

6-12-14

Dear Mr Dwight French;

My name is Russell Thornton and I am having issues with a water right problem concerning "Crooked creek", a tributary of the Chewaucan river in south central Oregon. I was looking through some of your on line information and found a line that states "Notification of any errors would be appreciated". I have found a rather large error and can't seem to get anyone from the water board to help in this matter. Our rights for "Sam Dicks" as well as others along the creek were found to be full of errors. The error involves the missdating of the beginning date of water rights for J.B. Elder. The information was placed in a stipulation and agreement dated November 15th, 1920 and Mr Elder signed the agreement, as well as all of the other water rights holders along the creek at the time. The problem I have is this agreement has been in effect for 94 years without any problems. Now Mr Dave Elder (J.B. Elder's nephew) has sold the family ranch and stated that his family has the first rights. The stipulation and agreement clearly shows that the Oregon State water board has entered several errors in the decree. These errors have caused us to lose the rights my family has had on Crooked Creek since 1875. As you can see, Mr Elder had stated his water right date to be 1873, which in fact should have been 1877. This error clearly causes the value of our property to be much less, not to mention the new water right holder is at the end of the creek, so our use of the water is substantially decreased in drought times. I have enclosed a copy of Mr Elders Water right certificates that shows he didn't even get the name of the creek right as well as the date of acquisition for the rights. I have already talked to Scott from your department, but haven't gotten any answers as to how to deal with this situation. We hired "Karnopp Petersen attorneys" to help us with this and have now spent over 17,000 dollars for nothing and have been told it would be another approximately 108,000 dollars to get this taken to court. I don't feel we should have to spend anymore of our money correcting a mistake the water board should have corrected back in 1920. I would really appreciate any help or direction in this matter.

Sincerely,

Russell Thornton

20633 Old Smokey Rd.

Lakeview, OR 97630

Home phone: 541-947-2827

Cell phone: 541-417-1323

e-mail: quickdraw\_27@hotmail.com

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JUN 16 2014

SALEM, OR

Lakeview, Oregon,  
November 15, 1920

STIPULATION AND AGREEMENT.

STATE OF OREGON WATER BOARD  
RECEIVED  
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OREGON

<sup>Elder</sup> It is hereby stipulated and agreed by and between J.B. ~~Elder~~; and J.B. Elder and E.S. McDonald, as partners; and A.C. Hotchkiss; and H.L. Chandler; and S.B. Chandler; and Thomas Daly and David Rahilly, successors in interest through mesne conveyance of S.P. Dicks; and F.D. Loveless; and Mrs. A.M. Stevenson and J.M. Sullivan, as successors in interest through mesne conveyances of Lana A. Hardesty; and J.W. Rehart and R.K. Winchester, as successors in interest through mesne conveyances of J.C. Shellhammer; and R.L. Weir, as successor in interest through mesne conveyances of S.B. Chandler; and Roy Chandler, as successor in interest through mesne conveyances of S.B. Chandler; and A.M. Pierson, as successor in interest through mesne conveyances of S.B. Chandler; and Mrs. Margaret Hedstrom, as successor in interest through mesne conveyances of Mrs. Everina Bensfield; and G.A. Rehart; all of Lake County, Oregon.

That the findings of fact and order of determination of the State Water Board in the matter of the determination of the relative rights to the use of the waters of the Chewaucan River and its tributaries, a tributary of Abert Lake, Lake County, Oregon, made and filed in said proceedings before the State Water Board of the State of Oregon, Water Division No. 1, Lake County, made on the 27th day of December 1915, as modified in the Circuit Court of the State of Oregon for Lake County by decree of date December the 2nd, 1916 in said matter, modifying the findings of fact and order of determination of said Water Board and affirming the same as modified, do not state the facts correctly and the parties hereto stipulate and agree that said findings of fact and order of determination as modified, as it relates to the waters of Crooked Creek between the parties to this agreement and stipulation is hereby corrected to read as follows:

1.

