acres of land irrigated by or through said Conn Ditch by said Northwest Townsite Company or its predecessors in interest, and all additional land irrigated since said year 1913 through said Ditch has

been irrigated under and subject to the limitations of a permit issued by the State Engineer in the year 1912 for the enlargement of said ditch. The 160 acres of land so irrigated prior to said year 1913 are those which in the tabulated statement hereinafter contained are allowed a priority date as of the year 1896.

19. The Portland Irrigation Company, contestee, was prior to these proceedings and now is a corporation organized and existing under the laws of the State of Oregon.

20. Portland Irrigation Company claims to be the owner of certain water rights appurtenant to certain lands which are public lands and the property of the United States of America. Said Portland Irrigation Company claims to have posted, prior to the 24th day of February, 1909, and at intervals usually of approximately six months each, at a proposed point of diversion described in said notices, certain notices of appropriation each for 15,000 inches, miners measurement, under a six inch pressure, of the waters of said Chewaucan River, and claims that within the time prescribed by law it filed a duplicate copy of each such notice with the County Clerk of Lake County, Oregon, and thereafter and within the time prescribed by law filed a certified copy of such duplicate with the State Engineer of the State of Oregon. In the statement and proof of claim of said Portland Irrigation Company it is alleged that one of the said copies was posted on September 30th, 1905, but no further evidence of the posting thereof or of any filing of any such notice or of any duplicate or copy thereof in the office of the County Clerk of Lake County, Oregon, or in the office of the State Engineer of Oregon, was offered in this proceeding. Said Portland Irrigation Company did not within six months after the posting of any of said notices nor at any time prior to November, 1911, commence any work to apply to beneficial use any of the waters of said Chewaucan River, nor did it within six months after the posting of said notices or any of them or at any other time commence or prosecute with due or any diligence any work to perfect any appropriation mentioned in any of said notices to apply to beneficial use any of the water mentioned in any of said notices, and it has not at any time applied, used or put to beneficial use for the irrigation of any lands mentioned in its said statement and proof of claim any of the waters of the Chewaucan River. No copy, certified by the County Clerk of Lake County, Oregon, of any notice of appropriation or of any duplicate of any such notice was ever filed by said Portland Irrigation Company in the office of the State Engineer of Oregon, but in each instance where any copy or purported copy of any such notice of appropriation or any such duplicate was filed by said Portland Irrigation Company with said State Engineer, such copy or purported copy was not certified by the County Clerk of Lake County, Oregon, or by any other public official. No maps or other information which were required by Sections 1624 of Lord's Oregon Laws to be filed with said State Engineer, with certified copies of the duplicates of said notices of appropriation were so filed with any copies or purported copies of such notices which were filed with said State Engineer.

Said contestee did not within fifteen days after posting the notice referred to in its Statement and Proof as having been posted March 31, 1906, nor did it at any time prior to June 22, 1906, file with the County Clerk of Lake County, Oregon, any duplicate or purported duplicate of such notice, but nevertheless did file with the State Engineer of Oregon, on the 16th day of April, 1906, an instrument purporting to be a copy of a duplicate of such notice theretofore filed with said County Clerk. The copies filed with said State Engineer and purporting to be copies of the notices of appropriation referred to in the Statement and Proof of said Portland Irrigation Company as having been posted September 30th, 1906, January 24th, 1907, and July 18th, 1908, respectively, were not true copies of any notice or duplicate of such notice theretofore filed with said County Clerk of Lake County, Oregon, but on the contrary the purported copy of the first mentioned of said notices which was filed with the State Engineer states the date of posting thereof as the 30th day of September, 1906, while the purported duplicate thereof filed with said County Clerk states said date of posting as the 29th day of September, 1906; the purported copy of the second of said notices last mentioned which was filed with the State Engineer states the date of posting thereof as the 24th day of January, 1907, while the purported duplicate of such notice filed with said County Clerk states said date of posting as the 21st day of January, 1907; and the purported copy of the third of said notices which was filed with the said State Engineer states the date of posting of such notice as the 18th day of July, 1908, while the purported duplicate of such notice filed with said County Clerk states said date of posting as July 13th, 1908.

On November 24th, 1911, H. C. Brodie, alleging himself to be the Trustee for the State of Oregon, made application No. 1886 to the State Engineer for a permit to appropriate 300 cubic feet per second of the waters of said Chewaucan River, and to supplement the direct flow of said water by storage for irrigation and domestic use on said lands, and at the same time filed with said State Engineer Application No. 1887 for a permit to reservoir and store for irrigation and domestic use the unappropriated waters of said Chewaucan River to the extent of 50,000 acre feet, said water so stored to be used upon saidlands.

On December 12, 1912, said Brodie, pursuant to an order of the Desert Land Board of Oregon, assigned said applications to said Portland Irrigation Company. Said application for a permit to appropriate does not definitely describe the proposed point of diversion of said waters nor contain any location or description of the proposed ditch, canal or other work, nor any definite description, by legal Subdivisions, of the land upon which said water was to be used, although all of said land had at the time said application was made been officially surveyed and was capable of being described by legal subdivisions. Said application for a permit to construct a reservoir does not contain any data respecting the height of the dam or the uses to be made of the impounded waters, and each of said applications does not contain material data prescribed by the Board of

Control to be contained in such applications. Said applications were not nor was either of them in the form nor did they or either of them contain the data and information required by Section 6626 of Lord's Oregon Laws. No permit has been issued or granted by said State Engineer on either of said applications, and both of said applications are now pending.

On the 27th day of February, 1907, said Portland Irrigation Company entered into a contract with the State of Oregon acting by and through its State Land Board to reclaim as desert lands the lands described in its Statement of Claim herein under what is known as the Carey Act and the acts amendatory thereof. Prior to said date it had made certain preliminary surveys of said lands and of the ditches necessary to provide a system for the irrigation thereof. Said Portland Irrigation Company did not comply with but failed to perform the terms of said contract dated February 27, 1907, and its rights under said contract dated February 27, 1907, were, prior to the 1st day of January, 1912, forfeited by the State of Oregon, acting through its Desert Land Board, and said contract was by reason of non-fulfillment by said Portland Irrigation Company of the provisions thereof terminated prior to said date. On the 6th day of September, 1911, said Portland Irrigation Company executed and delivered to the State of Oregon, acting through its Desert Land Board, a written relinquishment and surrender to the State of Oregon of all of its right, title and interest in and to Oregon Carey Act Selection No. 15 and all its right, title and interest in and to the contract dated February 27, 1907, hereinabove mentioned and all its right, title and interest in and to the water rights owned or claimed by it for the waters of the Chewaucan River necessary for the reclamation of lands in Oregon Carey Act List No. 15 and all of its right, title and interest in and to any and all rights of water and water rights theretofore secured by it from the Interior Department or the Forestry Service or the State of Oregon for canals and reservoirs to be used in the reclamation of lands in Oregon Carey Act List No. 15. Said relinquishment was conditioned that if on or before January 1, 1912, arrangements satisfactory to the said Desert Land Board for the financing of the Carey Act Project of said Portland Irrigation Company should have been made, said relinquishment should be null and void, but if satisfactory arrangements should not have been made by said date then said relinquishment should become absolute and of full effect. On January 25, 1912, and not before said State of Oregon entered into and executed a new contract with said Portland Irrigation Company bearing date December 29, 1911, whereby said Portland Irrigation Company undertook and agreed to reclaim as desert land the lands described in its Statement of Claim herein under the provisions of said Carey Act and its amendments, by and through a system of canals ditches and reservoirs using the waters of said

stream. The time prescribed by said contract for the completion of the work to be done thereunder by said Portland Irrigation Company has been from time to time extended by said Desert Land Board, but said work has not been completed nor has said Portland Irrigation Company in good faith or with due diligence prosecuted the work required to be done by said contract.

21. On September 6, 1903, the duly authorized agent of the State of Oregon did, under and by virtue of said Carey Act (Act of Congress of the United States of America approved August 18, 1894, and Act of June 11, 1896, and Act of March 3, 1901, amendatory thereof) and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, make and file in the United States Land Office at Lakeview, Oregon, a list of desert public lands which the state was then authorized to select under the provisions of said Carey Act and acts amendatory thereof, which said list of public lands included the lands now proposed to be irrigated by said Portland Irrigation Company and as described in the tabulated statement in the order of determination, herein. On September 18, 1913, the Register and Receiver of said Land Office at Lakeview, Oregon, did certify to the accuracy of said list, and allowed and approved the same, and did certify that the whole of said lands were at said times surveyed public lands of the United States, except certain lands in Section 4 and Section 9, Township 33 South, Range 18 East, W. M., which were then unsurveyed; that the said lands were not, nor any part thereof, returned and denominated as mineral or timber lands; that there was no homestead or other valid claim to any portion of said lands on file or of record in said office; and that said lands were, to the best of their knowledge and belief, desert lands as contemplated by the said acts of Congress.

22. On the 11th day of September, 1907, articles of agreement were made and entered into by and between the United States of America, through the Secretary of the Interior, and the State of Oregon, through the State Land Board of said state, under the provisions of said Carey Act and acts amendatory thereof, whereby and wherein the United States of America did bind itself to donate, grant and patent to said state, or its assignees, any particular tract or tracts of the said lands as described in said list and in the tabulated statement herein, upon the proper reclamation thereof within ten years, as provided in said contract; and it was understood and agreed that said state should have full power, right and authority to enter such lands, and from time to time make and enter into such contracts and agreements and to create and assume such obligations in relation to and concerning said lands as might be necessary to induce and cause irrigation and reclamation thereof as required by said contract and said acts of Congress.

None of the matters hereinabove mentioned nor any of the matters nor any acts of Portland Irrigation Company constitute or amount to a valid appropriation of

any of the waters of said Chewaucan River or entitle said Portland Irrigation Company to a present right to use any of the waters of said river for the irrigation of the lands described in its Statement of Claim herein or any thereof, and said Portland Irrigation Company has no right to use any waters of said Chewaucan River except such right if any, as it may hereafter acquire under said Applications Nos. 1886 and 1887 hereinabove mentioned, not inconsistent with these Findings or the Order of Determination herein, but by reason of said applications and the pendency thereof it has a right to appear in these proceedings, and its rights with respect to the waters of said Chewaucan River will be such, if any, as it shall hereafter lawfully acquire by virtue of said Applications Nos. 1886 and 1887, not however inconsistent herewith. Such rights if and when acquired will have a date of priority not earlier than November 24th, 1911.

23. On February 24th, 1909, said Portland Irrigation Company was not in good faith or with due diligence or in compliance with any laws existing prior to or on said date attempting to perfect or complete any appropriation theretofore made, attempted or initiated, and had not prior to said time exercised good faith or used due diligence in any attempt to complete any such appropriation.

