BEFORE THE STATE ENGINEER OF OREGON

Lake County

IN THE MATTER OF APPLICATIONS)
NOS. R-25395 AND 25396 AND)
R-25738 AND 25739 FILED BY)
WARNER VALLEY STOCK COMPANY.)

O R D E R

On October 27, 1950 Warner Valley Stock Company of Adel, Oregon filed two applications for permits, which applications are designated in the records of the State Engineer as Application No. R-25395 and Application No. 25396.

Application No. R-25395 is for a permit to construct a storage reservoir to be known as Greaser Lake for the storage of 10,000 acre feet of water from Twentymile Creek, tributary of Warner Lake, and drainage water from applicant's land for irrigation. Application No. 25396 is for a permit to appropriate the water stored under Application No. R-25395 as a supplemental supply for the irrigation of 4,465 acres of land.

The Greaser Lake Reservoir is located within Sections 17, 20, 21, 28, 29, 30, 31, 32 and 33, Township 39 South, Range 25 East, W. M., Section 36, Township 39 South, Range 24 East, W. M., Sections 1 and 2, Township 40 South, Range 24 East, W. M., and Sections 4, 5, 6, 8 and 9, Township 40 South, Range 25 East, W. M. The lands to be irrigated with the water stored are located within Township 39 South, Ranges 24 and 25 East, W. M., and Township 40 South, Range 24 East, W. M.

On March 20, 1951 Warner Valley Stock Company filed two additional applications for permits, which applications are designated in the records of the State Engineer as Application No. R-25738 and Application No. 25739.

Application No. R-25738 is for a permit to construct a storage reservoir to be known as Big Valley Reservoir and store 52,000 acre feet of water of Deep Creek, tributary of Warner Lakes, for irrigation. The location of the proposed

reservoir is in Sections 4, 5, 8, 9, 15, 16, 17, 20, 21 and 22, Township 40 South, Range 22 East, W. M.

Application No. R-25739, as amended at the time of hearing, is for a permit to appropriate the water to be stored in Big Valley Reservoir as a supplemental supply for the irrigation of 19,500.9 acres of land. The lands to be irrigated are within Township 39 South, Ranges 24 and 25 East, W. M., and Township 40 South, Range 24 East, W. M., and include lands described in Application No. 25396. All lands to be irrigated under Applications Nos. 25396 and 25739 are located in South Warner Valley.

On December 22, 1950 there were objections filed with the State Engineer by the Hart Lake Water Users Association against the approval of Applications Nos. R-25395 and 25396. On August 27, 1951 objections to the approval of Applications Nos. R-25395 and 25396 were filed by Con Lynch and Mary Lynch, husband and wife; W. C. Laird and Alice Laird, husband and wife; Martin Anderson; Deese McKee; D. J. Fitzgerald; Cornelius J. Fitzgerald, Jr.; Charles A. Chalstrand; J. P. Egan; Con Taylor and James J. Kiely. This protest will be referred to as the protest of Con Lynch, et al. It appears that the Hart Lake Water Users Association represents the same interests as the objections filed by Con Lynch, et al. On September 7, 1951 Alice Laird filed objections to the approval of Applications Nos. R-25395 and 25396.

On August 1, 1951 objections to the approval of Applications Nos. R-25738 and 25739 were filed with the State Engineer by the same parties who objected to the approval of Applications Nos. R-25395 and 25396, namely: Con Lynch and Mary Lynch, husband and wife; W. C. Laird and Alice Laird, husband and wife; Martin Anderson; Deese McKee; D. J. Fitzgerald; Cornelius J. Fitzgerald, jr.; Con Taylor; James J. Kiely; Charles A. Chalstrand and J. P. Egan. This protest will also be referred to as the protest of Con Lynch, et al.

On June 2, 1953 a hearing was held in the courthouse at Lakeview, Oregon, beginning at 10:00 A. M., at which the Warner Valley Stock Company was represented by its legal counsel, Theodore Conn of Lakeview, Oregon, and Wm. Ganong of Klamath Falls, Oregon, and the objectors appeared with their legal counsel, Forrest E. Cooper of Lakeview, Oregon, and both parties presented evidence.

The taking of evidence was concluded on the afternoon of June 3rd and on June 4th, accompanied by the objectors and their legal counsel and Mr. Wm. Kittredge, President of the Warner Valley Stock Company, and his legal counsel, Warner Valley was inspected from the Laird Ranch on Blue Joint Lake to the south end.

In preparing this order, in addition to the evidence introduced at the hearing and the decree of the Circuit Court of the State of Oregon for the County of Lake, denominated "In the Matter of the Determination of the Relative Rights to the Use of the Waters of Warner Lakes and their Tributaries", dated September 30, 1929, which decree will hereinafter be referred to as "The courts decree", data set forth in the following designated reports, maps and records have been considered.

(1) Engineering Report prepared under the direction of the State Engineer of Oregon and filed with the court as a part of the evidence collected in the above stated proceeding, said report being dated June 19, 1935.

(2) Adjudication survey maps made under the direction of the State Engineer pursuant to Section 116-812, O.C.L.A., in the above entitled proceedings.

(3) The report of John T. Whistler, Engineer, U. S. Reclamation Service, John H. Lewis, State Engineer of Oregon, entitled "Warner

Valley and White River Projects", dated February 1916. This report will be referred to herein as the "Warner Valley Cooperative Report".

(4) Published records of the flow of water and unpublished records on file in the office of the State Engineer.

(5) The report of the State Engineer to State Land Board on Crump Lake Project dated February 1948 and data collected in making the surveys and investigations from which this report was compiled.

(6) The State Engineer of Oregon Bulletins Nos. 4, 5, 8, 9 and 10, entitled "Water Resources of the State of Oregon". These bulletins contain a summary of the records of streams tributary to Warner Lake from 1910 to 1941.

(7) Water supply papers Nos. 310, 330, 360, 390 and 410 published by the U. S. Geological Survey, entitled "Surface Water Supply of the Great Basin". These will be referred to herein as "U. S. Geological Water Supply Papers". In these papers are published data as to the elevations of the water surface of lakes in Warner Valley during the years 1911 to and including 1915.

Our Supreme Court in the case of Cookingham v. Lewis, 58 Ore., at page 492, said that in passing upon an application the State Engineer may act upon any information he may have.

Warner Valley is situated in Lake County, Oregon, about thirty miles east of Lakeview. The valley proper begins a short distance north of the state line between Oregon, California and Nevada and extends to a short distance south of the south line of Harney County, Oregon, having an approximate length of sixty miles and an average width, with the exception of one place, of from four to eight miles.

Warner Valley is wholly surrounded by mountains. Those on the west and east sides rise somewhat abruptly to a height of approximately 1000 feet above the valley floor. Those on the north and northwest have a more gentle slope but reach to approximately the same general elevation.

The elevation of the valley floor is approximately 4500 feet above mean sea level and has indications of having at one time been one large lake, however, conditions have changed so that there now exists a chain of small lakes, swamps and lands which naturally are flooded.

Just south of Hart Lake a low ridge extends from mountains on the west almost across the valley, thus forming two valleys. The area to the south is known as South Warner Valley and the area to the north in which Hart Lake is located is known as North Warner Valley.

In South Warner Valley on the west side are Pelican Lake and Crump Lake and along the east side are three small lakes known as Fisher Lake, Greaser Lake and Dodson Lake. North of Hart Lake there is a chain of eight lakes extending to Bluejoint Lake. These lakes are known as Anderson Lake, Swamp Lake, Mugwump Lake, Flagstaff Lake, South Campbell Lake, North Campbell Lake, Turpin Lake and Stone Corral Lake.

The water supply of Warner Lakes is furnished almost entirely from three streams - Twentymile Creek, Deep Creek and Honey Creek. Twentymile Creek flows into South Warner Valley at the south end and Deep Creek flows into South Warner Valley from the West side about seven miles north of Twentymile Creek. HoneyCreek flows into North Warner Valley from the west near the town of Plush and is tributary to Hart Lake. All three of the above named streams flow for some distance through narrow canyons before reaching the valley. Waters from all three of these streams and tributaries are diverted above Warner Valley for the irrigation of lands lying adjacent to the streams.

Prior to the construction of the works, hereinafter described, by the Warner Valley Stock Company there existed no well defined channels in South Warner Valley. The waters of Twentymile Creek and Deep Creek which flow into South Warner Valley spread over the valley flooding during high water periods some 36,090 acres, the surplus draining into Hart Lake and co-mingling with the water flowing from Honey Creek.