On page 64 and 65 it should read as follows: Name and postoffice address of appropriator - J.B. Elder, Paisley, Oregon. (Proof 62, Vol. 1); date of relative priority, 1877; amount cubic feet per second, 7.29; number of acres, 291.5; use, irrigation; name of ditch, 70 ditch; stream, Crooked Creek; description of land or place of use, land fully and properly described in said order of determination; whereas the order of determination under heading date of relative priority gives the year as 1873 when in truth and fact the same should be 1877.

2.

On page 71 instead of reading as in the order of determination specified it should read as follows: Name and post office address of appropriator, E.S. McDonald and J.B. Elder (partners), Paisley, Oregon; (proof 113, Vol. 2); date of relative priority, 1877; amount cubic feet per second, 5.84; number of acres, 233.5; use, irrigation and stock; name of ditch, dams and ditches; stream, Crooked Creek; description of land or place of use, same as correctly and properly described in said order of determination; whereas the order of determination under heading date of priority gives the year 1873 when in truth and fact the same should be 1877.

3.

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That the order of determination on page 78 as it

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relates to the J.C. Shellhammer land should read as follows: Name and post office address of appropriator, J.C. Shellhammer, Lakeview, Oregon (Proof 152, Vol. 2); date of relative priority, 1875; amount cubic feet per second, 3; number of acres, 100; use, irrigation; name of ditch, Shellhammer ditches; stream, Crooked Creek; description of land or place of use, being a strip of land north and south of 100 acres in the center of the E $\frac{1}{2}$  of Section 13, Township 37S., R. 20E., W.M.; whereas the order of determination under heading date of relative priority is 1885 when in truth and fact the same should be 1875 as to 100 acres hereinbefore described.

4.

On page 45 of said order of determination it should read as follows: Name and post office address of appropriator, Everina Benefield, Lakeview, Oregon (Proof 3, Vol. 1); date of relative priority, 1875; amount cubic feet per second, 0.15; number of acres, 6; use, irrigation; name of ditch, Chandler; stream, Crooked Creek; description of land and place of use, 2 $\frac{1}{2}$  acres in NW $\frac{1}{4}$  of N $\frac{1}{2}$ ; 2 $\frac{1}{2}$  acres in SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Sec. 29, T $\frac{1}{2}$ . 37S., R. 21E., W.M., whereas the order of determination under heading date of priority is 1892 when in truth and fact the same should be 1875; name and post office address of appropriator, Everina Benefield, Lakeview, Oregon (Proof 4, Vol. 1); date of relative priority, 1875; amount cubic feet per second, 0.4; number of acres, 16; use, irrigation; name of ditch, Benefield; stream, Benefield Creek; description of land or place of use, 7 $\frac{1}{2}$  acres in SW $\frac{1}{4}$  of SW $\frac{1}{4}$ , Sec. 20; 8 $\frac{1}{2}$  acres in NW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Sec. 29, T $\frac{1}{2}$ . 37S., R. 21E., W.M., whereas the order of determination under heading date of relative priority is 1892 when in truth and fact the same should be 1875.

5.

That the land now held and owned by R.L. Weir, successor in interest through mesne conveyances of S.B. Chandler of the lands described in said order of determination as modified, the date of the priority for 80 acres of the land now used and possessed and owned by said Weir, described as the E $\frac{1}{2}$  of SE $\frac{1}{4}$ , of Sec. 24, Township 37S., R. 20E., W.M., should be 1880 instead of 1875.

That it is hereby stipulated and agreed that the priorities, the amount of water, the number of acres irrigated, purpose for which used, the sources of the appropriation and the description of the land in said order of determination as modified shall be the true rights and interests of said parties to this stipulation and agreement as set out therein, with the modifications as hereinbefore specifically set out and stipulated and agreed.

