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BE IT REMEMBERED that at a regular term of the Circuit Court of the State of Oregon for Umatilla County, begun and held in the County Court House in Pendleton, in said County and State, on Monday the 19th day of September, 1910, the same being the Third Monday in the said month, and the time fixed by law for holding a regular term of said court.

PRESENT. Hon. H. J. Bean, Circuit Judge
Frank Saling Clerk
T. D. Taylor Sheriff
G. W. Phelps Dist. Atty.

WHEREUPON a term of said Court is begun and held on Thursday the 29th day of December, 1910, the same being the fifty-first Judicial Day of said court, when among other proceedings were had to-wit:

Little Walla Walla River Irrigation
Union, a private corporation, et al
Plaintiffs, and the Peacock Milling
Company, a private corporation, inter-
venor, Plaintiffs

vs
Pinto Irrigation Company, a corporation
et al, Defendants

6/29/99
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M. Sugrue

D E C R E E

Now on this day this cause coming on for hearing upon the findings of fact, conclusions of law and the record herein, the Plaintiff and the Peacock Milling Company appearing by Carey M. Rader, their attorney, the Milton Ditch Cockburn defendants Milton City, the Up River defendants and the Perkins Ditch defendants by James A. Bee, their attorney, Martha A. Crow, and Mrs. S.L. Bennett by W. F. Crow, and T. P. Gose, the Tumalum, the East Side Irrigation Company, and the Loundagin Irrigation Company by G. W. Phelps, C. T. Godwin and Raley & Raley, the Milton, Freewater and Hudson Bay Irrigation Company by C. T. Godwin and R. J. Slater, the Pinto Irrigation Company by Sam Peterson, and all other defendants being represented by their respective attorneys, as shown by the record herein, and the court having fully considered said findings of fact, and said conclusions of law and said record being fully advised in

the premises and based upon the said findings, conclusions and record;

It is hereby ORDERED, ADJUDGED AND DECREED that each of the parties to this suit, whose names appear in the findings of fact herein, and their successors in interest, whose lands have been and are entitled to be irrigated from the waters of the Walla Walla River, or any of its branches, except as herein-after or otherwise provided, shall have and take from the respective streams, channels or ditches, described in the findings of fact, from which each of said land owners and irrigators have in the past taken water for irrigation, stock and domestic purposes, 1.5 miner's inches of water, measured under a six inch pressure, miner's measurement, for each acre and for each fraction of an acre, with an additional one-half inch for each acre and for each fraction of an acre cultivated to garden or small fruits, and each tract of one acre or less shall be entitled to receive two inches of water, measured as aforesaid, for irrigation, stock and domestic purposes, except defendant, A. Miller, who shall be entitled to have and take for the purpose of irrigating his nursery on the hill, which has been irrigated by a pumping plant, an amount of water equal to that which can be raised on said land by means of a pump having a capacity of 250 gallons per minute and operating not to exceed 18 hours during each 24 hours.

It is further ORDERED, ADJUDGED AND DECREED that the water which is taken through the Peacock Mill flume and race shall be divided between the numerous small streams and canals of the Little Walla Walla river as nearly as possible in proportion to the amount of land which is irrigated from each of the said several small streams and channels.

It is further ORDERED, ADJUDGED AND DECREED that in case there is not, at any time, sufficient water with which to

irrigate the several tracts of land mentioned and decreed in the findings herein, and to furnish water for power for said Mill Company and water for stock and domestic purposes, allowing each irrigated acre tract the amount of water herein found, to be necessary for such irrigation, then the tract of land which have been irrigated for the longest period of time and the oldest appropriation for power purposes shall be deemed to have a prior right to such water, and the amount and right decreed to the Peacock Mill Company shall be deemed to date and take priority from and according to the dates of appropriation, except that the parties shown by the findings who have used water for ten years or more prior to the commencement of this suit, shall at no time be disturbed in the use of the waters awarded by this decree to the extent of such award or to their pro rata share thereunder in case of scarcity, nor shall the Milton Ditch or the users thereunder at any time be disturbed in the amount of water hereby decreed to the said Milton Ditch which rights of the said Milton Irrigation Company are prior in time and superior in right to all of the rights herein, decreed, except the rights of the Cockburn and Nichols defendants which are prior in time and superior in right to the rights of the said Milton Irrigation Company.

