

MEMO

To: File
From: Scott Borison
Date: December 4, 2000

RE: Umatilla River Decree – Reading Code on Plat Cards

Under permit, the plat card information will have a number in the format DN3xxxxy or DN14xxxxy.

3 or 14 are the volume numbers.

xxx is the page number

yy is the entry number on the page, handwritten in.

Pages are numbered sequentially, irrespective of volume number, and are nearly impossible to read on our copy.

HERMISTON IRRIGATION DISTRICT

POINT OF DIVERSION

SE 1/4 SW 1/4, Section 22, Township 3 North, Range 29 East, W.M.

575' North and 1800' East of the SW Corner, Section 22

U M A T I L L A R I V E R

AND ITS TRIBUTARIES

Umatilla County

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| | Order | Record |
|--|-------|--------|
| | Vol. | Page |
| Findings of State Water Board, January 14, 1915 | 1 | 481 |
| Decree of Circuit Court, September 9, 1916. | 3 | 127 |
| Judgment on Mandate, August 12, 1918. | 5 | 381 |
| Decree of Circuit Court, April 13, 1950, amending E. Y. Shaw right. | 14 | 556 |
| Order of Court dated June 14, 1952, Nunc Pro Tunc, September 9, 1916. | 14 | 569 |
| Order of Court dated February 23, 1933, Nunc Pro Tunc, H. H. Gilbert Lands. | 15 | 452 |
| Supplemental Findings of State Engineer (Inchoate Rights) December 15, 1953 | 15 | 378 |
| Decree of Court dated September 20, 1956, correcting description, Marion Jack lands. | 15 | 454 |
| Decree of Court dated July 19, 1957, correcting description, M. S. Corrigan lands | 15 | 527 |
| Decree of Court, September 1, 1961 re: Inchoate Rights | 16 | 457 |
| Order of Circuit Court, Feb. 7, 1969, order modifying decree dated September 9, 1916. | 17 | 4 |

Note: The decree of the Circuit Court entered September 9, 1916 is a consolidation of the Water Board's findings with those of the court, and is a complete record. The Judgment on Mandate strikes out one paragraph of Finding 32, relating to quantity of water. This mandate was entered pursuant to the opinion of the Supreme Court in re: 88 Oregon 376.
Said opinion also declares that right vested with the State of Oregon

See Byers v We-We-Ne 86 Or 617 re Winters Doctrine

Note: The numbering machine numbers appearing at the lower right-hand corner of the Decree herein, indicates the corresponding page numbers in the recorded volumes.

Opinion of Circuit Court, May 29, 1916 Re: Byers Hill Right, Indian Reservation, Duty of Water, etc. Find in Court as Above Adjusted, etc.

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Certificates of water right have been issued confirming the vested rights only, said certificates being recorded at pages 2482 to 2648 inclusive and pages 10628 and 11093, State Record of Water Right Certificates.

Summary of rights allowed: see next page.

Rights allowed as follows:

IRRIGATION (acres)

| | |
|---|--------------|
| Vested rights (pages 195-224) | 9,390.10 |
| Vested rights (pages 227-247) | 36,241.25 * |
| Supplemental Findings | 10,372.08 ** |

TOTAL. 56,003.43

* Note: these rights have been allowed in the supplemental findings but have not yet been confirmed by a court decree or by issuance of Certificates.

** Note: these rights have been confirmed by the original decree, however no certificates have been issued as it is pending on the supplemental decree.

MILLING

| | |
|-------------------------|---------------|
| Vested rights | 167.00 c.f.s. |
|-------------------------|---------------|

*Cancelled Vol. 11, p. 312
cert. 2498*

MUNICIPAL

| | |
|-------------------------|--------------|
| Vested rights | 16.50 c.f.s. |
|-------------------------|--------------|

POWER

| | |
|-------------------------|-----------------------------------|
| Vested rights | 191.67 c.f.s. # <i>all c.f.s.</i> |
|-------------------------|-----------------------------------|

Note: of these rights, 122.00 c.f.s. have been cancelled as recorded in Special Order Record Book, Vol. 9, page 205.

*cert. 2514 67.0 c.f.s. cancelled (power)
SP. OR. Vol. 9, p. 511
cert. 2537 2.67 c.f.s. cancelled
Vol. 11, p. 56*

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR UMATILLA COUNTY.

IN THE MATTER OF THE DETERMINATION
OF THE RELATIVE RIGHTS OF THE VARIOUS
CLAIMANTS TO THE WATERS OF THE UMATILLA
RIVER AND ITS TRIBUTARIES, A TRIBUTARY
OF THE COLUMBIA RIVER, IN UMATILLA
COUNTY, OREGON

FINAL DECREE.

Now, at this time this matter came on for hearing upon the Findings of the State Water Board, heretofore filed in the above entitled proceeding and the exceptions filed thereto, and it appearing to the Court that said Findings of the State Water Board should be modified in a large number of particulars, and upon due hearing upon same, the Court made the Findings of Fact and Conclusions of Law, which Findings of Fact and Conclusions of Law do modify the Findings of the State Water Board, and the Court having filed said Findings of Fact and Conclusions of Law in the above named proceeding, and being fully advised in the premises, and based upon the testimony and records in the above entitled proceeding and said Findings of Fact and Conclusions of Law so made by said Court, it is hereby CONSIDERED, ORDERED and DECREED, as follows:

1.

That on the 7th day of May, 1909, there was filed in the office of the State Water Board, State of Oregon, a petition signed by Oliver P. Morton, for and on behalf of the United States of America, a water user upon said stream, requesting a determination of the relative rights of the various claimants to the waters of said stream, and that said petitioner is a user of the waters of the said Umatilla River and its tributaries, as appears from the order of determination herein. That thereupon the said State Water Board, after full investigation and due consideration of said petition, found the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants of the waters of said stream and its tributaries thereto; and made and entered its order in the records of said office, fixing a time and place for the beginning and making of such an examination of said stream by the State Engineer, as would enable the said Board to determine the rights of the said claimants and also the time and place for the beginning and taking of testimony by the Superintendent of Water Division No. 2; that said time when said

UMATILLA RIVER

State Engineer or his assistants, did begin the examination of said stream, was set by said order of said Board for the 9th day of May, 1910, and the time when the Superintendent of Water Division No. 2, did attend and take the testimony of the various claimants was set by said order of said Board as follows, to-wit: on Monday the 16th day of May, 1910, at the hour of ten o'clock A.M., in a certain building known as City Hall, in the Town of Echo, Umatilla County, Oregon, and on Thursday the 19th day of May, 1910, at the hour of ten o'clock A.M., in the Circuit Court Room, in the County Court House in the City of Pendleton, Umatilla County, Oregon.

2.

That a notice was prepared by said Board setting forth the date when the State Engineer, or his assistants, would begin the investigation of the flow of said stream, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of Water Division No. 2, would begin the taking of testimony as to the rights of the various claimants to the waters thereof, and said notice was published in the East Oregonian, a newspaper published at Pendleton, Umatilla County, Oregon, and of general circulation in the County of Umatilla, Oregon, for a period of two consecutive weeks, beginning on the 25th day of March, 1910, and ending on the 1st day of April, 1910, the date of the last publication of said notice being more than 30 days prior to the date fixed for the making of said examination and measurement of the said stream and ditches by the State Engineer, and for the beginning of taking of testimony by the Division Superintendent.

3.

That on the 5th day of April, 1910, the Superintendent of Water Division No. 2 did send by registered mail, to each person, firm and corporation (Vol. 1, page 306, et. seq) claiming a right to use the water of said stream, or any tributary thereof, and to each person, firm and corporation owning or being in possession of land bordering on or having access to said stream or any tributary thereof, in so far as said claimants, owners, firms, or corporations in possession could be reasonably ascertained, a similar notice to such published notice, setting forth the date when the State Engineer would commence the examination of said stream and its tributaries, and the ditches diverting water therefrom, and the time and place certain when the Superintendent of said Water Division would commence the taking of testimony as to the relative rights of the various claimants to said stream and its tributaries, and said Superintendent did

enclose with each of said notices, a blank form upon which the said claimant or person in possession should present in writing all the particulars necessary for the determination of his rights to the waters of said stream, or a tributary thereof, under oath.

4.

That due proof of publication of said notice and of the sending of said notice by registered mail, (Vol. 1, p. 316, et seq) has been made and is duly filed and is now a part of the record hereof.

5.

That upon the date named in said notice herein published and sent, and at the place specified therein, an assistant to the State Engineer did commence the examination of said stream and its tributaries, and the ditches diverting water therefrom, and the Superintendent of Water Division No. 2, did commence the taking of testimony as to the relative rights of said claimants, and did continue taking same until completed (Vol. 1, p. 423); that the following named persons, firms and corporations, were duly notified by registered mail, and by publication of said notice, as hereinbefore set forth, but that each and all of them, although so notified, have failed, neglected, and refused to appear herein and submit proof of their rights to said stream, if any they have or claim; and that each of said parties is in default, and that said default should be, and is hereby entered, to-wit:

Clarence E. Allen; W. M. Ayres, Matilda E. Ayres; Jennie Ammons; John Alexander; Melissa Abbott; James Anderson; Thos. W. Atkinson; Alexander Adams; American National Bank; W. D. Thompson, Pres; Dick O. Adams; Maggie Arlington; Susan E. Adams; John F. Adams; (Estate). J. D. Bullock; G. M. Baer; Llewellyn Brownell; Minnie A. Bannedit; W. T. Brown; T. R. Barks; J. J. Baumgardner; W. M. Beagle; W. D. Brassfield; Myrtle H. Bell; J. A. Borie; C. Bronson; D. K. Bell; Wm. Barkhart; Phoebe A. Bartholomew; Mary E. Bowman; J. H. Barker; Ella Belts, Christopher Bolin; Godeon Brown; Jessie M. Bryson; Geo. A. Barnhard; Wm. B. Blakely; J. M. Butler; Phoebe Butler; A. J. Baker; M. A. Baker; Wm. Baker; James S. Bell; Lee Buttler; Hayes A. Blair; A. S. Bennett; J. Baumgardner; Cyril Brownhill; A. C. Crawford; Esther M. Correll; Frank C. Cook; Columbia Land Co.; W. W. Coe, Pres; B. B. Cofwner; C. F. Coleworthy; Mrs. F. A. Campbell; Frank B. Clopton; Frank E. Crowe; M. F. Callbeck; Edwin Campbell; Angus Cameron; Charles E. Gate; W. F. Corley; Alex Cornett; J. S.

Cherry; F. B. Clopton - (Estate); Edward L. Cheney; L. K. Courtwright; Harry
 E. Cord; H. E. Cook; Mary E. Coffey; E. H. Caton; Katie Caton; Joseph Connelly;
 Matt Cononen; Ralph Crow; R. C. Canfield; H. E. Dickson; Jane M. Davison; F. H.
 Denzler; Henry Born; Mary T. Duncan; Frank Dickey; Elsie M. Dozier; Sarah J.
 Dozier; John Doherty; Catherine Agnes Doherty; J. N. Durham; G. DeGraw; F. C.
 Davis; J. W. Duncan; Sadie C. Elder; Wm. F. Ellis; W. R. Ellis; W. G. Estes;
 W. J. Emery; G. Estes; Chas. Ely; James M. Eldridge; T. P. Edwards; Geo. W. Ellis;
 Amanda Ely; Gredn Estes; Anne E. Faude; First Nat. Bank of Pendleton-Oregon,-
 G. M. Rice, Cashier; Joseph Francis; C. P. Ford; Julius Fletcher; Mary E. Fletcher;
 Farmers Bank of Weston, Oregon, Dillard French; John Foster; John H. French;
 Karl F. Fahrwald; John H. Ferguson; N. B. Foster; Fish & Toft; E. C. Fish;
 Bertha B. Harris; Guernsey H. B. Gillett; Wm. Grigsby; J. H. Gruelich; F. J.
 Gruelich; E. M. Graham; D. E. Gritman; Dorothy Gilliam; Mrs. S. C. Geiss; Earl
 Gillanders; Frank Gerard; I. H. Govvell; C. H. Gardner; S. S. Jackson; Annie
 Horn; Leonora G. Hunt; Bertha Guernsey Harris; H. T. Irwin; Charles B. Hawarth;
 Jessie A. Hutchinson; Herman Holverson; August Jachewak; Edgar B. Hoover; R. C.
 Hager; J. F. Harvey; S. L. Hawarth; Edith Howard; Paul Histor; Lucy M. Jarmon;
 Mrs. Laura Humphreys, J. L. Howard; Fred W. Handley; Chas. R. Hensley; I. L. Howard;
 Hill Bros; James Hawks; A. B. Johnson; Alex Hudson; Emme E. Horn; David Horne;
 Sarah Jones; W. W. Harrah; Maude L. Hailey; James M. Hager; Mrs. M. J. Holdman;
 Oliver Holcomb; Razille Holcomb; M. M. Johns; John S. Harris; John E. Hagen;
 Isaac Hagen; Mrs. Kate Hendrickson; C. W. Hibley; Wm. H. Isaac; Henrietta Milling
 & Grain Co - Wm. Daugherty-Pres; Tom Hurlburt; J. A. Kelley; Josiah H. Leezer;
 Mary Kine; Martha D. Kimball; Mathies Rononen; Lot Livermore; Stella Lacy; James
 Kash-Kash; J. W. Kimbrell; Maria L. Lightfoot; Imogene Keys; John Koop; Emma
 Kilkupp; George W. Linser; B. P. Keller; Harmon I. Kamrath; W. Lyman; B. P. Keller;
 Frank Krebs; Harry E. Krebs; W. A. Krebs; G. W. Lieuallen; J. T. Lieuallen;
 Henry Koepka; James A. King; F. G. Lucas; Henry Kopettke; Matt Kononen; William
 Ladd; E. H. Merrill; Lida R. McDonald; T. C. Mendenhall; Minerva Mendenhall;
 Kinsey Morton; Chas E. Marple; J. R. Marple; E. P. Marshall; Chas. McDaniels;
 James McKay; Wm. McCormack; John E. McCormack; James Morgan; David McCarty; Geo.
 F. Mansfield; Wm. McCutcheon; L. L. Mann; John Minthorn (Estate); Albert Moody;
 Wm. Manke; James G. McConnell; A. F. Michaels; Morse Estate; Mrs. S. L. Morse;
 Moody Estate; Clarence Morse; Billy Nurlin; A. E. McFarland; John McGinn; Tobitha
 Marquis; Alex McKenzie; Jno. A. McIntyre; Andrea B. McEwen; Wm. McCorkell; John
 M. McLaughlin; John L. McFall; J. S. McLeod; J. T. McNurlin; Mary T. Noble;

Northern Pacific R'y Co; Margaret Oliver; R. J. Oliver; Wm. L. Noble; T. D.
 Oliver; Catherine Nelson; Nels. C. Nelson; Sam Nelson; Chas. H. Olcott; Frank
 Noble; Wm. B. Owings; Chris Nelson; C. L. Nelson; S. M. Olmstead; Carl Oberg;
 Jackson Nelson; J. B. Owen; C. W. Nibley; Warren R. Parker; H. Pelmulder; Eliza
 E. Pugsley; J. B. Perry; Maggie N. Parr; Will M. Peterson; Eva M. Peterson; E. J.
 Perry; Pendleton Roller Mills; Pedro Bros; Alfred Palmer; Chief Peco; Amos Pond;
 G. Pea; Thos. P. Page; Wm. L. Parcell; Samuel L. Priscoe; D. A. Pearson; Rose
 Adell Heath; Joseph Rose; Annie Reeves; Henry Ruth; S. N. Richardson; Seth
 Richardson; C. E. Roosevelt; J. A. Rust; John Ray; J. L. Raley; Wm. Rhodes;
 A. D. Rhonimus; Adam B. Rothrock; L. C. Rothrock; W. C. Russell; Joseph Ringles;
 J. S. Ross; E. E. Rugg; John Runyan; W. B. Ross; Riparian Irrigation Company;
 Wm. Reeves; John D. Rice; W. H. Starr; C. P. Stanyan; Louis Scholl; Edith Smith;
 Paul F. Schneider; O. F. Steele; Matt Saari; Samuel Smith; James L. Smith; Wm.
 Smith; H. W. Schwartz; Schwartz & Gruelich; G. Schroeder; Chas. Switzler; Hattie
 Stanfield; Ephriam L. Smith; Minnie J. Suista; J. W. Salisbury; Mrs. H. T.
 Stanfield; Elizabeth Stamper; Edward Serell; A. L. Swaggert; Chas. Schumann;
 Cap. Sumpkins; John Switzler; S. G. Shaw; I. E. Saling; John R. Smith; Henry
 W. Schwartz; Agnes Swauger; T. B. Swearingen; E. P. Staples; Marshall Stevens;
 Dan Smythe; John B. Switzler; Ida M. Turner; E. E. Turner; R. E. Thom; Martha A.
 Travis; J. E. Taylor; M. L. Taylor; John F. Thompson; Wm. L. Thompson; T. D. Taylor;
 Squire D. Tucker; Elizabeth Tucker; _____ Tucker; E. W. Welch; Pauline West;
 Aga B. Thomson; Aura A. Thomson; David Sloan; Thomson; Ellen Tippet; Wm. Temple;
 Thompson-Figg Estate; Sarah Thompson Estate; Chris Tarver; Belle Todd; J. S. Todd;
 Peter Toft; Peter L. Van Orsdell; Minerva D. Vaughn; Chas. Van Pelt; James Vey;
 Carrie C. Van Grandall; James Wardwell; Frank J. Watson; John S. West; J. F.
 Williams; Clark M. Ware; Horace Walker; M. L. Warren; E. R. Ware; Perry T. Whit-
 worth; Wm. H. Wilson; John W. Whitman; Anna B. Weber; Mabel Wolfe; Peter West;
 Mary A. Waldron; Mary Wigglesworth; C. F. Williams; Mabel Wolfe; Mattie Walker;
 Alex Waugh; James P. Whittmore; R. W. Waucop; S. F. Wilson; A. L. Watts; Wm.
 Willaby; George L. Ward; Clark M. Ware; Walton Bros; William Wilson; Will Walton;
 Arthur H. Yates.

