

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of)
)
 DETERMINATION OF RIGHTS of the)
 Various Claimants to the waters of)
)
 SCOTT RIVER STREAM SYSTEM,)
)
 Excepts Rights to Water of)
 Shackleford Creek, French Creek,)
 and all Streams Tributary to)
 Scott River Downstream from the)
 United States Geological Survey)
 Gaging Station, in)
 SISKIYOU COUNTY, CALIFORNIA)

Order No. WR 79-1

ORDER MAKING FURTHER DETERMINATIONS OF RIGHTS OF
VARIOUS CLAIMANTS TO THE WATERS OF SCOTT RIVER STREAM SYSTEM

The unresolved exceptions in the above captioned matter having been referred back to the Board on November 1, 1978 for taking of further evidence and making further determination, pursuant to Water Code Section 2767; a public hearing having been held before the Board on December 15, 1978; exceptors and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Brief Description of the Exceptions

1. On August 25, 1978 Glenn N. Struckman filed an exception to the Order of Determination. On September 20, 1978 Dr. Terrence J. Kerrigan filed a Notice of Opposition to said exception. Dr. Terrence J. and Janice L. Kerrigan filed a

Notice of Exception on September 26, 1978, an Amendment to Notice of Exception on September 29, 1978 and an Amended Notice of Exception on October 9, 1978. Each exception relates to the right to use water diverted from Jackson Creek, Grizzly Creek, Camp Gulch, and Wildcat Creek for use in the Wildcat Creek watershed.

2. On August 30, 1978, Ronald and Domina Owens filed an exception to the Order of Determination. This exception relates to the use of water diverted by the East Fork Callahan Ditch at Diversion Point No. 81 for use on lands owned by Exceptor Owens and affected party Nerva Hayden and to the use of water diverted by the Masterson Ditch at Diversion Point No. 67 for use on lands owned by affected party Nerva Hayden.

3. On August 23, 1978 C. A. Gussman filed an exception to the Order of Determination. This exception relates to the diversion of water from Sugar Creek at Diversion Point No. 163 for use in a proposed mining operation. Carl Blomquist, Glenn Barnes, Quentin Tobias, Andrew Darbee, and Lawrence Bunting are affected parties.

The Struckman-Kerrigan Exception and Kerrigan "Notice of Opposition" Background

4. Exceptors Dr. Terrence J. and Janice L. Kerrigan, hereinafter collectively referred to as "Exceptors Kerrigan", divert water by an earthen dam from Jackson Creek at Diversion Point No. 91 for use within the Wildcat Creek watershed. Said water is conveyed from the Jackson Creek watershed by an earthen gravity flow ditch. Said ditch crosses the Grizzly Creek watershed and then crosses the Camp Gulch watershed. The ditch then discharges into a tributary of Wildcat Creek in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$

of Section 34; T40N, R9W, MDB&M. Where said ditch crosses the channel of Grizzly Creek it also diverts, at Diversion Point No. 96, the natural flow of Grizzly Creek. Where said ditch crosses the channel of Camp Gulch, it diverts the natural flow of Camp Gulch at an undesignated diversion point. After discharge of this water into the Wildcat Creek watershed said water is rediverted by an earthen dam at Diversion Point No. 148 in the channel of Wildcat Creek for use on lands of Exceptors Kerrigan. Diversion Point No. 148 also diverts substantially all the natural flow of Wildcat Creek after about July 1 of each year to about the end of October. An earthen ditch carries said water to the lands of Exceptors Kerrigan. The water from Jackson Creek, Grizzly Creek, and Camp Gulch are not diverted for use in the Wildcat Creek watershed until the flows in Wildcat Creek are necessary for the irrigation of the lands of Exceptors Kerrigan. This condition generally occurs around the middle of July (RT 91).

5. Exceptors Kerrigan own land designated on Map A as Parcels III, IV, V, VI, VII, VIII, and IX. Parcel IV contains 15 acres which are irrigated with water diverted at Diversion Point No. 148. Parcel V contains 6 acres which are irrigated with return flow that was originally diverted at Diversion Point No. 148 and at Diversion Point No. 151. Parcel VI contains 20 acres which are irrigated with water diverted at Diversion Point No. 148. Parcel VII contains 79 acres which are irrigated with water diverted at Diversion Point No. 148. Parcel VIII contains 14 acres which are irrigated with water diverted at

Diversion Point No. 148. Parcel IX contains 35 acres which are irrigated with water diverted at Diversion Point No. 148.

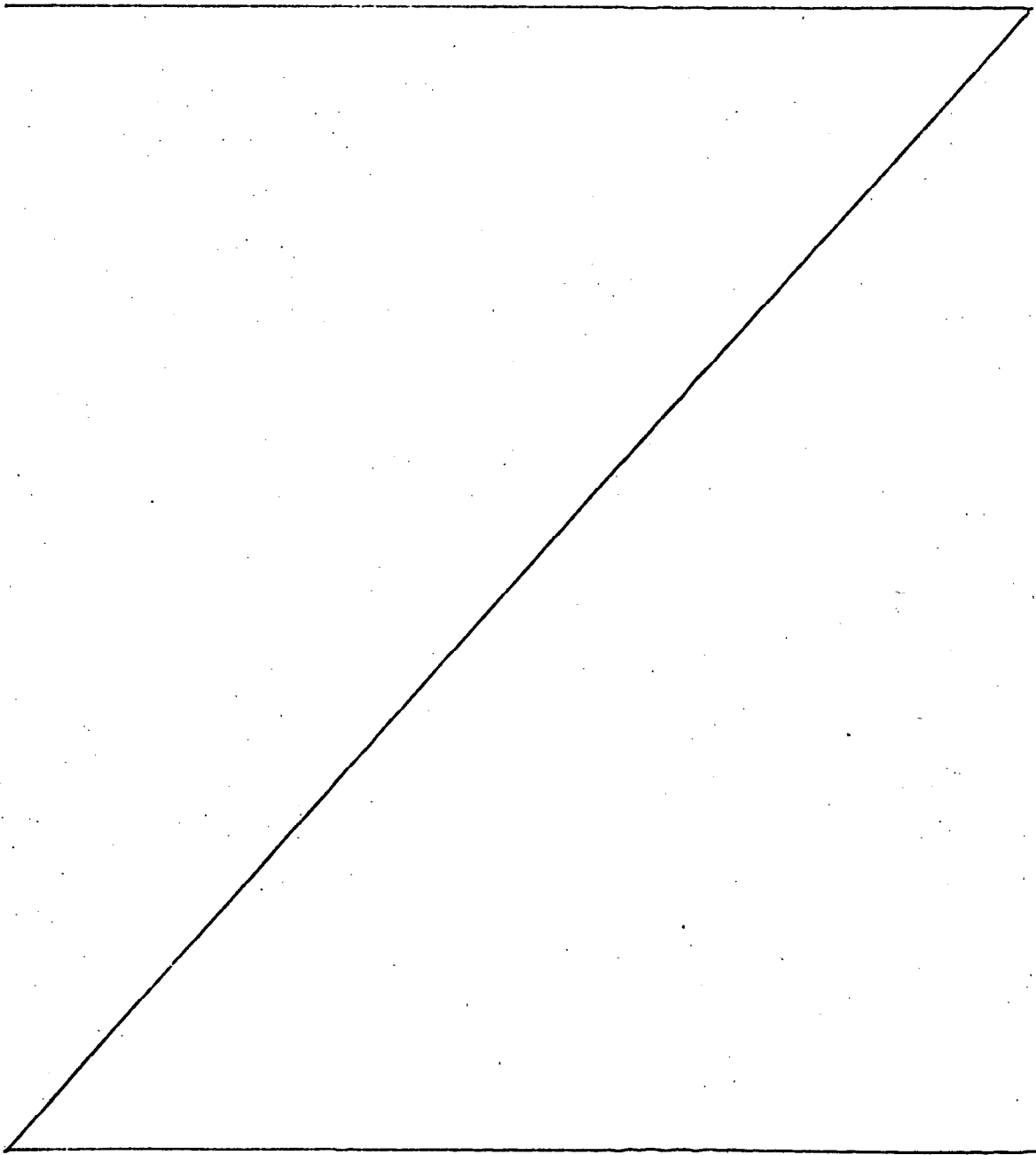
6. Wildcat Creek flows in its natural watercourse through or along Parcels V and VI. Wildcat Creek does not flow through or along Parcels IV, VII, VIII, and IX. Parcels IV, V, VII, and IX are wholly within the watershed of Wildcat Creek. Map A illustrates that portion of Parcels III and VI which is within the Wildcat Creek watershed.

7. Sheet 15 of Plate 1 of the Order of Determination depicts the course of the ditch leading from Diversion Point No. 148. The irrigated lands of Exceptors Kerrigan are irrigated by temporarily damming said ditch and by releasing water at turnouts in the ditch. The water then flows across the lands of Exceptors Kerrigan and is collected in the channel of a ditch leading from Diversion Point No. 151 or in the channel of Wildcat Creek both upstream and downstream of Diversion Point No. 151.

8. The Board established a duty of water of one cfs to 50 acres of flood irrigated land as being reasonably necessary for said use. About fifty percent of the water applied to a field using said duty of water will find its way after use back into a ditch or drain and becomes available for reuse as tailwater. When there is less water than the general duty of water of one cfs to 50 acres, there is proportionately less tailwater.

9. Exceptors Kerrigan presently irrigate 163 acres of irrigable pasture and hay land with water diverted from Diversion Point No. 148. The Order of Determination allocates

a continuous flow of 4.76 cubic feet per second (cfs) in a first priority allotment for said irrigation use. Said quantity of water was calculated by using a duty of water of 1 cfs to 50 acres of flood irrigated land for a use of 3.26 cfs and by adding a ditch loss of 1.5 cfs.



10. Exceptors Kerrigan plan to extend the present ditch leading from Diversion Point No. 148 to lands they recently acquired in Section 18, T40N, R8W, MDB&M. Exceptors Kerrigan estimate that approximately ten to twenty acres of land would be brought into cultivation (RT 118). Exceptors Kerrigan hope to irrigate said ten to twenty acres by using the existing allocation of water of 4.76 cfs in a more efficient manner as follows. In addition Exceptors Kerrigan propose to construct a small pond in the SW1/4 of the SW1/4, Section 13, T40N, R9W, MDB&M (RT 117). The surface area of the pond would be about one acre. It would be used as a source of water for fire protection.

11. Exceptor Struckman diverts water from Wildcat Creek at Diversion Point No. 151, which is located on land owned by International Paper Co. An earthen gravity flow ditch carries said water to the lands of Exceptor Struckman. Sheet 15 of Plate 1 of the Order of Determination depicts the course of the ditch from Diversion Point No. 151 to lands of Exceptor Struckman. Said ditch collects substantially all the water flowing in Wildcat Creek at Diversion Point No. 151 after about June 15. Said ditch also collects water which has been diverted by Exceptors Kerrigan at Diversion Point No. 148 and which has flowed across the irrigated lands of Exceptors Kerrigan.

12. Exceptor Struckman owns Parcels I, and II.

Wildcat Creek flows in its natural watercourse through or along Parcel I; Wildcat Creek does not flow in its natural watercourse through or along Parcel II.

13. Exceptor Struckman presently irrigates 92 acres of irrigable pasture land with water diverted from Diversion Point No. 151 or collected in the ditch leading from Diversion Point No. 151. The Order of Determination allocates a continuous flow of 1.84 cfs in a second priority allotment for said irrigation use. Said quantity of water was calculated using a duty of water of 1 cfs to 50 acres of irrigable land which is flood irrigated for a use of 1.84 cfs. The capacity of the ditch leading from Diversion Point No. 151 is 1.84 cfs.

14. Exceptor Struckman also diverts water flowing in Wildcat Creek at Diversion Point No. 153 for use on six acres of irrigable pasture land. Said six acres is included within the 92 acres indicated as the place of use for water diverted at Diversion Point No. 151. The Order of Determination allocates a continuous flow of 0.12 cfs in a second priority allotment for said irrigation use. Said allocation is an alternate allocation for said land. The continuous flow of 0.12 cfs was calculated using a duty of one cfs to 50 acres of flood irrigated land. No ditch loss was added to the use figure because no ditch loss was measured.

15. Exceptors Kerrigan also irrigate six acres of irrigable pasture land in Parcel V and one acre of irrigable pasture land in Parcel III. The Order of Determination

allocates a continuous flow of 0.14 cfs for the irrigation of said land, which was calculated using the duty of water of one cfs to 50 acres of irrigable land. Presently, there is no diversion to said land; rather it is irrigated by tailwater originating at Diversion Point Nos. 148 and 151 and which flows onto Parcel V and onto Parcel III.

16. The diversions of water from Jackson Creek and Grizzly Creek were initiated by the filing of Notices of Appropriation by J. D. Heard as follows:

a. September 18, 1894. J. D. Heard. Notice of Appropriation from Jackson Creek. Recorded on September 24, 1894. 4/WR/160. The place of use of water was indicated as the "Enterprise Mine and mining claims adjacent thereto". The quantity of water claimed was 5,000 inches under a four-inch pressure which equals 100 cfs. The purpose of use was mining.

b. September 18, 1894. J. D. Heard. Notice of Appropriation from Grizzly Creek. Recorded on September 24, 1894. 4/WR/161. The place of use of water was indicated as the "Enterprise Mine and mining claims adjacent thereto." The quantity of water claimed was 5,000 inches under a four-inch pressure which equals 100 cfs. The purpose of use was mining.

The chain of title of these two old appropriations appears in Appendix A.

17. Diversion Point No. 91 on Jackson Creek also rediverted water stored in Jackson Lake at one time. This appropriative right was initiated by the filing of a Notice of Appropriation by F. Beaudry as follows:

a. May 21, 1895. F. Beaudry. Notice of Appropriation from Jackson Lake. Recorded on May 29, 1895. 4/W.R./243. The place of use of water was indicated as "Placer Mines now being worked on Wildcat Creek and on Section 23, 24, 26, 27 and 28 of Township 40 North Range 9 West Mount Diablo Meridian claimed by F. Beaudry et al." The quantity of water claimed was unspecified. The purpose of use was mining. The chain of title for this old appropriation appears in Appendix A.

Nature of the Controversy

18. Exceptor Struckman alleges that through an oversight the Board failed to include in the Order of Determination Grizzly Creek and Jackson Creek as sources of water for his land. Exceptor Struckman argues that Grizzly Creek and Jackson Creek were included as sources of water for his land in the Abstract of Proof of Claim and that therefore the Order of Determination should be consistent. Therefore, Exceptor Struckman requests that he be added as a claimant in Schedule B8 to Jackson Creek and Grizzly Creek. Exceptors Kerrigan oppose this request and claim to be the exclusive owners of the right to divert water from Jackson Creek at Diversion Point No. 91 and from Grizzly Creek at Diversion Point No. 96. In addition, Exceptor Struckman opposes the changes in the use of water by Exceptors Kerrigan.

19. Exceptors Kerrigan claim that the Order of Determination reduces their water rights from those actually appropriated and used on their lands and that their water rights are

awarded to Exceptor Struckman. Exceptors Kerrigan further claim that they have acquired a prescriptive right to divert and use water from Wildcat Creek.

Resolution of the Controversy

20. The above conflict presents the following issues:

a. Who is a successor in interest to the pre-1914 appropriative water rights initiated by J. D. Heard and by F. Beaudry?

b. Assuming that none of the Exceptors are successors in interest to these pre-1914 appropriative water rights, what rights, if any, have either Exceptors Kerrigan or Exceptor Struckman or either of their predecessors acquired to divert water from Jackson Creek, Grizzly Creek, Camp Gulch and Jackson Lake?

c. Did the predecessors of Exceptor Struckman complete a pre-1914 appropriation to divert water originating in the Jackson Creek, Grizzly Creek, and Camp Gulch watersheds, hereinafter referred to as "foreign water", at Diversion Point No. 151 for use on Parcel I?

d. Are riparian rights part and parcel of any of the lands owned by Exceptors Kerrigan or by Exceptor Struckman?

e. Did the predecessors of Exceptors Kerrigan complete a pre-1914 appropriation to divert the natural flow of Wildcat Creek at Diversion Point No. 148 for use on parcel VII?

f. Assuming that the answer to the foregoing question is in the affirmative was this pre-1914 appropriation of water from Wildcat Creek an appropriation on vacant public domain?

g. Assuming Exceptor Struckman does own lands to which a riparian right is part and parcel, has this right been lost or diminished by prescription?

h. What rights, if any, do Exceptors Kerrigan have to develop the ten to twenty acres of land in Parcel III as they propose?