A part of the works which have been constructed by the Warner Valley Stock Company to control the waters of Twentymile Creek so as to prevent lands from flooding consists of a dike along the south and east sides of South Warner Valley to convey the flood waters of Twentymile Creek. This dike, some 15 miles in length, is constructed with earth excavated from the outside and extends from the place where Twentymile Creek enters South Warner Valley within the $SE\frac{1}{4}$ $SE\frac{1}{4}$, Section 24, Township 40 South, Range 39 East, W. M., to about one mile north of the dam located in the $SW\frac{1}{4}$, Section 17, Township 39 South, Range 25 East, W.M., and acts as a main channel carrying the flood waters of Twentymile Creek.

Water for irrigation is secured from the bypass channel by means of pipes with gates, extending through the dike at various places. In addition to the dike and bypass channel through which the waters of Twentymile Creek are controlled, the Warner Valley Stock Company has constructed deep, interior drainage ditches, canals for distributing irrigation water and pumping plants to remove the drainage and seepage water. The drainage water is pumped over the dike along the north end of the lands which have been reclaimed and is conveyed in two drainage canals which have been constructed to convey the water together with waters of Deep Creek north toward the Crump Lake area.

The works which have been constructed by the Warner Valley Stock Company have fully reclaimed all lands located in the south end of South Warner Valley having adjudicated rights to the use of waters of Twentymile Creek, including some lands belonging to others. Lands which in their natural

condition produced only grasses which grow on lands where water stands for sometime, now produce excellent yields of grain. On lands that have been reclaimed the practice is to irrigate early in the spring and on lands growing grain this is the only water applied.

It is believed that the reclamation works constructed by the Warner Valley Stock Company in South Warner Valley has resulted in a considerable saving in the amount of water both used and lost from evaporation in the reclaimed area. It is further believed that with the completion of the drainage system for the company's lands irrigated from Deep Creek which lie north of the lands that have been reclaimed, additional water will be saved.

As above stated, North Warner Valley and South Warner Valley are connected by a comparatively narrow strip about one-fourth mile wide and about 3.2 miles long. In this section is located the Stone Bridge referred to in the Court Decree as the point of division in the distribution of water.

The elevation of this channel at a point about 1 1/4 mile south of the Stone Bridge is about 4474.4 feet which is higher than a considerable area located in the north end of South Warner Valley. Waters from the end of the bypass channel, together with the waters of Deep Creek and waste water pumped from the reclaimed area of South Warner Valley, flows north in no well defined channel and some 12,000 acres, including Crump Lake, are flooded before any water flows north into Hart Lake.

Crump Lake has a well defined shore line except during high water when its shore line on the north, east and south is covered. The area of the water surface of Crump Lake at the time its shore line can be seen, which is when the water surface of Crump Lake is about 4472 feet mean sea level, is 1452 acres.

The principal source of water for Hart Lake which is located at the south end of North Warner Valley is the surplus water of Twentymile Creek and Deep Creek which flows into South Warner Valley and Honey Creek which enters the valley floor of North Warner Valley near Plush.

The only data showing the natural storage in Hart Lake is a survey made by the U. S. Bureau of Reclamation in cooperation with the State of Oregon in 1912. From data set forth in the Warner Valley Cooperative report, it appears that the natural storage in Hart Lake in 1912 at normal elevation, or the elevation at which water ceased to flow, was approximately 43,600 acre feet.

It appears that during the dry period in the late 1920's there was lit le or no water in Hart Lake. The shore line on the north was eroded from wind and in the early 1940's a road was constructed and a concrete control weir installed at the northeast end. The road and weir were constructed so as to restore the shore line and to hold the normal water surface as near as possible to that prior to the erosion. The crest of the weir at the northeast end of Hart Lake is 4473.28. (U. S. Geological Survey Data)

The survey made in 1912 shows the south half of Hart Lake to be comparatively shallow, the depth being only about 6 feet and the depth at the north end about 14 feet, at normal level. (Normal level is when water ceased flowing therefrom.)

In addition to the published records (years 1910 to 1915, inclusive), records of the elevations of the water surfaces of Crump Lake and Hart Lake were obtained for the years 1951, 1952 and 1953. The maximum observed elevation of the water surface of Hart Lake in 1951 was 4474.05 feet on April 18th. The maximum elevation of the water surface of Crump Lake was 2.25 feet higher than that of Hart Lake. The maximum observed elevation of the water surface of Crump Lake in 1952 was 4477.68 feet, m.s.l., on May 3rd, and the maximum observed elevation of the water surface of Hart Lake in 1952 was 4474.7 feet, m.s.l., on May 7th, or 2.98 feet below the maximum of Crump Lake. The maximum observed elevation of the water surface of Crump Lake in 1953 was 4475.83 on June 4th and the maximum observed elevation of the water surface of Hart Lake in 1953 was 4474.1 on April 4th. The maximum observed elevation of Crump Lake in 1950 was 4474.76 feet.

The difference in elevation of the valley floor in the south end of South Warner Valley and the south entrance of the relatively narrow strip connecting North Warner Valley and South Warner Valley is about 35 feet.

Water overflowing Hart Lake is used in the irrigation of several thousand acres of land north and adjacent to the lake which are growing natural meadow grasses and the surplus, in years of large runoff, drains into Bluejoint Lake which is the most northerly lake in the chain of lakes in Warner Valley.

The general topography, location of the lands and relative elevation of the normal water surface of the lakes is shown upon the attached maps, designated "Exhibit 1". This map is a reproduction of the map included in the Warner Valley Cooperative Report. In this report it is stated that the difference in the normal water surface of Crump Lake and Bluejoint Lake is 12 feet.

From data contained in the U. S. Geological Water Supply Papers Nos. 360, 390 and 410, it appears that the maximum depth of water in Bluejoint Lake was about 7.4 feet. The depth of water surface continued to lower and the lake bed was reported dry on March 8th, April 7th, May 3rd and 16th and June 3rd, 1914.

The only data as to the storage capacities of the lakes north of Hart Lake is that set forth in the Warner Valley Cooperative Report. In this report it is stated that the approximate storage capacity of Flagstaff Lake to a depth of 8 feet is 28,000 acre feet. The approximate storage capacity of Bluejoint Lake and lakes between it and Flagstaff Lake (8 to 10 feet in depth) is 155,000 acre feet. The total storage capacity of these lakes under the foresaid conditions is approximately 183,000 acre feet.

It appears that the Laird lands in 1910 were irrigated by water overflowing from Bluejoint Lake and as the water receded, the lands were irrigated by pumping. On June 4, 1953 a canal had been constructed to convey water from

Bluejoint Lake to a pumping plant, consisting of two pumps driven by a tractor and water was being pumped under a head of approximately 8 to 10 feet for irrigation. The area of water surface at Bluejoint Lake or the storage therein during the time the Laird lands were irrigated by pumping is not known.

Evaporation Losses:

The loss of water in lakes north of Hart Lake was determined in 1915 from records of the rate of fall of Flagstaff, Lower Campbell and Stone Corral Lakes and the results as published in the Warner Valley Cooperative report are as follows:

Observations of evaporation from standard pans have not been made in Warner Valley but records of the rate of fall of the Flagstaff lakes, obtained in 1915, are perhaps of even greater value than pan records would be in estimating the probable evaporation from lakes or reservoirs on the floor of the valley.

The four bodies of water frequently shown on maps as Flagstaff lakes contained water throughout the season, but were cut off from any inflow from Hart Lake, practically the only water reaching them being from precipitation. From March 23 to May 3 Flagstaff Lake fell 0.28 feet, Lower Campbell 0.33 feet, and Stone Corral Lake 0.28 feet, a mean of 0.30 feet. Adding 0.14 feet, the estimated precipitation, gives 0.44 feet as the total evaporation in 40 days, or at the rate of 0.33 feet per month. Flagstaff Lake fell 2.45 feet from March 23 to September 28, Lower Campbell 2.53 feet from March 21 to October 5, and Stone Corral Lake 2.41 feet from March 23 to October 5, or an average for 6 months and 11 days of 2.46 feet.

To make these figures applicable to a normal year, at least 0.20 foot must be added as allowance for the fact that the average temperature was below normal in Southern Oregon from April 1 to Steptember 30, 1915. The

deficiency at Lakeview for this period, 29F., has been assumed to apply to the Flagstaff Lake region. To obtain the gross evaporation the estimated rainfall, 0.35 foot, must be added, making the total 3.06 feet.

As these estimates agree very closely with those used in the power report on Deschutes River -- 0.30 foot for April, 3 feet April to September, inclusive, and 3.90 feet for the year -- they have been accepted for this report.

In the Warner Valley Cooperative Report it is estimated that normal annual evaporation losses in Warner Valley area, in excess of normal precipitation is 3.3 feet.

At the hearing Mr. Wm. L. Wales, an engineer of many years experience in planning, construction and operation of reclamation projects, who was a witness for the applicant at the hearing, estimated the normal gross evaporation losses in Warner Valley to be 45 inches or 2 inches less than that estimated in the Warner Valley Cooperative Report.

