

NORTH POWDER RIVER. - Baker & Union Counties (Vol. 3, page 262)

That none of the claimants \* \* \* \* shall be entitled to divert a quantity of water in excess of the quantity herein decreed \* \* nor any quantity in excess of that actually required by them for the beneficial irrigation of their said lands. Said claimants may divert such quantities as the same is set forth in the tabulated statement \* \* from the first of March until the first of July each year, and after the first of July of each year, the quantity of water which each of said claimants shall be entitled to divert shall not exceed the rate of one-half inch per acre, or one second foot to each eighty acres of the lands actually irrigated. The total quantity which any claimant shall be entitled to divert and use during an irrigation season shall not exceed in the aggregate in each case, two and one-half acre feet per acre actually irrigated, from the first of March until the first of October of each year.

That the right of use for stock and domestic purposes hereby confirmed entitles the owner of such right to divert and use such quantity of water as is reasonably necessary for his household and stock use.

pag. 107

# NORTH POWDER RIVER

And its Tributaries

Baker and Union Counties

-----o-----

## Order Record

	Vol.	Page
Findings of Board of Control, January 22, 1912 . . . . .	1.	147
Decree of Circuit Court, April 24, 1912. . . . .	1.	277
Modified Findings of Board of Control, April 24, 1913. . . . .	1.	341
Decree of Circuit Court, April 6, 1914 . . . . .	1.	447
Decree of Circuit Court, May 1, 1916 . . . . .	3.	252
Supplemental Findings of State Water Board, May 1, 1917. . . . .	3.	325
Decree of Circuit Court, August 16, 1917 . . . . .	3.	463
Decree of Circuit Court, May 31, 1924, (Young & Luster). . . . .	7.	441
Decree on Mandate, April 11, 1934 (Peterson) . . . . .	13.	3
Decree on Corrected Mandate, June 3, 1934 (Peterson) . . . . .	13.	6
Order of Court, May 20, 1939, (Perkins V. McCullough). . . . .	13.	458
Decree of Circuit Court, Sept. 27, 1989 . . . . .	19	70

Note: The Modified Findings of the Board of Control was confirmed by Decree of the Circuit Court, dated April 6, 1914, except in a few instances. On appeal to Supreme Court (75 Or. 83) the Circuit Courts Decree was amended. On May 1, 1916, the Circuit Court entered its decree on mandate, and the tabulation in said decree is complete. The Supplemental Findings of the State Water Board on inchoate rights was confirmed by Decree of the Circuit Court, dated August 16, 1917, and said Supplemental Findings is complete as to said inchoate rights.

-----o-----

Note: The numbering machine numbers appearing on the right hand margin and lower right hand corner of the various findings and decrees herein, indicate the corresponding page numbers as they appear in the recorded volumes.

-----o-----

Certificates have been issued and are recorded at pages 1,450 to 1,544, inc., Volume 2, pages 1,789, 1,790 and 1857, Volume 3, and page 5053, Volume 5, State Record of Water Right Certificates.

Rights allowed as follows:

	<u>IRRIGATION</u>		<u>OTHER USES</u>
	<u>Baker Co.</u>	<u>Union Co.</u>	<u>Union Co.</u>
North Powder River	15,207.00 ac	3,617.5 ac	25.0 c.f.s. (Power)
Anthony Creek		3,661.5 ac	
Pilcher Creek		17.0 ac	
Antoine Creek	12.0 ac		
TOTAL	15,219.0 ac	7,296.0 ac	

15,219.0  
7,296.0  
22,515.0

Standings of Western Band will for  
month & report preceding returned  
back to Grand Council, dated  
April 24 1912)

Decree ..... Apr. 24, 1912

~~RECORDED~~ ..... 1912

Mod. Findings - Rm. 24, 1913-  
Recorded - Vol. 1, p. 3419

Note: Review of April 22, 1912, report whole  
and left and Board findings, cited  
Jan. 22, 1912 in report for integrated  
presenting back to Main Union Board and

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR UNION COUNTY  
BEFORE THE BOARD OF CONTROL OF THE STATE OF OREGON  
WATER DIVISION NO. 2. BAKER AND UNION COUNTIES.

IN THE MATTER OF THE DETERMINATION OF  
THE RELATIVE RIGHTS TO THE WATERS OF NORTH  
POWDER RIVER AND ITS TRIBUTARIES A  
TRIBUTARY OF POWDER RIVER,

MODIFIED FINDINGS AND ORDER  
OF  
DETERMINATION.

Now on this 24th day of April, 1912, at a regular meeting of said Board, before the Board of Control of the State of Oregon, at a regular meeting of said Board, commenced and held on said day, and it appearing to said Board that all the evidence taken at the original hearing and in all contests has been filed in the office of said Board, and that pursuant to the order of the above entitled Circuit Court for Union County, Oregon, made the 24th day of April, 1912, the State Engineer has measured and determined the discharge of the above named stream and its tributaries, and has ascertained the carrying capacity of the several irrigating ditches diverting water from said stream and the amount of land irrigated or susceptible of irrigation from the said several ditches, and that a certified copy of such measurements, as the same appear of record in his office is now on file in this proceeding, and that further testimony has been taken as to water duty and other matters mentioned in said order, and as to the claim of the North Powder Milling and Mercantile Company and those claiming under said Company, and that all of said testimony has been taken, and no further testimony or evidence having been offered by the parties hereto or those filing exceptions herein, and all the testimony taken in this proceeding, exhibits filed, and maps, measurements and other record evidence submitted by the State Engineer having been fully and carefully considered, the Board of Control now therefore makes the following:

FINDINGS OF FACT.

1.

That North Powder River is a non-navigable, perennial, natural watercourse and stream, with well defined bed, banks and channel, and rises in the Blue Mountains, flowing in a general northeasterly direction to the Powder River, of which, it is a tributary; and for a portion of its course forms the boundary line between Baker and Union Counties, Oregon; and since time immemorial has flowed, and continues to flow, in its natural channel, except as the waters are diverted therefrom, as hereinafter set forth.

11.

That Anthony Creek, or the North Fork of said North Powder River, is a well defined, natural watercourse, having a bed, banks, and channel, having its source of

supply in the Blue Mountains, in Union County, Oregon, and flowing thence (as it has flowed since time immemorial) in a general southeasterly direction to North Powder River, of which it is a tributary, about nine miles above the point of confluence of said last named stream with main Powder River.

III.

That Pilcher Creek, Dutch Flat Creek and Antoine Creek are small, natural watercourses, tributaries of said North Powder River, and forming a part of the supply of the water annually flowing in the channel thereof.

341

IV.

That during the months of May, June, July, August and September of each year, the rainfall in the counties of Baker and Union, Oregon, is light, and the lands in the valley of said North Powder River, and other lands susceptible of irrigation therefrom, become, during the crop-growing period of each year, dry, arid and unproductive, and without moisture, are of little value, and that in order to render said lands productive, it is, and has been at all times necessary to divert and use the waters of said North Powder River, and its tributaries, for the irrigation of lands susceptible of irrigation therefrom, and that with irrigation, the said lands yield annually valuable crops of hay, alfalfa and grains and produce pasturage for cattle, horses, and other live-stock.

V.

That about the year 1865, the lands through and across which said stream and its tributaries now flow were public, vacant and unoccupied lands of the United States, and the waters then flowing in the same were free and unappropriated and subject to appropriation; that commencing about that year, and subsequent thereto, the claimants hereinafter named, or their predecessors in interest, at different times, initiated rights of appropriation of the waters of said stream and its tributaries, and reclaimed and cultivated the lands in the valley of said stream, and constructed ditches diverting the waters thereof down to and upon said lands, using the said waters so diverted for irrigation, stock and domestic purposes.

VI.

That the lands irrigated from said stream and its tributaries are situated in the Counties of Baker and Union, Oregon, and that said stream and its tributaries are situated wholly within said counties.

VII.

That on the 22nd day of May 1909, there was filed in the office of the Board of Control of the State of Oregon a petition, signed by Andrew O. Lum, requesting a determination of the relative rights of the various claimants to the waters of said stream; that

said petitioner is a water user of the waters of said North Powder River, as appears from the Order of Determination herein; that said Board did, after full investigation and due consideration of said petition, find the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants to the waters of said stream, and the tributaries thereof, and accordingly made and entered its order in the records of said office fixing a time and place for the beginning of taking of testimony and the making of such an examination as would enable it to determine the rights of said claimants.

#### VIII.

That a notice was prepared by said Board setting forth the date when the State Engineer, or his assistant, 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 the said notice was published in two issues of "The Morning Democrat", a newspaper published at Baker City, Baker County, Oregon, and of general circulation in the Counties of Baker and Union, Oregon, the date of the last publication of said notice being more than thirty days prior to the date fixed for the making of said examination and measurements of said streams and ditches by the State Engineer and for the beginning of the taking of testimony by the Division Superintendent, to-wit: the 27th day of August, 1910.

342

#### IX.

That the Superintendent of Water Division No. 2 of the State of Oregon did, more than thirty days prior to the date fixed therein for the making of such examination by the State Engineer, or for the taking of testimony therein, send by registered mail to each person, firm and corporation claiming a right to the use of any waters of said stream, or any tributaries thereof, and to each person, firm and corporation owning or being in possession of the lands bordering on or having access to said stream, or its tributaries, in so far as said claimants, owners, or persons 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 tributaries, and that said Superintendent did enclose with each of said notices a blank form upon which said claimant, or the 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, under oath.

X.

That due proof of publication of said notice and of the sending of said notice by registered mail has been made and was duly filed and is now a part of the record hereof.

XI.

That upon the date named in said notice so published and sent, at the place therein specified, to-wit: on Tuesday, the 4th day of August, 1910, at the hour of ten o'clock A. M. at the City Hall, in the town of North Powder, Union County, Oregon, and on Thursday, the 6th day of October, 1910, at the hour of ten o'clock A. M. in the Circuit Court Room, in the Court House, in Baker City, Baker County, Oregon, the said Superintendent of Water Division No. 2, did commence the taking of testimony as to the relative rights of said claimants, and did continue the taking of the same until completed.

XII.

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 the waters of said stream, if any they have, or claim, and that each of said parties are in default herein, and that said default should be and hereby is entered, to-wit: Edward Ashby, <sup>Boise</sup> Mrs. M. J. Atteberry, James Anderson, Bank of Commerce of Boise, Ephraim Barnes, Thomas Burns, Mrs. E. W. Barnes, W. J. Cavender, John Cavender, John Craig, Oscar Dennings, Emile Forsay, J. M. Gilkison, H. O. Gorham, W. E. Hill, C. A. Holstrom, S. P. Herring, John Haines, W. E. Haines, H. L. Haines, R. E. Haines, Will Henderson, John Holinger, Mrs. A. R. Hunter, Charles Harrison, Bennett Harrison, Ira Harrison, Walter Jones, Mrs. F. E. Lynch, Miles Lee, Frank Leonig, J. E. Lenhart, George Lee, E. L. Ledbetter, J. A. McLaren, Mrs. M. McCurry, L. B. Moore, I. W. Maharry, E. Mott, C. Oleson, Oscar Moody, W. L. Moody, Violet Parker, Powder Valley State Bank of North Powder, William Pearson, T. J. Pearce, Harrison Pearson, Ed Riggs, James Riggs, Miran Riggs, John Riser, S. A. Rollins, Otto Schuman, D. B. Sherritt, Howard Slocane, M. R. Shord, Harry Slater, Mrs. A. E. Titus, A. F. Tally, Sanford Vandecarr, Vern Webb, Clarence Wilson, John Yankee, and George Young..

XIII.

That upon the first day of January, 1911, George T. Cochran succeeded F. M. Saxton as Superintendent of Water Division No. 2 of the State of Oregon, and thereafter and prior to the opening of the testimony taken at the original hearing herein to public inspection, it appearing to the Board of Control that said Superintendent of Water Division No. 2 was interested in the waters of said stream, and its tributaries, and that he had, at



the time of the original hearing, appeared on behalf of and for various claimants to the waters thereof as their attorney, it was ordered that the further taking of testimony and further proceedings in the matter of the adjudication of said rights should be had by and under the direction of the Superintendent of Water Division No. 1 of the State of Oregon.

343

#### XIV.

That upon the completion of the taking of testimony by the Superintendent of Water Division No. 1, he did at once give notice by registered mail to each of the various claimants to the waters of said stream, and its tributaries, that at a time and place named in said notice, not less than ten days thereafter, all of said evidence would be open to the inspection of the various claimants or owners, and said Division Superintendent did, in accordance with said notice, keep said evidence open to inspection at said place for a period of ten full days, and said notice did also set forth the county in which the determination of the Board of Control would be heard by the Circuit Court, to-wit: the Circuit Court of the State of Oregon for the County of Union; due proof of the holding of said inspection and of the sending of said notices by registered mail being a part of the record herein.

#### XV.

That at the time specified in said original notice, the 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 of the ditches and canals diverting water therefrom and an examination and approximate measurement of the lands irrigated and susceptible of irrigation from said ditches and canals, which said observations and measurements were made a matter of record in the office of said State Engineer; that the State Engineer did prepare a plat or 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 each ditch and canal diverting water therefrom and the legal subdivisions of land which have been irrigated or are susceptible of irrigation from the ditches and canals already constructed, blue prints and copies of said maps, duly certified to by said engineer being now on file herein and a part of the record hereof.

#### XVI.

##### taking of

That upon the completion of the testimony herein in the original hearing as hereinbefore set forth, contests were duly and regularly initiated against the rights claimed by various of said claimants, as follows to-wit:

C. E. Davis et al. vs. Andrew Lun; P. L. Smith et al. vs. S. W. Holmes; P. L. Smith et al. vs. E. M. Sanders; J. T. York and E. M. Daugherty vs. Oscar Jacobson; James Dalton et al. vs. B. P. Doherty; James Dalton and P. L. Smith vs. J. B. Luster; J. D. McPhee et al vs. E. M. Sanders;

W. H. Anthony et al. vs. S. L. Baer, Sallie Baer, F. S. Heard, Lamonda Heard, Lyle Levinger, Louis Levinger, Byron Vandecarr, Rose Vandecarr, and the Haines Pipe Line Company, a corporation; J. H. Hutchinson et al. vs. J. L. Savage; W. M. Gardner vs. W. R. Hutchinson; W. M. Gardner vs. J. H. Hutchinson; and W. M. Gardner vs. Mary F. Hutchinson.

That the statement and notice of contest in each of said contests was duly and regularly filed within the time permitted by law, said statements of contests being verified by the said contestants and setting forth with reasonable certainty the grounds of the proposed contests; and that said Division Superintendent did notify each of the contestants and each of the persons whose rights were so contested in each of the above entitled contests to appear before him, at a time and place designated in said notice, due proof of service of such notice of hearing being a part of the record hereof.

#### IVII.

That the Contests of W. M. Gardner against Mary F. Hutchinson, J. H. Hutchinson, and W. R. Hutchinson, were, upon stipulation entered into between the parties in all things dismissed.

That the contests of J. H. Hutchinson et al. vs. J. L. Savage came duly and regularly on for hearing and upon stipulation and agreement between the parties the same was in all things dismissed.

That the contests of J. D. McPhee et al. vs. E. M. Sanders, and P. L. Smith et al. vs. S. W. Holmes, came duly and regularly on for hearing, and upon stipulations and agreement between the parties, the same were in all things dismissed.

That the contests of J. T. York vs. Oscar Jacobson, James Dalton vs. B. P. Doherty, James Dalton and P. L. Smith vs. J. B. Inster, and James York and L. M. Daugherty vs. Oscar Jacobson, came duly on for hearing, and the same were in all things dismissed, upon stipulations entered into between the parties.

#### XVIII.

That the contest of W. H. Anthony et al. vs. S. L. Baer et al. came duly and regularly on for hearing and the testimony offered by the respective parties to said contest was duly and regularly taken before, and a transcript thereof made and filed with, the Division Superintendent of Water Division No. 1. said transcript being now a part of the record hereof.

That the contest of C. E. Davis et al. vs. Andrew Lum came duly and regularly on for hearing and the testimony offered by the respective parties to said contest was duly and regularly taken and a transcript thereof made and filed with the Division Superintendent, such transcript being now a part of the record hereof.

XII.

That after the expiration of said period, for inspection and the taking of testimony at the said original hearing and in all contests filed herein, the evidence taken in said original hearing and said contests was transmitted by the Superintendent of Water Division No. 1. in person to the office of said Board of Control and was filed with said Board.

That thereafter and on the 22nd day of January, 1912, the said Board caused to be made and entered of record in its office an order determining and establishing the several rights to the waters of said stream and its tributaries, a copy of which was thereafter certified to by the Secretary of said Board under the seal of the Board and filed in the office of the County Clerk of each county in which said stream and its tributaries are situated, and the original evidence in all contests in said proceeding was at the same time, together with a certified copy of said determination, filed with the clerk of the above entitled Circuit Court for Union County, Oregon, by which such determination was thereafter heard.

II.

That thereafter, exceptions to said order were filed with said Court within the time allowed by said Court by C. E. Davis and others, water users and claimants of the waters of said stream, by and through their attorneys, Crawford and Eakin; and by J. H. Hutchinson and others, by their attorney, C. H. Finn; and by S. L. Baer and others, by their attorneys, McColloch and McColloch; and by James Dalton and others, by their attorney, C. E. Cochran.

XII.

That by order of said court, the 24th day of April, 1912, was fixed as the time when all exceptions should be filed and when the same would be heard by the Court.

XIII.

That on said 24th day of April, 1912, a hearing was had in the above entitled Court on said determination and exception thereto, and on said day an order was entered by said Court remanding said proceedings to said Board for the taking of further testimony and further measurements of said stream and the ditches diverting water therefrom and the lands irrigated thereby, and relative to other matters and things set forth in said order.

XIII.

That pursuant to said order of Court the State Engineer caused measurements of said stream and its tributaries to be made, and ascertained and determined the carrying capacity of the various ditches diverting water from said stream and its tributaries, and

the lands irrigated or susceptible of irrigation therefrom, and made the said measurements and investigations a matter of record in his office, and a certified copy thereof is now on file and a part of this proceeding.

345

XXIV.

That on the 6th day of January, 1915, the above entitled matter came on for the taking of such testimony before said Superintendent of Water Division No. 1, pursuant to notice theretofore duly given, and according to said order of said Court, and said testimony was thereafter duly and regularly taken and transcribed and concluded and is now on file in this proceeding and a part of the record hereof.

CONSTRUCTION OF DITCHES AND APPROPRIATION OF WATER.

THE BOARD FINDS, RELATIVE TO THE CONSTRUCTION, PRESENT OWNERSHIP AND CARRYING CAPACITY OF THE VARIOUS DITCHES DIVERTING WATER FROM NORTH POWDER RIVER AND ITS TRIBUTARIES, AND THE RESPECTIVE APPROPRIATIONS OF THE VARIOUS CLAIMANTS DIVERTING WATER FROM THE SAME INCLUDING THE AREA OF LAND IRRIGATED AND THE QUANTITY OF WATER TO WHICH EACH SUCH CLAIMANT IS ENTITLED AS FOLLOWS, TO-WIT:

XIV.

JOE SAVAGE DITCH:- The Joe Savage ditch taps the South Fork of North Powder River, at a point about the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 50 T. 7 S. R. 38 E., W. M., and is the highest diversion point on said stream. It was constructed by one J. L. Savage, in the year 1889 and completed in the year 1891.

J. L. Savage is the owner of a one-fourth interest; W. R. Moore, of a one-third interest; George W. Pratt, of a one-fourth interest; and A. W. Perkins, of a one-sixth interest in said ditch.

That about the year 1876, said Savage was the owner of certain lands, more particularly hereinafter described, through and across which flowed, and now flows, Little Muddy Creek, a tributary of Powder River, and a natural water course as appears more particularly, in the Findings relative to the Mansfield Ditches, Commencing about the year 1876, said <sup>said</sup> Savage proceeded to reclaim and irrigate portions of his lands, with the waters of North Powder River, diverted through the upper and lower Mansfield Ditches, then used for mining purposes, and within a reasonable time, applied the waters to the irrigation of one hundred and thirty-seven (137) acres of his said lands. In the year 1891, said Savage commenced the irrigation of his lands, with the water diverted through said Savage Ditch, in connection with the waters so diverted through said Mansfield ditches, and in addition to lands previously irrigated through said Mansfield ditches, applied the waters to the irrigation of twenty-eight (28) acres of his said lands, reclaimed and irrigated within a reasonable time after the construction of said Savage Ditch. Said Savage is now the owner of a one-sixteenth interest in said Mansfield ditches.

One W. R. Moore is the owner of certain lands east of, and contiguous to said lands of J.L. Savage. Said Moore commenced the irrigation of his lands with the waters of North Powder River, diverted into and through said Mansfield ditches, in the year 1876, and within a reasonable time thereafter, reclaimed and applied the waters so diverted, to the irrigation of one hundred and sixteen (116) acres of his said lands. Said Moore acquired an interest in the Savage ditch as the same was being constructed, and upon the completion of the same, commenced the irrigation of his lands through said ditch, and in addition to lands previously irrigated through said Mansfield ditches, reclaimed one hundred and seventeen acres of his said lands with the waters of said Savage ditch. All of the said lands of said Moore, are now irrigated with the waters of North Powder River diverted into said Savage ditch, and said Moore has no right, title or interest, in or to said Mansfield ditches, or either of them.

One Armand W. Perkins, or his predecessor in interest, acquired an interest in said Savage ditch, in the year 1894, and commenced the irrigation of his land, more particularly described hereinafter, in said year, and within a reasonable time, applied the waters so diverted, to the irrigation of about one hundred (100) acres of his said lands. That said claimant is also the owner of a one-sixteenth interest in said Mansfield ditches. His lands are irrigated with the waters diverted through both said Mansfield ditches and said Savage ditch.

That said Savage ditch was extended down to the lands of one George W. Pratt, in the year 1898, and the water diverted through said ditch was applied within a reasonable time thereafter, to the irrigation of one hundred and fifty-seven (157) acres of his land, which are more particularly described hereafter; and in the year 1904, ten (10) acres were added to the area of lands irrigated.

The said Savage ditch diverts the water of North Powder River, into the natural channel of Little Muddy Creek, and thence following said channel to the lands and laterals of said claimants. The maximum carrying capacity of said Savage ditch, does not exceed fourteen(14) second feet, or five hundred and sixty (560) miner's inches. A total of about six hundred and sixty-five (665) acres of land are irrigated from said ditch, of which about two hundred and thirty-seven (237) acres are partially irrigated with water diverted through said Mansfield ditches.

