

BEFORE THE STATE ENGINEER OF OREGON

Douglas County

IN THE MATTER OF THE APPLICATION )  
OF HAYWARD MILLING COMPANY FOR THE )  
APPROVAL OF A CHANGE IN USE AND )  
PLACE OF USE OF WATER FROM WINDY CREEK. )  
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O R D E R

APPROVING APPLICATION

On July 12, 1949 the Hayward Milling Company of Glendale, Oregon filed an application for the approval of a change in use and place of use of water from Windy Creek, pursuant to the provisions of ORS 540.510 to 540.530.

The State Engineer's Findings and Order of Determination in the Matter of the Determination of the Relative Rights to the Use of the Waters of Cow Creek and Its Tributaries, as confirmed by Decree of the Circuit Court for Douglas County, Oregon, dated August 14, 1930, adjudicated a water right in the name of G. A. Cunningham for the use of not to exceed 0.814 cubic foot per second of water from Windy Creek for the irrigation of 8.5 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 9.5 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 31.2 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 1 acre in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 6.8 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., during the irrigation season from April 1st to October 1st of each year with a date of priority of 1886.

The applicant, Hayward Milling Company, asserts that it is the owner of the land above described to which said water is appurtenant and proposes to discontinue the use of water for the irrigation of said land and to transfer the water therefrom without loss of priority for use in the operation of a log pond in the W $\frac{1}{2}$  NE $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M.

Notice by publication as provided by ORS 540.520 was given in the Roseburg News - Review, a newspaper printed and having general circulation in Douglas County, Oregon, for a period of three weeks, being the issues of

November 8, 15 and 22, 1949. The time for hearing as fixed in the notice, namely: January 5, 1950, was not less than thirty days after the last publication of said notice.

On December 22, 1949, Orcutt, Long & Neuner, attorneys for The Robert Dollar Company, a Corporation, filed objections to the approval of the proposed change in use and place of use of water on the grounds that the objector would be injured should the application be approved.

The hearing as originally scheduled at the County Court House in Roseburg, Oregon, to begin at 10:00 o'clock a.m. on January 5, 1950, was postponed from time to time by mutual agreement between the attorneys of record. Prior to the date finally fixed for hearing the attorneys for the applicant and objector advised that the issues may be resolved by stipulation and at their request the hearing was indefinitely postponed.

On August 26, 1954 Niel R. Allen, attorney for Hayward Milling Company, filed the following documents, to-wit:

Stipulation and Withdrawal of Protest of the Robert Dollar Company, a Corporation.

Stipulation and Amendment to Application.

Joint Use Agreement - Cunningham Ditch.

Under the terms of the Stipulation and Amendment to Application, the application of Hayward Milling Company for a change in use and place of use of water is to be amended to reflect the ownership and segregation of the water right appurtenant to the 6.8 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., as follows:

Hayward Milling Company . . . . 4.1 acres

The Robert Dollar Company . . . . 2.7 acres

Under the terms of the Stipulations, Amendment and Withdrawal of Protest, it appears the application of the Hayward Milling Company, as amended,

for a change in use and place of use of water from Windy Creek may be approved without injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in use and place of use of water from Windy Creek be and the same hereby is approved and that the water right hereinbefore described as appurtenant to 8.5 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 9.5 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 31.2 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 1 acre in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 4.1 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., with a date of priority of 1886, be severed therefrom and simultaneously and without loss of priority transferred to the W $\frac{1}{2}$  NE $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., for the operation of a mill pond.

It is FURTHER ORDERED that the quantity of water used for the operation of the mill pond heretofore used for the irrigation of 54.3 acres shall be limited to the duty of water fixed for irrigation purposes by Decree of the Circuit Court for Douglas County, dated August 14, 1930, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Cow Creek and Its Tributaries, or such pro rata part thereof as is available, during the period April 1st to October 1st of each year.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use on or before October 1, 1955, or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of the complete application of water to beneficial use for the operation of a mill pond in the W $\frac{1}{2}$  NE $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., a certificate of water right shall be issued to the Hayward Milling Company or its successors in interest, to the extent to which the water has been applied beneficially and a certificate of water right shall be issued to The Robert Dollar Company, or its successors in interest for the

irrigation of the remaining 2.7 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 33, Township 32 South, Range 6 West, W. M., not involved in the change in use and place of use of water and certificate of water right heretofore issued to G. A. Cunningham and recorded at page 9616, Volume 9, State Record of Water Right Certificates shall be canceled.

Dated at Salem, Oregon this 11th day of September 1954.

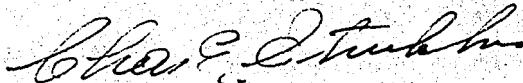
Noted on Findings

Vol. 10, p. 352

Cert. 9616

This Order Confirmed and  
Superseded by Certs. 20682 and 20683

T-4852 A use, POU (C-20683)

  
CHAS. E. STRICKLIN  
State Engineer