The area of the water surfaces of the lakes in South and North Warner Valley, not including Bluejoint Lake when full, as estimated by Mr. Wales at the hearing, is set forth as follows:

NAME	AREA IN ACRES
Pelican Lake	550
Crump Lake, including area flooded before flowing to Hart Lake	12,000
Hart Lake, including Peterie Swamp	9,700
Anderson Lake	450
Swamp Lake	1,000
Mugwump Lake	240
Flagstaff Lake	3,700
South Campbell Lake	1,000
North Campbell Lake	2,150
Turpin Lake	300
TOTAL AREA	33,190

The areas of the water surfaces as estimated by Mr. Wales, with the exception of Crump Lake, at the elevation water flows north into Hart

Lake is considerably in excess of that shown by late government plats and maps made by private engineers on file with the State Land Board.

It is very difficult to determine the water surface of the various lakes as the areas will vary with the amount of water flowing into and out of these lakes.

Mr. Wales estimates that the gross annual evaporation losses from 33,190 acres of water surface would be 135,000 acre feet or approximately 4 feet per acre. To determine the loss of water the precipitation should be taken into consideration.

In the report prepared under the direction of the State Engineer and filed with the court as part of the evidence in the proceedings for the determination of the relative rights to the use of waters of Warner Lakes and their tributaries (page 56), it is stated:

> "The State Engineer's survey made in 1921 shows the area covered with water south of Flagstaff Lake within North Warner and South Warner Valley as 60,000 acres. This area includes the delta lands on Honey Creek, lake surfaces, swamp areas and is located below gaging stations."

Using the 60,000 acres, the area covered with water in 1921, and eliminating the area in South Warner which has been reclaimed by the Warner Valley Stock Company, the loss of water from evaporation and transportation would be large.

In 1914 the measured flow of water of Deep Creek, Twentymile Creek and Honey Creek at the entrance of Warner Valley totaled 135,000 acre feet and of this quantity, 57,300 acre feet flowed into Flagstaff Lake. From published records it appears that part of the water flowing into Flagstaff Lake was due to failure of the dam on April 17th in the channel at the northeast end of

Hart Lake which drained part of the water naturally stored in Hart Lake. In 1921 the measured flow of water of these streams was 168,000 acre feet, of which quantity, 24,200 acre feet flowed into Flagstaff Lake.

The records secured in 1914 and 1921 show that in 1914 there was 78,000 acre feet and in 1921, 144,400 acre feet of water which did not flow further north than the entrance to Flagstaff Lake.

From "Exhibit 2" it is seen that for the year ending September 30, 1938, the combined measured flow of water in Deep Creek and Honey Creek was 190,590 acre feet and the estimated flow of Twentymile Creek was 66,500 acre feet. That the combined flow of the three streams for the year ending September 30, 1938, as measured and estimated, was 257,190 acre feet.

From "Exhibit 2" it is seen that the measured combined flow of water in Twentymile Creek, Deep Creek and Honey Creek for the year ending September 30, 1943 was 280,440 acre feet and for the year ending September 30, 1952 the combined flow of the three streams was 292,440 acre feet.

From that stated in the protest filed by Alice Laird in this matter, it appears that in 1938 and 1943 there was not sufficient water in Bluejoint Lake to irrigate the Laird lands. It is evident that to deliver water for the irrigation of these lands would result in the loss of a very large quantity.

It appears from statements filed by Max Rogers who was watermaster of Lake County from early in 1926 to late 1928 and Phil Smith who succeeded Mr. Rogers as watermaster and has had charge of the distribution of water of Warner Valley since 1928, and the testimony of James Wakefield and Joe Banasco, together with the records of the flow of water of streams tributary to Goose Lake and of Chewaucan River, that no water flowed from South Warner into Hart Lake during the years 1924, 1926, 1929, 1930, 1931 and 1934. It also appears

that no water flowed from Hart Lake during the years from 1924 to 1927, inclusive, 1929 to 1937, inclusive and 1939 and 1947. In 1926 Hart Lake was dry and there was little or no water in Hart Lake in 1924 and 1925.

It appears from Mr. Smith's statement and records that Bluejoint Lake was dry on August 26, 1913 and that no water from Hart Lake reached Bluejoint Lake until about June 28, 1914, but the lake was dry before the end of the year. It appears that no water from Hart Lake flowed into Bluejoint Lake during the years 1915 to 1953 with the exception of 1938, 1943, 1952 and 1953. On June 3, 1953 water was flowing from Bluejoint Lake.

Greaser Lake Reservoir:

Some of the water conveyed through the bypass channel which was constructed by the Warner Valley Stock Company to convey the water of Twentymile Creek around the south and east side of South Warner as a part of the works to drain and improve lands in South Warner, as above described, flows into Greaser Lake and Spanish Lake, the beds of which are lower in elevation. In 1949, prior to the filing of the applications by the Warner Valley Stock Company for a permit to store water in Greaser Lake, a dam had been constructed across the bypass channel at a point within the SW¼ of Section 17, Township 39 South, Range 25 East, W. M., and at the east end of this dam a spillway channel has been constructed through which surplus water flows. This dam retains some water in Greaser Lake and Spanish Lake which, prior to its construction, flowed north through the bypass channel.

Plans submitted by the Warner Valley Stock Company show that in addition to the dam across the bypass channel, it is proposed to raise the height of the dike along the west side of the bypass channel for a distance of about 9 1/2 miles above the dam.

It appeared from the inspection made on June 4, 1953 that the only work in developing storage in Greaser Lake was the construction of the dam across the bypass channel and the spillway.

It also appears that the quantity of water collected in Greaser Lake and Spanish Lake is approximately the same as before the construction of the dam across the bypass channel as the dike along the west side is low and at the time of inspection on June 4th there existed no indication that the dike had been raised. The water which is held in Greaser Lake and Spanish Lake by the dam in the bypass channel is released through conduits extending through the dike for irrigating the lands with a water right after the supply from other sources is not adequate. The lands upon which this stored water is used are in their natural condition producing grasses which are cut for hay early in July of a normal year or used for pasture. The surplus water from these lands flows north just as before the construction of any reclamation work.

Water Rights:

Following is a brief statement of the rights to the use of the waters of Warner Lakes and tributaries as set forth in the decree of the Circuit Court of the State of Oregon for the County of Lake, denominated "In the Matter of the Determination of the Rights to the Use of the Waters of Warner Lakes and Their Tributaries", dated September 30, 1929, and rights initiated by making application for a permit under the 1909 water code.

The rights defined in the foresaid court decree will be referred to as "Adjudicated rights" and those initiated by making application for a permit as "permit rights".

The total area of land with adjudicated irrigation rights to the use of water of Twentymile Creek and its tributaries is 8,245.8 acres, of which area, 8,117.8 acres are located within the south end of South Warner Valley in the area for which drainage works have been constructed as above described. The 8,117.8 acres are irrigated with water diverted from Twentymile Creek flowing past the gaging station or place where records were secured.

The total area of land with irrigation rights to the use of water of Twentymile Creek and tributaries initiated under permits is 93 acres, all of which is located above the canyon at the entrance of South Warner Valley and above the place where records of the flow of water in Twentymile Creek were obtained.

The total area of land with irrigation rights to the use of water of Deep Creek and tributaries is 14,942 acres, of which area, 10,703 acres are located in South Warner Valley below the canyon at the entrance of South Warner Valley and 4,239 acres are located adjacent to Deep Creek and its tributaries above said canyon and above the place where records of the flow of water of Deep Creek were obtained.

The area of lands with permit rights from Deep Creek and tributaries totals 1,388 acres, all of which are located above the place where records were obtained.

There are three additional adjudicated rights to the use of water for the irrigation of lands in South Warner Valley, one of these rights being for the irrigation of 188.5 acres from Pelican Lake, one for the irrigation of 30 acres from Crump Lake by pumping, and one in the name of W. Z. and Mary D. Moss. The W. Z. and Mary D. Moss right as described in the decree is for the irrigation of 819.7 acres of lands from Warner Lake and springs on the land. Of this area, 74.7 acres are government lands and 28.6 are owned by the State, having been acquired as swamp and overflow land.

The only way that the Moss lands, now known as the "Clark Ranch", can secure water, other than from springs, is by flooding during high water. All of the lands with an adjudicated right will be flooded when the water surface at the north end of South Warner is at about elevation 4475 msl.

The total area of lands with adjudicated irrigation rights to the use of waters of Honey Creek and its tributaries is 3,730.6 acres, of which

2,340.5 acres are located in North Warner Valley below the canyon at the entrance of Warner Valley and below the place where records were secured of the flow of water in Honey Creek.

The area of lands with rights to the use of waters of Honey Creek and tributaries, initiated under permits, totals 3,917 acres. Of this area, 1,100 acres are located above and 2,816.42 acres below the place where records of the flow of water in Honey Creek were secured.