24. The diversion point proposed for the canal and irrigation system which said Portland Irrigation Company has undertaken to construct by the terms of said contract dated December 29, 1911, with the State of Oregon, and the proposed site for the dam to be constructed under the terms of said contract, are situate upon the lands of the United States of America.

25. (a) CLASSES OF LANDS INVOLVED.

In general two classes of land are included in the lands which are irrigated or susceptible of irrigation with the waters of the Chewaucan River. These are the marsh lands and the "uplands". The marsh lands comprise the lands included within the Upper and Lower Chewaucan Marshes. The uplands include all other lands irrigated or susceptible of irrigation from the Chewaucan River, its tributaries and defluent branches. The largest area of the uplands lies in what is known as the delta of the Chewaucan River, which is the area lying north and west of the Upper Chewaucan Marsh that is irrigated with the waters of Small Creek, Paisley Slough, Fisher Slough and Jones Slough, defluent branches of said river. In addition to the area last mentioned (known as the delta uplands) the uplands include certain areas such as those irrigated from the Bagley Ditch and the Red House Ditch (which are not natural channels of the stream but artificial ditches constructed for the purpose of irrigating lands lying above the delta of the river), and also certain areas situate along the upper portions of the Chewaucan River as in the Little Chewaucan Valley, or on such tributaries of the river as Crooked Creek and Willow Creek. A comparatively small area

is irrigated from the Chewaucan River below the Lower Chewaucan Marsh.

(b) CLASSES OF SOIL.

The soil of the uplands is in general a sandy soil which in and near the delta region is impregnated with alkali to a considerable extent. The surface of the uplands is not as flat as that of the marsh lands, but is more or less broken by elevations and depressions. The delta uplands have a considerable slope, varying at different places, and gradually becoming less as the meander line of the Upper Chewaucan Marsh is approached. The lands lying under the Bagley Ditch have a heavy slope. The presence of alkali in the uplands, and particularly in the delta uplands, is noticeable wherever the surface of the ground projects above the level washed by the water during the irrigation season, and on such elevations the only growth is a salt grass or other plant worthless as food for livestock.

The marsh lands are comparatively flat and level, the larger portion of the land within both the Upper and Lower Chewaucan Marshes having a fall toward the southeast of only approximately one foot to the mile. At the northerly end of each of the two marshes there is a considerable deposit of silt, but the soil of the other portions of both Marshes is composed almost entirely of peat laid down through the years by the decomposition of vegetable growth. This peat is at a few places underlaid with a thin layer of a few inches of sand, but the soil on the larger part of both Marshes is entirely peat from the surface to the subsoil. The Marsh soil varies in depth from approximately a half foot to considerably over ten feet, the greater portion being from two and one-half to five feet in depth. The entire area of the marsh lands is underlaid with a subsoil of great depth composed of a practically impervious stratum of whitish earth resembling chalk in appearance. At the surface the soil of the marsh lands consists of an open fibrous mass of roots which is of a depth of two or three inches, and beneath which is the peat. Near the surface the decomposition of the vegetable matter is more or less incomplete, but this decomposition becomes more complete as the depth from the surface increases, and at a depth of one or two feet below the surface the soil consists of almost pure peat.

The marsh soil is porous, particularly near the surface, and during the non-irrigating season dries rapidly and to a considerable depth, shrinking as it dries and developing cracks at and near the surface, which increase the rate of evaporation. When water is again applied to the soil a large amount is at once absorbed in filling the cracks and larger voids, after which the rate of absorption is retarded by the "sliming" of the smaller particles, but a large quantity of water continues to be absorbed until the soil is fully saturated, although the rate of absorption is slower than when the water is first applied. The soil has a low capillarity and does not

effectively subirrigate. There is practically no drainage of the marsh lands through either the surface soil or the subsoil, and surface drainage is the only form of drainage natural or practically possible.

(c) CROPS.

In a few places on the "uplands" hardy fruits and vegetables are grown, but almost all of the uplands are devoted to the production of hay crops, these consisting in the main of natural meadow hays mixed in some localities with tame varieties of hay grasses such as timothy and red top. Alfalfa is grown on some of the lands irrigated from the Bagley Ditch and from the Red House Ditch.

The crop grown on the marsh lands consists of various native hays which grow to a height of from three to over five feet and produce from two and one-half to three tons to the acre of cured hay. This hay has exceptional keeping qualities and is of high value as feed for cattle. The predominant crop on the marshes is locally known as "sugar grass", which term is applied to two varieties similar in appearance and growing in about equal quantity. These two varieties are scientifically known as sprangletop (*scolochloa festucacea*) and awned sedge (*carex aristata*). These and the other varieties of hay-producing plants which grow on the marsh lands are perennial plants, hydrophitic in nature, which have their natural habitat in marsh lands where wet conditions prevail during the growing season. They require for their proper growth a saturated soil and water (that is not stagnant) upon the surface of the ground during the growing season.

Originally and before the marsh lands were reclaimed or the crops thereon harvested or cattle pastured thereon during the winter a considerable percentage of the growth thereon consisted of tules, flags, cane and other plants of comparatively small value as food for livestock. These plants now form a comparatively small percentage of the growth on the marsh lands, and where they exist grow among and intermingled with valuable hay grasses. All portions of said marsh lands now produce large and profitable crops of hay and pasturage, and the irrigation of all portions of said marsh lands is an application of water to beneficial use. Their soil is unfitted for the production of ordinary field crops or of crops ordinarily grown by intermittent irrigation. No crop other than that now grown on said marsh land could be profitably grown thereon.

(d) CLIMATE.

The average elevation of the marsh lands is approximately 4400 feet, and the climate is to a large extent influenced by the altitude. Freezing weather occurs in all months of each year except June, July and August, and in some years in the month of June. The winter climate is extremely rigorous, the temperature frequently falling below zero, and storms during the winter season are of frequent occurrence.

During the months of November to February, both inclusive, in practically every year, freezing weather prevails and ice forms to such depth in all defluent channels of the Chewaucan River and in the ditches and canals diverting water therefrom (including those in the Upper and Lower Chewaucan Marshes) that it is necessary to cut ice during practically the entire winter season in order that cattle may obtain drinking water from such water courses. In many years these conditions prevail also during the latter half of the month of October and the first half of the month of March. The plants which grow on the marsh lands are of such nature that they are not injured by freezing or by the application of water even during periods of extreme cold. The natural precipitation on the marsh lands is not sufficient to saturate the ground before the beginning of the irrigation season or to provide sufficient moisture for the proper growth at that time of the plants thereon. A large quantity of water is consumed and necessarily consumed at the beginning of each irrigation season in accomplishing the saturation of the ground.

(e) ALKALI.

The lands lying east of said Upper and Lower Chewaucan Marshes are heavily impregnated with alkali, and there is also a considerable quantity of alkali throughout the so-called "delta uplands". The drainage of all said lands is toward and into said marshes. The actual soil of the marshes is comparatively free from alkali, and the method of irrigation employed is effective to keep them in that condition. All irrigated lands require drainage in order to maintain their fertility, and the drainage afforded by the surface run-off from the marsh lands corresponds to the drainage ordinarily afforded by deep percolation, but which in the case of the marsh lands is prevented by an impervious stratum beneath the surface soil. On the uplands drainage is afforded by deep percolation and by surface run-off.

(f) METHOD OF IRRIGATION.

The method of irrigation generally employed on the uplands for the growth of meadow hays is flood irrigation. This is the method and practice commonly and usually employed in that locality and in other districts for similar crops upon lands of like character and situation and is a proper method for the irrigation of such crops on said lands. The uplands have a considerable slope, varying with their location, and there cannot be effective irrigation thereof for the growth of meadow hays without some loss in water from run-off due to their slope. The method of irrigation employed on the marsh lands is likewise flood irrigation and is the method which is commonly employed on similar lands for similar crops in other localities, and the only method which can be practically employed for the irrigation of said marsh lands and of the crops thereon. The slope of said marsh lands is very slight and the rate of movement of the water over

the same is small, and said lands by reason of the flatness of the ground surface and the retarding effect of the gradually contracting shape of both the Upper and Lower Chewaucan Marshes and the effect of the vegetation thereon are unusually well adapted to flood irrigation without a large unusual or excessive loss of water. The system of works constructed for the irrigation of said marsh lands and the methods and practice employed in irrigating the same, are adequate for an economical use of water. It would be impossible, except at prohibitive cost, to construct works which would materially reduce the amount of water consumed in the proper irrigation of said marsh lands, nor could said amount of water be substantitally reduced below the amount declared in these Findings to be the amount reasonably required for their proper irrigation without preventing the proper irrigation of said marsh lands, nor without reducing or destroying their fertility.

(g) IRRIGATION SEASON.

The irrigation season for the marsh lands (that is, the period during which water is usually and properly applied from the Chewaucan River to said lands) ends in each year between the 1st and 15th days of July. The growing season on said marsh lands begins usually about March 1st. There are, however, in certain years, early freshets in the months of January or February, and as in many years there is a deficiency in the amount of water available between March 1st and July 15th for the irrigation of the marsh lands, the owners of said lands have heretofore and for more than ten years prior to the commencement of this proceeding, applied to said lands the waters of said early freshets if and when they occur in the months of January or February. The irregularity and variability of the flow of the Chewaucan River is such that such use of said early freshets is in many years necessary in order to assure (insofar as this can be done) a sufficiency of water for the irrigation of the marsh lands. Such freshets when they occur are spread over the land, and such part as does not immediately enter the soil is to a considerable extent held until spring, when it aids in saturating the lands, and thereby diminishes the amount required for this purpose from the stream flow after the beginning of the growing season. Under present conditions, therefore, the owners of the marsh lands should be held entitled to use such early freshets, and, to permit such use, the irrigation season for such lands is found to begin January 1st in each year and continue until July 15th in each year. Similar considerations apply in determining the beginning of the irrigation season for the lands of Wm. H. Hotchkiss, situate below the Lower Marsh, and which contain 356.2 acres irrigated from the main channel of the Chewaucan River. The irrigation season for said lands of Wm. H. Hotchkiss begins on the 1st day of January in each year and continues until the 15th day of July in each year.

The same considerations apply also to the lands of E. S. McDonald and J. B. Elder and to the lands of A. C. Hotchkiss irrigated from Crooked Creek and Willow Creek. The flow of these tributaries is even more irregular than that of the main Chewaucan River. These lands are used for the growth of upland hays, and the irrigating season for said lands is therefore found to begin on the 1st day of January in each year and to continue until and including the 30th day of September in each year.

