

STATE OF OREGON
COUNTY OF CLACKAMAS
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STEVE SANDERS
MINIKAHDA HYDROPOWER CO. LLC
5829 NE 19TH AVENUE
PORTLAND, OR 97211

for the right to use the waters of MINIKAHDA CREEK, tributary of CLEAR CREEK, under 270 feet of gross head for the hydroelectric development of 98.8 theoretical horsepower.

The date of priority is AUGUST 12, 1980 for 2.3 CUBIC FEET PER SECOND (CFS) and APRIL 23, 1981 for 0.92 CFS. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 3.22 CFS measured at the point of diversion from the source.

The use of water for power generation is limited to the period of DECEMBER 1 TO JUNE 1 of each year.

The point of diversion is located as follows:

Tax Lot 1400, SE 1/4 NW 1/4, SECTION 27, TOWNSHIP 2 SOUTH, RANGE 7 EAST, W.M.; 60 FEET NORTH FROM THE NW CORNER OF THE NE 1/4 SW 1/4, SECTION 27.

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 Water Resources Department all fees required prior to the issuance of this certificate.

A description of the place of use to which this right is appurtenant is as follows:

TAX LOT 1500, NW 1/4 SE 1/4
SECTION 27
TOWNSHIP 2 SOUTH, RANGE 7 EAST, W.M.

Project Description

Minikahda Creek is on a steep slope that flows relatively straight down the hillside into Clear Creek. The diversion point for the hydroelectric project (HE 266) and Minikahda water district (Water Right Certificate 9826 – 0.2 CFS year-round diversion, if available) is on a neighboring property (Tax Lot 1400 in the SE 1/4, NW 1/4, Section 27), about 1500 feet above the mouth of the creek. Water descends a steep cascade to a collection tank with 1 inch by 3/8 inch mesh trash screen. The water is conveyed via 20 inch pipeline about 300 feet along the bench area to an 8 feet by 5 feet by 9 feet deep collection tank. A Drexelbrook sensor monitors the water level. A

20 inch over flow pipe carries excess water back to the creek. Two 12 inch steel penstocks 1200 feet long, carry water to the power house. The generation facilities consist of two Pelton wheels, one driving a 100 HP generator, the other a 40 HP generator. The local water district taps into the penstocks just before they enter the powerhouse. After passing through the generation facilities the water passes through two trout ponds and then overflows into a culvert that passes under a road and empties into a 100 feet long channel and into Clear Creek about 600 feet above the confluence of Minikahda Creek and Clear Creek. The last 50 feet of the channel have a slope of 35%.¹

WATER RIGHT CERTIFICATE CONDITIONS

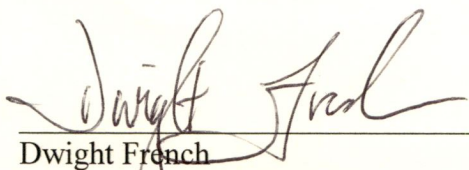
1. The total net vegetation adjacent to project waterways that provides shading to the waterways and/or streambank soil stability shall not be degraded or lessened. The water right holder shall consult with the Oregon Department of Environmental Quality before undertaking any activity which directly or indirectly results in removal of vegetation adjacent to project waterway(s) that provides shade to the waterway(s) and/or provides streambank soil stability. (Waterways include, but are not necessarily limited to: bypass stream reaches, siltation/forebay ponds, open-channel diversions, and above-ground pipes.) During the consultation with DEQ, the water right holder shall provide a description of the activity that results in removal of vegetation and shall describe any mitigation or enhancement that is planned in exchange for the removal. Upon such consultation, the DEQ shall provide to the water right holder and to WRD a written summary of the conclusions from the consultation, including any new requirements and/or allowable changes to the project.
2. 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).
3. The Department may alter conditions of the certificate on a clear showing of a significant threat to the public health or safety or the environment that was not identified and addressed during the most recent project authorization 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 state or 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 (TMDL) for a water quality parameter that may be affected by the project.

¹ Fisheries Evaluation for the Minikahda Hydropower Project, Clackamas County, Oregon, May 1999, by Jeffrey S. Hogle and Steven P. Cramer of S.P. Cramer & Associates, Inc.

- d. If the department proposes to alter conditions, the order shall be in writing and shall consist of 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.
4. The water right holder must obtain Water Resources Department 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 health and safety, including changes to project operation and flows (Oregon Administrative Rules 690-20-025, ORS 543A.025).
5. 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 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 operator shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW (ORS Chapter 543A.025).
6. All the fish and wildlife mitigation features shall be properly maintained for the duration of the project (ORS 543A.025 (2)(a) and (5)(d)).
7. Upon permanent cessation of power generation, the owner/operator shall remove or modify project facilities to meet decommissioning standards adopted by the Department.
8. The water right holder shall pay to the Department in accordance with the provisions of ORS 543.078 (2)(b), (or subsequent statute), an annual fee of \$50 on or before the first day of January of each year after issuance of this certificate.
9. The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source made for domestic, municipal, irrigation, or any other beneficial consumptive use.
10. The water right holder shall allow the Director and authorized agents and employees of the Department of Environmental Quality and the Department of Fish and Wildlife 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.
11. The project facilities are more particularly described and shown on the map filed to accompany 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.

12. Failure to comply with any of the provisions of this certificate may result in action including, but not limited to, civil penalties, restrictions on the use or cancellation of the certificate.
13. The land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan (ORS 197.180).
14. Any transfer or sale of a license, rights under a license, or property associated with a project must comply with the requirements of ORS 543.440 regarding prior approval of the Water Resources Department and rights and responsibilities transferred. These laws require that prior to any transfer, the water right holder shall notify the Department of the name of the new owner and complete forms provided by the Department assigning the hydroelectric project to the new owner. Any successor or assignee shall be subject to all terms and conditions of this certificate. Any mortgage, deed of trust or other lien are subject and subordinate to the terms and conditions of hydroelectric program law (ORS 543.440).
15. This certificate is issued for the period which is effective from the date of issuance through December 31, 2051. On termination of this certificate, such right to the use of water shall revert to an instream water right, unless the project owner applies to the Department to reauthorize the project.
16. The right to the use of water for power generation is restricted to beneficial use at the place of use described. The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights issued before this use was initiated, including rights for maintaining instream flows.

Issued FEB 28 2020



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