

STATE OF OREGON
WATER RESOURCES DEPARTMENT
LICENSE FOR HYDROELECTRIC PROJECT HE 404
A MAJOR PROJECT OF
2068 THEORETICAL HORSEPOWER

WHEREAS, by act of the Legislature of the State of Oregon, ORS 543.010 to 543.620 and 543.990, as amended, hereinafter called the Hydroelectric Act, the Water Resources Director is authorized to issue license to acquire and hold the right to the use of the waters within the state, and for the construction, operation and maintenance of facilities for the generation and utilization of hydroelectric energy; and

WHEREAS, HDI ASSOCIATES V, AN OREGON LIMITED PARTNERSHIP, hereinafter called the licensee, whose address is c/o Grayco Resources, 200 The Water Tower, 5331 SW Macadam, Portland, Oregon 97201, made application in due and proper form to the Director for a license for a power project designated as Project HE 404 in the records of the Director; and known as the NORTH FORK SPRAGUE RIVER Hydroelectric Project, and for authority to construct, maintain and operate in the County of KLAMATH, State of Oregon, certain project works necessary or convenient for the development, transmission and utilization of hydroelectric energy, and for use of the waters of the NORTH FORK SPRAGUE RIVER for generation of such electric energy; and

WHEREAS, the project is a major project for development of 2068 theoretical horsepower with proposed installed plant capacity of 1000 kilowatts; the licensee has paid to the Director all fees required prior to issuance of this license in accordance with the provisions of the Hydroelectric Act and the rules and regulations of the Director; and no application for said project, or in conflict therewith, has been filed by any municipal corporation or public utility district; and

WHEREAS, the licensee has filed maps, plans and specifications as required by ORS 543.290, and the director finds the project will be well adapted to the utilization of the water power involved and hereby approves same; and

WHEREAS, the licensee on the 28th. day of February, 1990, accepted in writing the terms and conditions of the Hydroelectric Act and this license for Project HE 404;

NOW, THEREFORE, the Director hereby issues this license to the licensee for the purpose of constructing, operating and maintaining the project works hereinafter described as necessary or convenient for the development, transmission and utilization of hydroelectric energy, and to appropriate, acquire, and hold the right to use the waters of NORTH FORK SPRAGUE RIVER to the extent hereinafter set forth. This license is issued on condition that licensee shall comply with all the terms and conditions of the Hydroelectric

Act and Laws of Oregon relating thereto, with the rules and regulations of the Director pursuant thereto as fully set forth herein, and shall be subject also to the following express conditions, limitations and exceptions;

ARTICLE 1.

Definition of Project

The word "project" as used in this license means the complete unit, improvement, and development, including among other things, powerhouses, waterwheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with said unit or any part thereof, right of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation, and maintenance of any such unit.

ARTICLE 2.

Description of Project

A concise, general description of Project HE 404 is as follows:

The NORTH FORK SPRAGUE RIVER Power Project proposes the use of 100 cubic feet per second of water, measured at the point of diversion from said stream, to develop 2068 theoretical horsepower utilizing a gross head of 182 feet. A concrete core rock fill dam 10 feet in height located in the SE1/4 NW1/4, Section 29, Township 35S, Range 15E, WM, will divert up to 100.0 cubic feet per second of water from NORTH FORK SPRAGUE RIVER through PIPELINE AND PENSTOCK TO A POWERHOUSE LOCATED ADJACENT TO THE NORTH FORK OF THE SPRAGUE RIVER.

Exhibits

The location and character of the project are more specifically shown and described among the following designated exhibits filed to accompany the application and hereby made part of this license.

- Exhibit A: Intake pipeline, penstock and powerhouse locations.
- Exhibit B: Appropriation of water.
- Exhibit C: Construction and maintenance schedule.
- Exhibit D: Project costs and budget.
- Exhibit E: Environmental report.