The irrigation season for the lands belonging to the estate of George M. Jones, deceased (represented herein by Frances J. Snider and Anna F. Jones as Executrices of said estate) in the Little Chewaucan Valley begins on the 1st day of March and continues to and including the 31st day of August of each year.

For many years and for more than ten years prior to the commencement of this proceeding the owners of the land containing 676 acres situate in Sections 5, 6, 7, 8, 16 and 17, Township 34 South, Range 19, East, W. M., now owned by Brattain Bros., a corporation (substituted for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small), which are irrigated from the Bagley Ditch, have employed the waters of the Chewaucan River diverted through said Bagley Ditch for spring and fall irrigation and the use of said waters for said purposes has been and is a use thereof for beneficial purposes. It is therefore found that the irrigation season for said lands begins on the 1st day of January of each year and continues to and including the 30th day of September in each year.

The irrigation season for all other lands irrigated from said Bagley Ditch begins on the 1st day of April in each year and continues to and including the 30th day of September of each year. The irrigation season for all other uplands now irrigated with the waters of the Chewaucan River (not heretofore in this subdivision (e) specifically mentioned) begins on the 1st day of April in each year and continues until and including the 15th day of September in each year.

(h) DUTY OF WATER FOR IRRIGATION.

A determination of the duty of water for the marsh lands cannot be made by merely comparing the measurements of volume of flow in the Chewaucan River at the several gauging stations above the Upper Marsh, in The Narrows and below the Lower Marsh. As applied to the difference of flow prior to July 1st in any year above the Upper Chewaucan Marsh on the one hand, and in The Narrows or below the Lower Chewaucan Marsh on the other hand, this involves an attempt to ascertain an average amount of water "consumed" on both the uplands and the marsh lands. These two classes of lands not only have different irrigation requirements, but their irrigation seasons are not the same and the acreage included in each class is so different that an average figure so derived cannot properly be applied to either class. Such a method further leaves

out of view the amount of water contributed between the different measuring stations by rainfall in excess of the normal amount, by drainage from surrounding areas and by the flow of streams entering the areas between the points of measurement. In the amounts of flow measured at The Narrows and below the Lower Chewaucan Marsh are included large quantities of water derived by drainage from the areas lying east of the marsh lands which waters enter the canals on the East sides of said marshes and are carried to said points of measurement, but which do not represent waters of the Chewaucan River, and which when included in an amount deducted from the flow of the river at an upper gauging station destroy the accuracy of any attempt to determine even the amount of water actually "consumed" on the irrigated lands between the two measuring stations. Other considerations (such as the fact that in particular years during which the measurements were taken a large part of the marsh lands did not receive proper irrigation but were uncovered and deprived of irrigation during the latter part of the irrigating season) render it impossible by this method to determine even the amount "consumed" between the measuring stations. But if such a method were otherwise correct it would not show the requirements of the lands for irrigation, but only the amount of water actually "consumed". It makes no allowance for the item of run-off which must be compensated in order to maintain the irrigation of both the marsh lands and the uplands during the irrigation season.

From all of the evidence, including the lay and expert testimony and the measurements in evidence, it is found that the irrigation of the marsh lands requires such amount of water as will saturate the ground and maintain a film of water on the surface of the ground during the irrigating season, and that if received when and in the quantities necessary to accomplish this, an allowance of 3.9 acre feet per acre in each irrigation season is required and is a reasonable allowance for this purpose.

Such uplands as have a slope approximating that of the marsh lands require substantially the same amount of water for their irrigation. Large areas of the uplands have, however, a much steeper slope than the marsh lands, and for this reason require a somewhat larger allowance of water for effective irrigation. An allowance of 4.4 acre feet of water per acre diverted from the stream during each irrigating season is required and is a reasonable allowance for the irrigation of the following lands:

All lands of W. Y. Miller (substituted herein for the Estate of Martha J. Farrow, deceased, W. Y. Miller, Executor) which are described in Proofs Nos. 68 and 69;

All lands of Frances J. Snider and Anna F. Jones, Executrices (substituted herein for George M. Jones) which are described in Proof No. 98;

All lands of Florence Jones which are described in Proofs Nos. 93 and 94;

All lands of E. S. McDonald which are described in Proof No. 109;

All lands of W. M. Dobkins which are described in Proof No. 55, and in Proof No. 54 except the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 33 South, Range 19 East;

All lands of C. E. Campbell (substituted herein for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small) which are described in Proof No. 18;

All lands of M. H. Lauritzen which are described in Proofs Nos. 104 and 105;

That part of the lands of M. C. Currier which are described in Proofs numbered 43 and 44, which is in Lots 4 and 5 in Section 20, and Lots 1 and 2 in Section 21, Township 33 South, Range 19 East, W. M.;

All lands of Chewacan Land and Cattle Company which are described in Proof No. 32;

All lands of Anton Egli which are described in Proofs Nos. 60 and 61.

An allowance of 4.6 acre feet of water per acre diverted from the stream during each irrigating season is required and is a reasonable allowance for the irrigation of the following lands;

All lands of M. C. Currier which are described in Proofs Nos. 43 and 44, except Lots 4 and 5 of Section 20, and Lots 1 and 2 of Section 1, Township 33 South Range 19 East;

All lands of W. B. Parker which are described in Proofs Nos. 139, 140 and 141;

All lands of Fred T. Elsey which are described in Proofs Nos. 64 and 65.

All lands of Cynthia I. McCall which are described in Proof No. 108;

All lands of Fred Weidey which are described in Proofs Nos. 159 and 160.

An allowance of 4.8 acre feet of water per acre diverted from the stream during each irrigating season is required and is a reasonable allowance for the irrigation of the following lands;

All lands of W. Y. Miller which are described in Proofs Nos. 119, 120 and 121;

All lands of Frances J. Snider and Anna F. Jones, Executrices (substituted herein for George M. Jones) which are described in Proof No. 97;

All lands of E. S. McDonald and J. B. Elder (co-partners) which are described in Proof No. 116;

That part of the lands of W. M. Dobkins which are described in Proof No. 54 that consists of the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 33 South, Range 19 East, W. M.

All lands of W. B. Parker which are described in Proof No. 138;

All lands of Annie Moss which are described in Proofs Nos. 124 and 125;

All lands of John O'Callaghan and Dennis O'Callaghan, co-partners doing business as O'Callaghan Bros., (substituted herein for D. B. Conrad and Lettie E. Conrad) which are described in Proof No. 42;

All lands of Harriett L. Random which are described in Proof No. 145;

All lands of Brattain Bros., a corporation (substituted herein for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small) which are described in Proof No. 13;

All lands of Chewaucan Land and Cattle Company which are described in Proof No. 33.

An allowance of 3.9 acre feet per acre in each irrigation season is a proper and reasonable allowance for the irrigation of all other uplands now irrigated with waters of said stream or its tributaries (the allowance for which is not hereinabove otherwise specified.)

No determination is herein made of the amount of water required for the irrigation of the lands within Carey Act Selection List No. 15 for the reason that Portland Irrigation Company has not a present right to divert or use water for the irrigation of said lands.

(i) RATE OF DIVERSION FOR IRRIGATION.

In order to facilitate the distribution of the waters of the river and its tributaries in accordance with the allowances of volume herein specified, a limitation should be placed upon the rate at which water may be diverted for irrigation. The shape of the marshes and the method of irrigation employed makes it practicable to use amounts in excess of those immediately required, such excess storing itself upon the marshes and to a degree avoiding the effect of a later deficiency in stream flow. Because of the irregular nature of the flow of the Chewaucan River it is necessary that the owners of the marsh lands shall be entitled to divert water when available to provide against the deficiencies of water which occur in almost every year during some part of, and usually near the end, of the irrigating season. On the other hand the rate at which water is delivered past the points of measurement for the marsh lands is not subject to the control of the owners of such lands, since, even in times of extreme floods, all water that is not actually used by irrigators whose points of diversion are higher on the stream, flows to and past the points of measurement for those lands. It would therefore be improper to charge against the total volume which may be diverted during any irrigation season for the irrigation of such lands, water which the stream may at particular times discharge

past the points of measurement in excess of the amounts demanded and required for the irrigation of these lands, but since any such excess is lost to water users whose points of diversion are above the marsh lands, and persons may hereafter acquire a right to store or divert above said marsh lands surplus waters of said stream, provisions should be made whereby a limitation will be placed upon the rate of flow up to which owners of the marsh lands shall be entitled to require that the natural flow of the stream be not interfered with by persons having subsequent rights, and which on the other hand will provide against there being charged against the allowance of water for the irrigation of the marsh lands such waters of the stream as are delivered to such lands in excess of their requirements from time to time. A limitation of $1/25$ th of one cubic foot per second of time for each acre is a reasonable and proper limitation upon the rate at which the owners of both marsh lands and up lands shall be entitled to divert the waters of the stream for the irrigation of their lands. The Order of Determination herein should therefore provide that (1) no users of waters of the Chewaucan River shall be entitled to divert water from the stream for the irrigation of any lands at a rate in excess of $1/25$ th of one cubic foot of water per second of time for each acre of their lands and for such period when water is available as will not exceed the allowance in respect of volume specified in these findings; (2) That if Portland Irrigation Company or any other person or persons shall hereafter acquire a right to divert or store any surplus waters of said river at a point or points above said marsh lands, such person so hereafter acquiring such right shall, during the irrigation season for the marsh lands (namely, January 1st to July 15th) and at least five days and not more than seven days prior to each 1st and 15th day of each month during which he shall desire to so divert or store any such water, deliver to the persons having in charge the irrigation of all lands within said Upper and Lower Chewaucan Marshes a written notice or notices requiring such irrigators of marsh lands to specify in writing the rate of flow up to which they will respectively desire to divert and use the natural flow of said stream during the following half monthly period (beginning the next 1st or 15th day of a month) which notice shall in every case state the name and post office address of the party giving such notice and each person having charge of the irrigation of marsh lands so served with any such notice shall, within two days after receipt of each such notice, deposit in the United States post office at Paisley, Oregon, with postage prepaid, addressed to the person who gave such notice, at the post office address named in such notice, a written specification of the rate of flow (in terms of cubic feet per second of time, but not exceeding a total flow in excess of a flow of $1/25$ th of a cubic foot per second for each acre of marsh lands owned or irrigated by him) up to which the person giving such written specification will require the natural flow of the stream for irrigation of such marsh lands during the half monthly period covered by said specification, and in all cases