21. These issues may be best analyzed by reviewing the sequence of events:

a. By the Act of July 25, 1866 (14 Stat. L. 239) the Congress authorized the granting of alternate sections to the Central Pacific Railroad in the amount of twenty per mile (ten on each side of the railroad line) as an inducement to construct a railroad connecting Portland, Oregon and Marysville, California. Said Act is contained in Appendix B.

b. By the Act of July 26, 1866 (14 Stat. L. 253, Sec. 9) the Congress provided that the owners and possessors of vested and accrued appropriative water rights on the public domain, which were recognized by local customs, laws, and court decisions should be protected and that the rights of way for the same were acknowledged and confirmed.

c. By the Act of July 9, 1870 (16 Stat. L. 217) the Congress further provided that all patents, pre-emptions, and homesteads should be subject to water and ditch rights so recognized by the Act of July 26, 1866.

d. Parcel VII is patented to James H. Sullivan on August 24, 1888.

e. James H. Sullivan commences diverting the natural flow of Wildcat Creek at Diversion Point No. 148 for irrigation use on Parcel VII. Proof of Claim No. 201 indicates that this irrigation use commenced in 1890. While Proof of Claim No. 201 claims the place of use was the entire 163 acres of irrigated land, Proof of Claim Nos. 200 and 201 collectively indicate that the ditch leading from Diversion Point No. 148 irrigated land only within Section 23 until 1951 when the ditch was extended into Sections 13 and 14. Proof of Claim No. 200 claims an

irrigated acreage in Section 23 of 95 acres. The actual measured irrigated acreage is 101 acres. Parcel VII, which is the only land James H. Sullivan owned in Sections 13, 14, and 23 in 1890, does not contain 95 acres of land irrigated with water diverted at Diversion Point No. 148 in Section 23. It appears that James H. Sullivan or his successors actually cleared land in Parcels VIII and IX and irrigated it, even though the successors of James H. Sullivan did not receive the grant of Parcels VIII and IX until 1955. The old barn constructed many years ago by the Sullivan family is actually located on Parcel VIII.

f. Parcels II, III, VI, VIII, IX and X are patented to Central Pacific Railroad Company on July 30, 1894 in accordance with the provisions of the Act of July 25, 1866 (14 Stat. L. 239). This deed is contained in Appendix C.

g. J. D. Heard files for the water in Jackson Creek and Grizzly Creek on September 18, 1894.

h. F. Beaudry files for the water in Jackson Lake on May 29, 1895.

i. Twelve placer mining claims on Wildcat Creek which were the place of use of these pre-1914 appropriative rights were filed in about 1895. Map B shows the location of the twelve placer mines.

j. The predecessors of Exceptor Struckman commenced, on or before 1899, diverting at Diversion Point No. 151 water flowing in Wildcat Creek for use on Parcel I.

k. The Proof of Claim states that irrigation use commenced on 95 acres in 1906 with water diverted from Jackson Creek and Grizzly Creek and rediverted at Diversion Point No. 148. Actually such use must have taken place immediately after

the commencement of the diversions of water from Jackson Creek, Grizzly Creek, and Camp Gulch to the Wildcat Creek watershed.

A placer mining use involved little consumptive use of water in the actual washing operation and the foreign water and natural flow of Wildcat Creek would have been commingled at Diversion Point No. 148. The Board interprets the 1906 date in the Proof of Claim to be that date when the Sullivan family first commenced operating the diversion structures on Jackson Creek, Grizzly Creek, and Camp Gulch.

l. The mining use ceases in the late 1890s or the early 1900s.

m. The successors in interest to James H. Sullivan acquire Parcels II and VI on October 27, 1944.

n. On November 8, 1949 the successors in interest to James H. Sullivan sell Parcel II and on November 9, 1949 they acquire Parcel IV. Each deed is silent regarding the reservation of the riparian right which was part and parcel of Parcels II, III and IV prior to said conveyance.

o. In 1951 the ditch leading from Diversion Point No. 148 is extended to irrigate Parcels IV and VI.

p. On October 5, 1955 the successors in interest to James H. Sullivan acquire Parcels VIII and IX.

22. Exceptors Kerrigan's contention that they are the successors of the pre-1914 appropriations acquired by J. D. Heard and F. Beaudry is based on the fact that they own a small portion of the land that was the original place of use of these appropriations. Map B shows the location of twelve placer mines that were transferred by the estate of Fred Beaudry to his successors. Exceptors Kerrigan own that land designated as Parcels III, IV, V, VI, VII, VIII, and IX and Map B shows that

the Cain Placer Mining Claim and R. R. Placer Mining Claim were partially located on either Parcel VIII or IX.

23. The chain of title indicates that the place of use of the appropriations of water from Jackson Creek and Grizzly Creek was the "Enterprise Mine and Mining Claims adjacent thereto". Since the term "adjacent" means "lying near or close at hand, adjoining, contiguous" (Fung & Wagnall's New Standard Dictionary), the other eleven mining claims were adjacent to the Enterprise Mine and therefore all twelve mining claims were places of use of these pre-1914 appropriations.

24. The chain of title indicates that the place of use of the appropriation of water from Jackson Lake was "Placer Mines now being worked on Wildcat Creek and on Sections 23, 24, 26, 27, and 28 of Township 40 North, Range 9 West, Mount Diablo Meridian claimed by F. Beaudry et al.". All twelve placer mining claims were places of use of this pre-1914 appropriation.

25. The sequence of events in Finding 21 indicates that the pre-1914 appropriations were initiated in 1894 and 1895 and that the mining use ceased in the late 1890's or early 1900s. While this is a rather vague time frame, other evidence corroborates that the mining use probably ceased before 1912. Fred Beaudry was the principal miner on these claims and he died before 1912.^{1/} The estate of Fred Beaudry transferred on January 6, 1916 the ownership of the twelve mining claims to

^{1/} Angele Beaudry, Fred Beaudry's wife, was appointed Executrix of the last will and testament of Fred Beaudry on January 10, 1912. The exact date of Fred Beaudry's death is not known.

Angele Beaudry, the wife of Fred Beaudry. Upon the death of Angele Bazet, formerly Angele Beaudry, the Estate of Angele Bazet attempted to sell the mining claims and the water rights in 1938. An option to purchase the mining claims and water rights was executed in 1938 but never exercised. There is no evidence to suggest any mining operations or any use of water for such operations after the attempted sale of the mining claims and water rights in 1938. Rather, the evidence indicates a cessation of mining operations and of such use of water much earlier. A reasonable inference is that mining operations and use of water for such purposes ceased on or before the death of Fred Beaudry. The consequence of this conclusion is that the pre-1914 appropriations initiated by J. D. Heard and Fred Beaudry were forfeited for five years non-use. Smith v. Hawkins, 110 Cal. 122, 42 P. 453 (1895). Therefore, the successors of James H. Sullivan did not acquire any appropriative water right on October 5, 1955 when they purchased Parcels VIII and IX. The fact that James H. Sullivan and his successors were actually operating the diversion structure for irrigation purposes since 1906 does not change the above conclusion unless there were some agreement between Fred Beaudry and his immediate successors and James H. Sullivan and his successors to exercise the water rights held by Fred Beaudry. No such agreement was established at the hearing; rather, H. Hearst Dillman^{2/} stated that the Sullivans'

^{2/} H. Hearst Dillman was a principal witness testifying on behalf of Exceptors Kerrigan. He leased a portion of the property now owned by Exceptors Kerrigan from the Sullivan family from about 1946 to 1974. (RT 85) He knows more about the operation of the irrigation system on the Sullivan ranch than anyone else alive today.

claimed the right to divert water from Jackson Creek, Grizzly Creek, and Camp Gulch after the Sullivan family purchased Parcels VIII and IX in 1955. (RT 91-92)^{3/} & ^{4/}

26. Exceptor Struckman claims to have the right to divert water from Jackson Creek, Grizzly Creek, and Camp Gulch for use in the Wildcat Creek watershed. The chain of title and sequence of events makes clear that Exceptor Struckman owns no land that was a place of use of the pre-1914 appropriations initiated by J. D. Heard and F. Beaudry and that there was no grant of a said right to Exceptor Struckman. Accordingly, the Board concludes that Exceptor Struckman is not a successor to these pre-1914 appropriations.

27. The fact that the successors of James H. Sullivan did not acquire any appropriative water right on October 5, 1955 when they purchased Parcels VIII and IX does not necessarily mean that they possess no right to divert water from Jackson Creek, Grizzly Creek or Camp Gulch. Prior to December 19, 1914 appropriative water rights could be acquired by taking and beneficially using water. Irwin v. Phillips, 5 Cal. 140 (1855). The priority of the right related back to the first substantial act toward putting the water to beneficial use, provided the

^{3/} Mr. Dillman actually stated that the purchase took place in 1952-53. The chain of title indicates that the deed was executed on October 5, 1955.

^{4/} Margaret S. Simmons, who is related to James H. Sullivan, was also called as a witness on behalf of Exceptors Kerrigan. She contradicted Mr. Dillman on this point. She testified that the Beaudrys originally owned the ditch from Jackson Creek and that ever since she could recall the Sullivan ranch claimed a right to use the waters out of Jackson Creek, Grizzly Creek and Camp Gulch Ditch (RT 79, 81).

appropriation was completed with reasonable diligence. Kelley v. Natoma Water Co., 6 Cal. 105 (1856). The sequence of events outlined in Finding 20 indicates that James H. Sullivan commenced operating the diversion structures on Jackson Creek and Grizzly Creek in 1906 ^{5/} and that he irrigated Parcel VII and portions of Parcel VIII and IX for beneficial use. These acts are sufficient to establish an appropriation with a priority of 1906 from Jackson Creek and Grizzly Creek. Because of the location of the ditch leading from Diversion Point No. 96 and crossing Camp Gulch, said acts also diverted the water flowing in Camp Gulch for beneficial use. Accordingly, these acts also established an appropriation with a priority of 1906 from Camp Gulch.

28. The quantity of water to which an appropriator is entitled by right of diversion is the quantity which was actually used for beneficial purposes at the time of the original diversion and which was reasonably necessary for such purposes, plus any additional quantity intended to be applied to further needs at the time of the original diversion. This additional quantity must be actually put to use within a reasonable time, measured by all the circumstances of the case, after the original diversion and which was reasonably necessary therefor. Haight v. Costanich, 184 Cal. 426, 194 P. 26 (1920). As earlier stated,

^{5/} There is no evidence to indicate operation of the diversion and storage structures on Jackson Lake. H. Hearst Dillman indicated that he was not familiar with the diversion and storage structures on Jackson Lake (RT 94). The Proof of Claim did not claim any water from Jackson Lake. Consequently, Exceptors Kerrigan do not possess any right to store water in Jackson Lake.

James H. Sullivan in 1906 or soon thereafter irrigated Parcels VII, VIII, and IX^{6/} with water diverted from Jackson Creek at Diversion Point No. 91, from Grizzly Creek at Diversion Point No. 96, and from Camp Gulch at an undesignated diversion point and rediverted at Diversion Point No. 148. The evidence is unclear as to the precise acreage originally irrigated. It is not unreasonable to assume that the irrigated land increased as additional land was cleared. Presently, Parcel VII contains a total of 79 acres of irrigable land^{7/} that may be irrigated with water diverted or rediverted at Diversion Point No. 148. About 52 acres of the total 79 acres are in Section 23; the remaining 27 acres of the total 79 acres are in Section 14. Parcel VIII and Parcel IX contain 14 and 35 acres, respectively, of said irrigable land. The sum of this irrigated acreage that may be irrigated with water diverted or rediverted at Diversion Point No. 148 and that is contained in Parcels VII, VIII, and IX is 128 acres.

the time of 29. The determination of the land that was originally irrigated with the foreign water, and of the land which was progressively developed in accordance with the doctrine of the Haight case also determines the measure of the right by applying

^{6/} The chain of title indicates that James H. Sullivan did not own Parcels VIII and IX in 1906. Although his successors were not granted Parcels VIII and IX until 1955, James H. Sullivan or his successors nonetheless cleared the land and irrigated it for beneficial use.

^{7/} Parcel VII also contains 22 acres of irrigable land that can only be irrigated by water diverted from Sugar Creek at Diversion Point No. 166. The use of water from Sugar Creek is not an issue in this exception.

a duty of water of one cfs to 50 acres of irrigable land. The Proof of Claim claims an acreage of 95 acres with a 1906 priority and it indicates that this acreage was evidently completely within Section 23. The actual measured acreage of land within Section 23 which is irrigated from Diversion Point No. 148 is 101 acres. The Board concludes that the entire 101 acres should be given a priority of 1906 because it was either the original place of use or progressively developed. The Proof of Claim further indicates that the ditch leading from Diversion Point No. 148 was not extended to irrigate the 27 acres in Parcel VII, which is in Section 14, until 1951. The question which this raises is whether this additional 27 acres can be considered a place of use under the doctrine of progressive development in the Haight case. Since the extension took place about 45 years after the initial appropriation, James H. Sullivan and his successors arguably did not use the diligence required under the doctrine of progressive development in the Haight case. On the other hand the 27 acres were originally acquired by James H. Sullivan in 1888 and a reasonable inference is that he intended to clear the land and irrigate it. The clearing of land is a time consuming process and the 45-year period was interrupted by two world wars. While the Board considers this an extreme case of progressive development, it concludes that the 27 acres should be designated as a place of use of the appropriation of the foreign water.^{8/}

^{8/} The 35 acres of irrigable land in Parcels IV and VI are not a place of use of this old appropriative right either originally or under the doctrine of progressive development. Under said doctrine, the appropriator is required originally to intend to irrigate the land. Since James H. Sullivan or his successors did not own Parcel IV or VI until the 1940s and since they did not exercise any acts of ownership on said land, they could not have intended to irrigate Parcels IV and VI in 1906.

The measure of the right is that quantity of water reasonably necessary to irrigate the 128 acres, which is 2.56 cfs using the general duty of water and that quantity of water lost as a ditch loss. The capacity of the diversion structure on Jackson Creek is 4.10 cfs and this is the maximum capacity of the ditch leading from Diversion Point No. 91. A ditch loss of about 1.5 cfs occurs in said ditch. Therefore, the total measure of this pre-1914 appropriative right is 4.10 cfs.

30. Did the predecessors of Exceptor Struckman take those actions sufficient to establish a pre-1914 appropriation to divert and use the waters of Jackson Creek, Grizzly Creek and Camp Gulch^{9/} for use within the Wildcat Creek watershed^{10/}. The evidence was conflicting on this point. Clarence Dudley, who is the immediate predecessor to Exceptor Struckman, testified on the behalf of Exceptor Struckman. He testified that when he purchased Parcel I in 1976 he did so with the understanding that he had a right to divert water from Jackson Creek and Grizzly Creek to supplement the natural flow of Wildcat Creek (RT 52). He further testified that he paid H. Hearst Dillman to maintain the ditch from Jackson Creek and Grizzly Creek. Exceptor Struckman testified that he discussed the water rights attaching to Parcel I with David McAnlis, a staff engineer in

9/ Exceptor Struckman does not claim an appropriation initiated under the Water Commission Act (Stats 1913, c. 586, p. 1012) or under the Water Code.

10/ This issue is distinct from the rights, if any, that Exceptor Struckman may have to divert and use foreign water, that is water from Jackson Creek, Grizzly Creek, and Camp Gulch, which has escaped the boundaries of the place of use of the original appropriation.

the Division of Water Rights, and that the following discussion took place:

"And I [Exceptor Struckman] said, 'Is this the way [referring to the Proof of Claim submitted by Allen G. Moore for Parcel I] it will be?' And he [David McAnlis] said, 'Well, there have been no contests, no one has objected to that proof of claim. And I believe that you would be safe in assuming that that is fine, adjudication is very near at this time'". (RT 63)

Exceptor Struckman interpreted the Proof of Claim as including the right to divert water from Jackson Creek and Grizzly Creek for use on Parcel I in the Wildcat Creek watershed.