The following are Indians residing on the Umatilla Indian
 Reservation:

Kap-sis-e-wa-tin; In-na-bo-pe; Shee-loo-pow-yan; Catherine King;
 We-a-lux; Temigh; Talaspaleo; Ida Pond; Ala-lame-ton-mi; Columbia Joe's
 daughter Maud; Koot-to-tan's wife's sister, Talakekla; Rueben-wa-won-a-kee; Acwate;
 W.H.H.68; Ap-nash-kla-tuck; 341 C; W.W.H.70; Watalawit; Sem-ka-we-ela; Ko-san-mi-

Jesse Picard; Alayokimi; Non-sa-pa; George Pearson; Pauline Tower; Francis Lincoln; A-ko-wit-ye-a; Gus Cornoyer; T-me-e-liche; Yekow Widow; L-e-lite; Hooit-soot (or Hook-Sook); He-you-wa-pe; Little Thomas; Mable Bergevin; Wa-pe-ta-nin; Eyoustime; Pa-la-nat-hi-hi; Long Hair; Tet-ha-lot; We-wt-kee; Me-tot-tsa-lumk; Paip; Lix-le-wa; Joseph McBear; Yellow Jacket; In-sa-sin-a; Pa-na-po-ye-aop; Wissates; Myrtle Hebart; W. H. H. 75. And except such rights to the use of said water as said parties may have, or be entitled to have, by, through, or under any claimant to whom a right is hereinafter granted and confirmed, or by appropriation according to law subsequent to the date of taking effect of C. 216, Gen. Laws of Oregon, 1909, such parties are hereby declared to be barred and estopped from asserting any rights to any of the waters of said Umatilla River and its tributaries, or either or any of them.

6

That upon the completion of the taking of testimony by the Superintendent of Water Division No. 2, said Superintendent did on the 8th day of August, 1910, (Vol. 1, p. 429 et seq) give notice by registered mail to each of the various claimants to the waters of said stream and its tributaries, that at the time and place named in said notice, to-wit: beginning on Monday the 5th day of September, 1910, and ending on Friday the 23rd day of September, 1910, (Sundays excepted), from 9 A. M., to 12 M., and from 1:30 P. M., to 5 P. M. at the Commissioners Court Room, in the County Court House, in Pendleton, Umatilla County, Oregon, all of said evidence would be opened to the inspection of the various claimants or owners, and that said Division Superintendent did, in accordance with said notice, attend at said time and place, and keep said evidence open to inspection for a period of 17 full days, and said notice did also state forthwith, the county in which the determination of the said Water Board would be held, by the Circuit Court, to-wit: Circuit Court State of Oregon, for Umatilla County, due proof of the holding of said inspection and of the sending of said notices, by registered mail, being filed herein. (Vol. 1, p. 346, et seq).

7.

That at the time specified in said original notice, a duly qualified assistant of the State Engineer of the State of Oregon, did proceed to make an examination of said stream and its tributaries, and all of the ditches diverting water therefrom, and all of the lands irrigated, and susceptible to irrigation,

from said ditches and canals, together with the measurements thereof, which observations and the measurements were made a matter of record in the office of the State Engineer, and said Engineer did prepare a plat and a map, on a scale of measurement of two inches to the mile, showing with substantial accuracy the course of said stream and its tributaries, and the location of the various ditches diverting water therefrom, and the legal subdivisions of land which had been irrigated, or were susceptible to irrigation from said ditches and canals, already constructed, blue prints and copies of said maps, and information duly certified to by said Engineer, being now on file herein and a part of the records hereof.

8.

That the following contests were duly filed with the Superintendent of Water Division No. 2, (Vol. 1, p. 465 et seq) within five days after the close of inspection of the statements and proofs of claim of the various claimants to the waters of said river, to-wit:

#1. Brownell Ditch Co., v. Maxwell Land & Irrigation Co;
#2. Brownell Ditch Co. v. H. G. Hurlburt; #3. Brownell Ditch Co. v. Harry R. Newport; #4. Brownell Ditch Co. v. Frank F. Fowler and Julia C. Fowler;
#5. Brownell Ditch Co. v. Oregon Land & Water Co; #6. The Beitle Ditch Co. v. Harry R. Newport; #7. The courtney Irrigation Co. v. The Pioneer Irrigation Co; #8. Courtney Irrigation Co. v. Western Land & Irrigation Co; #9 Courtney Irrigation Co. v. Harry R. Newport; #10. Courtney Irrigation Co. v. Riparian Irrigation Co.; #11. Courtney Irrigation Co. v. United States of America; Dillon Irrigation Co. v. Western Land & Irrigation Co; #13. Dillon Irrigation Co. v. Courtney Irrigation Co - T. G. Smith, E. O. Baumgardner, Grace Rogers, William H. Gulliford, Henry Baumgardner, Will Moore, Zoeth Houser, Sadie Haney, H. G. Hurlburt, C. J. Smith; #14. Frank Donnelly v. J. E. Smith Livestock Co.
#15. Frank Donnelly v. Joseph Cunha; #16. Frank Donnelly v. Allen Ditch Co.- Joseph Cunha, Fred A. Andrews, Elvira Teel, O. D. Teel, George T. Higgenbotham, and Mildred Spike; #17. Dillon Irrigation Co. v. Pioneer Irrigation Co.,-W. J. Emery, Frank Corea, James Mendenhall, Elmer Reeves, George L. Ward, C. J. Ward, B. F. McCullough, B. F. Raley, A. J. Cleghorn, Ed. Gnavauch, H. Baumgardner, and Charles Kennison; #18. The Maxwell Land & Irrigation Co. v. Oregon Land & Water Co;

#19. E. O. & L. D. Neill v. R. F. Wigglesworth and I. C. Cox; #20. E. O. Neill and L. D. Neill v. W. W. Howard; #21. E. O. Neill and L. D. Neill v. R. F. and W. E. Wigglesworth; #22. E. O. and L. D. Neill v. R. F. Wigglesworth; #23. E. O. Neill and L. D. Neill v. Kate Cornett; #24. E. O. Neill and L. D. Neill v. George J. Currin; #25. E. O. Neill and L. D. Neill v. Chas. E. Batholomew; #26. Oregon Land & Water Co. v. the Beitle Ditch Co; #27. The Oregon Land & Water Co. v. Brownell Ditch Co; #28. Oregon Land & Water Co. v. The Maxwell Land & Irrigation Co; #29. Oregon Land & Water Co. v. United States of America; #30. Oregon Land & Water Co. v. Frank Donnelly; #31. Oregon Land & Water Co. v. The Riparian Irrigation Co; #32. Oregon Land & Water Co. v. Courtney Irrigation Co; #33. Oregon Land & Water Co. v. O. D. Teel; #34. Oregon Land & Water Co. v. Western Land & Irrigation Co; #35. Mary E. Hopper v. Umatilla County; #36. William T. Walton v. Western Land & Irrigation Co; #37. Sidney Walton v. Western Land & Irrigation Co. #38. Western Land & Irrigation Co. v. U. S.; #39. Western Land & Irrigation Co. v. Pioneer Irrigation Co; #40. Western Land & Irrigation Co. v. Courtney Irrigation Co; #41. Western Land & Irrigation Co. v. Harry R. Newport; #42. Western Land & Irrigation Co. v. Brownell Ditch Co; #43. Western Land & Irrigation Co. v. John G. Peters and Thomas W. Peters; #44. Western Land & Irrigation Co. v. Oregon Land & Water Co; #45. Western Land & Irrigation Co. v. F. H. Gritman; #46. Western Land & Irrigation Co. v. Frank F. and Julia C. Fowler; #48. Western Land & Irrigation Co. v. Maxwell Irrigation Co; #49. United States of America v. George Higgenbotham; #50. U. S. A. v. Crayne-Lisle Irrigation Co; #51. U. S. A., v. H. J. Bean; #52. U. S. A. v. William Slusher; #53. U. S. A., v. Edmund D. Warner; #54. U. S. A. v. J. D. Ingram; #55. U. S. A. v. Thomas S. Gibson; #56. U. S. A. v. J. A. Guderian; #57. U. S. A. v. H. H. Gilbert; #58. U. S. A. v. Geo. W. Bush; #59. U. S. A. v. P. E. Fletcher; #60. U. S. A., v. John Forth; #61. U. S. A. v. M. T. Baker; #62. U. S. A. v. Fred Gienger; #63. U. S. A. v. J. A. Owings; #64. U. S. A. v. Nicholas Brown; #65. U. S. A., v. James A. Fee; #66. U. S. A., v. U. G. Horn; #67. U. S. A., v. Douglas Belts; #68. U. S. A., v. Truman Cable; #69. U. S. A., v. Robert Dick; #70. U. S. A., v. John Bain; #71. U. S. A., v. Grace Gilliam; #72. U. S. A., v. Andrew Fiedler; #73. U. S. A., v. J. N. Hemphill; #74. U. S. A., v. Herbert Boylen; #75. U. S. A., v. Elizabeth Horn; #76. U. S. A., v. William H. Evans; #77. U. S. A., v. J. E. Smith Livestock Co; #78. U. S. A., v. M. G. Edwards; #79. U. S. A., v. H. B. Owings; #80. U. S. A., v. Perry Knotts; #81. U. S. A., v. A. C. Henderson & Sons; #82. U. S. A. v. Perry Hauser; #83. U. S. A., v. Frank Frazier; #84. U. S. A., v. D. W. Bowman;

#85. U. S. A., v. Courtney Irrigation Co; #86. U. S. A., v. R. L. Oliver;
#87. U. S. A., v. L. T. Kennison; #88. U. S. A., v. Elmer A. Snyder; #89. U. S. A.
v. Mildred Spike; #90. U. S. A., v. Susan White; #91. U. S. A., v. H. G. Hurl-
burt; #92. U. S. A., v. Dillon Irrigation Co.; #93. U. S. A., v. Western Land &
Irrigation Co; #94. U. S. A., H. G. Hurlburt; #95. U. S. A., v. Furnish Ditch
Co; #96. U. S. A., v. C. J. Ward; #97. U. S. A., v. Wilson Irrigation Co. #98.
U. S. A., v. Geo. L. Ward; #99. U. S. A., v. Claude Sloan; #100. U. S. A., v.
Elmer Spike; #101. U. S. A., v. John H. Young; #102. U. S. A., v. W. W. Whit-
worth; #103. U. S. A., v. Frank Corea; #104. U. S. A., v. Nancy J. Lapham;
#105. U. S. A., v. C. J. Smith; #106. U. S. A., v. T. G. Smith; #107. U. S. A.,
v. Will Moore; #108. U. S. A., v. Beitle Ditch Co.; #109. U. S. A., v. Brownell
Ditch Co; #110. U. S. A., v. W. J. Emery; #111. U. S. A., v. H. Baumgardner;
#112. U. S. A., v. E. O. Baumgardner; #113. U. S. A., v. Grace B. Rogers;
#114. U. S. A., v. Henry Baumgardner; #115. U. S. A., v. F. H. Gritman; #116.
U. S. A., v. Joseph Cuhna; #117. U. S. A., v. O. D. Teel; #118. U. S. A., v.
Clarence Gulliford; #119. U. S. A., v. J. Feldmulder; #120. U. S. A., v. Frank
Corea; #121. U. S. A., v. J. K. Bott; #122. U. S. A., v. Rolla E. Bowman; Roy
D. Bowman, Chas. C. Bowman, and Hattie M. Hamblin; #123. U. S. A., v. W. B.
Jenkins; #124. U. S. A., v. Frank L. Jordan; #125. U. S. A., v. James Johns;
#126. U. S. A., v. Elizabeth Hemphill; #127. U. S. A., v. Carl A. Johnson;
#128. U. S. A., v. B. H. Fix; #129. U. S. A., v. Robert Hoeft; #130. U. S. A.,
v. Mrs. E. A. Reagin; #131. U. S. A., v. John W. Crow; #132. U. S. A., v.
Aaron M. Isaacs; #133. U. S. A., v. Mary E. Hopper; #134. U. S. A., v. W. J.
Furnish; #135. U. S. A., v. J. W. Roork; #136. U. S. A., v. George E. Adams;
#137. U. S. A., v. John C. Cline; #138. U. S. A., v. Frank E. Sherman; #139.
U. S. A., v. Umatilla County - T. P. Gilliland, County Judge, - Frank Saling, County
Clerk; #140. U. S. A., v. Ida Walker; #141. U. S. A., v. Carrie Sparks; #142.
U. S. A., v. Amanda Southwell; #143. U. S. A., v. Elwood F. Straughan; #144.
U. S. A., v. A. D. Sloan; #145. U. S. A., v. J. Stonebraker; #146. U. S. A., v.
Edward Simon; #147. U. S. A., v. John M. Wynn; #148. U. S. A., v. Annette
Willson; #149. U. S. A., v. A. P. Warner; #150. U. S. A., v. E. L. Wright;
#151. U. S. A., v. Sturtevant; #152. U. S. A., v. Wanaha Springs Co; #153.
U. S. A., v. Elvira Teel; #154. U. S. A., v. D. A. Pearson; #155. U. S. A., v.
J. A. Mendenhall; #156. U. S. A., v. Chas. Kenison; #157. U. S. A., v. H. R.
Newport; #158. U. S. A., v. H. R. Newport; #159. U. S. A., v. Charles McBee;

#160. U. S. A., v. Joseph Kane; #161. U. S. A., v. Thomas Jacques; #162. U. S. A., v. Rebecca Kemler; #163. U. S. A., v. Daniel Kemler; #164. U. S. A., v. Alonzo Knotts; #165. U. S. A., v. Oscar P. Newquist; #166. U. S. A., v. Louis Mc A La Dow; #167. U. S. A., v. W. W. Patton; #168. U. S. A., v. Geo. Male; #169. U. S. A., v. John P. McManus; #170. U. S. A., v. Charles Ogilvie; #171. U. S. A., v. Charles A. Manning; #172. U. S. A., v. W. F. Matlock; #173. U. S. A., v. Ben F. Brown; #174. U. S. A., v. C. C. Hendricks; #175. U. S. A., v. Daniel Shaw; #176. U. S. A., v. Wm. L. Ely; #177. U. S. A., v. Olive Harrison; #178. U. S. A., v. Hattie J. Davis; #179. U. S. A., v. Omer O. Stephens; #180. U. S. A., v. John Schmidt; #181. U. S. A., v. T. J. Cheney; #182. U. S. A., v. James P. Brown; #183. U. S. A., v. Geo. L. Dunn; #184. U. S. A., v. F. T. Byrd and C. E. Byrd; #185. U. S. A., v. G. W. Runyan; #186. U. S. A., v. Sophie Byers; #187. U. S. A., v. L. W. Reed; #188. U. S. A., v. William P. Daniels; #189. U. S. A., v. L. E. Roy and F. M. Smith; #190. U. S. A., v. William P. Card; #191. U. S. A., v. Geo. W. Jones; #192. U. S. A., v. Marion Jack; #193. U. S. A., v. J. S. Holmes; #194. U. S. A., v. Carl Jensen; #195. U. S. A., v. Horseshoe Irrigation Co; #196. U. S. A., v. Joseph Cunha; #197. U. S. A., v. Allen Ditch Co; #198. U. S. A., v. Levi Eldridge; #199. U. S. A., v. Arthur S. Janes (2 cases); #200. U. S. A., v. Arthur S. Janes (2 cases); #201. U. S. A., v. B. P. Doherty; #202. U. S. A., v. B. P. Doherty; #203. U. S. A., v. Cunningham Sheep & Land Co; #204. U. S. A., v. Cunningham Sheep & Land Co; #205. U. S. A., v. Cunningham Sheep and Land Co; #206. U. S. A., v. Joseph Ramos; #207. U. S. A., v. Elmer Reeves; #208. U. S. A., v. Chris Roberts; #209. U. S. A., v. B. F. Raley; #210. U. S. A., v. E. F. Carney; #211. U. S. A., v. J. E. Reeves; #212. U. S. A., v. Fred Andrews; #213. U. S. A., v. J. E. Smith Livestock Co; #214. U. S. A., v. J. E. Smith Livestock Co; #215. U. S. A., v. John J. and Thos. W. Peters; #216. U. S. A., v. Oregon Land & Water Co.; #217. U. S. A., v. Oregon Land & Water Co; #218. U. S. A., v. Oregon Land & Water Co; #219. U. S. A., v. Sadie Haney; #220. U. S. A., v. Zoeth Houser; #221. U. S. A., v. Wm. H. Gulliford; #222. U. S. A., v. Frank Donnelly; #223. U. S. A., v. Frank F. Fowler and Julia C. Fowler; #224. U. S. A., v. E. E. Elder; #225. U. S. A., v. Ed. Gnauvauch; #226. U. S. A., Pioneer Irrigation Co.; #227. U. S. A., v. Maxwell Irrigation Co.; #228. U. S. A., v. Addie C. Esteb; #229. U. S. A., v. A. J. Cleghorn; #230. U. S. A., v. Joel Halstead; #231. U. S. A., v. S. I. Lisle; #232. U. S. A., v.

