

ENGINEER  
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SALEM

BEFORE THE STATE ENGINEER OF OREGON.

IN THE MATTER OF THE APPLICATION ( )  
OF WILLIAM HILLIS FOR A CHANGE IN ) OBJECTIONS AND PROTEST.  
PLACE OF USE OF WATER. ( )

Come now the PLEASANT VALLEY DISTRICT IMPROVEMENT COMPANY, an Oregon Corporation, and ED. DIMMICK; GEORGE BEERS; W. W. WILLIAMS; M. EUBANKS; and O. C. ODEN, water users of the waters of Evans Creek, and object to and protest any change in place of use by William Hillis of the waters heretofore adjudicated and decreed to certain lands in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 Township 35 South Range 4 West W. M., and in support of these objections and protest, respectfully show and allege:

I.

That the PLEASANT VALLEY DISTRICT IMPROVEMENT COMPANY now is, and for several years prior hereto has been, a Corporation organized under and existing by virtue of the Laws of the State of Oregon, relative to District Improvement Companys.

II.

That said District Improvement Company is the owner of a water right of appropriation of the waters of Evans Creek through what is known as the Vroman Ditch, as the successor in interest to one PAUL S. SEELEY; that said appropriation was heretofore and regularly adjudicated, determined, and decreed under and by virtue of a decree made and entered on the 26th day of April, 1919, in the Circuit Court of Jackson County, Oregon, in the matter of the determination of the relative rights to the waters of Rogue River and its tributaries, pursuant to certain

proceedings in said Court duly and regularly had therein subsequent to and before the determination of the said relative rights by the State Water Board of Oregon, under and in accordance with the Laws of the State of Oregon, relative to such proceedings; and that said water right and appropriation as was adjudicated and is decreed is for 15.10 second feet for irrigation, domestic and stock use as of the priority of 1902, for certain lands described in said Decree, in Township 35 S. R. 4 W. W. M., Jackson County, Oregon; and that the members of said Corporation are the owners of said lands and water users from said Vroman Ditch, of the waters of Evans Creek.

### III.

That the protestants, Ed. Dimmick; George Beers; W. W. Williams ; M. Eubanks; and O. C. Oden are the owners of rights of appropriation of the waters of said Evans Creek through what is known as the Williams and Whalen Ditch, having a decreed and adjudicated priority under and by virtue of said Decree, as of the year 1896, the respective lands and rights of said last named water users being more fully set forth and described in the said Decree now on file and of record in said Court and the office of the County Clerk of said Jackson County, Oregon.

### IV.

That the Applicant, William Hillis, was adjudicated and decreed by said Decree a right to the appropriation of the waters of said Evans Creek through what is known as the Fielder or Hillis Ditch as of the priority of 1881, for 1.49 second feet, for the irrigation of Eighty-nine (89) acres described as follows, to-wit:

IRRIGATED: 28 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; 22 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
3 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; 6 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; Section 12; 10  
acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 11;

TO BE IRRIGATED: 20 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 11,  
Township 35 South Range 4 West W. M., Jackson County, Oregon.

V.

That heretofore and prior to the entry of said Decree and on or about the 2nd day of January, 1912, the said William Hillis appeared in the said proceedings, and submitted therein to the State Water Board, ~~ix~~ of Oregon, his statements and proof of claim wherein and whereby he claimed a right of appropriation of the waters of Evans Creek through said Fielder or Hillis Ditch, and of priority of 1881, for the following described lands owned by said Claimant, to-wit:

28 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; and 22 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12 Township 35 South Range 4 West W. M.; which said Claimant represented and alleged were at said time actually under irrigation, and in addition thereto claimed a right as of said priority through said Ditch, for the irrigation of 22 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, said Township and Range. That in said Proof of Claim the said Claimant also described and included the said Tract of land referred to in said Application for change in place of use, as 10 acres of land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 11, owned by W. J. Ingledue who has heretofore "rented water of Claimant"; and also 3 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 12, owned by Thos. Oden who rents from Claimant.

VI.

