

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

CITY OF WALLA WALLA  
PO BOX 478  
WALLA WALLA, WA 99362

confirms the right to use waters of MILL CREEK, tributary to the Walla Walla River, for the development of 4996 theoretical horsepower (thp) of hydroelectric power.

This certificate supersedes and amends the water right evidenced by license HE 523 by augmenting and redistributing flows for the hydroelectric project. The project amendment was reviewed by the Oregon Water Resources Commission according to the provisions of ORS 537.835. The Oregon Water Resources Department (Department) has determined that the project amendment satisfies the standards of 543A.025 and OAR 690-053.

This water right has two elements: (1) the first element authorizes the use of up to 28 cubic feet per second (cfs) of water with a priority date of June 4, 1984, for year round hydroelectric use, and (2) the second element authorizes the use of up to 10 cfs during the season November 1 to April 15 with a priority date of April 29, 2009, also for hydroelectric use.

**Point of Diversion:** 470 feet South and 200 feet West from the N 1/4 corner of Section 22, being within the NE 1/4, NW 1/4, Section 22, Township 6 North, Range 38 East, W.M.

**Place Of Use:** SE 1/4, NE 1/4, Section 13, Township 7 North, Range 36 East, W.M.  
A map showing the location of the City's Twin Reservoirs Hydroelectric Facility is attached as Appendix A.

**Expiration Date:** This water right is subject to reauthorization under ORS 543A. If not

*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 of 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.

reauthorized, this water right will expire on December 31, 2039.

**Bypass and Peak Flow Conditions:**

For diversion of water up to 10 cfs under the priority of April 29, 2009 right element, flows equal to those described below must be satisfied in Mill Creek at the USGS gage 14013000 near Kooskooskie when water is being diverted:

<b>November</b>	<b>December</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April 1-15</b>
100 cfs	110 cfs	110 cfs	125 cfs	150 cfs	150 cfs

Further, water shall not be diverted under the April 29, 2009 priority right element, when the flows at the Kooskooskie gage are higher than 525.0 cfs.

**Limit of Water Right:**

As to both elements, the amount of water that is entitled to divert is limited to an amount beneficially used without waste. This right, as it pertains to both elements, is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the License, the water right to use water shall revert to the public.

**Project Description:**

The City of Walla Walla's (City's) Twin Reservoirs Hydroelectric Project was originally allocated up to 28 cfs of water, measured at the point of diversion from Mill Creek, to develop 3683 theoretical horsepower utilizing a gross head of 1157.3 feet. An existing reinforced concrete dam 10 feet in height diverts water through 14.5 miles of 30 inch pipe to the powerhouse located adjacent to the city's municipal reservoirs near Walla Walla, in the State of Washington. A Pelton type wheel drives a 2250 kilowatt generator. The project connects to Pacific Power and Light Company transmission lines crossing the city's property. The Federal Energy Regulatory Commission (FERC) approved a conduit exemption for the Project under Docket Number p-10376, by "Order Granting Exemption From Licensing (Conduit)", dated January 7, 1988.

The City applied in 2009 for a 10 cfs amendment to HE 523 (which evidences a 1984 priority water right for water from Mill Creek), in order to develop up to 1313 thp of additional generation at the Project. Unlike the first element, the 1984 priority hydroelectric water right (i.e. issued under HE 523), the 10 cfs right may be used for hydroelectric generation with the water so used either being returned directly to Mill Creek or being used for municipal purposes including in conjunction with the City's aquifer storage and recovery program. This capacity will be managed within the existing generation capacity of the Project. No construction changes are proposed for the Project. The existing pipeline can divert up to 38 cfs. Turbine upgrades are not anticipated in the near term. The City has two municipal water rights<sup>1</sup> an 1866 priority year round and a 2001 priority seasonal right, as well as the aforementioned 1984 priority water right for hydroelectric power generation use pertaining to Mill Creek. Under this amendment, a water right of up to 10 cfs, (i.e. the aforementioned second element) is authorized for diversion from Mill Creek between November 1 and April 15 of

<sup>1</sup> Both of which allow water used for maintenance of the City's municipal system or water that is diverted from the creek that is determined thereafter to be in an unsuitable turbidity condition for treatment for normal municipal purposes to be returned directly to Mill Creek. To minimize the potential for waste associated with turbid-conditioned waters diverted for municipal use, the city shall reduce diversions as soon as is practicable whenever it concludes that it is unable to modify physically the condition of such turbid waters appropriately in order to put it to such use.