B. F. McCullough; #233. U. S. A., v. Geo. Fiedler; #234. Sophie Byers, v. Wa-wa-ne; #235. Sophie Byers, v. Joe Parr; #236. Sophie Byers, v. Eli Parr; #237. Sophie Byers, v. A-le-te-la; #238. Sophie Byers, v. Pat-si-ak; #239. Sophie Byers, v. To-yat, heirs of Peter Kalyton, Cayuse #240, by E. L. Swartz-lander; #240. Sophie Byers, v. Frank Parrl #241. Sophie Byers, v. William Caldwell; #242. Sophie Byers, v. Mrs. White Bull.

9.

That after the filing of said contests, the Superintendent of Water Division No. 2 did fix the time and place for the hearing of each and every of said contests to be Monday the 12th day of June, 1911, at the hour of 10 o'clock A. M., at the Court House in Pendleton, Oregon, which date was more than thirty days and less than sixty days from the date of the notice of hearing so served on each of the parties to each and every of said contests; that thereafter, said notice of hearing was duly served and returns made thereupon, which notice of hearing and proof of the service thereof is on file in these proceedings. That upon the date set for the hearing of said contests, and thereafter from time to time, the Superintendent of Water Division No. 2 did attend and begin said hearings upon said contests, and did continue the hearings upon said contests from time to time, until each and every of said contests were fully heard, settled, or otherwise disposed of. That each and every of said contests were disposed of and the particular findings necessary for the decision of each and every of said contests, is as follows, to-wit:

Contest #1. Brownell Ditch Company, contestant, v. The Maxwell Land & Irrigation Company, contestee. Was settled by the parties and the contestee, the Maxwell Land and Irrigation Company, conveyed to the Brownell Ditch Company, a right of way across the riparian lands belonging to the said contestee, the said contestee reserving unto itself riparian rights for stock purposes, and based upon said settlement said contest is hereby dismissed. (Vol. 1, p. 243 to 245 275.)

Contest #2. The Brownell Ditch Company, contestant, v. H. G. Hulburt, contestee; was settled by stipulation on file herein, wherein and whereby the parties to said contest agreed that said contestees should have the right to use the waters of the Umatilla River for power purposes, providing said waters so used for such purpose is returned to the channel of the said river at a

point above the present intake of the Beitel Ditch; and it appearing from the claim filed by said contestee, that the water appropriated for such right has not yet been applied to a beneficial use, said water right is tabulated herein as an inchoate right, and said contestee in perfecting the said right shall have and receive such right, subject to this stipulation. (Vol. 6, p. 43).

Contest #3. Brownell Ditch Company, contestant, v. Harry R. Newport, contestee. Was settled by stipulation wherein the parties hereto agree that the contestee should have the right to a flow of 62 inches of water, miners measurement, under a six inch pressure, from the Beitel Ditch, subject to the rights of the contestant. It further appeared that the contestee has transferred all his right and title to the water herein to H. G. Hurlburt. That in 1910, H. G. Hurlburt reduced the land to cultivation and irrigation, and the rights claimed by the contestee are herein tabulated under the name of H. G. Hurlburt as successor to Harry R. Newport, for the lands described in the Statement and Proof of Claimant, with a priority date of 1910. That said priority date is such as to make the use of said water subject to the right of the contestant in its use of water. As to the use of water for power, it appears that the contestee claims a right under the date of January 1899, but has never applied any of said water to a beneficial use for the development of power. That more than ten years has passed between the initiation of such right and the filing of proof of said claimant, and that so far as said contestee is concerned, said water right has lapsed and said contestee has no rights therefor. (Vol. 6, p. 64)

Contest #4. The Brownell Ditch Company contestant, v. Frank F. and Julia C. Fowler, contestee. It appeared to the Board that said contest was filed on the 27th day of September, 1910, being the 4th day after the ending of said public inspection of the statements and proofs of claim; that thereafter, the Superintendent of Water Division No. 2, did fix the time and place for the hearing of said contests as Monday the 30th day of October, 1911, at the hour of ten o'clock A. M., at the Court House, in Pendleton, Oregon. That it further appears to the Superintendent of Water Division No. 2, that said Frank F. Fowler and Julia C. Fowler, and each of them had departed from the State of Oregon, and had remained absent therefrom for a period of more than six consecutive weeks, and that said contestees, and each of them were not at the time said contest was set for hearing, or at any time thereafter, residents of the State, but that said contestees were the owners of the lands described in the statements and proofs of claim, and had property within this state, and that said contestees since leaving

the State of Oregon had become residents of the State of California, and that at the time of the publishing of said notices, and at all times thereafter resided at Midland, California, (Vol. 1, p. 280;) that upon the fixing of the time and place for the hearing of said contests, said Superintendent of Water Division No. 2 ordered said notice of said contest to be served by publication for six consecutive weeks, or seven issues of the "Live Wire", a weekly newspaper published and issued in Pendleton, and of general circulation in Umatilla County, Oregon, said newspaper being the one most likely to give notice to said contestees, due proof of said publication being filed herein (Vol. 6, p. 74) and in addition to said publication, said Superintendent of Water Division No. 2, caused certified copies of said notice of contest, and said notice of hearing of said contests, to be mailed to said contestees with postage prepaid, and addressed to said contestees at Midland, California, due proof of which is filed herein (Vol. 6, p. 74). That the Superintendent of Water Division No. 2 did attend at the time and place fixed for the hearing of said contests, and said contestees failed and neglected to appear, or answer said notices of contest, and said contestees, Frank F. Fowler and Julia C. Fowler, and each of them, were, and are in default, and it appearing from the statement and proof of said claimants that said water right was initiated in 1903, and that no use had been made of said water from the date of initiation of said water right, that said water right has lapsed, and said contestees Frank F. Fowler and Julia C. Fowler, and their successors, have no rights therein.

Contest #5. The Brownell Ditch Company, contestant, v. Oregon Land & Water Company, contestee, was settled by stipulation, wherein and whereby the date of priority of the Brownell Ditch Company was fixed at November 8th, 1893, and that of the Oregon Land & Water Company, April 14, 1893. That by said stipulation the Oregon Land and Water Company had a prior right for 75 second feet of water, and the Brownell Ditch Company should then receive 35 second feet of water, and thereafter the Oregon Land & Water Company should receive 75 second feet of water, and it appearing from the statement and proof of claimant, the Oregon Land and Water Company, and the record herein, that the lands upon which water has been beneficially applied amounted to 2066 acres under date of April 14, 1893, and an inchoate right for 3974 acres under date of 1906. That said claimant, the Oregon Land & Water Company is entitled to receive sufficient water to irrigate said lands as shown in the tabulation hereunto attached, and not to exceed 75

second feet of water, prior to the rights of the contestant, the Brownell Ditch Company; that the Brownell Ditch Company has irrigated 374.5 acres, and has a water right therefor and of the priority date of November 8, 1893, for 31 acres and of 1902 for 343.5 acres, and that said Brownell Ditch Company has an inchoate right for 953.60 acres, under a priority date of 1903 as shown by the tabulation herein. That under this decree, said contestant, the Brownell Ditch Company shall be entitled to receive sufficient water to irrigate said land, in accordance with the priority dates above set forth, not exceeding 35 second feet, provided that the amount of water received for use upon the lands of the above contestant and contestee, shall be limited to such an amount per acre, as in these findings may be found necessary for the irrigation thereof, and no more. (Vol. 6, p. 96).

Contest #6. Beltel Ditch Company, contestant, v. Harry R. Newport, contestee, was settled by stipulation wherein and whereby it was agreed between the parties that the contestant should have the first right to the use of 65.19 inches of water, miners measurement, under a six inch pressure, and the contestee should have the next right to the use of 62 inches of water, miners measurement, under a six inch pressure, and that the contestee should bear one half of the expense and labor of maintaining the Beltel Ditch from the headgate through the west half of Section 9. It further appeared that the contestee has transferred all his right, and title to the water herein to H. G. Hurlburt. That in 1910 H. G. Hurlburt reduced the land to cultivation and irrigation, and the rights claimed by the contestee are herein tabulated under the name of H. G. Hurlburt as successor to Harry R. Newport for the lands described in the statement and proof of claimant, with a priority date of 1910; that said priority date is such as to make the use of said water subject to the rights of the contestant in its use of water. As to the use of water for power, it appears that the contestee claims a right under the date of January 1899, but has never applied any of said water to a beneficial use for the development of power. That more than ten years has passed between the initiation of such right and the filing of proof of said claimant, and that so far as said contestee is concerned, said water right has lapsed and said contestee has no rights therefor. (Vol. 6, p. 116).

Contest #7. Courtney Irrigation Company, contestant, v. Pioneer Irrigation Company, contestee. Was settled by stipulation, wherein and whereby it was agreed that the Pioneer Irrigation Company shall be entitled to a priority

priority date of 1894 has been established under the Minnehaha right. That on the 25th day of February, 1904, the Maxwell Land & Irrigation Company posted a notice of appropriation, and map filed therewith shows that the water was appropriated for the acreage as stated forthwith under the claim of the United States. That due diligence has been shown in the bringing of the lands thereunder into cultivation and irrigation, and that the United States Government should have under date of February 25, 1904, the lands as hereinafter tabulated; that this tabulation shall include the claim of the Maxwell Land & Irrigation Company and claimants thereunder, which will make the claim of the United States of America as tabulated, include the claims of the United States of America, Maxwell Land & Irrigation Company, J. F. McNaught, S. R. Oldaker and Chas. E. Baker.

The third basis of claim of the United States of America is based upon the appropriation of Sept. 6, 1905, wherein the water rights are reserved to the United States under a Statute of the State of Oregon appearing as Chapter 228, Gen. Laws of Oregon for 1905. This right is tabulated and described with the other rights of the United States in Finding No. 34.

Contest #12. Dillon Irrigation Company, contestant, v. Western Land & Irrigation Company, contestee. The contestee bases its right upon three appropriations made in 1891, and upon a second appropriation made in 1903 (see Exhibits 25A, 25B, 25C and 25D.) The appropriation made by J. M. Jones was afterwards transferred to the Columbia Valley Land & Irrigation Company, (see Exhibit 25E). That under the appropriation of J. M. Jones, water was diverted, and in the year 1892 a couple of hundred acres were irrigated (Vol. 32, Book C, p. 670). In 1893 there was no water diverted through the ditch (Vol. 32, p. 670A). The ditch then fell into disuse and no further use was made of it until the rights were purchased by the Hinkle Ditch Company, which was succeeded by the Western Land & Irrigation Company. The Hinkle Ditch Company made a new appropriation on March 14, 1903. The priority date therefore, of the Western Land & Irrigation Company begins with the appropriation of the Hinkle Ditch Company, and the same is hereby established as March 14, 1903, for 4109.68 acres, and July 1907, for 12,747.48 acres.

Contest #13. Dillon Irrigation Company, contestant, v. Courtney Irrigation Company, a corporation, - T. G. Smith, O. Baumgardner, Grace Rogers, Wm. H. Gulliford, Henry Baumgardner, Will Moore, C. J. Smith, Zoeth Houser,

of date from the 9th day of January, 1900, for an amount of water not to exceed 1005 inches, miners measurement, under a six inch pressure, and that the Courtney Irrigation Company shall be entitled to a priority date of the 9th day of January, 1900, for an amount of water not to exceed 995 inches, miners measurement, under a six inch pressure, and that for the appropriations of the two parties for water, for said date, that their rights shall be considered as equal, and without priority as to each other. That the Courtney Irrigation Company, in addition to the foregoing appropriation, shall be entitled to receive the balance of its appropriation, not to exceed 722 inches of water, miners measurement, under a six inch pressure, under a priority date of January 17, 1900; that whenever the water is low and not sufficient to supply the amount required for the parties hereto, and is equal to or less than 1005 inches, miners measurement, under a six inch pressure, then the water shall be furnished to both ditches under a rotation method by giving such water first, to the Pioneer Irrigation Company for ten days, then to the Courtney Irrigation Company for ten days, and so on with the rotation during the balance of the irrigation season. That such agreement of parties shall be enforced according to the findings of fact herein, subject to the general findings of the amount of water necessary to irrigate the lands under such irrigating system, and if the amount of water under such stipulation be not required for such irrigation, then the amount in the above stipulation shall be proportionately diminished for each of the parties hereto.

(Vol. 6, p. 135).

Contest #8. The Courtney Irrigation Company, contestant, v. Western Land & Irrigation Company, contestee, was settled by stipulation, wherein and whereby it was agreed that the Courtney Irrigation Company should have a right prior to the Western Land & Irrigation Company for an amount of water not exceeding 1500 inches, miners measurement, under a six inch pressure; the amount of water which the Courtney Irrigation Company shall divert shall be governed by the findings as to the amount of water necessary to irrigate the land thereunder, and shall have a prior right to such amount not exceeding said 1500 inches. (Vol. 1, p. 278)

Contest #9. The Courtney Irrigation Company, contestant, v. Harry R. Newport, contestee, was settled by stipulation, wherein all the rights of the Courtney Irrigation Company were agreed to be prior in time and superior in right, to the rights of the contestee, Harry R. Newport; the rights

of said contestee, Harry R. Newport are further governed by the findings under Contest No. 3. (Vol. 6, p. 185)

Contest #10. The Courtney Irrigation Company, contestant, v. Dillon Irrigation Company, contestee, (under the name of Riparian Irrigation Company). The Dillon Ditch was constructed in the year 1897 for part of the lands and extended for other lands in 1907. (Vol. 33, Test., p. 49) and should have a priority date of 1897 and 1907 for the lands described in the tabulation under the name of W. T. Reeves, F. H. Densler, B. F. Myerick, B. F. Rector, B. F. Dixon, Umatilla Ranch Company, Frank Saling, Horace Walker, and W. J. Haney, and for lands not yet irrigated contestee should have a priority date of 1907 with limiting date of completion of Jan. 1, 1920, and the rights of said Dillon Irrigation Company, shall be as therein established.

Contest #11. Courtney Irrigation Company, contestant, v. United States of America, contestee. The claim of the United States of America is divided into three parts; that part of the claim represented by Engineer's permits under Application #13, and Application #237, initiated March 28th, 1909, not being completed rights are not in anywise determined by this decree of adjudication, but shall be determined and approved in accordance with Sections #6624, 6626, 6627, 6628, 6630, 6631, 6632 and 6633 of Lord's Oregon Laws.

That the second basis of claim of the United States of America is based upon what is called the Minnehaha and Maxwell rights; that R. E. W. Spargur settled on a desert claim, being the north half of Section 15, Twp. 4 N. R. 28 E., W. M., and his wife entered a desert claim consisting of the South half of Section 10 in said township and range, and that said R. E. W. Spargur purchased the East half of Section 16, of the same township and range; that thereafter, said R. E. W. Spargur abandoned his desert claim in the North half of Section 15, but that his wife proved up on her claim in the South half of Section 10, (See testimony of R. E. W. Spargur, Vol. 1, p. 70, et seq.) That thereafter, H. G. Hurlburt farmed the place to some extent and put in sixty acres of rye and irrigated the most of it. That the irrigation was under a great deal of difficulty, and was not carried on continuously (See testimony of H. G. Hurlburt, Vol. 30, p. 715, et seq.), also (testimony of S. B. Walton Vol. 30, p. 741, et seq.). That about eighty acres is what the water was put over under the Minnehaha right, and a water right for eighty acres of the

Sadie Haney, and H. G. Hurlburt, contestees. As to H. G. Hurlburt, showing is made that he had no further interest in the Courtney Irrigation Company, and as to him, the contest is abated by such disclaimer (Vol. 6, p. 321), and the said H. G. Hurlburt has no right or claim to any water for any irrigated land through the Courtney Irrigation Company's Ditch. That the claim of H. G. Hurlburt shall be continued as to 20 acres in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 4, Twp. 4 N., R. 28 E. W. M., and lying north and west of the Umatilla River, for the purposes of irrigation, by pumping the water direct from the Umatilla River and using it upon said land, and shall be given the priority date set forth in the tabulation herein. That the number of acres irrigated by the Courtney Irrigation Company is as shown in the tabulation hereinafter set forth, and the Courtney Irrigation Company shall be entitled to divert water from the Umatilla River under a priority date of January 9, 1900, for the acreage therein set out as now vested, and a priority date of 1906 for all inchoate rights.

Contest #14. Frank Donnelly, contestant, v. J. E. Smith Livestock Company, contestee, (a corporation). Was dismissed by stipulation of the parties thereto. (Vol. 7, p. 21.)

