

STATE OF OREGON  
COUNTY OF JACKSON  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

DELMER W. WAGNER  
36505 DITCH CREEK RD  
ROGUE RIVER OR 97537

541-582-3819

for the right to use the waters of DITCH CREEK, tributary of PLEASANT CREEK, tributary of the ROGUE RIVER for development of 20.9 theoretical horsepower (THP) for HYDROELECTRIC USE.

The right was filed under application HE 324. The date of priority is MAY 12, 1981. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 1.1 CUBIC FEET PER SECOND (cfs) measured at the point of diversion from the source.

The point of diversion is located: 650 FEET NORTH AND 770 FEET EAST from the W 1/4 CORNER of SECTION 29, being within the SW 1/4 NW 1/4, SECTION 29, TOWNSHIP 34 SOUTH, RANGE 4 WEST, Willamette Meridian.

The powerhouse is located in the NE 1/4 SW 1/4, SECTION 29, TOWNSHIP 34 SOUTH, RANGE 4 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. 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.

*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.

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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.

### **WATER RIGHT CERTIFICATE CONDITIONS**

1. The total net vegetation adjacent to project waterways that provides shading to the waterways and/or streambank soil stability shall not be degraded or lessened. The water right holder shall consult with the Oregon Department of Environmental Quality (ODEQ) before undertaking any activity that directly or indirectly results in removal of vegetation adjacent to project waterway(s) that provides shade to the waterway(s) and/or provides stream-bank soil stability. (Waterways include, but are not necessarily limited to: bypass stream reaches, siltation/forebay ponds, open-channel diversions, and aboveground pipes.)

During the consultation with DEQ, the water right holder shall provide a description of the activity that results in removal of vegetation and shall describe any mitigation or enhancement that is planned in exchange for the removal. Upon such consultation, the DEQ shall provide to the water right holder and to WRD a written summary of the conclusions from the consultation, including any new requirements and/or allowable changes to the project.

2. 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.
3. OWRD may alter conditions of the certificate on a clear showing of a significant threat to the public health or safety or the environment that was not identified and addressed during the most recent project authorization proceeding, and that requires modification of the certificate. ORS 543A.145 (5). Such changes could include, but are not limited to, the following:
  - a. New federal listing or a change in status or recovery plan of a threatened or endangered species that may be affected by the project.
  - b. Change in a water quality standard for a water quality parameter that may be affected by the project.
  - c. Development of a Total Maximum Daily Load for a water quality parameter that may be affected by the project.

If OWRD proposes to alter conditions, the order shall be in writing and shall

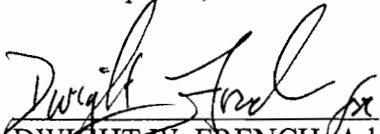
consist of a concise statement of the underlying facts supporting the proposed order. Any appeal of the order shall be according to procedures outlined in ORS Chapter 183.

4. The owner must obtain OWRD review and approval before undertaking any repair, maintenance activity, or any change to the project that might significantly and adversely affect water quality, fish and wildlife or public health and safety, including changes to project operation and flows. Oregon Administrative Rules 690-20-025, ORS 543A.025.
5. If at any time an unanticipated situation arises in which the owner observes or suspects that fish, wildlife, or their habitat may be harmed by any of the project facilities or as the result of project operation, the operator shall immediately notify and consult with the nearest office of the Oregon Department of Fish and Wildlife (ODFW); in no case shall such contact occur later than the next business day. The owner shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW. ORS Chapter 543A.025.
6. All the fish and wildlife mitigation features shall be properly maintained for the duration of the project. ORS 543A.025 (2)(a) and (5)(d).
7. The minimum flow in the stream bypass reach shall be as follows:  
  
When natural stream flow is greater than 2.2 cfs immediately upstream from the point of diversion, the bypass flow shall be natural flow less the 1.1 cfs for hydroelectric purposes.  
  
When natural stream flow is equal to or less than 2.2 cfs, the bypass flow shall be at least half of the available flow, but never less than 0.1 cfs when the owner is diverting.  
  
The specified flow shall be measured above the point of diversion by means of a calibrated v-notch weir, constructed and maintained by the owner.
8. The owner shall modify or replace the existing intake fish screen such that the intake screen conforms to ODFW standards. The owner water right holder shall keep the fish screen free of debris to prevent impingement of fish on the screen. ORS 543A.025 (2)(a)(A)(ii).
9. The owner shall consult with ODFW for fish screen design requirements and complete upgrading of the existing screens to meet current ODFW fish screen criteria not more than one year after receiving a new license.

10. The owner shall remove the concrete fish passage barrier located at a road crossing approximately 100 yards upstream from the powerhouse, no more than three months after receiving a new license. The stream channel shall be restored to its original unaltered gradient and condition.
11. Upon permanent cessation of power generation, the owner shall remove or modify project facilities to meet decommissioning standards adopted by the Department.
12. The owner shall pay to WRD in accordance with the provisions of ORS 543.078 (2)(b) an annual fee of \$50 on or before the first day of January of each year after issuance of this certificate.
13. The owner shall allow the Director and authorized agents and employees of the ODEQ and ODFW 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 the said project.
14. The project facilities are more particularly described and shown on the map filed to accompany the application and designated as Exhibit A. Said exhibit is hereby approved by the Director and made a part of this certificate. No substantial change to the project shall be made unless approved by the Director and incorporated into this certificate by appropriate amendment or special order.
15. Failure to comply with any of the provisions of this certificate may result in action including, but not limited to, civil penalties, restrictions on the use or cancellation of the certificate.
16. The land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. ORS 197.180.
17. Any transfer or sale of a license, rights under a license, or property associated with a project must comply with the requirements of ORS 543.440 regarding prior approval of the OWRD and rights and responsibilities transferred. These laws require that prior to any transfer, the owner shall notify OWRD of the name of the new owner and complete forms provided by the OWRD assigning the hydroelectric project to the new owner. Any successor or assignee shall be subject to all terms and conditions of this certificate. Any mortgage, deed of trust, or other lien is subject and subordinate to the terms and conditions of hydroelectric program law. ORS 543.440.
18. This certificate is issued for the period effective as of the date of issuance through December 31, 2027. On termination of this certificate, such right to the use of water shall revert to an instream water right, unless the project owner applies to OWRD to reauthorize the project.

19. The right to the use of water for power generation is restricted to beneficial use at the place of use described. The use confirmed herein may be made only at time when sufficient water is available to satisfy all prior rights issued before this use was initiated, including rights for maintaining instream flows.

Issued April 2, 2007



DWIGHT W. FRENCH, Administrator of Water Rights & Adjudications

{For}

PHILLIP C. WARD, DIRECTOR

Water Resources Department

Recorded in State Record of Water Right Certificates and Numbered 83297

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