It is further ORDERED AND DECREED that there shall not be diverted into any ditch, water in excess of that herein decreed to be necessary for irrigation, stock and domestic purposes upon the lands irrigated from said ditch, and when water is turned into such ditch for irrigation of land thereunder is not being used except that the Milton Ditch shall not be subject to this limitation, the said water so far as reasonably possible shall be turned back into the river, or channel from which it was taken, or if the amount not being used cannot be returned, then the amount diverted at the intake of the ditch or small stream shall be reduced so that the amount actually being beneficially used shall as nearly as possible correspond with the amount diverted,

allowance being made for seepage and evaporation and for stock and domestic purposes. When such water is returned to or allowed to remain temporarily in the channel on account of the same not being temporarily needed no rights shall be lost by reason of such non-usage, and none gained by those who may have temporarily used such water.

It is hereby further ORDERED, ADJUDGED AND DECREED that the parties to this suit who reside upon and own land on the numerous small streams and branches of the Little Walla Walla River below the Peacock Mill property in case the said Peacock Mill Company fails, neglects or refuses to convey through its said mill race and flumes the amount of water to which said Peacock Mill Company is entitled to divert under this decree that then and in that event said parties entitled to take and use water from said stream and branches below the said Peacock Mill shall have the right to enter upon the Wallawalla River at the point where, under this decree, the said Peacock Mill Company diverts water and to there take and divert into the channel of the little Walla Walla the amount of water which said Peacock Mill Company is entitled to divert at said point or so much thereof as may be necessary to furnish the amount of water provided by this decree, but no right shall be acquired therein adverse to said Mill Company.

It is further ORDERED, ADJUDGED AND DECREED that Flossa Bartlett, Blake Bartlett, Ima Bartlett, Hallie Bartlett, and Evaline Bartlett are entitled to four (4) inches, miners' measurement of water with which to irrigate in the manner herein provided two acres of the following lands, to-wit:

Beginning at the southwest corner of the Northwest Quarter of the Northwest Quarter of Sec. 35 Tp. 6 N. R. 35 East, in Umatilla County, Oregon, running thence North 32 rods, thence East 25 rods, thence south 32 rods, thence west 25 rods to the place of beginning.

It is further ORDERED, ADJUDGED AND DECREED that the Peacock Mill Company has the right, subject to the limitations, herein contained, to take and convey through the canals, flume mill race and penstock two thousand inches miner's measurement under six inch pressure appropriated July 1888, 750 miner's inches appropriated in 1898, and 850 inches of water appropriated in 1904, making a total amount of 3600 inches of water miner's measurement under six inch pressure for the purpose of furnishing power with which to run and operate the said mills, and to secure such water said Peacock Mill Company, its successors and assigns, shall be and are entitled to divert into its mill race and flume all the water flowing into the Brown and Miller mill races where they empty into the Little Walla Walla River and sufficient of the water flowing in the Walla Walla River at the Red Bridge located at the east end of Fair Street in the City of Milton, provided however, that said amounts so awarded to Peacock Mill Company shall not exceed two thirds of the combined amounts of water flowing in the Brown and Miller mill races and the Walla Walla river at said red bridge and further provided that the right or priority to the use of such water shall date from the date of the appropriation made by said Peacock Mill Company as above stated in the same manner as the amount awarded to the different irrigators of land by the provisions of this decree.

And it is further ORDERED, ADJUDGED AND DECREED that there is hereby awarded to the defendant, the Milton Irrigation Company and the users under the Milton Irrigation ditch 725 inches of water measured under a six inch pressure miners measurement to be measured at the head of the said Milton ditch as described in the findings of fact herein, that the said amount of water when so measured shall be entitled to continuously flow in and through the said ditch to the several users under the same and that the said amount of water shall not be subject to any of the other provisions of this decree; that a proper head gate

and measuring devise shall be maintained by said Milton Ditch Company at the intake of its ditch.