That the said William Hillis never was, and is not now the owner of the said 10 acres described in his said

Application as in said NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and that several years prior to the commencement of said Adjudication proceedings, the owner and occupant of said lands last mentioned, used the waters of said stream through the said Fielder Ditch for irrigation thereof with the permission and consent of the said William Hillis; and that the said waters of Evans Creek have been occasionally, from time to time, with the consent and permission of said William Hillis, used through said Ditch for the irrigation of said 10 acre tract, but that the said William Hillis has never had an appropriation of the waters of said stream for said land, and never claimed a right therefor as for himself, but only for the use and benefit of the owner and occupant thereof at the time said claim was filed, to-wit: One W. J. Ingledue; and that if any water right whatsoever, through said Ditch, is appurtenant to said Tract of land, it belongs to, and is owned by the owner of said land.

#### VII.

That the said Proof of Claim of the said William Hillis was based upon a survey made by the State Engineer which is now on file, and a part of the record in said proceedings; and that the only lands under said ditch owned by said William Hillis, at the time said Certificate was made, are situate in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 12, between said Ditch and Evans Creek. That the said State Engineer's plats and survey are inaccurate, and incorrect; and these Protestants allege and believe that the said William Hillis, under said Ditch, has never had in excess of 40

acres under irrigation therefrom, at any time, including all lands for which water was allowed, and which had not been irrigated at the time of filing said Claim; and that the said William Hillis never used and never had the right to use on said 10 acre tract, in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 11, any water whatsoever through said Fielder Ditch; and that if any water whatsoever has ever been used upon said lands, it has only been occasionally, by renters and occupants thereof, and if any right of appropriation whatsoever is appurtenant to said 10 acre tract, through said Ditch, or any ditch from Evans Creek, it belongs to and is the property of the owner of said tract, and not to the said William Hillis.

#### VIII.

That the Protestants believe and allege that the said Applicant now has an allowance of water through said Fielder Ditch in excess of the acreage irrigated therefrom, by him; and that he is diverting and has diverted heretofore more water per acre than was adjudicated and decreed unto him and by virtue of said Decree; and said Protestants believe and allege that it is the purpose and plan of said Applicant to secure a transfer of said water alleged to belong to said 10 acre tract to the lands of said Applicant in said Section 12, for the purpose of increasing the amount of water per acre in excess of the amount allowed by said Decree; and that the amount of water allowed by said Decree unto the said Applicant, as set forth in Paragraph 7 of said Decree, and as determined and established by the Order of said State Water Board; and to which this said Claimant is entitled, is at the rate of .016 second feet per acre; and that the said Hillis has no additional lands under said

Ditch to which to apply said water in the said NW $\frac{1}{4}$  of said Section 12.

That the said Fielder Ditch diverts water of said Evans Creek below the said William and Whalen Ditch, and above the said Vroman Ditch; and that the proposed change of place of use to said lands in said NW $\frac{1}{4}$  of said Section 12, from said 10 acre tract in Section 11 would result in serious injury and damage to these Protestants, inasmuch as it would increase the amount of water per acre allowed said Applicant under said Decree, and for the reason, further, that said Applicant has not now, and never has had any water right appurtenant to said 10 acre tract as of the priority 1881, or any other date; and that said proposed change would confer upon said Applicant a priority of appropriation over these protestants for 10 acres of land in addition to the lands actually owned and irrigated by said Applicant from said Fielder Ditch. Protestants further allege that the said William Hillis, through said Fielder Ditch has heretofore, and now is pretending and claiming to irrigate land belonging to him in the NW $\frac{1}{4}$  of said Section 12 an acreage of 50 acres, and lands in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 11 having an acreage of 20 acres, whereas, your Protestants believe and allege that the total acreage of land owned by said Hillis, and irrigated from said Ditch have never been in excess of 40 acres, and are not now in excess of 40 acres; and that a survey-~~xxxxxx~~ should be made by the State Engineer to determine the area of land irrigated under said Ditch, by the said Hillis, and the actual area thereof determined in this proceeding.

