

BEFORE THE STATE ENGINEER OF OREGON

GRANT

Count Y

In the Matter of the Determination of the Relative Rights
to the Waters of JOHN DAY RIVER
and its Tributaries,
a Tributary of COLUMBIA RIVER

STATEMENT AND PROOF OF CLAIM

#2.
DAD'S CREEK.

(The claimant must submit separate proof as to each ditch through which a water right is claimed.)

I, the undersigned, of Prairie City, Oregon, being called as a witness in support of this statement of claim, and being first duly sworn, testify as follows:

1. Q.—What is claimant's name and postoffice address? If a corporation, give the place of incorporation and the authority by which you make this proof.

A.— Herbert Ricco & Henry Ricco, partners, Prairie City, Oregon
(If this proof is made by you as agent, or attorney, the written

authorization therefor must be signed by the claimant upon the back hereof.)

2. Q.—Do you claim a right to the waters of the above named stream or a tributary thereof? If from a tributary, give its name.

A.— Yes--from Dad's Creek.

3. Q.—What is the nature of the right or use on which this claim to the waters of said stream is based?

A.— Irrigation and stock water.

(Irrigation, power, mining, domestic, stock, etc.)

4. Q.—How was such right initiated, or upon what is it based?

A.— diversion and use.

(Appropriation, diversion and use, etc.)

5. Q.—State the date of the initiation of such water right. A.— 1866

6. Q.—What steps were taken by this claimant or his predecessor in interest to initiate said right? Answer fully, attaching separate sheet if necessary.

A.— Ditch dug from West bank of Dad's Creek near center of NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, Tp. 12, South, Range 34, E.W.M., running in westerly direction. See supplemental statement.

7. Q.—When was water first used for irrigation, or other beneficial purposes?

A.— About 1880. See Supplemental Statement.

8. Q.—State the means of utilizing such water, giving the name by which the ditch is most commonly known, if a ditch is used.

A.— Water conducted into and through ditch; called Dad's *ditch*

9. Q. State the interest claimant has in such ditch, with the names of any other water users interested therein.

A.— Claimants own 2/3rds. interest in ditch. Mrs. W. J. Norton and others other 1/3 interest.

[Proof No. 1140]

(Stipulation -- see Contest # 36)

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10. Q.—State the date of the beginning of construction. A.—1866

11. Q.—State the date of completion. A.— Probably 1867

12. Q.—State the dimensions of the ditch canal or pipe line as originally constructed, just below the wasteway or headgate.

A.—Width (top) 3 feet; width (bottom) 2 feet;
depth 2 feet; grade or fall in feet per 1,000 feet, 10 feet.

13. Q.—If said ditch has been enlarged, state the date of beginning and completion of each enlargement, and its dimensions as enlarged.

A.—..... No enlargement.

First enlargement—Width (top) feet; width (bottom) feet;
depth feet; grade, or fall per 1,000 feet, feet.

Second enlargement—Width (top) feet; width (bottom) feet;
depth feet; grade, or fall per 1,000 feet, feet.

14. Q.—State the area of land which your ditch, as originally constructed, was intended to irrigate. A.— --- --- --- acres. See Supplemental Statement.

15. Q.—If water is used for irrigation, state the number of acres reclaimed and irrigated the first year. A.— See Supplemental Statement.

16. Q. How many acres were irrigated each subsequent year up to and including the present year? A.— See Supplemental Statement.

17. Q.—How many acres were irrigated after the first enlargement of said ditch? After each successive enlargement?

A. — See Supplemental statement.

18. Q.—Give the number of acres irrigated under said ditch at the present time in each smallest legal subdivision (40-acre tract), using the following form. (The lands have been surveyed and are shown on the plat of the State Engineer, which you may examine at the time of the hearing. Your answer to this question should conform to those maps, unless you object to the same and submit maps of your own showing such information. No proof will be accepted which does not answer this question in detail.) (Attach separate sheet if necessary.)

A. —

[illegible]

Total.....87.....acres.

