

12815

STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHT CERTIFICATE

ISSUED TO:

CELIA CADE
2006 HIGHWAY 101 #322
FLORENCE, OR. 97458

A. PROJECT DESCRIPTION

On December 2, 1994, Steve Cole (previous owner) submitted an application to OWRD for a water right to develop a minor hydroelectric project (Project) that would divert 0.3 cubic feet per second (cfs) of water from an unnamed stream, tributary to Tenmile Creek in Lane County. The Project would use 160 feet of hydraulic head and a Pelton wheel system to generate 5.45 theoretical horsepower for on-site household use.

The Project involves a diversion dam and small reservoir (holding tank). The dam is a concrete structure, approximately 12.2 feet long by 4.1 feet high. Two sheets of ½ inch plywood are on top of the dam structure, containing a screen in the center of the plywood to help keep debris from entering the holding tank and clogging the pipe screen. A pipe extends from the reservoir to the turbine, which is located in the powerhouse. The pipe is made of PVC and consists of 600 feet of 6-inch pipe and 1000 feet of 4-inch pipe. The powerhouse is located approximately 1400 feet from the point of diversion. The turbine is a bronze Pelton wheel with a GE brushless alternator, 24 volt, 100 amp. After passing through the powerhouse, water is returned to the unnamed stream prior to its intersection with Tenmile Creek.

B. LOCATION

The point of diversion (intake) is located in the SW ¼ SW1/4 of section 30, Township 15 South, Range 11 West, W.M., in Lane County, Oregon. The powerhouse is located in the NW ¼ NW ¼ of Section 31, Township 15 South, Range 11 West, W.M., in Lane County, Oregon.

APPEAL RIGHTS

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

C. WATER RIGHT GRANTED

This water right grants the right to use 0.3 cubic feet per second (cfs) of water from an unnamed stream, tributary to Tenmile Creek in Lane County, using 160 feet of hydraulic head and a Pelton wheel system to generate 5.45 theoretical horsepower for on-site household use. The priority date for the water right is December 2, 1994. The use of water is limited to the amount that the generation facilities can utilize efficiently, and shall not exceed the specifications noted in the water right. Water may be used on a year-round basis when water is present and all other consumptive water rights in the area affected by the Project are satisfied. The water right expires December 31, 2025, and may be reauthorized under laws existing at that time. This water right is inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive uses.

D. WATER RIGHT CONDITIONS

Upon a review of the application and input received from numerous state and federal agencies, OWRD finds that the Project, with the conditions set forth below, will not violate the standards expressed in OAR 690-051-0160 through -0270, and is consistent with the public interest. The Project is well adapted to the development and utilization of the water power involved.

The use of water is subject to the following express conditions:

1. The Owner shall comply with all statutes and rules applicable to the resources impacted by the Project.
2. The Owner shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$15.00, (*comprised of \$6.00 under OAR 690-051-0400(6) and \$9.00 under ORS 543A.415*). This amount shall be due by the date specified in the invoice.
3. Upon a decision to terminate the hydroelectric use for more than five years, the Owner shall comply with any decommissioning statutes and rules in effect at that time. On termination of the water right, the right to use water shall revert to the public.
4. If, after completing construction of the Project, the Owner fails to use or operate the Project facilities for any period of five consecutive years, the water right shall be subject to termination by the OWRD.
5. The Owner shall construct and build the Project according to the maps, plans and specifications filed with and approved by the WRC, and within the time fixed by the water right or by any lawful extension thereof. The Project map will be incorporated as part of the water right certificate.

6. Use of water is governed by this water right. However, the operations of the Owner so far as they affect the use, storage and discharge from storage of waters affected by the Owner, shall at all times be controlled by such reasonable rules as the WRC may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The Owner shall release water from the Project reservoir at such rate in cfs, or such volume in acre-feet per specified period of time, as the WRC may prescribe.
7. The Owner will maintain the Project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the Project, and all parts thereof, conformably to the rules of the WRC not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.
8. The Owner shall complete construction of the Project within two years of the date the water right is issued.
9. No voluntary transfer of the water right or of any property acquired, constructed or operated pursuant to the water right issued under ORS 543.010 to 543.610 shall be made without written approval of the WRC. Any successor or assignee of any water right under any project acquired, constructed or operated by the Owner, whether by voluntary transfer approved by the WRC or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the water right and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original Owner thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the water right shall terminate.
10. The following requirements of ORS 543 are hereby waived, under authority of OAR 690-051-0350:
 - ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the WRC.
 - ORS 543.550 relating to liens against the Project and providing that any sale shall be of the whole property embraced in the Project unless a partial sale is approved by the OWRD Director.
 - ORS 543.560 which requires the Owner to execute to the State of Oregon a bond to the effect that the Owner shall promptly make payment to all persons supplying labor, material, machinery, etc.

11. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41. The water right holder shall consult with ODEQ prior to undertaking any activity that directly or indirectly results in removal of vegetation adjacent to Project waterways. Waterways include, but are not necessarily limited to bypass reaches, siltation/forebay ponds, open-channel diversions, and above ground pipes.
12. Notwithstanding any specific conditions established by this water right, the water right holder must comply with all water quality standards adopted by the Environmental Quality Commission pursuant to state and federal law. ORS 468B.048 and Section 303 of the Clean Water Act.
13. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
14. Although there are no known cultural sites within the Project area, if any cultural material is discovered during Project construction, all activities should stop and an archaeologist should be contacted to assess the discovery. It is a Class B misdemeanor to impact an archaeological site (ORS 358.905-955) and a Class C felony to impact Indian Burials (ORS 97-740-990).
15. All mitigation measures are in the Project vicinity and shall be implemented prior to the first operation of the Project.
16. The Owner shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD free and unrestricted access in, through, and across the Project in the performance of their official duties, and shall allow free access to all reports, accounts, records, and other data relating to said Project.
17. The Owner shall be liable for all damages occasioned to the persons or property of others by the construction, operation, or maintenance of the Project facilities, and in no event will the State of Oregon be liable therefore.
18. Issuance of the water right does not absolve the Owner from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Owner is made aware that permits may be required from the United States Army Corps of Engineers under Section 404 of the Clean Water Act, or from the Division of State Lands for removal and fill of material.

Issued September 6, 2005


Phil Ward, Director

Oregon Water Resources Department