The lands of said claimants require, for their proper irrigation, up to the first of July of each irrigation season, a quantity of water, not exceeding the rate of one inch per acre, for each acre actually irrigated. This is evidenced, particularly by the carrying capacity of said ditch, and the area of land irrigated thereunder. Based upon the carrying capacity of said ditch, the proportionate interests of the various owners thereof, and the area of land irrigated and its requirements, the Board finds that

J. L. Savage is entitled to one hundred and thirty (130) miner's inches through said Savage ditch, and the balance of his appropriation, through the Mansfield ditches, to the extent of thirty-five (35) inches. W. R. Moore having a one-third interest in said ditch, and two hundred and thirty-three (233) acres of irrigated lands, is limited by his proportioned interest, and by the carrying capacity of said ditch, to two hundred (200) inches, miner's measurement. George W. Pratt having one hundred and sixty-seven (167) acres, and a one-fourth interest, is for the same reason limited to one hundred and fifty (150) inches, miner's measurement. Armand W. Perkins, having an interest in the Mansfield ditches, is limited to eighty (80) miner's inches in the Savage ditch, and the balance of his appropriation, or twenty (20) miner's inches, is through the Mansfield ditches.

#### XXVI.

UPPER AND LOWER MANSFIELD DITCHES:- These ditches divert the waters of said South Fork, at a point on the left bank, below the Joe Savage ditch. The upper ditch, taps the stream in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the lower ditch, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 19, Tp. 7 S. R. 38 E., W. M., and after running about one mile, converge into a single ditch, which discharges the diverted waters, into the natural channel of Little Muddy Creek. The waters diverted into Little Muddy Creek are conducted by lateral ditches and extensions, to the lands of the various claimants owning said ditches. The upper Mansfield ditch was constructed in the year 1868, and the lower Mansfield ditch was constructed prior to that year, and not earlier than 1866, and said ditches were originally constructed for placer mining, and used therefor, from the time of their construction until about the year 1897, since which time said ditches have been, and now are, used exclusively for the irrigation of the lands of the various claimants owning said ditches. During the use of said ditches for mining purposes, prior to 1879, the owners of said ditches were accustomed to turn the waste waters from their mines, down to the natural channel of Little Muddy Creek, where the same were utilized by the owners of land along that stream, for irrigation; but in 1897, the ownership of said ditches was acquired by said irrigators, and from that time there was considerable increase in the area of lands irrigated along Little Muddy Creek.

The original maximum carrying capacity of both of said ditches, did not exceed seven hundred (700) miner's inches, as constructed and used for mining purposes, but by reason of cleaning out said ditches and their constant use for so long a time, the carrying capacity thereof has been considerably increased. The present maximum carrying capacity of the upper Mansfield ditch, does not exceed ten (10) second feet, or four hundred (400) miner's inches; and of the lower Mansfield ditch, does not exceed twenty-three (23) second feet, or nine hundred and twenty (920) miner's inches, and the combined discharge of both of said ditches, does not exceed thirty three (33) second feet, or thirteen hundred and twenty (1320) miner's inches, measured at the heads of these ditches. These ditches irrigate,

approximately, a total of thirteen hundred (1300) acres, of which six hundred (600) acres are partially irrigated through the Joe Savage, John Williams and Hartung-Nicholson, ditches, all of which discharge their waters directly or indirectly, into Little Muddy Creek. The waters so mingled together, are diverted to the respective tracts of the several owners of said ditches, from the natural channel of Little Muddy Creek. (In addition to the above irrigated land, S. L. Baer et al. owning lands situated east of Powder River, are claiming rights of appropriation for thirteen hundred and sixty-two (1362) acres, of which it appears about seven hundred (700) acres have been actually irrigated. These appropriations are claimed by virtue of a one-eighth interest by these claimants jointly, in said Mansfield ditches. 347

The present owners of the said ditches, and their respective interests therein, are as follows: S. L. Baer, Sallie Baer, F. S. Heard, Lamonda Heard, Louis Levinger, Lyle Levinger, Byron Vandecarr, and Rose A. Vandecarr, are each the owners of an undivided one-sixty-fourth, or, collectively, of a one-eighth interest; Clayton Coleman, one-eighth interest; W. C. Nicholson estate, one-fourth interest; Lucinda Hartung, one-eighth; C. L. Kent, the P. Roethler estate, and A. Long, collectively, one-eighth, or each, one-twenty-four; Armand W. Perkins, one-sixteenth; E. H. Pratt, one-eighth; and J. L. Savage, one sixteenth.

That the rights of appropriation and diversion, of S. L. Baer, F. S. & Lamonda Heard, Sallie Baer, Louis and Lyle Levinger, and Byron and Rose A. Vandecarr, are more particularly set forth in the Findings relative to the contest of William Anthony et al. against the rights claimed by S. L. Baer, et al. (see pp 58) done of Hartung land pp 62

That the predecessors of Clayton Coleman, commenced the irrigation of his herein after described lands, in about the year 1895, with the waters diverted through said Mansfield ditches; and within a reasonable time, reclaimed and applied said waters to the irrigation of sixty-nine (69) acres of said lands; that said Coleman's predecessors, acquired an interest in said ditches in the year 1897; and commencing in the year 1906, added about twenty (20) acres to the area previously irrigated, within a reasonable time thereafter.

That the estate of W. C. Nicholson, deceased, (or the heirs of said deceased) is the owner of said lands, more particularly hereinafter described, now irrigated with the waters diverted through said ditches, and that the predecessors in interest, of said estate, commenced the irrigation of said lands in the year 1874, with the waters of said ditches, and within a reasonable time, applied the waters so diverted, to the irrigation of sixty (60) acres of said land; that in the year 1878, the Hartung-Nicholson ditch was constructed, and waters diverted and used through the same, as hereinafter set forth, for the irrigation of said land, in connection with the waters of said Mansfield ditches; and commencing about the year 1886, and within a reasonable time thereafter, about one hundred and twenty (120) acres were added to the irrigated area of said lands, and the waters diverted through said Mansfield ditches and said Hartung-Nicholson ditch, applied thereto.

That the predecessors of Lucinda Hartung commenced the irrigation of her lands more particularly described hereafter, with the waters diverted through said Mansfield ditches,

in the year 1886, and within a reasonable time, applied the waters so diverted, to the irrigation of forty (40) acres of said lands; and in the year 1898, ten (10) acres were added to such irrigated area; that said Lucinda Hartung, acquired an interest in said Mansfield ditches in the year 1897.

That C. L. Kent, A. Long and the P. Roethler estate, (or the predecessors of the heirs of P. Roethler, deceased,) commenced the construction of the ditch known as the Kent-Long-Roethler Ditch, in the year 1897, and completed the same in the year 1898, tapping the natural channel of Little Muddy Creek; and in said year, 1897, acquired an interest in said Mansfield ditches; and within a reasonable time, applied the waters diverted into and through said Mansfield ditches, and into and through the natural channel of said Little Muddy Creek, and said ditch tapping the same, to the irrigation of their lands, to the extent hereinafter and in the order of determination set forth.

That Armand W. Perkins, and J. L. Savage, are each the owner of an undivided interest in the Savage ditch; and their rights of appropriation are set forth herein, in the findings relative to said Savage ditch.

That E. H. Pratt, commenced the irrigation of his hereinafter described lands, in the year 1887, with the waters discharged into Little Muddy Creek from said Mansfield ditches; and within a reasonable time thereafter, applied the waters so diverted, to the irrigation of one hundred and four (104) acres of said land; that said Pratt acquired an interest in the John Williams ditch (or Hearing and Pratt ditch) in the year 1890, when said ditch was extended down to, and upon his said lands; and thereafter and within a reasonable time, applied the waters diverted into and through said John Williams ditch, to the irrigation of about two hundred and ninety (290) acres of his said lands, in addition to lands previously irrigated through said Mansfield ditches; that said Pratt acquired an interest in said Mansfield ditches in the year 1897.

348

It appears to the Board, that the Mansfield ditches are of insufficient carrying capacity, to properly irrigate the lands for which rights are claimed through these ditches. The total for which rights are claimed through these ditches is twenty-four hundred and sixty-two (2462) acres, and the total carrying capacity of said ditches does not exceed thirteen hundred and twenty (1320) inches. The Hartung-Nicholson ditch, with a carrying capacity of twenty-three (23) second feet, or nine hundred and twenty (920) inches, diverts water into Little Muddy Creek, and the Board is of the opinion that a greater area of land is actually irrigated with the waste and surplus waters of this ditch, than would appear from the proofs. The Board is also of the opinion, that the lands of the P. Roethler estate, and S. L. Baer et al. lying east of Powder river, are largely irrigated with waste



waters which are turned into Little Muddy, and picked up by these claimants by their respective ditches. This is apparent from the large area of land irrigated by these claimants, and their proportionately small interests in the Mansfield ditches.

The Board therefore finds, that irrespective of the proportionate interest of the various claimants in these ditches, the following quantities of water have been appropriated and used by them, from North Powder River, through said ditches. (1) That Clayton Coleman having one-eighth interest, and having ninety-nine (99) acres of irrigated land, which requires one inch to the acre until the first of July, for their proper irrigation, has a right to ninety-nine (99) inches of water through said ditch, and after the first of July, and until the end of the irrigation season, has a right to fifty (50) inches of water, (2) That Lucinda Hartung, having a one-fourth interest, and <sup>fifty</sup> fifty (50) acres of irrigated land, has a right to <sup>fifty</sup> (50) inches of water until July 1st, and thereafter, to twenty five (25) inches. (3) That the estate of W. C. Nicholson, deceased, has an undivided one-half interest in the Hartung-Nicholson ditch, and a one-fourth interest in the Mansfield ditches, and a total of one hundred and eighty and one-half (180½) acres of irrigated land, under both ditches. These lands require one inch to the acre up to July the first, for their proper irrigation, and it is found that said estate is entitled to a total of one hundred and eighty and one-half (180½) inches of water through both said ditches, for said lands, to July 1st. Of this amount, it appears to the Board, equitable to apportion one hundred (100) inches to the Hartung-Nicholson ditch, and eighty and one-half (80½) inches to the Mansfield ditches. (4) C. L. Kent, P. Roethler estate and A. Long, have collectively, a one-eighth interest in said Mansfield ditches. C. L. Kent has irrigated one hundred and fifty (150) acres of land, P. Roethler estate, about three hundred and twelve (312) acres, and A. Long, thirty (30) acres. Said Long's proportionate interest in said Mansfield ditches, entitles him to one inch to the acre for his land irrigated, or a total of thirty (30) inches. The Board finds that the lands of C. L. Kent, require one inch to the acre, and that he has diverted and used a total of one hundred and fifty (150) inches of water. "It appears to the Board, that the lands owned by the P. Roethler estate, consisting of three hundred and twelve (312) acres of irrigated land, are benefited largely by the waste water from Little Muddy Creek, and by the overflow of Powder River. It appears also, that this claimant has a ditch tapping main Powder River, which covers about fifty (50) acres of the lands claimed to be irrigated through the Mansfield ditches. The Board is therefor of the opinion, that one hundred and seventy-five (175) inches, is all that said claimant is entitled to, and has received for the irrigation of said lands. A. Long, having thirty (30) acres of irrigated land, and a one-twenty-fourth interest in said Mansfield ditches, is entitled to thirty (30) inches of water until July 1st, and thereafter to fifteen (15) inches. (5) S. L. Baer, Sallie Baer, F. S. and Lamonda Heard, Louis and Lyle Levinger, Byron and Rose Vandecarr, having jointly, thirteen hundred and twenty (1320) acres, of which seven hundred (700) acres have been actually irrigated, and having to some extent, enlarged the Mansfield ditches about the year 1907, are entitled to the surplus of the said

ditches, or five hundred and twenty-five (525) inches. This is considerably more than the one-eighth interest of these claimants appears to warrant, but the testimony discloses, that there was some enlargement of these ditches by said claimants, in the year 1907. (6) E. H. Pratt has a one-eighth interest in said ditches, and irrigates a total of about three hundred and ninety (390) acres of land, of which area, a large proportion is irrigated through the John Williams ditch. His one-eighth interest entitles him to one hundred and sixty-five inches through the Mansfield ditches and the balance of his appropriation should be diverted through the John Williams ditch. (7). It appears that one Edward W. Warfield, has used the waters of these ditches, by permission of the owners, for the irrigation of twenty six (26) acres. Apparently, his use is permissive use, and not by virtue of an appropriation. He is found to be entitled to continue the use, if not to exceed, twenty six (26) inches of water from said ditches, when there is a surplus of water therein, not required by the owners, and so long as said permission continues.

349

XXVII

WARFIELD-BURNSIDE DITCH:- That the Warfield-Burnside ditch diverts the waters of the South Fork of North Powder River, at a point on the left bank, below the head of the upper Mansfield ditch, and above the diversion point of the lower Mansfield ditch, in the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 19, Tp. 7 S. R. 58 E., W. M.; this ditch has a maximum carrying capacity of not exceeding fifteen (15) second feet, or six hundred (600) miner's inches, and a total of six hundred (600) acres of land, is irrigated with the waters diverted through the same; that said ditch was constructed in the year 1900, for the irrigation of the lands now owned by J. E. Burnside, J. R. and Elmer and Arthur Warfield; that J. E. Burnside has a one-fourth interest in said ditch, and irrigates fourteen (14) acres through the same; F. Spence irrigates thirty one (31) acres, and has a one-eighth interest in said ditch; James R. Warfield irrigates twenty three and one-half (23 $\frac{1}{2}$ ) acres and has a one-fifth interest; Elmer Warfield irrigates fifteen (15) acres, and has a one-fourth interest; and the said lands were reclaimed, and the waters diverted through said ditch, applied thereto, within a reasonable time after the construction of said ditch; that in the year 1904, one W. S. Dougherty, claimant, herein, acquired one eighth interest in said ditch, and thereafter, and within a reasonable time, reclaimed two hundred and ninety-two (292) acres of his said lands, more particularly described hereafter, and applied the waters of said ditch to the irrigation thereof; that the right of said Dougherty, in and to the waters of said ditch, is subsequent and subordinate to the rights of his said co-owners of said ditch, to a quantity of water sufficient for the irrigation of their respective tracts of land, as such quantity is hereafter set forth and defined.

The Board finds, that on account of the large head of water required, the small area irrigated by the claimants, hereinafter named, and the necessarily short period of time in which, on account of their late right, they have to apply said water, that at least two inches to the acre is required for the proper irrigation of these small tracts and that each of said claimants require one second foot of water for their said lands, up to July 1st, or so much thereof as may be necessary to supply the required head of water, when actually needed and used by them.

J. E. Burnside, James R. Elmer and Arthur Warfield, and F. Spence, are each entitled to forty (40) miner's inches through this ditch, to supply the required head needed by them, until July 1st of each year.

That the lands of W. S. Dougherty require one inch to the acre for their proper irrigation, and that he is entitled to two hundred and ninety-two (292) inches until July 1st of each year.

#### XVIII.

HARTUNG-NICHOLSON DITCH: - That the Hartung-Nicholson ditch, originally known as the Bunch ditch, was constructed by one Bunch, for placer mining purposes, in the year 1878; that the said ditch diverts the waters of said South Fork at a point on the left bank, in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 28, Tp. 7 S. R. 39 E., W. M., below the head of the Warfield-Burnside ditch, and has a maximum carrying capacity of not to exceed twenty three (23) second feet, or nine hundred and twenty (920) miner's inches; that about one hundred and eighty-one (181) acres are irrigated by means of this ditch.

That the estate of W. C. Nicholson, deceased, and one A. J. Hartung, respectively, are the owners of, each an undivided one-half interest in said ditch; that said ditch was constructed down to said Nicholson's lands, in 1880; and said estate has rights of irrigation through said ditch, in connection with the waters diverted through the Mansfield ditches, as set forth herein, in the finding relative <sup>said</sup> to the Mansfield ditches; that A. J. Hartung commenced the irrigation of his lands, more particularly described hereinafter, with the waters of North Powder river, diverted through said Nicholson-Hartung ditch, in the year 1878, and within a reasonable time thereafter, reclaimed and applied the waters so diverted, to the irrigation of sixty-six and one-half (66 $\frac{1}{2}$ ) acres of his said lands; that for the proper irrigation of the lands irrigated from the Hartung-Nicholson ditch, one inch to the acre is necessary until the first of July, and one-half inch to the acre, thereafter; that the said Nicholson estate as set forth in the finding relative to the Mansfield ditches, is entitled to one hundred (100) inches of water, from the Hartung-Nicholson ditch; that A. J. Hartung is entitled to sixty-six and one-half (66 $\frac{1}{2}$ ) inches from said ditch, but each of said claimants has the right to divert all of their said appropriations through said Hartung-Nicholson ditch, and none through the Mansfield ditches, if they so desire.

350

#### XXIX.

BLUME-ZILKEY DITCH: - This ditch diverts the waters of said South Fork, below said Hartung-Nicholson ditch, at a point on the left bank, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , of section 19, Tp. 7 S. R. 38 E. W. M., and has a maximum carrying capacity, of not to exceed fifteen (15) second feet, or six hundred (600) miner's inches, and serves to irrigate a total area of

thirteen hundred and twenty-four (1324) acres, no part of which is irrigated through any other ditch; that it is the practice of some of the owners of this ditch, to summer fallow portions of their acreage, every year, the ditch having insufficient carrying capacity to supply water for the irrigation of this entire acreage, in any one year; on the basis of the carrying capacity of said ditch, the same does not supply, in excess of 0.45 miner's inches per acre, but, owing to the fact that much of the land which has been claimed as irrigated land, is annually in a state of summer fallow, and not irrigated, for the lands actually irrigated, the duty of water is approximately  $\frac{4}{5}$  of a miner's inch per acre, during the high water season; that the construction of said ditch was commenced in the year 1879, subsequent to the posting of a notice, whereby F. G. Blume, Charles and Robert Zilkey, gave notice of their intention to construct said ditch, to carry six hundred (600) inches of water, which notice was recorded in October 21st, 1879, in Vol. B., Water Rights for Baker County, Oregon, on Page 298; and that the construction of said ditch was completed in the year 1881.

That J. H. Hutchinson is the owner of an undivided  $\frac{5}{18}$  interest; Dora B. Hutchinson, of an undivided  $\frac{1}{9}$  interest; the estate of M. J. Relling, deceased, of an undivided  $\frac{1}{4}$  interest; W. R. Hutchinson of an undivided  $\frac{1}{9}$  interest; and W. J. Welch, of an undivided  $\frac{1}{4}$  interest, in said ditch.

That J. H. Hutchinson, or his predecessor in interest, commenced the irrigation of his hereinafter described land, with the waters diverted into said ditch, in the year 1881, and applied the waters so diverted, within a reasonable time, to the irrigation of three hundred sixty (360) acres of his land, and W. R. Hutchinson, or his predecessor, commenced the irrigation of his lands, hereinafter described, with the said waters, about the year 1881, and applied said waters, within a reasonable time, to the irrigation of about ninety-five (95) acres of his lands, under said ditch; that the predecessors in interest, of Dora B. Hutchinson, commenced the irrigation of her hereinafter described lands, with said waters, in the year 1905, when said ditch was extended down to her said lands, and within a reasonable time, applied the waters so diverted, to the irrigation of one hundred and ninety-eight (198) acres thereof; that the predecessors of M. J. Relling, deceased, commenced the irrigation of the lands of said estate, with the waters of said ditch, in the year 1881, when said ditch was completed down to said lands, and within a reasonable time applied the waters thereof, to the irrigation of one hundred (100) acres; that thereafter and commencing about the year 1895, there was a gradual increase in the area irrigated until one hundred (100) acres were added to the area previously irrigated, within a reasonable time; that it appears that the predecessors of said Relling estate, have used the waters of that certain ditch, known as the John Williams ditch, diverting the waters of North Powder river, since, and including the year 1895, but that

their interests in said ditch does not appear in the testimony and proofs, filed in this proceeding; that their increase in irrigated acreage, made in the year 1895, appears to have been partly made by the diversion of water through the John Williams ditch; that said Relling estate is entitled to a right to irrigate one hundred (100) acres of <sup>said</sup> land, through said Blume-Zilkey ditch, as of the priority of 1881, fifty (50) acres through the same ditch, as of the priority of 1895, and fifty (50) acres through the said John Williams ditch, as of the year 1895; that the said right through the John Williams ditch, is a right by permission, and subject to the rights of the owners of said ditch..

That W. J. Welch, or his predecessors in interest, commenced the irrigation of his hereinafter described land, with the waters diverted through said Blume-Zilkey ditch, in the year 1881, upon the completion of said ditch, and within a reasonable time, the said water so diverted, was applied to the irrigation of about ninety (90) acres; that commencing about the year 1890, said Welch gradually increased the irrigated area of his said lands, until about three hundred and sixty (360) acres were added to the area previously irrigated with the waters diverted through said ditch.

351

That the estate of M. J. Relling, deceased, is entitled to sufficient water, for the irrigation of one hundred and fifty (150) acres, through said ditch, at the rate of one inch per acre until July 1st, and to seventy five (75) inches, or at the rate of one-half inch per acre, thereafter; that W. J. Welch is entitled to one hundred and fifty (150) inches; J. H. Hutchinson, to one hundred and sixty-seven (167) inches; W. R. Hutchinson, to sixty-seven (67) inches; and Dora B. Hutchinson, to sixty-seven (67) inches; this determination being based upon their respective interests in said ditch, as hereinafter set forth.

### III.

HEARING AND ANGEL DITCH:- That the Hearing and Angel Ditch diverts the waters of said South Fork, at a point on the left bank, in the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 19, Tp. 7 S. R. 58 E., W. M., and has a maximum carrying capacity of seven and eight-tenths (7.8) second feet, or three hundred and twelve (312) miner's inches; that a total of two hundred and thirty-eight (238) acres, is irrigated from this ditch; the ditch was constructed in the year 1897, and completed in the year 1898; that John Ashworth owns an undivided one-half interest; James Hearing an undivided one-third interest; and William Hearing, an undivided one-sixth interest in said ditch.