19. Q.—State the character of the soil and kind of crops cultivated.

A.— Dark loam. Hay-grain-orchard-garden and pasture.

20. Q.—When does the irrigating season begin and when does it end, and if water is used for other purposes, during what months is it used?

A.— April 1st. to Oct 1st.

21. Q.—What amount of water do you estimate is necessary for the proper irrigation of the lands which you are irrigating or propose to irrigate, or for any other purpose for which a right is claimed?

A.— At least one inch per acre.

22. Q.—Do you accept the maps prepared by the State Engineer as showing correctly the location of said ditch and the lands irrigated therefrom?

NOTE—In case there is objection to the official plat or a part thereof the parties objecting must, when giving proof, file a written statement of the reasons therefor, and must, within thirty days, file with the State Engineer a map covering the part objected to, with affidavit of surveyor thereto giving date of survey. Such map should be on tracing linen, preferably on a scale of four inches to the mile (20 chains to one inch), and should have marked thereon, within each 40-acre legal subdivision, the area of land which is irrigated. Such map should correspond in size to legal cap paper so as to be easily filed with the claim.

A.— Ditch correct. Acreage is short.

23. Q.—If water is used for power, state the total fall utilized and the theoretical (not actual) horsepower developed.

NOTE—Theoretical horsepower equals total quantity claimed in cubic feet per second, times fall in feet, divided by 8.8 (one cubic foot per second falling 8.8 feet equals one theoretical horsepower).

A.— --- --- --- ---

24. Q.—Describe the nature of the works by which the power is developed, the place where located, and state whether the water is returned to the stream after use and at what point.

A.— --- --- --- ---

25. Q.—If for mining purposes, describe the location and character of the mines to be served and state whether after use the water is returned to the stream and at what point.

A.— --- --- --- ---

26. Q.—If water is used for mining or power purposes, state whether there are any diversions between the point of your diversion and the return of such water to the stream.

A.— --- --- --- ---

27. Q.—Give description of your land as it appears in your deed. (Attach separate sheet if necessary.)

A.— E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, Tp. 12, South, Range 34, East.

28. Q.—What interest have you in the lands irrigated or place where the water is used?

A.— We own same.

29. Q.—What additional evidence have you attached hereto or submitted herewith?

A.— None.

(If the witness finds the space insufficient to properly answer any question, he should attach hereto said answer on a separate sheet or sheets. A corporation supplying water for irrigation to lands not its own should attach to its proof a complete list of the persons owning the lands so supplied with the correct description of the lands owned by each such person in each smallest legal subdivision. Certified copies of records and such evidence as the claimant may desire to submit should be attached to this proof and marked for identification as exhibit "A," "B," "C," etc.)

I hereby certify upon oath that the foregoing statement and answers are true as I verily believe.

Herbert Ricco

Signature of Claimant, or Agent Making Proof.

Subscribed and sworn to before me this 1st day of Oct., 1927.

C. J. Gaudin

State Engineer.

(for)

Notary Public for Oregon.

My commission expires Nov. 13 - 1928.

AUTHORIZATION OF AGENT

I, _____, of _____,
State of _____, do hereby make and appoint _____
_____, of _____, my agent
and attorney for me and in my name, place and stead, to make and submit the within Statement
and Proof of Claim.*

And I hereby designate said agent as the proper party upon whom lawful and valid service
may be made of all process and notices in any contest commenced by or against me, in the within
entitled matter, and said agent is hereby duly authorized to appear in any and all such contests as
my true and lawful agent and attorney, giving and granting unto my said attorney full power and
authority to do and perform all and every act necessary and requisite to be done in the premises,
as fully as I might or could do if personally present, hereby ratifying and confirming all my said
agent shall lawfully do by virtue of this power.

Signature of Claimant.

* Claimant should cross out the second paragraph of the Authorization if he does not desire the agent to appear for him
in the proceeding after the filing of this claim.

Filed, Oct 6, 1927.

Fees paid:

Irrigation 97 acres, \$ 14.55

Power, _____ H. P., \$ _____

Other use, stock, \$ 5.00

Recording certificates, .. \$ 2.00

Total, .. \$ 21.55

Receipt No. 7153

Paul Luper
State Engineer.

