

STATE OF OREGON  
COUNTY OF POLK  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

STEVEN LAZOTT  
17710 BROWN ROAD  
DALLAS, OR. 97338

confirms the right to use up to 0.09 CUBIC FOOT PER SECOND (cfs) of the waters of AN UNNAMED SEASONAL STREAM, tributary to SALT CREEK for the HYDROELECTRIC PRODUCTION of 1 THEORETICAL HORSEPOWER (thp).

This right was filed under applications HE 586. The date of priority is June 18, 2008. The maximum amount of water to be diverted under HE 586 is 0.09 CUBIC FEET PER SECOND (cfs). Water from this source may be diverted from NOVEMBER 1 through APRIL 30 of each year.

The point of diversion is located: Taxlot 411 of the NE ¼ NW ¼, SECTION 11, TOWNSHIP 7 SOUTH, RANGE 6 WEST, Willamette Meridian W.M.

The authorized place of use is located: Taxlot 411 of the NE ¼ NW ¼, SECTION 11, TOWNSHIP 7 SOUTH, RANGE 6 WEST, W.M.

**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.**

## **Project Description**

This hydroelectric project (Project) proposes to divert up to 0.09 cfs of water from an unnamed seasonal stream for hydroelectric generation. A 4-inch PVC pipe, also known as the penstock, will reside within a 6-inch PVC pipe that extends through the bottom of the dam for a reservoir directly above the hydroelectric Project, and will parallel the natural channel for approximately 200 feet; transporting the water to the turbine. The Project has approximately 75 feet of head. Project water will be returned to the creek immediately after it has passed through the turbine, so that it continues in the historic channel for approximately a ¼ mile to its confluence with Salt Creek. The transmission line will be buried from where it exits the powerhouse to where it connects to the proposed battery storage shed; with the exception of a small segment leading into the battery storage shed that will be above ground within a PVC pipe.

The power generated will be used onsite and all of the Project works are located on the owner's property.

## **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 Owner shall comply with all statutes and rules applicable to the Project.
2. This certificate is effective from the date of issuance through December 31, 2029 and is to be exercised consistent with the conditions contained in the water right certificate. This right may be reauthorized under laws existing at that time.
3. 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 right is inferior in right and subsequent in time to any future appropriation of water for beneficial consumptive use.
4. The Owner shall construct and build the Project according to the maps, plans and specifications filed with the application within two years of issuance of this time-limited water right certificate OAR 690-051-0390(2) or by any lawful extension thereof.
5. 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.

6. 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.
7. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41, ORS 468B.048, and Section 303 of the Clean Water Act. The Project must meet water quality requirements including numeric and narrative standards, protect beneficial use, and not degrade existing water quality. No significant temperature-related problems have been identified nor are they expected given the proposed Project facilities, proposed operations and management. ODEQ expects the temperature, dissolved oxygen and other water quality parameters to remain largely unchanged. 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.
8. The Applicant shall grade the embankment of the reservoir to achieve a slope of no more than 1:3 (approximately 18 degrees from horizontal). The embankment shall be re-planted with native vegetation to reduce soil erosion and promote solar shading of the impoundment. Vegetation, native to the area, shall be planted adjacent to the unnamed intermittent stream both above and below the impoundment to provide stream shading and soil stability and enhance riparian habitat. Total vegetation adjacent to Project waterways shall not be degraded or reduced. The water right holder shall consult with ODEQ prior to undertaking any activity that may reduce net stream shading or soil stability, and the water right holder shall provide a description of the proposed activity and mitigation and enhancement measures to be performed in exchange for the proposed removal.

Water shall be returned to the unnamed intermittent stream in a manner that minimizes instream and stream bank erosion and sediment mobilization. The Applicant shall employ Best Management Practices (BMPs), such as the

placement of energy dissipation devices (e.g. boulders) near where the water exits the powerhouse and reservoir (I.e. reservoir spill and minimum flows), to reduce the potential for instream and stream bank erosion and sediment mobilization. In accordance with OAR 340-041-0036, operation of the Project may not increase cumulative turbidity by more than ten percent relative to conditions immediately upstream of the Project.

This Project shall be completed using management practices that minimize soil disturbance. For soils that are disturbed, the water right holder shall employ BMPs 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. To minimize sediment entry into the stream and the erosion of the stream from Project access roads, BMPs (water bars, sediment traps ...) shall be designed, implemented and maintained for all Project access roads for the duration to the Project.

9. The hydroelectric Project, consistent with OAR will operate during the high flow times of the year (Nov 1 through April 1). A minimum of 50% of the stream flow entering the reservoir will be bypassed to the natural channel, downstream of the reservoir, for amphibians and invertebrates.

Inflow into the reservoir shall be measured directly above the point of diversion by means of a calibrated sharp-crested weir (I.e. rectangular-notch, trapezoidal-notch or 90 degree V-notch) to be constructed, installed and maintained by the owner. In addition, a calibrated valve shall be installed on the pipe exiting the reservoir to ensure that a minimum of 50% of the stream flow into the reservoir remains in the natural channel immediately downstream of the reservoir.

10. Though no fish are believed to reside in the waters of the unnamed seasonal stream to be used by the Project, if at any time an unanticipated situation arises where 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).
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 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.
14. 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.
15. 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.
16. Use of water is governed by this water right. However, the operation of the Project by the Owner, so far as those operations affect the use, storage and discharge from storage of waters affected by the Owner, shall be at all times 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 power purposes and for other beneficial public uses.
17. The Owner shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$15 (*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 on the invoice for the term of this time-limited certificate.
18. If after completing construction of the Project, the Owner fails to operate the Project facilities for more than five consecutive years, the water right shall be subject to termination by the OWRD. The Owner shall comply with the decommissioning standards under OAR 690-52, and upon termination of the water right, the right to use water shall revert to the public.

Issued November 19, 2009



Dwight W. French,  
Administrator Water Rights and Adjudications, for  
Phillip C. Ward, Director  
Oregon Water Resources Department