That John Ashworth, or his predecessors, commenced the irrigation of his hereinafter described lands, in the year 1880, with the waters of North Powder river diverted through said Hartung-Nicholson ditch, but that said claimant or his predecessors, had no interest in said ditch; that within a reasonable time thereafter, said claimant or his predecessors, applied the waters so diverted through the Hartung-Nicholson ditch, to the irrigation of eighteen (18) acres of his said lands; that in the year 1897, the said Hearing and Angel

ditch, was constructed down to his lands, and thereafter the waters of said stream, were diverted through said Hearing and Angel ditch and a gradual increase in the irrigated area of said lands, was commenced and continued until, within a reasonable time thereafter, one hundred and two (102) acres were added to the area previously irrigated; that W. M. Hearing, commenced the irrigation of his lands, with the waters diverted through said ditch, upon the completion of the same in the year 1898, and thereafter, and within a reasonable time, applied the waters so diverted, to the irrigation of ninety-two (92) acres of his said lands; that James Hearing commenced the irrigation of his lands, with the waters diverted through said ditch, upon the completion of the same, in the year 1898, and thereafter, and within a reasonable time, applied the waters so diverted, to the irrigation of thirty-five (35) acres of his said land; that said James Hearing has a right to irrigate, and has applied the waters from the John Williams ditch, to the irrigation of one (1) acre of his said lands from and of the year 1889.

That for the proper irrigation of the lands under the Hearing and Angel ditch, one inch to the acre is required until the first of July, and thereafter, one-half inch to the acre is required, and that the claimants under said ditch, have diverted and beneficially used, this amount.

That John Ashworth is entitled to one hundred and twenty (120) inches until July 1st, and sixty (60) inches thereafter; William Hearing, to ninety-two (92) inches until July 1st, and forty-six (46) inches thereafter; and that James Hearing, having only a small tract of thirty-four (34) acres, and owing to the fact that to prevent waste, a head greater than one inch to the acre, is required on such tracts, is entitled to the use of forty (40) miner's inches, until July 1st, and seventeen miner's inches thereafter, or so much thereof as can actually be beneficially used on said thirty-four (34) acres.

### XXXI.

BULGER DITCH:- This ditch was constructed about the year 1871, for placer mining purposes, and about the year 1887, the present owners of said ditch, or their predecessors, commenced the use of the waters flowing in said ditch, for irrigation purposes; that said ditch diverts the waters of the South Fork of North Powder River, at a point on the left bank in the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 18, Tp. 7 S. R. 38 E., W. M. The maximum carrying capacity of this ditch does not exceed eighteen (18) second feet, or seven hundred and twenty (720) miner's inches, and serves to irrigate a total of eight hundred and fifty and one-half (850½) acres of land; that of this quantity of water, one Ben Fisher, is entitled to divert one-half second foot, or twenty (20) inches, for irrigation of his hereinafter described land, to supplement the flow of certain springs, situated upon said lands, and now used for the irrigation thereof, but said Fisher has no interest in said ditch; that a total of eight hundred and fifty and one-half (850½) acres, excluding the lands of said Fisher, are irrigated from said ditch,

and the maximum amount of water which can be applied by said ditch, does not exceed the rate of 0.75 of a miner's inch per acre.

352

That said Ben Fisher commenced the use of water, diverted through said ditch, for the irrigation of his lands, in 1880, and is entitled to twenty (20) inches, as of that date.

That C. E. & A. B. Davis, partners and tenants in common in their lands and water rights, appurtenant thereto, are the owners of a one-third interest in said ditch; H. K. Fisher, L. W. Perkins and Harry C. Williams, each own an undivided one-eighteenth interest therein; and Seth Hart, Samuel Hearing estate and H. McCullough, each of an undivided one-sixth interest therein.

That said ditch was abandoned for mining purposes in the year 1877, and was enlarged, and from time to time extended, down to and upon the lands of the present owners thereof.

That C. E. & A. B. Davis commenced the irrigation of their lands, hereinafter described, in the year 1877, with the waters of said ditch, and within a reasonable time, applied the waters diverted through said ditch, to the irrigation of sixty-nine (69) acres thereof; and commencing in the year 1905, gradually increased the irrigated area of their said lands, and within a reasonable time, added thereto, one hundred and fifty (150) acres.

That H. K. Fisher commenced the use of the waters of said ditch, in the year 1877, and within a reasonable time, applied the waters thereof, to the irrigation of eighty (80) acres; and added to said irrigated area, about ten (10) acres, in the year 1905; said lands being more particularly described hereafter.

That Seth Hart commenced the irrigation of his said lands, hereinafter described, in the year 1887, and within a reasonable time, applied said waters to the irrigation of one hundred (100) acres; and in the year 1905 commenced, and within a reasonable time, applied said waters to the irrigation of thirty-two (32) acres additional.

That the predecessors of the Estate of Samuel Hearing, deceased, commenced to irrigate the lands of said estate, with said waters, in the year 1884, and within a reasonable time, applied said waters to the irrigation of eighty (80) acres; that said estate is the owner of other lands which are irrigated through the John Williams ditch.

That H. McCullough, or his predecessors, commenced to irrigate his hereinafter described lands with said waters, in the year 1877, and within a reasonable time, applied the same to the irrigation of eighty (80) acres; and in the year 1892, commenced a gradual increase in such irrigated area, until, within a reasonable time eighty (80) acres were added to said irrigated lands.

That L. W. Perkins commenced to irrigate his hereinafter described lands with said waters, in the year 1877, and within a reasonable time, applied the said waters

to the irrigation of forty (40) acres, and in the year 1895, increased the irrigated area of said land to the extent of ten (10) acres.

That Harry C. Williams commenced to irrigate his hereinafter described lands in the year 1880, with said waters, and reclaimed the irrigated seventy (70) acres within a reasonable time, and in the year 1896, added to said irrigated area to the extent of twenty three and one-half ( $23\frac{1}{2}$ ) acres.

That one J. R. Long has diverted and used the waters of said ditch, since the year 1885, but has no interest in said ditch, and his use thereof has at all times been by permission of the owners thereof; that he has reclaimed and irrigated about twelve (12) acres; and through the Blume-Zilkey ditch has irrigated about ten (10) acres since 1885; but that he has no interest in either of said ditches, and no other than a permissive right of use therein.

G. J. Savage, having twenty (20) acres, which have been irrigated since 1905, with the waters of said ditch, has a right to twenty (20) inches until July 1st, and thereafter to ten (10) inches; his interest in said ditch not appearing, is left undetermined.

That one inch to the acre until July 1st, and one-half inch thereafter, is necessary for the proper irrigation of the lands irrigated from the Bulgar ditch, but, that owing to the limited capacity of the said ditch and to the amount of land claimed to be irrigated by said claimants, from said ditch, said claimants are limited by their proportionate interests in said ditch to the following amounts; H. K. Fisher, with a one-eighteenth interest 353 in the ditch and eighty-nine and one-half ( $89\frac{1}{2}$ ) acres of irrigated land, is entitled to sixty (60) inches, to July 1st and forty-five (45) inches thereafter; L. W. Perkins, with one-eighteenth interest in the ditch, and fifty (50) acres of irrigated land, is entitled to forty one (41) inches until July 1st, and twenty five (25) inches thereafter; Harry C. Williams, with a one-eighteenth interest, and ninety-three and one-half ( $93\frac{1}{2}$ ) acres, is entitled to fifty-two inches, to July 1st and forty-seven (47) inches thereafter; Seth Hart with a one-sixth interest, and one hundred and thirty-two acres of land, is entitled to one hundred and fifteen inches, until July 1st, and sixty-six inches thereafter; F. McCullough, with a one-sixth interest, and one hundred and sixty (160) acres of irrigated land, is entitled to one hundred and fifteen inches, until July 1st, and eighty inches thereafter; C. E. & A. B. Davis, with a one-third interest, and two hundred and nineteen and one-half ( $219\frac{1}{2}$ ) acres of irrigated land, are entitled to two hundred and nineteen and one-half inches, until July 1st, and one hundred and ten inches thereafter; and Ben Fisher, with no interest in the ditch, is entitled to twenty inches of the flow thereof, for the irrigation of his hereinafter described lands; that the estate of Samuel Hearing, deceased, with a one-sixth interest, and eighty (80) acres, is entitled to eighty (80) inches, to July 1st and forty (40) inches thereafter; and G. F. Savage is entitled to twenty (20) inches to July 1st, and to ten (10) inches thereafter.

#### XIII.

##### Ditch

DUTCH FLAT CREEK: - The Dutch Flat Creek/taps North Powder River and Dutch Flat Creek, a tributary, the diversion points from said streams, being respectively on



the left bank, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ , of Section 18, Tp. 7 S., R. 38 E., W. M., and was constructed in the year 1904.

That on July 1st, 1910, application was made by J. R. Long, Samuel W. Loy, E. H. Pratt, A. L. Savage, George Ensminger, Seth Hart, and G. J. Savage, the owners of said ditch, for a permit to appropriate the waters of said streams through said ditch, and that thereafter, permit No. 586 was issued by the State Engineer of the State of Oregon, to said applicants.

That it appears that said Seth Hart commenced the use of the waters diverted through said ditch in the year 1906, and applied the same to the irrigation of twenty five and one-half (25 $\frac{1}{2}$ ) acres, during said year.

That E. H. Pratt applied the waters diverted through said ditch, to the irrigation of six (6) acres, in the year 1904, and that none of the lands of any of the other owners of said ditch, were irrigated through this ditch, prior to the irrigation season of 1909.

That said Seth Hart, is entitled to twenty-five and one-half inches (25 $\frac{1}{2}$ ), as of the year 1906, for the irrigation of twenty five and one-half (25 $\frac{1}{2}$ ) acres, in addition to his rights in the Bulgar ditch, as hereinbefore mentioned.

That E. H. Pratt, in connection with his other rights, is entitled to six inches in the Dutch Flat Creek ditch, as of the priority of 1904, for the irrigation of six (6) acres, more particularly hereinafter described.

That the rights of said claimants, and quantity of water to which each is entitled, under said permit, are, as defined and set forth in said permit and subject to the terms and conditions thereof.

#### XXXIII.

JOHN WILLIAMS DITCH:- That the John Williams ditch diverts the waters of the North Fork of the North Powder River, at a point on the left bank, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 18, Tp. 7 S. R. 38 E., W. M., and that said ditch was constructed in about the year 1875. It has a maximum carrying capacity of twelve and one-half (12 $\frac{1}{2}$ ) second feet, or five hundred inches.

That M. Ella Haskin, the estate of Samuel Haring, deceased, and E. H. Pratt, are each the owners of an undivided one-third interest in said ditch. The estate of M. J. Relling has some interest in, or right through said ditch, which does not definitely appear.

That the predecessors in interest, of M. Ella Haskin, commenced the irrigation of her lands (hereinafter described) in the year 1875, with the waters of said stream, diverted through the Mansfield ditches, and continued the same until the year 1889, when said John Williams ditch was completed down to, and upon her said lands; that about seventy-five (75) acres of said lands were irrigated, within a reasonable time after the year 1875, and that in the year 1889, said irrigated area was increased by twenty-two (22) acres, which were irrigated through the said John Williams ditch, and that since the year 1889, all of the said lands have been irrigated through said John Williams ditch; that claimant has no interest in said

354

Mansfield ditches.

That the predecessors of the heirs of Samuel Hearing, deceased, commenced the irrigation of their lands, more particularly hereinafter described, in the year 1877, with the waters diverted through the said John Williams ditch, and within a reasonable time thereafter, applied, the same to the irrigation of about ninety three (93) acres of said lands; that commencing about the year 1898, said irrigated area, within a reasonable time, was increased to the extent of forty seven (47) acres.

That E. H. Pratt is the owner of a one third interest in the said John Williams ditch; that the lands of said Pratt are irrigated with the waters diverted through said ditch, and the Mansfield ditches, and that his rights are fully set forth in the finding, relative to said Mansfield ditches, herein.

That M. Ella Haskin is entitled to ninety seven (97) inches to July 1st, and thereafter to forty nine (49) inches. Estate of Samuel Hearing, is entitled to one hundred and forty (140) inches to July 1st, and thereafter to seventy (70) inches. That E. H. Pratt is entitled to a one third interest, and has a total area of three hundred and ninety four (394) acres. That he uses and diverts, for these lands, one hundred and sixty five (165) inches through the Mansfield Ditches, and his said lands require about one inch per acre until July 1st. Accordingly, the Board finds, he is entitled to two hundred and twenty nine (229) inches through the said John Williams ditch for his said lands, until July 1st, and one hundred and fifteen inches thereafter.

That James Hearing is entitled to the use of the waters of said ditch, for the irrigation of one (1) acre of his lands, and is limited to the quantity of two (2) miner's inches therefor, to be used in connection with his right through the Hearing and Angel ditch.

That the Estate of M. J. Relling, deceased, has used the surplus waters in said ditch, for the lands of said estate, in connection with the waters of the Blume-Zilkey ditch, which surplus, the Board finds to be thirty two (32) inches, as of the year 1895.

#### XXXIV.

HUTCHINSON SIDE HILL DITCH:- That the Hutchinson Side Hill ditch was commenced in April, 1875, and completed, in 1877, when about two miles of ditch were constructed, and taps the left bank of the South Fork of North Powder River at a point in SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 32, Tp. 6 S. R. 38 E., W. M. That J. H. & W. R. Hutchinson are each the owners of an undivided one half interest therein.

That J. H. Hutchinson commenced the irrigation of certain of his lands, with the waters diverted through said ditch, in the year 1877, and thereafter applied the waters so diverted, to the irrigation of one hundred and ninety (190) acres. In the year 1895 he commenced an increase in the area of lands irrigated, and within a reasonable time, added three hundred and thirteen (313) acres. In 1905 an increase was again commenced, and within a

reasonable time, three hundred and one (301) acres were added. A portion of the lands covered by said Side Hill Ditch, are also irrigated with the waters diverted through the Hutchinson extension of the Gardner Mill Race, to-wit: SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 53, and S $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 54, Tp. 6 S. R. 58 E., W. M.

That W. R. Hutchinson commenced the irrigation of certain of his lands, under said ditch, with the waters diverted through said Side Hill ditch, in the year 1877, and within a reasonable time, applied the waters so diverted, to the irrigation of one hundred and twenty (120) acres; and in the year 1888 commenced an increase in his irrigated area, and added two hundred and twenty (220) acres within a reasonable time. In 1905 he again increased his irrigated area to the extent of one hundred and fifty eight (158) acres. A portion of the lands under said ditch, are also irrigated with the waters diverted into and through the Gardner Ditch, to-wit: S $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 2 Tp. 7 S. R. 58 E. W. M. 355

That Charles E. Hutchinson is the owner of certain lands, under said ditch, which were first irrigated in 1902, and that ninety and one-half (90 $\frac{1}{2}$ ) acres of said lands have been irrigated; and that while the interest of said claimant does not appear, the Board finds that he has rights of appropriation through said ditch, for said lands.

The maximum carrying capacity of said ditch does not exceed a total of nine hundred (900) miner's inches. There are irrigated through this ditch, a total of twelve hundred and forty (1240) acres. It is apparent that portions of these lands are annually summer fallowed. The duty of water for these lands must be measured by the capacity of said ditch, and the Board finds that it is at the rate of about 75/100 miner's inch per acre. It is therefore found that J. H. Hutchinson, having six hundred and sixty five (665) acres is entitled to four hundred and eighty-three (483) inches of water; W. R. Hutchinson, having five hundred and twenty eight and one-half (528 $\frac{1}{2}$ ) acres, is entitled to three hundred and eighty-three (383) inches; Charles E. Hutchinson, having ninety and one-half acres which are partially irrigated through the Gardner Mill Race Ditch, is found to be limited to thirty-three (33) inches through the Side Hill Ditch and fifty-six and one-half (56 $\frac{1}{2}$ ) inches through the Gardner Mill Race Ditch; but is entitled to divert said waters through either of said ditches, subject to the permission of said J. H. and W. R. Hutchinson, to the use of said Side Hill Ditch, for the diversion of a quantity in excess of thirty-three (33) inches.

#### XXXV.

GARDNER MILL RACE DITCH:- That the Gardner Mill Race ditch was constructed about the year 1865, tapping the South Fork of North Powder river at a point on the left bank, in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 52, Tp. 6 S., R. 58 E., W. M., and water was diverted through the same, by the predecessors in interest of William H. Gardner, for stock and domestic purposes, and for the operation of a mill, but that said mill and the right to divert water through said ditch for the development of power, or other use than domestic and stock purposes, has long since been abandoned; that in the year 1870, the predecessors of said Gardner, commenced

the irrigation of the lands now owned by him, more particularly described in the order of determination herein, and within a reasonable time thereafter, brought under cultivation and irrigated about eighty-five (85) acres of his said lands: that about the year 1871, J. H. and W. R. Hutchinson, claimants herein, commenced the construction of an extension of said Mill Race ditch, down to their lands, and completed the same in the year 1875, and applied the waters of North Powder River, diverted through said Gardner Mill Race and said Hutchinson Extension thereof to the irrigation of said lands: That at the time of the original hearing herein, said J. H. Hutchinson claimed a five-nineths interest, said W. R. Hutchinson, a one-third interest, and one Mary F. Hutchinson a one-ninth interest, in said Gardner ditch; that one Charles E. Hutchinson also claimed a right through said ditch for the irrigation of certain lands, more particularly described hereinafter, irrigated through said ditch and the Hutchinson Side Hill ditch, by permission of the owners of said ditches; that the estate of W. L. Miller, deceased, also claims a right to divert water through said ditch, and J. L. Dodson claims the right to divert water through the same, and into an extension or lateral thereof, and S. A. Dougherty also claims the right to use the water diverted into said last mentioned lateral, for the irrigation of about seven (7) acres of his lands; that within the time permitted by law, said W. N. Gardner filed statements of contest against the rights claimed by said W. R., J. H. and Mary F. Hutchinson, in said Gardner Mill Race ditch, and the said contests were duly and regularly set for hearing, upon notice to all parties thereto, according to law, and that at the time of the hearing of said contest, the said contestant and parties contested, appeared both personally and by attorney, and it was stipulated and agreed, that contestant, Gardner, should have the first right to the use of any and all water in said ditch, to the extent and amount of water awarded said contestant in this proceeding, based upon his claim filed herein; that said contestees should be entitled to the right and use of the said Mill ditch, for the purpose of, and to the extent of running therein, and flowing there through, the amount of water awarded said contestees upon their claims to the waters of North Powder River, through said ditch, filed herein, and that said claims of contestees, should be modified and limited to that extent; that said contestees should keep and perform the further conditions of said stipulations and that the same should be binding upon the heirs and assigns of the parties thereto, and run with the lands and water rights appurtenant thereto, now owned by said parties, and claimed in their proofs of claims herein, to be irrigated through the said ditch.

356

That based upon the proofs herein and said stipulations, said W. N. Gardner, is found and determined to be the owner of said Gardner Mill Race Ditch, and to have the first right to the use of the same, and to divert water there through for irrigation, stock and domestic purposes, to the extent, and in the amount limited herein in the order of determination; and said contestees, J. H., W. R. and Mary F. Hutchinson, are found and determined to be the

owners of the extension of said Gardner Mill Race ditch, constructed down to their lands, in the following proportions; J. H. Hutchinson, five-ninths; W. R. Hutchinson, one-ninth; and Mary F. Hutchinson, one-ninth; and said contestees are further found to have the right to the use of said Gardner Mill Race ditch, for the purpose of diverting the waters of North Powder River, into and through the same, and into their said extension thereof, subject to the prior rights of said contestant, W. N. Gardner, and the prior and superior rights of all other claimants, to the waters of said stream, and subject to the performance by them, of the conditions by them, to be performed, in accordance with said agreement and stipulation herein entered into; that the right of all other claimants diverting water through said Mill Race ditch, as to their respective interests, in, or rights to the use of said Gardner Mill Race ditch, are hereby left undetermined, the same being by reason of the inadequacy of the evidence, and the record herein not determinable.

That said J. H. Hutchinson commenced the irrigation of his lands, more particularly described in the order of determination herein, through said Gardner ditch extension, in the year 1873, and within a reasonable time thereafter, reclaimed and applied the waters diverted through said ditch, to the irrigation of about three hundred and forty five (345) acres of his lands, and in 1882 commenced to increase his irrigated lands thereunder, and added one hundred (100) acres; that W. R. Hutchinson commenced the irrigation of certain of his lands, through said ditch, in the year 1873, and within a reasonable time, applied the waters diverted into said ditch, to the irrigation of one hundred and sixty (160) acres of his said lands; and commencing about the year 1885, within a reasonable time, added seventy-five (75) acres to the irrigated area of said lands; and in the year 1899, about forty-five (45) acres additional were added; that Mary F. Hutchinson, or her predecessor, J. H. Hutchinson, commenced the irrigation of her lands, more particularly described hereinafter, in the year 1875, and within a reasonable time applied the waters diverted into said ditch, to the irrigation of eighty (80) acres of her said lands; that Charles E. Hutchinson irrigates about ninety and one-half (90½) acres of his said lands, through said Gardner ditch, and through the Side Hill Ditch; and his rights are more particularly defined and set forth in the finding relative to said Side Hill ditch herein.

That the rights of said J. L. Dodson, S. A. Dougherty and Estate of W. S. Miller, deceased, and A. W. Perkins, in and to the use of the waters diverted through said Gardner Mill Race ditch, are more particularly set forth in the finding herein relative to the Powers Company ditch, through which water is also diverted for the lands of the said claimants.