in which such specification shall be so mailed within the time herein specified, there shall not be charged (against the allowance in volume herein specified for the irrigation of such marsh lands) any water which said stream shall discharge during such half monthly period, past the points of measurement for the marsh lands of the party making such specification, in excess of the amount so specified, but if he shall fail to so mail said written specification there shall be charged (as against the allowance for the marsh lands so irrigated by him) all water up to (but not exceeding) a maximum flow of 1/25th of one cubic foot per second of time for each acre thereof, which during such half monthly period shall be actually delivered to or discharged past the points of measurement therefor, in the same manner and to the same extent as though no provision for a specification of requirements were herein contained. No party whose rights to use water from said stream shall be subsequent in priority to the rights of a person from whom any such specification may be demanded and by whom any such specification shall be mailed, shall, during the half monthly period covered by any such specification, divert or store any waters of said stream which are required during such half monthly period in order to deliver to or for the owner or irrigator of marsh lands mailing such specification and past the points of measurement for such lands the rate of flow required by such specification. The rate of flow which an owner or irrigator of marsh lands may require by any such written specification shall not exceed 1/25th of one cubic foot per second per acre for each acre of such marsh lands owned or irrigated by him, and (subject to the provisions herein to the effect that such owner or irrigator is not chargeable with water which may be delivered by the stream to his lands or past the points of measurement therefor in excess of the amount required by his written specification mailed as herein provided) no such owner or irrigator shall be entitled to divert from the stream for the irrigation of such marsh lands during any irrigation season a greater amount in the aggregate than an amount representing 3.9 acre feet per acre for each acre of such marshlands owned or irrigated by him. Except as otherwise in this paragraph provided no person hereafter acquiring any right to divert or store any surplus waters of the Chewaucan River shall at any time divert or store such waters in such manner or amount as will interfere with or prevent any person herein determined to have a present right to the use of the waters of said stream or its tributaries from full use of such waters at the rates and in the amounts herein specified.

(j) STOCK WATER.

There is required for domestic and stock water on the uplands such quantity as shall be necessary to furnish sufficient water for these purposes, and to prevent the complete freezing of the water in the ditches and water courses now used thereon for furnishing water for these purposes, not exceeding in the aggregate a flow of eight cubic feet per second during the period between October 15th in each year and March 6th in the next

year through each of the following water courses, namely: (a) Bagley Ditch; (b) Small Creek; (c) Paisley Slough; and (c) Jones Slough above its junction with Fisher Slough (the water flowing in said Jones Slough above said junction to be equally divided between said two water courses last named at their point of junction), and not exceeding four cubic feet per second through each of said water courses (Bagley Ditch, Paisley Slough, Small Creek and Fisher Slough) during the period from September 15th to October 15th of each year.

There is required for use for domestic and stock purposes on the marsh lands such amount as shall be necessary to furnish water for domestic purposes and for the watering of livestock thereon, and to prevent the water in the canals and water courses now used for supplying water for these purposes from being completely frozen, not, however, exceeding in the aggregate a flow of forty cubic feet per second during the period between October 15th of each year and March 1st of the next year, and not exceeding in the aggregate a flow of twenty cubic feet per second during the period between July 15th and October 15th following, provided, however, that the owners of said marsh lands shall not be entitled to require that more than twenty-five cubic feet per second of said amount allowed for stock water and domestic purposes on said marshlands during the period between October 15th of each year and March 1st of the next year shall at any time be diverted through the Center Canal and Outside Canal of the Upper Chewaucan Marsh.

The water allowed for domestic purposes and for stock water to the marsh lands so far as the same shall be diverted through Small Creek, Paisley Slough, Fisher Slough or Jones Slough shall be measured at the respective points where such water courses enter the Upper Chewaucan Marsh; provided that no water delivered through said Small Creek, Paisley Slough, Fisher Slough or Jones Slough for domestic or stock purposes during the period beginning October 15th in each year and ending March 1st in the succeeding year in excess of a flow of 15 cubic feet per second in the aggregate shall be chargeable against the allowance of domestic and stock water to said marsh lands, unless and except to the extent that a flow in said four-named water courses in excess of 15 second feet in the aggregate shall have been demanded by the owners of the lands in said Upper Chewaucan Marsh. Subject to the provisions herein contained the owners of the lands in the Upper Chewaucan Marsh shall be entitled to specify the proportion of water allowed herein to the marsh lands for domestic and stock purposes which shall at any time be supplied through the Center Canal and the Upper Outside Canal of said Upper Chewaucan Marsh. All water herein allowed for domestic or stock purposes and which shall be delivered to said Upper Chewaucan Marsh shall, except so far as the same is required for said purposes on said Upper Marsh, be permitted to flow through canals into the canals of the Lower Chewaucan Marsh.

(k) MEASUREMENT OF WATER.

By reason of the size and winding course of the defluent branches of the

Chewaucan River through the delta uplands, all water used on those parts of the uplands irrigated from Small Creek should be measured at a point in Small Creek at or just below its junction with Bagley Ditch; all water used on those parts of the uplands irrigated from Paisley Slough should be measured at a point in Paisley Slough at or just below its junction with Small Creek, and also at a point in Paisley Slough at or just below its junction with the Jones-Innis ZX Ditch; all water used on those parts of the uplands irrigated from Jones Slough should be measured at a point in Jones Slough at or just below its junction with the Jones-Innis ZX Ditch; all water used on those parts of the uplands irrigated from Fisher Slough should be measured at a point in Fisher Slough at or just below its junction with the Jones-Innis ZX Ditch, and any necessary division of water between said Jones and Fisher Sloughs should be made at their junction. Except as herein otherwise specifically provided, the amount of water used through any particular ditch or channel should be measured at or just below the point where such ditch or channel diverts such water from the stream. Whenever provision is made herein that the water used through any water course or ditch should be measured at the head of such water course or ditch or at the point of diversion from the stream, and there shall be several users of water from any such ditch or water course, the water diverted by each such user from such ditch or water course should also be measured on the land of such user and where so diverted by him from such ditch or water course, and each user on any such ditch or water course should bear any loss in transmission through said ditch or water course in the proportion which the acreage of land irrigated by him from such ditch or water course bears to the entire acreage irrigated from such ditch or water course. There should at all times when required by the users be diverted into each of said water courses above mentioned such amount as shall be sufficient to meet the aggregate requirements (limited as herein specified) of the owners of uplands who are entitled to divert or use water from said water courses respectively.

A considerable percentage of the water used for irrigation upon the delta uplands after use in such irrigation returns to the channels of Small Creek, Paisley Slough, Fisher Slough and Jones Slough above the points where said water courses enter the Upper Chewaucan Marsh, and such water in said channels at said points is capable of measurement before being applied to the marsh lands. The water herein allowed for the irrigation of the marsh lands within the Upper and Lower Chewaucan Marshes, in so far as the same is derived through Small Creek, Paisley Slough, Jones Slough and Fisher Slough should therefore be measured in the channels of said water courses at the respective points where such channels enter the Upper Chewaucan Marsh. All other water diverted for use on the marsh lands (whether situate within the Upper or the Lower Chewaucan Marsh) should be measured at the heads of the canals or ditches (such as the Upper Center Canal and the Upper Outside Canal) through which such water is diverted from the river at or above the northerly end of the Upper Chewaucan Marsh.

The irrigators of lands in the Upper Chewaucan Marsh shall not interfere with or prevent water diverted for lands situate within the Lower Chewaucan Marsh from passing to such lands. Those certain contracts, copies of which are attached as Exhibits "X", "Y" and "Z" to the Statement and Proof of claim "H" (numbered herein as Proof Number 37) of Chewacan Land and Cattle Company are hereby confirmed.

26. Two certain reports by John H. Lewis, State Engineer of the State of Oregon dated respectively September 1, 1915 and December 6, 1915, and a report purporting to be made by John Dubuis under date of September 1st, 1915, are contained in the record herein as certified to this Court by the Secretary of the State Water Board of Oregon. Said reports were not nor was any thereof made in conformity with law, but the same and each thereof were made ex parte and without notice to any of the claimants herein and none of the purported data and information contained in said reports was gathered in any investigation provided for by law nor in any investigation of which any such claimant herein had any notice or knowledge, but all of the purported data and information contained in said reports as having been obtained by said State Engineer or by said John Dubuis was gathered ex parte and without notice to or knowledge of any claimant herein, and said reports were not nor was any thereof nor any of the purported data or information therein contained which purports to have been gathered or reported by said State Engineer or by said John Dubuis provided as evidence in this proceeding; but said reports were made and were received by said State Water Board without notice to or knowledge of any of the claimants herein, and after said State Water Board had refused to receive further evidence or testimony herein. Said John Dubuis is not and has not at any time been an Assistant State Engineer, but at the time of gathering the purported information contained in the report purporting to be made by him under date of September 1, 1915, and at the time of making said report was Assistant Secretary of the Desert Land Board of the State of Oregon. Said Reports and the purported data and information therein contained are hearsay and incompetent as evidence for or against any claimant in this proceeding. Said reports should not nor should any of them have been received or used by said State Water Board or any member thereof nor made a part of the record herein, but the contents of said reports, even if considered as evidence, in so far as the same are in conflict with any facts stated in these findings, are disproved by other evidence herein.

- v -

The last sentence of subdivision 5 of paragraph XV of said Findings is hereby modified so as to read as follows:

That by virtue of the construction of said ditch as aforesaid, the predecessors in interest of said Christina and William Schmidt did appropriate for the irrigation of said premises in said Section 18 the waters of said Willow Creek, and are entitled to an

appropriation of said waters dating from the year 1898 for the land so described in Section 18, and are entitled to an appropriation of said springs and feeders dating from said year 1878 for the said lands.

- VI -

Subdivision 9 of Paragraph XV of said Findings is hereby modified so that the same shall read as follows:

9. That the Oregon Valley Land Company is a corporation organized and existing under the laws of the State of South Dakota. That prior to 1890 the predecessors in interest of the said Oregon Valley Land Company entered upon Willow Creek and constructed several dams and ditches and weirs, whereby the waters of said Willow Creek were diverted over and across the lands described opposite the name of said Oregon Valley Land Company in the tabulated statement contained in the Order of Determination herein. That at said time said predecessor in interest, the Heryford Land and Cattle Company, a corporation, was the owner of certain lands in Township 34 and Township 35 South, Range 20 East, Township 35 and Township 36 South, Range 21 East of W. M., in Lake County, Oregon. That said predecessor in interest of said Oregon Valley Land Company commencing prior to said year 1890 constructed a system of dams and ditches for the regulation of the flow of water in said Willow Creek, and for the diversion of the same into said ditches, and thereby applied the waters of said Willow Creek to the lands described in the tabulated statement herein under and opposite the name of said Oregon Valley Land Company (or persons substituted for said Company in this proceeding) for the irrigation thereof. That the irrigation season begins with the first freshets after the first day of January of each year, and terminates the 30th day of September in each year, during which season the waters of Willow Creek have been heretofore diverted and applied to the irrigation of said lands by the predecessors in interest of said Oregon Valley Land Company. That the said lands require for their proper irrigation during said irrigation season an adequate quantity or amount of water not exceeding 3.9 acre feet for each acre irrigated.

