

STATE OF OREGON
COUNTY OF LINN
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

FALLS CREEK H.P. Limited Partnership
PO BOX 23508
EUGENE, OR 97402

confirms the right to use the waters of FALLS CREEK, tributary to the SOUTH SANTIAM RIVER for HYDROELECTRIC USE of 7143 theoretical horsepower.

This time-limited certificate is issued under application HE 410.

The date of priority is AUGUST 24, 1982 for 16.5 CUBIC FEET PER SECOND (CFS); OCTOBER 28, 1982, for 3.5 CFS; and APRIL 29, 1983, for 6.4 CFS.

The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 26.4 CFS measured at the point of diversion from the source.

The point of diversion is located in:

NE ¼ SE 1/4, SECTION 5
TOWNSHIP 14 SOUTH, RANGE 4 EAST, W.M.

The authorized place of use is:

SW ¼ NE 1/4, SECTION 32
TOWNSHIP 13 SOUTH, RANGE 4 EAST, W.M.

The use of water is limited to the amount that the generation facilities can beneficially use without waste, 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 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.

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.

PROJECT DESCRIPTION

Falls Creek originates in a meadow and flows downstream to the Project diversion structure at river mile 2.35. The dam is 5.5' in height and creates a reservoir 80' wide by 136' feet in length and 5' deep. The reservoir overflows through two sets of screens. The primary screens consist of three self-cleaning 8' long panels with wedge wire Ogee screens. One CFS of water passes down a channel at the base of the screens to discharge into the original Falls Creek stream channel and satisfy the required 1 cfs minimum bypass flow. This bypass flow also flushes "trash" material from the screens back into the stream. The water that enters the screen chamber discharges into a 30-inch penstock that is 7,380 feet in length, almost of all of which is buried. The penstock narrows to 20-inches as it enters the powerhouse. The powerhouse contains a Gilkes 34-inch Twin Jet horizontal pelton wheel and generator with maximum capacity of 4.96 megawatts. Tailwater from the Project discharges into a steel culvert with a metal grate on the downstream end to prevent fish access. The water then travels through a small chute of exposed bedrock and discharges into the South Santiam River near river mile 57.5.

WATER RIGHT CERTIFICATE CONDITIONS

The Certificate holder shall comply with all statutes and rules applicable to the Project.

1. The certificate is effective from the January 1, 2020 through December 31, 2059. It is to be exercised consistent with the conditions contained in the license. This may be reauthorized under laws existing at that time.
2. The licensee shall comply fully with the provisions of the order of the Water Policy Review Board dated May 23, 1983. The order provides that the agreement between the licensee and the Oregon Department of Fish and Wildlife, dated November 26, 1982, be made a condition of the license. Copies of the order and agreement are attached for reference.
3. The project facilities are more particularly described and shown on the map filed with 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.
4. In consideration of this license and the benefits and advantages accruing thereunder to the Licensee, it is expressly agreed by the Licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the Licensee be

prevented from compliance with any provisions of this license or of the Hydroelectric Act 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, it 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.

5. The certificate holder 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, conformably to the rules of the Water Resources Commission (Commission) not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610. (ORS 543.300(4))

6. No voluntary transfer of the license or of any property acquired, constructed or operated pursuant to the license issued under ORS 543.010 to 543.610 shall be made without written approval of the Commission. Any successor or assignee of any license under any project acquired, constructed or operated by the Applicant, whether by voluntary transfer approved by the Commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original Applicant. 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 license shall terminate. (ORS 543.440)

7. The Project must comply with 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 uses, and not degrade existing water quality.

8. The Project shall be designed and operated to minimize visual, aesthetic and noise impacts.

9. 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).

10. A minimum instream flow of 1 cfs shall at all times be bypassed at the diversion structure during project operation to benefit aquatic and wildlife resources downstream from the project. During low flow conditions when inflow into the project diversion pool becomes less than 1 cfs and the powerhouse is not operating, the forebay shall be maintained at full pool as inflow allows for the benefit of wildlife resources. Maintenance occurs during the first three weeks of summer when the powerhouse is not operating. The pool is temporarily lowered for maintenance and repairs. This usually takes one or two days. Maintenance typically requires dropping pool

elevation to the elevation at which flow does not pass over the fish screen. On rare occasions, if there has been major damage to the diversion, the forebay elevation may be lowered below this point and maintenance may take up to three weeks. During these times all Falls Creek flows bypass the diversion structure and enter Falls Creek downstream of the diversion.

11. The certified holder shall maintain the screen over the diversion intake to prevent fish migration downstream through the project diversion. The holder shall be responsible for all screen repair and maintenance necessary to keep the fish screen in proper working order.

12. The tailrace structure and associated bar grating will be maintained as necessary to reduce erosion, scour, and fish entry into the tailrace and turbine.

13. If at any time an unanticipated situation arises in which the owner or operator 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 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.

14. The Applicant shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD free and unrestricted access upon reasonable notice, 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.

15. Issuance of the license does not absolve the Applicant from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Applicant 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.

16. The Applicant 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.

17. Use of water is governed by this license. However, the operations of the Project by the Applicant so far as those operations affect the use, storage and discharge from storage of waters affected by the Applicant, shall at all times be controlled by such reasonable rules as the Commission 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, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe. (ORS543.300(3)).

18. Public Health and Safety: The Department may reopen this certificate, if the Director

makes a clear showing of significant threat to the public health, safety or the environment that was not identified and addressed during the project reauthorization 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.
- d. Change in baseline environmental conditions such as climate change which may cause the project to not meet water quality standards.

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.

19. The Applicant shall pay on or before January 1 of each calendar year, an annual license fee, in 1998 dollars, of \$0.405 per Theoretical Horsepower (THP) for 7143 THP with adjustments inflation as provided in ORS 543.078 and ORS 543.085 (or superseding law).

20. Consistent with ORS 540.610, if after completing construction of the Project, the Applicant fails to use or operate the Project facilities for any period of five consecutive years, the water right shall be subject to termination by OWRD.

21. Upon a decision to terminate the hydroelectric use, the Applicant shall comply with any decommissioning statutes and rules in effect at that time. (OAR 690-052).

Issued in Salem, Oregon on this date: June 29, 2018.



Dwight French, Administrator
Water Right Services Division, for
Thomas M. Byler, Director
Oregon Water Resources Department

Recorded in State of Water Right Certificates numbered 93868.