Contest #15. Frank Donnelly, contestant, v. Jos. Cunha, contestee, was settled by stipulation of the parties to the effect that the contestant should have a prior right to the contestee to two second feet of water, then contestee to have the next right to five second feet, and then the contestant to have the next right to seventy-five second feet, but in no event shall either party be awarded a greater amount of water under the above priorities than is given by the decree hereunder. That the amount of water awarded to each of the contestants is set out in the tabulation hereinafter contained, and the delivery of such water as is shown in the tabulation shall be subject to this finding and said stipulation of the parties. (Vol. 7, p. 37).

Contest #16. Frank Donnelly, contestant, v. The Allen Ditch Company, a corporation, - Jos. Cunha, Fred Andrews, Elvira Teel, O. D. Teel, Geo. T. Higgenbotham, and Mildred Spike, contestees, was settled by stipulation, wherein the contestant should have the first prior right to two second feet of water, and the contestees the next right to twenty-seven second feet of water, provided, that in no event shall any party have a greater amount of water than is awarded to such party upon the final adjudication of the water rights. That the rights to the amounts of water used and the acreage irrigated by the parties hereto are shown in the tab-

ulation hereinafter contained. That the amount of water therein shown shall be distributed in accordance with said stipulation and settlement of this contest. (Vol. 7, p. 179)

Contest #17. The Dillon Irrigation Company, contestant, v. Pioneer Irrigation Company, a corporation, - W. J. Emery, Frank Corea, James Mendenhall, Elmer Reeves, Geo. L. Ward, C. J. Ward, B. F. McCullough, B. F. Raley, C. J. Cleghorn, Ed. Gnavauch, Henry Baumgardner and Chas. Kennison, contestees. That the acreage irrigated is as shown by the contestees in the tabulation hereinafter contained, and that acreage is hereby established as being the irrigated area which the contestees use water upon, and are entitled to use water in accordance with the proportion allotted thereto under the findings herein as to the duty of water.

Contest #18. Maxwell Land & Irrigation Company, contestant, v. Oregon Land & Water Company, contestee. Was dismissed without prejudice to either of the parties thereto. (Vol. 1, p. 3)

Contests #19 to 25 incl., arose upon Butter Creek, and have been disposed of in separate findings as to Butter Creek, made herein.

Contest #26. Oregon Land & Water Company, contestant, v. Beitle Ditch Company, contestee. Was settled by stipulation wherein the priority date of the contestee was admitted as December 1, 1898, and such priority date is hereby established for the number of acres as set forth in the tabulation hereinafter contained, being 56 acres. (Vol. 1, p. 157)

Contest #27. Oregon Land & Water Company, contestant, v. Brownell Ditch Company, contestee, was settled by stipulation, wherein as between the contestant and contestee, the contestant is entitled to have, and is hereby found to have, the prior right to 75 second feet of water, and that the contestee shall have a right next prior in time to 35 second feet of water, and the balance of the contestant's rights shall be next in time to the contestee's right. That this stipulation shall not have the effect of increasing the amount of water that either party hereto may be given under these findings. (Vol. 1, p. 158)

Contest #28. The Oregon Land & Water Company, contestant, v. The Maxwell Land & Irrigation Company, contestee. It appears from the testimony and claims that the Maxwell Land & Irrigation Company has sold all its rights to the United States Government, excepting the right to what the contestee calls the "Winnehaha Spring", and the contestant calls the "Maxwell Spring". It appears that this spring rises and is located upon the contestee's land and being so located, said contest

shall have a right to the use of the same to such an extent as is beneficial.
(L.O.L. Sec. 6673; Morrison v. Officer, 48, Or. 569).

Contest #29. The Oregon Land & Water Company, contestant, v. United States of America, contestee, was dismissed without prejudice or costs to either party. (Vol. 34, p. 512.)

Contest #30. Oregon Land & Water Company, contestant, v. Frank Donnelly, contestee, was settled by stipulation wherein the contestee shall have a prior right to the contestant of 64 cubic feet per second, continuous flow of the waters of the Umatilla River for milling and power purposes. It further appears from the evidence and from the claim of the contestee, that water is used from the appropriation made by the contestee for the purpose of irrigation, but that such irrigation has also been claimed by water users of the Wilson Ditch, and such rights shall be established in the tabulation under the name of the person so claiming and using the water. (Vol. 34, p. 588)

Contest #31. The Oregon Land & Water Company, contestant, v. The Riparian Irrigation Company, contestee. It appears that the Riparian Irrigation Company appeared and answered the contest herein, under the name of the Dillon Ditch Company, and that the parties hereto settled said contest by stipulation, wherein it was stipulated that the rights of the contestee should be settled according to the testimony taken by the State Water Board in this adjudication and applicable to this contest. The rights of said contestee shall be as hereinafter tabulated. (Vol. 1, p. 160)

Contest #32. The Oregon Land & Water Company, contestant, v. Courtney Irrigation Company, contestee, was settled by stipulation, wherein and whereby the priority date of the contestee is acknowledged as January 9th, 1900. The water master shall distribute water to said contestee in accordance with such date of priority, and the tabulation as hereinafter set forth. (Vol. 1, p. 161.)

Contest #33. Oregon Land & Water Company, contestant, v. O. D. Teel, contestee. The contestee herein filed a claim for riparian rights covering stock water, household and domestic use, and it appears from the statement and claim that the same has been in use for the watering of stock and garden purposes upon the banks of the river, and said right shall be hereinafter tabulated for the purpose of household and domestic and stock water use.

Contest #34. Oregon Land & Water Company, contestant, v. Western Land & Irrigation Company, contestee. Was settled by stipulation wherein the contestant is acknowledged to have a prior right to the contestee of 75 second feet of water, and that the balance of contestant's rights shall be subsequent in time

and right to the contestee, and the tabulation of the rights of the parties herein-after contained shall be subject to this settlement. (Vol. 1, p. 162.)

Contest #35. Mary E. Hopper, contestant, v. Umatilla County, contestee, was a contest involving the rights of the parties hereto to a joint use of certain ditches and distribution of water, and does not involve their water right. It appears that the contestee was served with an notice of hearing of contest on the 25th day of April, 1911, setting the time for the hearing on Monday the 12th day of June, 1911, but the contestee did not appear, and it further appears that the parties thereto have agreed as to the use of the ditches. The contestant shall have the right to enter the premises of the contestee to repair the ditches; that the parties hereto will jointly keep the ditches on contestee's land in repair while contestant shall keep the ditches on her own land in repair. The contestant shall have the use of water from Friday morning until Monday morning of each week, and the water master in the distribution of water shall be governed by such agreement. This finding only applies to ditches jointly used by the parties hereto. (Vol. 8, p. 122-125).

Contest #36. Wm. T. Walton, contestant, v. Western Land & Irrigation Company, contestee, was dismissed in open court without cost or prejudice to either party, and it further appearing that the rights of the parties are settled between themselves, no finding as to the rights of the parties is made. It further appearing that G. W. & A. W. Rugg are the successors in interest to Wm. T. Walton, such rights shall be considered as having been transferred. (Vol. 34, p. 527; Vol. 8, p. 129 et seq; Vol. 1, p. 261.)

Contest #37. Sidney Walton, contestant, v. Western Land & Irrigation Company, contestee, was dismissed without cost or prejudice to either party, and James A. Fee, Jr., was substituted as to the claim of Sidney Walton, and it further appears that the rights of the parties are settled between themselves, no finding thereon is made. (Vol. 34, p. 527; Vol. 8, p. 154; Vol. 1, p. 261).

Contest #38. Western Land & Irrigation Company, contestnat, v. U. S. A., contestee, involves the same matters as Contest No. 11, - Courtney Irrigation Company, contestant, v. United States of America, contestee, and shall be governed by the findings therein.

Contest #39. Western Land & Irrigation Company, contestant, v. Pioneer Irrigation Company, contestee, was settled by stipulation of the parties wherein it was agreed that as against the contestant, the contestee shall have a prior right to the use of not to exceed 1005 inches of water, miners measurement, under a six inch pressure, and in accordance with such stipulation, the contestee

herein shall have and be entitled to the use under a prior right to the contestant to such an amount of water as said contestee shall be entitled to, under the tabulation hereinafter contained in the findings of this Board, not to exceed 1005 inches. (Vol. 1, p. 300)

Contest #40. Western Land & Irrigation Company, v. Courtney Irrigation Company, contestee, was settled by stipulation and is governed by the findings under contest No. 8. (Vol. 1, p. 278)

Contest #41. Western Land & Irrigation Company, contestant, v. Harry R. Newport, contestee, was settled by stipulation, wherein and whereby the rights of the contestee are agreed to be subsequent in time and inferior in right to the rights of the contestant, and the date of the said contestee shall be as in the tabulation hereinafter established, and shall have a later date than those of said contestant. And it further appearing that H. G. Hurlburt has succeeded to the rights of said Harry R. Newport, such tabulation shall be made in his name as such successor. (Vol. 1, p. 165-279)

Contest #42. Western Land & Irrigation Company, contestant, v. Brownell Ditch Company, contestee, was settled by stipulation, wherein it was agreed that the rights of the contestee herein are prior in time and superior in right to any and all rights claimed by the contestant, except as to such rights as the contestant and its predecessors in interest may have secured with a priority date prior to March 14, 1903, and that as to such rights, the evidence in the case of the United States against the contestant herein shall be used to govern any such rights, if any there be. That such evidence has been duly examined and the date of priority of said contestant herein shall be as shown and established in the tabulation hereinafter contained. (Vol. 1, p. 167)

Contest #43. Western Land & Irrigation Company, contestant, v. John G. and Thos. W. Peters, contestees. A notice of the hearing of the contest was ordered to be served upon the contestee by publication, which order was made on or about the 12th day of June, 1911; that thereafter and on the 25th day of July, 1911, said notice of hearing was personally served upon the contestee, John G. Peters, in the County of Orange, State of California. That said notice of hearing fixed the time and place for the hearing of said contest as Friday the 1st day of September, 1911, at the hour of ten o'clock A. M., at the Court House, in the City of Pendleton, Oregon; that at said time and place the Superintendent of Water Division No. 2, did attend, and that said contestees, John G. and Thos. W. Peters, and each of them, failed to appear, answer, or otherwise plead to said notice of contest, but were in

default, and in accordance with said notice of contest, it is hereby found, that said John G. Peters, and said Thos. W. Peters have no right, title or interest in and to the use of any of the waters of the Umatilla River upon the lands described in their claim, as being the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 8, Twp. 4 N. R. 28 E., W.M., (Vol. 8, p. 253, et seq)

Contest #44. Western Land & Irrigation Company, contestant, v. Oregon Land & Water Company, contestee. Was settled by stipulation to the same effect as Contest No. 34, and the findings in Contest No. 34 shall govern as to this contest. (Vol. 1, p. 162)

Contest #45. Western Land & Irrigation Company, contestant, v. F. H. Gritman, contestee. It appears from the testimony in this contest that F. H. Gritman purchased the land in September, 1909; that at the time the land was purchased there was an irrigation ditch open, and that a few acres of land were being cleared for irrigation and that the irrigation of said land could not have been earlier than 1908. That the priority date for said land is hereby established as 1908, and it further appearing that the contestee had 60 acres in cultivation, the contestee is entitled to the water for such 60 acres as is described in the tabulation hereinafter. (Vol. 34, p. 228, et seq)

Contest #46. Western Land & Irrigation Company, contestant, v. H. G. Hurlburt, contestee, was settled by stipulation, wherein whatever rights the contestee might have in the use of the waters of the Umatilla River were subsequent in time and inferior in right to the rights of the contestant. For irrigation, contestee shall have the priority date of 1910 for the lands described in the tabulation herein. (Vol. 1, p. 171)

Contest #47. Western Land & Irrigation Company, contestant, v. Frank F. and Julia C. Fowler, contestees. It appeared to the Board that Frank F. Fowler and Julia C. Fowler, were not within the State of Oregon, and could not be found within the State of Oregon, and that the Superintendent of Water Division No. 2 made an order that service of notice of hearing be made upon Frank F. Fowler and Julia C. Fowler by publication thereon, in the "Live Wire", a newspaper of general circulation in Umatilla County, Oregon; that said notices were published for seven consecutive issues, being six consecutive weeks, beginning with the 7th day of September, 1911, and ending with the 19th day of October, 1911, due proof of which is filed herein; that a copy of said notice and said notices of contest were duly mailed to Frank F. Fowler and Julia C. Fowler, addressed to Midland, California, and a copy of said notice of contest and said notice of hearing was duly mailed to

said Frank F. Fowler and Julia C. Fowler, addressed to Midland, California. And it further appearing that the time and place of hearing of said notice of contest was fixed in said notice of hearing as Monday, the 30th day of October, 1911, at the hour of ten o'clock A. M., at the Court House, in the City of Pendleton, Oregon. That at said time and place said Superintendent of Water Division No. 2 did attend, but said contestees neither answered, appeared or otherwise plead, but are in default, and in consideration of the premises, said default is here and now entered against them, and it is found that said Frank F. Fowler and said Julia C. Fowler, have no right in or to the use of any of the waters of the Umatilla River. (Vol. 9, p. 16, et seq.)

Contest #48. Western Land & Irrigation Company, contestant, v. Maxwell Irrigation Company, contestee, was settled by stipulation, wherein said contestee is entitled to a right prior in time and superior in right to the contestant, to an amount not to exceed 462 inches of water, miners measurement, under a six inch pressure, and said contestee shall be entitled to such priority for the lands described in the tabulation herein and to the amount of water allowed by the general findings herein and duty of water, not to exceed 462 miners inches. (Vol. 1, p. 169)

Contest #49. U. S. A., contestant, v. George Higginbotham, contestee, was stipulated with Contest No. 197, United States of America, contestant, v. Allen Ditch Company, contestee, and shall be governed by the findings therein. (Vol. 24, p. 25)

Contest #50. U. S. A., contestant, v. Crayne-Lisle Irrigation Company, contestee. The acreage and priority date of said Crayne-Lisle Irrigation Company is settled by stipulation, as being March 7, 1904, and 473 acres, respectively. The question of the irrigation season and duty of water is settled by the general findings upon that subject, and the tabulation herein under finding 34 shows all the acreage to which such contestee is entitled under the evidence produced. (Vol. 34, p. 386.) As to the balance of the acreage the same is tabulated in finding 34 as inchoate rights, under the names of S. I. Lisle, Chris Roberts, Claude Sloan and John H. Young.

Contest #51. U. S. A., contestant, v. H. J. Bean, contestee. The contestee has purchased lands lying under the system of the Western Land & Irrigation Company, and holds a contract for his water right from such company. The rights of the contestee shall be determined as shown in these findings under the claims and findings concerning and affecting the Western Land & Irrigation Company. (See claim of contestee.)

Contest #52. U. S. A., contestant, v. William Slusher, contestee. The date of priority and acreage shall be as contained in the tabulation herein,

and the duty of water and irrigation season shall be governed by the general findings upon that subject herein contained. (Vol. 34, p. 239, et seq.)

Contest #53. U. S. A., contestant, v. Edmond D. Warner, contestee, was settled by stipulation that the evidence taken as to the contests involving Birch Creek would be deemed as evidence in this contest, and that the acreage and date of priority shall be as in the tabulation hereinafter contained, and the duty of water and irrigation season shall be as set forth in the general findings. (Vol. 31, p. 553.)

Contest #54. U. S. A., contestant, v. J. D. Ingram, contestee, was settled by stipulation to the effect that the testimony taken as to any contests on Birch Creek should apply in this case. The date of priority and acreage shall be as in the tabulation herein contained, and the irrigation season and duty of water shall be as in the general findings herein. (Vol. 31, p. 3.)

Contest #55. U. S. A., contestant, v. Thos. S. Gibson, contestee, was stipulated to the effect that the testimony taken on any contest on Birch Creek should apply in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as in the general findings herein established. (Vol. 31, p. 3)

Contest #56. U. S. A., contestant, v. J. A. Guderian, contestee, was stipulated to the effect that the testimony taken in contests on Birch Creek should apply in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as in the general findings established. (Vol. 31, p. 2-35)

Contest #57. U. S. A., contestant, v. H. H. Gilbert, contestee, was stipulated to the effect that the evidence taken as to the contests upon Birch Creek shall be considered in this contest, and the date of priority and acreage shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as in the general findings contained. (Vol. 31, p. 3)

Contest #58. U. S. A., contestant, v. Geo. W. Bush, contestee, was stipulated to the effect that the testimony taken in any of the contests on Birch Creek would apply in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as established in the general findings. (Vol. 31, p. 3-448 et seq.)

Contest #59. U. S. A., contestant, v. P. E. Fletcher, contestee, was stipulated to the effect that the evidence taken in any of the contests as to Birch Creek should apply in this contest, and the acreage and date of priority shall be as in the tabulation hereinafter contained, and the duty of water and

irrigation season shall be as established in the general findings. (Vol. 1, p. 207)

Contest #60. U. S. A., contestant, v. John Forth, contestee, was stipulated to the effect that the evidence taken in any of the contests as to Birch Creek should be considered in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as established in the general findings. (Vol. 1, p. 282.)

Contest #61. U. S. A., contestant, v. M. T. Baker, contestee, was stipulated to the effect that the testimony taken upon contests on Birch Creek should be considered in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as established in the general findings. (Vol. 1, p. 282.)