That the maximum capacity of the <sup>said</sup> Gardner Mill ditch, does not exceed thirty-seven and twelve-tenths (37.12) second feet, or fourteen hundred and eighty-five (1485) miner's inches. This ditch is used to irrigate twelve hundred and eighty-eight (1288) acres, three

hundred and twenty one (321) acres of which are irrigated from other ditches. Taking into consideration the quantity of water supplied by other ditches, for some of these lands the ditch will supply one inch to the acre, and if carrying its maximum capacity, about one and fifteen one hundredths (1.15) inches to the acre. The Board finds that the lands of the various claimants under this ditch, require about one inch to the acre for their proper irrigation, until July 1st of each year. Therefore J. H. Hutchinson, having four hundred and forty five and one-half ( $445\frac{1}{2}$ ) acres under this ditch, is entitled to four hundred and forty-five and one-half inches to July 1st, and thereafter to two Hundred and twenty three (223) inches; that W. R. Hutchinson, having two hundred and forty-nine and one-half ( $249\frac{1}{2}$ ) acres, is entitled to two hundred and forty-nine and one-half ( $249\frac{1}{2}$ ) inches to July 1st, and thereafter to one hundred and twenty-five (125) inches. Mary F. Hutchinson, having eighty acres, is entitled to eighty inches until July 1st, and thereafter to forty (40) inches. Charles E. Hutchinson irrigates ninety and one-half acres through the Side Hill ditch and the Gardner Mill Race ditch, and the Board finds that he is entitled to fifty-six and one-half ( $56\frac{1}{2}$ ) inches through said Gardner Mill Race ditch, and the balance of his appropriation through the Side Hill ditch; but may divert his entire appropriation through said Gardner Mill Race, subject to the prior rights of other claimants therein. W. N. Gardner has a right through said ditch as of the year 1862, to sufficient water for domestic and stock purposes, and as the year 1870, for the irrigation of eighty-seven (87) acres. That he is entitled therefore, to the quantity of eighty-seven inches until July 1st, thereafter to forty-four inches. The lands of J. L. Dodson, S. A. Dougherty, the Estate of W. S. Miller, deceased, and A. W. Perkins, are irrigated through this ditch and other ditches, and require one inch to the acre until July 1st, and thereafter one half inch to the acre. That A. W. Perkins has rights of appropriation for the irrigation of forty-two and one-half ( $42\frac{1}{2}$ ) acres, through the said ditch and through the Powers Co. ditch, as of the year 1864.

357

#### XXXVI.

POWERS COMPANY DITCH: That the Powers Company ditch was constructed in the year 1873, It is also known as the Davis Brothers Company ditch and taps the South Fork of North Powder river, at a point on the left bank in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 32. Tp. 6 S. R. 58 E., W. M. The ditch has a maximum carrying capacity of thirty six and fifty three hundredths (36.53) second feet, or fourteen hundred and sixty-one miner's inches. This ditch is used for the irrigation of about seven hundred and eighty-four (784) acres, and partially supplies an additional acreage of about five hundred (500) acres. Assuming that eleven hundred (1100) acres, is the entire acreage actually irrigated under this ditch, and that the balance of the lands are irrigated under other ditches, which are hereinafter set forth, the maximum flow of this ditch would furnish about one and three tenths (1.3) inches per acre. Taking this into consideration, and the fact that the other lands may at times

be also irrigated and considering the quantity required by these lands, it is found that one inch to the acre is the duty to be fixed for the lands under this ditch, up to July 1st. That said ditch appears to have been originally constructed down to, and upon the lands now owned by Laura L. Dodson and William N. Gardner, by the predecessors of those claimants; and to have been extended and enlarged about the year 1885; that C. E. and A. B. Davis are partners and tenants in common in their water rights, as herein set forth, and own an undivided one-seventh interest in said ditch; J. L. Dodson, S. A. Dougherty, William Gardner, and the Estate of W. L. Miller, deceased, are each the owners of an undivided one-seventh interest, and Laura L. Dodson is the owner of an undivided two-sevenths interest in said ditch; that of the lands owned by said C. E. Davis and A. B. Davis, or Davis Brothers, as said partnership is known, as the said lands are hereinafter described, seventy (70) acres thereof were reclaimed and irrigated through said ditch, within a reasonable time, and commencing about the year 1875; and it appears that said Davis Brothers became the owners of a one-seventh interest in said ditch, in the year 1888, and thereafter and within a reasonable time, applied the waters diverted through said ditch, to the irrigation of four hundred and ninety-six (496) acres, in addition to the area previously irrigated through said ditch; and in the year 1906, added fifteen (15) acres to the area previously irrigated.

That the predecessor of Laura L. Dodson, brought under irrigation, and reclaimed within a reasonable time after construction of said ditch, one hundred and forty (140) acres of her lands, more particularly described hereinafter; that of other lands of said Laura L. Dodson, fifty three (53) acres were reclaimed and irrigated through that certain ditch known as the Old Powers ditch, about one hundred and forty (140) acres through said Powers Company ditch, and twenty-one (21) acres through the J. L. Dodson ditch.

That J. L. Dodson commenced the irrigation of his lands, more particularly described hereinafter, through said ditch, in the year 1884, and within a reasonable time thereafter, the waters diverted through said ditch (and other ditches, as hereinafter set forth) were applied to the irrigation of about one hundred (100) acres of his said lands; that said claimant also irrigates his said lands through the Gardner Side Hill ditch, which is an extension or lateral from the said Gardner Mill Race ditch; and with the waters diverted through a certain ditch, known as the Daley ditch; that in the year 1906, thirty (30) acres were added by said Dodson, to the area of his irrigated lands, under said ditches.

358

That S. A. Dougherty commenced the irrigation of his lands, more particularly hereinafter described, in the year 1881, and within a reasonable time, applied the waters diverted through said Powers Company ditch, to the irrigation of one hundred and eighty two (182) acres of his said lands; that in addition to these lands, said S. A. Dougherty is also the owner of seven (7) acres of land which has been irrigated continuously since 1874, with the waters diverted into the Gardner Mill Race ditch, and J. L. Dodson (or Gardner Side Hill) extension thereof; that the interest of said claimant in said last named ditch, does not appear.

That the predecessor of the heirs of W. L. Miller, deceased, (or estate of W. L. Miller) commenced the irrigation of the lands belonging to said Estate, more particularly described hereinafter, through said ditch, in the year 1890, at which time said predecessor acquired an interest in said Powers Company ditch, and within a reasonable time thereafter, applied the waters diverted through said ditch, to the irrigation of about one hundred and forty-eight (148) acres of said lands, that the lands of said estate, are also irrigated through that certain ditch known as the Bamberger ditch, and three small lateral ditches tapping the Gardner Mill Race ditch, which said ditches were constructed at different times; that the irrigation of said lands, was commenced through said Bamberger ditch, in the year 1869, and the waters diverted, applied to the irrigation of about thirty eight (38) acres, within a reasonable time; that said lateral ditches were constructed, tapping said Mill race, one in the year 1865, one in the year 1871, and one in the year 1875; and through said first lateral ditch, about fifty (50) acres were irrigated, within a reasonable time; and through said second lateral, about twenty five (25) acres were irrigated within a reasonable time; and through said last mentioned lateral, the waters so diverted, were applied to the irrigation of about thirty-five (35) acres, within a reasonable time; that the right or interest of said Miller Estate, in said Gardner Mill race ditch, does not appear.

That W. N. Gardner, or his predecessor, commenced the irrigation of his lands through said Powers Company ditch, in the 1875, and within a reasonable time applied the water to the irrigation of thirty-seven (37) acres of his said lands; and in 1895, added to said irrigated area, to the extent of twenty (20) acres; that said Gardner commenced the irrigation of certain of his lands, in the year 1871, through that certain ditch, known as the Hunsaker ditch, and within a reasonable time, applied the waters diverted through said ditch, to the irrigation of thirty (30) acres of his said lands, in addition to lands previously irrigated through other and different ditches.

That C. E. and A. B. Davis, having five hundred and eighty-one acres (581) under said ditch, and having a one-seventh interest in said ditch, and their said land requiring about one inch to the acre, are entitled to five hundred and eighty-one (581) inches to July 1st, according to their priorities. Laura L. Dodson, having a two-seventh interest and one hundred and forty (140) acres irrigated under said ditch, is entitled to one hundred and forty inches; but has the right to irrigate any, or all of her said lands, to the extent of two hundred and fourteen (214) acres through said ditch, or in connection to the waters diverted through the Old Powers ditch and the J. L. Dodson ditch; and having two hundred and fourteen acres of land under all of said ditches, is entitled to a total quantity of two hundred and fourteen (214) inches through said ditches to July 1st. J. L. Dodson, having one hundred and thirty (130) acres, and one seventh interest, and rights of appropriation through the Gardner Mill Race ditch and the Daley ditch, is entitled to one hundred and thirty (130) inches to July 1st, and has a right to divert the whole of said appropriation, through said Powers Company ditch,



or to supplement his rights in said ditch through the Daley and Gardner ditches, S. A. Dougherty has a one-seventh interest, and one hundred and eighty-two (182) acres of land, for which he is entitled to one hundred and eighty-two (182) inches through said ditch, and through the Gardner Mill Race ditch is entitled to seven inches for seven acres. The Estate of W. L. Miller, deceased, has one hundred and forty-eight (148) acres, irrigated through said ditch, and is entitled to one hundred and forty-eight inches therefor, until July 1st. That said estate is entitled to one hundred and forty eight (148) inches through the Bamberger and Gardner Mill Race ditches, until July 1st, according to priority of said right. W. N. Gardner having eighty seven (87) acres irrigated through the Powers Company ditch, and partly through the Hunsaker ditch, is entitled to eighty-seven (87) inches until July 1st; having the right to divert all of his said appropriation through said Powers Company ditch, or to divert part of his said appropriation through the Hunsaker ditch, to supplement the water diverted through the Powers Company ditch. 359

A. W. Perkins having forty-two and one-half (42½) acres is entitled to forty-two and one-half (42) inches to July 1st, and thereafter to twenty-two (22) inches, through said ditch and the Gardner ditch, or either of them, as of the year 1884.

#### XXXVII.

HUNSAKER DITCH:- That the Hunsaker ditch was constructed in the year 1871, and W. N. Gardner is the owner thereof. That this ditch taps North Powder at a point on the left Bank of the South Fork, in the SE¼NE¼ Section 32, Tp. 6 S. R. 38 E., W. M. The waters of this ditch are used wholly by W. N. Gardner to supplement his rights of appropriation through the Powers Company ditch. The carrying capacity of said ditch, is in excess of the quantity required by said Gardner for his land. - 20 ft.

#### XXXVIII.

BAMBERGER DITCH:- That this ditch was constructed in the year 1869, and that the Estate of W. L. Miller, deceased, is the owner thereof; that it taps the South Fork of North Powder river at a point on the left bank in the SE¼SW¼, Section 28 Tp. 6 S. R. 38 E., W. M., and the waters diverted through the same, are used for the irrigation of about thirty eight (38) acres of the said Miller lands. That the carrying capacity of said ditch, is in excess of the quantity required for the irrigation of said lands, at the rate of one inch per acre.

#### ANTHONY CREEK OR NORTH FORK.

That the following ditches divert the waters of Anthony Creek, to the lands of the respective claimants thereunder.

XXXIX.

CARNES COMPANY DITCH:- That the Carnes Company ditch, or Anthony Creek Company ditch, was commenced in the year 1898, and construction thereof was completed on June 2nd, 1902. That about twenty miles of ditch have been constructed. That said ditch was enlarged in the year 1903, to carry sufficient water for the irrigation of the lands under said ditch, That said ditch taps the right bank of Anthony Creek, diverting the water of both Forks of Anthony Creek, at a point in the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> Section 13, Tp. 6 S. R. 57 E., W. M. That the maximum carrying capacity of said ditch, is thirty (30) second feet, or twelve hundred (1200) inches, and a total of two thousand (2000) acres, approximately, has been irrigated through said ditch.

That George M. and Ed Carnes, are together the owners of a one-fourth interest; John Brant, of a one-fourth interest; John Shaw of a one-fourth interest; and W. J. and Clara Welch of a one-fourth undivided interest in said ditch.

That of the lands at present irrigated through said ditch, belonging to W. J. Welch, one hundred and twenty (120) acres thereof were reclaimed and irrigated within a reasonable time after the completion of construction of said ditch; and the remaining portion of said irrigated lands, or about two hundred and sixty seven (267) acres, were first irrigated and within a reasonable time, the water applied thereto, subsequent to and commencing in the year 1906.

That the lands of Clara M. Welch were first irrigated in the year 1905, and the waters diverted through said ditch applied to the irrigation thereof within a reasonable time thereafter.

That the lands of John Brant, George and Edward Carnes, and John Shaw were<sup>re</sup> claimed and irrigated within a reasonable time after the completion of said ditch. The lands of said claimants irrigated through and under said ditch, being more particularly described herein, in the order of determination.

The Board finds that George M. Carnes, having a one-eighth interest, and one hundred and ninety and one-half (190<sup>1</sup>/<sub>2</sub>) acres, is entitled to one hundred and sixty (160) inches. That Edward A. Carnes having a one-eighth interest, and one hundred and forty<sup>four</sup> acres, is entitled to one hundred and forty (140) inches. John Brant, having a one-fourth interest, and four hundred and ninety-nine and one-half (499<sup>1</sup>/<sub>2</sub>) acres is entitled to three hundred (300) inches. John Shaw, having a one-fourth interest, and six hundred and forty-one and one-half (641<sup>1</sup>/<sub>2</sub>) acres, is entitled to three hundred (300) inches. W. J. Welch and Clara M. Welch, having together five hundred and forty-two (542) acres, and one-fourth interest, are entitled to three hundred (300) inches, of which W. J. Welch, with three hundred and eighty-seven (387) acres, is entitled to two hundred and eleven inches, and Clara M. Welch, with one hundred and fifty-five (155) acres, is entitled to eighty-nine inches. After July 1st, none of these claimants are entitled to exceed the rate of one-half miner's inch per acre.

XL.

TUCKER FLAT DITCH:- That the Tucker Flat, or Hutchinson Ditch, was commenced in the year 1877, but that the same was not completed, or the water applied to the irrigation of the lands under said ditch, until the year 1885; that J. H. Hutchinson is the owner of a nine-tenths interest in said ditch, and one Elmer Shipp is the owner of a one-tenth interest therein; that about the year 1885 said J. H. Hutchinson commenced the irrigation of his lands, susceptible of irrigation from said ditch, and more particularly described hereinafter, and within a reasonable time thereafter, applied the waters so diverted through said ditch, to the irrigation of about ninety-seven (97) acres of said lands; that the predecessor of Elmer Shipp commenced the irrigation of his lands, more particularly described hereinafter, with the waters diverted through said ditch, in the year 1908, and within a reasonable time applied the waters so diverted through said ditch to the irrigation of about thirty-eight (38) acres of said lands; that said lands, or portions thereof, of the said Shipp were, commencing about the year 1878, irrigated with the waters of Pilcher Creek, a tributary of North Powder River, diverted through the Pilcher Ditch, tapping said creek; and that the waters of Anthony Creek were first applied thereto in the year 1908, as above set forth.

That the Tucker Flat Ditch taps the North Bank of Anthony Creek at a point just below the head of the Carnes Company Ditch, in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 15, Tp. 6 S. R. 57 E. W. M., and has a maximum carrying capacity of six and seventy-nine hundredths (6.79) second-feet, or two hundred and seventy-two (272) inches; that a total of one hundred and thirty five (135) acres of land is irrigated through this ditch, and J. H. Hutchinson, with ninety-seven (97) acres, is entitled to ninety-seven (97) inches, and Elmer Shipp with thirty-eight (38) acres, is entitled to forty inches, to July 1st, and thereafter at the rate of one-half inch to the acre.

XLI.

COUGHANOUR DITCH:- That the Coughanour Ditch was commenced about the year 1880, and was completed about the year 1885, and the waters of Anthony Creek thereafter diverted through said ditch, and within a reasonable time, applied to the irrigation of about eight hundred (800) acres of the lands of William A. Coughanour; that said Coughanour is the owner of said ditch; that commencing about the year 1900, said Coughanour commenced a gradual increase of the irrigated area of his said lands, and within a reasonable time thereafter, added about three hundred and forty-eight (348) acres to the area previously irrigated; that the rights of said Coughanour, as against the rights claimed by the North Powder Milling and Mercantile Company, as the same were adjudicated and determined in that certain suit in the Circuit Court of Union County, wherein said Company was plaintiff and said Coughanour was defendant, are more fully set forth in the finding herein relative to said North Powder Milling and Mercantile Company Ditch.

This ditch taps the right bank of Anthony Creek at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 18, Tp. 6 S. R. 38 E. W. M., and has a maximum carrying capacity of eighteen (18) second feet, or seven hundred and twenty (720) inches; a total acreage of about eleven hundred and fifty (1150) is irrigated under this ditch, and the Board finds that said William A. Coughanour is entitled to seven hundred and twenty (720) inches for the irrigation of his said lands, until July 1st, and thereafter to five hundred and seventy-four (574) inches, according to the priority of his right.

#### XLIII.

PILCHER-EVANS-FILKINS DITCH:- The Pilcher-Evans-Filkins Ditch, or Pilcher and Evans Ditch, was commenced on May 16, 1890, and completed in the year 1895. Said ditch taps the right bank of Anthony Creek at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 18, Tp. 6 S. R. 38 E. W. M., and has a maximum carrying capacity of five and eighty-nine hundredths (5.89) second feet, or two hundred and thirty-six (236) miner's inches.

That James A. Pilcher, C. C. Garwood, and Juliette Evans Ten Broeck, are each the owners of an undivided one-third interest in said ditch.

That the predecessors of the claimant, Ten-Broeck, commenced the irrigation of thirty (30) acres of her land, more particularly described hereinafter, through the Tucker Flat and Coughanour Ditches, but had no interest in said ditches; that the said Pilcher-Evans-Filkins Ditch was completed in the year 1895, and thereafter said lands were irrigated through said ditch; and commencing with the completion of said ditch, and within a reasonable time, the water diverted through the same was applied to the irrigation of seventy (70) acres of her said lands, including said lands previously irrigated through said Tucker Flat and Coughanour Ditches; and in the year 1904, seventeen (17) acres were added to the area of lands irrigated through said ditch by said claimant, or her predecessor.

That James A. Pilcher commenced the irrigation of his lands under said ditch, upon the completion of the same, and within a reasonable time, applied the waters diverted through said ditch to the irrigation of thirty-three (33) acres, more particularly described hereinafter.

That C. C. Garwood commenced the irrigation of his lands, more particularly described hereinafter, in the year 1895, upon the completion of said ditch, and thereafter and within a reasonable time applied the water so diverted to the irrigation of thirty-four (34) acres of his said lands.

That one Thomas H. Parker appears to have some right or interest in said ditch, the nature of which does not appear from the proofs herein, and has irrigated about seven (7) acres of his lands through the same, since the year 1905.

Juliette Evans Ten-Broeck, having eighty-seven (87) acres, a one-third interest, and requiring one inch to the acre, is entitled to eighty seven inches to July 1st, and

thereafter to forty-four inches. James A. Pilcher, having thirty-three (33) acres, is entitled to one second foot to supply the required head, when needed by him, to July 1st, and thereafter to seventeen inches. C. C. Garwood, having a one-third interest, and thirty four (34) acres, requires one second foot, or forty inches, to supply the required head, to July 1st, and thereafter is entitled to seventeen inches. Thomas H. Parker, having seven (7) acres, but his interest not appearing, is entitled to fourteen inches of water to July 1st to supply a sufficient head, and thereafter is entitled to five inches.

#### XLIII.

ANTHONY DITCH:- The Anthony Ditch was constructed in the year 1871, tapping Anthony Creek at a point on the right bank, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 18, Tp. 6 S. R. 58 E. W.M. That said ditch has a maximum carrying capacity of seven and six-tenths (7.6) second feet, or three hundred and four (304) miner's inches.

362

That William Anthony, and the heirs of Sarah Anthony, deceased, are together the owners of an undivided one-half interest in said ditch, and one Lewis Klinefelter of an of an undivided one-half interest therein.

That the lands now owned by said William Anthony, as more particularly described, hereinafter, were irrigated, and the water applied thereto in the year 1871.

That the lands of the said Sarah Anthony Estate were irrigated and the water applied thereto in the year 1871.

That Lewis Klinefelter acquired an interest in said ditch, and commenced the irrigation of his lands, more particularly described hereinafter, in the year 1885, and within a reasonable time applied the waters so diverted to the irrigation of about forty-three (43) acres of said land.

That one Thomas H. Parker has irrigated six and one-half (6 $\frac{1}{2}$ ) acres of his lands through said ditch, since the year 1871; but that said Parker has no interest in said ditch, and his use thereof has been by permission of the owners thereof.

That a total of ninety and one-half (90 $\frac{1}{2}$ ) acres are irrigated from this ditch at the present time. That said ditch has apparently been enlarged since the commencement of this proceeding. The lands of the claimants require one inch to the acre, but owing to the small areas irrigated, W. M. Anthony, with ten acres, is entitled to forty inches during the month of July, to supply the required head, and the Estate of Sarah Anthony, deceased, with thirty-one (31) acres, is entitled to forty (40) inches for the same purpose. Lewis Klinefelter, having forty-three (43) acres, is entitled to forty three (43) inches. Thomas H. Parker, having six and one-half acres, requires fourteen inches to supply the required head.

#### XLIV.

PILCHER-DRYBOROUGH DITCH:- The Pilcher-Dryborough ditch diverts the waters

of Anthony Creek at a point on the right bank, in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 20 Tp. 6 S. R. 38 E. W. M. It has a maximum carrying capacity of eight and twenty-two hundredths (8.22) second-feet, or three hundred and twenty-nine (329) miner's inches. The ditch was constructed in the year 1870, by the predecessors in interest, of James A. Pilcher, tapping Anthony Creek and diverting the waters of said stream down upon the lands of said Pilcher; that within a reasonable time after the construction of said ditch, forty (40) acres of the lands of said Pilcher were reclaimed and irrigated with the waters so diverted; and commencing in 1884, sixty-one<sup>and one half</sup>/(61 $\frac{1}{2}$ ) acres were added thereto, within a reasonable time; that said James A. Pilcher is the owner of a two-thirds interest in said ditch, and one A. K. Dryborough of a one-third interest therein; that said Dryborough, or his predecessor, acquired an interest in said ditch in the year 1872, and thereafter, and within a reasonable time, applied the waters diverted through said ditch to the irrigation of fifty<sup>eight</sup> and one-half (58 $\frac{1}{2}$ ) acres of his said lands; the lands of said claimants being more particularly described hereinafter.

James A. Pilcher, having one hundred and one and one-half (101 $\frac{1}{2}$ ) acres, requiring about one inch to the acre, is entitled to one hundred and one and one-half (101 $\frac{1}{2}$ ) inches to July 1st, and thereafter to fifty-one (51) inches. A. K. Dryborough, having fifty-eight and one-half (58 $\frac{1}{2}$ ) acres, and one-third interest, is entitled to fifty-eight and one-half (58 $\frac{1}{2}$ ) inches to July 1st, and thereafter to thirty inches.

The following ditches tap North Powder River below the mouth of Anthony Creek:

#### XLV.

DALEY DITCH:- The Daley ditch diverts the waters of North Powder River at a point on the right bank in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 27, Tp. 6 S. R. 58 E. W. M. The Daley Ditch has a maximum carrying capacity of approximately eighteen (18) second feet, or seven hundred and twenty (720) miner's inches. The carrying capacity of said ditch is sufficient to supply three (3) miner's inches per acre for the lands irrigated, but the lands of the said claimants do not require to exceed the rate of one inch per acre.