- VII -

Subdivision 10 of Paragraph XV of said Findings is hereby modified so that the same shall read as follows:

10. That J. B. Elder and E. S. McDonald are the owners and in the possession of certain lands described in the tabulated statement in the Order of Determination herein opposite their names as irrigated from Willow Creek, and prior to 1890 said lands were irrigated by a system of dams and ditches diverting the waters of Willow Creek onto said lands through said ditches, and from the main channels of said Willow Creek. That by virtue of said use of the waters, an appropriation of the waters of said Willow Creek was made. That 3.9 acre feet per acre during the irrigation season, commencing with the first freshets

after the first day of January of each year, and terminating on the 30th day of September of each year, is sufficient for the proper irrigation of said lands.

- VIII -

Paragraph XIX of said Findings is hereby modified so that the same shall read as follows:

That the Amended Statement of Proof and Claim filed herein by Frances J. Snider and Anna F. Jones as Executrices of the Estate of George M. Jones, deceased (they having been substituted for George M. Jones in this proceeding) claims the water of Dairy, South and Elder Creeks for the irrigation of 840 acres of land described in the tabulated statement herein opposite their names as lands irrigated with the waters of said Creeks. It is found that said lands have been irrigated as claimed in the said Statement and Proof of Claim and are entitled to a water right from said Creeks in an amount necessary to accomplish the proper irrigation of said lands, not exceeding 3.9 acre feet per acre during the irrigation season beginning March 1st and ending August 31st of each year.

- IX -

A new paragraph is hereby added to the Findings of Fact herein to be numbered XXIII, and to read as follows:

The several claimants represented in this proceeding by A. E. Reams, Esq., by W. Lair Thompson, Esq., and by said W. Lair Thompson, Esq., and Walter Rothchild, Esq. respectively, have stipulated that the facts hereinafter in this paragraph found are true and may be found to be in this proceeding, and it is hereby found (a) that the rights of all persons who are parties to said stipulation to divert and use the waters of the Chewaucan River for domestic and stock purposes have equal priority and a priority as of the year 1878; (b) that the rights of all persons owning lands in the Lower Chewaucan Marsh to divert and use waters of said River for the irrigation of such lands lying within said Lower Chewaucan Marsh have equal priority and a priority as of the year 1901; (c) that the right of Brattain Bros., a corporation, to use waters of said river diverted through Bagley Ditch for the irrigation of all the lands (including 676 acres) described as irrigated in Proof Number 13 filed herein, has a priority over any lands now owned by Chewacan Land and Cattle Company or by Wm. Hotchkiss; (d) that as between Wm. H. Hotchkiss and all persons owning any lands in the Upper or Lower Chewaucan Marshes the right of said Wm. H. Hotchkiss to use water for the irrigation of the lands irrigated by him from the Chewaucan River below said marshes shall be subsequent and subordinate to the rights of the owners of lands in said marshes to use water for the irrigation of their said lands. All users of water from Bagley Ditch, except Frances J. Snider and Anna F. Jones, Executrices of the Estate of George M. Jones, deceased, and substituted for said George M.

Jones in these Proceedings, have stipulated that they have an equal priority as between themselves to the right to the use of water out of Bagley Ditch, and the Decree herein should so provide as to said parties who have so stipulated.

- X -

That part of the Order of Determination herein made by the State Water Board which precedes the tabulation therein contained headed "Chewaucan River and Tributaries" (including paragraphs numbered 1 to 16 inclusive of said Order as made by said Board) is hereby modified so that the same shall read as follows:

ORDER OF DETERMINATION.

1. The relative rights of the claimants herein to the waters of the Chewaucan River and its tributaries are (except as otherwise in this Order of Determination provided) as set forth in the tabulated statement in this Order contained, and said claimants named in said tabulated statement (or their respective successors in interest who have been substituted herein) are severally entitled to a decree and to a certificate of water right in accordance therewith, determining, establishing and confirming, in accordance with this Order, their several rights to the use of the waters of said stream, its tributaries or branches.

2. The rights to the use of water for irrigation hereby determined confer no right to divert or use water which shall be lawfully impounded in reservoirs or other storage works which may hereafter be constructed in accordance with law when such water is discharged into the natural channel of the stream or tributary thereof in a lawful manner by those having a lawful right to do so; but no water shall be so impounded if such impounding will interfere with or prevent the full enjoyment by any person or corporation of any right herein determined to exist in favor of such person or corporation except upon the conditions hereinafter specified.

3. Each of the claimants mentioned in said tabulated statement contained in this Order (and their respective successors in interest) shall (except as herein otherwise provided) be entitled in the Order of their priorities to divert from the channel of said Chewaucan River or from the tributary or branch thereof specified in said tabulated statement, at a rate of diversion for the several particular tracts of land therein listed not exceeding the rate therein specified for each such tract, and by the ditch or other means of use therein mentioned, the waters of such stream or of the tributary or branch therein specified for the irrigation of the particular tracts of land specified in such tabulated statement, from the beginning of the irrigation season for such land as herein fixed until the termination thereof, up to but not exceeding the total quantity in acre feet, which such claimant is herein determined to be entitled to divert and use during the irrigation season for the irrigation of such land.

4. The respective periods (or irrigation seasons) during which water may be diverted from the Chewaucan River, its tributaries or branches, for the irrigation of the lands herein involved, shall be as follows, respectively:

(a) The irrigation season for the lands herein and in the Findings herein referred to as the marsh lands shall begin on the 1st day of January in each year and continue to and including the 15th day of July in each year. Said marsh lands consist of those which in the tabulated statement hereinafter contained are respectively described opposite the names of the following several claimants, and as designated by the following numbered Proofs herein, and as being irrigated respectively from the irrigation works and as contained respectively the number of acres here below set forth, namely:

<u>NAME OF IRRIGATOR</u>	<u>PROOF NO.</u>	<u>ACRES</u>	<u>IRRIGATION WORKS</u>
H. A. Brattain	11	5	No Ditch. Overflow from River.
H. A. Brattain	12	410	Lower Outside Canal
Brattain Bros., a corporation (substituted for H.A.Brattain, P.J.Brattain and Mrs. C. N. Brattain-Small	15	632	East and West Brattain- ZX Ditches
Chewacan Land and Cattle Company	34	143.1	Small's Creek, Jones Ditch and Jones Levee.
Chewacan Land and Cattle Company	35	215.1	Paisley Slough and Stock Ditch.
Chewacan Land and Cattle Company	37	20598	Main Diversion and Ap- purtenant Works.
Oregon Valley Land Company, a corporation	135	569.66	Lower Outside Canal, Brattain ZX Ditch, East and West Brattain ZX Ditches and Lower Center Canal.

(b) The irrigation season for the lands of Wm. H. Hotchkiss (substituted herein for A. C. Hotchkiss, P. W. Hotchkiss and Wm. Hotchkiss, doing business as Hotchkiss Bros.) which are referred to in said tabulated statement opposite the designation Proof No. 87 and as containing 356.2 acres irrigated by the Hotchkiss Dam, shall begin on the 1st day of January in each year and continue to and including the 15th day of July in each year.

(c) The irrigation season for the lands of E. S. McDonald and J. B. Elder, which are referred to in said tabulated statement as dealt with in Proofs No. 113, 114 and 115 as containing 490, 107 and 233.5 acres respectively, and for lands as to which said McDonald and Elder was substituted for Oregon Valley Land Company, irrigated by ditches and dams from Willow Creek and from Crooked Creek, and for the lands of A. C. Hotchkiss

(substituted herein for Oregon Valley Land Company), referred to in said tabulated statement herein as dealt with in Proofs Nos. 133 and 144, as irrigated from Crooked Creek and Willow Creek, shall begin on the 1st day of January of each year and continue to and including the 30th day of September in each year.

(d) The irrigation season for the lands described in said tabulated statement as owned by the Estate of George M. Jones, deceased, (represented herein by Frances J. Snider and Anna F. Jones as Executrices) as dealt with in Proof No. 99 and as containing 840 acres irrigated from Dairy, South and Elder Creeks shall begin on the 1st day of March and continue to and including the 31st day of August in each year.

(e) The irrigation season for the lands described in said tabulated statement as irrigated by Brattain Bros., a corporation (substituted herein for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small) as covered by Proof No. 13, and as containing 676 acres irrigated from Bagley Ditch, shall begin on the 1st day of January of each year and continue to and including the 30th day of September of each year.

(f) The irrigation season for all lands irrigated with waters of said river diverted through Bagley Ditch and not hereinabove in this paragraph 4 specifically mentioned shall begin on the 1st day of April in each year and continue to and including the 30th day of September of each year.

(g) The irrigation season for all other lands referred to in said tabulated statement herein (and not hereinabove in this paragraph specifically mentioned) shall begin on the 1st day of April of each year and shall continue to and including the 15th day of September of each year.

5. (A) Each of the following named claimants respectively entitled to divert water from said stream, its tributaries or branches for the irrigation of the particular tract or tracts of land mentioned in this subdivision shall be entitled to divert for said purpose from said stream (or from the particular tributary or branch specified in said tabulated statement as the tributary or branch from which water may be diverted to such land) a quantity of water equivalent in the aggregate to 4.4 acre feet per acre for each acre of such lands during each irrigation season therefor, as such season is herein defined, namely:

All lands of W. Y. Miller (substituted herein for the Estate of Martha J. Farrow, deceased, W. Y. Miller, Executor) which are described in Proofs Nos. 68 and 69;

All lands of Frances J. Snider and Anna F. Jones, Executrices (substituted herein for George M. Jones) which are described in Proof No. 98;

All lands of Florence Jones which are described in Proofs Nos. 93 and 94;

All lands of E. S. McDonald which are described in Proof No. 109;

All lands of W. M. Dobkins which are described in Proof No. 55, and in Proof No. 54 except the North 1/2 of the Northwest 1/4 of Section 30, Township 33 South, Range 19 East;

All lands of C. E. Campbell (substituted herein for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small) which are described in Proof No. 18;

All lands of M. H. Lauritzen which are described in Proofs Nos. 104 and 105;

That part of the lands of M. C. Currier which are described in Proofs numbered 43 and 44, which is in Lots 4 and 5 in Section 20, and Lots 1 and 2 in Section 21, Township 33 South, Range 19 East, W. M.;

All lands of Chewacan Land and Cattle Company which are described in Proof No. 32;

All lands of Anton Egli which are described in Proofs Nos. 60 and 61.