Contest #62. U. S. A., contestant, v. Fred Gienger, contestee, was stipulated to the effect that the testimony taken upon contests on Birch Creek should be considered in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the duty of water and irrigation season shall be as established in the general findings. (Vol. 1, p. 282.)

Contest #63. U. S. A., contestant, v. J. A. Owings, contestee, (W. A. Gilliam, transferee), was stipulated to the effect that the evidence taken in contests as to Birch Creek should be considered in this contest, and the acreage and date of priority shall be as hereinafter tabulated, and the irrigation season and duty of water shall be as in the general findings established. (Vol. 1, p. 208.)

Contest #64. U. S. A., contestant, v. Nicholas Brown, contestee, was dismissed under a stipulation that the amount of water to be used should be left to the determination of the Board, and shall be in accordance with the general findings and tabulation of the acreage as herein contained. (Vol. 31, p. 546.)

Contest #65. U. S. A., contestant, v. Jas. A. Fee, contestee, was stipulated to the effect that the testimony on contests as to Birch Creek should be deemed and taken as the evidence in this contest, and the contestee shall be entitled to the acreage and date of priority as hereinafter tabulated, and in the use of water as in the general findings established. It was further stipulated, that the water of the contestee should be measured at the cement dam for a point of diversion, and for the lower part of the lands of the contestee, water shall also be measured at the point where the irrigation ditch crosses the public road, being a place from which the NE corner of the NW corner of Sec. 28, Twp. 3 N. R. 33 E.W.M., bears North 23 degrees East, 11 chains distant. (Vol. 1, p. 209.)

Contest #66. U. S. A., Contestant, v. U. G. Horn, contestee, was stipulated wherein it was agreed that the evidence relating to Birch Creek should apply in this contest, and the acreage and date of priority of the contestee shall be as hereinafter tabulated, and the use of water shall be as described in the general findings. (Vol. 1, p. 210)

Contest #67. U. S. A., contestant, v. Douglas Belts, contestee, was settled by stipulation wherein the contestee shall have the acreage and priority date as shown in the tabulation hereinafter contained, and the use of water shall be regulated by the general findings herein contained. (Vol. 31, p. 547)

Contest #68. U. S. A., contestant, v. Truman Cable, contestee, was settled by stipulation, wherein the evidence as to Birch Creek contests should apply as to this contest, and the contestee shall have the acreage and date of priority as hereinafter tabulated, and the use of water shall be according to the general findings herein. (Vol. 1, p. 211.)

Contest #69. U. S. A., contestant, v. Robert Dick, contestee, was settled by stipulation wherein the testimony taken as to Birch Creek should apply in this contest, and the contestee shall have the acreage and priority dates as set forth in the tabulation, and as to the use of water, shall be governed by the general findings. (Vol. 31, p. 547)

Contest #70. U. S. A., contestant, v. John Bain, contestee, was stipulated to the effect that the testimony taken as to Birch and McKay Creeks should be considered as evidence in this contest, and the contestee shall be entitled to the acreage and date of priority as contained in the tabulation, and as to the use of water, therefor, shall be subject to the general findings in this decree. (Vol. 1, p. 282.)

Contest #71. U. S. A., contestant, v. Grace A. Gilliam, contestee, was stipulated to the effect that the testimony as to the contests on Birch Creek should be considered as evidence in this contest, and the contestee shall have the acreage and priority date as shown in the tabulation, and in the use of water shall be governed by the general findings herein as to Birch Creek. (Vol. 31, p. 547.)

Contest #72. U. S. A., contestant, v. Andrew Fiedler, contestee, was stipulated to the effect that the testimony as to Birch Creek should apply in this contest, and the contestee shall have the acreage and priority as shown in the tabulation herein, and shall have the use of water subject to the general findings. (Vol. 31, p. 547.)

Contest #73. U. S. A., contestant, v. J. M. Hemphill, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply in this contest, and the contestee shall be entitled to the acreage and priority dates as shown in the tabulation herein, and shall have the use of water in accordance with the general findings. (Vol. 31, p. 547.)

Contest #74. U. S. A., contestant, v. Herbert Boylen, contestee, was stipulated to the effect that the testimony taken as to contests on Birch Creek should apply in this contest. The contestee shall be entitled to the acreage and date of priority as shown in the tabulation, and as to the use of water, shall be governed by the general findings of the Board. (Vol. 31, p. 547.)

Contest #75. U. S. A., contestant, v. Elizabeth Horn, contestee, was stipulated to the effect that the testimony taken as to contests on Birch Creek should be used in this contest, and the contestee shall have the acreage and date of priority as given in the tabulation, and the right to use water as governed by the general findings. (Vol. 1, p. 212.)

Contest #76. U. S. A., contestant, v. Wm. H. Evans, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply in this contest, and the contestee shall have the acreage and priority dates as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #77. U. S. A., contestant, v. J. E. Smith Livestock Company, contestee, was stipulated to the effect that the evidence taken in the case of the United States v. Slusher, and United States v. State of Oregon, shall be deemed to be the evidence in this contest, and the contestee shall be entitled to the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings herein. (Vol. 1, p. 273.)

Contest #78. U. S. A., contestant, v. M. G. Edwards, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should be taken as the testimony in this contest, and the contestee shall be entitled to the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings herein. (Vol. 1, p. 213.)

Contest #79. U. S. A., contestant, v. H. B. Owings, contestee, was stipulated to the effect that the evidence as to the contests on Birch Creek should be taken as evidence in this contest, and C. R. Adams has purchased the rights of H. B. Owings, and as such transferee shall be entitled to the rights of the contestee, and as his successor in interest, shall have the acreage and priority dates as shown

in the tabulation, and as to the use of water shall be governed by the general findings herein contained. (Vol. 1, p. 214.)

Contest #80. U. S. A., contestant, v. Perry Knotts, contestee, was stipulated to the effect that the evidence taken as to Birch Creek should apply to this contest, and the contestee shall have the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #81. U. S. A., contestant, v. A. C. Henderson & Sons, contestee, was stipulated to the effect that the evidence taken as to Birch Creek should be taken as testimony in this contest. The contestee shall have the acreage and priority dates as shown in the tabulation, and in use of water shall be governed by the general findings herein. (Vol. 31, p. 547.)

Contest #82. U. S. A., contestant, v. Perry Houser, contestee, was stipulated to the effect that the evidence taken on Birch and McKay Creeks should be the evidence in this contest, and the contestee, Perry Houser, shall have the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings. And it further appearing that the contestee is the holder of Permit No. 137, issued by the State Engineer of Oregon, as such, contestee shall receive such further rights to the waters of East Birch Creek as he may be entitled to by law under said permit and the lands irrigated under such permit will not be tabulated herein. The contestee in order to secure and perfect his rights under said permit will therefore perfect the same as required by law. (Vol. 1, p. 3.)

Contest #83. U. S. A., contestant, v. Frank Frazier, contestee, was stipulated to the effect that the contestee was similarly situated to the contestees in other contests as to Birch Creek, and the testimony taken as to Birch Creek should be used in this contest, and the contestee shall have the acreage and date of priority as shown in the tabulation, and shall be governed by the general findings as to the use of water. (Vol. 1, p. 281.)

Contest #84. U. S. A., contestant, v. D. W. Bowman, contestee, was stipulated to the effect that the date of priority of the contestee should be subsequent in time to 1894, and that all matters as to the use of water and irrigation season should be decided by the Water Board, from the evidence introduced in the contest of the United States v. Pioneer Irrigation Company. The contestee shall have the acreage and priority date as given in the tabulation hereinafter, and in the use of water, shall be governed by the general findings applicable thereto. (Vol. 1, p. 174.)

Contest #85. U. S. A., contestant, v. Courtney Irrigation Company, contestee. The contestee shall have the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings thereon.

Contest #86. U. S. A., contestant, v. R. L. Oliver, State of Oregon, transferee, contestee. The contestee herein shall have the acreage and priority date as set forth in the tabulation, and in the use of water shall be governed by the general findings.

Contest #87. U. S. A., contestant, v. L. T. Kennison, contestee. The contestee pumps water from the Main stream and shall have the acreage and date of priority as given in the tabulation, and in the use of water shall be governed by the general findings.

Contest #88. U. S. A. Contestant, v. Elmer Snyder, contestee, was settled by stipulation to the effect that the testimony taken in the contests of the United States, v. Slusher, and United States v. State of Oregon, shall be considered as the evidence in this contest. The contestee shall have the acreage and priority date as established in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 176.)

Contest #89. U. S. A., contestant, v. Mildred Spike, contestee, was stipulated to the effect that the only question involved in the contest was the duty of water and irrigation season, and it appeared from the Engineer's Maps, and from the claim and testimony taken, that the contestee is now irrigating 63 acres of land. The contestee shall have such acreage and date of priority, both vested and inchoate, as contained in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 24, p. 25.)

Contest #90. U. S. A., contestant, v. Susan A. White, contestee, was stipulated to the effect that the evidence taken as to the claim of L. T. Kennison and J. E. Reeves should be the evidence in this contest. The contestee shall have the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general finding. (Vol. 1, p. 215.)

Contest #91. U. S. A., contestant, v. H. G. Hurlburt, contestee, was stipulated to the effect that H. G. Hurlburt waived all priority as to any and all rights of the contestant. The contestee shall have the rights as found under Contest No. 46,-- Western Land & Irrigation Company, v. H. G. Hurlburt, contestee, but subject to this finding. (Vol. 13, p. 94.)

Contest #92. U. S. A., contestant, v. Dillon Irrigation Company, contestee. The contestee herein shall be entitled to the acreage and date of priority as hereinafter tabulated, and in the use of water shall be governed by the general findings. (Vol. 33, p. 47 et seq; Vol. 34, p. 513 et seq.)

Contest #93. U. S. A., contestant, v. Western Land & Irrigation Company, contestee. The rights of the contestee are established the same as in Contest No. 12 heretofore set forth in this finding.

Contest #94. U. S. A., contestant, v. H. G. Hurlburt, contestee, was stipulated to the effect that H. G. Hurlburt waived all priority as to any and all rights of the contestant, and is further governed by the findings in Contest No. 91, - U. S. of America, contestant, v. H. G. Hurlburt, Contestee.

Contest #95. U. S. A., contestant, v. Furnish Ditch Company, contestee. The contestee herein has priority rights under date of March 8, 1905 for irrigation of land, and also under date of February 25, 1909, for storage and irrigation of land. The water stored under the appropriation of February 25, 1909 is to be carried from the reservoir in the channel of the river to the main canal of the distribution system and used upon the lands as in these findings listed, covered by both appropriations of March 8, 1905 and February 25, 1909, both as to the vested and inchoate rights. The rights of the contestee as to the acreage and irrigation of the land shall be as hereinafter tabulated, and in the use of water contestee shall be governed by the general findings. (Vol. 34, p. 404.)

Contest #96. U. S. A., contestant, v. C. J. Ward, contestee, was heard in connection with the contest as to the Pioneer Irrigation Company, and the contestee shall be entitled to the acreage and priority dates, both vested and inchoate, as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 30)

Contest #97. U. S. A., contestant, v. Wilson Irrigation Company, contestee, was stipulated to the effect that the Wilson Irrigation Company was entitled to supply water to its stockholders for the acreage as follows: E. E. Elder, 35' acres; Addie C. Esteb, 5' acres; Joel Halstead, 12' acres; D. A. Pearson, 8' acres; Jos. Ramos, 60 $\frac{1}{2}$ ' acres vested and 30' acres inchoate; Elmer Spike 30' acres; W. W. Whitworth, 10' acres; and that the priority date should be December 15, 1904, for all the water except as to ten acres supplied W. W. Whitworth, which should have the priority date of May 1881, and the question tried out by the testimony was as to the duty of water and irrigation season, and the contestee shall furnish water to the lands as described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 34, p. 555.) It further appears that the contestee was a party to the suit of the United States, v. Ramos, et al., described under Contest No. 206, and shall be governed thereby. (Exhibit #126).

Contest #98. U. S. A., contestant, v. Geo. L. Ward, contestee, was heard in connection with the contest as to the Pioneer Irrigation Company, and the contestee shall have the acreage and priority date, both as to vested and inchoate rights, as in the tabulation contained, and in the use of water shall be governed by the general findings. (Vol. 30)

Contest #99. U. S. A., contestant, v. Claude Sloan, contestee, was heard in connection with the contest as to the Crayne-Lisle Irrigation Company, and shall be governed by the finding therein. (Vol. 34, p. 387)

Contest #100. U. S. A., contestant, v. Elmer Spike, contestee, was heard in connection with the contest against the Wilson Irrigation Company, and shall be governed by the finding therein. (Vol. 34, p. 557.)

Contest #101. U. S. A., contestant, v. John M. Young, contestee, was heard in connection with the contest against the Crayne-Lisle Irrigation Company, and shall be governed by the finding therein. (Vol. 30.)

Contest #102. U. S. A., contestant, v. W. W. Whitworth, contestee, was heard in connection with the contest as to the Wilson Irrigation Company, and shall be governed by the finding therein. (Vol. 34, p. 557.)

Contest #103. U. S. A., contestant, v. Frank Corea, contestee, was heard in connection with the contest as to the Pioneer Irrigation Company, and shall be governed by the finding therein. (Vol. 30.)

Contest #104. U. S. A., contestant, v. Nancy J. Lapham, contestee. The contestee was served with a notice of hearing on the 7th day of July, 1911, in the County of Union, State of Oregon. That said notice of hearing set the time and place of said contest as Friday the 1st day of September, at ten o'clock A. M., at the Court House, at Pendleton, Umatilla County, Oregon, and at the said time and place the Superintendent of Water Division No. 2 did attend. That the said Nancy J. Lapham did not appear, answer, or otherwise plead, and is therefore in default, and it appears from the said claim and contest, that the said Nancy J. Lapham claimed water from the Umatilla River by reason of a contract from the Oregon Land & Water Company, and that whatever rights the said Nancy J. Lapham has for the use of water, is by virtue of the contract existing between said Nancy J. Lapham and the Oregon Land & Water Company. That said Oregon Land & Water Company also makes claim for a water right of this same land. That the claim of Nancy J. Lapham will be included in the claim of the Oregon Land & Water Company, and will not be individually tabulated herein. (Vol. 14, p. 187.)

Contest #105. U. S. A., contestant, v. C. J. Smith, contestee, was heard in connection with the contest of the Courtney Irrigation Company, and shall be governed by the general findings therein. (Vol. 30.)

Contest #106. U. S. A., contestant, v. T. G. Smith, contestee, was heard in connection with the contest of the Courtney Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #107. U. S. A., contestant, v. Will Moore, contestee, was heard in connection with the contest of the Courtney Irrigation Company, and shall be governed by the finding therein. (Vol. 30.)

Contest #108. U. S. A., contestant, v. Beltel Ditch Company, contestee, was stipulated to the effect that the contestee should be entitled to sufficient water to irrigate 56 acres of land, under a priority date of December 1, 1898, and the contestee is entitled to irrigate such lands as are described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 177-178.)

Contest #109. U. S. A., Contestant, v. Brownell Ditch Company, contestee, was stipulated to the effect that the rights of the contestant secured through the appropriation of the Minnehaha Irrigation Company, should be prior in time to those of the contestee, and that the rights of the contestee as to 1200 acres of land, should be prior in time to all other rights of the contestant. That the balance of the contestee's claim should be subsequent in time to the contestant's rights, and that the duty of water shall be governed by the general findings of the Board. That the contestee herein shall have the dates of priority and the acreage set out in the tabulation herein, subject to such stipulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 179.)

Contest #110. U. S. A., contestant, v. W. J. Emery, contestee, was heard in connection with the contest of the Pioneer Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #111. U. S. A., contestant, v. H. Baumgardner, contestee, was heard in connection with the contest as to the Pioneer Irrigation Company, and shall be governed by the finding therein. (Vol. 30)

Contest #112. U. S. A., contestant, v. E. O. Baumgardner, contestee, was heard in connection with the contest of the Courtney Irrigation Company, and shall be governed by the finding therein. (Vol. 30)

Contest #113. U. S. A., contestant, v. Grace B. Rogers, contestee, was heard in connection with the contest as to the Courtney Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #114. U. S. A., contestant, v. Henry Baumgardner, contestee, was heard in connection with the contest as to the Courtney Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #115. U. S. A., contestant, v. F. H. and C. E. Gritman, contestees. The contestees shall be entitled to the acreage and date of priority as set forth in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 229.)

Contest #116. U. S. A., contestant, v. Joseph Cuhna, contestee, was heard in connection with the contest as to the Allen Ditch Company, and shall be governed by the general findings therein. (Vol. 24, p. 2.)

Contest #117. U. S. A., contestant, v. O. D. Teel, contestee, was heard in connection with the contest as to the Allen Ditch Company, and shall be governed by the general findings therein. (Vol. 24, p. 25.)

Contest #118. U. S. A., contestant, v. Clarence Gulliford, contestee, The contestee is entitled to the date of priority and the acreage as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 538.)