Six reservoir permits have been issued for the storage of 1070.5 acre feet of water of tributaries of Honey Creek. All of these reservoirs are located above the gaging stations. Some of the water to be stored in the reservoirs is to be used as a supplemental supply, which area is included in the 1100 acres.

Of the 2816.42 acres of lands in North Warner Valley irrigated with Honey Creek water under rights initiated by making application for permit, 288.06 acres are new lands located within the area in which adjudicated rights to the use of water from Honey Creek were allowed and 62.5 acres are new lands located in the valley floor north of Hart Lake and 2465.86 acres are located on the valley floor north of Hart Lake, which lands have adjudicated rights to the use of overflow water from Hart Lake and permit rights to the use of water pumped from natural storage in Hart Lake.

The total area of lands in North Warner Valley with rights to the use of waters of Honey Creek flowing past the gaging station and water flowing from Hart Lake, north of Campbell Lake, is 9223.21 acres.

The area of land with adjudicated irrigation rights to the use of waters overflowing from Hart Lake totals 6532.15 acres. Of this area, 6006.85 acres have rights to the use of water naturally stored in Hart Lake and 2465.86 acres have rights to the use of water of Honey Creek as a supplemental supply for irrigation. The supplemental rights were initiated by making application for permit.

Of the 6532.15 acres of lands with adjudicated irrigation rights from the overflow from Hart Lake, 523.30 acres have no other rights.

All of the above referred to lands located north and adjacent to Hart Lake with adjudicated rights to the use of water flowing from Hart Lake and water diverted from Honey Creek, are owned by parties who have filed objections to the approval of the applications filed by the Warner Valley Stock Company.

In addition to the rights to the use of waters of Honey Creek, overflow from Hart Lake and natural storage in Hart Lake, there is one adjudicated right for the use of water from Campbell Lake for the irrigation of 43 acres with a date of priority of October 27, 1892 and one right for the irrigation of 625 acres from Bluejoint Lake.

Other Applications for Permits Pending:

On June 2, 1938 Warner Valley Stock Company filed an application for a permit to appropriate 5000 cubic feet per second of water from Twentymile Creek. The purpose of filing this application as set forth in the application is as follows: "This application is filed for the purpose of securing rights to the use of water for supplemental irrigation prior to March 1st of each year and a right to divert surplus water as a drainage measure." Plans of the dike and bypass channel were filed with this application.

The application has not been approved as it appears the purpose was to change the beginning of the irrigation season from April 1st as set forth in the court decree defining the relative rights to the use of the waters of Warner Lakes and tributaries and this could only be done by the court. The applicant was advised to present this to the court.

As has been described herein, water flowing in the bypass channel filled Greaser and Spanish Lakes and drained north until the dam - dike was

constructed across the bypass channel. This dam - dike was constructed prior to the filing of Applications Nos. R-25395 and 25396.

Applications to Store Water in Hart Lake:

The applications for the storage of water in Hart Lake for use as a supplemental supply in irrigating lands of objectors are set forth in the objections filed. No maps showing the storage capacity of Hart Lake have ever been filed and the 80,000 acre feet, the quantity stated in the application to be stored, appears to be greatly in excess of that which can be stored and in excess of the quantity that could be beneficially used.

The State Land Board has on file three applications for permits which are designated in the records of the State Engineer as Applications Nos. 24503, R-23563 and 23564. Application No. 24503 is for the appropriation of water described as overflow or excess water from South Warner Valley for the irrigation of 3172.26 acres of state lands located west of Hart Lake in Peterie Swamp. Application No. R-23563 is for the storage of 12,919 acre feet of water of Deep Creek in Crump Lake for irrigation. Application No. 23564 is for the appropriation of water of Deep Creek, Twentymile Creek, water to be stored in Crump Lake and seepage and waste water for the irrigation of 8463.39 acres of State Lands located in the north end of South Warner Valley.

Summary of Contests:

Omitting that relating to rights of the objectors to the use of waters of Warner Lakes and tributaries, the pertinent matter set forth in the objections to the approval of Applications Nos. R-25395 and 25396, filed by Con Lynch, et al., and Hart Lake Water Users Association, is summarized as follows:

1. There is not sufficient water year in and year out to supply existing right.

2. Water reaching the valley floor from the end of one irrigation season to the beginning of the next contributes toward the filling of all intervening channels and lakes between the mouth of Twentymile Creek and

Deep Creek and the lands of the objectors, thereby expediting the delivery of the current of the flow head which comes to their lands as a result of the spring runoff. In the absence of spring runoff, the winter runoff thus becomes the main source of irrigation supply through the use of supplemental rights to pump.

3. The approval of the application to store water in Greaser Basin, which was constructed without a permit, would, as a practical result, grant the applicants a right to appropriate public waters which would be prior, from a standpoint of actual value, to rights of the objectors. Therefore, the approval of the application would conflict with existing rights of objectors.

4. The applications do not comply with the statutes of Oregon relating to the appropriation of public waters in that:

a. The required data, maps, drawings and other necessary information required by Section 116-420, O.C.L.A., is not attached thereto.

b. Does not state the time of impoundment of water under application No. R-25395.

c. No documentary evidence has been filed showing that the applicant is either legal owner of the lands within the flow line of Greaser Lake Reservoir or has an agreement with the owner thereof, the United States of America, for a permanent and sufficient interest in said reservoir site to impound the water.

5. Some of the lands which the applicant proposes to irrigate with stored water do not have a water right.

6. That the objectors have since September 30, 1929, the date of the courts decree defining the relative rights to the use of the water of Warner Lakes and tributaries, and prior thereto,,been using the water of Warner Lakes and tributaries, in the irrigation of their lands under natural

conditions and said use has been continuous, actual, exclusive, open, notorious, under claim of right by objectors and such use was adverse and hostile to applicants rights.

7. That the Hart Lake Water Users Association has on file with the State Engineer, applications for the storage of 80,000 acre feet of the water in the bed of Hart Lake, the source of which is all waters flowing into Hart Lake including water from Deep and Twentymile Creeks and water running into Hart Lake from South Warner.

In the objection filed by Alice Laird on September 7, 1951 against the approval of Applications Nos. R-25395 and 25396 it is stated:

"That there could be no surplus waters in said Warner Valley watershed subject to subsequent appropriation and application for permit to use said surplus water until the volume and flow of said Warner Valley waters, its lakes and tributaries, should become sufficient to satisfy all of the water rights adjudicated by said decree of adjudication. Since your protestant has received no water pursuant to her right adjudicated by said decree, since said decree of adjudication was entered, it is apprent that there has never been and that there is not today any surplus waters in said Warner Valley watershed, its lakes and tributaries, subject or available to subsequent appropriation as contemplated by the applications herein protested.

"The adjudicated water right of your protestant is dependent for its supply of water subject to appropriation and use under said water right upon the availability of the waters contained in Bluejoint Lake which lies at the north end of said Warner Valley watershed. The waters of Blue-Joint Lake are available only when the volume and flow of the waters of said Warner Valley watershed and in said watercourse are sufficient in flowing from south to north to overflow from South Warner Valley into Hart Lake and subsequently to overflow from the said Hart Lake to Blue Joint Lake to the north. The adjudicated water right of your protestant is thus dependent upon flow northward to the said Blue Joine Lake of any waters remaining after the satisfaction of the adjudicated rights of appropriators in the South Warner Valley region and the Hart Lake region of said Warner Valley watershed. If the adjudicated right of your protestant is to have any value or meaning whatsoever then it is necessary that, after the use of said waters of the Warner Valley watershed by those holding certificates of water rights to said waters pursuant to the limitations and provisions of said certificates and the adjudication upon which they were based, all of said waters of said North Warner Valley watershed must be allowed to flow north along the water course of said Warner Valley watershed without further us or appropriation in order that your protestant may have the benefit and value of her water right should

the volume and flow of the waters of said Warner Valley watershed become sufficient to enable her to exercise said right. Until your protestant is enabled by the volume and flow of said waters of the Warner Valley watershed to fully satisfy her adjudicated water right there can, of course, be no question of any surplus unappropriated waters in said Warner Valley watershed subject to any further appropriation other than the waters already appropriated and rights thereto adjudicated as outlined above by said court decree.

"Said applications of the Warner Valley Stock Company, if allowed, would impair and damage the property rights of the protestant herein for the reason that said Warner Lakes and their tributaries constitute one continuous body of water or watercourse, flowing from south to north, and all waters not consumed by South Warner valley appropriators, pursuant to their existing adjudicated rights, including the Warner Valley Stock Company, are subject to the existing adjudicated rights of your protestant to the flow of such waters. That the granting of the permits now requested by the Warner Valley Stock Company would result in said protestant never receiving any irrigation water even under a return to the favorable precipitation conditions existing during the period when the existing rights to the use of the waters of the Warner Lakes and their tributaries were being perfected, by appropriation.

