

BEFORE THE STATE ENGINEER OF OREGON

Jackson County

IN THE MATTER OF THE APPLICATION )  
OF DWIGHT L. PATTERSON AND ALICE )  
PATTERSON FOR THE APPROVAL OF A )  
CHANGE IN PLACE OF USE, USE, AND )  
POINT OF DIVERSION OF WATER FROM )  
ASHLAND CREEK, PURSUANT TO THE )  
PROVISIONS OF SECTION 116-606, )  
O. C. L. A. )  
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O R D E R  
APPROVING APPLICATION

On November 2, 1945, Dwight L. Patterson and Alice Patterson, husband and wife, of Ashland, Oregon, filed an application for the approval of a change in place of use, use, and point of diversion of water from Ashland Creek.

By decree of the Circuit Court of the State of Oregon for Jackson County, dated April 26, 1919, in the matter of the determination of the relative rights to the use of the waters of Rogue River and its tributaries, a right was allowed in the name of Joseph and Kizzie Million, Ashland, Oregon, for the use of 0.63 cubic foot per second of water from Ashland Creek through the Million Ditch for the irrigation of 50 acres of land with a date of priority of 1856, and more particularly described as follows: 10.0 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 5.0 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 7.0 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 8.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 20.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 4, Township 39 South, Range 1 East, W. M.

It appears that the 50 acres of land to which this water right is appurtenant is now within the boundaries of the City of Ashland and has been divided into small tracts, upon which have been constructed homes, and the water is being used for irrigation in these tracts.

The applicants herein, owners of 79 acres of land in the SE $\frac{1}{4}$  of Section 4, Township 39 South, Range 1 East, W. M., and more particularly described in said application, within which 29.0 acres of the aforesaid water right is appurtenant, proposes to transfer the irrigation right appurtenant to 3.0 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 7.0 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 8.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 11.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$

of Section 4, Township 39 South, Range 1 East, W. M., to the City of Ashland for municipal use and to change the point of diversion from that of the Million Ditch upstream to the City's intake which is described in the application as 100 feet north and 10 feet west from the southeast corner of Section 20, Township 39 South, Range 1 East, W. M.

Notice as provided by Section 116-606, O. C. L. A., was published in the Ashland Tidings, a daily newspaper of general circulation, printed and published in Ashland, Oregon, once a week for three successive and consecutive weeks, commencing with the issue dated the 9th day of November and ending with the issue dated the 23rd day of November, 1945, the last publication being more than thirty days prior to the date of hearing as set forth in the notice.

On December 20, 1945, a protest signed by R. L. Phelps, Chas. L. Smith, B. Buckles, A. E. Messer, Jessie A. Hunt, E. R. Hossler, E. J. Wilson, F. H. Minnear, Vera V. Doran, C. C. Million, and Mildred Million was filed with the State Engineer against the approval of the application. The principal grounds set forth in the protest was that the water flowing in the ditch had been divided equally at a point about 1/2 mile below the point of diversion for more than 10 years into two laterals, one serving the lands of the petitioners and the other serving the lands of the objectors; that by this diversion the loss of water in the canal above the diversion box, which was asserted to be large, was charged equally to both parties, that the approval of the application would result in reducing the quantity of water delivered to the protestants lands.

By agreement the time of the hearing as set forth in the published notice was postponed to February 6, 1946.

A hearing beginning at 10 o'clock A.M. on February 6, 1946, was held by the State Engineer in the City Hall in Ashland at which the petitioners, represented by their legal counsel, William Briggs, and the objectors, represented by their legal counsel, George Roberts, appeared and submitted testimony.

It appears that it has been the practice to divide the water flowing in the Million Ditch, equally, 1/2 being delivered to the lateral serving petitioners lands and the other 1/2 being delivered to the lateral serving protestants lands, and that the petitioners do not object to giving recognition to this practice.

At the time of the hearing the parties were advised by the State Engineer that as the testimony of the witnesses as to canal losses was not based upon any actual measurements, that action upon the application would be withheld until such time that measurements could be made to determine this.

On August 15, 1946, Mr. Chester Cummings, assistant to the State Engineer, who has had some 15 years experience in the measurement of water, made a survey of the Million Ditch and made measurements of the water flowing therein. Mr. Cummings has made a written report setting forth the results of the survey and measurements, analysis of the data, and his conclusions. This report is made a part of this order by reference.

From the data secured by Mr. Cummings and set forth in his report it appears that there is very little, if any loss of water in the Million Ditch from the point of diversion from Ashland Creek to the diversion box, and that the approval of the application would not result in injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion, change in use, and change in place of use of water in the amount of 0.315 cubic foot per second be and the same hereby is approved and that 0.315 cubic foot per second of water right hereinbefore described as appurtenant to 3.0 acres

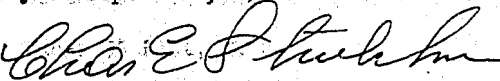
in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 7.0 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 8.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 11.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 4, Township 39 South, Range 1 East, W. M., and more definitely described in the application, be severed therefrom and simultaneously and without loss of priority transferred to the City of Ashland, Oregon, for municipal use, to be diverted from Ashland Creek at the City's intake as hereinbefore described.

It is FURTHER ORDERED that .0504 cubic foot per second, the balance of the water right appurtenant to the land owned by the petitioners, as described in the application, be severed therefrom and made appurtenant to 10.0 acres within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 2.0 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , and 9.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 4, Township 39 South, Range 1 East, W. M., without loss of priority.

It is FURTHER ORDERED that complete application of water to beneficial use shall be made on or before October 1, 1948, or such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that when the City of Ashland furnishes satisfactory proof to the State Engineer that it has made beneficial use of the waters being transferred, and upon the payment of the cost of recording of a certificate with the County Clerk, that a certificate of water right be issued to said city.

Dated at Salem, Oregon, this 16th day of September, 1946.

  
CHAS. E. STRICKLIN  
State Engineer

Noted on Decree,  
Vol. 4, page 12, Col. 2  
(Trsf. No. P. 21)

Cert 16623 and 16624 confirms this Order

Decree Vol. 17, P. 8 Corrected  
Pl. of use for 50 ACRES