Contest #119. U. S. A., contestant, v. Jay Pelmulder, contestee, was stipulated by and between the contestant and Jos. T. Hinkle, and Edna L. Cooper, assignees of the contestee, to the effect that said Jos. T. Hinkle should have a water right for 3.25 acres with a priority date of January 1st, 1900, and that Edna L. Cooper should have a water right for the irrigation of 4.9 acres with a priority date of January 1st, 1900, and that the duty of water should be determined by the evidence as to the L. T. Kennison and J. E. Reeves claims. That the lands of the assignees, Edna L. Cooper and Jos. T. Hinkle are situated in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 31, Twp. 4 N. R. 29 E. W. M., and the said Edna L. Cooper and Jos. T. Hinkle shall therefore be substituted for Jay Pelmulder, and the tabulation shall show the lands irrigated by said Edna L. Cooper and Jos. T. Hinkle, and the said Jay Pelmulder shall have no further right to the use of the waters of the Umatilla River under his claim filed herein. (Vol. 1, p. 266-270.)

Contest #120. U. S. A., contestant, v. Frank Corea, contestee, was heard in connection with the contest as to the Pioneer Irrigation Company, and shall be governed by the findings therein. It further appears that Frank Corea in addition to the irrigation of these lands through the Pioneer Irrigation Company's Ditch, also irrigates the same land by means of a pumping plant which was installed in the year 1907. As to the operation of this pumping plant, said contestee shall have the priority date of 1907. (Vol. 30.)

Contest #121. U. S. A., contestant, v. J. K. Bott, contestee. The contestee shall be entitled to the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 220.)

Contest #122. U. S. A., contestant, v. Rolla E. Bowman, Roy D. Bowman, Chas. C. Bowman and Hattie M. Hamblin, contestees. (John Worster, transferee). The contestees herein withdrew from their appearance made in the contest, and upon the testimony taken, it is evident that the contestees irrigated about 22.6 acres, and as the contestant has acquiesced to any water right for the lands irrigated, the contestee shall have a water right for the lands described in the tabulation herein, and with a priority date therein set forth, and in the use of the water shall be governed by the general findings. (Vol. 1, p. 235 et seq).

Contest #123. U. S. A., contestant, v. Z. T. Jenkins, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should govern in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #124. U. S. A., contestant, v. Frank L. Jordan, contestee, was stipulated to the effect that the testimony taken as to the contests on Birch Creek should be considered as evidence in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #125. U. S. A., contestant, v. James Johns, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply to this contest. The contestee shall be entitled to irrigate the lands described in the tabulation, and to the priority date as set forth therein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #126. U. S. A., contestant, v. Elizabeth Hemphill, contestee, was stipulated to the effect that the testimony taken as to the contests on Birch Creek should be the evidence in this case, and the contestee shall be entitled to irrigate the lands described in the tabulation with the priority date as herein set forth, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #127. U. S. A., contestant v. Carl A. Johnson, contestee, was stipulated to the effect that the testimony as to the contests on Birch Creek

should apply in this contest, and the contestee shall have the date of priority and right to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 216.)

Contest #128. U. S. A., contestant, v. B. H. Fix, contestee, was stipulated to the effect that the contestee should have the use of the waters of Alkali Canyon for the lands which he can beneficially irrigate and described in the tabulation hereinafter, and in the use of water shall be governed by the general findings herein. (Vol. 1, p. 293.)

Contest #129. U. S. A., contestant, v. Robert Hoeft, contestee, was stipulated to the effect that the testimony in contests involving Birch and McKay Creeks should be taken as testimony in this contest. The contestee shall be entitled to the date of priority and the acreage as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 282.)

Contest #130. U. S. A., contestant, v. Mrs. E. A. Reagin, contestee, was heard in connection with the contests involving McKay Creek. The contestee shall have the use of water under the priority date and upon the lands described in the tabulation hereinafter, and in the use of water shall be governed by the general findings. (Vol. 34.)

Contest #131. U. S. A., contestant, v. John M. Crow, contestee, (Wm. Wright, transferee), was stipulated to the effect that the testimony taken as to the contests involving Upper McKay Creek should apply in this contest. It further appears from the claim of the contestee that riparian rights only are claimed, and that no land has been placed under irrigation. That the tabulation herein shall give the contestee the right to stock water and domestic use. (Vol. 1, p. 217.)

Contest #132. U. S. A., contestant, v. Aaron M. Isaacs, contestee, was stipulated to the effect that the testimony taken as to the contests involving McKay Creek should apply in contest. The contestee shall have the date of priority and acreage as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 294.)

Contest #133. U. S. A., contestant, v. Mary E. Hopper, contestee, was heard in connection with the contests on McKay Creek, and the contestee shall have the use of water and under the priority date upon the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34.)

Contest #134. U. S. A., contestant, v. W. J. Furnish, contestee, was stipulated to the effect that the testimony as taken in respect to the rights of John Wynn and others as to Upper McKay Creek should be deemed as evidence in this

contest. The contestee herein shall have the date of priority and the right to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 298.)

Contest #135. U. S. A., contestant, v. J. W. Roork, contestee, was stipulated to the effect that the testimony taken in respect to the waters of McKay Creek should be deemed as evidence in this contest, and the contestee should be entitled to the date of priority and to irrigate the lands described in the contest, and in the use of water shall be governed by the general findings. (Vol. 1, p. 218.)

Contest #136. U. S. A., contestant, v. Geo. E. Adams, contestee, was heard in connection with the contests on McKay Creek. The contestee shall have the date of priority and the right to irrigate the lands described in the tabulation herein, and as to the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #137. U. S. A., contestant, v. John C. Cline, contestee, was stipulated to the effect that the testimony as to the waters of Birch Creek should apply in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands as described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 219.)

Contest #138. U. S. A., contestant, v. Frank E. Sherman, contestee, was stipulated to the effect that the testimony taken as to other contests on Birch Creek should apply in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #139. U. S. A., contestant, v. Umatilla County, T. P. Gilliland County Judge, Frank Saling, County Clerk, was heard in connection with the contests on McKay Creek. The contestee shall be entitled to the acreage and date of priority as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #140. U. S. A., contestant, v. Ida Walker, contestee, was heard in connection with the contests on McKay Creek, and the contestee shall have the date of priority and the right to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #141. U. S. A., contestant, v. Carrie Sparks, contestee, was stipulated to the effect that the testimony as to Birch Creek should apply in this contest. The contestee shall have the date of priority and the right to irrigate the

lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #142. U. S. A., contestant, v. Amanda Southwell, contestee was stipulated to the effect that the testimony as to Birch Creek should apply in this contest, and the contestee shall have the date of priority and the right to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #143. U. S. A., contestant, v. Elwood F. Straughan, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply in this contest, and the contestee shall have the date of priority and the right to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #144. U. S. A., contestant, v. A. D. Sloan, contestee, (T. A. Stevens transferee), was stipulated to the effect that the testimony taken as to Birch Creek should apply to this contest, and the contestee shall have the date of priority and the right to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #145. U. S. A., contestant, v. J. Stonebraker, contestee, was heard in connection with the contests on McKay Creek. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 294.)

Contest #146. U. S. A., contestant, v. Edward C. Simon, contestee, was heard in connection with the contests on McKay Creek. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 294.)

Contest #147. U. S. A., contestant, v. John M. Wynn, contestee was heard in connection with the contests on McKay Creek. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 295.)

Contest #148. U. S. A., contestant, v. Annette Wilson, contestee, was stipulated to the effect that the testimony taken in respect to the rights on Birch Creek should be used in this contest. The contestee is entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 220.)

Contest #149. U. S. A., contestant, v. A. P. Warner, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply as to this contest. The contestee is entitled to the date of priority and to irrigate

the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 221.)

Contest #150. U. S. A., contestant, v. E. L. Wright, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply as to this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 282.)

Contest #151. U. S. A., contestant, v. A. J. Sturtevant, contestee, was stipulated to the effect that the testimony taken as to Birch Creek should apply as to this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #152. U. S. A., contestant, v. Wenaha Springs Company, contestee, was stipulated to the effect that the testimony taken as to Upper McKay Creek should be deemed as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 298.)

Contest #153. U. S. A., contestant, v. Elvira Teel, contestee, was heard in connection with the contests as to the Allen Ditch Company, and shall be governed by the findings therein. (Vol. 24, p. 25.)

Contest #154. U. S. A., contestant, v. D. A. Pearson, contestee, was heard in connection with the contests against the Wilson Irrigation Company, and shall be governed by the findings therein. (Vol. 34, p. 557.)

Contest #155. U. S. A., contestant, v. James A. Mendenhall, contestee, was heard in connection with the contest of the United States, v. Pioneer Irrigation Company, and shall be governed by the findings in that case. (Vol. 30.)

Contest #156. U. S. A., contestant, v. Chas. Kennison, contestee, was heard in connection with the contest of the United States, v. Pioneer Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #157. U. S. A., contestant, v. H. R. Newport, contestee, involves the rights of the contestee to the use of the water through the Wilson Irrigation Company's Ditch, and it appearing that the contestee has no rights in and to the use of the water through the Wilson Ditch, the statement and proof of the claimant as to the use of the water from Wilson Ditch is not established and said contestee is not entitled to any such use. (Vol. 34, p. 571.)

Contest #158. U. S. A., contestant, v. H. R. Newport, contestee, involves the contestee's claim to the use of water for irrigation and power, and it appears that no steps have been taken to develop any power, and that the contestee claims to have originated his water right in 1899. That the right to the use of water for power has been abandoned by reason of the delay in non-development of power. That so far as the right of irrigation is concerned, the same has been transferred to H. G. Hurlburt, and a stipulation was entered into between the contestant and the contestee whereby the priority date of the contestee is acknowledged to be subsequent in time to the rights of the contestant, and it appears that the contestant has rights initiated as late as March 28, 1909; and it further appears that the contestee never utilized any of the water until the year 1910, and the date of priority for said contestee for irrigation purposes therefore shall be 1910 for the lands described in the tabulation herein, under the name of H. G. Hurlburt, as successor to H. R. Newport. (Vol. 1, p. 279.)

Contest #159. U. S. A., contestant, v. Charles McBee, contestee involves the use of the waters of Birch Creek, and the contestee shall be entitled to use water of the priority date and for the lands described in the tabulation hereinafter, and in the use of water shall be governed by the general findings. (Test. 31, p. 547.)

Contest #160. U. S. A., v. Joseph Kane, contestee, was tried with other contests relative to the waters of McKay Creek, and the contestee shall have the priority date of the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #161. U. S. A., contestant, v. Thomas Jacques, contestee, was stipulated to the effect that the testimony taken in respect to the rights and claims to the waters of Birch Creek and its tributaries, should be deemed as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation hereinafter, and in the use of water shall be governed by the general findings. (Vol. 1, p. 222.)

Contest #162. U. S. A., contestant, v. Rebecca Kemler, contestee, was tried in connection with other contests as to the Waters of McKay Creek. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #163. U. S. A., contestant, v. Daniel Kemler, contestee, was heard in connection with other contests as to the waters of McKay Creek. The

contestees shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #164. U. S. A., contestant, v. Alonzo Knotts, contestee, was stipulated to the effect that the testimony taken on Birch Creek should apply in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #165. U. S. A., contestant, v. O. P. F. Newquist, contestee, was stipulated to the effect that the testimony taken as to the waters of Birch Creek should apply in this contest, and the contestee shall have the priority date to irrigate the lands described in the tabulation, herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #166. U. S. A., contestant, v. Louis McA. LaDow, contestee, was stipulated to the effect that the testimony as to the contests involving the waters of McKay Creek should apply in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 292.)

Contest #167. U. S. A., contestant, v. W. W. Patton, contestee, involves the water rights to the lands which have been transferred to the State of Oregon for State Hospital purposes, and the State of Oregon has been substituted for the contestee herein. The acreage and date of priority shall be as in the statement and proof of claim, shown in the tabulation herein, and in the use of water shall be governed by the general findings herein. (Vol. 34, p. 590.)

Contest #168. U. S. A., contestant, v. Geo. Male, contestee, was stipulated to the effect that the testimony taken as to the waters of Birch Creek should apply in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #169. U. S. A., contestant, v. John P. McManus, contestee, (John P. McManus, Appleburg Water Company and W. H. Evans, holding under said Appleburg Water Co.,) was stipulated to the effect that the testimony taken in contests involving the waters of Birch Creek below Pilot Rock, should be deemed as evidence in this contest. The contestee shall be entitled to the priority date and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 281.)

Contest #170. U. S. A., contestant, v. Chas. Ogilvy, contestee,

was stipulated to the effect that the testimony taken on Birch Creek should be used in this contest to determine the rights. The contestee shall be entitled to the priority date and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 223.)

Contest #171. U. S. A., contestant, v. Charles J. Manning, contestee, was stipulated to the effect that the testimony taken as to the waters of McKay Creek should be used in this contest, and the contestee shall be entitled to the priority date and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 282.)

Contest #172. U. S. A., contestant, v. W. F. Matlock, contestee, was stipulated to the effect that the City of Pendleton was the present owner of the premises described in the statement and proof of claimant, and that said land is now what is known as the Round-Up Grounds, and was stipulated to the effect that the contestee should be entitled to one-half cubic foot per second, continuous flow, of the waters of the Umatilla River for irrigation, stock and domestic use upon said grounds. (Vol. 34, p. 209.)

Contest #173. U. S. A., contestant, v. Ben F. Brown, contestee, was stipulated to the effect that the testimony taken in respect to the rights of John Wynn and others on Upper McKay Creek should be deemed as evidence in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 152.)

Contest #174. U. S. A., contestant, v. C. C. Hendricks, contestee, involves the lands which have been transferred to the State of Oregon for use as a State Hospital, and the State of Oregon has been substituted for the contestee herein, and shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 34, p. 590.)

Contest #175. U. S. A., contestant, v. Dabiel Shaw, contestee, was tried in connection with the contests as to the waters of McKay Creek. The contestee shall have the date of priority and the right to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings.

Contest #176. U. S. A., contestant, v. William L. Ely, contestee, was stipulated to the effect that the testimony taken on McKay Creek should be deemed as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the claim, and in the use of water shall be governed by the general findings. (Vol. 1, p. 302.)

Contest #177. U. S. A., contestant, v. Olive Harrison, contestee, was stipulated to the effect that the contestee should have the use of water for the lands described in the proof of claim with a priority date as shown therein, and in the use of water, the contestee shall be governed by the general findings. (Vol. 1, p. 301.)

Contest #178. U. S. A., contestant, v. Hattie J. Davis, contestee, was tried in connection with other contests arising as to the waters of McKay Creek, and it appearing that said Hattie J. Davis had sold and transferred the lands to T. B. Swearingen, said T. B. Swearingen was substituted for contestee in this contest. The contestee shall have the date of priority and be entitled to irrigate the lands described in the tabulation herein, and as to the use of water shall be governed by the general findings. (Vol. 1, p. 295.)

Contest #179. U. S. A., contestant, v. Omer O. Stephens, contestee, was tried in connection with the contests on McKay Creek, and the contestee shall have the priority date and be entitled to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 295.)

Contest #180. U. S. A., contestant, v. John Schmidt, contestee, involves the rights of the contestee which are based upon State Engineer's Permit No. 360, dated June 7th, 1910. That the contestee appeared and refused further to proceed in the proceedings, and it is therefore ordered that the contestee shall have such rights as he may gain under the Laws of the State of Oregon relative to the appropriation of water by State Engineer's Permit, and the rights of said John Schmidt shall not be tabulated herein, but shall be governed entirely by such proof as may be submitted under said Engineer's Permit, as required by law. (See claim).

Contest #181. U. S. A., contestant, v. T. J. Chaney, contestee, was stipulated to the effect that the contests involving the waters of McKay Creek should be used in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 295.)

Contest #182. U. S. A., contestant, v. James P. Brown, contestee, was tried in connection with other contests on McKay Creek, and it further appeared that Peter Baker is the transferee of the lands in question as assignee of said James P. Brown, and said Peter Baker was substituted as contestee herein. The contestee shall be entitled to the date of priority and to irrigate the lands described in the

tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #183. U. S. A., contestant, v. Geo. L. Dunn, contestee, was tried in connection with other contests involving the waters of McKay Creek, and it further appeared that the lands in question in this contest were transferred to Chas. Tulloss, and said Chas. Tulloss was substituted for the contestee herein, and that thereafter, said lands were transferred to Geo. Adams. The contestee shall be entitled to the priority date and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 34, p. 1.)

Contest #184. U. S. A., contestant, v. F. T. and C. E. Byrd, contestee, was heard in connection with the contests involving the waters of Birch Creek, and the contestees shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #185. U. S. A., contestant, v. Geo. W. Runyan, contestee, was stipulated to the effect that the testimony taken with respect to the waters of Birch Creek should be used in determining this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein contained, and in the use of water shall be governed by the general findings. (Vol. 31, p. 554.)

Contest #186. U. S. A., contestant, v. Sophie Byers, contestee, was stipulated to the effect that the testimony taken as to the waters of Birch creek and its tributaries should be taken as evidence in this contest, and it further appearing that this contest does not involve any of the rights of the contestee in and to the use of the waters of the Umatilla River for power purposes and milling, but only as to the use of water for irrigation, the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein contained, and in the use of water shall be governed by the general findings. (Vol. 1, p. 224.)

Contest #187. U. S. A., contestant, v. L. W. Reed, contestee, was stipulated to the effect that the testimony taken as to the rights of John Wynn and others as to the waters of Upper McKay Creek, above the forks thereof, will be deemed and taken as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 298.)

