

Umatilla County

IN THE MATTER OF THE APPLICATION OF  
 ROGERS CANNING COMPANY FOR APPROVAL  
 OF A CHANGE IN USE, PLACE OF USE, AND  
 POINT OF DIVERSION OF WATER FROM WALLA  
 WALLA RIVER.

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ORDER  
APPROVING APPLICATION

On August 25, 1941, Rogers Canning Company, an Oregon corporation, of Milton, Oregon, filed an application for the approval of a change in use, place of use, and point of diversion of water from Walla Walla River.

By decree of the Circuit Court for Umatilla County, dated May 16, 1932, in the matter of the determination of the relative rights to the use of the waters of Walla Walla River and its tributaries, a water right was recognized in the name of John L. and W. E. Miller for the use of 75 cubic feet per second of the waters of Walla Walla River for the development of 153 horsepower for flour and feed mill situated in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 12, Township 5 North, Range 35 East, W. M., with a date of priority of 1872, the water for said purposes to be conveyed through the Miller Brothers Power Canal, the point of diversion of said canal being located 2,580 feet north and 3,850 feet east from the southwest corner of Section 12, Township 5 North, Range 35 East, W. M.

The applicant herein proposes to use this water for the purpose of cooling its products in sealed cans after being cooked and for the generation of electricity at its plant located in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 12, Township 5 North, Range 35 East, W. M., being approximately 150 feet south of the Miller Brothers Mill. It is also proposed to change the present point of diversion upstream to a point located 1,647 feet north and 4,092 feet east from the southwest corner of Section 12, Township 5 North, Range 35 East, W. M.

Notice by publication as provided by Section 116-606, O. C. L. A., was given in the Milton Eagle, a newspaper of general circulation in Umatilla County, for a period of at least three weeks and not less than one publication each week in the issues of September 4, 11, 18, and 25, 1941.

On October 16, 1941, being more than ten days prior to the date set for hearing in the published notice, Randall & Perry as attorneys for the water users irrigating from the Milton Ditch acting through the Board of Directors of the Milton Irrigation Company, the water users irrigating from the Little Walla Walla River acting through the Board of Directors of the Little Walla Walla River Irrigation Union, and the water users irrigating from the Eastside Ditch and the Loundigan Ditch acting through the Board of Directors of the Eastside Ditch Company and the up-river users of water filed contest and objection to the granting of the application.

On October 20, 1941, a stipulation was filed by A. S. Cooley as attorney for the applicant and Randall & Perry as attorneys for the contestants and objectors, which stipulation provides as follows:

"That applicant may change the place of use of the water and water right involved herein from the present place of use to its plant located in the Southwest Quarter of the Northeast Quarter of Section 12 in Township 5 North of Range 35 East of the Willamette Meridian, being approximately 150 feet South of the Miller Brothers Mill, said Miller Brothers Mill being the present place of use and also known as Northwestern Roller Mills.

"That applicant may use said water for the purpose of cooling its products in sealed cans after being cooked.

"That said water after being used by applicant shall be returned to the Walla Walla River at the point where it is now returned.

"That said water shall be conveyed through the Miller Brothers power canal and flume as heretofore conveyed, but said canal and flume may be rebuilt and improved if applicant desires; said water shall not be used for the generation of electricity; and no change shall be made in the present point of diversion."

Subsequently, on November 7, 1941, a supplemental stipulation was filed by A. S. Cooley as attorney for the applicant and Randall & Perry as attorneys for the contestants and objectors, fixing the quantity of water to be diverted as follows:

"That the maximum quantity of water to be diverted for the purpose of cooling products in sealed cans after being cooked shall be 31 cubic feet per second."

The objections having been settled by stipulations, it appears that a change in place of use and use of 31 cubic feet per second of water from the development of power to that of cooling products in sealed cans after being cooked may be made without injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that 31 cubic feet per second of the 75 cubic feet per second of water awarded John L. and W. E. Miller in the Walla Walla River adjudication proceedings for the development of 153 horsepower at the Miller Brothers flour and feed mill situated in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 12, Township 5 North, Range 35 East, W. M., with a date of priority of 1872, be severed therefrom and simultaneously and without loss of priority transferred in accordance with the terms of the stipulations as follows:

That the place of use for the 31 cubic feet per second of water be changed from the Miller Brothers Mill to the Rogers Canning Company plant located approximately 150 feet south of the Miller Brothers Mill and being within the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 12, Township 5 North, Range 35 East, W. M.

That the use of said 31 cubic feet per second of water be changed from the development of power to that of cooling products in sealed cans after being cooked.

That the water is to be conveyed through the Miller Brothers power canal and flume and no change shall be made in the present point of diversion.

That the Miller Brothers power canal and flume may be rebuilt and improved but the quantity of water to be conveyed therein shall not exceed 31 cubic feet per second.


That the Rogers Canning Company shall return the water to the Walla Walla River at the same point where it is now returned as shown on the adjudication maps of the Walla Walla River prepared under the direction of the State Engineer.

It is FURTHER ORDERED that the remaining 44 cubic feet per second of water be and the same hereby is declared forfeited and shall revert to the State of Oregon subject to appropriation in order of priority.

It is FURTHER ORDERED that construction work and complete application of water to beneficial use shall be completed on or before October 1, 1942, or such extension of time as may be granted by the State Engineer for good cause shown and that upon receipt of proof satisfactory to the State Engineer of the completion of construction work and complete application of water to beneficial use a new certificate of water right shall be issued to the Rogers Canning Company, or its successors-in-interest, in lieu of the certificate of water right heretofore issued to John L. and W. E. Miller and recorded in State Records of Water Right Certificates at Page 12914, Volume 11.

Dated at Salem, Oregon, this 22nd day of November, 1941.

*Noted on Decree Vol. 12, p. 174.  
Cert. 14535 issued, superseding 12914*

  
CHAS. E. STRICKLIN

State Engineer