31. Two witnesses, Margaret S. Simmons and H. Hearst Dillman, testified on behalf of Exceptors Kerrigan and they were offered, in part, to rebut the testimony offered by Exceptor Struckman. Margaret S. Simmons testified that the Beaudrys originally owned the ditch from Jackson Creek, that ever since she could recall the Sullivan ranch claimed a right to use the waters out of the Jackson Creek, Grizzly Creek, and Camp Gulch ditch and that H. Hearst Dillman was leased the property with the understanding that he would continue to maintain the water right belonging to the Sullivan ranch (RT 79, 81, 82). H. Hearst Dillman testified that he, as lessee, was not authorized to give or relinquish any of the water rights belonging to the Sullivan ranch to the predecessors of Exceptor Struckman (RT 86). He further denied that Clarence Dudley or any other owner of

Parcel I had ever paid him for the maintenance of the ditch leading from Diversion Point No. 91 on Jackson Creek (RT 86, 93, 97). He explained that he had cleaned the ditch leading from Diversion Point No. 151 to Parcel I as lessee of both the Sullivan ranch and the Moore ranch^{11/} just prior to sale of the Moore ranch to Clarence A. and Arvilla K. Dudley on May 18, 1976. The payment mentioned by Clarence Dudley was for the cleaning of this ditch (RT 97, 98).

32. The evidence submitted by Exceptor Struckman fails to convince the Board that his predecessors acquired a pre-1914 appropriative right to divert and use the waters of Jackson Creek, Grizzly Creek, and Camp Gulch. There is no evidence that Margaret A. Ankeny^{12/}, the owner of Parcel I from August 18, 1899 to December 13, 1934, operated the diversion structure on Jackson Creek, Grizzly Creek, and Camp Gulch and beneficially used the water diverted prior to December 19, 1914^{13/}. Even if the testimony of Clarence Dudley is accepted as accurate, it merely establishes that he helped maintain the ditch from Diversion Point No. 91. It does not establish the existence of a pre-1914 appropriative right. The Proof of Claim, relied on by Exceptor Struckman, is of no help. It states in pertinent part:

^{11/} Allen G. and Evelyn K. Moore owned Parcel I from August 8, 1949 to May 18, 1976.

^{12/} The deed, which conveys Parcel I to Margaret A. Ankeny in 1899 also conveys an easement to the ditch leading from Diversion Point No. 151. This ditch shows the exercise of a riparian right and since foreign water was commingled with the natural flow of Wildcat Creek, an appropriation of the foreign water, which is discussed, infra.

^{13/} After December 19, 1914 an appropriative water right could only be acquired by applying to the State Water Resources Control Board or its predecessors in function for such a permit. There is no allegation or evidence of a post-1914 appropriation.

<u>Claimant</u>	<u>Diversion Number</u>	<u>Source</u>
A. Moore	151	Wildcat, Jackson and Grizzly Creeks	

This statement merely indicates that A. Moore, a predecessor of Exceptor Struckman, appropriated at Diversion Point No. 151 the foreign water that has been imported to the Wildcat stream system.^{14/} It does not mean, evidently as Exceptor Struckman interprets it, that A. Moore has a right to operate the diversion structures on Jackson Creek, Grizzly Creek and Camp Gulch. To have this latter meaning Diversion Point No. 91 and Diversion Point No. 96 would have had to be named as Diversion Points in the claim. Finally, Clarence A. Dudley's testimony as to the representation made to him about the water rights by his predecessors has to be discounted. While the Board does not doubt the good faith and honest nature of his belief, the deed from Allen G. and Evelyn K. Moore to Clarence A. and Arvilla K. Dudley does not convey a right of way to the ditch from Diversion Point No. 91. Some evidence of a right of way would be necessary for exercise of the appropriative right.^{15/} Accordingly, the Board concludes that there is insufficient evidence to establish that Margaret A. Ankeny or any of the other predecessors of Exceptor Struckman acquired a pre-1914 appropriative right to divert and

^{14/} The Board considers this basis of right, infra.

^{15/} The Board notes that Exceptors Kerrigan do not have such a grant of a right of way in their chain of title either. However, considerable evidence was received which tends to establish a prescriptive easement on land now belonging to International Paper and an easement under Revised Statutes § 2239, which was repealed by Section 706 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), on land now in the Klamath National Forest. (RT 93,94)

use the waters of Jackson Creek at Diversion Point No. 91, of Grizzly Creek at Diversion Point No. 96 and of Camp Gulch at an undesignated diversion point.

33. As earlier stated in Footnote 12, the deed, which conveys Parcel I to Margaret A. Ankeny in 1899, also conveys an easement to the ditch leading from Diversion Point No. 151. A reasonable inference to be drawn from this fact is that water was being diverted from the channel of Wildcat Creek on or before 1899. Since the mining operations began importing the foreign water around 1894-95 and since these diversions were continued on and after 1906 by James H. Sullivan and his successors, foreign water was commingled with the natural flow of Wildcat Creek and was diverted by Margaret A. Ankeny at Diversion Point No. 151 for beneficial use on Parcel I. Consequently, the Board concludes that Margaret A. Ankeny or her predecessors completed an appropriation of the foreign water for use on Parcel I. The measure of the right is limited by the quantity which is actually diverted and by the amount which can be put to reasonable beneficial use. The Order of Determination allocates a continuous flow of 1.84 cfs to Exceptor Struckman in a 2nd priority allotment. During the beginning of the irrigation season the entire flow of 1.84 cfs is available from Wildcat Creek. Around the middle of July foreign water from Jackson Creek, Grizzly Creek, and Camp Gulch

is imported into the watershed. In addition, foreign water from Sugar Creek is also imported by Exceptors Kerrigan at Diversion Point No. 166. As discussed infra, the Board concludes that a riparian right is part and parcel of parcel I. Consequently, Exceptor Struckman possesses a correlative right to the natural flow of Wildcat Creek. As the natural flow of Wildcat Creek diminishes progressively toward the end of the irrigation season around October 15 of each year, the foreign water becomes an increasingly bigger proportion of the total flow of 1.84 cfs needed by Exceptor Struckman. Accordingly the Board concludes that the maximum amount authorized for diversion under this pre-1914 appropriative claim is 1.84 cfs, which is that quantity which can be reasonably and beneficially be used by Exceptor Struckman.

34. Riparian rights to the use of water are an incident of land ownership and the right attaches to land which abuts a stream, lake or pond and which is the smallest parcel held under one title in the chain of title to the present owner. Hudson v. West, 47 Cal.2d 823, 306P.2d 807 (1957). Consequently, a riparian parcel may never be larger than the original patent size, but may become smaller by the conveyance of the back parcel without either an implied or an express reservation of a riparian right. Hudson v. Dailey, 156 Cal. 617, 105 P. 748 (1909). Furthermore, the place of use of water under a riparian right is limited to riparian lands within the watershed of the particular stream. Anaheim Union Water Co. v. Fuller, 150 Cal. 327, 88 P. 978 (1907).

35. Wildcat Creek flows in its natural watercourse through parcels III, V, and VI. Map A illustrates those portions of Parcels III & VI which are within the Wildcat Creek watershed. Parcel V is wholly within the watershed of Wildcat Creek. Consequently, Exceptors Kerrigan possesses a riparian right to the use of waters from Wildcat Creek on parcel V and on the southern portions of parcels III and VI which are in the watershed of Wildcat Creek.

36. Wildcat Creek does not flow through or along parcels IV, VII, VIII, and IX. Consequently, Exceptors Kerrigan, the owners of said parcels, do not possess a riparian right to the use of waters from Wildcat Creek, unless a riparian right were either expressly or impliedly reserved for these parcels. The chain of title for parcel VII indicates that it never was a portion of a larger parcel which abutted Wildcat Creek. Consequently, no riparian right attaches to parcel VII. The chain of title for parcels VIII and IX indicates that they were originally part of parcel X and that parcels VIII, IX, and X were not split up until October 5, 1955. The sequence of events establishes that water was diverted and used on this land in 1890 or sometime immediately thereafter. Because of the existing diversion and use of water on parcels VIII and IX, the Board concludes that a riparian right was impliedly reserved for parcels VIII and IX and that, therefore, Exceptors Kerrigan possess a riparian right to the use of waters from Wildcat Creek on parcels VIII and IX. The riparian status of parcel IV will be considered, infra.

37. Wildcat creek flows in its natural watercourse through parcel I and parcel I is wholly within the watershed of

Wildcat Creek. Consequently, Exceptor Struckman, the owner of parcel I, possesses a riparian right to the use of the waters from Wildcat Creek on parcel I.

38. Wildcat Creek does not flow through or along parcel II. Consequently, Exceptor Struckman, the owner of parcel II, does not possess a riparian right to the use of waters from Wildcat Creek, unless a riparian right were either expressly or impliedly reserved for parcel II. The chain of title for parcels II, IV, and VI indicates that parcel II was originally part of parcel VI and that parcel II was not split off until November 8, 1949 from parcel VII when parcel II was traded for parcel IV. Since the ditch leading from Diversion Point No. 151 is uphill from the irrigated portion of parcel II, parcel II, therefore, can be easily irrigated by said ditch. Since said ditch was in use for many years previous to November 8, 1949, a reasonable inference is that the land swap in 1949 was intended to retain the riparian status of parcel II. Consequently, Exceptor Struckman possesses a riparian right to the use of waters from Wildcat Creek on parcel II.

39. The maximum measure of the riparian right is the amount necessary for reasonable and beneficial use. (Article X, Section 2 of the California Constitution.) If there is insufficient natural flow of the stream, like uses share the available supply. Exceptor Struckman possesses 92 acres of irrigable land in parcels I and II. The maximum measure of his riparian right is 1.84 cfs using a duty of water of one cfs to 50 acres of flood irrigated land.

40. The determination of the riparian status of Parcel IV is more difficult. Parcel IV was originally part of parcel VI and therefore it was riparian; the question is whether a riparian right were either expressly or impliedly reserved to parcel IV. There is no express reservation. The ditch leading from Diversion Point No. 148 was extended to serve parcel IV in 1951 which was obviously after the land swap in 1949. Since parcel IV was not being irrigated in 1949, one possible inference is that no riparian right was impliedly reserved to said land. However, the evident purpose of the land swap, at least as far as the predecessors of Exceptor Struckman were concerned, was to own irrigable land which could easily be irrigated by the diversion of water at Diversion Point No. 151. Since the ditch from Diversion Point No. 148 was extended within two years of the land swap in 1949 to irrigate Parcel IV, a reasonable inference is that the purpose of the land swap as far as the predecessors of Exceptors Kerrigan were concerned was to own irrigable land which could be easily irrigated from Diversion Point No. 148. For this reason, the Board concludes that the parties to the land swap in 1949 did not intend to sever the riparian right part and parcel of parcel IV. Accordingly, the Board further concludes that Exceptors Kerrigan possess a riparian right to the use of waters from Wildcat Creek on parcel IV.

41. Exceptors Kerrigan possess a total of 84 acres of irrigable land in parcels IV, VI, VIII, and IX for which a riparian right is part and parcel.

Of this total amount 60 acres are in parcels VIII and IX and in the SW 1/4 of Section 13 in parcel VI. A continuous flow of 1.2 cfs is necessary for the irrigation of said 60 acres using a duty of water of one cfs to 50 acres of flood irrigated land. However, there is a total ditch loss of 1.5 cfs from the ditch leading from Diversion Point No. 148 as explained in Finding 9. The proportional share of the ditch loss for the 60 acres is 0.65 cfs. The maximum measure of the right for said 60 acres is the sum of the use amount and of the ditch loss; the sum is 1.85 cfs. The remaining 24 acres of irrigable land in parcels IV and VI for which a riparian right is part and parcel is that presently irrigated land in parcels IV and VI which is down ditch of a point designated on Map A as measurement Point A. A continuous flow of 0.48 cfs is necessary for the irrigation of said 24 acres. Because of the location of Measurement Point A, no ditch loss occurs for said 24 acres. Accordingly, the maximum measure of the riparian right part and parcel to said 24 acres is 0.48 cfs. The significance of Measurement Point A and the division of the riparian land in this manner will be discussed infra. The total flow necessary for irrigation of the 84 acres of irrigable, riparian land is 2.33 cfs.

42. The sequence of events establishes that James H. Sullivan diverted water for irrigation of irrigable land on parcel VII in 1890. These acts are sufficient to establish an appropriative right with a priority of 1890. The extent of the beneficial use is the measure of the right.

James H. Sullivan originally irrigated only 52 acres of irrigable land within parcel VII and within Section 23. The remaining 27 acres of irrigable land within parcel VII, which is within Section 14, was not irrigated until 1951. For the reasons stated in Finding 29, the Board concludes that said 27 acres should be included as a place of use under this appropriation. Therefore, the total place of use contains 79 acres and a continuous flow of 1.58 cfs is necessary for the irrigation of said land using a duty of water of one cfs to 50 acres of flood irrigated land. However, there is a total ditch loss of 1.5 cfs from the ditch leading from Diversion Point No. 148 as explained in Finding 9. The proportional share of the ditch loss for 79 acres in parcel VII is 0.85 cfs. The measure of the right is the sum of the use amount and the ditch loss; the sum is 2.43 cfs.

43. Exceptors Kerrigan contend that the Order of Determination reduces their water rights from those actually appropriated. Although Exceptors Kerrigan do not specifically assert that their predecessors completed a pre-1914 appropriation on vacant public domain, the above general claim is broad enough to include such a contention. To assure a complete analysis the Board analyzes that claim now.

44. By the Act of July 26, 1866 (14 Stat. L. 253, Sec. 9) the Congress provided that the owners and possessors of vested and accrued appropriative water rights on the public domain, which were recognized by local customers, laws, and court

decisions, should be protected and that the rights of way for the same were acknowledged and confirmed. By the Act of July 9, 1870 (16 Stat. L. 218) the Congress further provided that all patents, pre-emptions, and homesteads should be subject to water and ditch rights so recognized by the Act of 1866.

45. In controversies between an appropriator of water on public land and a riparian who subsequently purchased such land, the California Supreme Court has variously determined the operative date from which the riparian's right to the use of the water will be protected. An early decision concluded that the riparian right of the pre-emptor attached as of the date of issuance of the patent. Osgood v. El Dorado Water and Deep Gravel Min. Co., 56 Cal. 571 (1880). In 1920 the court held that the granting of a patent related back to the date of filing of the entry on the land in the government land office and that the granting of the patent conferred the rights of a riparian owner upon the grantee from the date of such entry. Haight v. Costanich, 184 Cal. 426, 194 Pac. 26 (1920). However, in 1922 the court restated the rule to be that the inception of the right is the date of bona fide settlement with the intention of subsequently acquiring a complete title by patent. Pabst v. Finmand, 190 Cal. 124, 211 Pac. 11 (1922).

46. Since the chain of title for Parcel X, the land on which Diversion Point No. 148 is located, indicates that the United States patented Parcel X to the Central Pacific

Railroad Company on July 30, 1894, Exceptors Kerrigan's appropriation with a priority of 1890 may be an appropriation on vacant public domain. The effect of this conclusion would be to elevate the priority of the appropriation to a first priority and make it senior to riparian rights on Wildcat Creek. If this were land patented to a private individual, the issue would be by what date did the patentee enter into bona fide settlement with the intention of subsequently acquiring a complete title by patent. If the appropriation were initiated prior to said date of bona fide settlement, the appropriation would be senior to the riparian right part and parcel of the land subsequently granted to the Central Pacific Railroad Co. The Board is unaware of any case specifically resolving such a conflict where a corporation such as a railroad is involved. One possible argument is that the inception of the right relates back to the act of Congress authorizing the railroad grant in the first instance. Here the date of that act is July 25, 1866. Under this analysis the priority of the appropriation would have to be prior to the date of said act to have priority over the riparian rights part and parcel of the land. A significant point in determining this question is to review the patent from the United States to the Central Pacific Railroad Co. Unlike patents to private individuals, the patent contains no clause making the patent subject to vested and accrued water rights. The Board concludes that this obvious omission^{16/} means that

^{16/} A perusal of just a few patents to individuals after the Act of July 9, 1870 (16 Stat. L. 218) indicates that the United States was quite consistent in inserting this clause required by said act.

of July 9, 1870 to patent which had its inception in an Act of Congress enacted on July 25, 1866. In an analogous situation under the Swamp Land Act of 1850 (9 Stat.L. 519) The California Supreme Court determined that a patent issued to the State of California in 1895 for swamp land related back to the date of the Swamp Land Act, which was that Act of Congress which granted swamp and overflowed lands to various states. The court further concluded that appropriations initiated in 1871 and 1872 on the land conveyed by said patent were junior to the exercise of the riparian right part and parcel of said land. San Joaquin & Kings River Canal and Irrig. Co. v. Worswick, 187 Cal. 674, 203 P. 999 (1922). Accordingly, the Board concludes that John H. Sullivan, a predecessor of Exceptors Kerrigan, did not complete an appropriation on vacant public domain.

47. A right to the use of water may be acquired by prescription. To perfect such a right, the use of water must be: (1) actual, (2) open and notorious, (3) hostile and adverse to the original owner's title, (4) continuous and uninterrupted for five years, and (5) under a claim of right, and not by virtue of another right. Peck v. Howard, 73 Cal. App. 2d 208, 325, 167 P. 2d 753 (1946). However, when surplus water is available, no prescriptive title can be acquired because the use is not adverse.

