

STATE OF OREGON  
COUNTY OF JACKSON  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

BENJAMIN STOTT  
155 STRAWBERRY LANE  
ASHLAND, OR 97520

confirms the right to use the waters of the WEST FORK of COTTONWOOD CREEK, a tributary to the EAST FORK of COTTONWOOD CREEK, TRIBUTARY of KLAMATH RIVER for HYDROELECTRIC PRODUCTION of 8.5 THEORETICAL HORSEPOWER.

This time-limited certificate is issued under application HE 577. The date of priority is MARCH 16, 2007. The amount of water to be diverted is 0.66 CUBIC FOOT PER SECOND (cfs). 2,800 feet of six-inch diameter PVC pipe will be placed in a pre-existing irrigation ditch, providing about 100 feet of hydraulic head and terminating at a Harris Pelton hydro-turbine. The project may include a pressure gauge and shutoff valve at the end of the pipe where the Pelton turbines located; this allows for better operation monitoring/control and the repair of the turbine incase it fails. An outlet pipe will return water to the stream. The electricity will be conveyed to a battery storage shed. The Project proposes to generate 8.5 theoretical horsepower (Thp) for residential 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.

The point of diversion is located:

SW ¼ NW ¼,  
Section 31,  
TOWNSHIP 40 SOUTH, RANGE 2 EAST, of the Willamette Meridian (W.M.),  
TAX LOT 300

The authorized place of use is located:

NW ¼ NW ¼,  
Section 31  
TOWNSHIP 40 SOUTH, RANGE 2 EAST, W.M.,  
TAX LOT 300

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 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, (under ORS 543.075). This amount shall be due by the date specified on the invoice.
3. This certificate is effective from the date of issuance through December 31, 2027, 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 water right holder 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 safety, including changes to project operation and flows (Oregon Administrative Rules 690-20- 025, ORS 543A.025).
8. The Owner shall complete construction of the Project within two years of the date the water right is issued
9. If at any time an unanticipated situation arises in which the operator observes or suspects that fish, wildlife or their habitat may be harmed by any of the project facilities or as the result of the project operation, the operator shall immediately notify and consult with the nearest ODFW office; 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 the direction provided by ODFW (ORS Chapter 543A.025) .
10. All fish and wildlife mitigation features shall be properly maintained for the duration of the project (ORS 543A.025 (2)(a)and(5)(d).
11. Water, in the amount of 0.66 cfs may be used. The water will be measured at the point of diversion by means of a calibrated v-notch weir, constructed and maintained by the water right holder. Any water above this amount must remain instream.
12. A fish species listed under the state and federal Endangered Species Acts is present in the Project area. The applicant shall install a fish screen that conforms to current National Marine Fisheries Service and Oregon Department of Fish and Wildlife standards on the hydroelectric project diversions. The water right holder shall consult with the ODFW for design requirements. The 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)).
13. The diversion dam proposed for use under HE 577 was constructed without providing

upstream fish passage and forms the upstream extent for anadromous fish populations in the west fork of east fork Cottonwood Creek. ODFW's Fish Passage Law (ORS 509.580 - 509.645) establishes as state policy that upstream (and downstream) passage is required at all artificial obstructions in those Oregon waters in which migratory native fish are currently or have historically been present. The water right holder shall consult with the ODFW for design requirements. The water right holder shall keep the upstream passage structure free of debris to prevent reduction of upstream passage.

14. 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 there-under. 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.
15. 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 proposed Project facilities, operation and management. The intake is piped, and no storage of water occurs for this facility. As such, Oregon Department of Environmental Quality (ODEQ) expects the temperature, dissolved oxygen and other water quality parameters to be largely unchanged. The Project must meet water quality requirements including numeric and narrative standards, protect beneficial uses, and not degrade existing water quality. As the proposed project will be year-round, the withdrawal of the waters of West Fork Cottonwood Creek for the proposed beneficial use during low-stream flow periods should be managed so as to avoid water quality conditions detrimental to sensitive aquatic life in the dewatered reach above the powerhouse return flow. In addition, this project shall be completed using management practices that minimize soil disturbance. For soils that are disturbed, best management practices must be used to minimize erosion of the disturbed soils during construction. After construction is completed, the disturbed areas should be planted to stabilize the soils from future erosion. In addition, 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 canopy 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.

16. 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.
17. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
18. 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).
19. 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.
20. 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.
21. 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 signature of the Water Resources Director,

Affixed December 5, 2007



DWIGHT W. FRENCH, Administrator of Water Rights & Adjudication

{For}

Phillip C. Ward, Director

Water Resources Department

Recorded in State Record of Water Right Certificates and numbered 83639.