"All available waters in said Warner Valley Watershed have been heretofore appropriated and the entire annual flow is inadequate to supply existing rights in full. To permit anyone to divert and impound said waters, at any time, as is contemplated by the applications of the said Warner Valley Stock Company, would deprive your protestant of valuable property rights in violation of law."

In the objection filed by Con Lynch, et al., against the approval of Applications Nos. R-25738 and 25739 of the Warner Valley Stock Company, in addition to that set forth in the objection to the approval of applications Nos. 25395 and 25396, it is further alleged that the description of lands to be irrigated as set forth in Application No. 25739 includes lands owned by others who have not joined in the application and are opposed to the inclusion of their acreage. Also, that the objectors have an exclusive option, dated July 18, 1951, on record in the county clerk's office, running for a period of five years, to purchase the S½ SW¼ and E½ SW¼, Section 5, Township 40 South, Range 22 East, W. M., and a similar option for the purchase of the W½ NW¼, Section 17 and the SW¼ NE¼, Section 20, Township 40 South, Range 22 East, W. M.

That these lands are located within the bed of the proposed reservoir and the applicant cannot obtain the right to flood these lands.

It appears that most of the objections presented relate to the interpretation of the decree of the decree of the Circuit Court of the State of Oregon for Lake County, dated September 30, 1926, denominated "In the Matter of Determining the Relative Rights to the Use of the Waters of Warner Lakes and Their Tributaries", and questions of fact and law which are vested in the court. In the findings herein it is found necessary to pass upon issues that are not within the jurisdiction of the State Engineer, but in doing so, it is admitted that the final decision is vested in the court and the court has the power and authority to modify or set aside any or all findings herein.

Prescriptive Right:

As to the objectors having a prescriptive right against the applicants -- all of the objectors lands to which there are water rights appurtenant, are located north and below the applicants lands and there exists no diversion whereby it is possible to deprive applicants of water.

Our Supreme Court in a number of decisions has stated that no adverse use of water can be initiated until the person possessed with a superior use is deprived of its beneficial use in such a substantial manner as to notify them that their rights are being invaded. It is impossible to conceive as to how the objectors could, if an adverse right can now be obtained, deprive the applicants of waters so as to give the applicant a cause of action. (Davis v. Chamberlain, 51 Ore.,at page 317; Beers v. Sharp, 44 Ore. at page 394)

Whether the objectors have a vested right as against rights initiated subsequent to the entry of the courts decree determining the relative rights to the use of waters of Warner Lakes and tributaries, to demand that sufficient water be permitted to flow from South Warner which, together with the water

available from Honey Creek, will fill and overflow Hart Lake and irrigate objectors lands will be considered herein.

The law relating to applications for permits to appropriate waters (Section 116-420, O.C.L.A.) is summarized as follows:

Each application for a permit to appropriate water shall contain:

a. Name and post office address of applicant.

b. The source of water supply.

c. The nature and amount of the proposed use.

d. A description of proposed ditch, canal or other works.

e. The time required for completion of construction work and time for complete application of water to the proposed use.

f. If for agricultural purposes, it shall give the legal subdivisions of the land and the acreage to be irrigated as near as may be.

g. If for the construction of a reservoir, it shall give the height of the dam, the capacity of the reservoir and use of impounded waters.

Section 116-425, O.C.L.A., is summarized as follows:

a. All applications for reservoir permits shall be subject to the provisions of Sections 116-419 and 116-424, O.C.L.A., both inclusive, except that an enumeration of any lands proposed to be irrigated under this act shall not be required in the primary permit.

b. In the secondary permit the reservoir from which it is proposed to secure water shall be referred to and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in the application. The term "primary permit" as used in the statute, is a permit to construct a reservoir

and store water. The term "secondary permit" is the permit to appropriate the water stored. (Cookingham v. Lewis, 58 Ore., 484)

In 1927 (Chapter 353, Oregon Laws, 1927) an act was passed which is codified as Section 116-502, O.C.L.A., stating that it shall be unlawful to construct any dam, dike, or other hydraulic structure or works, the failure of which the State Engineer finds would result in damage to life or property, unless the State Engineer shall have made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and shall have approved them in writing. Section 116-503, O.C.L.A., states that the act does not apply to any dam less than 10 feet in height or impounding less than 3,000,000 gallons of water nor to splash dams used in driving logs, nor to farm dikes constructed by individuals on their own property.

In construing the latter section it has been assumed that individuals, persons, corporations, associations, firms, partnerships and joint stock companies, are synonymous. (See Chapter 314, Oregon Laws 1951)

Section 116-421, O.C.L.A., provides that an application shall not lose its priority of filing because of defects if such be found upon examination, provided acceptable data, proofs, maps and drawings are filed within 30 days after the date the application is returned to the applicant or such further time as may be given by the State Engineer not exceeding one year.

That part of Section 116-425, O.C.L.A., which reads "**and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application" has never been construed by our courts with respect to the issue raised in this proceeding, however, the State Engineer has considered that this applies only

to constructed reservoirs and not to reservoir sites. A reservoir such as that proposed for construction by the Warner Valley Stock Company is not a reservoir until the dam has been constructed in order that water can be impounded.

In the Manual of Engineering Practice, published by the American Society of Civil Engineers, "reservoir" is defined as a pond, lake or basin, either natural or artificial, for storage, regulation and control of water. The dictionary definition of "reservoir" is similar.

Where a reservoir is to be constructed upon the public lands it is necessary to obtain a permit from the United States to utilize the government lands for these purposes. (See Solicitors Opinion of July 16, 1942) With the application for such permits it is necessary to submit evidence that the applicant has obtained a legal right to store and use the waters to be stored. To aid in securing permits to construct and operate reservoirs located on the public domain, it is and has been for many years the policy of the State Engineer, where there appears to be surplus water available for storage and use and a feasible reservoir site, and satisfactory maps, plans and specifications have been filed, to issue permits for the construction, storage and use of such water.

Completion of Plans and Specifications:

Before plans and specifications can be approved by the State Engineer for a dam such as that proposed to store the waters of Deep Creek in the Big Valley Reservoir site, it will be necessary to make drillings for the purpose of determining foundation conditions, which work requires time and is expensive. It is believed obvious that prior to doing this work, it is prudent to file application for permit to store and use the water. It is the practice of the State Engineer to hold such applications so as to give the applicant a reasonable time within which to make the necessary surveys and investigations and prepare detailed plans and estimates of cost before returning the application for completion.

Time of Storage:

Under the law of this state if surplus waters are available for storage at any time of the year, rights can be initiated for the storage and use of such water for beneficial use.

New Land and Land Not Owned by Applicant:

If there are surplus waters available for storage and use, rights can be initiated for the storage and use of such waters as a supplemental supply for the irrigation of lands which do not have an adequate supply and for the irrigation of new lands.

It is stated in the objections that some of the lands proposed to be irrigated with water stored in Big Valley Reservoir are not owned by the Warner Valley Stock Company and the owner of these lands objects to their inclusion. No objection has been filed by the owner of these lands.

The inclusion of lands not owned by the applicant does not place any obligation upon the owner of the lands and does not prevent them from initiating and perfecting independent rights. Should the permit be granted which includes lands not owned by the applicant and the stored water not be used in irrigating these lands, such lands would be excluded from the certificate of water right when issued.

Water Supply:

The area of lands in South Warner Valley with rights to the use of water of Twentymile and Deep Creeks flowing past the place where records were obtained, excluding the lands described in the court's decree in the name of W. Z. and Mary D. Moss (a large part of which is irrigated with water from springs) totals 19,039.3 acres. The area of lands with rights to use water of Honey Creek flowing past the place where records were secured, including rights to the use of water flowing from Hart Lake and natural storage in Hart Lake, but not including the lands irrigated from Campbell and Bluejoint Lakes, totals 9,223.21 acres.

The quantity of water required to supply 3 acre feet per acres, the maximum quantity fixed in the court's decree and permits issued by the State Engineer, to the 19,039.3 acres of lands in South Warner Valley with water rights is 57,118 acre feet.

It appears that the consumptive use of water in Warner Valley, or water lost by evaporation and transpiration is approximately 1.6 acre feet per acre and if the lands were properly drained, that about 1.4 acre feet of the 3 acres feet per acre would drain from the lands.

In the following table the records of the flow of water in Twentymile Creek, Deep Creek and Honey Creek, in acre feet, are shown for the years 1915, 1930 to and including 1937, 1939 and 1947, which were years in which water did not flow from Hart Lake. The records of the flow of water in Twentymile Creek for the years 1929 to 1937, inclusive, and 1939 were compiled by William L. Wales and submitted at the hearing. These estimates where made by use of records of precipitation. Estimates computed by this method can only be considered indicative of the flow that occurred.