Agreement between Oregon Department of Fish & Wildlife and Fred D. Ehlers.

Power purchase agreement between Frederick D. Ehlers and Pacific Power and Light Company.

Design drawings and specifications, penstock, intake structure and powerhouse approved December 16, 1987.

No substantial changes shall be made in the maps, plans, specifications and statements described and designated as exhibits herein until such changes have been approved by order of the Director. To the extent any changes in maps, plans or specification are hereafter approved by the Director, the approval of such change shall be deemed to amend the description of the license accordingly.

ARTICLE 3.

The licensee shall comply fully with the provisions of the order of the Water Resources Commission dated December 2, 1985 and amended February 12, 1990. The orders are made part of this license. A copy of the orders are attached for reference.

ARTICLE 4.

The licensee shall furnish the Director with a monthly progress report of construction of Project HE 404. Included in this report shall be a statement of the claimed cost covering each of the accounts involved.

ARTICLE 5.

Period of License

This license is effective as of March 27, 1990, and shall terminate December 31, 2021.

ARTICLE 6.

Jurisdiction

In consideration of this license and the benefits and advantages accruing thereunder to the licensee, it is expressly agreed by the licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the licensee be prevented from compliance with any provisions of this license or of the Hydroelectric Act by the operation of any valid federal law, or the lawful order, rule or regulation of any federal government agency exercising exclusive jurisdiction in the premises, it shall not be deemed to be in default, or under any liability to the State of Oregon for failure to perform the same during the period of such disability.

ARTICLE 7.

The licensee shall begin construction of the project facilities within one year of the date of issuance of this license; shall complete construction of the project facilities within three years of the date of issuance of this license; and thereafter shall maintain the project facilities in good working order. If the licensee fails to begin or complete construction of the project facilities within the time limits fixed in this license or any lawful extension thereof; or if, after completing construction, fails to use or

operate the project facilities for any period of five consecutive years, the Director shall, after due notice, terminate this license by written order. If at any time after two years of nonuse of water for this project, there shall be any conflicting application for or claim to the use of this water, then the licensee may be required by the Director to show cause why the conflicting application should not be granted and this license terminated.

ARTICLE 8.

Water Right Granted

Subject to the provisions of ARTICLE 3 and prior appropriations, this license grants the licensee the right to use up to 100.0 cubic feet per second of water from NORTH FORK SPRAGUE RIVER provided that the right to the use of water will be limited to the amount which the generation facilities will utilize efficiently. The priority of the right hereby granted is July 12, 1982. On termination of this license, such right to the use of water shall revert to the public. The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source which may hereafter be made for domestic, municipal, irrigation, or any other beneficial consumptive use.

ARTICLE 9.

Period of Water Right

The right to the use of the waters in connection with the development of this project shall be vested with the license during the time this license or any lawful renewal or extension thereof is in force.

ARTICLE 10.

Annual License Fee

An annual license fee of \$433.60 shall be paid by the licensee on or before January 1 of each calendar year for each calendar year from the first calendar year after the project is completed to 2021 inclusive, being \$1.00 for the first 25 theoretical horsepower and 20 cents for each additional theoretical horsepower of the 2068 theoretical horsepower authorized herein for Project HE 404.

ARTICLE 11.

Depreciation

The amount of the annual charges for depreciation expenses to be included in the cost of operation shall be determined on a shrinking fund basis computed by the use of service lives subject to the approval of the Director; provided, that, for the purpose of depreciation, the service lives of the original units of property shall not exceed unexpired period of this license; provided further, that the Director may upon further determination and in his discretion, extend the depreciation period of the original units of the

project beyond the life of the license. In determining the amount of the annual charges for depreciation expenses to be included in the cost of operation prior to the time of final action of the Director in fixing the actual legitimate cost of the original legitimate cost of the items in each account number as set forth in the "Initial Cost Statement" to be filed by the licensee, as provided for in said ARTICLE, shall be used.