That the ditch was constructed in about the year 1869; that J. L. Dodson owns a one-tenth interest; J. H. Hutchinson, a one-fourth interest; J. O. Pilcher a two-fifths interest; and John Powers a one-fourth interest in said ditch; that J. L. Dodson commenced the irrigation of his lands through said ditch in the year 1884, and his rights are more fully set forth in the finding herein relative to the Powers Company ditch; that J. H. Hutchinson, or his predecessor, commenced the irrigation of his lands under said ditch, more particularly described hereinafter, in the year 1872, and within a reasonable time thereafter, fifty-six and one-half (56 $\frac{1}{2}$ ) acres of his lands were reclaimed and irrigated with the waters diverted through said ditch; that J. O. Pilcher commenced the irrigation of his lands, more particularly described hereinafter, with the waters diverted through said ditch, in the

363

year 1869, and within a reasonable time, the waters so diverted were applied to the irrigation of seventy-four (74) acres of his said lands; that the predecessors in interest of John Powers commenced the irrigation of his lands, more particularly described hereinafter, with the waters diverted through said ditch, in the year 1870, and within a reasonable time applied the waters diverted to the irrigation of eighty two and one-half ( $82\frac{1}{2}$ ) acres.

The Board finds that J. L. Dodson, having one hundred and thirty (130) acres, which are irrigated through the Daley, Powers Company and Gardner Mill Race ditches, is entitled to one hundred and thirty (130) inches through said ditches, for his land. The carrying capacity of all of said ditches being sufficient, said Dodson is not limited to any particular quantity through any of said ditches, but his total appropriation through said ditches, which he is entitled to divert, does not exceed one hundred and thirty (130) inches, to July 1st, and thereafter sixty-five (65) inches. J. H. Hutchinson, having fifty-six and one-half ( $56\frac{1}{2}$ ) acres, is entitled to fifty-six and one-half ( $56\frac{1}{2}$ ) inches through said ditch to July 1st, and thereafter to twenty-nine (29) inches. J. O. Pilcher having seventy-four (74) acres, is entitled to seventy-four (74) inches to July 1st, and thereafter to thirty-seven (37) inches. John Powers, having eighty-two and one-half ( $82\frac{1}{2}$ ) acres, is entitled to eighty-two and one-half ( $82\frac{1}{2}$ ) inches to July 1st, and thereafter to forty-two (42) inches.

#### XLVI.

DAVIS-DALTON DITCH: - The Davis-Dalton ditch, or Davis Hutchinson Ditch diverts the waters of North Powder River from the left bank in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 54, Tp. 6 S. R. 38 E. W. M. The maximum carrying capacity of said ditch does not exceed ten (10) second feet, or four hundred (400) miner's inches. That said ditch was constructed in the year 1874, down to and upon the land of J. S. Davis, and was, in the year 1888, enlarged and extended down to and upon lands now owned by James Dalton, by the predecessor in interest of said Dalton. That James Dalton is now the owner of a two-thirds interest, and said J. S. Davis of a one-third interest in said ditch.

That James Dalton irrigates two hundred and eight (208) acres through the Davis-Dalton Ditch, and is entitled therefore, to two hundred and eight (208) inches to July 1st, and thereafter to one hundred and four (104) miner's inches. J. S. Davis has irrigated eighty-four (84) acres through said ditch, and is entitled therefore, to eighty-four (84) inches to July 1st, and thereafter to forty-two (42) inches.

That James Dalton's predecessor commenced the irrigation of his land in the year 1888, and reclaimed the same within a reasonable time. J. S. Davis commenced the irrigation of his said land in the year 1874, and reclaimed the same within a reasonable time. That James Dalton is also the owner of interests in the Kelsey-Wilson and Smith-McPhee and Fanner ditches. J. S. Davis is also the owner of interests in the Davis-Kelsey Ditch. The rights of said claimants through said ditches are more particularly set forth in the findings relative thereto.

XLVII.

OLD POWERS DITCH:- The Old Powers Ditch taps the left bank of North Powder River at a point in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 54, Tp. 6 S. R. 36 E. W. M. Said ditch was constructed in the year 1865 by the predecessor of Laura L. Dodson, and said Laura L. Dodson is now the owner thereof. About fifty-three (53) acres of land has been reclaimed and irrigated under said ditch, for which said claimant is entitled to fifty-three (53) inches to July 1st, and thereafter to twenty-seven inches. 364

XLVIII.

Davis-Kelsey Ditch: - That the Davis-Kelsey Ditch taps the right bank of North Powder River at a point in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 55, Tp. 6 S. R. 36 E. W. M., and was constructed in the year 1887, and that J. S. Davis, Grant Dalton, W. L. Goff, Will F. Hutchinson, L. S. Kelsey, Chris Peterson and J. B. Wilson are the owners thereof; that said ditch, as originally constructed, was three (3) feet in width, and owned by J. S. Davis, J. B. Wilson, L. S. Kelsey, Grant Dalton and Will F. Hutchinson, prior to the enlargement thereof; that in the year 1889 said ditch was enlarged three feet in the width of said ditch; that the present interests of the present owners of said ditch, as at present constructed, insofar as can be determined from the proof herein, are: J. S. Davis, one-fourth; Grant Dalton, one-ninth; W. L. Goff, one eighteenth; Will F. Hutchinson, one twelfth; L. S. Kelsey, five thirty-sixths; J. B. Wilson, five-eighteenths, and Chris Peterson, one-twelfth interest; that the rights of appropriation of J. S. Davis were initiated through this ditch in the year 1887, and within a reasonable time thereafter, the waters diverted through said ditch were applied to the irrigation of two hundred and twenty-three (223) acres of his said lands as above set forth; that Grant Dalton irrigates approximately one hundred and sixty (160) acres of his lands, more particularly described hereinafter, through said Davis-Kelsey Ditch; that about eighty (80) acres were irrigated, commencing about the year 1887, within a reasonable time; that about the year 1897; upon the enlargement of said ditch, about eighty (80) acres in addition to lands previously irrigated, were reclaimed and irrigated, within a reasonable time; that in addition to said lands, said claimant also irrigates about thirty-six (36) acres of land through that certain ditch known as the Ellis Ditch, the irrigation of which lands was commenced in the year 1904, and completed within a reasonable time thereafter; that the predecessors of W. L. Goff commenced the irrigation of their lands through the said ditch in the year 1897, and within a reasonable time applied the waters diverted to the irrigation of about thirty-two (32) acres thereof; that said Goff also irrigates portions of his said lands through those certain ditches known as the Pearson Ditch and the Ellis Ditch; said lands being more particularly described hereinafter; that said Goff commenced the irrigation of his said lands through said Pearson Ditch in the year 1893, and applied the water diverted through the same, within a reasonable time, to the irrigation of thirty-five (35) acres; and commenced the irrigation of his said lands through the Ellis Ditch in the year 1903, and applied the waters diverted through the same to the



irrigation of thirty-three (33) acres of his said lands; that L. S. Kelsey commenced the irrigation of certain of his lands through said ditch in the year 1887, and within a reasonable time applied the waters so diverted to the irrigation of about eighty (80) acres; and increased the irrigated area of his said lands in the year 1902, to the extent of forty-two (42) acres, irrigated through and under said ditch; that Chris. Peterson commenced the irrigation of his lands in the year 1889, through said Davis-Kelsey ditch, and has reclaimed and irrigated under said ditches, thirty (30) acres, as of the year 1889, two hundred and ninety-three (293) acres as of the year 1898, and ninety-one and one-half (91½) acres as of the year 1904, by appropriations through said ditches initiated in said years, and application to the said lands of said claimant, within a reasonable time thereafter; that J. B. Wilson commenced the irrigation of his lands in the year 1889, with the waters diverted through said ditch, and reclaimed and irrigated within a reasonable time about three hundred and ninety (390) acres thereof; that W. F. Hutchinson commenced the irrigation of his said lands through said ditch, in the year 1896, and within a reasonable time thereafter, reclaimed and irrigated one hundred and forty-two and one-half (142½) acres thereof; that the lands of said claimants are more particularly described in the order of determination herein.

365

J. S. Davis, having two hundred and twenty-three (223) acres, is entitled to two hundred and twenty-three (223) inches to July 1st, and thereafter to one hundred and twelve (112) inches. Grant Dalton, having one hundred and sixty (160) acres, is entitled to one hundred and sixty (160) inches to July 1st, and thereafter to eighty (80) inches. W. L. Goff, having thirty-two (32) acres, is entitled to forty (40) inches until July 1st, so as to give the required head, and thereafter is entitled to sixteen (16) inches. Will F. Hutchinson, having one hundred and forty-two and one-half (142½) acres, is entitled to one hundred and forty-two and one-half (142½) inches until July 1st, and thereafter to seventy-two inches. L. S. Kelsey, having one hundred and twenty-two (122) acres, is entitled to one hundred and twenty-two (122) inches. Chris. Peterson, having four hundred and fifteen and one-half (415½) acres, which are irrigated through the Davis-Kelsey Ditch and the Ellis Ditch, is entitled to four hundred and fifteen and one-half (415½) inches through said ditches, according to his priorities; of which quantity said Peterson is entitled to divert not to exceed two hundred and fifty inches through said Davis-Kelsey Ditch, and the balance of his appropriation through the Ellis Ditch, or may divert all or any part of his appropriation through said Ellis Ditch, the carrying capacity of which is sufficient therefor.

The right of said Peterson to divert water through either ditch, depends upon the priority of his respective appropriation. J. B. Wilson, having three hundred and ninety (390) acres, is entitled to three hundred and ninety (390) inches until July 1st, and thereafter to one hundred and ninety-five (195) inches.

The above quantities of water confirmed to the respective claimants are determined by the Board in accordance with the quantities required by said claimants for

their lands, the proportionate interests of said claimants in said ditch, their rights in other ditches for the same land, and the maximum carrying capacity of said Davis-Kelsey Ditch, which the Board finds does not exceed thirty-three (33) second feet, or thirteen hundred and twenty (1320) miner's inches.

XLIX.

ELLIS DITCH:- That the Ellis Ditch diverts the waters of North River from a point on the right bank, in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 36, Tp. 8 S. R. 38 E. W. M. The board finds that this ditch has a maximum carrying capacity of not to exceed seventy-five (75) second feet, or three thousand (3000) miner's inches.

The Ellis Ditch was constructed in the year 1879, down to and upon the lands of L. S. Kelsey. The present owners of said ditch are L. S. Kelsey, Chris. Peterson, Grant Dalton, Mrs. Allie Dalton, W. L. Goff, W. R. Hutchinson, and Albert Hutchinson.

Said ditch, as originally constructed, was four feet in width, and was enlarged to increase the carrying capacity thereof, in the year 1882, and again in the year 1904 and 1905; and as enlarged in the year 1904, had a width in excess of eight (8) feet, and has a present width of about ten (10) feet.

The respective interests of the owners of said ditch therein, appear to be impossible of determination in this proceeding, from the proofs and testimony taken.

That L. S. Kelsey commenced the irrigation of his land under said ditch in the year 1880, and within a reasonable time, diverted through said ditch the waters of said stream, and applied the same to the irrigation of sixty-two and one-half (62 $\frac{1}{2}$ ) acres; and is entitled to a right for the irrigation of sixty-two and one-half (62 $\frac{1}{2}$ ) acres as of the year 1879.

In the year 1905, said Kelsey commenced the construction of an extension of said Ellis Ditch, for the irrigation of about twelve hundred (1200) acres of land owned by said Kelsey. That it was the intention of said Kelsey to use the surplus waters of said North Powder River for the irrigation of said land through said ditch. Subsequent to the year 1905, said Kelsey constructed about thirty miles of ditch, including laterals, and that said main ditch so constructed is about eighteen miles long. In order to construct said ditch, said Kelsey had to secure rights of way therefor over the lands of about ten owners of land, whose tracts of land are situated between the head of said ditch and the lands to be irrigated therefrom. During the years 1906-1907-1908 and 1909, said Kelsey endeavored to secure rights of way for said ditch, but being unable to secure the same, was prevented by those over whose land said ditch was to be built from proceeding with the construction thereof. In 1905, said Kelsey diligently proceeded with the construction of said ditch, repairing and enlarging the head of the Ellis Ditch, and constructing a considerable portion of said ditch. Commencing in the year 1910, and the year 1911, said Kelsey completed said ditch down to said lands, and commenced the

irrigation of said lands in the spring of 1911. Prior to the completion of said ditch, a considerable area of land had been broken up, and at the present time, over eight hundred (800) acres are practically ready for cultivation. Without said water, said lands are of little value for agricultural purposes. That said Kelsey has also constructed a ditch, tapping the North Powder River at a point on the right bank, in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 22, Tp. 6 S. R. 39 E. W. M., which ditch crosses and receives considerable water from the North Powder Milling and Mercantile Company's tail race, and is being constructed under application No. 1779, filed in the office of the State Engineer, to irrigate portions of said lands, to be irrigated under said Ellis Ditch. The said extension of said Ellis Ditch is known as the Sunny Slope Ditch, and said Kelsey intends to irrigate about seven hundred and twenty (720) acres under said ditch. The cost of construction of said ditch, preparation of said land for irrigation, and construction of laterals, was about \$10,000.00. Taking into consideration the large area of land, the difficulties encountered in securing the rights of way, the length of the ditch and the lateral ditches, and the size thereof, the Board is of the opinion that due diligence was exercised by said Kelsey, and that he is entitled to complete his said appropriation through said Ellis Ditch. That said appropriation should be completed, and water completely applied, during the irrigation season of 1914, and thereafter, proof should be taken by the Superintendent of Water Division No. 2, as to the completion of said appropriation, and a <sup>water</sup> right certificate issued thereafter to said Kelsey, confirming his said appropriation to the extent that water has been actually applied to a beneficial use during said irrigation season of 1914. That on account of the late right, and the short irrigation season, it is not probable that said Kelsey will receive, or be entitled to any water for the irrigation of said lands after July 1st, and accordingly the Board finds that he requires one inch to the acre up to July 1st of each year, for the lands to which water shall have been applied by the irrigation season, 1914.

That the lands of Chris, Peterson are irrigated through the Ellis ditch - 1655 and through the Davis-Kelsey Ditch, and his rights are set forth in the finding relative to said Kelsey-Davis Ditch.

That Grant Dalton and Mrs. Allie Dalton commenced the irrigation of their respective tracts of land, under said ditch, in the year 1904, after the second enlargement thereof; and said Grant Dalton irrigates about thirty-five and one-half (35 $\frac{1}{2}$ ) acres under said ditch, reclaimed and irrigated within a reasonable time after such enlargement; that of the lands of Mrs. Allie Dalton, about thirty-six (36) acres thereof were reclaimed and irrigated within a reasonable time after said second enlargement in 1904.

That W. L. Goff began the irrigation of his lands through said ditch in the year 1904, after said second enlargement, and applied the waters diverted to the

irrigation of thirty-three (33) acres, within a reasonable time thereafter.

That W. R. Hutchinson commenced the irrigation of his lands, under said ditch, with the waters diverted through the same, in the year 1882, and within a reasonable time applied the waters so diverted to the irrigation of one hundred and five and one-half (105½) acres of said lands.

That Albert Hutchinson commenced the irrigation of his lands with the waters diverted through said ditch, in the year 1882, and within a reasonable time, applied the waters so diverted to the irrigation of one hundred and forty (140) acres of his said lands; the lands of said claimant being more particularly described hereinafter; that the lands of said claimant, situated in the SE¼ SW¼, section 32, Tp. 6 S. R. 39 E. W. M., have been irrigated through that certain ditch known as the Wilson-Kelsey Ditch, but that claimant has no interest or right in said ditch, and his use of the water flowing in the same has been by permission of the owners thereof; that in the year 1896 said claimant added to the area irrigated through said Ellis Ditch, to the extent of forty-one and one-half (41½) acres; that the lands of said claimant irrigated through said Kelsey-Wilson Ditch were first irrigated in the year 1896.

337

That the lands of the claimants irrigated through this ditch required one inch to the acre until July 1st, and thereafter, one-half inch; but that to furnish the required head, Allie Dalton, Grant Dalton and W. L. Goff are each entitled to one second foot, or forty (40) miner's inches to July 1st of each year.

L.

KELSEY-WILSON DITCH:- That the Kelsey-Wilson Ditch taps North Powder River at a point on the left bank in the SE¼ SW¼, Section 36, Tp. 6 S. R. 39 E. W. M.

That said ditch was constructed about the year 1888 by one L. S. Kelsey, claimant herein, and one J. D. Wilson and son, and another; that as originally constructed said ditch was what is termed a "four foot" ditch, that is, four feet in width; that in the year 1888, under and by virtue of an agreement between the then owners of said ditch, and one James York, J. D. McPhee, and P. L. Smith, claimants herein, and one William Tanner, an enlargement of said ditch was made, which is presumed to have been to double its original capacity; that in that certain suit in the Circuit Court of the State of Oregon, for Baker County, wherein J. D. McPhee and others were plaintiffs, and L. S. Kelsey was defendant, a decree was entered in the year 1906, in Circuit Court Journal "Y" at Page 621, upon mandate from the Supreme Court of the State of Oregon, wherein it was determined by the Court that in said enlargement of said ditch, the same was probably enlarged to double its former capacity, from the head thereof down to the point known as the "Wilson Tap"; that said L. S. Kelsey was the owner of a four-foot interest in said ditch, as originally constructed; that said James Dalton was the owner of the Tanner and McPhee interests in the enlargement of said ditch; that said P. L. Smith still retains his interest; and that one George Neill had

succeeded to the interest of said Kelsey in said enlargement ( said Kelsey having succeeded to the interest of said York in the same); that in that certain suit in the Circuit Court of the State of Oregon for Baker County, wherein Sam and W. A. Carnes were plaintiffs, and James Dalton was defendant, upon appeal to the Supreme Court of the State of Oregon, on the 6th day of December, 1910, it was found and determined that Sam Carnes and W. A. Carnes, appellants therein, were the owners and in possession of the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 32, Tp. 6 S. R. 39 E. W. M., and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ , Section 5, and ten (10) acres situated in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 5, adjoining same, all in Tp. 7 S. R. 39 E. W. M., containing one hundred and twenty (120) acres of agricultural lands, of which ninety (90) acres were in orchard, grain and other cultivated crops; that James Dalton, respondent therein, was the owner of the W $\frac{1}{2}$  of Section 3, E $\frac{1}{2}$  SE $\frac{1}{4}$ , and S $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 4; SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10; the W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 2, and NW $\frac{1}{4}$  Section 10, all in Tp. 7 S. R. 39 E. W. M., in Baker County, Oregon, of which lands two hundred (200) acres were in alfalfa and other crops, and the balance of said lands being used for pasturing live stock, and for the production of grain, hay and orchard and garden crops.

That about the year 1886, the predecessors of said appellants made an appropriation of the waters of North Powder River through said Kelsey-Wilson Ditch; and that in the year 1888, under an agreement entered into between one Kelsey, a co-owner of said ditch, the said ditch was enlarged by the respondent, Dalton, and his co-owners, without the consent or an agreement of the appellants or their predecessors in interest, and became what is known as an eight-foot ditch, and that a further appropriation of the waters of North Powder River was made through said ditch, in the year 1888.

368

That in said decree it was determined that as against respondent, James Dalton, said appellants Sam and W. R. Carnes, were entitled to the right to the first use of the waters flowing in said ditch, not exceeding one-eighth of the carrying capacity thereof; and said Dalton was decreed to be entitled to the use of said ditch and the waters flowing therein, when not in use by said appellants, or to an amount in excess of the amount required by the prior rights of said appellants, the respective amounts to which said parties were entitled to be measured as provided in said decree.

That from said decrees, and the proofs of claimants herein, it appears impossible to the Board, without further evidence, to determine the respective interests of the claimants diverting water through said ditch.

That the rights of said L. S. Kelsey and Sam and W. R. Carnes were initiated by the construction of said ditch in the year 1886; and that the rights of said James Dalton and P. L. Smith, by the enlargement of said ditch in the year 1888; and that the rights of appropriation of said George W. Neill commenced with the first irrigation of his lands in the year 1901.

That the predecessors of said Sam and W. R. Carnes reclaimed and irrigated with the waters diverted through said ditch, about one hundred and nineteen (119) acres of their said lands, within a reasonable time after the initiation of their said rights of appropriation.

That L. S. Kelsey has applied the waters diverted into and through said ditch to the irrigation of approximately five hundred and four (504) acres of his<sup>said</sup> lands, more particularly described hereinafter, and that the irrigation of said lands was completed within a reasonable time after the construction of said ditch.

That James Dalton and P. L. Smith initiated rights of appropriation through said ditch, for the irrigation of their lands, by the enlargement of said ditch in the year 1888, and that said Dalton has reclaimed and irrigated with the waters of said ditch, diverted from North Powder River, about one hundred and seventy-two (172) acres, to which the water was applied within a reasonable time after such enlargement; and that said P. L. Smith, within a reasonable time after such enlargement, reclaimed and irrigated with the waters diverted through said ditch, about eighty (80) acres of his lands, more particularly hereinafter described.

That the claimant George W. Neill, is the owner of a one-eighth interest in said Kelsey-Wilson Ditch, as enlarged, and it appears that said Neill succeeded to the interest of one York, in the enlargement made by said claimants, by purchase of an interest in said ditch in the year 1901, from said Kelsey, who had succeeded to said interest of said York; that in said year 1901, said Neill purchased of said Kelsey a one-foot interest in said ditch, but it does not appear that said Neill acquired or succeeded to any of the rights of appropriation of said Kelsey through said ditch, or that Kelsey's predecessor, York, ever initiated or perfected rights of appropriation through said ditch; that in fact, said York, at the time of said enlargement, had no lands susceptible of irrigation from said ditch; and it is therefore, found and determined that said Neill's rights of appropriation were initiated by the purchase of an interest in said ditch in the year 1901, and the irrigation of his said lands, to the extent of one hundred and ninety-two (192) acres, within a reasonable time thereafter that his rights of appropriation and diversion of water into said ditch, and of use of the waters in said ditch, appear subsequent in point of time to the rights of said co-owners.