48. Water Code Section 1052 states:

"The diversion or use of water subject to the provisions of this division other than as authorized in this division is a trespass, and the board may institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined.

Water Code Section 1052 was originally added as Section 38 of the Water Commission Act (Statutes 1913, c. 586, p. 38). In

1923 Section 38 was implemented by the addition of Section 1c to the Water Commission Act; Section 1c is now found in Water Code Section 1225.

Water Code Section 1225 states:

Except as provided in Article 2.5 (commencing with Section 1226) of this chapter, no right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this division.

49. The Water Commission Act was effective on December 19, 1914. A diversion and use of water after the act's effective date, under no claim of right, and without complying with said Act, constitutes merely an illegal diversion. See generally Craig, "Prescriptive Water Rights in California and the Necessity for a Valid Statutory Appropriation", 42 Calif. L. R. 219 (1954).

50. Exceptors Kerrigan allege that Diversion Point No. 148 has diverted the natural flow of Wildcat Creek to nonriparian land since 1890 and that this invasion of the riparian rights attaching to Parcels I and II has been actual, open and notorious, hostile and adverse, continuous and uninterrupted for five years and under claim of right, and not by virtue of another right. If Exceptor Kerrigan were correct in this assertion, the effect would be to elevate the priority of the valid appropriation discussed in Finding 40. The evidence abundantly supports the conclusion that the diversion to Parcel VII by the predecessors of Exceptors Kerrigan has been actual, open and notorious, continuous and uninterrupted for five years, under claim of right and not by virtue of another right. The more difficult question is whether it has

been adverse and hostile. The Board's investigation discloses that the Wildcat Creek watershed as presently augmented by the Grizzly Creek, Jackson Creek, and Camp Gulch watersheds provides enough water for both Exceptors Kerrigan and Exceptor Struckman. Prior to the adoption in 1928 of Article XIV, Section 3 of the California Constitution, which has been renumbered to be Article X, Section 2, a riparian proprietor was entitled to restrain any diversion to nonriparian land and the riparian proprietor was not required to show any damage to his use. Pabst v. Finmand, 190 Cal. 124, 211 P. 11 (1922). Article X, Section 2 of the California Constitution limited a riparian proprietor's use of water to a reasonable and beneficial use of water. Consequently, after the effective date of the 1928 amendment, a riparian proprietor would have to be damaged by an appropriation to restrain a diversion to nonriparian land.^{17/} Here, prior to 1928 the predecessors of Exceptors Kerrigan diverted water from Wildcat Creek to Parcels VII, VIII, and IX. The Board has previously concluded that Parcels VIII and IX are riparian and that Parcel VII is not. The Board concludes that the diversion to Parcel VII was adverse and hostile under the criteria stated in the Pabst case, because it was an invasion

^{17/} For post-1914 appropriations under the Water Commission Act or the successor provisions of the Water Code, the Board, or its predecessors, are required to find that unappropriated water exists to supply the applicant. This determination of the existence of unappropriated water necessarily requires the determination of the reasonable needs of riparians. During periods of drought, a junior appropriator with a water right entitlement from the Board is required to respect riparian rights by not operating its diversion structures. However, pre-1914 appropriators, as here, may be increasing their use under the doctrine of progressive development after 1928. This statement applies to them.

of the riparian right part and parcel of Parcels I and II. Accordingly, the Board concludes that prior to 1928 John H. Sullivan and his successors acquired a prescriptive right to divert and use water on Parcel VII to the extent of his beneficial use. As earlier stated, the irrigated acreage in Parcel VII at this time was 52 acres and a continuous flow of 1.04 cfs is necessary for the irrigation of said land using the duty of water of one cfs to 50 acres of flood irrigated land. However, there is a ditch loss of 1.5 cfs from the ditch leading from Diversion Point No. 148 as explained in Finding 9. The proportional share of the ditch loss for the 52 acres in Parcel VII is 0.56 cfs. The measure of the right is the sum of the use amount and of the ditch loss; the sum is 1.60 cfs. The season of diversion is the irrigation season. For the predecessors of Exceptors Kerrigan to have acquired a prescriptive right after 1928 for use on the additional 27 acres in Section 14, Exceptors Kerrigan were required to show damage by their use of water on the 27 acres to the use of water by the predecessors of Exceptors Kerrigan. Exceptors Kerrigan failed to show such damage and therefore no prescriptive right was acquired as a result of use of water on the 27 acres in Section 14 since 1951. Consequently, the appropriative right from the natural flow of Wildcat Creek which is appurtenant to said 27 acre is junior to the exercise of the riparian right on Wildcat Creek. A continuous flow of 0.54 cfs is necessary for the irrigation of said land using the normal duty of water for flood irrigated land. The proportional share of the ditch loss for the 27 acres is 0.29 cfs. The measure of the right is the sum of the use amount

and of the ditch loss; the sum is 0.83 cfs. The effect of this conclusion is to divide the appropriative right discussed in Finding 40 into two separate priority classes.

51. Exceptors Kerrigan claim of prescriptive right is also broad enough to include a claim of such a right for use on Parcels IV, VI, VIII, and IX. The Board has previously concluded that these parcels are riparian. While the law is well established that one riparian can obtain a prescriptive right adverse to downstream riparians, it must be clearly shown that the downstream riparian proprietor had actual notice of the adverse claim or that circumstances are such that such party must be presumed to have known of the adverse claim. Pabst v. Finmand, supra, at 129 . In the present situation there is nothing to indicate that the predecessors of Exceptors Kerrigan were exercising or attempting to exercise any more than their riparian right. The fact that the predecessors of Exceptors Kerrigan diverted substantially all the natural flow of Wildcat Creek after about July 1 of each year is not dispositive of the matter. This diversion did not damage use of water by the predecessors of Exceptor Struckman; rather this diversion provided tailwater for use on Parcels I and II. It was a diversion of benefit to owners of all riparian parcels. Accordingly, the Board concludes that the diversion of water to Parcels IV, VI, VIII, and IX by the predecessors of Exceptors Kerrigan did not result in the acquisition of a prescriptive right to the use of the natural flow of Wildcat Creek.

52. Exceptors Kerrigan desire to develop ten to twenty acres of land in Section 18, T40N, R8W, MDB&M for irrigation. Evidently, they propose this development solely in the exercise of their appropriative rights (RT 123). Two possible legal doctrines arguably may allow such development. The first is the doctrine of progressive development from Haight v. Costanich, 184 Cal. 426, 194 P. 26 (1920); the second is the provisions of Water Code Section 1706, which allows changes in the place of use of water appropriated prior to December 19, 1914.

53. The doctrine of progressive development requires both the intention at the time of the original diversion to apply the additional quantity of water to further needs and the beneficial use of said water within a reasonable time. Exceptors Kerrigan proposed use of water on this ten to twenty acres on Parcel III fails to satisfy either requirement. John H. Sullivan, the original appropriator of water for which Exceptor Kerrigan is a successor, did not own Parcel III in 1890; nor did he exercise any acts of ownership of said land. Accordingly, John A. Sullivan could not have had the intent to irrigate said land. Even if he did have such an intent, a time period of nearly eighty years separates the original intent from action by Exceptors Kerrigan to use beneficially water on said land. Such a delay does not constitute reasonable diligence. For these reasons, the Board concludes that Exceptors Kerrigan do not possess the right to irrigate the ten to twenty acres under the doctrine of progressive development.

54. Water Code Section 1706 states:

The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. (emphasis added)

Consequently, Exceptors Kerrigan can change the place of use to Parcel III "if others are not injured by such change". The Board has always interpreted Water Code Section 1706 and the analagous provision, Water Code Section 1701, relating to post-1914 appropriations as prohibiting any change which injures either a senior or junior right to divert and use water from the same source. The proposed change would reduce the quantity of water applied to Parcels IV, VI, VII, VIII, and IX and therefore reduce the tailwater which is collected in the channel of Wildcat Creek or in the ditch leading from Diversion Point No. 151. Since this reduction likewise will reduce the quantity of water available for diversion and use by Exceptor Struckman, the proposed change will injure the appropriative and riparian rights possessed by Exceptor Struckman. Consequently, the Board concludes that Exceptors Kerrigan have no right to extend the ditch leading from Diversion Point No. 148 to provide water to ten to twenty acres of allegedly irrigable land in Parcel III.^{18/}

^{18/} Exceptors Kerrigan predecessor did not file a Proof of Claim on the basis of riparian right to divert and use water on Parcel III, even though the Board has concluded that the southern portion of Parcel III is riparian. Whether Exceptors Kerrigan could make this claim at this late date is not raised by the issues before the Board and the Board expresses no opinion on this conceptual issue.

55. Exceptors Kerrigan may, for water management purposes, wish to use their pre-1914 appropriative right from Wildcat Creek with the 1890 priority on land other than Parcel VII and their pre-1914 appropriative right from Jackson Creek, Grizzly Creek, and Camp Gulch on land other than Parcels VII, VIII, and IX. As stated in Finding 54, the place of use of pre-1914 appropriative rights may be changed "if others are not injured by such change". Because of the relative location of Parcels VI, VII, VIII, and IX, the Board concludes that Water Code Section 1706 would allow Exceptors Kerrigan to use the pre-1914 appropriation from Wildcat Creek on Parcels VIII and IX in addition to Parcel VII. Moreover, Exceptors Kerrigan could use said water on the eleven acres of irrigable land in the southwest corner of Section 13. In each case, the water would flow across the lands of Exceptors Kerrigan and be collected either in the channel of Wildcat Creek above Diversion Point No. 151 or in the ditch leading from Diversion Point No. 151. In either case, the tailwater would be available for use by Exceptor Struckman and therefore he would not be injured. For the same reasons, the Board concludes that Water Code Section 1706 would allow Exceptors Kerrigan to use the pre-1914 appropriation from Jackson Creek, Grizzly Creek, and Camp Gulch on the eleven acres of irrigable land in the southwest corner of Section 13.^{19/}

^{19/} This expansion of the place of use does not increase the quantity of the right.

THE OWENS-HAYDEN EXCEPTION

Background

56. Exceptors Ronald and Domina Owens, hereinafter referred to as Exceptors Owens, and affected party Nerva Hayden, hereinafter referred to as "N. Hayden", divert water from the East Fork Scott River at Diversion Point No. 81 for use on lands riparian to the East Fork Scott River. Said water is conveyed to the place of use by an earthen gravity flow ditch, commonly called the "East Fork Callahan Ditch".

57. Exceptors Owens presently irrigate 24 acres of irrigable pasture and hay land with water diverted at Diversion Point No. 81. The Order of Determination allocates in Schedule B7 to Exceptors Owens for diversion of water at Diversion Point No. 81 a continuous flow of 0.01 cfs for domestic use incidental to an irrigation use in a first priority allotment, a continuous flow of 0.97 cfs for irrigation use in a third priority allotment, and a continuous flow of 0.48 cfs for irrigation use in a surplus class right allotment. The quantity of water allocated in the first and third priority allotment was calculated by using a duty of water of 1 cfs to 25 acres of flood irrigated land for a use of 0.98 cfs. The surplus class right allotment of 0.48 cfs is Exceptors Owens' share of the maximum measured flow of the East Fork Callahan Ditch. Said surplus right provides additional water to saturate fully the soil with water during the spring runoff and therefore to reduce the need for water toward the end of the season.

58. N. Hayden presently irrigates 24 acres of irrigable pasture and hay land with water diverted at Diversion Point No.

81. The Order of Determination allocates in Schedule B7 to N. Hayden for diversion of water at Diversion Point No. 81 a continuous flow of 0.01 cfs for domestic use incidental to an irrigation use in a first priority allotment, a continuous flow of 0.97 cfs for irrigation use in a third priority allotment, and a continuous flow of 0.48 cfs for irrigation use in a surplus class right allotment. The quantity of water allocated

in the first and third priority allotment was calculated by using a duty of water of 1 cfs to 25 acres of flood irrigated land for a use of 0.98 cfs. The surplus class right allocation of 0.48 cfs is N. Hayden's share of the maximum measured flow of the East Fork Callahan Ditch. Said surplus right serves the same purpose as the surplus right allotment for Exceptors Owens.

59. N. Hayden also diverts water from the East Fork Scott River at Diversion Point No. 67 for use on lands riparian to the East Fork Scott River. Said water is conveyed to the place of use by an earthen gravity flow ditch, commonly called the "Masterson Ditch". N. Hayden presently irrigates 38 acres of irrigable pasture and hay land with water diverted at Diversion Point No. 67. The Order of Determination allocates in Schedule B7 to N. Hayden for diversion of water at Diversion Point No. 67 a continuous flow of 0.01 cfs for domestic use incidental to an irrigation use in a first priority allotment, a continuous

flow of 2.75 cfs for irrigation use in a second priority allotment, and a continuous flow of 0.76 cfs in a surplus class right allotment. The quantity of water allocated in the first and second priority allotment was calculated by using a duty of water of 1 cfs for 50 acres of flood irrigated land for a use of 0.76 cfs and by adding a measured ditch loss of 2.0 cfs. The surplus class right allotment of 0.76 cfs is the remaining maximum measured flow in the Masterson Ditch. Said surplus right serves the same purpose as the surplus right allotment for Exceptors Owens.

in the first and second priority allotment was calculated by

Nature of the Controversy

60. Exceptors Owens request three changes in the Order of Determination in their Notice of Exceptions.

a. That the amounts of land upon which said waters are to be used be increased to conform to the amounts set forth in the Proof of Claim of Water Right heretofore filed herein.

b. That the amounts of water awarded to Exceptors Owens be increased to conform to that amount claimed in the Proof of Claim of Water Right heretofore filed herein.

c. That the date of priority of the respective water rights each be changed to a first and prior right and superior to any rights in the respective streams as to which such adjudication and determination is proposed.

Resolution of the Controversy

61. The changes requested in subdivision (a) and (b) are not supported by a preponderance of the evidence. Rather the request is made because of an apparent misunderstanding of the documents on file with the Board. The sequence of events is as follows:

a. Exceptors Owens file a Proof of Claim for the diversion of 3.5 cfs at Diversion Point No. 81 for use on 48 acres. At the time of filing the Proof of Claim Exceptors Owens were tenants in common with other persons of the place of use for water diverted at Diversion Point No. 81.

b. About the same time, N. Hayden filed a Proof of Claim for the diversion of 6 cfs at Diversion Point No. 81 for use on 30 acres. N. Hayden is one of the tenants in common of the place of use for water diverted at Diversion Point No. 81.

c. The Board's "Report on Water Supply and Use" concludes that only 42 acres are irrigated with water diverted at Diversion Point No. 81. The irrigated acreage was subsequently reevaluated to be 48 acres.

d. The place of use is partitioned to provide Exceptors Owens a total acreage of 24 acres that are irrigated by water diverted at Diversion Point No. 81 and to provide N. Hayden a total acreage of 24 acres that are irrigated by water diverted at Diversion Point No. 81.

62. Several conclusions are evident from this sequence of events. Exceptors Owens' Proof of Claim was filed for the total acreage irrigated with water diverted at Diversion Point No. 81; N. Hayden's Proof of Claim was filed for less than the

total acreage irrigated with water diverted at Diversion Point No. 81; the Proofs of Claim filed by Exceptors Owens and N. Hayden overlap. Consequently, the Order of Determination should, and does, accurately reflect the present irrigated acreage of Exceptors Owens and of N. Hayden.

63. The Proofs of Claim filed for diversion of water at Diversion Point No. 81 indicate a diversion substantially in excess of the allotments set forth in Schedule B7 of the Order of Determination. However, the exercise of any water rights in this state is limited by the provisions of Section 2, Article X of the California Constitution, which prohibits the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The Board established a general duty of water of one cfs to 50 acres of flood irrigated land as being reasonably necessary for said use in the Scott River Adjudication. However, the Board doubled that duty of water to one cfs to 25 acres of flood irrigated land with water diverted at Diversion Point No. 81, because of the more porous condition of the place of use (RT 149-150). In effect, Exceptors Owens are requesting in subdivision (b) of Finding 60 a more generous duty of water than the one cfs to 25 acres of flood irrigated land. The Board concludes that the amounts allotted to Exceptors Owens and N. Hayden in the Order of Determination are reasonably necessary for the irrigation of said place of use; a more generous duty of water would constitute an unreasonable use of water.

