

STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHTS CERTIFICATE

A. INTRODUCTION

On March 23, 2004, Lucien and Juliette Gunderman (Applicants) submitted an application for a minor hydroelectric water right to divert a combined total of 2.0 cubic feet per second (cfs) of water from an unnamed stream, tributary to Baker Creek, and from two unnamed springs and runoff. The water will be diverted into two existing ditch/pipe systems and will use the existing hydroelectric system described in HE 549. The power generated will be used onsite for domestic and agricultural purposes, and excess power will be sold to McMinnville Power and Light under a net metering agreement.

B. PROJECT DESCRIPTION

The Project is located in Yamhill County. The proposed use involves diversion of up to a total of 2.0 cfs of water from (A) an unnamed stream, tributary to Baker Creek, (B) from two unnamed springs and (C) rain runoff into two existing ditch/pipe systems. Both spring water and rain runoff flow through the ditch/pipe systems into the two existing reservoirs (Big Lake and Little Lake). This additional water will help augment flows allowed under a separate existing hydroelectric water right (HE 549). However, the overall hydroelectric water usage for the entire project (HE 558 and HE 549) remains limited to 4.0 cfs. The existing hydroelectric facilities are described in HE 549. Water diverted from the unnamed stream tributary to Baker Creek will operate a turbine pump that pushes water back up the hill and into an existing storage reservoir for use in the hydroelectric project. A non-storage reservoir will be constructed at the diversion point on the unnamed tributary to maximize hydraulic head for the pipe that delivers water to the turbine pump. The reservoir will be constructed of earthen materials brought to the site from another location on the Applicant's property. The dam will be no more than 8 feet high, and will back up water for approximately 100 feet in length and 40-50 feet in width.

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.

There will be an 8-inch pipe extending through the bottom of the dam that will allow water to flow through on a year-round basis to meet or exceed minimum flows required by this water right. A 24-inch culvert will be installed to handle overflow water. The estimated cost of the Project is \$40,000.

C. LOCATION

The points of diversion and places of use are located in Township 4 South, Range 5 West, Section 16, W.M. See attached map.

D. WATER RIGHT GRANTED

This water right certificate grants the right to divert 2.0 cubic feet per second (cfs) of water from an unnamed stream, from two unnamed springs, and runoff, tributaries to Baker Creek in Yamhill County, into two existing ditch/pipe systems, with the overall hydroelectric water usage for the entire project (HE 558 and HE 549 combined) remaining limited to 4.0 cfs. The priority date for the proposed water right is March 23, 2004. 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 and that of HE 549. This water right expires on December 31, 2022 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 use. Water may be diverted, stored in Big Lake Reservoir and Little Lake Reservoir, and used for hydroelectric purposes from November 1 through June 14 each year.

E. WATER RIGHT CONDITIONS

Upon review of the application and input received from state and federal agencies and private citizens, Oregon Water Resources Department (OWRD) finds that the Project, with the conditions set forth below, will not violate the standards expressed in Oregon Administrative Rules (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.

1. The Applicants shall comply with all statutes and rules applicable to the Project.
2. Hydroelectric fees are already being charged on all power generated under hydroelectric water right HE 549. Therefore, no additional fees are due under this water right, HE 558.
3. Upon a decision to terminate the hydroelectric use for more than five years, the Applicants 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 Applicants fail 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 Applicants shall construct and build the Project according to the maps, plans and specifications filed with and approved by the Water Resources Commission (WRC), and within the time fixed by the water right or by any lawful extension thereof. The Project map will be incorporated into the water right certificate.
6. Use of water is governed by this water right. However, the operations of the Project by the Applicants so far as those operations affect the use, storage and discharge from storage of waters affected by the Applicants, 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 Applicants 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 Applicants 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 Applicants shall not commence construction of any Project features covered by this water right until after results of Oregon Department of Fish and Wildlife's (ODFW) fish survey (see condition # 10) are submitted in writing by ODFW to the Applicants and the OWRD. The Applicants shall complete construction of the Project within two years of the date the fish survey results are issued by ODFW. All construction affecting the unnamed tributary shall be confined to periods allowed by ODFW and shall meet ODFW fish passage criteria.
9. It is currently assumed that adult and juvenile salmonids will be impeded at the point of diversion. If fish are present, Applicants shall construct a fish ladder and screen that meet current ODFW fish passage criteria.
10. ODFW shall schedule an appointment with Applicants for ODFW staff to conduct a fish survey in the unnamed tributary to Baker Creek. The fish survey shall occur no later than May 15, 2005. This survey will determine whether fish are present in the unnamed tributary. Survey results shall be prepared by ODFW and submitted in writing to the Applicants and OWRD hydroelectric staff, referencing hydroelectric application HE 558, no later than May 20, 2005. If the survey shows that fish are present, the Applicants shall install a fish screen for