It is further ORDERED, ADJUDGED AND DECREED that the Tumalum defendants, the East Side Irrigation Company and the Loundagin Irrigation Company, J. D. McCoy, B. M. Johnston, I. Heldenrich, and Mary A. McCoy, are entitled to have flow down the Tumalum branch of the Walla Walla River at the point where the same is separated from the Little Walla Walla river, known as the Red bridge, the amount of water necessary to irrigate all lands now owned and irrigated by them or any of them as shown by the data on file herein and a sufficient quantity for domestic use and stock watering purposes, being a total of 950 inches, miners measurement under six inch pressure, provided however, that the said amounts awarded to said defendants to flow down the Tumalum river shall not exceed one-third of the combined amounts of water flowing in the Brown and Miller Mill races and the Walla Walla river at said red bridge, and the right to have the said amount of water flow down the Tumalum river at said point of diversion, not exceeding however, said one-third, is superior in right to the right of any other parties to this suit, except the right of the Milton Irrigation, and the Cockburn and Nichols defendants as provided herein.

It is hereby ORDERED, ADJUDGED AND DECREED that the Perkins ditch and those persons using by through and under the same shall receive and take the quantity of water to which the said several users are entitled from the stream at the head of the Peacock Mill race where the said Peacock Mill Company divides the water at the red bridge, and that the same shall be conveyed through the said Peacock Mill flume and race pursuant to the stipulation on file herein, and delivered by the said Peacock Mill Company to the said Perkins ditch and the users thereunder in the Perkins ditch as the same now exists where the said Perkins ditch crosses the waste ditch of the Peacock Mill Company at the corner of the

Peacock Mill, as it stood prior to the commencement of this suit; that the amount of water awarded by this decree shall be delivered by the said Peacock Mill Company into the said ditch at said point without cost to the said Perkins ditch or the users thereunder.

It is further DECREED that the city of Milton is entitled and shall receive at all times through its present 14 inch intake water pipe located on the west bank of the Little Walla Walla river, and having its intake about $1\frac{1}{2}$ miles above the bank building on Main Street in the said city, a continuous flow of water measured under a pressure of 3 feet of water above the upper surface of its pipe for domestic, irrigation, street sprinkling, fire and other purposes in pursuance with the stipulation heretofore filled herein.

It is further ORDERED, ADJUDGED AND DECREED that the UP River defendants, that is those persons made defendants in this suit, who own lands situated and irrigated above the city of Milton, shall be and each of them is entitled to take and divert through the ditches, channels, flumes and canals through they are now or have heretofore used or diverted water, 2 inches of water per acre, for each acre to be irrigated, ~~and 2 inches of water per acre, for each acre to be irrigated,~~ and 2 inches for each fraction of an acre to be irrigated.

It is hereby further ORDERED, ADJUDGED AND DECREED that the defendants known in the findings herein as the Cockburn defendants are entitled to and shall receive through the Nichols ditch, the Cockburn ditch, the Milton ditch, or such other ditches, flumes or canals as they are now using water through or have heretofore used water through for the irrigation of their several tracts to the amount in this decree heretofore specified, and for stock and domestic purposes, to-wit: one and one half inches of water measured under a six inch pressure, minors measurement for each acre of land irrigated, and one and one half inches of water, measured under said pressure for each fraction of an acre of

land irrigated, and an additional one half inch of water for each acre or fractional acre of land planted to garden or small fruits.

It is further ORDERED, ADJUDGED AND DECREED that all measurements of water awarded under this decree (except that the water awarded to the Milton Ditch Company which shall be measured at the head of the said ditch) to be used for irrigation purposes, or stock or domestic use, shall be measured at the line of the premises where water first enters on any lands to be irrigated under this decree and upon which the water is about to be applied.

That any party to this decree may change the point of his diversion without the loss of right, and may from said new point of diversion divert the quantity of water awarded the said party hereby.

That each of the parties to this suit is hereby given 90 days from and after this date within which to correct or amend any description of land contained in the findings of fact herein or to correct any findings as to the quantity of land irrigated, to what irrigated or the length of time the same has been irrigated; that if said corrections are not made within said time the said findings of fact and conclusions of law shall then be recorded by the clerk of this court and spread at large upon the journals of said court as the basis of this decree; that said original findings shall remain in the custody of the clerk of this court until they are entered of record herein.

That no party to this suit or other person, shall make any alternation or change in the said findings or conclusions unless by permission of the court first duly had and obtained.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the costs of dividing the water at the red bridge between the Tumalum defendants and the parties to this suit, who receive water through the Little Walla Walla river should be borne jointly the Peacock Mill

Company and the irrigators upon the Little Walla Walla river should bear seventy per cent of the costs of such division, and that the Tumalum defendants should bear thirty per cent of the said divisions.