And that the said order of determination as modified with the priorities and rights therein as hereby modified by this stipulation, especially hereinbefore set out, shall be and are the rights and interests of the respective parties to this stipulation and agreement to the waters and use of the waters of Crooked Creek and its tributaries and not otherwise or different and in carrying out said order of determination as modified, this stipulation and agreement shall become and is a part thereof and in enforcing said order of determination as modified it shall be enforced as therein provided, save and except as by this stipulation and agreement modified, and as thus modified by this stipulation and agreement the same shall be binding on the parties in all particulars and carried into full force and effect, binding the parties to this stipulation

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and agreement and the parties not in the order of determination but who are parties to this stipulation and agreement as successors in interest through mesne conveyances of certain parties to this agreement hereinbefore named, namely: Daly and Rehilly, successors through mesne conveyances to S.P. Dicks; R.E. Winchester and J.W. Rehart, successors in interest through mesne conveyances to J.G. Shallhammer; Mrs. Margaret Hedstrom, as successor in interest through mesne conveyance of Mrs. Everina Benefield; R.L. Weir, successor in interest through mesne conveyances of certain of the S.B. Chandler interests; Mrs. A.M. Stevenson and J.M. Sullivan, successors in interest of Mrs. Lena A. Hardesty; A.M. Pierson, successor in interest through mesne conveyances of certain of the S.B. Chandler interests; and A.C. Hotchkiss, successor in interest through mesne conveyances of the Oregon Valley Land Company; and J.B. Elder; and J.B. Elder and E.S. McDonald, partners, as successors in interest through mesne conveyances of the Oregon Valley Land Company.

That the said order of determination with its modifications, by reason of the facts hereinbefore set out has caused a difference to exist between the parties to this stipulation and agreement and to settle those differences the parties have therefore entered into this stipulation and agreement.

That in entering into this stipulation and agreement and making the corrections as herein especially stipulated and agreed, as between the parties hereto relative to the appropriation, diversion and use of the waters of Crooked Creek by the parties hereto and their predecessors in interest there is no change as to the amount of water appropriated, diverted and used; the place of use; the character of use; the time of use than as theretofore existed and used by the parties and their predecessors and no additional water or water right or use of water is involved or to be taken from or to be diverted from said Crooked Creek, but this stipulation is intended to and does carry out, specify and name the priority of appropriation, diversion and use, the priority thereunder, and as thus modified as to the date of appropriation and priority only, in all other matters provided for in the order of determination with its modification as modified by the order of determination of the Circuit Court of Oregon for Lake County in said matter shall be the rights of the parties hereto and to be carried into full force and effect by and with this stipulation and agreement as to priorities here stipulated and agreed in all particulars as a part of said order of determination as modified. This stipulation and agreement is made as to the dates of priority of appropriation and use and priority of right to give the true and correct dates of such priority, and thereby avoid legal proceedings and future trouble or disputes in relation thereto between the parties hereto.

This stipulation and agreement is intended to and does bind the parties hereto, their heirs and executors and administrators, successors or assigns, their agents or attorneys.

In witness whereof the parties hereto have hereunto set their hands and seals this the 15th day of November 1920.

(Signed) ~~J.B. Elder.~~  
(Signed) McDonald & Elder, by J.B. Elder.  
(Signed) A.C. Hotchkiss.  
(Signed) S.B. Chandler.  
(Signed) Thomas Daly.  
(Signed) David Rehilly, by Thomas Daly,  
Attorney in Fact.  
(Signed) F.D. Loveless.  
(Signed) J.M. O'Sullivan.  
(Signed) Stephenson & Sullivan, partners,  
~~(Signed)~~ by J.M. Sullivan.

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JUN 19 2014

SALEM, OR

(Signed) J.W. Rehart.  
(Signed) R.E. Winchester.  
(Signed) Robt. L. Weir.  
(Signed) Roy Chandler.  
(Signed) A.M. Pierson.  
(Signed) C.A. Rehart.  
(Signed) Margaret Hedstrom, by Mabel Hedstrom.  
Atty. in Fact.

Witnesses to all the  
signatures:  
K.E. Gott  
John E. Baker.

STATE of OREGON )  
COUNTY of LAKE ) ss.