SUPPLEMENTAL STATEMENT.

The water rights claimed by this Statement and Proof of Claim have to do with the waters of Dad's Creek, as they flow down to the head of that certain ditch known as Dad's Ditch. This ditch heads near the center of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, Township 12, South, Range 34, E.W.M., in Grant County, Oregon. Said ditch runs westerly from said point of diversion and out of Section 16 and across Section 17 and across the southeast corner of Section 18 and then onto Section 19 near the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 19, all in said township and range. It flows thence westerly across Section 19 and onto Section 24, Township 12, South, Range ~~34~~ 33, E.W.M., said County. Said ditch crosses in a westerly direction and north of the center of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NW $\frac{1}{4}$, of said Section 19, and then onto the NE $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 24.

Said ditch was constructed as a mining ditch in the year 1866. The same was used for placer mining on the Dixie Creek side, presumably in Sections 24 and 23 in Townships 12, South, Range ~~34~~ 33, E.W.M.

During the irrigation season of each year Dad's Creek does not furnish water at the head of said ditch sufficient to fill the same. For that reason during the dry or irrigation season of each and every year from 1866, down to and including the year 1927, the entire flow of said Dad's Creek at the aforesaid point of diversion has been conducted into and carried through said Dad's Ditch. No question has ever been raised with reference to such use and the aforesaid Dad's Ditch is, and for many years has been, considered as a regular water course.

Between the head of said ditch and the point where the same reaches the aforesaid Section 19 said ditch picks up the waters of three springs and one gulch. During the dry or irrigation season all the waters of Dad's Creek, as the same come to the head of said Dad's Ditch, and all the waters of said gulch and of said three springs, have at all times and continuously since the year 1866 flowed down to and across the aforesaid Sections 19 and 24, excepting as the same have been used for irrigation purposes thereon as does hereafter appear.

As early as the year 1880 waters were by permission of the owners of said Dad's Ditch taken from the said ditch at various times and used upon the lands of claimants. The mining above referred to was placer mining, and gradually these placer diggings were worked out. As these diggings were worked out the necessity for the use of the waters of Dad's Creek for that purpose became less and more water was then

available for irrigation purposes. As this use for mining purposes decreased the use of said waters for irrigation purposes was increased and claimants increased irrigation upon said Sections 19 and 24. Said placer mining ceased not later than the year 1900 and claimants have at all times and continuously since the year 1900 claimed and used all the aforesaid waters of Dad's Creek and of said gulch and of said three springs, and through said Dad's Ditch, for irrigation upon the lands of claimants in said Sections 19 and 24, and said claimants claim as set out in their Statements and Proofs of Claim and as of the various dates herein specified and have at all times and continuously since the year 1900, and for a long time prior thereto, claimed, and do now claim, the sole and exclusive right to the use of the said waters of Dad's Creek as the same flow down to the head of Dad's Ditch, together with the waters of the aforesaid gulch and the waters of the aforesaid three springs, for use upon the said lands of claimants in said Sections 19 and 24, as hereinbefore referred to, which claim and use has since the year 1900, and continuously for some time before that, been open, notorious, continuous, exclusive, hostile and adverse as against the whole world in general and particularly against any and all other users or pretended users of water from said Dad's Creek and from said gulch and from said three springs, and has so continued at all times and continuously since and including the year 1900 to and including the present date.

Claimant Mrs. _____ Woloerton has the use of all said waters for irrigation upon the $\frac{W\frac{1}{4}}$ of the $NW\frac{1}{4}$ of said Section 19, and upon the $E\frac{1}{2}$ of the $NE\frac{1}{4}$ of said Section 24, for one-third of the time during each irrigation season and claimants Ricco and Ricco have the right during each irrigation season to the use of all said waters for two-thirds of the time upon their lands as in their Statement and Proof of Claim specified and designated, and said use has always been and is agreeable to all said claimants and it is the desire of said claimants that an order to that effect be entered herein.