

STATE OF OREGON
COUNTY OF JOSEPHINE
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

JESS & MARIA CARBAJAL
106 NW F STREET # 419
GRANTS PASS, OR 97526

541-474-2429

confirms the right to use the waters from #1 GULCH, tributary to POORMAN CREEK for development of 1 THEORETICAL HORSEPOWER (THP).

This time-limited certificate is issued under application HE 500. The date of priority is JANUARY 31, 2002. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.078 CUBIC FEET PER SECOND (cfs) measured at the point of diversion from the source.

The point of diversion is located:

670 Feet South and 570 Feet West from the NE Corner of Section 33, being within the NE 1/4 NE 1/4, SECTION 33, TOWNSHIP 33 SOUTH, RANGE 7 WEST, W.M.

The authorized place of use is:

NW 1/4 NW 1/4
SECTION 34
TOWNSHIP 33 SOUTH, RANGE 7 WEST, W.M.

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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law.

PROJECT DESCRIPTION

On March 28, 2001, Jess and Maria Carbajal (Owner) submitted an application for a minor hydroelectric water right to divert 0.02 cubic feet per second (cfs) (10 gallons per minute) of water from #1 Gulch, tributary to Poorman Creek. This proposed hydroelectric Project would use 120 feet of hydraulic head to generate 0.5 theoretical horsepower (thp) for on-site household use. On January 31, 2002, the Owner requested to modify the application by changing the rate of flow to .078 cfs (35 gallons per minute), which would have capacity of 1 THP. The Oregon Water Resources Department (OWRD) accepted this modification.

The Project does not involve a dam or reservoir. The Project would divert water from #1 Gulch, into a pipeline that follows #1 Gulch streambank on the surface, has a length of 800 feet, with 20 feet of 4 inch pipe, 20 feet of 3 inch pipe, 600 feet of 2 inch pipe, and 160 feet of 1.5 inch pipe. The pipeline will be connected to the powerhouse, which includes a Delco automotive alternator that is attached to a six-inch turgo wheel. A truck trailer serves as the powerhouse. Diverted water will be returned to #1 Gulch, below the powerhouse, approximately 50 feet upstream of the confluence with Poorman Creek. The estimated cost of the Project is \$1,000.

FINDINGS

The Director finds that the project is well adapted to the development and utilization of the water power involved, that no application for this project or in conflict with this project has been filed by any municipality or utility district, and that the water right holder has paid to the Oregon Water Resources Department (OWRD) all fees required prior to the issuance of this certificate.

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. The right granted herein is expressly made inferior in right and subsequent in time to any authorized appropriation of water from this source for domestic, municipal, irrigation or any other beneficial consumptive use

WATER RIGHT CERTIFICATE 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 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 \$1.00 under OAR 690-051-0400(6) and \$14.00 under ORS 543A.415*). This amount shall be due by the date specified in the invoice.
3. The Owner shall construct and build the Project according to the maps, plans and

specifications filed with the application and approved by the WRC within two years of issuance of this time-limited water right. OAR 690-051-0390 (2). The Project map will be incorporated into the water right certificate.

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. 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.
6. Use of water is governed by this water right. However, the operations of the Project by the Owner so far as those operations 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. 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.
9. 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. No significant temperature-related problems have been identified nor are they expected given the existing Project facilities, operations and management. However, to protect from any significant future temperature-related adverse impacts to aquatic organisms, any future modifications of vegetation surrounding Project waters should be carefully evaluated. 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 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. 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.
 16. 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.
 17. 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 State 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.
 18. If at any time an unanticipated situation arises in which the operator observes that fish, wildlife, or their habitat may be harmed by any of the Project facilities or as a result of

Project operation, the operator shall immediately notify and consult with the nearest office of the ODFW. In no case shall such contact occur later than the next business day. The operator shall subsequently restore any damaged fish and wildlife protection features of the Project consistent with direction provided by ODFW. Diverted water shall be returned directly to #1 Gulch near the powerhouse.

19. This water right expires December 31, 2028, and may be reauthorized under laws existing at that time.

Issued August 19, 2008



DWIGHT W. FRENCH, Administrator of Water Rights & Adjudications

{For}

Phil Ward, Director

Oregon Water Resources Department