On this, the 16th day of November A.D., 1920,  
personally came before me, a Notary Public in and for said County  
and State, the within named, J.B. Elder; A.C. Hotchkiss; S.B.  
Chandler; Thomas Daly, each for himself, and McDonald & Elder,  
by J.B. Elder; and David Rahilly, by Thomas Daly, his attorney-  
in-fact; F.D. Loveless, for himself; J.M. Sullivan, for himself;  
Stephenson and Sullivan, by J.M. Sullivan; J.W. Rehart; R.E.  
Winchester; Robt. L. Weir; Roy Chandler; A.M. Pierson; C.A.  
Rehart, each for himself; Margaret Hedstrom, by Mabel Hedstrom,  
her attorney-in-fact; all to me known to me to be the identical  
person described in and who executed the within instrument and  
acknowledged to me that they executed the same freely and for  
the uses and purposes therein named.

Witness my hand and official seal this 16th day  
of November, 1920.

(Signed) K.E. Gott.  
Notary Public for Oregon,  
Residing at Lakeview,  
Oregon.  
My commission expires  
12/19/1923.

ENDORSED:

( Seal. )

Filed December 24th, 1920,  
at 2 o'clock P. M.

RECORDED: Volume 1 Page 393 Records of Agreements Lake County, Oregon.  
John Ward, County Clerk.

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JUN 16 2014

SALEM, OR

STATE OF OREGON, )  
County of Lake, ) M.

I, John Ward, County Clerk and Clerk of the County  
Court of the County and State aforesaid, do hereby certify that the foregoing copy of  
Stipulation and Agreement between J. B. Elder et al  
has been by me compared with the original, and that it is a correct transcript therefrom,  
and of the whole of such original Stipulation and Agreement as the same  
appears of record at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the  
seal of said Court this 6<sup>th</sup> day

of January 1921  
John Ward

By \_\_\_\_\_ Clerk.

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JUN 15 2014 JR

SALEM, OR

BEFORE THE BOARD OF CONTROL OF THE STATE OF OREGON

Water Division No. \_\_\_\_\_ Count \_\_\_\_\_

In the Matter of the Determination of the Relative

Rights to the Waters of Chewaucan River

and its tributaries, a Tributary of Lake Abert.

STATEMENT AND PROOF OF CLAIMANT

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

STATE OF OREGON,

County of Lake ss.

J. B. Elder of Palaley, Oregon,

being called as a witness in support of this Statement of Claim, and being first duly sworn, testified 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.— J. B. Elder.

(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, Crooks 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.— Appropriation, diversion and use for Irrigation.

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

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

A.— Appropriation, diversion and use.

(Appropriation, diversion and use, etc.)

5. Q.—State the date of the initiation of such water right. A.— 1873.

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.— Construction of ditches and use of water for irrigation of land. This ditch was constructed by Merryford Brothers.

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

A.— 1873

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.— By ditch, known as 70 ditch.

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

A.— Lessee, no others.

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Not the right creek

Not the right date 1877

SA M. JR

JUN 16 2014

SALEM, OR

10. Q.—State the date of the beginning of construction. A.— 1873

11. Q.—State the date of completion. A.— 1873.

12. Q.—State the dimensions of the ditch as originally constructed, just below the waste way or head gate.

A.—Width (top) uncertain feet; width (bottom) uncertain feet; depth uncertain feet; grade, or fall in feet per 1000 feet, 2 in. 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) XXXXXX feet; width (bottom) XXXXXX feet; depth XXXXXX feet; grade, or fall per 1000 feet, XXXXXX feet.

Second enlargement—Width (top) XXXX feet; width (bottom) XXXX feet; depth XXXXXX feet; grade, or fall per 1000 feet, XXXXXX feet.

14. Q.—State the area of land which your ditch, as originally constructed, was intended to irrigate. A.— about 300 acres.

15. Q.—If water is used for irrigation, state the number of acres reclaimed and irrigated the first year. A.— All irrigated when ~~water~~ ditch was constructed.