Year Ending Sept. 30th	RUN OFF			Combined Flow
	Deep Creek	Twentymile Creek (estimated)	Honey Creek	
1915	54,600	18,600	6,390	79,590
1930	48,900	18,500	2,480	69,880
1931	18,100	7,100	2,610	27,810
1932	63,800	33,800	10,200	107,800
1933	34,200	4,800	5,830	44,830
1934	21,610	14,400	2,050	38,060
1935	85,010	25,900	10,390	121,300
1936	85,320	41,200	11,790	138,310
1937	54,950	8,200	8,480	71,630
1939	45,410	8,600	6,410	60,420
1947	48,530	10,590	8,000	67,120

From the above table it is seen that the total estimated flow of the three streams during the 11 years in which no water flowed from Hart Lake, varied from a minimum of 27,810 to a maximum of 138,310 acre feet. That during the period beginning October 1, 1934 and ending September 30, 1935, the combined flow of the streams is estimated at 121,300 acre feet and from October 1, 1935 to September 30, 1936 the combined flow is estimated at 138,310 acre feet.

From Exhibit 2, which is attached hereto it is seen that in 1944 the flow of Deep Creek was 56,680 acre feet and the combined flow of Deep, Twentymile and Honey Creeks was 81,610 acre feet. It appears that in 1944 Hart Lake overflowed. The records of the precipitation at Lakeview show that the precipitation in June was 5.47 inches or 4.55 inches above normal. The recorded flow of water in Deep Creek in June of 1944 was 17,360 acre feet and the flow of water in Twentymile and Honey Creeks was above normal. It appears the reason for Hart Lake overflowing in 1944 was due to the large precipitation and runoff occurring during June. It further appears from the records of the stream flow that on a normal year Hart Lake will not overflow when the combined flow of Deep Creek, Twentymile Creek and Honey Creek is less than 100,000 acre feet.

The statement in the protest filed by Alice Laird that the lands with an adjudicated irrigation right had received no water flowing from Hart Lake since the entrance of the court decree defining the relative rights to the use of the waters of Warner Lakes and tributaries appears to be a correct statement of conditions. From the records of the flow of water in these streams, tributary to Warner Valley, and records of the flow of water of other streams in south central Oregon, it appears that no water from Hart Lake flowed into Bluejoint Lake from 1915 to 1938. Some water from Hart Lake flowed into Bluejoint Lake in 1938, 1943, 1952 and 1953.

From Exhibit 2, it is seen that for the year 1938, the combined measured flow of water in Deep Creek and Honey Creek was 190,590 acre feet and the estimated flow of Twentymile Creek was 66,600 acre feet. That the combined flow of the three streams for the year ending September 30, 1938 as measured and estimated was 257,190 acre feet.

From Exhibit 2 it is also seen that the recorded combined flow of water in Twentymile Creek, Deep Creek and Honey Creek for the year ending September 30, 1943 was 280,440 acre feet and for the year ending September 30, 1952, 292,440 acre feet.

It appears from the protest filed by Alice Laird that in 1938 with a combined flow of about 257,000 acre feet and in 1943 with a combined flow of about 280,000 acre feet, there was not sufficient water in Bluejoint Lake for the irrigation of the Laird lands.

From the testimony of Mr. Con Taylor, it appears that about 1916 was the last year hay was cut from the Laird lands, or there was a period of 37 years in which there was not sufficient water in Bluejoint Lake for the irrigation of the Laird lands.

The records of the flow of water in Honey Creek show that all of the 9,223.2 acres of land with rights to the use of water of Honey Creek flowing past the gaging station and overflow from Hart Lake, without considering the water from South Warner Valley, would have received three acre feet per acre during 7 of the 31 years for which records are available and would probably have, with the seepage and waste water from lands irrigated above, received a full supply during 12 years.

The objectors maintain that they have a vested right to sufficient water of Deep Creek and Twentymile Creek to fill Hart Lake and intervening lakes and sloughs so that they can continue to irrigate their lands as in the past from waters overflowing from Hart Lake. Also, that in years when the

quantity of water is not sufficient to overflow Hart Lake, that they have prior rights, initiated under permits, to divert natural storage in Hart Lake and if this does not include the right to sufficient water to fill Hart Lake, they have applications on file with the State Engineer which would give them a right prior to that of the applicants.

Of the 6,532.15 acres of land which were adjudicated irrigation rights from the waters overflowing from Hart Lake, 6,006.85 acres have initiated rights to the use of waters naturally stored in Hart Lake. As to whether the rights initiated for the use of this natural storage includes the rights as against subsequent appropriations to sufficient natural flow from streams tributary to Hart Lake to maintain the storage necessary for use in irrigating the 5,006.85 acres, has never been presented to our courts for determination.

In the adjudication of the relative rights to the use of waters of Owyhee River and its tributaries, a right was allowed for the use of natural storage in Upper Cow Creek which right has been recognized by our Supreme Court in the case of Oliver v. Skinner and Lodge, 190 Ore., 423.

In the courts decree defining the relative rights to the use of the waters of Warner Lakes and their tributaries, in respect to rights of the use of waters, Warner Valley is divided into three areas, one of which is the area south and above the Stone Bridge located near the Northwest corner of Section 19, Township 37 South, Range 25 East, W. M., another is the area south of Anderson Lake and north of the Stone Bridge and the other is the Bluejoint Lake area.

Area South of Stone Bridge:

Paragraph 19 of the court's decree defining the relative rights to the use of water of Warner Lakes and their tributaries reads in part as follows:

"To consider the entire Warner Valley as one continuous water course and to attempt to enforce priorities of water rights as between the two areas, would result only in waste of water, with little if any benefit to the lower valley. The record does not disclose any instance in the past, of the upper valley users having recognized such a superiority of right in any user in the lower valley. Therefore, the two areas shall be treated as distinct and separate, in the administration of the water rights as herein determined, and no rights of priority shall be recognized in the lower valley as against the upper valley. The dividing point between the two is hereby fixed as the Narrows, or more particularly, the location of the "Stone Bridge," near the northwest corner of Section 19, Township 37 South, Range 25 East, W. M."

It is believed that part of paragraph 19 which reads "in the administration of the water rights as herein determined" as it relates to rights south of Campbell Lake, makes certain that in the distribution of waters as between rights defined in the decree and rights not included that the water is to be distributed in order of relative dates of priorities.

The decree is definite that in the administration of water, water is to be delivered to lands south of the Stone Bridge with rights defined in the decree in accordance with their relative dates of priorities, independently of the right to use the waters on lands north of the Stone Bridge.

Bluejoint Lake Area:

The findings of fact set forth in the decree upon which the Alice Laird right to the use of waters of Bluejoint Lake was allowed, is summarized as follows:

1. The lands are situated some 30 miles north of Hart Lake and at various times were adequately irrigated by backwater of Bluejoint Lake, but only part of the 625 acres had been irrigated during the past several years by water pumped from the lake due to deficiency of water supply.

2. Although it may be said that there is one continuous water course from Hart Lake to Bluejoint Lake, there are several large depressions in the area between, forming lakes of considerable size when there is water enough to fill them, such as Anderson, Swamp, Upper Campbell, Lower Campbell, Stone Corral and Bluejoint Lakes, which only happens in times of high water.

3. It would be an impractical and wasteful use of water to enforce priorities of Laird appropriations as against upper users near Hart Lake having subsequent priorities.

4. In order to deliver from Hart Lake area sufficient water for the Laird lands in dry periods, many times the amount actually needed would have to be allowed to flow toward Bluejoint Lake.

In defining the right of Alice Laird to use water of Bluejoint Lake the decree states "***although there has clearly been no abandonment of the water right, and a right to water from Bluejoint Lake will be recognized when water reaches the land from natural causes or under existing conditions as they have existed in the past, no right shall attach which will entitle the claimant to insist on the delivery of water as against upper users." The State Engineer in writing this finding which has been affirmed by the court was evidently aware of the large quantity of water that would be lost in delivering water to Bluejoint Lake and intended that the term "which will entitle the claimant to insist on delivery of water as against upper users" include all rights regardless of dates of initiation. The fact that the decree authorizes further appropriations of natural storage in Hart Lake, it is believed, supports the latter interpretation.

Hart Lake Area:

Some of the pertinent matters as set forth in the decree as it relates to rights allowed for the irrigation of lands with water flowing from Hart Lake are summarized as follows:

1. The natural system of irrigation is wasteful and more economical methods must be employed to keep pace with modern developments.

2. It would be a step backward to permit them to maintain a large body of water in Hart Lake at a certain level merely for the purpose of

continuing the natural flood system of irrigation. Moreover this system fails them in critically dry periods and in low water seasons.