Contest #188. U. S. A., contestant, v. William P. Daniels, contestee, was stipulated to the effect that the testimony taken as to the claims to the waters of the Umatilla River, between Pendleton and the mouth of Birch Creek, should be deemed as evidence in this contest. The contestee shall have the date of priority and be entitled to irrigate the lands in the tabulation herein described, and in the use of water shall be governed by the general findings. (Vol. 1, p. 225.)

Contest #189. U. S. A., contestant, v. L. E. Roy and F. M. Smith, contestees, was stipulated to the effect that the testimony taken respecting the rights and claims to the waters of Birch Creek and its tributaries should be deemed as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 226.)

Contest #190. U. S. A., contestant, v. William P. Card, contestee, was stipulated to the effect that the testimony taken in connection with the contests on McKay Creek should be taken as evidence in this contest, and it further appearing that the lands in question in this contest had been transferred to Earl Gillanders and Henry Kopitke, said transferees were substituted as contestees in this contest. The contestees shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 296.)

Contest #191. U. S. A., contestant, v. George W. Jones, contestee, was stipulated to the effect that the testimony taken in connection with the contests involving the waters of McKay Creek, should be taken as the evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 296.)

Contest #192. U. S. A., contestant, v. Marion Jack, contestee, was stipulated to the effect that the testimony taken in connection with the contests on McKay Creek should be deemed as the evidence herein. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 296.)

Contest #193. U. S. A., contestant, v. J. S. Holmes, contestee, was stipulated to the effect that the testimony taken in connection with the contests involving the waters of McKay Creek should be taken as the evidence herein. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 296.)

Contest #194. U. S. A., contestant, v. Carl Jensen, contestee, was stipulated to the effect that the testimony taken involving the contests on Birch Creek, below Pilot Rock, should be deemed as the evidence in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 281.)

Contest #195. U. S. A., contestant, v. Horseshoe Irrigation Company, contestee. It appears that the contestee, the Horseshoe Irrigation Company, was served with a notice on the 29th day of April, 1911, by delivering to Edward Dupuis, personally and in person, a copy of the notice of hearing and a copy of the notice of contest, which said notice of hearing was served by the Sheriff of Umatilla County, Oregon, and the notice of contest was served by Geo. T. Cochran, Superintendent of Water Division No. 2. That said Edward Dupuis was at said time, Secretary of said corporation, and said notice of hearing set the time and place of said contest as at the Court House in the City of Pendleton, Umatilla County, Oregon, at ten o'clock A. M., on Monday the 12th day of June, 1911. That at said time the contestee did not appear and has not appeared, answered, or otherwise plead in said contest. That said notice of contest states the ground of contest to be, that the contestees have no right to use any of the waters in excess of one-eightieth of one cubic foot per second per acre of land irrigated, and further alleges that the irrigation season is 100 days from and after the 1st day of March, for any and all years, and that the contestee has no right to use any of the waters for irrigation at other times, and the rights of the contestee are subject to each and all of the rights of the contestant. It appears from the claim that the priority date of the contestee is December 26, 1904, and as to all claimants except said contestant, said priority date shall govern, and shall be placed in the tabulation hereinafter contained. That as to said contestant, said contestees shall at all times be deemed to have waived their priority date and shall be subject in the use of water to all rights of the contestant herein, and as to the irrigation season, and the use of water, said contestee shall be governed by the general findings herein and shall have the rights to the use of the water to irrigate the lands described in the tabulation.

Contest #196. U. S. A., contestant, v. Jos. Cunha, contestee, was stipulated to the effect that the priority date of the contestee in the use of water from the Taylor Ditch shall be as of July 1st, 1884, and that the acreage which should receive water from the Taylor Ditch shall be 186 acres. It further appeared that the lands irrigated at the present time was 166 acres, and the tabulation herein shall designate only such amount of land. In the use of water said contestee shall be governed by the general findings herein. (Vol. 34, p. 362 $\frac{1}{2}$).

Contest #197. U. S. A., contestant, v. Allen Ditch Company, contestee, was stipulated to the effect that the acreage irrigated from said ditch was as follows: to-wit:- Fred Andrews, 184 acres; O. D. Teel, 205 acres; Elvira Tell, 170 acres; Mildred Spike, 71 acres; Jos. Cunha, 179 acres; George Higginbotham, 334 acres; but it appears from the testimony, maps, and data on file in the record, that the acreage is as follows, to-wit: Fred Andrews, 184 acres; O. D. Teel, 205 acres, Elvira Teel, 170 acres; Mildred Spike, 63 acres; Jos. Cunha, 169 acres; George Higginbotham, 151 acres,-- making a total of 942 acres which shall be described and designated in the tabulation hereinafter. It was further stipulated, that the rights claimed by the contestant, and it appearing that the date of priority of said contestees is 1870, the tabulation herein shall show such date. In the use of water the contestees shall be governed by the general findings herein. (Vol. 24, p. 25.) That Mildred Spike shall have an inchoate right for 9 acres; Jos. Cunha for 10 acres, and George Higginbotham for 183 acres, which inchoate right shall be tabulated in the tabulation of inchoate rights, with the description of the land, date of priority and a time for the completion shall be set as January 1st, 1918.

Contest #198. U. S. A., contestant, v. Levi Eldridge, (2 claims), contestee, was stipulated to the effect that the testimony taken in connection with the contests on McKay Creek should be taken as the evidence herein. The contestee shall be entitled to the priority date as shown in the tabulation, and to irrigate the lands therein described, and in the use of water shall be governed by the general findings. (Vol. 1, p. 296.)

Contests #199, 199a, 200., U. S. A., contestant, v. Arthur S. Janes, Contestee, was stipulated to the effect that the testimony taken in respect to the rights to the waters of Birch Creek and its tributaries, shall be taken and deemed as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands as shown in the tabulation, and in the use of water shall be governed by the general findings. (Vol. 1, p. 227.)

Contests #201, 202, U. S. A., contestant, v. B. P. Doherty, contestee, was stipulated to the effect that the testimony taken on contests involving the waters of Birch Creek, McKay Creek, and Umatilla River, above the Furnish Reservoir, would be deemed and taken as evidence in this contest, and the contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. It further appears from the records of the U. S. Land Office at La Grande, Oregon, that Lot 3 is the

SEISM of Section 9, as claimed in contestee's claim. (Vol. 1, p. 282.)

Contests #203, 204, 205. U. S. A., contestant, v. Cunningham Sheep & Land Company, contestee, was heard in connection with the contests involving the waters of Birch Creek, and by stipulation is to be governed by the evidence therein. It appears in the claim filed by the contestee for the lands irrigated under the J. E. Smith Ditch, that the contestee began the enlargement in 1907, and in March 1910 secured State Engineer's Permit No. 36, and for the irrigation of the lands covered thereby the contestee shall be entitled to the same in accordance with the laws governing the rights to the use of water appropriated under such permits. As to the irrigation of the lands claimed in the other statements and proofs filed by the contestee, said contestee shall be entitled to the date of priority as in the tabulation shown, and in the use of water shall be governed by the general findings. (Vol. 31, p. 547.)

Contest #206. U. S. A., contestant, v. Joseph Ramos, contestee, was heard in connection with the contest against the Wilson Ditch Company, wherein it was stipulated that the priority date of the water users through the Wilson Ditch Company should be December 15, 1904, and that the number of acres of which Joseph Ramos is entitled to irrigate is 90.5 and that in the diversion of water, the decree of the Circuit Court of the United States for the District of Oregon, in the case of the United States of America, v. Joseph Ramos, et al, should be observed. It appears from the testimony, and especially from the maps of the State Engineer, that said Joseph Ramos has only 60½ acres irrigated and such acreage shall be hereinafter designated in the tabulation, together with the priority date as established by said stipulation. As to the balance of 30 acres, contestee shall have an inchoate right. — In the use of water contestee shall be governed by the decree of said Circuit Court of the United States for the District of Oregon, and the general findings herein. (Vol. 34, p. 555.) (Ex. 126.)

X Motion 130

Contest #207. U. S. A., contestant, v. Elmer Reeves, contestee, was heard in connection with the contests as to the Pioneer Irrigation Company, and shall be governed by the findings therein, and in the use of water by the general findings. (Vol. 30.)

Contest #208. U. S. A., contestant, v. Chris Roberts, contestee, was heard in connection with the contest of the U. S. v. Crayne-Lisle Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #209. U. S. A., contestant, v. B. F. Raley, contestee, was heard in connection with the contest of the U. S. A., v. Pioneer Irrigation Company, and shall be governed by the finding therein. (Vol. 30.)

Contest #210. U. S. A., contestant, v. E. F. Carney, contestee, was stipulated to the effect that the testimony taken as to the rights and claims of John Wynn and others on Upper McKay Creek, above the forks of said creek, should be deemed and taken as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation herein, and in the use of water shall be governed by the general findings. (Vol. 1, p. 228.)

Contest #211. U. S. A., contestant, v. J. E. Reeves, contestee. The contestee appears to be using water by means of pumping the same from the bed of the Umatilla River, and shall be entitled to use the water upon the lands and under the priority date as in the tabulation hereinafter set forth, and in the use of water shall be governed by the general findings.

Contest #212. U. S. A., contestant, v. Fred W. Andrews, contestee, was heard in connection with the contest of the U. S. v. Allen Ditch Company, and shall be governed by the finding therein. (Vol. 24, p. 25.)

Contests #213, 214. U. S. A., contestant, v. J. E. Smith Livestock Company, contestee, was stipulated to the effect that the testimony taken in respect to the rights and claims to the waters of that portion of the Umatilla River between Fandleton and Echo, should be deemed and taken as evidence in this contest. The contestee shall be entitled to the priority date, and to irrigate the lands described in the tabulation hereinafter shown, and in the use of water shall be governed by the general findings. (Vol. 1, p. 173.)

Contest #215. U. S. A., contestant, v. John J. and Thos. W. Peters, contestees, is governed by the findings made under the contest of the Western Land & Irrigation Company, v. John J. and Thos. W. Peters, being contest No. 43.

Contests #216, 217 and 218. U. S. A., contestant, v. Oregon Land & Water Company, contestee, were stipulated to the effect that the contestee should be entitled to 75 cubic feet per second of water, prior in time and superior in right to any right of or claims of the contestant. It is found that such rights shall have the priority date of April 14, 1893, for 2066 acres as vested right, and 3974 acres as an inchoate right under date of 1906, and the balance of the rights of the contestee shall be governed by the permits for the appropriation of water which have been taken under and by virtue of the water laws of the State of Oregon and issued thereunder by the State Engineer. The contestee shall be entitled to the priority date to irrigate the lands as described in the tabulation herein contained. (Vol. 1, p. 182.)

Contest #219. U. S. A., contestant, v. Sadie Haney, contestee, was heard in connection with the contests of the Courtney Irrigation Company, and shall be governed by the findings therein. It further appears that the lands in question

in this contest has been transferred to Jas. A. Fee, Jr., and said Jas. A. Fee, Jr., is hereby substituted in this contest for the contestee. (Vol. 30.)

Contest #220. U. S. A., contestant, v. Zoeth Houser, contestee, was heard in connection with the contest of the U. S. v. Courtney Irrigation Company, and shall be governed by the findings thereunder. (Vol. 30.)

Contest #221. U. S. A., contestant, v. William H. Gulliford, contestee, was heard in connection with the contest of the Courtney Irrigation Company, and shall be governed by the findings thereunder. (Vol. 30.)

Contest #222. U. S. A., contestant, v. Frank Donnelly, contestee, was stipulated to the effect that Jos. Cunha was the successor in interest to Frank Donnelly, and is hereby substituted as the contestee in place of said Frank Donnelly. It was further stipulated that the contestee should be entitled to a priority date prior in time and superior in right to any rights of the contestant, to 35 cubic feet of water per second, which said 35 second feet of water should include the amount of water claimed by W. W. Whitworth, through the Wilson Ditch Company. That for the balance of the contestee's appropriation, being 32 cubic feet of water per second, the contestee should have a priority date of April 1st, 1906. It further appears that the priority date for the 35 second feet of water should be May 1881. (Vol. 1, p. 283.)

Contest #223. U. S. A., contestant, v. Frank F. and Julia C. Fowler, contestees, shall be governed by the findings under the contest of the Western Land & Irrigation Company, v. Frank F. and Julia C. Fowler, being case No. 47.

Contest #224. U. S. A., contestant, v. E. E. Elder, contestee, was heard in connection with the contest of the Wilson Irrigation Company, and shall be governed by the finding thereunder. (Vol. 34, p. 554.)

Contest #225. U. S. A., contestant, v. Ed Gnavauch, contestee, was tried in connection with the contest of the Pioneer Irrigation Company, and shall be governed by the finding therein. (Vol. 30.)

Contest #226. U. S. A., contestant, v. Pioneer Irrigation Company, contestee. The contestee shall be entitled to furnish water to its stockholders and water users, under the date of priority and for the irrigation of the lands described in the tabulation hereinafter contained, and in the use of water shall be governed by the general findings. (Vol. 30.)

Contest #227. U. S. A., contestant, v. Maxwell Irrigation Company, contestee, was stipulated to the effect that the date of priority of the contestee shall be September 11, 1894, and that inasmuch as the ditch of the contestee flows

through the City of Stanfield, for the purposes of municipal and domestic use, the contestee shall have a volume of $11\frac{1}{2}$ cubic feet per second of water flowing in said ditch when same is available, under a priority date as aforesaid. It was further stipulated that the contestee was entitled to receive water from said ditch for the irrigation of 462 acres, but inasmuch as the claimant has only described in his claim 204 acres, such an amount shall be herein tabulated. The contestee shall have water for the irrigation of the same in accordance with the general findings herein, provided, that whenever there is no interference with the rights of others, the contestee may have a head of water of $11\frac{1}{2}$ second feet. (Vol. 1, p. 185.)

Contest #228. U. S. A., contestant, v. Addie C. Esteb, contestee, was heard in connection with the contest of the U. S., v. Wilson Ditch Company, and shall be governed by the findings thereunder. (Vol. 34, p. 554.)

Contest #229. U. S. A., contestant, v. A. J. Cleghorn, contestee, was heard in connection with the contest of the Pioneer Irrigation Company, and shall be governed by the findings thereunder. (Vol. 30.)

Contest #230. U. S. A., contestant, v. Joel Halstead, contestee, was heard in connection with the contest of the Wilson Ditch Company, and shall be governed by the findings therein. (Vol. 34, p. 554.)

Contest #231. U. S. A., contestant, v. S. I. Lisle, contestee, was heard in connection with the contest of the U. S., v. Crayne-Lisle Irrigation Company, and shall be governed by the findings therein. (Vol. 34, p. 386.)

Contest #232. U. S. A., contestant, v. Ben F. McCullough, contestee, was heard in connection with the contest of the Pioneer Irrigation Company, and shall be governed by the findings therein. (Vol. 30.)

Contest #233. U. S. A., contestant, v. Geo. Fiedler, contestee, was stipulated to the effect that the testimony taken heretofore in the contest involving the waters of Birch Creek should be deemed and taken as evidence in this contest. The contestee shall be entitled to the date of priority and to irrigate the lands described in the tabulation hereinafter contained, and in the use of water shall be governed by the general findings. (Vol. 31, p. 553.)

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| Contest #234. | Sophie Byers, | contestant, | v. | Wa-wa-ne, | contestee |
| 235. | " | " | " | v. Joe Parr, | " |
| 236. | " | " | " | v. Eli Parr, | " |
| 237. | " | " | " | v. A-le-te-la, | " |
| 238. | " | " | " | v. Pat-si-ak, | " |
| 239. | " | " | " | v. To-yat, heir of | |
| | | | | Peter Kalyton, Cayuse | |
| | | | | #248, by E.L. Swartzlander | |
| 240. | " | " | " | v. Frank Parr, Contestee | |
| 241. | " | " | " | v. Wm. Caldwell, | " |
| 242. | " | " | " | v. Mrs. White Bull | " |

had been made upon the contestees, the United States of America as Trustee and Guardian over the Indians and lands of the Indian Reservation in Umatilla County, Oregon, and on behalf of the contestees, and through the United States Attorney for the District of Oregon, acting under the direction and by the authority of the Attorney General of the United States of America, appeared and intervened in said contest. Thereafter the testimony was taken, and from the testimony it appears that on the 9th day of June, 1855, a treaty was made between certain Indian Tribes residing in Oregon and Washington, and the United States Government; this treaty was ratified by the United States Senate on the 8th day of March, 1859, and was proclaimed as being in force on the 11th day of April 1859. By this treaty, the lands which the contestees are irrigating were a part of those lands set apart and ceded as an Indian Reservation for the exclusive uses, and as a place of residence for said Indians. The Indians moved upon the reservation, established their residence, and they and their descendants have continued to live upon said reservation from that date until the present time, under government regulation, guardianship, and control of the United States.

On the 7th day of July, 1870, G. W. Bailey, Geo. A. LaDow, Lot Livermore, F. Coates, and other citizens of the United States and of the State of Oregon, obtained permission from the United States through the Department of the Interior, to take water from the Umatilla River, and to construct a ditch for the conveyance of the same across the Umatilla Indian Reservation. In pursuance of such permission from the U. S. Government, LaDow and others constructed a ditch from a point on the Umatilla River in the ~~SE~~ of SE¹ of Sec. 1, Twp. 2 N. R. 32 E. W. M., to the City of Pendleton, taking and appropriating some of the waters of the Umatilla River, and applied the water for irrigation and other useful and beneficial purposes.