16. Q.—How many acres were irrigated each subsequent year up to and including the present year? A.— 300

17. Q.—How many acres were irrigated after the first enlargement of said ditch? After each successive enlargement? A.— No enlargement

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.—

| Twp.              | Range | Sec. | NE 1-4   |      |      |     | NW 1-4 |     |     |     | SW 1-4 |     |     |     | SE 1-4 |      |     |     |
|-------------------|-------|------|--|------|------|-----|--------|-----|-----|-----|--------|-----|-----|-----|--------|------|-----|-----|
|                   |       |      | NE¼  | NW¼  | SW¼  | SE¼ | NE¼    | NW¼ | SW¼ | SE¼ | NE¼    | NW¼ | SW¼ | SE¼ | NE¼    | NW¼  | SW¼ | SE¼ |
| 35                | 20    | 25   |  | 29.5 |      |     |        |     |     |     |        |     |     |     | 10     |      |     |     |
|                   |       |      | 33.5   |      |      |     |        |     |     |     |        |     |     |     |        | 16.5 |     |     |
|                   |       |      |  | 29.0 |      |     |        |     |     |     |        |     |     |     |        |      |     |     |
|                   |       |      |  |      | 14.0 |     |        |     |     |     |        |     |     |     |        |      |     | 3.5 |
| <del>XXXXXX</del> |       |      | Remaining tracts in S-2 SE-4 Sec. <del>XXXXXX</del> 35, E1 and remaining tracts in E-2 of Sec. 36 T. 35 R. 20 containing 150 acres. See Plat filed by J. B. Elder. |      |      |     |        |     |     |     |        |     |     |     |        |      |     |     |





\*\*\*32. Q.—How many miles of ditch and what other construction work has been completed to date? A.—

\*\*\*33. Q.—State the cost of construction to date. A.—

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

A.—

35. Q.—Name at least three witnesses who will substantiate the statements herein made by you. Give their postoffice addresses.

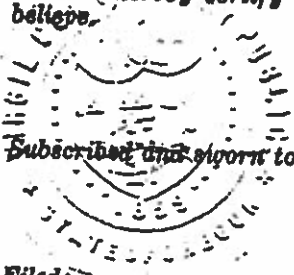
A.— J. D. Heryford, W. P. Heryford. John Simmons.  
all of Lakeview, Oregon.

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

A.— Any other additional evidence that may be needed.

(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 statements and answers are true as I verily believe.



J. B. Elder

Signature of Claimant, or agent making proof.

Subscribed and sworn to before me this 7 day of August, 1913.

Superintendent of Water Division No. 1 of State of Oregon.

Filed: , 191

Fees paid: \$

Superintendent, Water Division No. State of Oregon.

\*In case there is objection to the official plat the parties objecting must, when giving proof, file a written statement of the reasons therefor, and must, within thirty days, file with the Division Superintendent a map of said ditch and irrigated lands, with affidavit of surveyor thereto giving date of survey. Such map should be on tracing linen, on a scale of two inches to the mile (48 chains to one inch), and should have marked thereon, within each 40-acre legal subdivision, the area of land which is irrigated.  
\*Theoretical horsepower equals total quantity claimed in cubic feet per second, times fall in feet, divided by 2.3 (one cubic foot per second falling 2.3 feet equals one theoretical horsepower, or 550 foot pounds per second).  
\*Where a water right has been initiated prior to February 24, 1903, and the works are incomplete, or the water not yet or only partially applied to beneficial use, a map of lands on the above scale should accompany this statement, or filed with the Division Superintendent within thirty days from date of proof, which maps should be drawn on uniform sheets of tracing linen, on a scale of two inches to the mile (48 chains to one inch), and should show the area which it is proposed to irrigate in each 40-acre tract, as well as main canals and general plans of all important structures to be built. The affidavit of surveyor or engineer should be attached, with data. The surveys of the State Engineer will show only constructed works and lands now irrigated. Questions 26, 27, 28, 29, 30, 31, and 32 relate only to uncompleted rights.