64. The Board understands the change requested in subdivision (c) of Finding 60 to be a change in the priority of the allotment of water diverted by the East Fork Callahan Ditch (Diversion Point No. 81) as it relates to the diversion of water by the Masterson Ditch (Diversion Point No. 67). During the Board's initial field investigation which led to the adoption of the Order of Determination, the Board understood that the Masterson Ditch and East Fork Callahan Ditch had been operated in such a manner as to give the place of use of the Masterson Ditch (Diversion Point No. 67) the first call on the water. This understanding was the reason for placing the allocation of 2.75 cfs for the Masterson Ditch (Diversion Point No. 67) in a second priority allotment and for placing the allocation of 0.97 cfs for Exceptors Owens and of 0.97 cfs for N. Hayden in a third priority allotment. In addition, the Board placed the allocation of 0.79 cfs for R. Hayden for his diversion at Diversion Point No. 82 in a third priority allotment. Since the Board adopted the Order of Determination, it has become aware that its previous understanding was incorrect and that when a shortage occurred water was shared between the diversions at Diversion Points No. 67, 81, and 82. For this reason the Board concludes that said allocations should be placed in the same priority allotment.

65. Exceptors Owens and affected party N. Hayden evidently are agreeable to having the diversions at Diversion Points No. 67, 81, and 82 in the same priority class (RT 179-180). The only problem is one of management of the two diversions

such that the water is equitably shared in times of insufficient water for all diversions. Paragraph 23 of the Order of Determination already addresses this concern. Paragraph 23 states in pertinent part:

The term "priority class" when used here means a class of rights each one of which is equal in priority and correlative right with all other rights of the same class appearing within the same schedule, except as provided in Paragraph 25, so that in the event of a supply of water sufficient to supply only part of the entitlement of any specific priority class, said available supply shall be prorated in accordance with allotments in that priority class. (Emphasis added)

Consequently, Exceptors Owens and affected party N. Hayden would be under an obligation to share the water in times of deficiencies. In the event they themselves cannot manage that in a neighborly manner, either party has the option to request the Department of Water Resources to appoint a watermaster. Said watermaster would measure the flows and operate the diversion structures. Furthermore Exceptors Owens and affected party N. Hayden desire to rotate in the use of water diverted by the East Fork Callahan Ditch. Although the Order of Determination contains general provisions on rotation, the Board concludes that a special provision is necessary. Said provision is contained in the amended schedule.

66. The Board received on February 23, 1979, a letter dated February 20, 1979, from Exceptors Owens. They requested that

the hearing held in this matter be reopened for the receipt of additional evidence. Affected party N. Hayden opposes said request. Exceptors Owens and their attorney of record were sent a copy of the Notice of Hearing in this matter; Exceptors Owens through their attorney of record made an appearance at the hearing on December 15, 1978; Exceptors Owens presented evidence and examined opposing witnesses at said hearing. The parties to this adjudication have a responsibility to present their claims in the orderly and timely manner contemplated by Chapter 3, Part 3, Division 2 of the Water Code, commencing with Section 2500.

Exceptors Owens state no basis in this letter why the evidence which they now proffer could not have been produced at said hearing in the exercise of reasonable diligence, nor have Exceptors Owens stated any basis to excuse their failure to exercise reasonable diligence in this matter. Accordingly, the Board concludes that Exceptors Owens' request be denied.

THE GUSSMAN EXCEPTION

Background

67. Exceptor C. A. Gussman, hereinafter referred to as Exceptor Gussman, diverts water by an earthen dam from Sugar Creek at Diversion Point No. 163 for use within the Sugar Creek watershed. Said water is conveyed to the place of use within the SW $\frac{1}{4}$ of Section 10, T40N, R9W, MDB&M by an earthen gravity flow ditch. The place of use consists of a proposed placer gold mining operation near the headwaters of Tiger Fork, which is tributary to Sugar Creek.

68. The Order of Determination in Schedule B11 on page 100 allocates to Hymet Corporation a continuous flow of 2.50 cfs in a fourth priority allotment and 3.50 cfs in a surplus class priority allotment. Said allotment is conditioned by the following statement contained in Footnote b to Schedule B11.

"This allotment is for mining purposes only and no water in excess of that necessary for mining shall be diverted. Water used for mining shall be returned to Tiger Fork as near to the place of use as practical and the quality of the water returned to the stream after use shall meet all the requirements set by the California Regional Water Quality Control Board, North Coast Region. This allotment shall only be diverted from the end of the irrigation season until July 1 of the following year."

69. The Order of Determination defines on page 20 in paragraph 25 a surplus class right as follows:

"Water may be diverted in surplus class whenever all downstream diversion systems have sufficient surface stream flow available to satisfy their numbered priority class rights, provided that an amount of water equal to or greater than the amount being diverted in surplus class be allowed to flow unobstructed past the diversion facilities for the benefit of fish, and provided further that the allotments to the U. S. Forest Service in Paragraph 45 are satisfied."

70. Exceptor Gussman also diverts water at Diversion Point No. 175 from a spring rising in the SE $\frac{1}{4}$ of Section 10, T40N, R9W, MDB&M. The Order of Determination in Schedule A allocates the entire flow of the spring to Hymet Corporation. During the field investigation Hymet Corporation was attempting to purchase the mining claims of Exceptor Gussman. Since then Hymet Corporation has defaulted and Exceptor Gussman is in lawful possession of the lands shown to be in the possession of Hymet Corporation in the Order of Determination.

71. A possible major effect of the placer gold mining operation will be on the water quality of the receiving water. Since the placer gold mining operation contemplated a discharge of pollutants to water of the United States, Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500^{19/} and Chapter 5.5, Division 7 of the California Water Code, commencing with Section 13370, required Exceptor Gussman to file a Report of Waste Discharge in order to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Regional Water Quality Control Board, North Coast Region, hereinafter referred to as the "Regional Board". Exceptor Gussman filed a Report of Waste Discharge and he described his proposed operation as follows: After the use of the water, he proposed to discharge the placer gold mine waste to tailing ponds located on his property. He then proposed to discharge the clarified water to Tiger Fork. On June 26, 1974 the Regional Board adopted Order No. 74-120 (NPDES No. CA 0023591) prescribing waste discharge requirements for said placer gold mining operation. Said order establishes effluent limitations, receiving water limitations, and monitoring provisions to assure the protection of water quality in Tiger Fork and Sugar Creek.

72. The proposed placer gold mining operation will by itself not involve a substantial consumptive use of water. The major loss of water will be the ditch loss in the over one mile long earthen ditch from Diversion Point No. 163 to the place

^{19/} Section 402 is codified in Section 1342 of Title 33 of the United States Code. Section 402 was amended by the Clean Water Act of 1977 (Pub. L. 95-217).

of use. In addition, there may be some evaporation loss from the tailing ponds prior to discharge to Tiger Fork. Exceptor Gussman or a possible successor in interest is considering whether to reduce these losses by lining the ditch and covering the tailing ponds. With the exception of the above ditch loss and evaporation loss, the flow of Sugar Creek below the confluence of Sugar Creek and Tiger Fork is not substantially diminished by the water diverted by Exceptor Gussman at Diversion Point No. 163 because water diverted at Diversion Point No. 163 is discharged after use to Tiger Fork thence Sugar Creek. Sugar Creek above the confluence of Sugar Creek and Tiger Fork is substantially diminished by the water diverted by Exceptor Gussman at Diversion Point No. 163.

73. Affected Party Andrew L. Darbee diverts water from Sugar Creek at Diversion Point No. 173 for irrigation of 26 acres in Section 12, T40N, R9W, MDB&M and of 59 acres in Section 7, T40N, R9W, MDB&M. Since Diversion Point No. 173 is downstream of Diversion Point No. 163 and is upstream of the confluence of Sugar Creek and Tiger Fork, Exceptor Gussman's diversion at Diversion Point No. 163 substantially diminishes the flow of water in Sugar Creek available for diversion by affected Party Andrew L. Darbee at Diversion Point No. 173.

74. Affected Parties Quentin Tobias and Glenn C. Barnes divert water from Sugar Creek at Diversion Point No. 179 for irrigation of 172 acres owned by Quentin Tobias in Section 14, T41N, R9W, MDB&M and 141 acres owned by Glenn C. Barnes in Section 23 and 24 both in T41N, R9W, MEB&M. Since

Diversion Point No. 179 is downstream of the confluence of Tiger Fork and Sugar Creek, Exceptor Gussman's diversion at Diversion Point No. 179 does not substantially diminish the flow of water in Sugar Creek available for diversion by Affected Parties Quentin Tobias and Glenn C. Barnes, except for the ditch loss and evaporation loss sustained by Exceptor Gussman and explained above in Finding 67.

75. Affected Party Lawrence O. Bunting diverts water from Sugar Creek at Diversion Point No. 181 for irrigation of 32 acres in Section 12, T40N, R9W, MDB&M. Since Diversion Point No. 181 is downstream of the confluence of Tiger Fork and Sugar Creek, Exceptor Gussman's diversion at Diversion Point No. 163 does not substantially diminish the flow of water in Sugar Creek available for diversion by Affected Party Lawrence O. Bunting, except for the ditch loss and evaporation loss sustained by Exceptor Gussman and explained above in Finding 67.

Nature of the Controversy

76. Exceptor Gussman states two bases for his exceptions:

- a. Hymet Corporation is incorrectly designated as the owner of certain lands and water rights in the Order of Determination. Exceptor Gussman requests that he be designated as the owner in lieu of Hymet Corporation of the right to divert water at Diversion Point No. 163 and at Diversion Point No. 175 in appropriate portions of the Order of Determination.

b. The season of diversion is improperly limited to the end of the irrigation season (about October 16 of each year) to July 1 of the succeeding year.

77. The Board concurs with Exceptor Gussman that the Order of Determination should be amended to show Exceptor Gussman as the owner of the right to divert water at Diversion Point No. 163 and Diversion Point No. 175.

78. The Board in attempting to reach an equitable settlement of this exception proposed to delete the last sentence in footnote (b) on Page 100 and substitute the following sentence:

"The 2.50 cfs allotment in fourth priority may be diverted only from the end of the irrigation season until July 1 of the following year. The 3.50 cfs allotment in surplus priority may be diverted throughout the year."

The Board letter dated November 27, 1978 requested comments from all affected persons on this proposal. The Board received no adverse written comments prior to the hearing held on December 15, 1978. Exceptor Gussman, Glenn C. Barnes, and Lawrence O. Bunting appeared and made statements at the hearing. Glenn C. Barnes and Exceptor Gussman agreed to the proposed amendment. Lawrence O. Bunting was quite concerned about the possible water quality degradation from the proposed mining operation. He did not otherwise oppose the proposed amendment. The Board subsequently sent all affected persons a copy of Order No. 74-120, which is the NPDES permit for the proposed mining operation as explained in Finding No. 71. Said order adequately assures the protection of water

quality in Tiger Fork and Sugar Creek. Furthermore, said order expires five years from the date of adoption, which was June 26, 1974. Consequently, Lawrence O. Bunting will have the opportunity to present any further concerns regarding water quality when the NPDES permit is up for renewal. Quentin Tobias, Andrew L. Darbee, and Carl Blomquist did not make an appearance at the hearing held in this matter.

CONCLUSIONS

Struckman-Kerrigan Exception and Kerrigan "Notice of Opposition"

79. The Board concludes as follows:

- a. Neither Exceptors Kerrigan or Exceptor Struckman are successors in interest to the pre-1914 appropriative water rights initiated by J. D. Heard and F. Beaudry.
- b. Exceptors Kerrigan are successors in interest to a pre-1914 appropriation from Jackson Creek, Grizzly Creek and Camp Gulch with a priority of 1906. The place of use is 128 acres in Section 14 and 23 of T40N, R9W, MDB&M. The quantity of the right is 4.10 cfs. (Finding 29)
- c. Exceptor Struckman is not a successor in interest to a pre-1914 appropriative right to divert and use the waters of Jackson Creek at Diversion Point No. 91, of Grizzly Creek at Diversion Point No. 96, and of Camp Gulch at an undesignated diversion point.
- d. Exceptor Struckman is a successor in interest to a pre-1914 appropriative water right to divert water

originating in Jackson Creek, Grizzly Creek, and Camp Gulch at Diversion Point No. 151 for use on Parcel I.

e. Exceptors Kerrigan own Parcels III, IV, V, VI, VII, VIII, and IX and Parcels IV, V, VIII, and IX are riparian to Wildcat Creek. The southern portion of Parcels III and VI are riparian to Wildcat Creek; Parcel VII is not riparian to Wildcat Creek. A continuous flow of 2.33 cfs provides reasonable irrigation of said riparian land.

f. Exceptor Struckman owns Parcels I and II and Parcels I and II are riparian to Wildcat Creek. A continuous flow of 1.84 cfs provides reasonable irrigation of said riparian land.

g. The predecessors of Exceptors Kerrigan completed a pre-1914 appropriation to divert the natural flow of Wildcat Creek at Diversion Point No. 148 for use on 79 acres in Parcel VII. This pre-1914 appropriation was not an appropriation on vacant public domain. The quantity of the right is a continuous flow of 2.43 cfs.

h. Exceptor Struckman's riparian right was diminished by use of water on nonriparian land by predecessors of Exceptors Kerrigan. The effect of this conclusion is to split the priority of the appropriative right discussed next above as follows:

The pre-1914 appropriative right is a first priority right to use the natural flow of Wildcat Creek on the 52 acres, which is in Parcel VII and in Section 23, insofar as it relates to a continuous flow of 1.60 cfs; the riparian

parcels possess a second priority right to use the natural flow of Wildcat Creek; the remaining 27 acres of irrigable land in Parcel VII which can be irrigated from Diversion Point No. 148 have a third priority right to divert a continuous flow of 0.83 cfs from the natural flow of Wildcat Creek.

i. Exceptors Kerrigan do not possess any right to develop the ten to twenty acres of land in Parcel III under claim of appropriative right.

80. The foregoing conclusions present several practical problems of managing the diversions from Wildcat Creek, Jackson Creek, Grizzly Creek, and Camp Gulch. The determination of the natural flow of Wildcat Creek at Diversion Point No. 148 must be made; the foreign water and natural flow have different places of use; the division of the natural flow of Wildcat Creek between Exceptors Kerrigan and Exceptor Struckman must be made.

a. The natural flow of Wildcat Creek at Diversion Point No. 148 may be determined by subtracting the foreign water imported from Jackson Creek, Grizzly Creek, and Camp Gulch from the total flow of Wildcat Creek at Diversion Point No. 148. Several alternative ways exist of measuring the natural flow and the appropriateness of the method depends upon the hydrologic condition of Wildcat Creek. Since the parties desire a watermaster, the Board concludes that the watermaster should retain

the flexibility to use the method most appropriate according to the hydrologic condition of Wildcat Creek and that the schedule should define only the term natural flow.

b. The second problem is in part solved by the consolidation of the places of use of the pre-1914 appropriative rights and riparian rights to the extent allowed by applicable law. Finding 53 concludes that the pre-1914 appropriative rights may have the same place of use of all riparian parcels except that irrigable land of Exceptors Kerrigan east of the eleven acres of irrigable land in Parcel VI in the SW $\frac{1}{4}$ of Section 13. To assure that this remaining difference in the place of use as recognized by the parties an additional measurement point is needed. Said point is designated on Map A as Measurement Point A. Sheet 15 of Plate I of the Order of Determination should be amended also to show Measurement Point A. Exceptors Kerrigan own nine acres of irrigable land in Parcel VI and fifteen acres of irrigable land in Parcel IV which are down ditch of Measurement Point A. The proportional share of the water needed to irrigate said land is a continuous flow of 0.48 cfs. Consequently, Exceptors Kerrigan should be limited to diverting a flow of 0.48 cfs past Measurement Point A. Finally, said 24 acres can only be irrigated in the exercise of a riparian right.

c. Exceptors Kerrigan's diversion must be operated in a manner to recognize the riparian and appropriate rights of Exceptor Struckman. As the analysis indicates, Exceptors Kerrigan have the first right to 1.60 cfs of natural flow of Wildcat Creek. In the event a greater flow exists, Exceptors Kerrigan and Exceptor Struckman have to share the natural flow. A measurement point designated as Measurement Point B on Map A assists in said division. Said measurement point is at the intersection of the ditch leading from Diversion Point No. 151 with the boundary of Parcel II. When the natural flow in Wildcat Creek exceeds 6.6 cfs, the sum of the allotments for Exceptors Kerrigan and Exceptor Struckman for Diversion Point Nos. 148 and 151, respectively, Exceptors Kerrigan can divert 4.76 cfs, the total amount needed for the irrigation of their land. When the flow equals or exceeds 5.77 cfs but is less than 6.6 cfs, Exceptors Kerrigan's third priority rights of 0.83 must recognize the prior riparian right of Exceptor Struckman. Consequently, Exceptors Kerrigan can divert only 3.93 cfs in such event. However, since there is significant tail-water from flood irrigation, Exceptor Struckman would not be hurt if his allotted amount were available for diversion at Diversion Point No. 151 or at Measurement Point B. If 1.84 cfs were available at either point, Exceptors Kerrigan should be allowed the option of diverting 4.76 cfs. When the flow exceeds 1.60 cfs but is less than 5.77 cfs,

Exceptors Kerrigan and Exceptor Struckman have to share the available natural flow. Exceptors Kerrigan's share of the amount in excess of 1.60 cfs is 56 percent; Exceptor Struckman's share is 44 percent. However, since there will be significant tailwater even with this reduced amount of irrigation, Exceptors Kerrigan should be allowed the option of diverting 4.76 cfs when 1.84 cfs is available for Exceptor Struckman at either Diversion Point No. 151 or at Measurement Point B. When the flow recedes to 1.60 cfs or less, Exceptors Kerrigan are entitled to the entire natural flow, except that the only basis of right to irrigate the 24 acres past said Measurement Point A is a riparian right. If Exceptors Kerrigan elect to irrigate said land when the natural flow is less than 1.60 cfs, Exceptors Kerrigan must share some water with Exceptor Struckman. The Board realizes that the foregoing schedule is complicated. However, it assures the maximum beneficial use of water by Exceptors Kerrigan and by Exceptor Struckman because it recognizes that significant amounts of tailwater will occur with flood irrigation. If Exceptors Kerrigan for whatever reason desire to forego the benefits of said management because in their minds they have to "guarantee" the delivery of 1.84 cfs at Diversion Point No. 151 or at Measurement Point B, they can always divert water in the alternative schedule outlined. However, such action will be to their own detriment.

d. The Order of Determination should be amended to reflect the foregoing conclusions. The amended schedules for the diversion and use of water are attached.