That the waters in said ditch should be distributed by the water master of the district in which said ditch is situated, in accordance with said decree of said Circuit Court, and the findings herein set forth and order of determination herein, and decree entered in this proceeding, as far as possible.

That James Dalton and P. L. Smith, having been decreed to be the owners of certain waters referred to in the decree above mentioned in said suit of McPhee et al. vs. Kelsey et al., as the Hutchinson Slough waters, are found and determined to be the owners of the same and entitled to the use thereof, to supplement their rights of appropriation of the waters of North Powder River, in proportion to their respective interests in said Kelsey-Wilson Ditch.

That one J. B. Luster, at the time of the original hearing, filed a statement and proof of claim herein, claiming the right to a six-inch enlargement, or interest in said Kelsey-Wilson Ditch, acquired in the year 1902; that said Luster appears to have

used the waters in said ditch since said year 1902, for the irrigation of his lands, but that at said time, said claimant had no interest in said ditch; that James Dalton and P. L. Smith filed a statement of contest as against the rights of said Luster, through said ditch, and it was stipulated and agreed upon the hearing thereof, that said contest should be dismissed, upon the understanding and agreement that the use of said ditch by said Luster should be granted to said contestee upon condition that he enlarge said ditch one and one-half feet from a point near the southeast corner of the northeast quarter of Section 5, Tp. 7 S. 39 E. W. M., to a point on said ditch between the lands owned by said Dalton and those lands owned by said Luster; that whenever it becomes necessary for the purpose of carrying sufficient water for the use of said contestee, Luster, through said ditch, to enlarge the same to North Powder River, he would enlarge the same to the extent and in the manner stipulated by Dougherty Brothers, in a certain contract entered into between said James Dalton and others, with said Dougherty Brothers and others, on October 10th, 1900, which is recorded in Volume 42, at page 193, Records of Deeds of Baker County, Oregon; and based upon said stipulation and proof, it is found and determined that said Luster has a right of appropriation through said ditch, as of the year 1902, for the irrigation of thirty-seven (37) acres of his said lands, reclaimed and irrigated within a reasonable time after the first application of water to the same in the year 1902; said right being subordinate in point of time to the rights of each and all of the owners of said ditch, as above set forth.

That B. P. Doherty is claiming an interest in said ditch by virtue of a three-inch enlargement made in the year 1905, and since said year, it appears that within a reasonable time, said B. P. Doherty applied the water diverted through said ditch to the irrigation of thirty-eight and one-half (38½) acres of his lands, more particularly described in the order of determination herein.

That said Kelsey-Wilson Ditch has a maximum carrying capacity of twenty-nine (29) second feet, or eleven hundred and sixty (1160) inches, and is of sufficient capacity to supply approximately one inch to the acre for all the lands irrigated under said ditch.

Sam and W. R. Carnes, having one hundred and nineteen acres, are entitled to one one hundred and nineteen (119) inches until July 1st of each year, and thereafter to sixty (60) inches. L. S. Kelsey, having five hundred and four (504) acres, is entitled to five hundred and four (504) inches until July 1st, and thereafter to two hundred and fifty-two inches. James Dalton, having one hundred and seventy-two and one-half (172½) acres, is entitled to one hundred and seventy two and one-half inches until July 1st of each year, and thereafter to eighty-seven (87) inches. P. L. Smith, having eighty acres (80) is entitled to eighty (80) inches until July 1st, and thereafter to forty (40) inches. George W. Neill, having one hundred and ninety-two (192)

acres, is entitled to one hundred and ninety-two (192) inches until July 1st, and thereafter to ninety-six (96) inches. J. B. Luster, having thirty-seven acres, and requiring therefor, to secure sufficient head, one second foot, is entitled to forty (40) inches until July 1st of each year, and thereafter to nineteen inches. B. P. Doherty, having thirty-eight and one half ( $38\frac{1}{2}$ ) acres, is entitled to forty (40) inches to supply the required head, to July 1st of each year, and thereafter to twenty (20) inches.

The rights of said claimants to divert said quantities of water <sup>must</sup> be exercised in the order of their respective priority, and in accordance with the said decrees above mentioned, and the conditions of the stipulation hereinbefore referred to. Albert Hutchinson having fifty-eight (58) acres which have been irrigated through said Kelsey Wilson Ditch since and including the year 1896, by permission of the owners of said ditch, is entitled to the use of fifty-eight inches until July 1st of each year, and to twenty-nine (29) inches thereafter whenever that amount of water or part thereof is not required by the owners of said ditch, his said rights of use of the waters in said Kelsey-Wilson Ditch being subject to the permission of the owners of said ditch.

370

## II.

BEATY AND KELSEY DITCHES:- That L. S. Kelsey is the owner of that certain ditch known as the Beaty Ditch, tapping North Powder River at a point on the left bank, in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 36, Tp. 6 S. R. 38 E. W. M., at the head of the Kelsey-Wilson Ditch, through the head of which ditch, water is at present diverted into said Beaty Ditch. The head of said Kelsey-Wilson Ditch is sufficient to carry the waters appropriated through both said Kelsey-Wilson Ditch, and said Beaty Ditch. The said Beaty Ditch was constructed in the year 1883, and within a reasonable time thereafter, water was diverted through the same and applied to the irrigation of eighty-four and one-half ( $84\frac{1}{2}$ ) acres of said Kelsey land. The maximum carrying capacity of said ditch is ten (10) second feet, or four hundred (400) miners inches. Said lands require not to exceed one inch to the acre for their proper irrigation, and said Kelsey is limited to eighty-four and one-half ( $84\frac{1}{2}$ ) inches for said lands until July 1st, and thereafter to forty-three (43) inches. But said Kelsey has the right to divert his appropriation to which he is entitled through his other said ditches, through said Beaty Ditch, to the extent of its carrying capacity, the total quantity diverted by said Kelsey at any time not to be in excess of the total quantity to which he is here found entitled, nor to exceed in the aggregate a total quantity for all of his said lands, at the rate of one inch to the acre to July 1st, and thereafter at the rate of one-half inch to the acre.

*Kelsey*  
The Kelsey Ditch taps North Powder River at a point on the right bank in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 36, Tp. 6 S. R. 38 E. W. M., and was constructed in the year 1886. Said ditch has a maximum carrying capacity sufficient to supply one inch to the acre for the lands



irrigated thereunder. That a measurement of said ditch was made, showing a carrying capacity at the time of measurement of about three and one-half ( $3\frac{1}{2}$ ) second feet, or one hundred forty (140) INCHES. That said L. S. Kelsey, the owner of said ditch, within a reasonable time after the construction of said ditch, applied the waters diverted through the same to the irrigation of one hundred and eighteen (118) acres of his said land. That said lands require one inch to the acre or a total of one hundred and eighteen (118) inches until July 1st of each year, thereafter a total of fifty-nine (59) inches.

LII.

PEARSON TOWN DITCH:- The Pearson Town Ditch, or North Powder City ditch, tapping North Powder River at a point on the right bank in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 31, Tp. 6 S. R. 39 E. W. M., was constructed in the year 1900 by one Henry Pearson, a claimant herein, and enlarged in the year 1904, and extended down to North Powder City. Within a reasonable time after the construction of said ditch, said Pearson applied the waters diverted through the same to the irrigation of one hundred and sixty (160) acres of his lands. In the year 1904 said ditch was enlarged and extended down to said North Powder City, and used by said municipality for the irrigation of lawns, gardens, and orchards within the corporate limits of said municipality. That North Powder is a municipal corporation, and the owners of one-half interest in said ditch, and after said enlargement, applied the waters diverted through the same to the irrigation of about eighty (80) acres of garden, lawns, and orchards within the corporate limits of said municipality. Henry Pearson is the owner of an undivided one-half interest in said ditch.

A measurement taken of said ditch during the irrigation season of 1912, shows a maximum carrying capacity of one and six-tenths (1.6) second feet, or sixty-four (64) inches, but apparently the ditch was not in the proper condition to carry a quantity of water required for the irrigation of the lands under said ditch. The Board finds that if put in its proper and usual condition, said ditch will carry about one hundred and eighty (180) inches of water. It is therefore determined that said Pearson is entitled to one hundred (100) inches of water for his said lands until July 1st of each year, and thereafter to eighty (80) inches. The City of North Powder is entitled to eighty-inches until July 1st, and thereafter to forty (40) inches.

LIII.

SMITH-MCPHEE AND TANNER DITCH:- That the Smith-McPhee and Tanner ditch, tapping the left bank of North Powder River in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 32, Tp. 6 S. R. 39 E. W. M., was constructed in the year 1889, and completed in 1890, by J. D. McPhee, P. L. Smith, and one James Tanner, and that, as originally constructed, said ditch was about four feet wide; and said Smith was the owner of an undivided one-half interest in said ditch, and said McPhee, having succeeded to the interest of said Tanner, became

the owner of an undivided one-half interest therein; that in the year 1895, said ditch, was enlarged by one James Dalton and others, and the carrying capacity thereof increased; that said ditch appears to have been enlarged from time to time by different parties; and that the present owners of said ditch are J. D. McPhee, P. L. Smith, J. T. York, James Dalton, Oscar Jacobson, John Brant, and Byron Vandecarr and L. M. Daugherty; that the respective interests of said owners of said ditch therein are uncertain, but that it appears from the proofs filed that said ditch is at present a ten-foot ditch, that is, ten feet in width at the top, and that James Dalton is the owner of a one-sixth interest, L. M. Daugherty of a one-thirtieth interest, Oscar Jacobsen of a two-fifteenths interest, J. D. McPhee of a three-tenths interest, P. L. Smith of a three fifteenths interest; James York and Dustin, partners, together of a one-sixth interest; and that John Brant and Byron Vandecarr have acquired some right or interest in said ditch, the nature and extent of which does not appear; and that the respective interests of the owners of said ditch are therefore not determined; that J. B. Luster and B. P. Doherty, at the time of the original hearing herein, filed proofs claiming the right to the use of said ditch, for the irrigation of certain of their lands.

That J. D. McPhee is the owner of four hundred and six and one-half (406½) acres of land, more particularly described in the order of determination herein, and that said lands are irrigated through said Smith, McPhee and Tanner ditch, and that certain ditch known as the McPhee ditch; and the rights of said McPhee through said ditches are more particularly set forth in the finding relative to said McPhee Ditch; that said McPhee commenced the irrigation of his lands through the Kelsey-Wilson ditch in the year 1889; and within a reasonable time applied the waters diverted through said ditch to the irrigation of about one hundred and fifty (150) acres of his said lands; that the said claimants, at the time of the enlargement of said Kelsey-Wilson Ditch, in the year 1888, was the owner of an interest in said enlargement, and a portion of his said lands were first irrigated through said ditch; that said claimant disposed of his interest in the Kelsey-Wilson Ditch in about the year 1894, to James Dalton; and since that time, said lands have been irrigated with the waters diverted through the Smith, McPhee and Tanner Ditch; that said claimant is also the owner of an interest in the McPhee ditch, and that the remainder of his lands were brought under irrigation with the waters diverted through that ditch.

That P. L. Smith commenced the irrigation of a portion of his lands, more particularly described hereinafter, with the waters diverted through said Smith, McPhee and Tanner Ditch, in the year 1890, upon the completion of the construction of the same; that within a reasonable time thereafter, said claimant reclaimed and applied the waters so diverted to the irrigation of about three hundred and ten (310) acres of his said lands; that said claimant is also the owner of an interest in the Kelsey-Wilson Ditch and the McPhee ditch, and portions of his lands are irrigated through said ditches; the rights of

said claimant through said ditches being more fully set forth in the findings herein relative to said ditches.

That James York commenced the irrigation of his lands through the Kelsey-Wilson Ditch in the year 1892; that at said time, said York was the owner of the Tanner interest in said Kelsey-Wilson Ditch, to which said James Dalton afterwards succeeded, as hereinbefore set forth; that said lands were irrigated through said Kelsey-Wilson Ditch until the year 1895, when said claimant acquired an interest in the Smith, McPhee and Tanner Ditch; and thereafter said lands were irrigated through said last named ditch; that the interest of said York in said ditch includes the interest of the partnership of York and Dustin, which said partnership is the owner of a half of said York's interest in said ditch; that within a reasonable time after the year 1892, the waters diverted through said ditch were applied to the irrigation of one hundred and forty-two (142) acres of the lands of said York, more particularly described hereinafter; and that in the year 1902, said York commenced a gradual increase of the irrigated area of his lands, and applied the waters diverted through said ditch, within a reasonable time, to the irrigation of fifty-one (51) acres in addition to the land previously irrigated.

372

That James York and Charles Dustin are the owners, jointly, of about two hundred (200) acres of land, more particularly described in the order of determination herein; and are jointly the owners of the water rights appurtenant thereto; that the said claimants commenced the irrigation of their said lands with the water diverted through said Kelsey-Wilson Ditch, in the year 1892, and in 1895, commenced the irrigation of their said lands through the Smith, McPhee and Tanner Ditch, in which said partners and joint owners own one-half of the said York interest, as above set forth; that within a reasonable time thereafter, the waters so diverted were applied to the irrigation of two hundred (200) acres of their lands; that said claimants have no right or interest in said Kelsey-Wilson Ditch.

That James Dalton commenced the irrigation of his lands in the year 1895, with the waters diverted into and through said Smith, McPhee and Tanner Ditch, and within a reasonable time thereafter, the waters so diverted were applied to the irrigation of about three hundred and thirty-six (336) acres of his said lands, more particularly described hereinafter; that said ditch was enlarged by said Dalton and others in the year 1895; that other portions of the lands of said Dalton are irrigated through the Kelsey-Wilson and Davis-Dalton ditches; and the rights of said claimants are more particularly set forth in the findings relative to said ditches.

That Oscar Jacobson and Byron Vandecarr are the owners of certain lands situated on the east and south sides of Main Powder River, in Baker County, Oregon; that in the year 1895, one L. S. Kelsey was the owner of an interest in said Smith, McPhee and Tanner Ditch, and in said year, conveyed to said Oscar Jacobson, an interest in said ditch;

and the said ditch was extended across said Powder River down to and upon the lands of said Jacobson; and within a reasonable time, the waters diverted through said ditch were applied to the irrigation of forty and one-half (40½) acres of his said lands; that said irrigated area was not increased until the year 1899, when said claimant commenced a gradual increase of his irrigated area, until within a reasonable time two hundred and thirty-seven and one-half (237½) acres in addition to lands previously irrigated were brought under irrigation; that within the time permitted by law, James T. York and L. M. Daugherty, contestants herein, filed a statement of contest against the rights claimed by said Jacobson, and at the time of the hearing thereof, the said parties entered into a stipulation and agreement, in which said contestee stipulated and agreed to modify certain of his statements in his statement and proof of claim herein; and based upon such stipulation, said contest was dismissed.

That Byron Vandecarr extended said ditch, down to and upon his lands, in the year 1901, and commenced the irrigation of said lands with the waters diverted into and through said ditch, in said year, and within a reasonable time thereafter, applied the waters so diverted to the irrigation of one hundred and twelve (112) acres of his lands; the lands of said Jacobson and Vandecarr being more particularly described hereinafter.

That John Brant acquired an interest in said ditch under and by virtue of a contract with J. D. McPhee, in the year 1899; that said claimant now claims an interest in said ditch to the extent of an enlargement made in said year 1899, by himself; that it appears that said claimant commenced the irrigation of his lands, more particularly described hereinafter, and within a reasonable time applied the waters diverted through said ditch to the irrigation of one hundred and fifty-five and one-half (155½) acres of his <sup>said</sup> lands.

That L. M. Daugherty is the owner of one hundred and twenty-five (125) acres of land, and acquired an interest in said ditch in the year 1898, and within a reasonable time, his predecessors in interest applied the waters diverted through said ditch to the irrigation of one hundred and twenty-five (125) acres of his said lands.

That B. P. Doherty, at the time of the original hearing, filed a statement and proof of claim, claiming a one-sixth interest in said ditch, by virtue of an enlargement made in the year 1893, by his predecessors; that within the time permitted by law, James Dalton and others owning interests in said ditch, claimants herein, initiated a contest of the rights claimed by said Doherty by the filing of a statement of contest; and that at the time of the hearing, it was stipulated between the parties to said contest that said B. P. Doherty has, since the year 1893, used the water diverted through said ditch for the irrigation of his lands; that said use has been by permission of the contestants in said contest, under an agreement between the said parties; and that said Doherty should have the right to enlarge said ditch in accordance with the claim herein; and that he would make such enlargement, necessary to carry water sufficient for the irrigation of said lands, at such time as he might be requested so to do by the owners of said ditch; and said contest was thereupon dismissed and withdrawn; that it appears that said Doherty;

or his predecessors within a reasonable time subsequent to the year 1905, applied the waters diverted through said ditch to the irrigation of one hundred and Twelve (112) acres of his lands, more particularly described hereinafter.

That J. B. Luster is the owner of thirty and one-half (30½) acres of land irrigated from said ditch, more particularly described hereinafter, and that he commenced the irrigation of said lands in the year 1901, with the waters diverted through said Smith, McPhee and Tanner Ditch, and within a reasonable time applied the waters so diverted to the irrigation of said lands; that his interest (or that he has any interest) in said ditch, does not appear.

J. D. McPhee, having four hundred and six and one-half (406½) acres, which are irrigated through the Smith-McPhee and Tanner Ditch and the McPhee Ditch, is entitled to four Hundred and six and one-half (406½) inches to July 1st through said ditches, and thereafter to two hundred and four inches. P. L. Smith, having three hundred and ten (310) acres irrigated through said Smith-McPhee and Tanner Ditch, is entitled to three hundred and 10 (310) inches until July 1st, and one hundred and fifty-five inches thereafter, James York, having one hundred and ninety-three (93) acres, is entitled to one hundred and ninety three (193) inches to July 1st, and thereafter to ninety-seven inches. James York and Charles Dustin are jointly entitled to two hundred inches to July 1st and thereafter to one hundred inches, for two hundred acres. James Dalton, having three hundred and thirty six (336) acres, is entitled to three hundred and thirty six (336) inches to July 1st, and thereafter to one hundred and sixty-eight (168) inches. Oscar Jacobson, having two hundred and seventy-eight (278) acres is entitled to two hundred and seventy-eight (278) inches until July 1st, and thereafter to one hundred and thirty-nine inches. Byron Vandecarr, having one hundred and twelve (112) acres, is entitled to one hundred and twelve (112) inches to July 1st, and thereafter to fifty-six inches. John Brant, having one hundred and fifty-five and one-half (155½) acres, is entitled to one hundred and fifty-five and one-half (155½) inches to July 1st, and thereafter to seventy-eight (78) inches. L. M. Daugherty, having one hundred and twenty-five (125) acres, is entitled to one hundred and twenty-five (125) inches to July 1st, and thereafter to sixty-three (63) inches. B. P. Doherty, having one hundred and twelve acres, is entitled to one hundred and twelve (112) inches until July 1st, and thereafter to fifty-six (56) inches. J. B. Luster, having thirty and one-half (30½) acres and requiring at least one second foot, on account of his late right, and the short period he will necessarily have to irrigate in, is entitled to forty (40) inches to July 1st, and thereafter to sixteen (16) inches.

That the maximum carrying capacity of said ditch is fifty (50) second-feet, or two thousand (2000) miner's inches, and is sufficient to supply the quantities of water to which said claimants are herein found entitled, when it is taken into consideration that J. D. McPhee irrigates a large portion of his land through the McPhee Ditch. The board finds it impossible to segregate the lands irrigated by McPhee under the re-

LIV.

McPHEE DITCH: - The McPhee ditch taps North Powder River at a point on the left bank in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 33, Tp. 6 S. R. 39 E. W. M.

That said ditch was constructed in the year 1890, by J. D. McPhee, down to and upon his said lands, and that J. D. McPhee is now the owner of a two fifths interest, P. L. Smith of a two-fifths interest, and H. C. Travillion of a one-fifth interest in said ditch.

That J. D. McPhee commenced the irrigation of his lands through said ditch in the year 1890, and within a reasonable time applied the waters so diverted to the irrigation of two hundred and fifty-six and one-half (256 $\frac{1}{2}$ ) acres of his said lands; that other portions of said claimant's lands are irrigated through the Smith-McPhee and Tanner Ditch, in which claimant has an interest, and the rights of said claimant are fully set forth in the finding relative to said ditch.

That P. L. Smith commenced the irrigation of his lands in the year 1890, with the waters diverted through said ditch; and within a reasonable time thereafter, applied the waters so diverted to the irrigation of one hundred and fifty-eight (158) acres; that said claimant irrigates other portions of his lands through the Kelsey-Wilson and Smith-McPhee and Tanner Ditches, and his rights are more fully set forth in the findings relative to said ditches.

That H. C. Travillion acquired an interest in said ditch, in the year 1895, under an agreement and contract with said J. D. McPhee, and commenced the irrigation of his lands in said year, and within a reasonable time applied the waters diverted through said ditch to the irrigation of thirty-four (34) acres of his said lands.

The lands of the said claimants are more particularly and fully described in the order of determination herein.

The maximum carrying capacity of the said McPhee ditch is sufficient to supply the lands of the said owners, one inch to the acre. J. D. McPhee is entitled to a total of four hundred and six and one-half (406 $\frac{1}{2}$ ) inches through said McPhee Ditch, and the Smith-McPhee and Tanner Ditch, to July 1st, and thereafter at the rate of one-half inch per acre. P. L. Smith, having one hundred and fifty-eight (158) acres under said ditch, is entitled to one hundred and fifty-eight (158) inches until July 1st, and thereafter to seventy-nine (79) inches. H. C. Travillion, having thirty-four (34) acres, requires at least one second foot during the high water season to supply the required head, or forty (40) inches, and after July 1st is entitled to seventeen inches.

LV.

JACOBSON DITCH:- The Jacobson Ditch diverts the waters of North Powder River from a point on the left bank in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 26, Tp. 6 S. R. 39 E. W. M. This ditch has a maximum discharge of twenty-two (22) second feet, or eight hundred and eighty (880) miner's inches, which is sufficient to supply the lands under the ditch actually

at the rate of one inch per acre.

It was constructed in the year 1890 and completed in the year 1891; that Chris Johnson is the owner of an undivided one-sixth interest; C. E. Jacobson of an undivided two-thirds interest; and Frank McAllister of an undivided one-sixth interest in said ditch; that said ditch was enlarged in the year 1895 by said C. E. Jacobson, and predecessors of said Chris Johnson and Frank McAllister.

