

STATE OF OREGON

WATER RESOURCES DEPARTMENT

WATER RIGHT CERTIFICATE

A. PROJECT DESCRIPTION

On June 4, 2002, Vern Spaur (Owner) submitted an application to OWRD for a water right to develop a minor hydroelectric project (Project) that will divert 1.0 cubic feet per second (cfs) of water from West Side Ditch and Spring Creek, tributary to the Wallowa River in Wallowa County. The Project would use 80 feet hydraulic head to generate 4 theoretical horsepower (thp).

During the irrigation season, the Project will make hydroelectric use of a portion of the water that is diverted under water right certificate 3180 for irrigation, but will not cause the diversion of any additional water from the Lostine River, beyond what is allowed under the irrigation water right. Outside the irrigation season, the Project uses runoff collected in the same system of ditches as used for irrigation.

A portion of the water from Spring Branch (composed of water from Spring Creek and West Side Ditch), is diverted into the powerhouse through buried 10-inch mainline pipe. The powerhouse includes a Pelton wheel that has a 1.25 inch nozzle and over 38 pounds of pressure when using .5 cfs (1 cfs is authorized under the water right), a direct current generator, and an alternating current inverter. After water is used for hydroelectric purposes at the powerhouse, it flows into a small holding reservoir that serves as a bulge in the system for the irrigation system. Water then flows from the reservoir and back into Spring Branch, which flows into the Clearwater Ditch. The power the Project will generate will be used for on-site use. The estimated cost to build the Project is \$10,000.

B. LOCATION

The point of diversion and powerhouse are located in the SW ¼ of Township 1 North, Range 43E, Section 31, W.M., Wallowa County, Oregon. After passing through the power plant, the water will be returned to a small reservoir and then the Westside runoff ditch, with some water potentially reaching Spring Creek.

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 of the order must be filed within 60 days of the date of service.

C. WATER RIGHT GRANTED

This water right grants the right to use 1.0 cfs of water from West Side Ditch and Spring Creek, tributary to the Wallowa River in Wallowa County, using 80 feet hydraulic head to generate 4 thp. The priority date for the water right is June 4, 2002. 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 use for hydroelectric purposes as specified in this water right may be made on a year-round basis, when water is available and all other consumptive water rights in the project area are satisfied. The water right expires 20 years after the water right certificate is issued, 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.

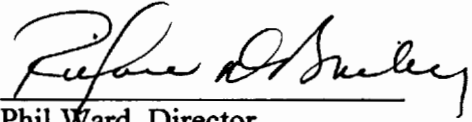
The use of water is subject to the following express conditions:

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 \$4.00 under OAR 690-051-0400(6) and \$11.00 under ORS 543A.415*). This amount shall be due by the date specified in the invoice.
3. The Owner may relocate the existing powerhouse (but may not *add* an additional powerhouse) to the location identified in "OPTION #2" in the original application, after providing written notice to, and obtaining permission from, OWRD. The Owner shall inform OWRD of any proposed modifications to the Project and must obtain approval from OWRD prior to initiating any such modifications.
4. 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.
5. 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.
6. 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.

7. The 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.
8. 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.
9. The Owner shall complete construction of the Project within two years of the date the water right is issued.
10. 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.
11. The following requirements of ORS 543 are hereby waived, under authority of OAR 690-051-0350:
 - ORS 543.510 which requires the Owner to establish and maintain amortization reserves to be applied in reduction of the net investment.
 - ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the WRC.
 - ORS 543.520 which provides that on amortization of the net investment the Project shall become the property of the State of Oregon.
 - 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.
12. The Project must meet the water quality standards stated in ORS 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.
 13. 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.
 14. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
 15. 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).
 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 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.

Issued September 7, 2004



Phil Ward, Director
Oregon Water Resources Department