The Owens-Hayden Exception

81. The Board concludes as follows:

a. The Order of Determination accurately reflects the present irrigated acreage of Exceptors Owens and N. Hayden.

b. The amounts allotted in the Order of Determination are reasonably necessary for the irrigation of said place of use; a more generous duty of water would constitute the approval of an unreasonable use of water.

c. The Order of Determination should be amended to change the priority for the diversion of water at Diversion Points No. 67, 81, and 82 to the same priority. The amended schedule for said diversions is attached.

d. The Order of Determination should be amended to include the special rotation provision in the amended schedule.

The Gussman Exception

82. The Board concludes as follows:

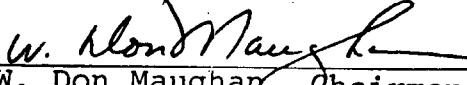
a. The order of Determination should be amended to show Exceptor Gussman as the owner of the right to divert water at Diversion Point No. 163 and Diversion Point No. 175.

b. The last sentence in footnote (b) on page 100 should be deleted and the following sentence should be substituted:

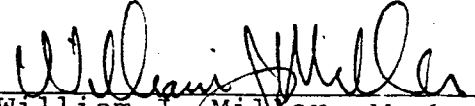
"The 2.50 cfs allotment in fourth priority may be diverted only from the end of the irrigation season until July 1 of the following year. The 3.50 cfs allotment in surplus priority may be diverted throughout the year."

Dated: MAR 15 1979

WE CONCUR:



W. Don Maughan, Chairman



William J. Miller, Member



L. L. Mitchell, Member

APPENDIX A

CHAIN OF TITLE

Appendix A shows the chain of Title for those lands designated as Parcels I - X on Map A and for certain appropriative water rights. The names of the persons are as indicated by the particular document even though another document may indicate a slightly different spelling. This chain of title utilizes the following method of abbreviation: The abbreviation, 6/Pat/116, indicates that the document is recorded in Book 6 of Patents at Page 116; the abbreviation 160/OR/477, indicates that the document is recorded in Book 160 of Official Records at Page 477; the abbreviation, 39/Dds/137, indicates that the document is recorded in Book 39 of Deeds at Page 137; the abbreviation, 3/D of Dist./154, indicates that the document is recorded in Book 3 of Decrees of Distribution at Page 154; the abbreviation, 4/WR/161, indicates that the document is recorded in Book 4 of Water Rights at page 161. This chain of title does not include references to documents relating to unpatented mining claims.

Parcel 1

1. February 17, 1894. United States to Charles Macaulay. Recorded on October 18, 1895. 6/Pat/116
2. February 18, 1899. Estate of C. A. Macauley to Bridget Macauley Recorded on May 15, 1944. 160/OR/477
3. August 18, 1899. Bridget Macaulay to Margaret Ankeny. Recorded on August 21, 1899. 47/Dds/196
4. December 13, 1934. Margaret A. Ankeny to Julius E. and Clara A. Doering. Recorded on January 30, 1935. 60/OR/103
5. Affidavits of Lost Deed
 - A. December 13, 1934. Margaret A. Ankeny. Recorded on March 28, 1935. 44/OR/291

- B. November 24, 1934. Chas. Farrington. Recorded on March 28, 1935. 44/OR/291
- C. November 24, 1934. Julius E. Doering and Clara A. Doering. Recorded on March 28, 1935. 44/OR/291
6. January 21, 1936. Clara A. Doering to Julius E. Doering. Recorded on January 27, 1936. 23/OR/354
7. September 11, 1941. Julius E. Doering to Martha Doering (1/4) and Francis Webb (3/4). Recorded on September 11, 1941. 128/OR/181.
8. May 8, 1944. Julius E. Doering, Martha Doering and Francis Webb to Oscar J. and Mary M. Henry. Recorded on May 15, 1944. 160/OR/478 (Agreement for Sale)
9. November 30, 1948. Julius E. Doering, Martha Doering and Francis Webb to Oscar J. and Mary M. Henry. Recorded on July 21, 1949. 245/OR/85
10. August 8, 1949. Oscar J. and Mary M. Henry to Allen G. and Evelyn K. Moore. Recorded on August 18, 1949. 246/OR/280
11. May 18, 1976. Allen G. and Evelyn K. Moore to Clarence A. and Arvilla K. Dudley. Recorded on June 14, 1976. 757/OR/425
12. July 5, 1977. Clarence A. and Arvilla K. Dudley to Glenn N. and Virginia A. Struckman. Recorded on July 12, 1977. 787/OR/17

Parcel II

1. July 30, 1894. United States to Central Pacific Railroad Company. Recorded on October 19, 1896. 2/Pat/321.
2. Unknown Conveyances

3. November 6, 1944. Southern Pacific Land Company to Charles W. and Mildred Genevieve Thompson. Recorded on February 2, 1945. 170/OR/15.
4. October 27, 1944. Charles W. and Mildred Genevieve Thompson to Cornelius F. Sullivan. Recorded on February 2, 1945. 170/OR/16.
5. November 8, 1949. Cornelius F. Sullivan to Allen G. and Evelyn K. Moore. Recorded on December 12, 1949. 251/OR/215
6. On and after May 18, 1976 same as Parcel I.

8. May 8, 1944. Julius E. Doernbecher, Trustee, and E. J. ...
Parcel III

Same as Parcel II through July 5, 1977.

9. November 3, 1948. Julius E. Doernbecher, Trustee, and E. J. ...
Parcel IV

1. Same as Parcel I through August 8, 1949
2. November 7, 1949. Allen G. and Evelyn K. Moore to Cornelius F. Sullivan. Recorded on December 12, 1949. 251/OR/214.
3. March 28, 1955. Estate of Cornelius F. Sullivan to Frank B. Sullivan (1/5), Robert B. Sullivan (1/5), James B. Sullivan (1/5), Margaret M. Simmons (1/5), and William Homer Schneider (1/5). Recorded on March 29, 1955. 347/OR/239. This document incorrectly describes the lands held by Cornelius F. Sullivan at his death.
4. July 25, 1956. Estate of Frank D. Sullivan to Robert P. Sullivan (1/4 of a 1/5 interest, James B. Sullivan (1/4 of a 1/5 interest), William Homer Schneider (1/4 of a 1/5 interest), and Margaret M. Simmons (1/4 of a 1/5 interest). Recorded on July 25, 1956. 372/OR/148. This document incorrectly describes the lands held by Frank D. Sullivan at his death. The effect of this conveyance was as follows:

Robert P. Sullivan (1/4)

James B. Sullivan (1/4)

William Homer Schneider (1/4)

Margaret M. Simmons (1/4)

5. August 2, 1972. James B. Sullivan to James B. Sullivan for life, remainder to Margaret S. Simmons. Recorded on August 22, 1972. 672/OR/689. This document incorrectly describes the lands held by James B. Sullivan and therefore transferred to Margaret S. Simmons. The effect of this conveyance was as follows:

James B. Sullivan 1/4 interest for life

Robert P. Sullivan 1/4 interest

William H. Schneider 1/4 interest

Margaret M. Simmons 1/4 present interest

1/4 remainder interest

6. May 23, 1974. Estate of Robert Patrick Sullivan to Homer Schneider (1/2 of 1/4) and Margaret Simmons (1/2 of 1/4). Recorded on June 7, 1974. 711/OR/670. The effect of this conveyance was as follows:

James B. Sullivan 1/4 interest for life

Homer Schneider 3/8 present interest

Margaret Simmons 3/8 present interest

1/4 remainder interest

7. November 26, 1974. Margaret M. Simmons, James B. Sullivan, and Homer Schneider to H. Hearst and Jeanne L. Dillman. Recorded on July 10, 1975. 735/OR/669.

8. April 4, 1977. H. Hearst and Jeanne L. Dillman to Terrence J. and Janice L. Kerrigan. Recorded on April 28, 1977. 780/OR/592.

Parcel V

1. Same as Parcel I through December 13, 1934.
2. July 27, 1935. Julius E. and Clara A. Doering to Edgar M. and Cathern Lull. Recorded on March 25, 1936. 27/OR/483.
3. The documents necessary to complete this chain of title were not supplied.

James B. Sullivan to Parcel VI

1. Same as Parcel II through October 27, 1944.
2. March 28, 1955. Estate of Cornelius F. Sullivan to Frank B. Sullivan (1/5), Robert B. Sullivan (1/5), James B. Sullivan (1/5), Margaret M. Simmons (1/5), and William Homer Schneider (1/5). Recorded on March 29, 1955. 347/OR/239. This document incorrectly describes the lands held by Cornelius F. Sullivan at his death.
3. July 25, 1956. Estate of Frank D. Sullivan to Robert P. Sullivan (1/4 of a 1/5 interest), James B. Sullivan (1/4 of a 1/5 interest), William Homer Schneider (1/4 of a 1/5 interest) and Margaret M. Simmons (1/4 of a 1/5 interest). Recorded on July 25, 1956. 372/OR/148. This document incorrectly describes the lands held by Frank D. Sullivan. The effect of this conveyance was as follows:

Robert P. Sullivan (1/4)

James B. Sullivan (1/4)

William H. Schneider (1/4)

Margaret M. Simmons (1/4)

4. August 2, 1972. James B. Sullivan to James B. Sullivan for life, remainder to Margaret S. Simmons. Recorded on August 22, 1972. 672/OR/689. This document incorrectly describes the lands held by James B. Sullivan and therefore transferred to Margaret S. Simmons. The effect of this conveyance was as follows:

James B. Sullivan 1/4 interest for life

Robert P. Sullivan 1/4 interest

William H. Schneider 1/4 interest

Margaret M. Simmons 1/4 present interest

1/4 remainder interest

5. May 23, 1974. Estate of Robert Patrick Sullivan to Homer Schneider (1/2 of 1/4) and Margaret Simmons (1/2 of 1/4). Recorded on June 7, 1974. 711/OR/670. The effect of this conveyance was as follows:

James B. Sullivan 1/4 interest for life

Homer Schneider 3/8 present interest

Margaret Simmons 3/8 present interest

1/4 remainder interest

6. November 26, 1974. Margaret M. Simmons, James B. Sullivan, and Homer Schneider to H. Hearst and Jeanne L. Dillman. Recorded on July 10, 1975. 735/OR/669.

7. April 4, 1977. H. Hearst and Jeanne L. Dillman to Terrence J. and Janice L. Kerrigan. Recorded on April 28, 1977. 780/OR/592

Parcel VII

1. August 24, 1888. United States to James H. Sullivan. Recorded April 15, 1896. 6/Pat/124.

2. May 12, 1913. Estate of James H. Sullivan to Margaret M. Davis (1/2), Cornelius F. Sullivan (1/14), Mary Nelson (1/14), Frank

Sullivan (1/14), Jerome Sullivan (1/14), Robert Sullivan (1/14) Bernard Sullivan (1/14), Margaret Schneider (1/28) and Homer Schneider (1/28). Recorded on December 13, 1973. 700/OR/393.

3. July 23, 1927. Estate of Jerome Sullivan to Margaret M. Davis(1/14) Recorded on December 13, 1973. 700/OR/401. The effect of this conveyance is to vest in Margaret M. Davis with her existing interest an undivided 4/7 interest to parcel VII ($7/14 + 1/14 = 8/14$).
4. January 11, 1932. Estate of Margaret Mary Davis to Cornelius F. Sullivan (1/6 of 4/7 interest), Marie Nelson (1/6 of 4/7 interest), Frank D. Sullivan (1/6 of 4/7 interest), Robert P. Sullivan(1/6 of 4/7 interest), J. B. Sullivan (1/6 of 4/7 interest), Margaret Schneider (1/12 of 4/7 interest), and Homer Schneider (1/12 of 4/7 interest). Recorded on December 13, 1973. 700/OR/398.

The effect of this conveyance was as follows:

Cornelius F. Sullivan	1/6 interest
Marie Nelson	1/6 interest
Frank D. Sullivan	1/6 interest
Robert P. Sullivan	1/6 interest
Margaret Schneider	1/12 interest
J. B. Sullivan	4/42 interest
Bernard Sullivan	1/14 or 3/42 interest
Homer Schneider	1/12 interest

5. May 5, 1947. J. B. Sullivan to Cornelius F. Sullivan. Recorded on May 15, 1947. 206/OR/315. The effect of this conveyance is to vest in Cornelius F. Sullivan an undivided 1/3 interest. The question which this conveyance raises is where did J. B. Sullivan acquire a 1/6 interest. The chain of title suggests that J. B. Sullivan acquired the 3/42 interest of Bernard Sullivan. This chain of title assumes that such a conveyance took place, even though the Abstract of Title submitted by Exceptors Kerrigan did not disclose the existence of said conveyance.

6. On May 28, 1955. Estate of Cornelius F. Sullivan to Frank B. Sullivan (1/5 of a 1/3 interest), Robert B. Sullivan (1/5 of a 1/3 interest, James B. Sullivan (1/5 of a 1/3 interest) Margaret M. Simmons (1/5 of a 1/3 interest), and William Homer Schneider (1/5 of a 1/3 interest). Recorded on March 29, 1955. 347/OR/239.

The effect of this conveyance was as follows:

Frank B. Sullivan	7/30 interest
Robert B. Sullivan	7/30 interest
James B. Sullivan	2/30 interest
Margaret M. Simmons, also known as Margaret Schneider	9/60 interest
William Homer Schneider, also known as Homer Schneider	9/60 interest
Marie Nelson	1/6 or 5/30 interest

7. July 25, 1956. Estate of Frank D. Sullivan to Robert P. Sullivan, James B. Sullivan, William Homer Schneider, and Margaret M. Simmons. Recorded on July 25, 1956. 372/OR/148. The court order describes the property as being a 1/5 or a 6/30 interest in Parcel VII, even

though the document filed for records appear to establish that Frank D. Sullivan in fact owned a 7/30 interest at the time of his death. Assuming an undivided 7/30 interest was actually transferred the effect of this conveyance was as follows:

Robert P. Sullivan	35/120 or 7/24
James B. Sullivan	15/120 or 3/24
Margaret M. Simmons	25/120 or 5/24
William Homer Schneider	25/120 or 5/24
Marie Nelson	1/6 or 4/24

8. August 2, 1972. James B. Sullivan to James B. Sullivan for life, remainder to Margaret S. Simmons. Recorded on August 22, 1972.