That C. E. Jacobson commenced the irrigation of his lands upon the construction of said ditch, in the year 1891, and within a reasonable time applied the waters diverted through the same to the irrigation of one hundred and forty (140) acres of his lands; and after the enlargement of said ditch in 1895, increased the irrigated area of his lands to the extent of two hundred and thirty-six and one-half ( $236\frac{1}{2}$ ) acres, within a reasonable time. 375

That Chris Johnson, or his predecessors, commenced the irrigation of the lands of said claimant in the year 1895, after said enlargement, and within a reasonable time applied the waters diverted into and through said ditch to the irrigation of about one hundred and sixty (160) acres of his said lands.

That Frank McAllister, or his predecessor, commenced the irrigation of his lands in the year 1895, after said enlargement of said ditch, and within a reasonable time thereafter, the water diverted into and through said ditch was applied to the irrigation of two hundred (200) acres of his said lands.

That the lands of said claimants are more particularly described in the order of determination herein.

That said McAllister and said Johnson are also the owners of interests in that certain ditch known as the Harlan-Sanders Ditch, and that the lands of said claimants so irrigated through said Jacobson Ditch are also covered and irrigated by the said Harlan-Sanders Ditch; the rights of said claimants in said Harlan-Sanders Ditch being more particularly set forth in the findings herein relative to said ditch.

Chris Johnson requires one hundred and sixty inches for his land, through said ditch, and the Harlan-Sanders Ditch. Frank McAllister requires two hundred (200) inches for his said lands through said Jacobson Ditch and through said Harlan-Sanders Ditch. After July 1st of each year the lands of said claimants do not require to exceed one-half inch to the acre. C. E. Jacobson, having three hundred and seventy-six and one-half ( $376\frac{1}{2}$ ) acres, is entitled to three hundred and seventy-six and one-half ( $376\frac{1}{2}$ ) inches to July 1st, and thereafter to one hundred and eighty-nine (189) inches. Chris Johnson, having a one-sixth interest in said Jacobson Ditch, is entitled to one hundred (100) inches through said Jacobson Ditch, and the balance of his appropriation, or sixty (60) inches through said Harlan-Sanders Ditch, but may divert all of his said appropriation, or any part thereof, through said Jacobson Ditch. The Harlan-Sanders Ditch being of insufficient carrying capacity, said Johnson and said McAllister are limited as follows: Chris Johnson, sixty inches, and Frank McAllister, to ninety inches through said Harlan-Sanders Ditch, the balance of their appropriations to be diverted through the Jacobson Ditch, but said claimants have the right to divert their entire appropriation, or any part thereof, through said Jacobson Ditch.

LVI.

PEARSON DITCH: That the Pearson Ditch was constructed in the year 1895, and diverts the waters of North Powder River from a point on the right bank, in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 28, Tp. 6 S. R. 39 E. W. M., that Henry Pearson and W. L. Goff, claimants herein, are each the owner of one-half interest in said ditch.

That said W. L. Goff commenced the irrigation of his land through said ditch in the year 1895, and within a reasonable time thereafter, applied the waters so diverted to the irrigation of thirty-eight acres.

That Henry Pearson commenced the irrigation of his land through said ditch in the year 1895, and within a reasonable time thereafter applied the waters so diverted to the irrigation of thirty-five (35) acres.

That to supply the required head, the above named claimants are each entitled to one second foot until July 1st, and thereafter said W. L. Goff is entitled to nineteen inches, and said Henry Pearson to eighteen (18) inches.

LVII.

HARLAN-SANDERS DITCH:- That the Harlan-Sanders Ditch diverts the waters of North Powder River from a point on the left bank in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 28, Tp. 6 S. R. 39 E. W. M., and that said ditch has a maximum carrying capacity of twenty (20) second feet, or eight hundred miner's inches. 376

That the construction of said ditch was commenced in the year 1881 by one M. T. Harlan, who, in that year, and on April 6th, posted a notice of appropriation of the waters of North Powder River, at the proposed point of diversion of said ditch; and said notice of appropriation was duly recorded in the Record of Water Locations of Baker County, Oregon; that M. F. Wilcox, O. D. Thomlinson, E. M. Sanders, Frank McAllister, Andrew O. Lun, Chris Johnson and S. W. Holmes, in their statements and proofs of claim herein, are claiming some right, title or interest in said ditch, and the right to divert and use the waters of North Powder through the same; but that the respective interests of said parties do not appear from the proofs or evidence herein; and the ownership thereof, and the respective interest of said parties therein is left undetermined in this proceeding.

That it appears that the predecessors of Andrew O. Lun, a claimant, initiated rights of appropriation through said ditch in the year 1884, and diverted the waters of said stream into and through the same, and within a reasonable time applied the waters so diverted to the irrigation of thirty-eight (38) acres of the lands of said Lun, situated in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 27, Tp. 6 S. R. 39 E. W. M.

That said ditch was constructed down to the lands of M. F. Wilcox in the year 1881, and the predecessors of said claimant commenced the irrigation of the lands now owned by said Wilcox in said year; that prior to the year 1887, fifty-four (54) acres of said lands were irrigated; that said ditch appears to have been enlarged in the year 1887,



and thereafter the predecessors of said Wilcox applied the waters diverted through the same, within a reasonable time, to the irrigation of one hundred and four (104) acres, in addition to the lands irrigated prior thereto; that in the year 1893 said ditch appears to have been again enlarged by the predecessors in interest of Chris Johnson and Frank McAllister; and the waters of said stream diverted through said ditch; for the irrigation of the lands of said claimant; and that within a reasonable time the waters so diverted were, with the waters diverted through said Jacobson Ditch, as hereinbefore set forth, applied to the irrigation of the lands of said claimants.

That S. W. Holmes is the owner of certain lands now irrigated with the waters of said stream, diverted into and through said ditch; and that within the time permitted by law, P. L. Smith and others, claimants herein, filed a statement of contest against the rights claimed by said Holmes; and that at the hearing of said contest, it was stipulated and agreed that in the year 1887 said claimant's predecessors initiated rights of appropriation through said ditch, and within a reasonable time thereafter, reclaimed and applied the waters so diverted to the irrigation of one hundred and five (105) acres of said lands; that the maps of the State Engineer show that one hundred and nineteen (119) acres of said lands have been irrigated through said ditch.

That one E. M. Sanders, at the original hearing, filed a statement and proof of claim, claiming the right to an interest in said Harlan-Sanders Ditch; to the extent of a one-foot interest therein, in the width of said ditch; that it appears from said claim, that E. M. Sanders is the owner of two hundred and twenty seven (227) acres of land, irrigated with the waters diverted through said ditch; and said lands appear therefrom to have been first irrigated in 1887 and within a reasonable time entirely reclaimed and irrigated; that said claimant claims for said lands, one hundred and fifty-eight (158) miner's inches, under six inch pressure; that a statement of contest was filed within the time permitted by law by J. D. McPhee and others, against the rights claimed by said claimant, Sanders, and at the time of the hearing of said contest, said contestee, E. M. Sanders appeared in person; that no testimony was taken in said contest, or offered on behalf of said contestants, or by said contestee; that in the contest of P. L. Smith and others against the rights claimed by said Holmes, said Sanders appeared for and on behalf of said Holmes, as his agent, having also appeared at the time of the original hearing herein, as agent for said Holmes, and a stipulation was entered into in that contest, as above set forth, in consideration of which stipulation, said Sanders relinquished all claims and demands to the waters of North Powder River.

That the rights of Andrew O. Lunn, claimant herein, are more fully set forth in the finding relative to the contest of C. E. Davis, et al. vs. Andrew O. Lun, herein.

That O. D. Thomlison commenced the irrigation of his lands, hereinafter described, through said Harlan-Sanders Ditch, in the year 1890, and thereafter and within a reasonable time, applied the waters diverted through said ditch to the irrigation

of one hundred and sixty (160) acres of his said lands, more particularly described in the order of determination herein.

That for the proper irrigation of the lands under the Harlan-Sanders Ditch, one inch to the acre until July 1st is necessary, and thereafter one-half inch to the acre is sufficient.

acres is entitled to one hundred fifty eight (158)

That M. F. Wilcox, with one hundred and fifty-eight (158) inches until July 1st, and thereafter to seventy-nine inches. That O. D. Thomilson is entitled to one hundred and sixty (160) inches until July 1st, and thereafter to eighty (80) inches. That the rights of Frank McAllister and Chris Johnson are fully set forth in the finding relative to the Jacobson Ditch. That Andrew O. Lun, having thirty-seven (37) acres irrigated through the Harlan-Sanders Ditch, and which requires one second-foot or forty (40) inches, to furnish the required head, is entitled to forty (40) inches until July 1st, and thereafter to nineteen inches. That S. W. Holmes, having two hundred and fifty-nine and one-half (259½) acres, is entitled to two hundred and fifty-nine and one-half (259½) inches until July 1st, and thereafter to one hundred and thirty (130) inches.

#### LVIII.

NORTH POWDER M. AND M. MILL RACE DITCH:- That the Mill Race Ditch of the North Powder Milling and Mercantile Company, a corporation, incorporated under the laws of the State of Oregon, taps North Powder River at a point on the right bank in the SE¼ NE¼, of Section 28, Tp. 6 S. R. 39 E. W. M. diverting the waters of North Powder River down to the flouring mill of said company, for the purpose of producing and developing power for the operation of said mill, and that said ditch has a maximum carrying capacity of thirty five and five-tenths (35.5) second feet, or fourteen hundred and twenty (1420) miner's inches. That in the year 1870, the predecessors in interest of said company commenced, and within two years thereafter, completed the construction of a flouring mill on the left bank of North Powder River, in Union County, Oregon, and diverted water from the river at a point about one mile west of the Mill site, through a Mill Race constructed for that purpose, and made an appropriation of the waters of said stream to the extent of one thousand (1000) inches of said waters, miner's measurement, under six inch pressure, or twenty-five (25) second feet, that thereafter and within a reasonable time, said predecessors put the amount so appropriated to beneficial use, for the development of said power and operation of said mill.

That on the 12th day of January, 1898, at a regular term of the Circuit Court of the State of Oregon, for the County of Union, in the certain suit wherein the North Powder Milling Company, a predecessor of said above named corporation, was plaintiff, and one W. A. Coughanour, claimant to the waters of Anthony Creek herein, and another, were defendants, a decree was entered wherein and whereby it was determined and decreed that said plaintiff was the owner of one thousand (1000) inches of water,

miner's measurement, under six inch pressure, of the natural flow of said North Powder River, and its tributaries, above the diversion point of said Mill Race, to be used for the purpose of generating power for the operation of said Mill at any and all seasons of the year; and said defendant was forever inhibited and enjoined from in any manner diverting from the channel of Anthony Creek, or North Powder River, at any point or points above the head of plaintiff's mill race, any of the waters flowing in said stream, when such diversion would have effect of preventing one thousand (1000) inches of water from reaching the head of plaintiff's Mill Race, as then located, in the natural channel of North Powder River, unobstructed, for the use of plaintiff and its said Mill; that upon appeal to the Supreme Court of the State of Oregon, from said decree, the same was affirmed in all things.

11 378

That from the conclusion of law and findings of fact in said suit, and said decree, and the opinion of the Supreme Court therein, as well as the proofs of the various parties herein, and the record and testimony in this proceeding, it is found that on October 4th, 1880, the predecessors in interest of said Coughanour, defendant in said suit, posted at a point on the left bank of Anthony Creek about eleven (11) miles above the head of said Mill Race, and filed for record in the office of the County Clerk of said Union County, a notice of appropriation, subscribed by them, to the effect that they intended to, and would appropriate two thousand (2000) inches of the waters of said creek, to be diverted at said point and conducted in ditches and flumes, to the town of North Powder, to be used for agricultural, mining and mechanical purposes; and that the said predecessors of said claimant, immediately thereafter commenced the construction of that certain ditch, known herein and heretofore referred to as the Coughanour Ditch, and the same was thereafter and in March, 1886, completed, and the waters of said Creek diverted and conducted through said ditch down to and upon said lands, now owned by Coughanour; that said Coughanour is now the owner of about one thousand three hundred and sixty (1360) acres of lands of an arid character, requiring for the profitable cultivation thereof, the application of water during the irrigation season; and of which lands, over one thousand (1000) acres appear to be susceptible of irrigation with the waters diverted through said ditch; that said Coughanour raises, and has raised, with the aid of said waters so diverted; valuable crops of grass, hay, grain, fruits, and vegetables; but that the larger portions of said lands are cultivated to crops of grain of various kinds, and particularly wheat; and said lands are summerfallowed each succeeding year, or every other year, so that about one-half of the said grain lands so summerfallowed are irrigated the same year; that the irrigation season for wheat and other grains grown upon said lands, commencing April of subsequent to the 15th day of each year, and terminates prior to July 1st of each year, that said lands were first irrigated in the year 1887; that by a gradual increase in the irrigated area of lands, about eight hundred (800) acres of said lands were reclaimed and irrigated prior to the year 1900; and that in the year 1900 and by gradual increase thereafter, until the year 1909, about three hundred and forty-eight (348) acres were added to the cultivated and reclaimed area of lands.

That since the year 1880 and prior to 1900, many intervening rights of

appropriation have been initiated, both from said Anthony Creek and from said North Powder River; and that the irrigation of said additional lands, commencing in the year 1900, was the initiation of a new and distinct right of appropriation as of the year 1900,

That S. W. Holmes, and his predecessors, have since the year 1888, diverted and used the waters flowing from said Mill Race, and into the tail race thereof, through a ditch known as the Sanders Ditch, for the irrigation of one hundred and seven and one-half ( $107\frac{1}{2}$ ) acres of his said lands, more particularly described in the order of determination herein; that said lands were reclaimed and irrigated within a reasonable time since the year 1888, but that said claimant has no rights of appropriation of the waters of North Powder River, by virtue of said use, but his right of use is confined to the waters flowing in said tail race, down to the head of said ditch.

That for the proper irrigation of the lands belonging to the said S. W. Holmes, one inch to the acre is required until July 1st, and thereafter,, one-half inch to the acre is sufficient, and that said claimant is entitled to one hundred and seven and one-half inches of said tail race waters until July 1st, and thereafter to fifty-four (54) inches.

LIX.

CONTEST OF C. E. DAVIS AND OTHERS AGAINST ANDREW LUN: - That within the time permitted by law, C. E. Davis, A. E. Davis, W. J. Welch, W. S. Doherty, E. H. Pratt, P. L. Smith and Chris Johnson, claimants herein, filed a statement of contest against the rights claimed by Andrew Lun herein; and the same was duly and regularly set for hearing; upon notice to all parties thereto, given according to law; that the same came regularly on for hearing upon the 28th day of July, 1911, at the hour of ten o'clock A. M. pursuant to such notice, at the City 379 Hall in the City of North Powder, Union County, Oregon, and testimony therein was taken, and a record thereof made and filed in this proceeding.

That from the testimony taken in said contest, and from the evidence herein, and exhibits introduced, it is found and determined:

1. That the defendant, Andrew Lun, is the owner and in possession of about fifteen (15) acres of land along the east side of the  $E\frac{1}{2}$  of the  $NW\frac{1}{4}$  of Section 28; also all that part of the  $NW\frac{1}{4}$  of Section 27, lying southeast of the railroad, and being about one hundred and fifty (150) acres; also all that part of the  $SE\frac{1}{4}$  of the  $SW\frac{1}{4}$  of Section 22, lying southeast of the railroad, and being about twenty-five and six-tenths (25.6) acres; also all that part of the  $SW\frac{1}{4}$   $SW\frac{1}{4}$  of Section 22, lying southeast of the railroad and being about two (2) acres; also all that part of the  $NW\frac{1}{4}$   $SE\frac{1}{4}$  of Section 22, lying southeast of the railroad and being about eleven and six-tenths (11.6) acres; all of the  $NE\frac{1}{4}$   $SE\frac{1}{4}$  of Section 22; and also three (3) acres in the southeast corner of the  $SE\frac{1}{4}$   $NE\frac{1}{4}$  of Section 22; also all of the  $SW\frac{1}{4}$   $SE\frac{1}{4}$  of Section 22, excepting four (4) acres in a square located in the Southeast corner thereof; all of said property being situated in township 6 S. R. 59 E. W. M., and in Union and Baker Counties, Oregon; that

about two hundred and forty (240) acres of said lands have been and are being cultivated to crops of grain and hay, and a portion thereof is used for pasture; and that a portion of said lands is used as an ice-pond for the production of ice during the winter months.

2. That North Powder River flows, and since time immemorial has flowed, down to said lands, at a point at, or about, the quarter section corner on the west side of Section 27, aforesaid, from whence said river flows in a general northeasterly course, through over and across the said premises, leaving the same at a point near the section corner on the east side of Section 22.

3. That the channel of said river in crossing said premises, winds back and forth, forming in some places a double and again a triple channel, and has changed from time to time and formed new channels across said lands.

4. That the changing of said channel has in course of time formed upon defendant's lands, numerous sloughs, or depressions, which connect with the channel of said river as it is at present, and during high or flood waters in the channel of said stream, the said sloughs are filled with water which subirrigates said lands, but that as the waters flowing in said channel decreases, the said sloughs dry up, and that it is and has been, since first irrigation of said lands, necessary to dam said stream and force the waters of the same into said slough<sup>in</sup> order to irrigate said lands.

5. That said lands are dry and arid in character, and require for their profitable cultivation, the application of water; and without irrigation are of little value for the production of crops, but with the application of water thereto, annually produce valuable crops of hay, grasses and grains and produce pasturage for live stock.

6. That commencing in about the year 1870, said defendant's predecessors have diverted the waters of said North Powder River into said sloughs and depressions each and every year, and applied the same to the irrigation of said lands; and that said irrigation by said defendant and his predecessors has been continuous down to the present time; that the waters so forced into said sloughs during the irrigation season, have been each and every year dammed and held in said sloughs to cause the waters so impounded to sub-irrigate the lands of said defendant; and by means of lateral ditches, portions of said lands have been irrigated by the diversion of the waters of said slough, so forced into the same by the diversion of said waters out and over the surface of said lands; and that the irrigation of said lands has been both by means of sub-irrigation, or subsurface irrigation, and surface irrigation, and the waters have been put to beneficial use each and every year for those purposes; that said defendant and his predecessors reclaimed and irrigated all of said lands within a reasonable time after the first irrigation thereof.

380

7. That the lands of said claimant Lun, situated in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, Tp. 6 S. R. 39 E. W. M., having been irrigated each and every year since the year 1884, through what is known as the Harlan-Sanders Ditch, by an appropriation through said ditch initiated in that year; the rights of said Lun through said ditch being more fully set forth in the finding herein relative to said ditch.

8. That in the year 1886, said defendant, Andrew Lun, appropriated the waters of said North Powder River for ice making purposes, by diverting the same into and through a ditch and thence into the Mill Race of the North Powder Milling and Mercantile Company, and diversion from said Mill Race into and through a ditch to the ice pond of said claimant; that said water is also diverted from the channel of said river into a reservoir, and thence into said pond; and that for the purpose of ice making, said defendant has used, and needs, not exceeding five (5) acre feet to fill said pond, and thereafter a continuous flow of said water of one-half second foot, to sustain the water at a grade in said pond, and sustain ice surface of said water: that the season for making said natural ice begins October 15th and ends March 1st of each year.

9. That the rights of said defendant and claimant, Andrew O. Lun were initiated by virtue of prior appropriation, and that he and his predecessors have at all times claimed and elected to claim as appropriators in their claims to the right to the use of the water of said stream.

10. That said contestee, Andrew O. Lun, shall be deemed to have prevailed herei

LX.

CONTEST OF WM. ANTHONY AND OTHERS AGAINST THE RIGHTS CLAIMED BY S. L. BAER AND OTHERS:- That within the time permitted by Law, William Anthony and about one hundred of the claimants hereinafter named, through and by their attorney, filed a statement of contest, wherein the rights claimed by S. L. Baer, Sallie Baer, Louis Levinger, Lyle Levinger, F. S. Heard, Lamonda Heard, Byron Vandecarr, and Rose Vandecarr, claimants herein, and the Haines Pipe Line Company, a corporation, through the Mansfield ditches, were contested; that said contest was duly and regularly set for trial, and notice of the time and place fixed for the hearing thereof was duly and regularly given each of said contestees and contestants, according to law; and the same came duly and regularly on for hearing upon the 24th day of July, 1911, before the Superintendent; and said parties appeared by their attorneys, whereupon testimony was taken and a transcript thereof made and filed in this cause, upon the completion of the taking of testimony therein, together with all exhibits and other evidence introduced and offered therein.

That from the testimony and evidence taken and submitted in said contest, it is found and determined by the Board as follows:

1. That the Mansfield Ditch, known as the Upper Mansfield (or Old Kennedy and Elsworth Ditch) was constructed in the year 1868, and completed in the year 1869; and that said ditch taps the south and east bank of the South Fork of North Powder River at a point in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, Tp. 7 S. R. 38 E. W. M., and that the Lower Mansfield Ditch (or Old Currier Ditch) was constructed prior to 1868, and about the year 1866, and taps the south and east bank of the South Fork of North Powder River, in about the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 19, Tp. 7 S. R. 38. E. W. M.

2. That prior to the year 1868, the waters of North Powder River were diverted into said Lower Mansfield Ditch and into said Upper Mansfield Ditch in the year 1869, and the waters so diverted were, commencing at said times, thereafter used for placer mining purposes; and that the owners of said ditches during the time same were so used for mining purposes, <sup>present</sup> were the predecessors in interest in said ditches of these contestees, and their/co-owners of the same.

3. That said contestees owned jointly, an undivided one-eighth interest ( or each an undivided one-sixty-fourth interest) in said ditches, the Estate and heirs of W. C. Nicholson, deceased, owned an undivided one-fourth interest, Clayton Coleman an undivided one-eighth interest; C. L. Kent, A. Long and P. Roethler Estate, jointly an undivided one eighth interest ( or each an undivided one-twenty-fourth interest), J. L. Savage an undivided one-sixteenth interest, Armand W. Perkins an undivided one-sixteenth interest, Lucinda Hartung an undivided one-eighth interest, E. H. Pratt an undivided one eighth interest in said ditches. 331

4. That the Lower Mansfield Ditch, as originally constructed, had a carrying capacity of about five hundred (500) inches; and the Upper Mansfield Ditch, as originally constructed, had a carrying capacity of about two hundred and fifty (250) inches (inches refer to inches, Miner's measurement, under six inch pressure, as used herein, and throughout these findings, in the ratio of one second foot to forty miner's inches); that by constant use of said ditches, the flowing of water through the same, and the cleaning out thereof from year to year, the carrying capacity thereof was greatly increased in the course of years; that the grade of said ditches is very steep and the action of the water flowing through the same has, in the course of time, washed out the same and gradually increased the capacity thereof, until at the present time, the maximum capacity of said ditches, in their present condition, is about <sup>thirty-</sup>three (33) second-feet, or thirteen hundred and twenty (1320) inches; that said ditches appear to have been materially enlarged by these contestees, in the year 1907.