each year when higher instream flows exist in the Creek. Water from exercise of this 10 cfs water right would be diverted at the City's existing point of diversion and would flow via existing pipeline to the existing powerhouse. The water would then either be: 1) put into the municipal system, including in an aquifer for the City to store and recover (under the City's existing 2001 municipal priority water right), or 2) returned directly to Mill Creek under the 2009 hydroelectric water right or 3) a combination of 1) and 2). Water that is recovered from underground storage during summer months offsets diversions that would otherwise deplete Mill Creek during low flow times of the year. In addition, the City has agreed, by its acceptance of permit S-54483, to reduce the maximum amount to be exercised of its aforementioned 1866 priority municipal water right to a maximum of 25.5 cfs, a 2.5 cfs reduction, during a two-month low-flow period as described in the first paragraph of section B. 5, infra. In this light, the storage and recovery facility makes it possible to provide a public benefit such as riparian or watershed improvement. Furthermore, the resulting revenue from the increased power generation of the hydroelectric project makes it possible for the City to finance the underground storage and recovery facility and related streamflow enhancement elements of this project.

### **CERTIFICATE CONDITIONS**

A. Use of water as it relates to the 28 cfs 1984 priority right as hereinbefore described shall be subject to Article 8 of HE 523, the original license for the hydroelectric project, dated May 24, 1990 (signed by William H. Young, Director, Oregon Water Resources Department).

B. Use of water as it relates to the 10 cfs 2009 priority right, as hereinbefore described, shall be subject to the following conditions:

1. Compliance with Terms

In consideration of this Certificate and of the benefits and advantages accruing hereunder to the water right holder, it is expressly agreed by the water right holder that the City's Project, whether or not upon the lands of the United States, shall be subject to all provisions, terms, and conditions applicable to this 10 cfs right. If the water right holder is prevented from compliance with any provisions of this Certificate or of ORS 543 or ORS 543A, by the operation of any valid Federal law, or the lawful order, rule, or regulation of any federal governmental agency exercising exclusive jurisdiction in the premises, the water right holder shall not be deemed to be in default or under any liability to the State of Oregon for failure to perform the same during the period of such disability.

2. Measurement, recording and reporting conditions:

- a. The City shall install a totalizing flow meter or other suitable measuring device as approved by the Director at the point of diversion. The permittee shall maintain the meter or measuring device in good working order, keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded volume of water use amount to the Department annually or more frequently as may be required by the Director.
- b. The City shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

- c. The City shall provide the Department notice of any water use, authorized by Washington Permit No. 13121 five days prior to any use. The annual reports required under paragraph A above, shall also indicate the amount of water diverted, if any, authorized by Washington Permit No. 13121.

3. Kooskooskie Gage

If the existing gage at Kooskooskie, as now operated and maintained by the USGS ceases operation then the water right holder shall establish, operate and maintain a substitute gage which provides for equivalent measurement ability, to the satisfaction of the Department.

4. Use of Washington Permit No.13121

Use of the 10 cfs of water under priority April 29, 2009, during the period of November 1 to April 15, is prohibited at any time the water right evidenced by Washington Permit No. 13121 is exercised. Furthermore, upon determination by the Washington State Department of Ecology, after consultation with the permittee (City of Walla Walla) and the Oregon Department of Water Resources, that the water storage and withdrawal works and facilities of an aquifer storage and recovery (ASR) program of the permittee (as approved by a permit issued by the Department of Ecology pursuant to RCW 90.03.370), are in an operable condition (i.e. the aforementioned works and facilities have been constructed completely and in an initial working condition that are capable of withdrawing sufficient water up to the amounts authorized by this permit for municipal use), the permittee shall terminate Permit No. 13121. The City's intention, based upon present projections, is to have said works in an operable condition by the end of December 2015. The permittee shall terminate Permit No. 13121 by the end of the year the ASR becomes operational by submitting to the Washington Department of Ecology a written relinquishment document, and providing a copy of said document to the Oregon Department of Water Resources. Were the ASR not to become operational then the hydroelectric right will remain valid, regardless of whether or not the City of Walla Walla caused Washington Permit No. 13121 to be cancelled prior to December 31, 2017.