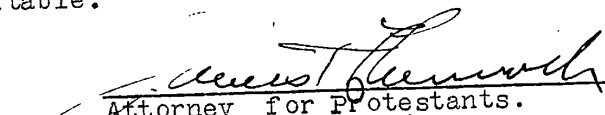

That there is every year a shortage of water in Evans Creek, and the decreed priorities of appropriation are during a part of each irrigation season in excess of the amount of water available in said stream; and that if said transfer is allowed the said William Hillis will divert and claim the right to divert the amount of water allotted to said ten acre tract upon his said lands in said NW $\frac{1}{4}$  of said Section 12, and to which water was decreed by said Decree for all thereof, in said SW $\frac{1}{4}$  susceptible of irrigation from said Ditch, or said Applicant will use said additional water so transferred upon lands above said Ditch by pumping therefrom, and thereby claim priority over the rights of these protestants for lands never irrigated heretofore by him, and the water Master having charge of the distribution of said waters will distribute said additional waters to said Fielder Ditch, and require the users through said Williams and Whalen Ditch to allow the amount thereof to flow past the intake of said last mentioned ditch and will distribute the same to said Fielder Ditch above the head of said Vroman Ditch during the dry season of the year when the use thereof is needed and required by Protestants, and the rights of these Protestants will be injured, and they will suffer irreparable loss and damage as a result thereof.

That the inclusion of said ten acre tract in said NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 11 in the said Decree under the name of said William Hillis, and the allotment of water thereto through said ditch under the name of said Applicant was obviously and apparently a clerical error and mistake, and if said tract was entitled to any allotment of water whatever from said ditch it should have been decreed unto the said Ingle-

due; and that Protestants believe and allege that the purpose

of including said tract in the claim of said Hillis was to establish for said tract of land a water right through said Fielder Ditch appurtenant to said tract for the use and benefit of the owner thereof, and not for the use or benefit of said Hillis.

WHEREFORE, Protestants pray that upon the Hearing of said Application evidence be taken and an Order be made denying the said Application; and that a survey of the lands of said Hillis under the said Fielder Ditch and actually irrigated therefrom, be made by the State Engineer, and the actual area thereof be determined and the water Master be directed to distribute therefor and to said Fielder Ditch the amount of water per acre for the acreage actually under irrigation in accordance with the amount per acre determined and decreed by said Decree and no more; and that Protestants have their costs and disbursements and such other and further relief as may be proper and equitable.

  
Attorney for Protestants.  




STATE OF OREGON, }  
County of Josephine, } ss.

I, Ed. Dimmick being first duly

sworn, depose and say that I am <sup>one of</sup> the protestants

in the above entitled cause, and that the facts stated in the foregoing pleading are true as I verily believe.

Ed. E. Dimmick

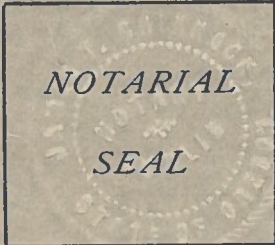
Subscribed and sworn to before me this 24 day of

September 1927

James T. Plummer

Notary Public for the State of Oregon.

My Commission Expires Feb 15-1928



I hereby certify that the foregoing is a true copy of the original pleading.

Attorney for \_\_\_\_\_

STATE OF OREGON, }  
County of Josephine, } ss.

Due service of the within pleading is hereby accepted in Josephine County, Oregon, this \_\_\_\_\_ day of \_\_\_\_\_ 192\_\_\_\_, by receiving a copy thereof duly certified to.

Attorney for \_\_\_\_\_

*Copy served on  
Chas Peaves  
Medford*

J. Roll No. -----

Case No. -----

*before* ~~in~~ THE *State Engineer*

CIRCUIT COURT

OF THE

STATE OF OREGON

FOR

JOSEPHINE COUNTY

*Re application*

*of* ~~Plaintiff~~  
*vs.*

*William Helles*

~~Defendant~~

*Proctor*

Filed -----

Clerk.

By -----

Deputy.

JAMES T. CHINNOCK

GRANTS PASS, OREGON

Attorney for *Proctor*

Proctor, Prompt Printer