5. That the mining season in the vicinity of North Powder River, and the season during which water was diverted and used for placer mining purposes through said ditch, at all times, commenced in May and terminated subsequent to October 1st of each year, or during the period for irrigation, or irrigation season in the vicinity of said river.

6. That the testimony taken establishes a fairly continuous use of the waters diverted into and through said ditches, for mining purposes, from the time of the construction thereof down to the year 1897, but fails to establish to the satisfaction of the Board that it was necessary for the operation of said placer mines, to divert or use the waters through said ditch to the extent of the full capacity thereof, or that eight hundred (800) inches was at any time necessary for beneficial use in the operation of said mines, or was actually put to beneficial use in connection therewith, continuously during the operation of said mines, or that eight hundred (800) inches were in fact diverted through said ditches and

Original  
18. 75 C  
In 1907 322 C

used for the operation of said mines.

7. That the use of said ditches for mining purposes was, in the year 1897, abandoned upon the sale thereof and used thereafter for a different purpose; and that for more than ten years, no waters have been diverted through said ditches for mining purposes.

8. That Little Muddy Creek is a natural water course, and a tributary of main Powder River, and forms no part or portion of the supply of North Powder River; that said stream rises about two miles east of the channel of North Powder River, and is fed by natural springs, but that during the irrigation season, furnishes but an inconsiderable supply of water, and the natural flow thereof is of little value for irrigation purposes, except as the same is augmented and increased by the diversion of the waters of North Powder River into said natural channel, through said Mansfield and other ditches, as hereinafter set forth.

9. That those certain ditches known as the Savage Ditch, the Warfield-Burnside Ditch, and the Mansfield Ditches, diverting the waters of North Powder River, and the waste waters from other ditches, and seepage waters from irrigated lands above the channel of Little Muddy Creek, furnish the principal annual supply of said Little Muddy Creek during the irrigation season, and particularly that portion of the irrigation season commencing about July 1st of each year; that at the present time the waters diverted into and through said Mansfield, Savage and Warfield-Burnside ditches, are conducted through the same and thence into the natural channel of Little Muddy Creek, down the channel of which said waters flow, mingled together, with the natural flow of said stream; and are diverted into and through various ditches of the different claimants of said waters, and by means of extensions down to and upon the lands of said claimants, including these contestees, the said waters have been put to beneficial use each and every year, from the time of the first irrigation of the lands of said claimant.

be

10. That the contestees hereinbefore named are the owners of certain lands, more particularly described in the order of determination herein, situated in Section 13, 14, 15, 22, 23, 24 in Tp. 7 S. R. 39 E. W. M., and the SW $\frac{1}{4}$  of Section 19, in Tp. 7 S. R. 40 E. W. M., in Baker County, Oregon, south and east of main Powder River, and about nine miles from the natural channel of North Powder River, and in an easterly direction therefrom; and that all of said lands are arid and dry in character, and require for their profitable cultivation and the production of crops thereon, the application of water; and with irrigation said lands are valuable and produce crops of hay and grain and produce some pasturage for livestock.

11. That in the year 1907, said contestees and the Haines Pipe Line Company (a corporation of which said contestees were the stock-holders) commenced and in 1908 completed the construction of a ditch and pipe line down to their lands, commencing at a point on that certain ditch known as the Pratt and Dougherty, or Pratt, Hutchinson, Dougherty Ditch, and enlarged said last named ditch, and extended the same down to said Powder River,

382



where by means of an inverted syphon, the waters in said ditch were conducted over and across said Powder River, and down on to the lands of these contestees, and applied to the irrigation thereof; and that at said times, and within a reasonable time thereafter, the carrying capacity of said Mansfield ditches was materially increased by said claimants and contestees, and the extension ditch aforesaid completed down to and upon their said lands.

12. That in the year 1898 and on the 20th day of October of said year, one P. Basche and J. H. Parker were the owners of a half interest in said Mansfield ditches and the water rights connected therewith, and on said day made and executed a deed of quit claim of all their undivided one-half interest in said ditches, to A. J. Hartung and W. C. Nicholson, together with the water rights connected therewith; that the water rights connected with said ditches at said time were rights of use of said waters of North Powder River for mining purposes, and the diversion thereof through the said ditches therefor.

13. That from the year 1875 and up until the year 1889, one W. W. Lucas was the owner of said ditches, and that said Basche and Parker were the owners of said ditches from 1891 until 1898, but that it does not appear said owners were operating or owned any mines in connection with which said ditches were used; and at all times during the ownership of said ditches by said parties, the said ditches were leased to various persons for mining purposes, and the waters diverted through said ditches were used by said lessees at different places and for the operation of different placer mines; and that at no time during their said ownership did said Lucas, Basche and Parker divert or use any of the waters of North Powder River through said ditches for mining, irrigation or other beneficial use, but said ditches were at all times during said ownership under the control of said lessees.

14. That at all times during the use of said ditches and waters through the same for mining purposes, the water rights for mining purposes have been appurtenant to and connected with said ditches; and at no time appurtenant to or connected with any particular mine or place of use, or tract of land.

15. That commencing about the year 1874, the present owners of said Mansfield Ditches, other than these contestees, or their predecessors in interest, commenced the irrigation of their various tracts of land with the waters of North Powder River, diverted through the same; and the said lands have been continuously irrigated ever since, with the waters so diverted, and it does not appear that said use has been a permissive use, or other than under a claim of right to the use of said waters for irrigation purposes during the irrigation season for the irrigation of said lands.

16. And the Board further finds that at all times when said waters were diverted and used for mining purposes, either by the owners of said ditches, or their lessees, the said waters were, with the exception of not more than three mining seasons, turned into the natural channel of Little Muddy Creek, thence to flow down to main Powder River; and that said

waters so diverted were used by said miners and those irrigating therewith in such manner as to entirely deprive the natural channel of North Powder River of the same.

17. That on the 18th day of February, 1907, A. J. Hartung and Lucinda Hartung, his wife, transferred to said contestees by Deed, or did "bargain, sell and quitclaim" to them, an undivided one-eighth interest of, in and to "that certain ditch and water right connected therewith, whereby the waters of the South Fork of North Powder River are being diverted at a point about five miles above Gardner's Saw Mill, known as the Courier ditch, carrying five hundred (500) inches of water, " and a like undivided one-eighth interest in the upper Mansfield Ditch, "carrying two hundred and fifty (250) inches of water", "both said ditches carrying water to the Muddy Creek placer mining district"; and that by said instrument of transfer, said contestees became the owners of an undivided one-eighth interest in said Mansfield ditches, and the "water/<sup>right</sup> connected therewith", at the time of said sale. 333

18. That A. J. Hartung and Lucinda Hartung, his wife, were the owners of about one hundred and sixty (160) acres of land, situated in the W $\frac{1}{2}$  SW $\frac{1}{4}$ , Section 15, and the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 22, all in Tp. 7 S. R. 38 E. W. M.; that of these lands not exceeding one hundred and twenty (120) acres have been irrigated, reclaimed and cultivated; that the Nicholson-Hartung Ditch was constructed in the year 1881, and of said lands, about eighty (80) acres thereof have been irrigated with the water diverted through said ditch; that commencing about the year 1886, the waters of the North Powder River diverted through said Mansfield ditches, were applied to the said lands, and thereafter and prior to the year 1898, not exceeding forty (40) acres of the said lands were irrigated through said Mansfield ditches; that subsequent to the year 1898, ten acres had been added to the area irrigated with the waters diverted through said Mansfield Ditches; that in the year 1898, said Hartung became the owner of an undivided one-fourth interest in said Mansfield ditches, and in the year 1908, said Hartung, as hereinbefore set forth, transferred one-half of his interest in said ditches to these contestees; that since the year 1898 and prior to the year 1908, no further or greater use was made of the waters of said North Powder River by said Hartung for the irrigation of his said lands, than had been made prior to said year 1898, except to the extent of the irrigation of ten acres thereafter; that neither said Hartung, nor these contestees, have since the year 1897, used the water diverted through said Mansfield ditches for mining purposes or for any other purpose than the irrigation of their said lands.

19. That none of the lands of said contestees have been irrigated since the first irrigation thereof, or the water diverted through said Mansfield ditches, for the irrigation of said lands subsequent to the 20th day of July during any year.

20. That said contestees commenced the use of the waters of North Powder River upon their lands in May, 1908, for the irrigation thereof; and that since that time said claimants have, of their several tracts of land, reclaimed and irrigated prior to the commencement of these proceedings, a total of about eight hundred and seventy (870) acres; that about five hundred (500) acres of the lands of said claimants were, at the time of the commencement of this proceeding, not yet reclaimed or irrigated, but that it was and is the intention of

said claimants to apply the waters diverted through said Mansfield ditches to the irrigation of said lands, and that claimants have exercised due diligence in the application of the said waters of their lands, and have prosecuted the work as diligently as circumstances will permit; that all of said lands should be reclaimed and irrigated prior to January 1st, 1915; and that said time is a reasonable time within which to complete the irrigation of said lands, and fully and completely apply the waters appropriated by said claimants to beneficial use; the several tracts of the said claimants, the number of acres actually irrigated at the time of the commencement of proceedings, and the number of acres at said time <sup>to be reclaimed</sup> remaining/and irrigated, being more particularly described and set forth in the order of determination herein, to which reference is hereby made.

21. That no water had been applied to the lands of Sallie Baer and Lamonda Heard at the time of the commencement of this proceeding, that said waters were first applied to the lands of S. L. Baer, in the year 1908, F. S. Heard in 1908, F. S. Heard, Louis Levinger, and S. L. Baer, joint owners of a certain tract, in 1908, Louis Levinger in 1908, Lyle Levinger in 1908, Byron Vandecarr in 1908, and Rose A. Vandecarr in 1908.

334

22. That since the execution of said deed to said contestees, said claimant, Hartung, and his wife, irrigated the same lands, and to the same extent, and have diverted and used through said Mansfield ditches at all times sufficient of the waters of North Powder River for the irrigation of said lands; and have at all times claimed and are now claiming, sufficient of the waters of said stream for the irrigation of their lands, as the same were being irrigated prior to the execution of said deed in the year 1908.

#### LXI.

PILCHER CREEK:- That Pilcher Creek is a tributary of North Powder River, and that the Pilcher ditch was constructed in the year 1870 by the predecessors of James A. Pilcher, and that said Pilcher and Elmer Shipp have interests in said ditch, the exact nature of which does not appear; that said Pilcher has irrigated seventeen (17) acres of his lands through said ditch, and the same were reclaimed and irrigated within a reasonable time after the construction of said ditch; and that the predecessor of said Shipp commenced the irrigation of the lands of said claimant in the year 1885; that said Shipp has a one-tenth interest in the Tucker Flat ditch, diverting water from Anthony Creek, and that his said lands are now irrigated through said ditch and are entitled to a right therein as of the year 1908; that said Shipp is entitled to priority date of the year 1885 for his said lands in and to the waters of Pilcher Creek, and <sup>his</sup> that/said rights are subsequent in point of time to the rights of said Pilcher to said waters for the irrigation of seventeen (17) acres of his said lands, that is, said Shipp is entitled to divert sufficient of the flow of said Pilcher Creek, remaining therein after the rights of said Pilcher have been satisfied for the irrigation of said lands, and to supplement said appropriation, if at any time insufficient for the irrigation of said lands, with the waters of said Anthony Creek, as of the year 1908, after prior rights to the waters of said Anthony Creek have been satisfied.

XLVII.

ANTOINE CREEK- That Antoine Creek is a tributary of North Powder, and that the A. O. Smith ditch was constructed in the year 1905, tapping said stream, and diverting the waters thereof down to and upon the lands of A. O. Smith, a claimant herein; and that within a reasonable time after the construction of said ditch, said Smith reclaimed and irrigated twelve (12) acres of his said lands, situated in the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 5, T. 7 S. R. 58 E. W. M.

XLVIII.

DEFINITION OF TERMS:- Whenever in these findings or in the Order of Determination herein, the terms "inch", "miner's inches under six inch pressure" are employed the same shall be taken to mean miner's inches under six inch pressure at the ratio of forty miner's inches to one cubic foot of water per second of time; whenever the term "second feet" is used in these Findings or in the Order of Determination herein, the same shall be taken to mean cubic feet of water per second of time.

LXIV.

THE CLAIM OF THE NORTH POWDER M. & M. CO., TO 1000 INCHES OF WATER DURING JULY AND AUGUST, AND JAMES DALTON, J. D. McPHEE AND P. L. SMITH TO 400 INCHES THEREOF.

1. That the Mill Race ditch of the North Powder Milling and Mercantile Company, a corporation, was constructed in the year 1870, and the right of said Company to the use of the waters of said stream was initiated for power purposes in said year, and since said year, the water appropriated has been used by said company and its predecessors for the operation of its flouring mill.

2. That in that certain suit, wherein the North Powder Milling Company, predecessor of the North Powder Milling and Mercantile Company, was plaintiff, and one W. H. Coughanour, a claimant to the waters of Anthony Creek, and another, were defendants, in the Circuit Court of Union County, Oregon, it was determined and decreed that said plaintiff, as against said defendants, was the owner <sup>of</sup> one thousand (1000) inches, miner's measure, under six inch pressure, of the waters of North Powder River and its tributaries; said decree being more particularly referred to in Finding No. LVIII hereof. And it was further determined that said plaintiff was entitled to said quantity of water for generating power for the operation of its said Milling properties, at any and all seasons of the year; said decree being thereafter affirmed in all things by the Supreme Court of the State of Oregon.

3. That Laura A. Dodson, for the irrigation of fifty-three (53) acres William N. Gardner for stock and domestic purposes; W. L. Miller Estate for the irrigation of fifty (50) acres; J. O. Pilcher for the irrigation of seventy-four (74) acres; John Powers for the irrigation of eighty-two and one-half (82 $\frac{1}{2}$ ) acres, have rights of appropriation which in accordance with the claims made, and these Findings, are prior in time and right to said rights of appropriation of said North Powder Milling and Mercantile Company. That William N. Gardner, for the irrigation of eighty-five (85) acres, Andrew O. Lun for the irrigation

of two hundred and three (203) acres, James A. Pilcher for the irrigation of forty (40) acres, J. O. Pilcher for the irrigation of seventeen (17) acres, have rights of appropriation initiated in the year 1870, and equal in priority and right with the rights of appropriation of said Company. That of these claimants having equal or prior right, all excepting Andrew O. Lun divert the waters of North Powder River, or its tributaries above the head of the North Powder M. and M. Co.'s Mill race.

4. That on the 15th day of June, 1909, said Company, under its corporate seal, by its President and Secretary, made, executed and delivered to James Dalton, P. L. Smith and J. D. McPhee, a certain instrument in writing, whereby it bargained, sold, and quitclaimed unto said Dalton, Smith and McPhee, in consideration of one dollar and other valuable considerations, the right to use four hundred miner's inches, or the two-fifths of the water right belonging to the said Company, to be used by said grantees, their heirs or assigns, during the months of July and August of each year, but at no other time during the year. Said amount appropriated as follows: James Dalton Two Hundred (200) inches; P. L. Smith one hundred and thirty-three (133) inches; and J. D. McPhee sixty-seven (67) inches.

5. That on the 24th day of October, 1910, James Dalton filed his written statement and proof of claimant in the above entitled proceeding, and attached thereto said instrument above referred to, which appears therefrom to have been recorded on the 25rd day of July, 1909, in Book 70, of Deeds, page 342, Records of Baker County, Oregon. That on the same day, J. D. McPhee filed his statement and proof of claim, and in an instrument attached thereto, marked "Exhibit A", it was stated; "I also have an interest from North Powder Milling and Mercantile Company, being a sixty-seven (67) inches for use during July and August of each year, for which interest said North Powder Milling and Mercantile Company executed quit claim deed, June 15th, 1909, said interest having been reserved by myself and Dalton and Smith, at the time we sold the Mill to said Corporation. Said Deed being attached to the claim filed by James Dalton herein, therein marked "Exhibit No. 2", and I hereby refer to said Exhibit as a part hereof." That on the same day, P. L. Smith filed his statement and proof of claim, to which was attached an instrument in writing marked "Exhibit A", in which was recited: "I also have an interest, one hundred and thirty-three (133) inches, for use during July and August each year, reserved be me at the time of transferring Mill to North Powder Milling and Mercantile Company, a Corporation, which said right is described in the Deed executed by said Corporation, June 15, 1909, and which said Deed is attached to the claim filed herein by James Dalton, and therein marked "Exhibit No. 2", and which said Exhibit I hereby refer to as a part hereof".

6. That James Dalton is the owner of about seven hundred and sixty (760) acres of land, J. D. McPhee owns about four hundred and ten (410) acres, and P. L. Smith about five hundred and fifty (550) acres, which lands have rights appurtenant thereto, as heretofore set forth. That James Dalton diverts water for said land through the Kelsey-Wilson,

Davis-Dalton, and Smith-McPhee and Tanner ditches; J. D. McPhee irrigates his lands through the Smith-McPhee and Tanner, and McPhee ditches; that P. L. Smith irrigates his lands through the Smith-McPhee and Tanner, Kelsey-Wilson and McPhee ditches. The rights of said claimants through said ditches being more particularly set forth in the Findings relative to said ditches. That the Kelsey-Wilson Ditch diverts the waters of the said stream, at a point in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 36, Tp. 33. R. 38 E. W. M., at a point about four miles above the head of said Mill Race. The Davis-Dalton Ditch diverts the waters of said stream at a point in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 35, Twp. 6 S. R. 38 E. W. M., about five miles above the head of said Mill Race. The Smith-McPhee and Tanner Ditch diverts the waters of said stream at a point in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 32, Tp. 6 S. R. 39 E. W. M., about two and one-half miles above the head of said Mill Race. The McPhee Ditch diverts the waters of said stream at a point in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 35, Tp. 6 S. R. 39 E. W. M., about one and one-half miles above the head of said Mill Race.

386

7. That on the 21st day of May, 1911, said statements and proofs, with said Exhibits attached, together with all other proofs filed in the above entitled proceeding were duly opened to inspection, as provided by law, and according to notice duly and regularly given, and were kept open to inspection for a full period of ten days, as is hereinbefore more particularly set forth. That a committee was appointed by the water users of the waters of said stream, on March 23rd, 1911, to inspect and investigate all claims made and filed in said proceeding, which committee, on the 31st day of March, 1911, made its report to said water users, and with reference to the claims of said Dalton, McPhee and Smith, recited in said report over the signatures of said committee, as follows: "In the claim of James Dalton, J. D. McPhee and P. L. Smith, from North Powder Mercantile and Milling Company Ditch. We find they have never used any water and the committee does not recognize any claim, until actual appropriation and use."

8. That no contest or other proceeding was thereafter initiated as against the claims of said McPhee, Dalton and Smith, within the time permitted by law, in which to file contests, or prior to the entry of order of determination and findings by said Board in the above entitled proceedings.

9. That on the 22nd day of January, 1912, the Board of Control made and entered of record in its office, Findings of Facts and an Order of Determination, wherein, with reference to the claims of Dalton, Smith and McPhee, it was determined that: "James Dalton, P. L. Smith and J. D. McPhee are entitled to divert and use the waters of said North Powder River and its tributaries, above the heads of their respective ditches for the irrigation of their lands hereinbefore described, through the ditches hereinbefore named, opposite their respective names, as of the priority date of 1870, to the extent of ten (10) second feet of the waters of said stream, proportioned as follows: James Dalton, five (5) second feet; P. L. Smith, three and thirty-two one-hundredths (3.32) second feet; J. D. McPhee

one and sixty-eight hundredths (1.68) second feet; that the right of said claimants to divert the waters of said stream to said extent and as of said date is confined to the months of August and July of each year, and the right to divert the amount of the proportional parts thereof of said claimants through said ditches, is in subordination to the prior rights of the use of said ditches by the owners thereof, other than these claimants; that the quantity to which the appropriation of the North Powder Milling and Mercantile Company is entitled during said months of July and August, shall not exceed twenty (20) second feet; and the rights to the use of said water by said claimants, Dalton, McPhee and Smith is appurtenant to the lands of said claimants hereinbefore described, and for the purposes of supplementing their respective appropriations, as hereinbefore set forth, and the quantity of water to which each of said claimants is entitled for the irrigation of said lands does not exceed at any time during the irrigation season, or said months of July and August, the rate of one (1) second foot for each eighty (80) acres thereof".

10. That on the 23rd day of April, 1912, exceptions were filed to the said Findings and Order of the Board, by J. H. Hutchinson, and four others, by and through C. H. Finn their attorney, as hereinbefore set forth, and on the 18th day of May, 1912, exceptions were filed by C. E. Davis, and fifty-four others, by and through their attorneys, Crawford and Eakin, by which exceptions the said order of the Board relative to the claims of Smith, McPhee and Dalton was excepted to, with respect to the rights, claimed under said North Powder Milling and Mercantile Company, and after hearing in the Circuit Court for Union County, Oregon, it was ordered by said Court, that the said order of determination of said Board be annulled and set aside, and that the proceeding be referred to the Board of Control and that the Water Superintendent take such further testimony as might be offered by the various claimants "touching the disputed claim of James Dalton, P. L. Smith, and J. D. McPhee to four hundred (400) miner's inches of water during the months of July and August, claimed to have been purchased from the North Powder Mercantile and Milling Company, of the priority of 1870, and touching the disputed claim or right of the North Powder Mercantile and Milling Company to any water from said stream, for milling or other purposes during the months of July and August of each year". That it was further ordered that said Board, based upon the evidence so taken and the evidence theretofore taken in said cause, make and cause to be entered of record in its office, an order determining and exhibiting the several rights to the waters of said stream. 387

11. That in accordance with said order, the Superintendent of Water Division No. 1 took said testimony as offered by said claimants touching the matters referred to in said order of Court, and said testimony is now on file in the office of said Board and a part of the record herein.