

BEFORE THE STATE WATER BOARD OF OREGON

Harney and Grant Counties.

IN THE MATTER OF THE DETERMINATION
OF THE RELATIVE RIGHTS OF THE VARIOUS
CLAIMANTS TO THE USE OF THE WATERS OF
SILVIES RIVER AND ITS TRIBUTARIES, A
TRIBUTARY OF MALHEUR LAKE.

SUPPLEMENTAL FINDINGS
AND
RECOMMENDATIONS TO THE COURT.

Now at this time the above entitled matter coming on for consideration by the State Water Board, and it appearing that on December 7, 1917, this Board entered findings of fact and an order of determination with respect to the various rights to the use of the waters of Silvies River and its tributaries; that thereafter and on November 6, 1919, said matter was remanded to the Board by the Circuit Court for Harney County, for the taking of further testimony on certain questions before a referee; that said testimony has been taken and reported to the Board; and that it is now necessary to make further findings and recommendations in said matter; and being now fully advised in the premises, the Board finds as follows:

1.

That claims have been filed in these proceedings by a number of parties, for water rights in addition to those granted by the former findings of the State Water Board. Claims have also been filed asking various modifications of the rights allowed by the former findings. These claims so far as they have been allowed by the Water Board are hereinafter tabulated.

2.

That a considerable amount of testimony has been taken before the Referee with respect to the dates of initiation of the water rights of the Wm. Hanley Company, and also on the question of the effect of certain work done by said Company and by the Pacific Live Stock Company in changing the channel of Silvies River. But after a careful examination of the evidence, it is ordered that the dates of priority shall remain as heretofore found. With respect to the new work done in changing the river channel, it would seem that the same does not affect the rights of other water users to such an extent as to justify any change in the former findings as to the rights of the parties involved, and that the work has been done in such a manner as

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to enable the water master to regulate and control the flow of water at least as satisfactorily as under the former conditions.

3.

That the Silvies River Irrigation Company has filed an amended statement and proof of claim in these proceedings, for the purpose of securing an extension of time in which to complete its inchoate right allowed under the former findings of the Board, and for the purpose of securing a change in the place of use of water under said rights. An extension of time should be allowed in the final decree of the Court in order that the Company may have time after the entry of the final decree to complete the work. The changes in place of use are hereby denied.

4.

That a petition has been filed with the Board in connection with these proceedings by Harney Basin Development Company and Oregon & Western Colonization Company, asking for a re hearing for the purpose of taking further testimony on the question of duty of water. The provision of the former findings of the Board contained in Paragraph 33 thereof, giving the water master discretionary power to cut down the amount of water used by any claimant, should be eliminated by the Court, in view of the decision of the State Supreme Court in the case of In re Umatilla River. (88 Ore. 401.) And the Board feels that with the above provision absent from the decree, a further restriction should be placed upon the amount of water to be diverted for irrigation purposes. It is therefore recommended to the Court that there be added to Paragraph 32 of the former finding, a provision limiting the amount of water to be diverted for irrigation purposes, to not to exceed $1\frac{1}{2}$ acre feet per acre delivered on the land, during each irrigating season.

5.

The names and addresses of the respective parties who have filed claims in these proceedings for a modification of the former findings of the Board, or for rights in addition to those allowed by the former findings, together with their respective rights as so claimed and as recommended herein to be allowed by the Court, are tabulated as follows, to-wit:

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Baker, J. T. Burns, Oregon	1892	2.00	160	Irrigation	Dams, ditches & Overflow	Foley Slough	40 acres in NE 1/4 NW 1/4 40 acres in SE 1/4 NW 1/4 40 acres in SW 1/4 NW 1/4 40 acres in NW 1/4 NW 1/4
	1898	2.00	160	Irrigation	Dams, ditches & Overflow	Foley Slough	40 acres in NE 1/4 SW 1/4 40 acres in SE 1/4 SW 1/4 40 acres in SW 1/4 SW 1/4 40 acres in NW 1/4 SW 1/4 Section 10 T 23 S. R. 31 E. W. M.
	1885	4.00	320	Irrigation	Dams, ditches overflow	Poison Creek	40 acres in SW 1/4 NE 1/4 40 acres in NW 1/4 NE 1/4 40 acres in NE 1/4 SW 1/4 40 acres in SE 1/4 SW 1/4 40 acres in SW 1/4 SW 1/4 40 acres in NW 1/4 SW 1/4 40 acres in NE 1/4 SW 1/4 40 acres in NW 1/4 SW 1/4
	1908	2.00	160	Irrigation	Dams, ditches overflow	Poison Creek	40 acres in NE 1/4 NE 1/4 40 acres in SE 1/4 NE 1/4 40 acres in NE 1/4 SE 1/4 40 acres in SE 1/4 SE 1/4 Section 34 T 22 S. R. 31 E. W. M.
	(NOTE: These rights supersede the rights allowed said party by the original findings of the State Water Board, on Page 28 thereof.)						
Culp, Chas. Burns, Oregon	1901	2.00	160	Irrigation and domestic	Ditches dikes & levees	East Fork Silvies River & Poison Creek	40 acres in NE 1/4 NW 1/4 40 acres in NW 1/4 NW 1/4 40 acres in SW 1/4 NW 1/4 40 acres in SE 1/4 NW 1/4 Section 30 T 23 S. R. 32 E. W. M.
Hankins, G.W. & J.P. (Hankins Bros.) Seneca, Oregon.	1888	1.08	65	Irrigation	Hankins Bros.	Flat Creek	3 acres in NW 1/4 SW 1/4 7 acres in SW 1/4 SW 1/4 15 acres in SE 1/4 SW 1/4 5 acres in SW 1/4 SE 1/4 20 acres in SE 1/4 SE 1/4 Section 15 15 acres in NE 1/4 NE 1/4 Section 22 T 18 S. R. 31 E. W. M.
(NOTE: This right is to supersede the right granted to said Hankins Bros by the original findings of the State Water Board, tabulated on page 40 thereof)							
Hughes, I. N. Burns, Oregon.	1889	2.00	160	Irrigation	Natural sloughs, and ditches and levees	Silvies River	40 acres in NE 1/4 NW 1/4 40 acres in NW 1/4 NW 1/4 40 acres in SW 1/4 NW 1/4 40 acres in SE 1/4 NW 1/4 Section 19 T 24 S. R. 31 E. W. M.

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Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Johnson, Dr. E.P. Burns, Oregon. Successor in interest for this land to Marcellus B. Hayes)	1886	1.65	132	Irrigation	Dams, ditches, sloughs & levees	East Fork of Main stream	40 acres in SE ¹ SW ¹ 20 acres in SW ¹ SE ¹ Section 27 36 acres in NE ¹ NE ¹ 36 acres in NE ¹ NE ¹ Section 34 T 24 S. R. 32 E. W. M.
(NOTE: This right is to supersede the right of M. B. Hayes granted under the original findings of the State Water Board, on page 48 thereof, for 116 acres of land in the same subdivisions.)							
Lewis, C. W. Burns, Oregon. Successor in interest to Mrs. J. H. Dunstan)	1889	2.00	160	Irrigation	Lampshire and Dunstan dam and ditch	Foley Slough	40 acres in NE ¹ SW ¹ 40 acres in NW ¹ SW ¹ 40 acres in NE ¹ SE ¹ 40 acres in NW ¹ SE ¹ Section 5 T 23 S. R. 31 E. W. M.
McPherson, J.C. & L. E. Burns, Oregon.	1890	1.75	140	Irrigation	Natural sloughs, ditches and levees	Silvies River	20 acres in NE ¹ NW ¹ 40 acres in NW ¹ NW ¹ 40 acres in SW ¹ NW ¹ 40 acres in SE ¹ NW ¹ Section 20 T 24 S. R. 31 E. W. M.
Marsden Livestock Co. Geo. B. Marsden Secy. Seneca, Oregon.	1888	5.05	303	Irrigation	Sells ditch and dams	Bear Creek	25 acres in NE ¹ NE ¹ 40 acres in NW ¹ NE ¹ 15 acres in SW ¹ NE ¹ 30 acres in NE ¹ NW ¹ 40 acres in NW ¹ NW ¹ 40 acres in SW ¹ NW ¹ 25 acres in SE ¹ NW ¹ Section 26 30 acres in NE ¹ NE ¹ 30 acres in NW ¹ NE ¹ 28 acres in NE ¹ NW ¹ Section 27 T 16 S. R. 32 E. W. M.
(NOTE: This appropriation includes and supersedes the right of F.C. Sells, allowed by the findings of the State Water Board for 60 acres of land at Page 83 thereof.)							
Owen, Chas. Burns, Oregon	1901	3.56	285	Irrigation	Harkey	Silvies River Sagehen Creek & Warm Springs	40 acres in NE ¹ SW ¹ 40 acres in NW ¹ SW ¹ 40 acres in SW ¹ SW ¹ 40 acres in SE ¹ SW ¹ 40 acres in NE ¹ SE ¹ 40 acres in NW ¹ SE ¹ 40 acres in SW ¹ SE ¹ 5 acres in SE ¹ SE ¹ Section 20 T 24 S. R. 31 E. W. M.
Pearson, James E. Burns, Oregon.	1901	1.25	100	Irrigation	Natural sloughs, and levees dams & ditches	Silvies River and sloughs	40 acres in NW ¹ NE ¹ 20 acres in SW ¹ NE ¹ 20 acres in SW ¹ NW ¹ 20 acres in SE ¹ NW ¹ Section 29 T 24 S. R. 31 E. W. M.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Pearson, James E. (continued)	1888	4.00	320	Irrigation	Natural sloughs levees dams & ditches	Silvies River and sloughs	40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18 40 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19 40 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29 T 24 S. R. 31 E. W. M.
Pearson, James E. Burns, Oregon (as successor in interest to Wm. E. Moore.)	1888	4.00	160	Irrigation and domestic	Moore ditch, dams & levees	West Fork Silvies River & Sagehen Creek	40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 19 T 24 S. R. 31 E. W. M.
Southworth, W. S. and Sons Seneca, Oregon	1881	2.54	152	Irrigation	W.S. Southworth & Sons	Main and Bear Creek	40 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 27
	1885	2.00	120	Irrigation	W.S. Southworth & Sons	Main and Bear Creek	40 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34
	1885	0.58	35	Irrigation	Lincoln Slough	Bear Creek	35 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34 T 16 S. R. 31 E. W. M.
(NOTE: These rights supersede the rights allowed said parties by the original findings of the State Water Board on page 85 thereof.)							
Stewart, William M. Burns, Oregon	1883	3.25	260	Irrigation	Garden ditch and sloughs	Poison Creek & Branch of Foley Slough and springs	40 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 20 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 33 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28 T 22 S. R. 31 E. W. M.
	1900	2.06	165	Irrigation	Garden Ditch and sloughs	Poison Creek & Branch of Foley Slough	5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 33 T 22 S. R. 31 E. W. M.
(NOTE: This right supersedes the right allowed said party by the original findings of the State Water Board, on page 86 thereof.)							

