

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

JAY AND JAN WHEELHOUSE  
1220 SW MORRISON STREET SUITE 527  
HERMISTON, OR 97838

confirms the right to use up to 0.45 CUBIC FEET PER SECOND (cfs) of the waters of BELL COW CREEK, tributary to N MCKAY CREEK for the HYDROELECTRIC PRODUCTION of 5.6 THEORETICAL HORSEPOWER (thp).

This right was filed under application HE 594. The date of priority is MARCH 30, 2011. The maximum amount of water to be diverted is 0.45 cfs during the season November 1 to May 1.

The point of diversion is located: NE ¼ SE ¼, SECTION 28 , TOWNSHIP 1 NORTH, RANGE 34 EAST, W.M.

The authorized place of use is located: NW ¼ SW ¼, SECTION 28, TOWNSHIP 1 NORTH, RANGE 34 EAST, 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 right is inferior in right and subsequent in time to any future appropriation of water for 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.**

### **Project Description**

The project proposes to divert water through a 6 inch pipe which will channel water across a hydroscreen (a very fine screen). A 5 inch diameter pipeline with a length of 4600 feet will be buried 30 to 36 inches below ground surface and will convey the water to a small turbine/generator unit. The intake and return points will be protected with rip rap. No equipment will be operated in either Bell Cow Creek or N McKay Creek, so no erosion is expected in the stream system. The proposed project is entirely on privately owned land.

### **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, 2031, 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 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.
4. 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.
5. 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.

6. 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.
7. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
8. 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).
9. If at any time, unanticipated circumstances or emergency situations arises in which fish or wildlife are being killed, harmed or endangered by any of the project facilities, or as the result of project operation, the operator shall immediately take appropriate action to prevent further loss. The operator shall, within 24 hours, notify the nearest office of the Oregon Department of Fish and Wildlife (ODFW) and comply with the measures required by ODFW to prevent additional injury or mortality. The owner shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW.
10. The water intake pipe will be required to have a fish screen installed and maintained to meet ODFW's fish screen standards. Any instream construction activity should occur during ODFW's inwater work period.
11. 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.
12. 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.

13. 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.
14. 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 other beneficial public uses.
15. The Owner shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$15.00 (*OAR 690-051-0400(6) and ORS 543A.415*). This amount shall be due by the date specified on the invoice.
16. 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.

Issued

10/26/11



Dwight W French,  
Administrator Water Right Services, for  
Phillip C. Ward, Director  
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates numbered 87269.