(b) Each of the following named claimants respectively entitled to divert water from said stream, its tributaries or branches, for the irrigation of the particular tract or tracts of land mentioned in this subdivision shall be entitled to divert for said purpose from said stream (or from the particular tributary or branch specified in said tabulated statement as the particular tributary or branch from which water may be diverted to such land), a quantity of water equivalent in the aggregate to 4.6 acre feet per acre for each acre of such land during each irrigation season thereof, as such season is herein defined, namely:

All lands of M. C. Currier which are described in Proofs Nos. 43 and 44, except Lots 4 and 5 of Section 20, and Lots 1 and 2 of Section 1, Township 33 South, Range 19 East;

All lands of W. B. Parker which are described in proofs Nos. 139, 140 and 141;

All lands of Fred T. Elsey which are described in Proofs Nos. 64 and 65.

All lands of Cynthia I. McCall which are described in Proof No. 108;

All lands of Fred Weidey which are described in Proofs Nos. 159 and 160.

(c) Each of the following named claimants respectively entitled to divert water from said stream, its tributaries or branches, for the irrigation of the particular tract or tracts of land mentioned in this subdivision shall be entitled to divert for said purpose from said stream (or from the particular tributary or branch specified in said tabulated statement as the particular tributary or branch from which water may be diverted to such land) a quantity of water equivalent in the aggregate to 4.8 acre feet per acre for each acre of such land during each irrigation season therefor as such season is herein defined, namely:

All lands of W. Y. Miller which are described in Proofs Nos. 119, 120 and 121;

All lands of Frances J. Snider and Anna F. Jones, Executrices (substituted herein for George M. Jones) which are described in Proof No. 97;

All lands of E. S. McDonald and J. B. Elder (co-partners) which are described in Proof No. 116;

That part of the lands of W. M. Dobkins which are described in Proof No. 54

that consists of the North 1/2 of the Northwest 1/4 of Section 30, Township 33 South, Range 19 East, W. M.

All lands of W. B. Parker which are described in Proof No. 138;

All lands of Annie Moss which are described in Proofs Nos. 124 and 125;

All lands of John O'Callaghan and Dennis O'Callaghan, co-partners doing business as O'Callaghan Bros., (substituted herein for D. B. Conrad and Lettie E. Conrad) which are described in Proof No. 42;

All lands of Harriet L. Random which are described in Proof No. 145;

All lands of Brattain Bros., a corporation (substituted herein for H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small) which are described in Proof No. 13;

All lands of Chewacan Land and Cattle Company which are described in Proof No. 33;

(d) Each claimant herein determined to be entitled to divert and use waters from said stream, its tributaries or branches, for the irrigation of any of the tracts of land which are hereinabove in subdivision (a) of Paragraph 4 of this Order referred to or listed shall be entitled to so divert and use for said purpose during each irrigation season therefor (as such season is herein defined) an amount of water equivalent in the aggregate to 3.9 acre feet per acre for each acre thereof.

(e) Each claimant herein who by said tabulated statement is shown to be entitled to divert and use water for said stream, its tributaries or branches, for the irrigation of any tract of land the allowance in volume for which is not otherwise in this paragraph 5 of this Order specified, shall be entitled to divert and use for the irrigation of such lands in each irrigation season therefor (as herein defined) an amount of water equivalent in the aggregate to 3.9 acre feet per acre for each acre thereof.

(f) The rights determined in this paragraph (5) are subject to the priorities provided for in this Order of Determination.

6. None of the claimants who are herein determined to be entitled to use water for the irrigation of a particular tract of land shall during any irrigation season divert a quantity of water for the direct irrigation of such tract in excess of the total quantity in acre feet per acre herein allowed for the irrigation of such tract on the basis specified in Paragraph 5 of this order, nor at a rate of diversion in excess of a rate representing a flow of 1/25th of one cubic foot per second of time per acre for the number of acres contained in such tract, (being the amount in cubic feet per second expressed for such tract in the third column of the tabulated statement contained in this Order of Determination) but each such claimant shall be entitled to divert water for the irrigation of such tract of land at not exceeding said rate of diversion from the beginning of the irrigation season for such lands (as herein defined) until the termination thereof up to but not exceeding the amount in volume herein determined to be a proper allowance for the irrigation of such land.

(NOTE: Right limited in amount per acre as follows: 3.9 acre feet per acre per season for upland lands & 4.8 acre feet per acre per season for upland)

CHEWACAN RIVER

If Portland Irrigation Company or any other person or persons shall hereafter acquire a right to divert or store any surplus waters of said stream at a point or points above the Upper Chewaucan Marsh, such person so hereafter acquiring such right shall, during the irrigation season for the marsh lands (namely, January 1st to July 15th) and at least five days and not more than seven days prior to each 1st and 15th day of each month during which he shall desire to so divert or store any such water, deliver to the persons having in charge the irrigation of all lands within said Upper and Lower Chewaucan Marshes a written notice or notices requiring such irrigators of marsh lands to specify in writing the rate of flow up to which they will respectively desire to divert and use the natural flow of said stream during the following half monthly period (beginning the next 1st or 15th day of a month) which notice shall in every case state the name and post office address of the party giving such notice and each person having charge of the irrigation of marsh lands so served with any such notice shall, within two days after receipt of each such notice, deposit in the United States post office at Paisley, Oregon, with postage prepaid, addressed to the person who gave such notice, at the post office address named in such notice, a written specification of the rate of flow (in terms of cubic feet per second of time, but not exceeding a total flow in excess of a flow of $1/25$ th of a cubic foot per second for each acre of marsh lands irrigated by him) up to which the person giving such written specification will require the natural flow of the stream for irrigation of such marsh lands during the half monthly period covered by said specification, and in all cases in which such specification shall be so mailed within the time herein specified, there shall not be charged (against the allowance in volume herein specified for the irrigation of such marsh lands) any water which said stream shall discharge during such half monthly period, past the points of measurement for the marsh lands of the party making such specification, in excess of the amount so specified, but if he shall fail to so mail said written specification there shall be charged (as against the allowance for the marsh lands so irrigated by him) all water up to (but not exceeding) a maximum flow of $1/25$ th of one cubic foot per second of time for each acre thereof, which during such half monthly period shall be actually delivered to or discharged past the points of measurement therefor, in the same manner and to the same extent as though no provision for a specification of requirements were herein contained. No party whose rights to use water from said stream shall be subsequent in priority to the rights of a person from whom any such specification may be demanded and by whom any such specification shall be mailed, shall, during the half monthly period covered by any such specification, divert or store any waters of said stream which are required during such half monthly period in order to deliver to or for the owner or irrigator of marsh lands mailing such spec-

ification and past the points of measurement for such lands the rate of flow required by such specification. The rate of flow which an owner or irrigator of marsh lands may require by any such written specification shall not exceed 1/25th of one cubic foot per second per acre for each acre of such marsh lands owned or irrigated by him, and (subject to the provisions herein to the effect that such owner or irrigator is not chargeable with water which may be delivered by the stream to his lands or past the points of measurement therefor in excess of the amount required by his written specification mailed as herein provided) no such owner or irrigator shall be entitled to divert from the stream for the irrigation of such marsh lands during any irrigation season a greater amount in the aggregate than an amount representing 3.9 acre feet per acre for each acre of such marsh lands owned or irrigated by him. Except as otherwise in this paragraph provided no person hereafter acquiring any right to divert or store any surplus waters of the Chewaucan River shall at any time divert or store such waters in such manner or amount as will interfere with or prevent any person herein determined to have a present right to the use of the waters of said stream or its tributaries from full use of such waters at the rates and in the amounts herein specified.

7. In addition to the water herein decreed for the purposes of irrigation, those water users entitled to divert water through Bagley Ditch, Small Creek, Paisley Slough or Jones Slough above its junction with Fisher Slough (the waters flowing in said Jones Slough above said junctions being equally divided between said two water courses last named at their point of junction) shall, in addition to the amount decreed herein for irrigation purposes, be entitled to divert into said ditch and water courses respectively (and therefrom for use for domestic and stock purposes on their lands which are irrigated by such ditch or water course respectively) so much of the waters of said stream as is necessary for stock and domestic purposes and to prevent the complete freezing thereof, not, however, to exceed a flow of eight cubic feet per second of time through each said four named ditch and water courses for that period of time between the 15th day of October of one year and the 6th day of March of the succeeding year, and not to exceed a flow of four cubic feet per second of time through each said ditch and water courses during that period of time between September 15th and October 15th of each year.

In addition to the quantity of water herein decreed for the irrigation of the marsh lands mentioned herein, the owners of irrigated lands in the Upper and Lower Chewaucan Marshes shall be entitled to divert into the Upper Chewaucan Marsh, for domestic and stock purposes, such quantity of water as shall be sufficient for such purposes and to prevent complete freezing, not, however, to exceed in the aggregate a flow of forty cubic feet per second during that period of time between the 15th day of October of each year and the 1st day of March of the succeeding year, and not exceeding in the aggregate a flow of twenty cubic feet per second during that period of time between July 15th and October 15th of any

year, but no owner of any of said marsh lands shall be entitled, between the 15th day of October of any year and the 1st day of March of the succeeding year, to require more than twentyfive cubic feet per second of such water to be diverted through the center canal and Outside Canal of said Upper Chewaucan Marsh.

The water allowed for domestic purposes and for stock water to the marsh lands, so far as the same shall be diverted through Small Creek, Paisley Slough, Fisher Slough or Jones Slough shall be measured at the respective points where such water courses enter the Upper Chewaucan Marsh; provided that no water delivered through said Small Creek, Paisley Slough, Fisher Slough or Jones Slough for domestic or stock purposes during the period beginning October 15th in each year and ending March 1st in the succeeding year in excess of a flow of 15 cubic feet per second in the aggregate shall be chargeable against the allowance of domestic and stock water to said marsh lands, unless and except to the extent that a flow in said four-named water courses in excess of 15 second feet in the aggregate shall have been demanded by the owners of the lands in said Upper Chewaucan Marsh. Subject to the provisions herein contained the owners of the lands in the Upper Chewaucan Marsh shall be entitled to specify the proportion of water allowed herein to the marsh lands for domestic and stock purposes which shall at any time be supplied through the Center Canal and the Upper Outside Canal of said Upper Chewaucan Marsh. All water herein allowed for domestic or stock purposes and which shall be delivered to said Upper Chewaucan Marsh shall, except so far as the same is required for said purposes on said Upper Marsh, be permitted to flow through canals into the canals of the Lower Chewaucan Marsh.