ARTICLE 12.

Determination of Cost of Project

- a. Initial Cost Statements: The licensee shall file within one year after the time the project is ready for service, an initial statement, under oath, with one additional conformed copy thereof showing the amount claimed by the licensee as the actual legitimate cost of the project, as defined in subsection 2 of ORS 543.010, on forms as prescribed or otherwise approved by the Director.

Similar statements with respect to net additions and betterments to the project shall be filed in the same manner before April 1 of each and every succeeding year during the term of this license or any lawful extension thereof, unless the Director shall otherwise direct.

- b. Substance: Each statement so filed shall give full, adequate and complete information with respect to the cost of the project or additions and betterments thereto as the case may be. Any statement which does not contain sufficient information will be returned to the licensee for such additional information as the Director may deem necessary.
- c. Report on Project: When a satisfactory statement shall have been filed with the Director, the Director's representatives will make an audit on the accounts, will analyze the books, cost records, engineering reports and other records supporting such statements or pertaining to the project, will inspect the project works, and will prepare a report setting forth their findings and recommendations with respect to the costs claimed.
- d. Service of Report: Copies of such report and of the final report provided for in subsection (g) of this ARTICLE 12, will be served by certified mail upon the licensee at its principal place of business in Oregon and copies will be sent to such other parties as the Director may prescribe.
- e. Time of Filing Protests: Thirty days after service thereof will be allowed to the licensee within which to file a protest to such report. If no protest is filed within the time allowed, the Director shall issue such orders as may be appropriate. If a protest is filed, a hearing will be ordered, such hearing to be held within 90 days from filing of the protest with the Director.

- f. Burden of Proof: The burden of proof to sustain each item of the statement of claimed costs as filed shall be upon the licensee and only such items as are in the opinion of the Director supported by satisfactory proof may be entered in the project accounts of the licensee.
- g. Finding and Final Statement: Final action by the Director will be in the form of a finding and order entered in the records of the Water Resources Department and served upon the licensee and such other parties as the Director may prescribe. The licensee shall thereafter file a final statement, under oath, in duplicate, showing the net investment revised in conformity with the order of the Director, together with a statement showing that its records have been revised in conformity with such order.

ARTICLE 13.

Reasonable Rate of Return

A reasonable rate of return on the net investment in the project shall be that established by the Public Utility Commissioners for Electric Utilities, subject to the approval of the Director.

ARTICLE 14.

Amortization Reserve

Any earnings in excess of said reasonable rate of return shall be set up in a Miscellaneous Reserve Account, as credit to the Amortization Reserve, pursuant to ORS 543.510 of the Hydroelectric Act, to be disposed of in accordance with order of the Director.

ARTICLE 15.

Accounting

The licensee shall maintain an account of the actual cost of the construction of the project facilities and any additions thereto, and shall, under oath, provide such accounting to the Director upon his request.

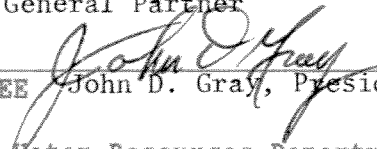
ARTICLE 16.

Bond of License to Protect Laborers and Materialmen

Before entering into the construction of this project, the licensee shall execute a bond as required by ORS 543.560 to be approved by the Director, and by the Attorney General of Oregon as to form, which bond shall be in addition to and not in lieu of any other liability of the licensee principal.

IN TESTIMONY OF ACCEPTANCE of all the terms and conditions of this license, ORS 543.010 t 543.620 and 543.990, and the rules and regulations of the Commission made pursuant thereto, the licensee has affixed his signature this 28th. day of February, 1990.

HDI Associates V, by HDI-Oregon, Inc.,
its General Partner



LICENSEE John D. Gray, President

IN WITNESS HEREOF, the Director of the Water Resources Department of Oregon has signed his name at Salem, Oregon this 27th day of March, 1990.