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Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Swack, C.A. & Ella S. Burns, Oregon.	1877	2.80	224.17	Irrigation	McGowan Stinger	Main Silvies River	40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 39.9 acres in Lot 4(SE $\frac{1}{4}$ SE $\frac{1}{4}$) Section 7 40 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18 26.77 acres in Lot 5(NW $\frac{1}{4}$ NW $\frac{1}{4}$) 37.4 acres in Lot 4(SW $\frac{1}{4}$ NW $\frac{1}{4}$) Section 17 T 23 S. R. 31 E. W. M.
(Note: This right supersedes the right tabulated under the name of said parties on page 88 of the original findings of the State Water Board.)							
Thompson, Grant Crane, Oregon	1889	2.80	231.9	Irrigation	Natural sloughs dams and levees	Silvies River	12.83 acres in Lot 5(SE $\frac{1}{4}$ SE $\frac{1}{4}$) 27.17 acres in Lot 6(SE $\frac{1}{4}$ SE $\frac{1}{4}$) Section 21 30.14 acres in Lot 10(SW $\frac{1}{4}$ SE $\frac{1}{4}$) 27.50 acres in Lot 11(SE $\frac{1}{4}$ SW $\frac{1}{4}$) Section 22 17.87 acres in Lot 1 (NW $\frac{1}{4}$ NE $\frac{1}{4}$) 39.66 acres in Lot 2 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) 18.03 acres in Lot 3 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) 46.73 acres in Lot 4 (SE $\frac{1}{4}$ NW $\frac{1}{4}$) Section 27 11.97 acres in Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) Section 28 T 25 S. R. 32 E. W. M.
Tyler, Stanton and Lester Burns, Oregon	1889	2.00	160	Irrigation	Natural sloughs ditches and levees	Silvies River	40 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18 T 24 S. R. 31 E. W. M.

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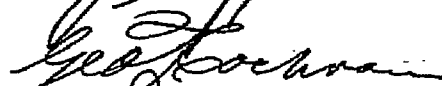
Dated this 31st day of October, 1921 at Salem, Oregon.

STATE WATER BOARD

By



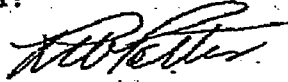
Perry A. Gupper, State Engineer, President



Geo. T. Cochran, State Water Superintendent.

(SEAL OF STATE WATER BOARD)

ATTEST:



R. W. Potter, Secretary.

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