In addition to the water herein decreed for purposes of irrigation, each claimant entitled to use water on lands not hereinabove referred to in this paragraph 7 who by the tabulated statement in this Order contained is shown to be entitled to divert water for stock purposes or for domestic and stock purposes for use on any particular tract of land, shall be entitled to divert and use thereon for these purposes such amount of water as is reasonably necessary therefor during all times in each year when water is not being actually diverted for the irrigation of such lands.

During such time as water is actually being used by any claimant for irrigation, the water required for domestic and stock purposes shall be derived from the amount so diverted and herein allowed for irrigation except that the use by owners of marsh lands during the months of January and February of any part of the freshet flow of the river for irrigation shall not affect the right of the owners of such lands to divert in addition during any such period of use such amount of water as is herein allowed and shall be required for stock purposes on such lands during any such period.

8. All water used on those parts of the uplands irrigated from Small Creek shall be measured at a point in Small Creek at or just below its junction with Bagley Ditch; all water used on those parts of the uplands irrigated from Paisley Slough shall be measured at a point in Paisley Slough at or just below its junction with Small Creek,

and also at a point in Paisley Slough at or just below its junction with the Jones-Innis ZX Ditch; all water used on those parts of the uplands irrigated from Jones Slough shall be measured at a point in Jones Slough at or just below its junction with the Jones-Innis ZX Ditch; all water used on those parts of the uplands irrigated from Fisher Slough shall be measured at a point in Fisher Slough at or just below its junction with the Jones-Innis ZX Ditch, and any necessary division of water between said Jones and Fisher Sloughs shall be made at their junction. Except as herein otherwise specifically provided, the amount of water used through any particular ditch or channel shall be measured at or just below the point where such ditch or channel diverts such water from the stream. Whenever provision is made herein that the water used through any water course or ditch shall be measured at the head of such water course or ditch or at the point of diversion from the stream, and there shall be several users of water from any such ditch or water course, the water diverted by each such user from such ditch or water course shall also be measured on the land of such user and where so diverted by him from such ditch or water course, and each user on any such ditch or water course shall bear any loss in transmission through said ditch or water course in the proportion which the acreage of land irrigated by him from such ditch or water course bears to the entire acreage irrigated from such ditch or water course. There should at all times when required by the users be diverted into each of said water courses above mentioned such amount as shall be sufficient to meet the aggregate requirements (limited as herein specified) of the owners of uplands who are entitled to divert or use water from said water courses respectively.

The water herein allowed for the irrigation of the marsh lands within the Upper and Lower Chewaucan Marshes, in so far as the same is derived through Small Creek, Paisley Slough, Jones Slough and Fisher Slough shall be measured in the channels of said water courses at the respective points where such channels enter the Upper Chewaucan Marsh. All other water diverted for use on the marsh lands (whether situate within the Upper or the Lower Chewaucan Marsh) shall be measured at the heads of the canals or ditches (such as the Upper Center Canal and the Upper Outside Canal) through which such water is diverted from the river at or above the northerly end of the Upper Chewaucan Marsh.

The irrigators of lands in the Upper Chewaucan Marsh shall not interfere with or prevent water diverted for lands situate within the Lower Chewaucan Marsh from passing to such lands. Those certain contracts, copies of which are attached as Exhibits "X", "Y" and "Z" to the Statement and Proof of Claim "H" (numbered herein as Proof Number 37) of Chewaucan Land and Cattle Company are hereby confirmed.

9. The division and distribution of water for irrigation among the various claimants herein found to be entitled to use water for irrigation shall be made at all times throughout the irrigation season in accordance with the dates of the relative priorities of their respective rights as herein or in the tabulated statement herein set forth.

10. Fred T. Elsey has a right to use water for the irrigation of and for domestic and stock purposes on the lands described opposite his name in the tabulated statement herein, but is not entitled to prevent the diversion and use by subsequent appropriators of the waters of said river in so far as such diversion does not affect or impair his right to receive, divert and use from said stream for irrigation and for domestic and stock purposes the amount of water to which he is herein determined to be entitled.

11. Portland Irrigation Company has no right to divert, use, impound or store any of the waters of the Chewaucan River for the irrigation of any lands described in its statement and proof of claim herein or for any other purpose, and any right of said Portland Irrigation Company to divert, store or use any waters of said river, if it shall hereafter acquire such right, will be subject and subordinate to such rights of present users of the waters of said stream as are hereby determined to have a date of priority earlier than November 24th, 1911.

12. All persons who have heretofore been substituted as parties or claimants herein for any party or claimant whose rights are set forth on the tabulated statement herein contained, shall be deemed to have succeeded to the rights of such original claimant to the extent set forth in the Order of Substitution of such person, and any water right certificate issued in accordance herewith shall be issued to such person or persons so substituted.

13. The designation in the seventh column of the tabulated statement of the Chewaucan River as the stream from which water may be diverted for the irrigation of the lands of Chewacan Land and Cattle Company described in its Proof of Claim 37 includes the defluent branches of said stream mentioned in said Proof of Claim, and the quantity of water which may be diverted by said claimant for use on lands described in said Proof of Claim may be by it applied to any part of said lands by or through any of the irrigation and distribution works mentioned in the last column of said tabulated statement or in said Proof of Claim. Any water which may be diverted through the Center Canal in the Upper Chewaucan Marsh may be so diverted at either of the points where the same diverts water from said stream, one of said points being near the section line between sections 8 and 9, and the other in section 19, township 33 south, range 19 East.

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

connection with the irrigation of their respective lands, or other useful and beneficial purpose for which they are decreed a right of use, at all times, as against those having subsequent rights without let or hindrance; but the priorities herein determined and the priorities of the rights of appropriation hereby confirmed, confer no right of use of the waters appropriated upon other lands than those to which the same are appurtenant, for the benefit of which such appropriations were initiated, and the waters diverted for the irrigation thereof; and whenever the water is not required by the appropriator having a prior right to its use for irrigation purposes, for the beneficial irrigation of his premises, or other beneficial use, he must and shall permit it to flow down in the natural channel of the stream as it was wont to flow in its natural course, without hindrance or diversion thereof.

15. The Northwest Townsite Company, a corporation, claimant herein is the owner and holder of Enlargement Permit No. 5, issued by the State Engineer, upon Application No. 145, filed in his office on the 22nd day of June, 1909, and that said company has succeeded to all the right, title and interest in and to said permit of George Conn and M. E. Conn, the original applicants, and in and to the water right thereby initiated. Said Northwest Townsite Company shall complete and perfect the appropriation thereby initiated within the time limited, and subject to the terms and conditions set forth in said permit, and subject to the conditions of the laws under which the same was issued.

16. The rights of Frank M. Beane, Proof No. 6, having been initiated under Permit No. 788 issued by the State Engineer of Oregon for diversion of the waters of Swamp Creek, shall be completed in accordance with the terms and conditions of said permit and the laws under which the same was issued.

17. H. E. Curtis, owner of Permit No. 1418, and F. N. Curtis, owner of Permit No. 1417, having initiated rights of appropriation of the waters of Coyote, or Willow Creek, tributary of the Chewaucan River, by application to the State Engineer on the 29th day of November, 1913, and having duly received permits as provided by law, shall complete and perfect their appropriations of said waters in accordance with the terms and conditions of said permits and the laws under which the same were acquired.

- XI -

The tabulated statement contained in the Order of Determination herein as filed by the State Water Board of Oregon is hereby modified in the several particulars hereinafter specified, and wherever in the Findings of Fact or Order of Determination as the same are modified by this Decree, said tabulated statement is referred to, such reference shall be deemed to be to said tabulated statement as hereby modified.

(a) Said tabulated statement is hereby modified by adding thereto a tabulation as follows:

In the first column of said statement, under the heading "Name and Post

Office Address of Appropriator", the words Frances J. Snider and Anna F. Jones, Executrices of the Estate of George M. Jones, deceased, Lakeview, Ore. - (Proof No. 99 Vol. 2)"; and opposite the same in column 2 under the heading "Date of Relative Priority" the figures "1887"; in column 3, under the heading "Amt. cubic feet per second" the figures "33.6"; in column 4 under the heading "No. Acres" the figures "840"; in column 5 under the heading "Use" the words "Irrigation, domestic and stock"; in column 6 under the heading "Name of Ditch" the words "Various dams and ditches"; in column 7 under the heading "Stream" the words "Dairy, South and Elder Creeks"; in column 8 under the heading "Description of Land or place of Use", the following:

*Cont. # 3658.
To front of the map
D. J. Jones*

38 acres in	NW 1/4	NW 1/4	
39 "	SW 1/4	NW 1/4	
4 "	NE 1/4	NW 1/4	
35 "	SE 1/4	NW 1/4	
25 "	NW 1/4	SW 1/4	
40 "	NE 1/4	SW 1/4	
32 "	SW 1/4	SW 1/4	
40 "	SE 1/4	SW 1/4	
21 "	NW 1/4	SE 1/4	
38 "	SW 1/4	SE 1/4	
8 "	SE 1/4	SE 1/4	
5 "	SW 1/4	NE 1/4	- Section 5.
35 acres in	NE 1/4	NE 1/4	
5 "	NW 1/4	NE 1/4	
11 "	SE 1/4	NE 1/4	
14 "	SE 1/4	SE 1/4	
3 "	SW 1/4	SE 1/4	- Section 6.
32 "	NE 1/4	NE 1/4	
25 "	NW 1/4	NE 1/4	- Section 7.
40 "	NW 1/4	NW 1/4	
39 "	NE 1/4	NW 1/4	
24 "	NW 1/4	NE 1/4	
25 "	NE 1/4	NE 1/4	
35 "	SW 1/4	NE 1/4	
34 "	SE 1/4	NE 1/4	- Section 8.
9 "	SW 1/4	NW 1/4	
24 "	NW 1/4	SW 1/4	
7 "	SW 1/4	SW 1/4	
29 "	SE 1/4	SW 1/4	- Section 9.
27 "	NW 1/4	NE 1/4	
17 "	NE 1/4	NE 1/4	
10 "	SW 1/4	NE 1/4	
11 "	SE 1/4	NE 1/4	
8 "	NE 1/4	NW 1/4	
20 "	SE 1/4	NW 1/4	
3 "	SW 1/4	NW 1/4	
23 "	NW 1/4	SW 1/4	
1 "	NE 1/4	SW 1/4	
4 "	SW 1/4	SW 1/4	- Section 16.

All in Tp. 36 S., R. 18 E. W. M.