672/OR/689. The effect of this conveyance was as follows:

James B. Sullivan	30/240 interest for life
Margaret M. Simmons	50/240 present interest 30/240 remainder interest

9. May 23, 1974. Estate of Robert Patrick Sullivan to Homer Schneider (1/2 of 7/24), and Margaret Simmons (1/2 of 7/24) Recorded on June 7, 1974. 711/OR/670. The effect if this conveyance was as follows:

James B. Sullivan	30/240 interest for life
Margaret M. Simmons	85/240 present interest 30/240 remainder interest
Homer Schneider	85/240 present interest
Marie Nelson	1/6 or 40/240 present interest

10. June 30, 1975. Estate of Marie Nelson to Margaret S. Simmons (Order confirming Sale) Recorded on July 19, 1975. 734/OR/895.

11. July 7, 1975. Estate of Marie Nelson to Margaret S. Simmons.
(deed) Recorded on July 10, 1975. 735/OR/668. The effect of
this conveyance was as follows:

James B. Sullivan	30/240 interest for life
Margaret M. Simmons	125/240 present interest
	30/240 remainder interest
Homer Schneider	85/240 present interest

12. November 26, 1974. Margaret S. Simmons, James B. Sullivan, and
Homer Schneider to H. Hearst and Jeanne P. Dillman. Recorded on
July 10, 1975. 735/OR/669
13. April 4, 1977. H. Hearst and Jeanne L. Dillman to Terrence J. and
Janice L. Kerrigan. Recorded on April 28, 1977. 780/OR/592.

Parcel VIII

1. July 30, 1894. United States to Central Pacific R. R. Co.
Recorded on October 19, 1896. 2/Pat/321.
2. July 1, 1896. Central Pacific R.R. Co. to Fred Beaudry. Recorded
on October 28, 1896. 39/Dds/13.
3. March 8, 1901. Frederick Beaudry to Societe Anonyme
Francaise Des Placers Hydrauliques de Beaudry Mines (Californie).
Recorded on May 27, 1909. 79/Dds/10
4. March 4, 1907. Societe Anonyme Francaise des Placers Hydrauliques
de Beaudry Mines (Californie) to Fred Beaudry. Recorded on March 4,
1907. 71/Dds/517.
5. January 3, 1916. Estate of Frederic B. Beaudry to Angele Beaudry.
Recorded on January 6, 1916. 3/D of Dist/154

Parcel X

1. Same as Parcel VIII through July 20, 1938.
2. March 21, 1961 Estate of Angele Bazet to International Paper Co. Recorded on April 4, 1961. 458/OR/176

JACKSON CREEK

1. September 18, 1894, J. D. Heard. Notice of Appropriation from Grizzly Creek. Recorded on September 24, 1894. 4/WR/160. The place of use of water was indicated as the "Enterprise Mine and Mining claims adjacent thereto".

2. _____ J. D. Heard to Fred Beaudry. This transfer is referred to in subsequent documents. The date is unknown.

3. March 8, 1901. Fred Beaudry to Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie). Recorded on May 27, 1909. 79/Dds/10.

4. March 4, 1907. Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie) to Fred Beaudry. Recorded on March 4, 1907. 71/Dds/517.

5. January 3, 1916. Estate of Fred Beaudry to Angela Beaudry. Recorded on January 6, 1916 3/D of Dist/5.

6. June 21, 1938. Estate of Angela Bazet, formerly Angele Beaudry, to R. B. Potoshnick, O. Cashmere and Clara P. Schneider. (an option; never exercised). Recorded on July 28, 1938. 95/OR/273.

7. July 27, 1938, Estate of Angele Bazet, (Notice of Nonresponsibility). Recorded on July 28, 1938. 73/OR/460.

GRIZZLY CREEK

1. September 18, 1894. J. D. Heard. Notice of appropriation from Grizzly Creek. Recorded on September 24, 1894. 4/WR/161. The place of use of water was indicated as the "Enterprise Mine and Mining claims adjacent thereto".

2. _____ . J. D. Heard to Fred Beaudry. This transfer is referred to in subsequent documents. The date is unknown.

3. March 8, 1901. Fred Beaudry to Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie) Recorded on May 27, 1909. 79/Dds/10.

4. March 4, 1907. Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie) to Fred Beaudry. Recorded on March 4, 1907. 71/Dds/517.

5. January 3, 1916. Estate of Fred Beaudry to Angela Beaudry. Recorded on January 6, 1916. 3/D of Dist/154.

6. June 21, 1938. Estate of Angele Bazet, formerly Angele Beaudry to R. B. Potoshnick, O. Cashmere, and Clara P. Schneider. (an option never exercised). Recorded on July 28, 1938. 95/OR/273.

7. July 27, 1938. Estate of Angele Bazet (Notice of Nonresponsibility). Recorded on July 28, 1938. 73/OR/460.

JACKSON LAKE

1. May 29, 1895. F. Beaudry. Notice of Appropriation from Jackson Lake. Recorded on May 29, 1895. 4/WR/243. The place of use of water was indicated as "Placer Mines now being worked on Wild Cat Creek and on Section 23, 24, 26, 27 and 28 of Township 40 North, Range 9 West, Mount Diablo Meridian claimed by F. Beaudry et al. "

2. March 8, 1901. Fred Beaudry to Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie). Recorded on May 27, 1909. 79/Dds/10.

3. March 4, 1907. Societe Anonyme Francaise Des Placers Hydrauliques de Beaudry Mines (Californie) to Fred Beaudry. Recorded on March 4, 1907. 71/Dds/517.

4. January 3, 1916. Estate of Fred Beaudry to Angela Beaudry. Recorded on January 6, 1916. 3/D of Dist/154.

5. June 21, 1938. Estate of Angele Bazet, formerly Angele Beaudry, to R. B. Potoshnick, O. Cashmere, and Clara P. Schneider. (an option; never exercised). Recorded on July 28, 1930. 95/OR/273.

7. July 27, 1938. Estate of Angele Bazet. (Notice of Non-responsibility). Recorded on July 28, 1938. 73/OR/460.

Appendix B

Attached is a true and correct copy of the Act of July 25, 1866
(14 Stat. L. 239)

or near Preston, in the State of Texas, with grants of land according to the provisions of this act, but upon the further special condition, nevertheless, that said railroad company shall have commenced in good faith the construction thereof before the said Kansas and Neosho Valley Railroad Company shall have completed its said railroad to said point: *And provided further*, That said other railroad company, so having commenced said work in good faith, shall continue to prosecute the same with sufficient energy to insure the completion of the same within a reasonable time, subject to the approval of the President of the United States: *And provided further*, That the right of way through private property when not otherwise provided for in this act, or by the law of any State through which the road may pass, shall be obtained by said Kansas and Neosho Valley Railroad Company, or either of the other companies named in this act, in accordance with the provisions of section three of an act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two.

APPROVED, July 25, 1866.

Preston, Texas, with grants of land, &c.

Work to be prosecuted with energy.

Right of way through private property.

1862, ch. 120, § 3.
Vol. xii. p. 492.

CHAP. CCXLII. — *An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon.*

July 25, 1866.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the "California and Oregon Railroad Company," organized under an act of the State of California, to protect certain parties in and to a railroad survey, "to connect Portland, in Oregon, with Marysville, in California," approved April sixth, eighteen hundred and sixty-three, and such company organized under the laws of Oregon as the legislature of said State shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad, in California, in the manner following, to wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento valley, in the State of California, and running thence northerly, through the Sacramento and Shasta valleys, to the northern boundary of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua, and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first-named company: *Provided*, That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

The California and Oregon R. Co., and an Oregon company, may locate and construct a railroad and telegraph line between Portland, Oregon, and the Central Pacific Railroad in California.

What part the C. & O. Company to build.

The company first completing its part, may continue its road, with consent of State.

SEC. 2. *And be further enacted*, That there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of

Grant of public lands, not mineral, to said companies, to aid in the construction of road &c.

If any sections of land have been sold, or are occupied, other lands may be selected in lieu thereof.

When maps of survey are filed, lands to be withdrawn from sale.

Lands granted to be applied to building road in the States where they lie.

Remaining lands to be sold for what price. Settlers under pre-emption laws may purchase at what price; under homestead act may have not over eighty acres.

Right of way through public lands granted to said companies.

Materials for construction from adjacent lands.

Extent of grant of right of way.

Land for stations, &c.

When and how patents for these granted lands shall issue to said companies.

Conditions of grants.

public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold: *Provided*, That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement, and occupation: *And provided, also*, That, settlers under the provisions of the homestead act, who comply with the terms and requirements of said act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said companies for the construction of said railroad and telegraph line; and the right, power, and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 4. *And be it further enacted*, That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time, whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

SEC. 5. *And be it further enacted*, That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and

telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

Railroad to be a public highway and free to the United States.

SEC. 6. *And be it further enacted*, That the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the "Central Pacific Railroad" of California, and be connected therewith.

Companies when to file assent to this act. Rate of progress to be made.

Gauge. To be connected with Central Pacific Railroad.

SEC. 7. *And be it further enacted*, That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel, and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time, and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on account of such discrimination, to be sued for and recovered in any court of the United States, or of any State, of competent jurisdiction.

Companies to use and operate road as one continuous line, and to secure to each other equal advantages, &c.

SEC. 8. *And be it further enacted*, That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this act.

If companies fail to comply with certain conditions, this act to be void, and the lands not conveyed to revert to the United States.

If road and telegraph line are not kept in repair, Congress may, &c.

SEC. 9. *And be it further enacted*, That the said "California and Oregon Railroad Company" and the said "Oregon Company" shall be governed by the provisions of the general railroad and telegraph laws of their respective States, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this act. Wherever the word "company" or "companies" is used in this act it shall be construed to embrace the words "their associates, successors, and assigns," the same as if the words had been inserted, or thereto annexed.

The companies to be governed by the laws of their respective States.

The word "company" to include "associates, successors, and assigns."

SEC. 10. *And be it further enacted*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies: *Provided*, That the term "mineral lands" shall not include lands containing coal and iron.

Mineral lands excepted from this grant.

Timber for construction. "Mineral" not coal and iron.

Companies to obtain consent of States, where road and telegraph line do not pass through public lands. Act may be amended, &c.

SEC. 11. *And be it further enacted*, That the said companies named in this act shall obtain the consent of the legislatures of their respective States, and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

SEC. 12. *And be it further enacted*, That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this act.

APPROVED, July 25, 1866.

July 25, 1866. CHAP. CCXLIII. -- *An Act to change the Place of holding Court in the Northern District of Georgia.*

District court for northern district of Georgia to be held at Atlanta.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the district court for the northern district of Georgia shall hereafter be held at Atlanta, instead of Marietta; and the clerk of said northern district is hereby required to remove all the books, papers, and records belonging to his office from Marietta to Atlanta.

Process.

SEC. 2. *And be it further enacted*, That all process made returnable to the court heretofore held at Marietta shall be taken and considered returnable to the court at Atlanta.

APPROVED, July 25, 1866.

July 25, 1866. CHAP. CCXLIV. -- *An Act granting to A. Sutro the Right of Way, and granting other Privileges to aid in the Construction of a Draining and Exploring Tunnel to the Comstock Lode, in the State of Nevada.*

Right of way granted to A. Sutro, &c. to construct a mining, &c. tunnel, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of the construction of a deep draining and exploring tunnel to and beyond the "Comstock lode," so called, in the State of Nevada, the right of way is hereby granted to A. Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel; also to sink mining, working, or air shafts along the line or course of said tunnel, and connecting with the same at any point which may hereafter be selected by the grantee herein, his heirs or assigns. The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or assigns, at the hills near Carson River, and within the boundaries of Lyon County, and extending from said initial point in a westerly direction seven miles, more or less, to and beyond said Comstock lode; and the said right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel.

Dimensions of tunnel, where to commence, &c.

Right of way to extend northerly and southerly &c.

A. Sutro may purchase not over two sections of public land at mouth of tunnel, for use thereof. Not to be mineral lands, &c.

SEC. 2. *And be it further enacted*, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at one dollar and twenty-five cents per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land or in the bona fide possession of other persons who claim under any law of Congress at the time of the passage of this act, and all minerals existing or which shall be discovered therein are excepted from this grant; that upon filing a plat of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue. And the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the

Upon filing plat, land to be withdrawn from sale.

Patent to issue. Certain mineral veins and lodes may be purchased.

APPENDIX C

Attached is a true and correct copy of a patent from the United States to the Central Pacific Railroad. The patent was executed on July 30, 1894 and recorded on October 19, 1896.

Patent No 24 C. P. R. R. Lands S. W. 1/4 Sec 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

The United States of America

To all to whom these presents shall come Greeting:

Whereas by the Act of Congress approved July 25th 1866, to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California to Portland in Oregon authority is given to the California and Oregon Railroad Company its associates successors and assigns a corporation existing under the laws of the State of California, "to construct a Railroad and Telegraph line" under certain conditions and stipulations as expressed in said Act, and provision is made for granting to the said Company, every alternate section of public land not mineral, designated by odd numbers to the amount of thirty alternate sections per mile (two on each side of said Railroad line". And Whereas it is further enacted in said Act, that "now any of said alternate sections or lots of sections shall be found to have been granted sold leased or otherwise alienated, pre-empted or otherwise disposed of other lands designated as aforesaid shall be selected by said Company in lieu thereof under direction of the Secretary of the Interior, alternate sections designated by odd numbers as aforesaid nearest to such not more than ten miles beyond the limits of said first named alternate sections. And Whereas, official statements from the Secretary of the Interior have been filed in the General Land Office, showing that Commissioners appointed by the President, under the provisions of the fourth section of said Act have reported to him that the said California and Oregon Railroad and Telegraph Line commencing at a point in the Town of Arcville, in the County of Placer State of California and ending at a point on the boundary between the States of California and Oregon, near its mouth the Oregon and California Railroad, a distance of two hundred and ninety six miles and four hundred and eighty nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act. And Whereas by articles of Agreement entered into under the laws of the State of California between the said California and Oregon Railroad Company and the Central Pacific Railroad Company, said Companies were amalgamated and consolidated under the name of the Central Pacific Railroad Company upon the thirtieth day of August eighteen hundred and seventy, as shown by a certified copy of the articles of consolidation filed in the General Land Office on the first day of March eighteen hundred and seventy two by Henry Beard Attorney for said Central Pacific Railroad Company. And Whereas certain tracts of land have been selected by the duly authorized agent of the Central Pacific Railroad Company as shown by such agent original lists of selections, approved by the local land offices and now on file in this office. And Whereas said tracts of land lie within the Indian reservation of the said route, and are particularly described

as follows, to wit:

North of Base line and West of Mount Diablo Meridian, State of California.

Township Thirty six, Range Eight.

All of Section seven containing six hundred and thirty four acres and seventy four hundredths of an acre. All of Section sixteen containing six hundred and thirty eight acres and seventeen hundredths of an acre. All of Section thirty one containing six hundred and thirty eight acres and thirty nine one hundredths of an acre.

Township Thirty seven, Range Eight.

All of Section four containing six hundred and thirty four acres and seventy four hundredths of an acre. All of Section seven containing six hundred and thirty four acres and fifty six hundredths of an acre. All of Section nine containing six hundred and forty acres. All of Section sixteen containing six hundred and forty acres. All of Section thirteen containing six hundred and thirty eight acres and thirty nine hundredths of an acre. All of Section thirty one containing six hundred and thirty four acres and forty seven hundredths of an acre.

Township Thirty eight, Range Eight.

All of Section one containing six hundred and thirty eight acres and eighty two hundredths of an acre. All of Section eleven containing six hundred and forty acres. All of Section sixteen containing six hundred and forty acres. All of Section thirteen containing six hundred and thirty three acres and thirty six hundredths of an acre. All of Section twenty nine containing six hundred and forty acres. All of Section thirty one containing six hundred and thirty seven acres and thirty six hundredths of an acre.

Township Forty, Range Eight.

All of fractional Section thirteen containing seventy three acres and twenty six hundredths of an acre. The East half of Section one, two and seven of the North East quarter, the South West quarter and the West half of the South East quarter of Section twenty one containing two hundred and eighty six acres and twenty four hundredths of an acre. All of fractional Section thirty one containing seventy three acres and eighty six hundredths of an acre. All of Section thirty three containing six hundred and forty acres.

Township Thirty six, Range Nine.