In the year 1874, the ditch and right to use the waters of the Umatilla River were conveyed to W. S. Byers, who constructed a grist and flour mill. The contestant, Sophie Byers, is the widow and successor in interest of W. S. Byers; that at the time the government granted the permission to use the waters of the Umatilla River, and at the time W. S. Byers became the owner of the ditch and water privileges and built the mill, the lands on each side of the Umatilla River, both above, at, and below the point where the ditch tapped the river, were within the boundaries of the Umatilla Indian Reservation. That the amount of water necessary to operate the mill is about 10,000 cubic feet per minute, or nearly 167 second feet of water; that the river at Pendleton during the dry time of the year has had a minimum flow of as low as 23 second feet; that when the water is less than 167 second feet; then the contestant's

mill requires all the water that is flowing in the stream, and has since the building of the mill used practically all of the water flowing in the stream, when the flow was less than 167 second feet. That the rainfall at the City of Pendleton for the past twenty years has varied from 8.21 inches per annum to 20.08 inches per annum; that the amount of rainfall is a great deal more in the foothills than in the mountains up the stream from the City of Pendleton, and is sufficient upon the reservation to raise good crops of wheat, oats, barley, and kindred crops; that irrigation upon the reservation would largely increase the crops of alfalfa, hay, orchard, garden, and kindred crops.

On August 5, 1882, Congress of the United States enacted a law entitled "An Act authorizing the Secretary of the Interior to dispose of certain lands adjacent to the town of Pendleton, State of Oregon, belonging to the Umatilla Indian Reservation and for the purposes " (22 Stats. L. 297). By that Act, the Secretary of the Interior was authorized to survey, plat and dispose of a certain part of the Umatilla Indian Reservation, lying contiguous to the town of Pendleton, and the lands so authorized to be surveyed, platted and disposed of by the Secretary of the Interior, and about the year 1884, by means conveyances, W. S. Byers became the owner of all of the lands on both sides of the Umatilla River at the point where said mill taps the river, and the contestant, Sophie Byers, is the successor in interest to said W. S. Byers.

That on the 3rd day of March, 1885, the Congress of the United States passed another act entitled "An Act providing for the allotment in severalty to Indians residing upon the Umatilla Indian Reservation, in the State of Oregon, granting patents therefor, and for the purposes, ***** (23 Stats. L. 340.) This act provided that the Umatilla Indian Reservation should be surveyed and allotted in severalty to the Indians residing thereon, and that the United States Government should hold the lands in trust for a period of 25 years for the sole use and benefit of the Indian to whom such allotment should be made, or to his heirs, to be determined according to the laws of the State of Oregon, and that at the end of that period, or longer if the President should so determine, the United States should grant a patent to said Indian or to his heirs, and about the year 1891, the allotment was made and the lands are now so held in pursuance of that Act. Said Act further contained the following proviso, under Section 2. "Provided further, that the water right across a portion of said reservation from the town of Pendleton granted by the Interior Department, July 7th, 1870, on the application of Geo. LaDow, Lot Livermore, and other citizens of Pendleton, for manufacturing purposes be affirmed and continued to W. S. Byers and Company, or their successors, provided, that this

Act shall in no way impair any existing right to a reasonable use of the water of said stream for agricultural purposes nor shall confirm or grant any right to use the water thereof in any manner nor to any extent beyond or different from that to which it has heretofore been appropriated."

On the 23rd day of May, 1895, George W. Rigby, and William R. Rigby, and through a private undertaking or agreement with the Indians having those allotments, constructed a ditch for the purpose of irrigation, and that said George W. Rigby and William T. Rigby were white persons, and the lands farmed by William Caldwell, also a white person, and there has been irrigated upon the lands of the contestee, the lands described in the tabulation herein. After the Rigby's had taken out water from the Umatilla River, W. S. Byers filed a suit in the Circuit Court of the State of Oregon, for Umatilla County, as plaintiff, against George W. Rigby and William T. Rigby, Hootsoot, Hop-sin, Wa-win-ta-le-son-mi, Peter Kalyton, James A. Fee, Thomas Thompson, Is-ka-malk, Nich-ga-we-tle, Good-man and Charles Wilkins as defendants. A stipulation was filed, wherein Messrs. Carter and Raley signed as attorneys for the Indians, and John H. Hall signed as United States Attorney; upon this stipulation the finding of fact and conclusions of law were made, and a decree entered in said court to the effect that the rights of the defendants to the waters of the Umatilla River were inferior in time and right to those of W. S. Byers. There was some further testimony, that in the early days the Government had built a mill for the Indians with the intention of using the water of the Umatilla River for power purposes, but this was abandoned, and so far as these contestees are concerned, it does not appear that either the Government or the Indians themselves are using the water, but that the water is made use of by white persons under private arrangements with the Indians.

The contention of the government is that by the Act of March 3, 1885, a continuance of this permissive use was permitted, but subject to revocation at any time. Counsel for Byers Mill interests assert that a right was obtained first, because of the alleged Congressional Grant, and second, because of riparian ownership. The United States claims that by the treaty of 1885 with the Indians, the land embraced within the Umatilla Reservation was set aside for the use of the Indians, and that by necessary implication there was reserved for the Indian the use of the waters of the Umatilla River flowing over and across said lands. Much testimony was taken and a strong argument made by each side in this controversy, but so far as the Congressional Act is concerned, I am of the opinion that this Court cannot at this time either add to nor take from the contestant, any of the privileges extended to contestant in said act and that any attempt on the part of Congress or the Department of the Interior to

repeal, modify or withdraw the privileges mentioned, any action of this Court would be premature, and would not have any binding effect. Such right as the contestant obtained by the Act of Congress, whether by license or by grant, is a right which continues for the benefit of the contestant or her successor, at least until some attempt is made to take away such rights or privileges.

As to the use of water by the Indians, when the United States by the Act of Congress of March 3rd, 1885, set aside for the use of the Indians the lands included within the Umatilla Reservation, such water as was or might be needed for domestic uses, and for the purposes of agriculture was also set aside or reserved, and to the extent said waters may be required on the Reservation for domestic and agricultural uses by the Indians upon the Reservation, there is vested in the Indians a paramount right. (Winters v. United States, 207, U. S., 340.)

The fact that upon the Umatilla Reservation the lands may require less water and may be of a different character than the lands under consideration in the Winters case, does not furnish sufficient reason why a different principle or construction should be applied. Changed conditions will measure the extent of use, but it cannot take away the right. The amount of water that can be put to a beneficial use will measure the right in any case, but the requirements cannot add to not take from the right itself.

10.

A stipulation was entered into as between the lands tabulated herein for which a water right was claimed by the Estate of Z. T. Jenkins, deceased, and for the lands in the tabulation herein contained, for the water right for the lands of Geo. Male, wherein it is agreed that the ditch known as the Bowman Ditch shall be used by both parties according to their water rights as confirmed by the State Water Board, and that each part shall bear their proportionate share of the expense of upkeep of such ditch. The water master shall distribute the water accordingly.

11.

Rebecca Kemler, A. M. Despain, and Umatilla County entered into a stipulation as to the use of a ditch known sometimes as the G. C. French Ditch, sometimes as the Home Irrigation Company's Ditch, and sometimes the Kemler-Despain-Umatilla County Ditch, wherein it was agreed that Rebecca Kemler should have the prior and superior right for the irrigation of 13 acres of land, and thereafter A. M. Despain 22 acres of land, and thereafter, Umatilla County, 25 acres of land. The water master shall distribute water according to the priorities as shown in this stipulation and

as above enumerated.

12.

A stipulation was entered into between Geo. Male, Geo. W. Runyan, Carl Jensen, Frank Sherman, Elizabeth Hemphill, J. M. Hemphill, as to the priorities for the irrigation of the lands tabulated herein, and it was stipulated that George Male should have the prior right for 6 acres of land; that thereafter, the other parties should have the water distributed to them in accordance with the dates of priority as found by the State Water Board, and the balance of the right of George Male should be subsequent in time to all of the rights of the said other parties. In accordance with this stipulation, the dates found and established are as follows, to-wit: Geo. Male, 1867, 6 acres; 1908, 109 acres. G. W. Runyan, 1895, 25 acres; Carl Jensen, 1873, 30 acres; 1907, 40 acres, Frank Sherman 1904, 57½ acres; Elizabeth Hemphill, 1870, 54 acres; J. M. Hemphill, 1904, 62 acres. The water master shall distribute the water in accordance with such dates of priority and this stipulation.

13.

A stipulation was entered into between George Male, J. A. Guderian, G. W. Bush, Oscar Newquist, E. F. Straughan, Henry Rockwell and Carrie Sparks, wherein it was agreed that the said Geo. Male should have a prior and superior right of irrigation for forty acres of the land as hereinafter tabulated as irrigated by him; that J. A. Guderian, G. W. Bush, Oscar Newquist, E. F. Straughan, Henry Rockwell and Carrie Sparks should thereafter be entitled to the use of sufficient water to irrigate the lands described in the tabulation hereinafter contained, in accordance with the dates of priority as found by the State Water Board, and that after said parties had received sufficient water to irrigate such land, that then the said Geo. Male should be entitled to a sufficient amount of water to irrigate the balance of his land. The water master in the distribution of water shall be bound by such stipulation and shall distribute the water accordingly.

14.

A stipulation was entered into between Geo. Male, Amanda J. Southwell, and the heirs of John Southwell, deceased, wherein it was agreed that the said Geo. Male should be entitled to a prior right to irrigate forty acres of the land described in the tabulation herein, and that thereafter the said Amanda J. Southwell and the heirs of John Southwell, deceased, should have a sufficient amount of water to irrigate the lands as in the tabulation is shown as irrigated by them; that after such irrigation by said Southwells, then the said Geo. Male should be entitled to

irrigate the balance of his land. The water master shall be governed by such stipulation, and shall distribute the water in accordance therewith.

15.

A stipulation was entered into between Geo. Male, and H. H. Gilbert, wherein it was agreed that Geo. Male should have a prior right for a sufficient amount of water to irrigate six acres of land; that thereafter, said H. H. Gilbert should have the next prior right to the use of the water for the irrigation of the lands irrigated by him, and that the balance of the land belonging to the said Geo. Male should have the next right. The water master shall distribute the water in accordance with this finding and said stipulation.

16.

A stipulation was entered into between Daniel Kemler, Laura B. Perrin and A. M. Despain, as to the rights to the use of water from the ditches known as the Eastman-Seagle and Coldwell Brothers Ditch, and it was agreed that the parties to said stipulation should have rights to the irrigation of lands, equal in time and rights as follows: Daniel Kemler, 23 acres; Laura B. Perrin, 12 acres; A. M. Despain, 25 acres, and that A. M. Despain should have the right to irrigate further lands from said ditch, but that such right should be junior in right and time to the above rights. The water master shall be governed by this finding in the distribution of water to said parties.

17.

There is a decree existing between the Appleburg Water Company, a corporation, the Hartman Abstract Company as Trustee, and J. P. McManus, as plaintiffs, and Addison C. Henderson, Emma C. Henderson, C. C. Henderson, Maggie Henderson, L. V. Henderson, and Cora Henderson, as defendants, wherein it was decreed that the plaintiffs and Loyd Henderson were entitled to 35 inches of water, prior in time and right to any of the other rights of either the plaintiffs or defendants. The next subsequent thereto in right and priority, the said defendants are entitled to 105 inches of water, miners measurement, and that subsequent thereto and next in time the plaintiffs should be entitled to whatever water was appropriated by them; that of the 35 inches of water, miners measurement, belonging to the plaintiffs and defendants, that Lloyd Henderson, plaintiff should be entitled to the use of 30 inches thereof, and the defendant, Lloyd Henderson, 5 inches thereof; that said 5

inches should be used upon the following described property, to-wit: Beginning at a point in the NW¹/₄ of Sec. 28, Twp. 1 S. R. 32 E. W. M., which point is South 51 degrees East 1372 feet distant from the NW¹/₄ of Section 28, Twp. 1 S., R. 32 E. W. M., and from said point running thence south 200 feet; thence at right angles East a distance of about 400 feet, more or less, to the west bank of the main channel of East Birch Creek, and also running north from said beginning point which is South 51 degrees, East 1372 feet distant from the NW corner of said Section 28, 344.51 feet; thence at right angles 400 feet, more or less, to the west bank of the main channel of East Birch Creek to the line first herein described as running East to said West bank of said main channel. The water master in the distribution of water shall be bound by said decree, and shall distribute the water in accordance therewith; that none of the water coming from springs rising upon any of the land shall be affected by said decree, but shall be used upon the lands upon which it arises if the parties so desire.

18.

Lillian A. Spicer, filed a statement and proof of claim, from said statement and proof it appeared that all of the land which she claims as irrigated is naturally sub-irrigated from McKay Creek. That it is low bottom land, and that the claimant has never diverted any water through ditches, relying upon the low surfact of the land for sub-irrigation. That the claimant has not appropriated any water from McKay Creek. That the claimant had not described any of the lands in her claim upon which the water is used; that said claimant is not entitled to have any rights tabulated herein, nor to divert water through any ditches for the irrigation of any land.

19.

Jessie S. Vert filed a statement and proof of claim for repairan rights upon Meacham Creek and Wild Horse Creek. The place of use of such riparian rights shall be as tabulated herein, and shall be limited to stock water and domestic use.

20.

That the Umatilla River and its tributaries form a perennial stream with well defined bed and banks, wholly within the Counties of Umatilla and Morrow, but principally within the County of Umatilla, State of Oregon, having its source

near the Eastern boundary of Umatilla County, in the Blue Mountains, and flowing in a westerly and northwesterly direction, and empties its water into the Columbia River. That the flow of this stream and its tributaries is torrential in its nature, flowing large quantities in the spring time when the winter snows are melting, and the main stream almost going dry in the dry part of the summer, and most of the tributaries do go dry.

That upon the tributaries it is necessary therefore to use the water for irrigation during the flood time, or the irrigators will not be able to divert any water whatever. That along the main stream the supply of water during the dry part of the summer is so short that a great many of the irrigators must divert water for irrigating during the flood time, or not be able to divert any water whatever. That the spring freshets beginning at different times each year, depending upon the extent of the snowfall, the time when and the degree of temperature prevailing while the winter snows are melting; that ordinarily, winter begins to break up about the first of February of each year. That it is customary among the irrigators to use the water from the various streams at any time of the year they can get it; that various irrigators irrigate their lands during the fall and winter, thereby storing sufficient water in their lands to carry them over the dry part of the summer season.

21.

That the soil of the water shed of the Umatilla River varies, in places there is a heavy sandy loam, other place a light sandy loam, others gravelly loam, others sage brush and desert land, other places a black loam, and in others a volcanic ash. That the annual rainfall in said water shed varies, and the necessity for irrigation varies according to that rainfall; that in general, irrigation is necessary in order to produce crops; that that part of the Umatilla Watershed lying east and above the Furnish Reservoir ^(Sec. 12, T. 24, R. 30 E. N. 12) has a greater rainfall than that part lying west of, and below said reservoir; that said part above said reservoir shall be called, and known in these Findings, as the Upper River, and that part below said reservoir shall be known as and called, in these Findings, the Lower River. That along the tributaries the amount of water necessary to irrigate an acre of land varies according to the rainfall, and the kind and quality of the land; that gravelly places along the river require more water to irrigate than a loam soil.

Upper River defined

In no case, where water is stored, shall there be diverted from the stream more than the number of acre feet of water as represented by the number of acres to be irrigated with such stored water, multiplied by the number of acre feet that is sufficient for the irrigation of one acre, as found in these findings, and the diversion for storage shall be the number of second feet appropriated for that purpose, diverted at any time there is water, according to the date of priority.

23.

In order to successfully irrigate a piece of ground, it is necessary to have a sufficient head of water; the flow of one-eightieth of a second foot of water for the period of 120 days would approximately supply three acre feet of water. That a head of water of one-eightieth of a second foot is inadequate for the purpose of irrigating an acre of land. That in order to irrigate any land, it is not necessary to keep a continuous flow of water upon each and every acre of said land. That it is necessary to irrigate an acre of land once in about every three weeks during the growing season. That the intermittent use of water upon an acre of ground makes it possible for the arrangement of satisfactory systems of rotation, so that the head of water necessary for the irrigation of an acre of land can be increased. That the head of water required to irrigate any land varies according to the season, rainfall, the heat, soil, crops, and humidity.

24.

That all claimants herein to water for irrigation shall be entitled to use such water for stock and domestic purposes; that the rights of use for stock and domestic purposes is hereby confirmed and entitles the owner of such right to divert and use such a quantity of water as is reasonably necessary for his household and stock use, and for stock use, the amount so diverted and used shall not exceed the rate of one-fortieth of one cubic foot per second for each one thousand (1000) head of stock, and the quantity diverted for irrigation purposes during the irrigation season shall include when it is so diverted, such an amount as may be reasonably necessary for said stock and domestic purposes, and the right to divert and use the waters of said stream and its tributaries, for stock and domestic purposes continues throughout the year.