5. Use of Oregon Certificate 13276

As a condition of water use under this certificate, the City of Walla Walla is prohibited, except as provided in the sentence that follows, from exercising 2.5 cfs of its 28 cfs municipal water right with 1866 priority, (Oregon Water Right Certificate number 13276), thereby limiting its exercise to not more than 25.5 cfs, between August 1st and September 30th (or during a different period of not less than two months agreed to by the Department, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife and the City). Notwithstanding the prohibition of the preceding sentence, if the City is not able to withdraw aquifer stored water, due to its unavailability or a breakdown of the ASR delivery system, then the City may exercise the aforementioned 2.5 cfs on a limited necessity basis, (in the context of implementing the emergency shortage provisions of a Washington State Department of Health approved water conservation plan applicable to the City's public water supply system), in order to satisfy its minimal municipal water use needs. Exercise of the aforementioned 2.5 cfs shall be restricted to any period when the ASR water is unavailable or the ASR system is inoperable. To comply with this condition, the City of Walla Walla

shall protect the 2.5 cfs of certificate 13276 by obtaining a split-season instream lease for the two months as aforementioned in this paragraph of each year for the maximum allowed lease period(s). The City of Walla Walla shall renew the split-season instream lease for additional periods up to the maximum duration allowed. If the City of Walla Walla needs to exercise this 2.5 cfs, as described above, the City shall submit a request to terminate the lease in accordance with the conditions of the Final Order approving the split-season instream lease. In the event that the split-season instream lease is terminated, the City shall, within 30 days of termination, seek to renew the split-season instream lease for additional periods up to the maximum duration allowed. This condition can also be satisfied by the City choosing to file a permanent or time-limited instream transfer (for the duration of the use of this permit or certificate issued for this permit) for 2.5 cfs for the two months as aforementioned in this paragraph. If, at some date in the future, the "split-season instream lease" program no longer exists, the City shall choose and implement another available program that provides the same, or greater, level of instream protection for the 2.5 cfs portion of its 1866 Oregon water right (certificate 13276).

C. The following conditions shall apply to both the 1984 priority and the 2009 priority hydroelectric water right elements hereof.

1. Prior Rights

The diversion of water authorized herein may occur only at times when sufficient water is available to satisfy all prior rights.

2. Annual Fees

The water right holder shall pay to the Department in accordance with the provisions of ORS 543A.415. The fee is due on or before the first day of January of each year, and is presently set at \$0.28 per theoretical horsepower. The fees shall be based on 4997 theoretical horsepower (38 cfs \* 1157.3 feet of head / 8.8). Should the terms and conditions of this water right certificate be extended at its expiration, the water right holder shall pay such annual fees as the Director or its successor having jurisdiction in the matter at the time shall fix.

3. Access

The water right holder shall allow the Department Director and authorized agents and employee's free and unrestricted access upon reasonable notice, in, through, and across the Project in the performance of their official duties, and, subject to applicable provisions of the Oregon Public Records Law, to all reports, accounts, records, and other data relating to the Project.

4. Liability

The water right holder may be liable for any damages resulting from the construction, operation, or maintenance of Project facilities to the extent prescribed by Oregon law, allowing and including any defense as may be provided for by Oregon statutes or common law. In no event will the State of Oregon be liable therefore.

5. Project Maps

The Project facilities are more particularly described and shown on the maps filed to accompany the application and designated as Appendix A, which is attached hereto and incorporated herein. No substantial change shall be made unless approved by the Director and incorporated into this Certificate by appropriate amendment or special order.

6. Enforcement and Restrictions

Failure to comply with any of the provisions of this water right certificate may result in action including, but not limited to, restrictions on the use, civil penalties, and or cancellation of the certificate.

7. Forfeiture

If the water right holder fails to use or operate the Project facilities for any period of five consecutive years, the Director shall, after due notice and opportunity to rebut the presumption of forfeiture for non-use as allowed by statute and administrative rule, terminate the final certificate by written order.

8. Miscellaneous Conditions

The City shall construct and build any additions or modifications to the Project according to maps, plans, and specifications filed with and approved by the Oregon Water Resources Commission (ORS 543.300(2)).

The City shall 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, conforming to the rules of the commission not inconsistent with ORS 543.010 to 543.610 (ORS 543.300(4)).

9. Ownership

The water right holder shall notify the Department of any change in ownership of the Project.

D. Scope of Water Right Certificate

The Department hereby issues this single water right certificate, with its two aforementioned elements, for the entire Project under application HE 523. This right to the use of the waters in connection with the development of this project shall, as to both elements of this water right, be vested with the water right holder during the time this license or any lawful reauthorization thereof is in force. On termination of the certificate, such a right to the use of water shall revert to the public, unless the Project owner applies to the Department, or its successor having jurisdiction in the matter, to reauthorize the Project.

E. Determination

Based on these reasons and subject to the conditions described herein, the Director finds that, as to the 2009 priority water right element, the proposed use(s) of water described by this certificate will not impair or be detrimental to the public interest.

This Certificate as to the aforementioned water right elements relating to the City of Walla Walla's Twin Reservoirs Hydroelectric Project supersedes the rights evidenced in the prior license for Project HE 523 and certificate 86008.

Issued February 25<sup>th</sup>, 2010



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

