

WRIS

STATE OF OREGON
COUNTY OF LINCOLN
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

OREGON DEPARTMENT OF FISH AND WILDLIFE
2040 SE MARINE SCIENCE DR
NEWPORT, OR 97365

confirms the right to use the waters of MILL CREEK RESERVOIR, constructed under Reservoir Permit R-5132, a tributary of YAQUINA RIVER, for HYDROELECTRIC PRODUCTION of 0.34 THEORETICAL HORSEPOWER.

This right was filed under application HE 571. The date of priority is JANUARY 11, 2005. The amount of water to be diverted is 0.06 CUBIC FOOT PER SECOND (cfs). The project diverts water through a screened pipeline 2 inches in diameter and 300 feet long. The project uses a pelton wheel and 50 feet of gross head to develop 0.34 theoretical horsepower of energy to be stored in batteries to operate a fish trap to catch juvenile salmon migrating downstream.

The point of diversion is located at MILL CREEK FISH LADDER - SW ¼ NE ¼, SECTION 33, TOWNSHIP 11 SOUTH, RANGE 10 WEST, W.M.

The authorized place of use is located:

SW ¼ NE ¼
SECTION 33
TOWNSHIP 11 SOUTH, RANGE 10 WEST, W.M.

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.

This water right is inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive uses. Water use for hydroelectric purposes as specified in this water right may be made on a year-round basis, when water is available.

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.

WATER RIGHT CONDITIONS

Upon a review of the application and input received from state and federal agencies and private citizens, 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. No other application has been filed in competition with this application. 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:

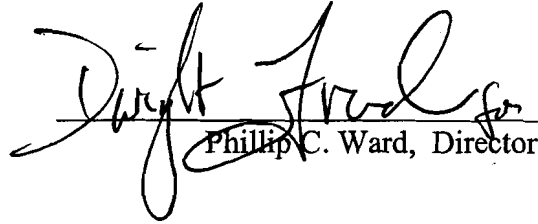
1. The Owner shall comply with all statutes and rules applicable to the Project.
2. The Applicant shall pay, upon receiving an invoice from OWRD, an annual fee in the amount of \$15.00, (*comprised of \$1.00 under OAR 690-051-0400(6) and \$14.00 under ORS 543A.415*). This amount shall be due by the date specified in the invoice.
3. This certificate is effective from the date of issuance through December 31, 2025, and may be reauthorized under laws existing at that time.
4. Upon a decision to terminate the hydroelectric use for more than five years, the Owner shall comply with the decommissioning standards under OAR 690-52. On termination of the water right, the right to use water shall revert to the public.
5. The Owner shall construct and build the Project according to the maps, plans and specifications filed with and approved by the OWRD, 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. 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.
7. The Owner shall complete construction of the Project within two years of the date the water right is issued.
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 Water Resources Department. 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 Department 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 Owner shall construct and properly maintain a fish screen on the diversion. The screen shall be designed, constructed, and operated to comply with ODFW's Fish Screening Criteria for Water Diversions.
10. Notwithstanding any specific conditions established by this water right, the water right holder must comply with 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. 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.
11. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
12. 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).
13. The Owner shall allow the OWRD Director and authorized agents and employees of the Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department 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.
14. 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.
15. 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.

WITNESS the signature of the Water Resources Director,

affixed November 21, 2005.


Phillip C. Ward, Director



Recorded in State Record of Water Right Certificates numbered 81670