3. The ease with which the water users have been able to divert their water has been merely their own good fortune. It is not a right, but merely a privilege to be enjoyed until rendered impractical by a fuller development and use of the unappropriated waters.

4. Below the point of overflow no one has appropriated the waters stored in Hart Lake. The proper procedure for anyone who wishes to use the water naturally stored in Hart Lake is to file an application with the State Engineer in the usual manner for the appropriation of this unappropriated water.

The decree is definite in that none of the claimants to the use of the waters of Warner Lakes and their tributaries had rights to the use of natural storage water of Hart Lake. Also, the decree is definite in that subsequent rights to the use of natural storage in Hart Lake could be initiated.

Holding that subsequent rights to the use of natural storage in Hart Lake could be initiated is further evidence that the natural flood system of irrigation was not a legal right but as to how the owners of lands which were granted irrigation rights from waters flowing from Hart Lake were to obtain water under their dates of priorities as against rights subsequently initiated, evidently was overlooked. To obtain water by gravity would require the construction of a canal many miles in length, would be very costly to construct and the cost of maintenance would be large. The decree as it now reads would, it appears, prevent the change from natural flood system of irrigation to that of pumping when water ceased to flow from Hart Lake and still retain their dates of priorities.

It is believed that the State Engineer and court did not intend that rights to the use of waters could be initiated, which rights would result in reducing the flow so that none reached Hart Lake.

As has been stated in this order, of the 6,532.15 acres of lands which were allowed a right to the use of waters flowing from Hart Lake, approximately 6007 acres have initiated rights to the use of natural storage in Hart Lake.

If the rights to the use of natural storage in Hart Lake are an appropriation from waters of streams tributary to Hart Lake and the natural flooding system of irrigation is not a legal right, then the approval of the applications under consideration would not result in injury to the 6007 acres of lands with rights to the use of natural storage in Hart Lake as it would be necessary to bypass sufficient water, if it is in the streams, to supply these lands. Until these legal questions have been determined by the courts, the State Engineer is unable to find that the proposed storage and use of the water under the applications being considered would not result in injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that the applications filed by the Warner Valley Stock Company, designated in the records of the State Engineer as Applications Nos. R-25395, 25396, R-25738 and 25739, be and the same hereby are REJECTED.

Dated at Salem, Oregon this 3rd day of November, 1953.

Chas E Stricklin

CHAS. E. STRICKLIN
State Engineer

Description of Gaging Station:

Following is a description of the gaging stations at which the records of the flow of water in Deep, Twentymile and Honey Creeks, shown in Exhibit 2, were secured.

Deep Creek -- The records of the flow of water in Deep Creek from May 11, 1909 to December 9, 1922 were obtained at a gaging station located near the residence of W. S. Wible, within the SE¼ NW¼, Section 21, Township 39 South, Range 24 East, W. M. Five ditches diverted water from Deep Creek above the gage and below the canyon at the entrance of South Warner. The area of lands irrigated with adjudicated rights to the use of the water conveyed through the five ditches totaled 670.6 acres.

On September 8, 1922 a gaging station was established on Deep Creek within the NW¼, Section 13, Township 39 South, Range 23 East, W. M., about one-half mile below Drake Creek and records were obtained at this station from September 8, 1922 to September 30, 1923. In 1929 a new gaging station was constructed on Deep Creek, within the E½, Section 15, Township 39 South, Range 23 East, W. M., about one-third mile below Drake Creek and records of the flow of water in Deep Creek from October 10, 1929 to September 30, 1952 were secured at this station.

The water stages were obtained by a staff gage at the station near Wible's residence except for the period from March 10, 1914 to May 27, 1915 when a water stage recorder was installed. Water stage recorders were installed and used at the upper stations.

Twentymile Creek -- Records of the flow of water in Twentymile Creek from November 1, 1910 to June 1922 were obtained at a gaging station located within the SE¼, Section 24, Township 40 South, Range 23 East, W. M. For the period beginning September 21, 1940 to September 30, 1952 the records were

obtained at a station located in the NW¼, Section 25, Township 40 South, Range 23 East, W. M., about three-fourths mile above the old gaging station and about two miles below Twelvemile Creek.

A water stage recorder was in operation during the period beginning December 3, 1914 and ending September 30, 1915 and from September 21, 1940 to September 30, 1952. A vertical staff gage was used to determine the water stage during the remainder of the time that records were secured.

Honey Creek — The records of the flow of water in Honey Creek for the period beginning May 13, 1909 to February 23, 1910 were obtained at the highway bridge near Plush and for the period beginning February 24, 1910 to June 30, 1922 at a station located within the SW¼ SW¼, Section 20, Township 36 South, Range 24 East, W. M. In 1930 the gaging station now in use was constructed about one-half mile below the station established in 1910. This station is located at the mouth of the canyon at the entrance to North Warner within the NW¼, Section 29, Township 36 South, Range 24 East, W. M.

Following is a description of the gages used in obtaining water stages on Honey Creek.

Prior to February 23, 1910 - staff gages; February 24, 1910 to January 12, 1912 - staff gage; January 13, 1912 to May 16, 1915 - water stage recorder; March 15 to April 16, 1921 - staff gage; April 7 to August 31, 1921 - water stage recorders; March 19 to June 30, 1922 - staff gage; April 1930 to September 30, 1952 - water stage recorder.