WILLIAM H. YOUNG, DIRECTOR

0524J

BEFORE THE WATER RESOURCES COMMISSION
OF THE
STATE OF OREGON

In the Matter of the Consideration of)	
Hydroelectric License Application HE)	PROJECT BACKGROUND,
404 Involving Use of Water from the)	FINDINGS OF FACT,
North Fork Sprague River for)	CONCLUSION AND ORDER
Hydroelectric Power)	

Frederick D. Ehlers has submitted Hydroelectric License Application HE 404 for a hydroelectric project in excess of 100 theoretical horsepower.

A public hearing on the license application was held on September 19, 1985, in Bly, Oregon. Other than the applicant, there were no parties to the proceedings.

PROJECT BACKGROUND

Hydroelectric License Application HE 404 covers a hydroelectric facility on the North Fork Sprague River in Klamath County. Only the applicant and one other individual testified at the public hearing on the proposed project. One letter opposing the project was also received.

Mr. Ehlers proposes to use between 20 and 100 cfs of water to produce a maximum of 1,000 KW of power for an average output of 5.4 million KWH a year. The diversion structure will be built entirely below the surface of the stream and will be screened according to the provisions of the agreement with the Oregon Department of Fish and Wildlife.

From the streamside intake structure, water will be diverted into a buried flume and then conveyed in a buried pipeline for about 5,600 feet. The water will drop 182 feet before passing through generating units using reverse running pumps to produce electricity. The water will return directly to the creek from the powerhouse. The project will be a run-of-river type located entirely on private forest lands. The applicant has a 25-year lease from the Weyerhaeuser Company for use of project lands. Power will be transmitted to Pacific Power and Light Company lines northeast of Bly and sold to the company. The transmission lines will be buried to the main power lines. The project is planned to run unattended with computer-operated automatic controls. Only monthly maintenance visits are anticipated.

The project will be located in a canyon area of the North Fork Sprague River. Surrounding lands are part of the Fremont National Forest which are managed for multiple use. Trout is the main species in the river. Elk, deer and fur-bearing animals inhabit the area. Plans to bury the project pipeline and transmission line will minimize potential impacts on wildlife.

The only public witness speaking at the hearing primarily sought clarification of project details such as the length of pipe and its composition. The letter in the record objected to the project because of the free-flowing nature of the river and possible impacts on the trout fishery. The agreement with the Oregon Department of Fish and Wildlife provides for screening and minimum flow levels in the stream to protect trout.

According to the record, it appears that the applicant has obtained all other state and local permits for the project. Approvals include a conditional use permit from Klamath County, an agreement with ODFW, a fill and removal permit from Division of State Lands and certification by the Department of Environmental Quality. The applicant also has a contract for the sale of power. Nothing in the record suggests Mr. Ehlers will not be able to obtain the necessary approval for the transmission lines from the U.S. Forest Service. He has applied to FERC for a license. Both permits have yet to be issued.

As a result of the hearing and information received on the matter, the Water Resources Commission makes the following:

FINDINGS OF FACT

Statements of fact presented in the project background discussion are incorporated herein:

1. Estimated streamflows were correlated with the Sprague River near Beatty Gage (11497500) over 32 years of record and show sufficient water for the proposed diversion.
2. Project lands are in private ownership and managed for timber. Surrounding lands are managed for multiple use including recreation and water resources by the National Forest Service.
3. The project site is located in a canyon area with recreational potential.
4. There are no known climatologic or geologic factors expected to affect the project.
5. There are no known historic or archeological sites in the area.
6. The project will have no effect on drainage, sanitation or flood control.
7. No known water rights of record or other uses of water are located in the project area. Irrigation use occurs downstream from the project area.
8. There is no program for the Klamath Basin. The Klamath River Basin Compact between the States of Oregon and California covers use of water in the drainage. Hydroelectric use is permitted under the compact.