(b) Said tabulated statement is hereby modified to show that the respective dates of relative priority of the several rights dealt with in the proofs hereinafter referred to are respectively as follows:

<u>Proof Number</u>	<u>Date of Relative Priority.</u>
15	1901 (as to all lands described in said proof)
65	1878
87	1887 (subject to the terms of paragraph XII of this Decree).

(c) Said tabulated statement is hereby modified by striking out in the 4th column thereof (on page 51) the figures "17747.7" which appear under the heading "No. Acres" opposite the reference to Proof 37, Volume 1 (filed by Chewaucan Land and Cattle Company) and by inserting in lieu thereof "20598"; also by changing in the last column of said tabulation (on page 56) the figures following the words "Center Canal (area south and west of Stock Ditch irrigated from Central Canal and to some extent by Jones Ditch and Stock Ditch)" to 5212.5 (instead of 2362.2) and by changing the designation and description of the lands appearing in said last column of said tabulated statement (on pages 56 and 57) under and in connection with the words last above quoted, to read as follows:

9.1 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$
6.5 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
39 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
38.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$
22 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$
2.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Sec. 33:

7.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
15.1 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$
19.4 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$
25.4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Sec. 32, Tp. 33 S.,
R. 19 E., W.M.

1.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
33 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
3.7 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$
Sec. 2

3.7 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$
37.3 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
5.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$
13.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$
28.2 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
80 acres in S $\frac{1}{2}$ NW $\frac{1}{4}$
160 acres in SW $\frac{1}{4}$
26.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$
80 acres in S $\frac{1}{2}$ SE $\frac{1}{4}$
Sec. 3.

320 acres in S $\frac{1}{2}$
160 acres in NW $\frac{1}{4}$
80 acres in S $\frac{1}{2}$ of NE $\frac{1}{4}$
40 acres in NW $\frac{1}{4}$ of NE $\frac{1}{4}$
37.3 acres in NE $\frac{1}{4}$ of NE $\frac{1}{4}$
Sec. 4.

160 acres in SE $\frac{1}{4}$
80 acres in E $\frac{1}{2}$ of SW $\frac{1}{4}$
20 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$
20 acres in NW $\frac{1}{4}$ of SW $\frac{1}{4}$
40 acres in SE $\frac{1}{4}$ of NW $\frac{1}{4}$
20 acres in SW $\frac{1}{4}$ of NW $\frac{1}{4}$
80 acres in N $\frac{1}{2}$ of NW $\frac{1}{4}$
160 acres in NE $\frac{1}{4}$
Sec. 5,

20.5 acres in SE $\frac{1}{4}$ of SE $\frac{1}{4}$
 4 acres in SW $\frac{1}{4}$ of SE $\frac{1}{4}$
 32 acres in NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 40 acres in NE $\frac{1}{4}$ of SE $\frac{1}{4}$
 12 acres in NE $\frac{1}{4}$ of SW $\frac{1}{4}$
 80 acres in E $\frac{1}{2}$ of NW $\frac{1}{4}$
 8.1 acres in SW $\frac{1}{4}$ of NW $\frac{1}{4}$
 19.7 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$
 160 acres in NE $\frac{1}{4}$
 Sec. 8

320 acres in E $\frac{1}{2}$
 160 acres in NW $\frac{1}{4}$
 80 acres in N $\frac{1}{2}$ of SW $\frac{1}{4}$
 39 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$
 40 acres in SE $\frac{1}{4}$ of SW $\frac{1}{4}$
 Sec. 9

640 acres (all of) Sec. 10.

80 acres in S $\frac{1}{2}$ of SE $\frac{1}{4}$
 40 acres in NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 20.5 acres in NE $\frac{1}{4}$ of SE $\frac{1}{4}$
 160 acres in SW $\frac{1}{4}$
 80 acres in S $\frac{1}{2}$ of NW $\frac{1}{4}$
 40 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$
 34.3 acres in NE $\frac{1}{4}$ of NW $\frac{1}{4}$
 27.3 acres in SW $\frac{1}{4}$ of NE $\frac{1}{4}$
 2.5 acres in NW $\frac{1}{4}$ of NE $\frac{1}{4}$
 Sec. 11.

11 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$
 Sec. 12

16.6 acres in SW $\frac{1}{4}$ of SE $\frac{1}{4}$
 80 acres in S $\frac{1}{2}$ of SW $\frac{1}{4}$
 40 acres in NW $\frac{1}{4}$ of SW $\frac{1}{4}$
 35 acres in NE $\frac{1}{4}$ of SW $\frac{1}{4}$
 2.5 acres in SE $\frac{1}{4}$ of NW $\frac{1}{4}$
 36.7 acres in SW $\frac{1}{4}$ of NW $\frac{1}{4}$
 27.1 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$
 Sec. 13.

39.5 acres in SE $\frac{1}{4}$ of SE $\frac{1}{4}$
 25.2 acres in SW $\frac{1}{4}$ of SE $\frac{1}{4}$
 80 acres in N $\frac{1}{2}$ of SE $\frac{1}{4}$
 30.9 acres in NW $\frac{1}{4}$ of SW $\frac{1}{4}$
 23.7 acres in NE $\frac{1}{4}$ of SW $\frac{1}{4}$
 320 acres in North $\frac{1}{2}$
 Sec. 14.

2.6 acres in NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 17 acres in NE $\frac{1}{4}$ of SE $\frac{1}{4}$
 34.7 acres in SE $\frac{1}{4}$ of NW $\frac{1}{4}$
 17.6 acres in SW $\frac{1}{4}$ of NW $\frac{1}{4}$
 80 acres in N $\frac{1}{2}$ of NW $\frac{1}{4}$
 160 acres in NE $\frac{1}{4}$
 Sec. 15.

1 acre in SE $\frac{1}{4}$ of NE $\frac{1}{4}$
 35 acres in NE $\frac{1}{4}$ of NE $\frac{1}{4}$
 Sec. 16.

8.4 acres in NE $\frac{1}{4}$ of NE $\frac{1}{4}$
 Sec. 23.

22.7 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$
 10.2 acres in NE $\frac{1}{4}$ of NW $\frac{1}{4}$
 .5 acres in NW $\frac{1}{4}$ of NE $\frac{1}{4}$
 Sec. 24

Tp. 34 S., R. 19 E. W.M.

(d) Said tabulated statement is hereby modified by changing all of the figures

therein set forth in column 3 thereof under the heading "Amt. cubic feet per second" so that the figures shown in said column shall in each instance be a figure equal to 1/25th of the number of acres (In each tract of land respectively) set forth opposite thereto in column 4 of said tabulated statement; it being intended that the maximum rate of diversion for each such tract of land shall, subject to the other provisions of this Order, be stated in said tabulated statement on the basis of one cubic foot per second for each 25 acres.

- XII -

There is hereby added to said Order of Determination a new paragraph to follow the tabulated statement therein contained, reading as follows:

As between the following named claimants herein and notwithstanding anything to the contrary herein contained, to wit:

Chewacan Land and Cattle Company, a corporation, Fred T. Elsey, W. M. Hotchkiss, Christina Schmidt and William Schmidt, E. S. McDonald and J. B. Elder, A. C. Hotchkiss, Frances J. Snider and Anna F. Jones as executrices of the last will and testament of George M. Jones, deceased, W. Y. Miller, Brattain Bros., a corporation, John O'Callaghan and Dennis O'Callaghan, co-partners doing business under the name of O'Callaghan Bros., C. E. Campbell, H. A. Brattain, P. J. Brattain and Mrs. C. N. Brattain-Small, H. A. Brattain, Fred Weidey, Anton Egli, Florence Jones, Cynthia I. McCall, W. B. Parker, W. M. Dobkins, Harriet L. Random, M. C. Currier, M. H. Lauritzen, E. S. McDonald and J. B. Elder, co-partners doing business under the name of McDonald & Elder, and Annie Moss.

(a) The rights of said persons respectively to divert and use waters of the Chewacan River for domestic and stock purposes have equal priority and a priority as of the year 1878;

(b) The right of Brattain Bros., a corporation, to use waters of said river diverted through Bagley Ditch for the irrigation of all the lands (including 676) acres described in Proof 13 filed herein is prior in time and right to any right of Chewacan Land and Cattle Company or Wm. H. Hotchkiss to divert water for the irrigation of any lands now owned by either of said parties;

(c) As between Wm. H. Hotchkiss and all persons owning any lands in the Upper or Lower Chewacan Marshes the right of said Wm. H. Hotchkiss to use water for the irrigation of any lands irrigated by him from said Chewacan River below said Chewacan Marshes is subordinate in time and right to the rights of each of the owners of lands in said Marshes to divert and use the waters of said river for the irrigation of their said lands;

(d) As between all such of the persons hereinabove in this paragraph named (except Frances J. Snider and Anna F. Jones, Executrices of the Estate of George M. Jones, deceased) as are entitled to divert water through Bagley Ditch for the irrigation of their

land, the rights of all such persons to divert such water for the irrigation of such lands shall have equal priority and a priority as of the year 1878.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all parties to this proceeding, their successors in interest and assigns, and all others acting in their aid or behalf, be and each of them hereby is forever restrained and enjoined from either storing or diverting any of the waters of the Chewaucan River or its tributaries in such manner as to interfere with the relative rights of the respective parties hereto as decreed herein.

DONE IN OPEN COURT this 2nd day of December, 1916.

BERNARD DALY
Circuit Judge.

STATE OF OREGON)
 (ss.
County of Lake)

I, Myrtle Payne, County Clerk and ex-officio Clerk of the Circuit Court of the County and State aforesaid, do hereby certify that the foregoing copy of Decree Modifying Findings of Fact and Order of Determination of State Water Board, and affirming the same as modified, in the Matter of the Determination of the Relative Rights to the use of the Waters of Chewaucan River and its tributaries, a tributary of Lake Abert, has been by me compared with the original, and that it is a correct transcript therefrom, and the whole thereof of such original Decree as the same appears on file and of record, at my office and in my custody.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the Circuit Court this 21st day of March, A. D. 1918.

(COURT SEAL)

Myrtle Payne
County Clerk and ex-officio Clerk of the
Circuit Court in and for Lake County, Oregon.

STATE OF OREGON)
 (ss.
County of Marion)

I, R. W. Potter, Secretary of the State Water Board of Oregon, do hereby certify that the above and foregoing copy of Decree of the Circuit Court of the State of Oregon for Lake County has been by me compared with, and same is a full, true and correct copy of, the Certified Copy of such decree as received in the office of the State Water Board and entered of record herein on the 26th day of March, 1918.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Seal of the State Water Board of Oregon, this 26th day of March, 1918.


Secretary, State Water Board of Oregon.