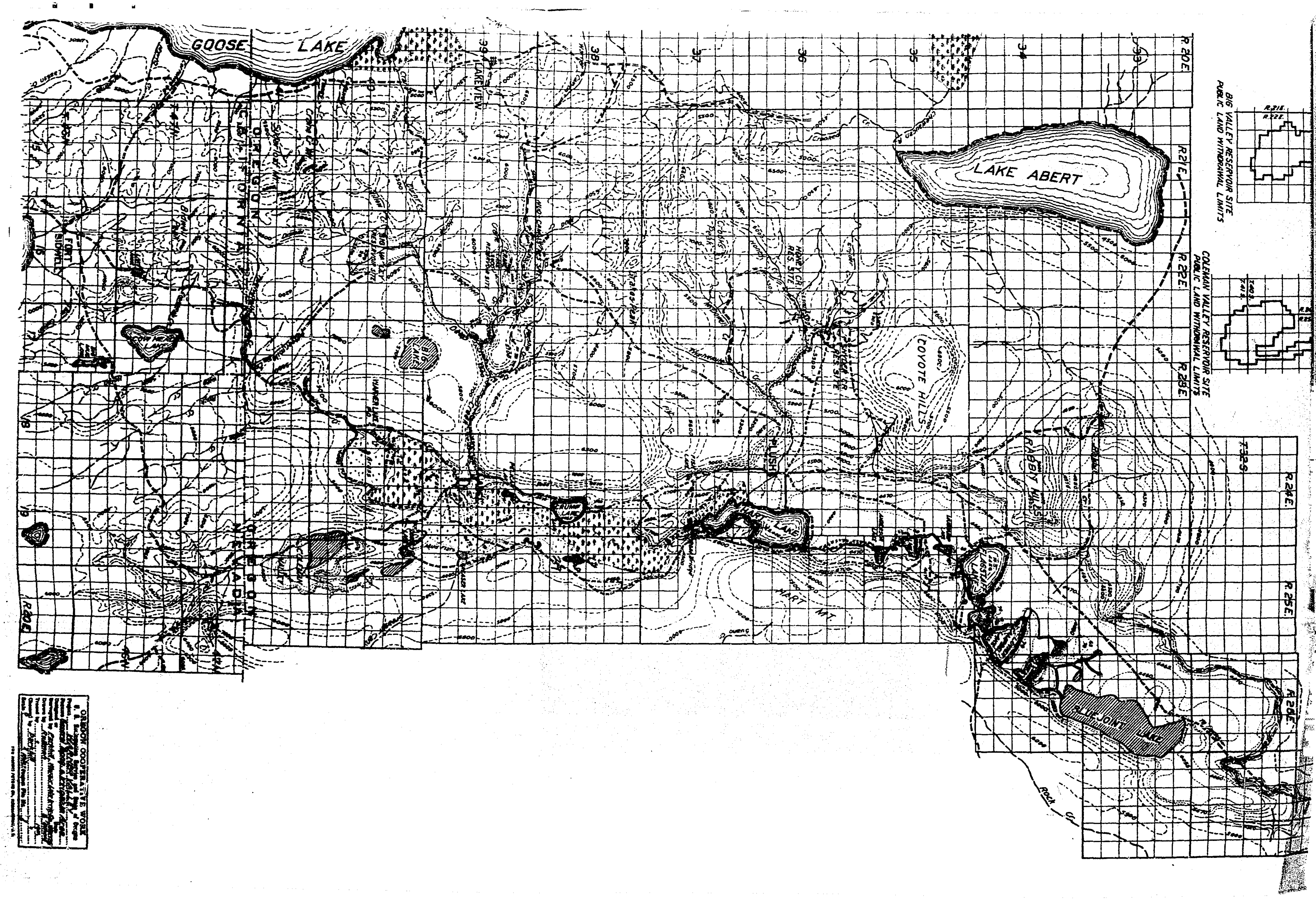
EXHIBIT - 2 -

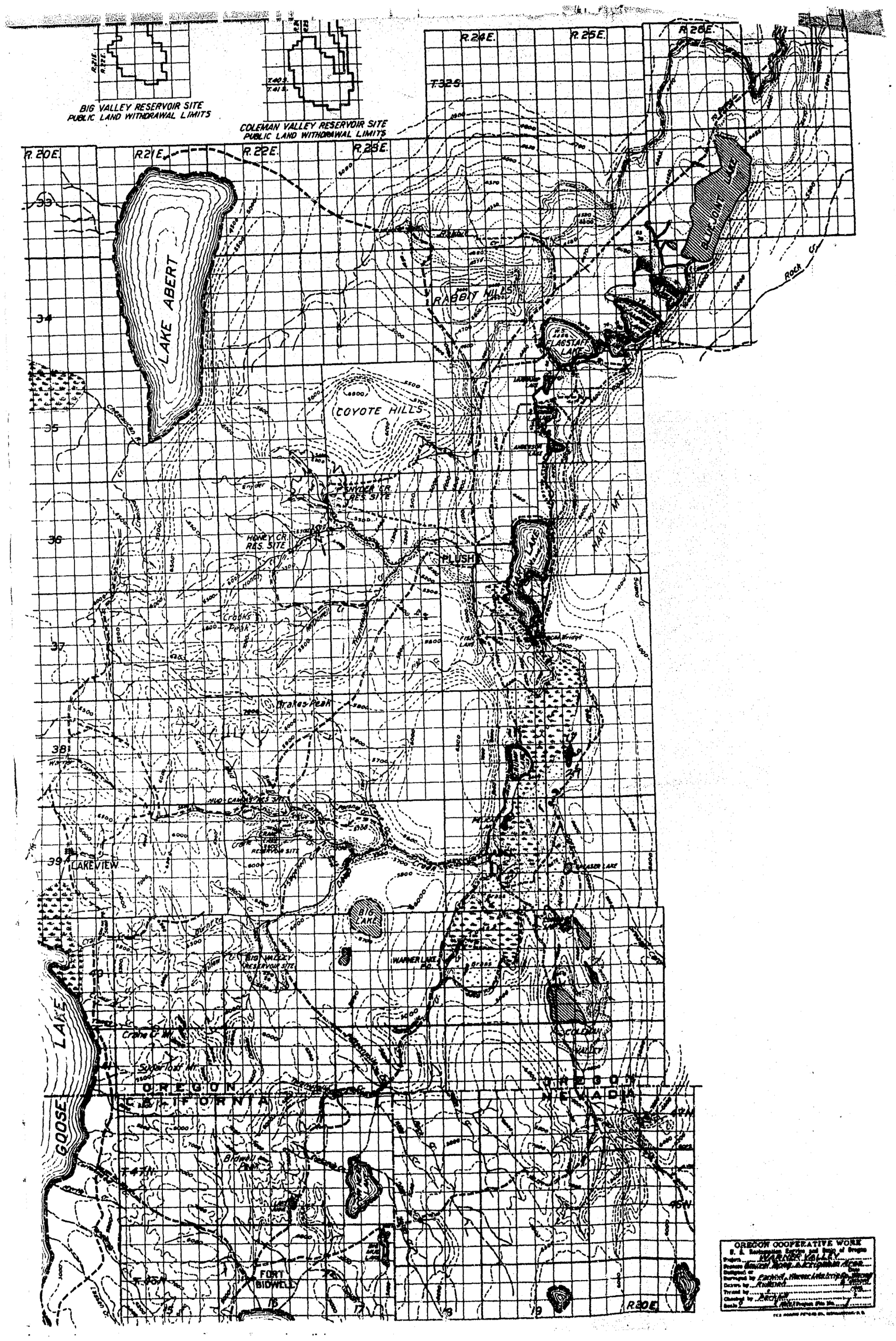
SUMMARY OF RECORDS OF FLOW OF WATER

In Deep Creek, Twentymile Creek and Honey Creek at Entrance to Warner Valley
(In Units of 1000 Acre-Feet)

Year Ending Sept.30	Deep Creek	Remarks	Twentymile Creek	Remarks	Honey Creek	Remarks	Total of Three Streams
1910	141.0		41.2	March to Sep.	47.3	Jan.to Sep.	229.5
1911	122.0		47.9		54.3		224.2
1912	125.0		16.0		19.5		160.5
1913	110.0		18.5		21.6		150.1
1914	111.0		41.5		27.2		179.7
1915	54.6		18.6		6.39	March to May 16	79.59 - No water flowing from Hart L.
1916	79.1		36.6	Oct. to June	no records		
1917	no records		no records		No records		
1918	42.7	Dec.18 to Sep.30	9.68	Dec.16 to Sep.	no records		
1919	77.6		28.5		no records		
1920	no records		no records				
1921	128.8	Feb.to Sep.	20.6	Mar.14 to Sep.	20.0	Mar. 15 to Sep.	169.4
1922	91.4		35.1	Sep. to June	23.4	Mar.19 to June	149.9
1923	68.8		no records		no records		
NO RECORDS FOR PERIOD BEGINNING OCTOBER 1, 1924 TO SEPTEMBER 30, 1929							
1930	48.9		(18.5)		2.48	Apr.24 to Sep.	69.88 - " "
1931	18.1		(7.1)		2.61		27.81 - " "
1932	63.8		(33.8)		10.2		107.80 - " "
1933	34.2		(4.8)		5.83		44.83 - " "
1934	21.61		(14.4)		2.05		38.06 - " "
1935	85.01		(25.9)		10.39		121.30 - " "
1936	85.32		(41.2)		11.79		138.31 - " "
1937	54.95		(8.2)		8.48		71.63 - " "
1938	150.2		(66.6)		40.39		257.19 - " "
1939	45.41		(8.6)		6.41		60.42 - " "
1940	70.29		(27.6)		16.95		114.84
1941	71.52		33.38		14.1		119.0
1942	108.7		36.58		28.79	no record Dec.24 to Mar.6	174.06
1943	169.2		68.77		42.47	no record Dec.7 to Mar.3	280.44
1944	56.68		14.42		10.51	no record Nov.13 to Mar.1	81.61
1945	96.67		20.38	no records for Dec.1 to Mar.12 Dec.,Jan.& Feb.	17.21	no record Nov.17 to Mar.10	134.26
1946	83.40		35.6		16.83		135.83
1947	48.53		10.59		8.0		67.12
1948	91.19		23.42		26.94		141.55
1949	85.13		37.22		19.17		141.52
1950	100.0		35.51		15.89		151.40
1951	114.56		36.28		24.48		175.32
1952	156.6		92.04		41.80		292.44

Flow of Twentymile Creek is for period beginning Oct. 1, 1929 to Sep. 30, 1940, inclusive and is that estimated by Wm. L. Wales and shown in applicant's Exhibit 6. These are enclosed in parenthesis.


GOOSE LAKE
LAKE ABERT
LAKEVIEW
FORT BIDWELL
OREGON
CALIFORNIA
NEVADA
COYOTE HILLS
RABBIT HILLS
PLUSH
HART LAKE
HART MT.
CRUMP LAKE
PLUSH
ROCK CR.
BIG VALLEY RESERVOIR SITE
PUBLIC LAND WITHDRAWAL LIMITS
COLEMAN VALLEY RESERVOIR SITE
PUBLIC LAND WITHDRAWAL LIMITS
R. 20 E.
R. 21 E.
R. 22 E.
R. 23 E.
R. 24 E.
R. 25 E.
R. 26 E.
T. 32 S.
OREGON COOPERATIVE WORK


BIG VALLEY RESERVOIR SITE
PUBLIC LAND WITHDRAWAL LIMITS
COLEMAN VALLEY RESERVOIR SITE
PUBLIC LAND WITHDRAWAL LIMITS
R.20E.
R.21E.
R.22E.
R.23E.
R.24E.
R.25E.
R.26E.
T.32S.
LAKE ABERT
RABBIT HILLS
FLAGSTAFF LAKE
COYOTE HILLS
PLUSH
HART MT.
Drakes Peak
LAKEVIEW
BIG LAKE
WARNER LAKE
GOOSE LAKE
OREGON
CALIFORNIA
NEVADA
FORT BIDWELL
R.20E.
OREGON COOPERATIVE WORK
WARNER VALLEY