All of fractional Section one containing six hundred and thirty eight acres and eighty one hundredths of an acre. All of fractional Section three containing six hundred and thirty six acres and forty nine hundredths of an acre. All of Section five containing six hundred and thirty four acres and forty hundredths of an acre. All of Section seven containing six hundred and thirty six acres and sixteen one hundredths of an acre. All of Section nine containing six hundred and forty acres. All of Section eleven containing six hundred and forty acres. All of Section thirteen containing six hundred and forty acres. All of Section fifteen containing six hundred and forty acres. All of Section seventeen containing six hundred and forty acres. The East half of the North West

hundredths of an acre. All of Section Nine, containing six hundred and forty
 acres. All of Section Eleven, containing six hundred and forty acres. The
 north East quarter of the South East quarter, the north half of the South West
 quarter, the South West quarter of the South West quarter, and the north half
 of Section Thirteen, containing four hundred and eighty acres. All of Section
 Fifteen, containing six hundred and forty acres. All of Section Seventeen, con-
 taining six hundred and forty acres. All of Section Nineteen containing one
 thousand two hundred and nine acres and forty six hundredths of an acre.
 All of Section Twenty One, containing six hundred and forty acres. The north East
 quarter of the north East quarter, the South half of the north East quarter, the South
 East quarter of the north West quarter and the West half of the north West quarter
 of Section Twenty Three, containing two hundred and forty acres. All of Section Twenty
 Four containing six hundred and forty acres. All of Section Twenty Nine
 containing six hundred and forty acres. The lots numbered three, four, five,
 six and seven, the lots numbered eight, nine, ten and eleven, the lots num-
 bered twelve, thirteen, fourteen, fifteen, sixteen and seventeen, the lots num-
 bered twenty one, twenty two, twenty three and twenty four, the lots numbered one of the
 north West quarter, the lots numbered eighteen, nineteen and twenty, the East
 half and the lot numbered one of the north West quarter of Section Thirty one con-
 taining one thousand two hundred and nine acres and forty six hundredths of
 an acre. The north half of Section Thirty three, containing three hundred and
 twenty acres.

Township Forty One Range Two

The lot numbered four of the north West quarter and the South West
 quarter of Section Three containing two hundred and one acres, and fifteen hun-
 dredths of an acre. The South West quarter of the north East quarter, the lot num-
 bered four and the South half of the north West quarter, the South West quarter, the
 north half of the South East quarter, and the north West quarter of the South East quarter
 of Section Five containing four hundred and forty acres and eighty six hundredths
 of an acre. All of Section Seven containing six hundred and thirty one acres. The
 West half, the north East quarter of the north East quarter, and the South half of
 the South East quarter of Section Nine, containing four hundred and forty acres.
 The South half of the north East quarter, the north West quarter, the West half of the
 South West quarter and the East half of the South East quarter of Section Fifteen,
 containing four hundred acres. All of Section Seventeen containing six hun-
 dred and forty acres. All of Section Nineteen, containing six hundred and thirty
 six acres and sixty hundredths of an acre. All of Section Twenty One contain-
 ing six hundred and forty acres. The north East quarter and the north half
 of the South East quarter of Section Twenty three containing two hundred and
 forty acres. All of Section Twenty five containing six hundred and forty ac-
 res. All of Section Twenty seven containing six hundred and forty acres and sixty eight
 hundredths of an acre. The West half and the South East quarter of Section Thirty
 three, containing four hundred and eighty acres. The South East quarter of the
 north West quarter, the East half of the South West quarter, and the East half of
 Section Thirty five, containing two hundred and forty acres.

Homestead Forty Five Range Ten

All of Section Thirty Three containing six hundred and forty acres.

The said tracts of land as described in the foregoing make in the aggregate area of (116,878.88) one hundred and sixteen thousand eight hundred and seventy eight acres and eighty eight hundredths of an acre.

Now Know Ye, that the United States of America in Consideration of the premises and pursuant to the said Act of Congress, Has Given and Granted, and by the present Do Given and Grant unto the said Central Pacific Railroad Company, successors as aforesaid and to its successors all the tracts of land described in the foregoing. Yet excluding such excepting "All mineral lands" should any such be found in the tracts aforesaid but this exclusion and exception according to the terms of the Statute shall not be construed to include Coal and Iron lands.

To Have and To Hold the same with the appurtenances unto the said "Central Pacific Railroad Company" and to its successors and assigns forever.

In Testimony Whereof I, John Cleveland, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this the thirtieth day of July in the year of our Lord one thousand eight hundred and ninety four and of the Independence of the United States the one hundred and nineteenth.

[Handwritten signature]

By the President

John Cleveland

Mc Kee

Secretary

A. C. Luman
Recorder of the General
Land Office

Recorded in Vol 14, pp 144, to 159, inclusion
Recorded at Request of Wells Fargo & Co Oct 19th, 1876 at
1 min past 9 o'clock AM

Allen Weston
County Recorder
By H W Schick
Deputy

SCHEDULE B10
ALLOTMENTS TO CLAIMANTS FROM WILDCAT CREEK
AND TRIBUTARIES

Name of Claimant	: Diversion : and Map : Sheet No.	: Use	: Area : Served : (acres)	: Allotments by Priority				: Total : Amount
				1st	2nd	3rd	4th	
Int. Paper Co.	137-17	Dom		0.01				0.01
	143-17	Dom		0.01				0.01
	144-15	Dom		0.01				0.01
Kerrigan	148-15	Irr	163	1.60	2.33	0.83		4.76 ^{a/}
Struckman	151-15	Irr	92		1.84			1.84 ^{b/}
Kerrigan	c/	Irr	7		0.14 ^{c/}			0.14
Struckman	153-15	Irr	6 ^{d/}		0.12 ^{d/}			0.12
Hjertager	155-15	Ind.					0.10 ^{e/}	0.10
	157-15	Ind.	2	0.10 ^{f/}				0.10
TOTALS			270	1.73	4.43	0.83	0.10	7.09

^{a/} This allotment may be supplemented with foreign water imported from Jackson Creek, Grizzly Creek, and Camp Gulch as set forth in Schedule B8, provided that none of this foreign water may be diverted past measurement Point A on Sheet 15 of Plate I. This allotment from the natural flow of Wildcat Creek shall not exceed a continuous flow of 0.48 cfs past measurement Point A. This allotment from the natural flow of Wildcat Creek shall be diverted in accordance with the following schedule:

- (1) At all times when the natural flow of Wildcat Creek at Diversion 148 equals or exceeds 6.6 cfs this allotment may divert 4.76 cfs.
- (2) At all times when the natural flow of Wildcat Creek at Diversion 148 shall equal or exceed 5.77 cfs, but shall be less than 6.6 cfs, this allotment may divert 4.76 cfs for so long as a continuous flow of 1.84 cfs is available for diversion at Diversion 151 or at measurement Point B on Sheet 15 of Plate I or in the alternative this allotment may divert 3.93 cfs.

- (3) At all times when the natural flow of Wildcat Creek at Diversion 148 shall exceed 1.60 cfs but shall be less than 5.77 cfs, this allotment may divert 4.76 cfs for so long as a continuous flow of 1.84 cfs is available for diversion at Diversion 151 or at said measurement Point B or in the alternative this allotment may divert the sum of 1.60 cfs and of 56% of the natural flow of Wildcat Creek which exceeds 1.60 cfs.
- (4) At all times when the natural flow of Wildcat Creek is equal to or less than 1.60 cfs, this allotment may divert the entire natural flow, except that this allotment shall only divert 0.48 cfs for use on the 24 acres down ditch of said measurement Point A for so long as a continuous flow of 0.38 cfs is available for diversion at Diversion 151 or at measurement Point B. In the event that the natural flow of Wildcat Creek is less than 0.86 cfs and that this allotment will be used to irrigate said 24 acres, this allotment shall divert 56% of the natural flow at Diversion 148.
- (5) The natural flow of Wildcat Creek shall be determined by subtracting the foreign water imported from Jackson Creek, Grizzly Creek, and Camp Gulch from the total flow of Wildcat Creek at Diversion 148.

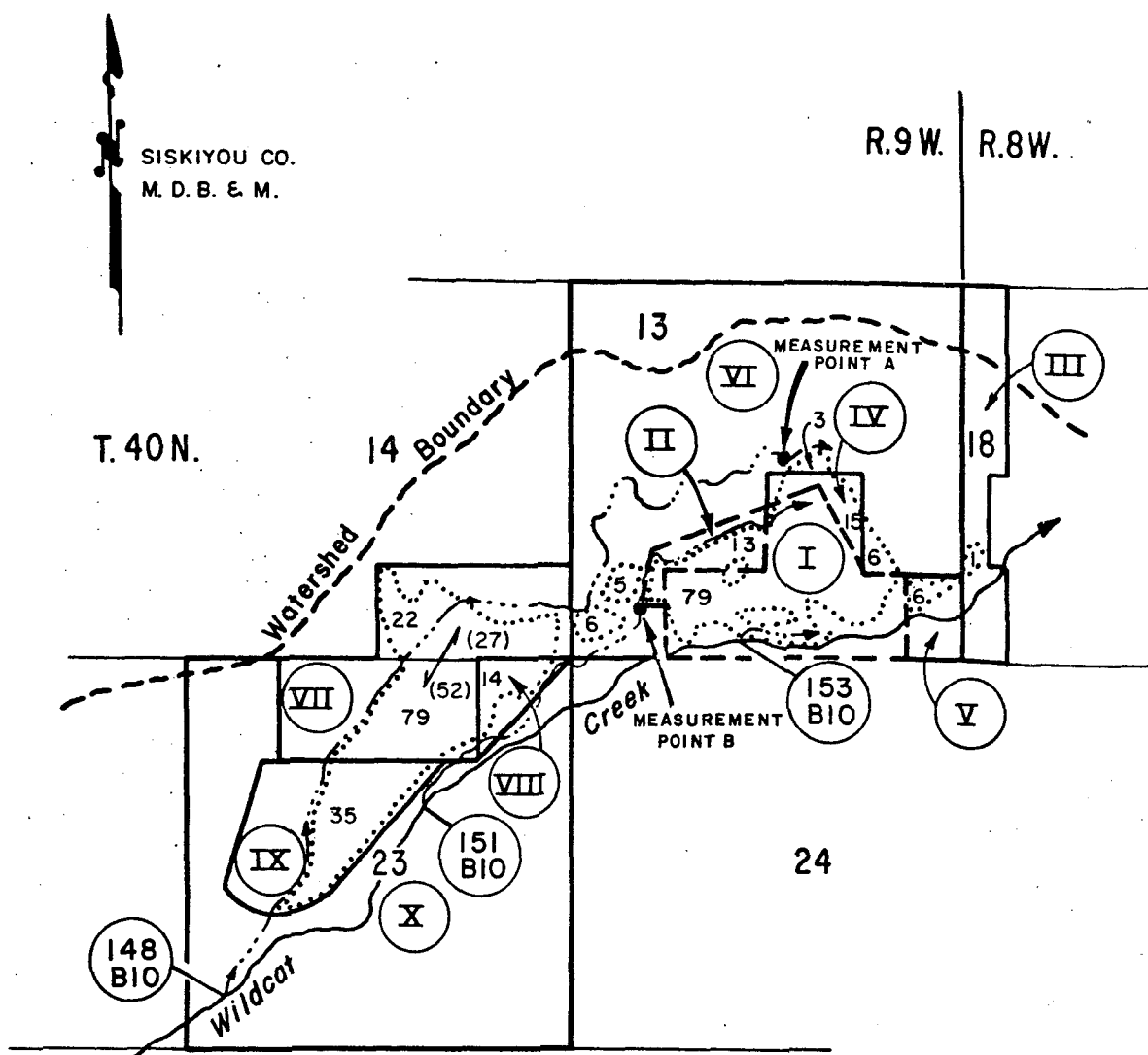
- b/ This allotment from the natural flow of Wildcat Creek may be supplemented by foreign water which has been diverted from Sugar Creek, Jackson Creek, Grizzly Creek, and Camp Gulch and which has escaped the property of the original place of use.
- c/ This allotment is for tailwater from Diversions 148 and 151 after use by Kerrigan and Struckman.
- d/ This 6 acres may also be irrigated from Diversion 151. This allotment is an alternative allotment for said six acres and not in addition to the allotment for Diversion 151.
- e/ This allotment is for use at the lumber mill and to keep two log ponds full all year (see Schedule E, Permit 16900 on Application 24375).
- f/ This allotment shall be diverted from two offset wells for use at the lumber mill and at seven homes and supplements any deficiency from Diversion 155 and Diversion 156 (see Schedule A).

SCHEDULE B7
 ALLOTMENTS TO CLAIMANTS FROM EAST FORK SCOTT RIVER - GROUSE
 CREEK TO CONFLUENCE WITH SOUTH FORK SCOTT RIVER

Name of Claimant	Diversion and Map Sheet No.	Use	Area Served, Acres	Allotments by Priority in Cubic Feet per Second				Total Amount
				1st	2nd	3rd	Surplus	
Harkness	65a-16	Dom		0.01				0.01
Hayden, N.	67-16	Irr	38	0.01	2.75		0.76	3.52
	81-15	Irr	24	0.01	0.97 ^{a/}		0.48	1.46
Owens	81-15	Irr	24	0.01	0.97 ^{a/}		0.48	1.46
Hayden, R.	82-15	Irr	10	0.01	0.79		0.20	1.00
Hamilton	82a-15	Irr	10 ^{b/}	0.01		0.13		0.14
Owens	87a-15	Irr	10	0.01		0.13		0.14
U. S. Forest Service	87b-15	Irr	3	0.01	0.03			0.04
TOTALS			119	0.08	5.51	0.26	1.92	7.77

^{a/} These allotments shall be diverted on a seven-day rotational basis. Hayden may use all the water from Diversion 81 for seven days and Owens may use all the water for the next seven days.

^{b/} This ten acres may also be irrigated from Diversions 84 and 86 (see Schedule B4).



PARCEL NO.	PRESENT OWNERSHIP
I and II	G. STRUCKMAN
III thru X	T. KERRIGAN

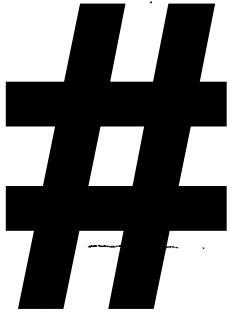
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

PARCELS IN CHAIN OF TITLE
STRUCKMAN vs KERRIGAN EXCEPTIONS
Scott River Adjudication

SCALE
0 1/2 1 MILE

DATE: 1-16-79	DRAWN: ag	CHECKED: D.E.M.	OWG. 3182
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ON. R.9W.
KIYOU CO.
D.B. & M.



KERRIGAN
PROPERTY
LINE

DUMP
PLACER MINE

23
"R.R."
PLACER
MINING CLAIM

24

CAIN PLACER
MINING CLAIM

22

JESSE JAMES
PLACER
MINING
CLAIM

ANGELE PLACER
MINE

28
MOUNTAIN
QUEEN
PLACER MINE
BEAUDRY
PLACER
MINE

ENTERPRISE
PLACER
MINING
CLAIM

27

NEW ERA
HYDRAULIC
MINING
CLAIM

HEARD
NUGGET
CONSOLIDATED
PLACER MINE

26

RICO
PLACER
MINING
CLAIM

RAIL ROAD
PLACER
MINING
CLAIM

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

MINING CLAIMS

STRUCKMAN vs KERRIGAN EXCEPTIONS

Scott River Adjudication

SCALE
0 1/2 1 MILE

DATE: 1-16-79 DRAWN: ag CHECKED: D.E.M. DWG. 3181

6. June 21, 1938. Estate of Angele Bazet, formerly Angele Beaudry to R. B. Potashnick, O. Cashmere, and Clara D. Schneider (an option; never exercised). Recorded on July 28, 1938. 95/OR/273.
7. July 27, 1938. Estate of Angela Bazet. (Notice of non responsibility). Recorded on July 28, 1938. 73/OR/460.
8. October 5, 1955. Estate of Angele Bazet to James B. Sullivan, Robert P. Sullivan, Homer Schneider and Margaret S. Simmons. Recorded on October 14, 1955. 357/OR/484.
9. October 5, 1955. Estate of Angela Bazet to James B. Sullivan Robert P. Sullivan, Homer Schneider and Margaret S. Simmons. (Order confirming Sale of Real Property) Recorded on October 14, 1955. 357/OR/488
10. May 23, 1974. Estate of Robert Patrick Sullivan to Homer Schneider (1/2 of 1/4) and Margaret Simmons (1/2 of 1/4). Recorded on June 7, 1974. 711/OR/670. The effect of this conveyance was to as follows:

James B. Sullivan	1/4
Homer Schneider	3/8
Margaret S. Simmons	3/8

11. November 26, 1974. Homer Schneider, James B. Sullivan, and Margaret S. Simmons to H. Hearst and Jeanne L. Dillman. Recorded on July 10, 1975. 735/OR/669.
12. April 4, 1977. H. Hearst and Jeanne L. Dillman to Terrence J. and Janice L. Kerrigan. Recorded on April 28, 1977. 780/OR/592.

Parcel IX

1. Same as Parcel VIII