9. The applicant has applied for a \$2.5 million loan from the Small Scale Energy Loan Program.
10. The Department of Environmental Quality has determined that the project will comply with the applicable provisions of the Federal Clean Water Act Sections 301, 302, 303, 306, and 307 and that there is reasonable assurance it will not violate applicable water quality requirements.
11. No anadromous fish are present in the drainage.
12. Trout is the primary species in the river.
13. Screening and maintenance of flows in the channel are proposed for fishery protection.
14. Plans to bury the penstock and transmission lines will minimize impacts on wildlife.
15. Wildlife in the area include elk, deer and fur-bearing animals.
16. A conditional use permit has been issued by Klamath County.
17. The applicant has a contract with Pacific Power & Light Company for sale of project power.
18. No measurable cumulative impacts associated with the project have been identified.

OFFICIAL NOTICE

The Water Resources Commission has taken official notice of the records of the Water Resources Department pertaining to water use from the North Fork Sprague River in the project area.

ULTIMATE FINDINGS

As proposed in HE 404, the project will not adversely affect any of the designated resource areas specified in OAR 690-74-020. The record demonstrates that the proposed use of water reasonably complies with the standards in OAR 690-74-050 Fish Resources; OAR 690-74-055 Wildlife; OAR 690-74-060 Land Resources; OAR 690-74-065 Economics; and OAR 690-74-070 Need for Power.

CONCLUSION

It is, therefore, concluded that the proposed diversion for power generation would not impair or be detrimental to the public interest.

ORDER

It is hereby ordered that Hydroelectric License Application HE 404 be and hereby is approved with the following conditions:

1. At all times during project operation, a flow of water in the river shall be maintained as follows: October - May, 40 cubic feet per second (cfs); June, 40 cfs; July, 20 cfs; August - September 15 cfs.
2. The pipeline shall be buried from the point of diversion to the forebay to minimize conflicts with terrestrial animals.
3. The project shall be designed and built in such a manner so as to minimize the impacts on the scenic river capacities of the affected river stretch. This shall include the use of native and nonreflecting materials, burial of all facilities which feasibly can be and topographic and vegetative screening of any above-ground facilities.
4. At all times during project operation, the applicant shall comply with the terms of the agreement with the Oregon Department of Fish and Wildlife.

Dated December 2, 1985

WATER RESOURCES COMMISSION

William H. Young

William H. Young, Director
WATER RESOURCES DEPARTMENT

APPEALS AND JUDICIAL REVIEW

1985 Oregon Laws Chapter 673, Section 9, provides for judicial review of orders issued by the Water Resources Commission or the Water Resources Director. Refer to that statute for details as to rights of judicial review. Petitions for review must be filed within 60 days from the date an order is served, unless a petition for reconsideration or rehearing has been filed.

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BEFORE THE WATER RESOURCES DIRECTOR
OF THE
STATE OF OREGON

CONSIDERATION OF HYDROELECTRIC)
LICENSE APPLICATION HE 404 ON THE) AMENDMENT TO ORDER
NORTH FORK OF THE SPRAGUE RIVER) APPROVING APPLICATION

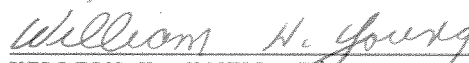
On December 2, 1985, the Water Resources Commission approved Hydroelectric License Application HE 404 with several conditions.

On February 12, 1990, the Commission approved an amendment to the minimum flow conditions for this license. The amendment was approved to make the operating conditions consistent with Federal Energy Regulatory Commission requirements.

It is hereby ordered that the following condition amending Hydroelectric License Application HE 404 be adopted.

1. At all times during project operation, a flow in the river shall be maintained as follows: October 1 through July 31, 30 cubic feet per second (cfs); August 1 through September 30, 25 cfs.

Dated this 27th day of March, 1990.



WILLIAM H. YOUNG, Director
Water Resources Department

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