It is further ORDERED, ADJUDGED AND DECREED that the land irrigated and lying below the forks of the Little Walla Walla river and including the R. M. Dorothy place at said forks, shall pay at the rate of \$1.10 per acre, and fractions of an acre their proportionate part of \$1.10 per acre; that the Tumalum defendants and the users through the Loundagin Irrigation Company ditch and the East Side Irrigation Company ditch shall each pay \$1.40 per each acre of irrigated land, irrigated from the said Tumalum river, or the Loundagin Company ditch or the East side Irrigation Company ditch, and for each fraction of an acre of land irrigated from either the said Tumalum, Loundagin or East side Irrigation Company ditches, its proportionate part of \$1.40 per acre; that the Milton, Freewater and Hudson Bay Irrigation Company shall each pay \$150., J. D. McCoy, Mary A. McCoy, B. M. Johnson, T. Heidenrich shall each pay \$12.50 and the said Peacock Milling Company shall pay \$1000. or such part thereof as remains of the costs, disbursements and expenses incurred in this suit after the payment of the sums assessed against the irrigated lands and against the said Milton Freewater and Hudson Bay Irrigation Company.

That the said costs, disbursements and expenses to the extent of the amounts, hereinbefore set forth, are hereby declared to be a lien to the extent of \$1.10 per acre upon each irrigated acre of land and a proportionate part of \$1.10 per acre for each fraction of an acre of irrigated land of all the parties to this suit, except the parties taking and receiving water through the Tumalum River, the Loundagin Irrigation Company ditch and the East Side Irrigation Company ditch, and upon such lands irrigated from the sources last above mentioned

there is hereby declared to be a lien to the extent of \$1.40 per acre and for each fraction of an acre its proportionate part of \$1.40 per acre.

That \$150 assessed against the said Milton, Freewater Hudson Bay Irrigation Company is hereby declared to be a lien upon the said property of the company until the same is paid; that there is hereby declared to exist a lien against the said Peacock Mill Company, its mill, flume, ditches and dam until the said \$1000 or such part thereof as the foregoing lien against the property of the said Milton, Freewater and Hudson Bay Irrigation Company and against the said irrigated lands fails to produce.

That it shall be the duty of the county clerk to note under this decree the receipt of the amount of money assessed against any piece or parcel of land, and such entry and receipt shall constitute a cancellation of the said lien so far as the same effects the premises upon which said payments has been made.

That the Peacock Milling Company shall have execution to enforce the payment of costs herein after the expiration of 90 days.

That when said costs are paid to the clerk of this court he shall distribute the money as follows: \$1809.50 to the Little Walla Walla Irrigation Union, which is included in the amount stated in the findings herein as due the Peacock Mill Company \$3509.50 and the remainder of said money to be paid to the persons named in the findings herein.

It is further ORDERED, ADJUDGED AND DECREED that the lands irrigated from any stream, channel or ditch mentioned in this decree shall be kept in good state of cultivation, and the ditches and lands, free from weeds so that the duty of water hereby established shall be sufficient to properly irrigate the said lands.

It is further DECREED that before the irrigation season of 1913 commences there shall be established and maintained

thereafter, at the place where water first enters the several tracts of land to be irrigated a measuring box, or appropriate measuring device for the purpose of measuring the quantity of water awarded each of the said tracts to be irrigated as shown by the findings herein, so that the same can be conveniently measured by a civil engineer, except that the Milton Ditch and the users of water through the said Milton ditch shall divide the water equitably among the users thereof under the said ditch upon the basis of 725 inches of water measured under a six inch pressure, awarded to the said ditch, measuring devices to be established at the line of the several tracts of land to be irrigated from the said ditch to measure the quantity of water distributed to each of the several tracts by and through the said ditch.

That the cost and expense of establishing measuring boxes and appropriate devices for the purposes of measuring the water awarded the several tracts, described in the findings of fact herein, shall be paid by the owner of each tract to be irrigated; that if any party to this suit, or his successors, or assigns, shall fail to establish said measuring boxes and measuring devices within the time hereinbefore provided, that then and in that event the said party so neglecting to establish the said measuring box or measuring device shall not be entitled to take or receive any water nor to irrigate his said land with any water so taken until he shall have complied with the said requirement and shall have at his own expense established said measuring box or device.