downstream fish passage and a fish ladder for upstream fish passage. The fish screen and fish ladder must meet ODFW criteria. Designs for the fish screen and fish ladder must be approved by ODFW prior to their installation. However, if the survey shows that fish are not present, the Applicant shall not be required to install a fish screen or fish ladder.


11. 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 Applicants, 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 Applicants 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.
12. The following requirements of Oregon Revised Statutes (ORS) 543 are hereby waived, under authority of OAR 690-051-0350:
 - ORS 543.510 which requires the Applicants 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 Applicants to execute to the State of Oregon a bond to the effect that the Applicants shall promptly make payment to all persons supplying labor, material, machinery, etc.
13. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41. See water quality requirements in the existing hydroelectric water right, HE 549, and any amendments thereto, which are incorporated by reference and shall apply to this water right as though set forth fully herein. 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 Oregon Department of Environmental Quality (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.

14. 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.
15. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
16. 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).
17. The Applicants shall allow the OWRD Director and authorized agents and employees of the OWRD free and unrestricted access in, through, and across the Project in the performance of their official duties, including but not limited to monitoring of instream flow requirements, and shall allow free access to all reports, accounts, records, and other data relating to said Project.
18. The Applicants 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.
19. Issuance of the water right does not absolve the Applicants from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Applicants are informed that wetland removal/fill permits may be required by appropriate state or federal agencies. The OWRD recommends that the Applicants consult with the Oregon Division of State Lands and the United States Army Corps of Engineers for clarification on this issue. If the activity will involve the clearing of forestland for conversion to any non-forest use (water development) then the landowner, operator or timber owner is required to notify the State Forester 15 days prior to commencement of the operation (ORS 527.670). If the forest operation takes place within 100 feet of a "Fish Bearing Stream" the Applicants are required to submit a written plan (OAR 629-605-0170) addressing stream protection measures.

20. In order to provide instream flows in the unnamed tributary to Baker Creek that meet the lifestage needs of adult and juvenile cutthroat trout, the Applicants shall maintain a minimum flow of 1 cfs from December 1 to June 14 to meet spawning, incubation, and rearing needs of cutthroat trout; and November 1 through November 30 a minimum flow of 0.5 cfs should be maintained or inflow if 0.5 cfs is not available.
21. The Applicants shall repair the two culverts located on the unnamed tributary to Baker Creek. These repairs shall consist of re-installing culverts to appropriate grade level.
22. The reservoir constructed under this water right shall not be used to store water for use at a later time, and must continuously allow water to flow through the 8-inch outflow pipe to meet minimum flow requirements. The reservoir shall serve as a non-storage reservoir, otherwise known as a "bulge in the system." The Applicants shall not excavate behind the dam to deepen the reservoir. The Applicants are made aware that such excavation may require a separate water right application. The dam height shall not exceed 8 feet. If fish are present, and upstream fish passage is required, the 8-inch pipe shall be closed off and all outflow shall be through the fish ladder from November 1 through June 14, except in cases of high flow events which require the use of an emergency outlet. However, from June 15 through October 31, all outflow shall be passed through the 8-inch pipe.
23. To reduce the potential for seasonal warming of water flowing into Baker Creek, the reservoir constructed under this water right must be designed and operated so it is fully drained and passes all natural inflow beyond the dam from June 15 through October 31 of each year. The reservoir shall be drained at a rate no greater than 12 inches per day (.5 inches per hour). At this rate, the Applicants shall begin draining the reservoir on or before June 7 of each year to ensure the reservoir is fully drained by June 15.
24. The Applicants shall install appropriate flow dissipation structures or other effective measures approved by ODFW immediately below the dam to minimize erosion and other impacts from the force of water flowing out of the 8-inch pipe (used from June 15 through October 31) and the fish ladder (used from November 1 through June 14) the dam.

Issued February 4th, 2005


Phillip C. Ward, Director
Oregon Water Resources Department