AUTHORIZATION OF AGENT.

State of \_\_\_\_\_ 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 Claimant, 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.

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JUN 16 2014

SALEM OR

BEFORE THE BOARD OF CONTROL OF THE STATE OF OREGON

Water Division No. \_\_\_\_\_ Count \_\_\_\_\_

In the Matter of the Determination of the Relative Rights to the Waters of the Chewaucan River and its tributaries, a Tributary of \_\_\_\_\_

STATEMENT AND PROOF OF CLAIMANT

Creek's Creek Ditch

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

STATE OF OREGON,

County of \_\_\_\_\_ Lake \_\_\_\_\_ ss.

J.B. Elder of Paisley, Oregon,

being called as a witness in support of this Statement of Claim, and being first duly sworn, testified 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.— J.B. Elder for himself and as agent for McDonald and Elder

(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.— No do to Creek'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 (Irrigation, power, mining, domestic, stock, etc.)

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

A.— Appropriation, diversion and use. (Appropriation, diversion and use, etc.)

5. Q.—State the date of the initiation of such water right. A.— About 1873

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.— About the year 1873 claimant's predecessor in interest placed dams in the Chewaucan River and took out water through ditches and applied to the land and

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

A.— About 1873

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.— Flooding the land by dams and headgates in the River and ditches leading therefrom

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

A.— Whatever rights goes with the land

RECEIVED BOARD

JUN 13 2014

SALEM, OR

Not the right Co  
About? Not the right date 1877

10. Q.—State the date of the beginning of construction. A.— About 1873
11. Q.—State the date of completion. A.— About 1873
12. Q.—State the dimensions of the ditch as originally constructed, just below the waste way or head gate.

A.—Width (top) 12 feet; width (bottom) 12 feet;

depth 8 feet; grade, or fall in feet per 1000 feet, 1.25 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.— None

First enlargement—Width (top) feet; width (bottom) feet; depth feet; grade, or fall per 1000 feet, feet.

Second enlargement—Width (top) feet; width (bottom) feet; depth feet; grade, or fall per 1000 feet, feet.

14. Q.—State the area of land which your ditch, as originally constructed, was intended to irrigate. A.— 233.5 acres.

15. Q.—If water is used for irrigation, state the number of acres reclaimed and irrigated the first year. A.— 233.5

16. Q.—How many acres were irrigated each subsequent year up to and including the present year? A.— 233.5

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

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.)

| Twp. | Range | Sec. | NE 1-4 |     |     |     | NW 1-4 |     |     |     | SW 1-4 |     |     |     | SE 1-4 |     |     |     |    |
|------|-------|------|--------|-----|-----|-----|--------|-----|-----|-----|--------|-----|-----|-----|--------|-----|-----|-----|----|
|      |       |      | NEX    | NWX | SWX | SEX | NEX    | NWX | SWX | SEX | NEX    | NWX | SWX | SEX | NEX    | NWX | SWX | SEX |    |
| 35   | 20    | 36   | 30     | 30  | 30  | 10  |        |     |     |     |        |     |     |     |        |     |     |     |    |
| 35   | 21    | 31   |        |     |     |     | 4      | 10  | 15  |     |        | 10  | 30  | 2   |        |     | 10  | 30  | 30 |
| 35   | 21    | 30   |        |     |     |     |        |     |     |     |        | 10  |     |     |        |     |     |     |    |
|      |       |      |        |     |     |     |        |     |     |     |        |     |     |     |        |     |     |     |    |
|      |       |      |        |     |     |     |        |     |     |     |        |     |     |     |        |     |     |     |    |
|      |       |      |        |     |     |     |        |     |     |     |        |     |     |     |        |     |     |     |    |
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19. Q.—State the character of the soil and kind of crops raised. Total 233.5 312

STATE OF OREGON

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.—The irrigating season extends from March to October and water is used the year round for stock purposes.

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.—From four to six acre feet per season.