It is further ORDERED, ADJUDGED AND DECREED that the Pine Irrigation Company, under and pursuant to its stipulation made a part of the findings of fact, herein, is entitled to take all of the surplus water flowing in the Milton ditch, after all of the parties claiming by through and under said ditch have been supplied with all necessary water for their

lands as hereinbefore provided.

It is further ORDERED AND DECREED that said Fines Irrigation Company, its successors or assigns, shall have no right, title or interest in or to any of the water flowing into said Milton Ditch, and no right power or authority to enter upon the line of the said ditch or to take water therefrom or to turn water into the said Milton ditch or to demand that a greater quantity of water or any water shall flow therein and the said Fines Irrigation Company shall in no manner interfere with the management, control or operation of the said Milton ditch or the waters flowing therein at any season of the year. That the water hereby awarded the said Fines Irrigation Company is such water as may be permitted by the said Milton ditch and the defendants interested therein to flow past their premises and the end of the said Milton ditch.

It is FURTHER ORDERED AND DECREED Milton, Treewater and Hudson Bay Irrigation Company is the owner of and entitled to divert since the 16th day of February, 1903, two-fifths of all the water flowing naturally in the Little Walla Walla river between the 15th day of October of each year and the first day of the following April and no more. And between the 1st day of April and the 15th day of October of each year any surplus water flowing in the said Little Walla Walla river in excess of 4000 inches, measured under six inch pressure miners measurement, and that the point of diversions the head gate of the Milton, Treewater Hudson Bay Irrigation Company, near the southeast corner of the Northwest quarter of the northeast quarter Section two, Township five North Range thirty five E. W. N.; provided however, that as against the plaintiffs to this suit the said Milton, Treewater & Hudson Bay Irrigation Company shall acquire no right to have flow past the point where the waters of the Walla Walla river are divided between the Tumalum and the Little

Walla Walla and down the Tumalum any water which may be required in the Little Walla Walla for the proper irrigation of the lands thereunder to be irrigated under the provision of the decree; that the said Milton, Freewater Hudson Bay Irrigation Company, its assigns, successors in interest shall bear their pro rata expense of the maintenance of the necessary canals, dams and flumes and head gates in the Little Walla Walla river above the said defendants said point of diversion, said sum to be in proportion to the quantity of water in the Little Walla Walla diverted or caused to flow therein by the said defendants, and that the said Milton, Freewater & Hudson Bay Irrigation Company shall maintain at their point of diversion the necessary flumes, gates, dams and viers necessary to properly measure and control of the water of the said Little Walla Walla river, and that said stipulation on file in the findings of fact herein be enforced according to its terms and conditions against the parties and in favor of the parties thereto.

It is further ADJUDGED AND DECREED that the said Milton, Freewater & Hudson Bay Irrigation Company shall have the right to divert into the ditch of the said company where the same taps the Tumalum river flood waters which may be flowing said Tumalum after the said Tumalum river defendants have been supplied with not to exceed 850 inches of water, measured under a six inch pressure minors measurement, the said Peacock Milling company has been supplied with water to the extent of 3600 inches measured under said pressure, plus the amount in said Peacock Mill race and flume that is awarded to the Perkins ditch defendants under this decree, and after all irrigators and water users who receive water from the Little Walla Walla above the Peacock Mill Company have been supplied with water in accordance with this decree.

It is further ORDERED, ADJUDGED AND DECREED that there shall flow down to and upon the premises of the Interveners J. D. McCoy, B. M. Johnson, I. Heidenrick, and Harry A. McCoy, at all times from the East Side Irrigation Company ditch,

through the channel of what is known as Little stream, or through a ditch of sufficient capacity to be constructed by, or at the expense of the East Side Irrigation Company, sufficient quantity of water for stock and domestic purposes upon the premises of each of said intervenors.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any further expense arising in connection with the carrying into effect of this decree so far as the establishment of other measuring boxes or devices than those hereinbefore provided for, shall be paid for by the parties using water through the ditch, or ditches, channels or streams where said additional measuring boxes are established.

H. J. Bean, Circuit Judge.