\*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?

A.—Yes for Section 36 Tp. 35-20 but in Section 31 Tp. 35-21 have more irrigated land than shown on Sti M

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

A.—

24. Q.—Describe the nature of the works by which the power is to be 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.—If the right claimed was initiated prior to February 24, 1909, but the water not yet fully applied, state whether such right was initiated by the construction of a new ditch or the enlargement of an existing ditch, and whether storage works are to be constructed.

A.—

\*\*\*28. Q.—Give the length of such proposed ditch. A.—

\*\*\*29. Q.—What is the estimated cost of such proposed construction? A.—

\*\*\*30. Q.—When are the works intended to be completed? A.—

\*\*\*31. Q.—State in detail, the number of acres which you propose to irrigate in each smallest legal subdivision (40-acre tract) under such proposed ditch or enlargement, using the following form. The lands at present actually irrigated should be described in answer to question 17. (Attach a separate sheet if necessary.)

A.—

| Twp. | Range | Sec. | NE 1-4 |     |     |     | NW 1-4 |     |     |     | SW 1-4 |     |     |     | SE 1-4 |     |     |     |
|------|-------|------|--------|-----|-----|-----|--------|-----|-----|-----|--------|-----|-----|-----|--------|-----|-----|-----|
|      |       |      | NE¼    | NW¼ | SW¼ | SE¼ | NE¼    | NW¼ | SW¼ | SE¼ | NE¼    | NW¼ | SW¼ | SE¼ | NE¼    | NW¼ | SW¼ | SE¼ |
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\*\*\*32. Q.—How many miles of ditch and what other construction work has been completed to date? A.—

\*\*\*33. Q.—State the cost of construction to date. A.—

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

A.— Owners

85. Q.—Name at least three witnesses who will substantiate the statements herein made by you. Give their postoffice addresses.

A.— W.P. and J.D. Herford and J. Simmons, all of Lakeview, Oregon

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

A.— A map showing the ditches on my land and the number of acres irrigated in each smallest legal subdivision

(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 statements and answers are true as I verily believe.

John B. Elder

Signature of Claimant, or agent making proof.

Subscribed and sworn to before me this 2nd day of June, 1913

Superintendent of Water Division No. 1 of State of Oregon

Filed: June 2, 1913

Fees paid: James T. Edmunds, Superintendent, Water Division No. 1, State of Oregon

\*In case there is objection to the official plat the parties objecting must, when giving proof, file a written statement of the reasons therefor, and must, within thirty days, file with the Division Superintendent a map of said ditch and irrigated lands, with affidavit of surveyor thereto giving date of survey. Such map should be on tracing linen, on a scale of two inches to the mile (40 chains to one inch), and should have marked thereon, within each 40-acre legal subdivision, the area of land which is irrigated.
\*\*Theoretical horsepower equals total quantity claimed in cubic feet per second, times fall in feet, divided by 2.2 (one cubic foot per second falling 2.2 feet equals one theoretical horsepower, or 550 foot pounds per second).
\*\*\*Where a water right has been initiated prior to February 24, 1902, and the works are incomplete, or the water not yet or only partially applied to beneficial use, a map of lands on the above scale should accompany this statement, or filed with the Division Superintendent within thirty days from date of proof, which maps should be drawn on uniform sheets of tracing linen, on a scale of two inches to the mile (40 chains to one inch), and should show the area which it is proposed to irrigate in each 40-acre tract, as well as main canals and general plans of all important structures to be built. The affidavit of surveyor or engineer should be attached, with date. The surveys of the State Engineer will show only constructed works and lands now irrigated. Questions 24, 27, 28, 29, 30, 31, and 32 relate only to uncompleted rights.

AUTHORIZATION OF AGENT.

I, E. S. McDonald, of Paisley, State of Oregon, do hereby make and appoint

J. B. Elder, Paisley, Oregon, of my agent and attorney for me and in my name, place and stead, to make and submit the within Statement and Proof of Claimant, 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.