

STATE OF OREGON
COUNTY OF HOOD RIVER
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

UPCOUNTRY LLC
P.O. BOX 682
HOOD RIVER, OR 97031

confirms the right to use up to 2.5 CUBIC FEET PER SECOND (cfs) of the waters of TONY CREEK, tributary to the MIDDLE FORK HOOD RIVER utilizing 500 feet of head for HYDROELECTRIC PRODUCTION of 142 THEORETICAL HORSEPOWER (THP).

The use of water for hydroelectric purposes shall be in conjunction with water used under the right as evidenced by Certificate 39054. Use of water shall be limited to periods when the water right under Certificate 39054 is put to beneficial use without waste. The amount of water used shall not be greater than the quantity of water diverted to satisfy the authorized specific use under Certificate 39054. The use of water shall be limited by rate, duty, season and any other limitations of Certificate 39054. ORS 543.765(5)(c) and (d).

The applicant shall measure and report the quantity of water diverted. ORS 543.765(5)(e).

This right was filed under application PC 910.

The point of diversion is located:
1710 FEET SOUTH AND 2675 FEET WEST FROM NE CORNER, SECTION 25, being within the SE ¼ NW ¼, SECTION 25, TOWNSHIP 1 NORTH, RANGE 9 EAST, W.M.

The authorized place of use is located:
Tax Lot 503, NW¼ NW¼, SECTION 7, TOWNSHIP 1 NORTH, RANGE 10 EAST, W.M.

PROJECT DESCRIPTION

The source of water for the Upcountry LLC Hydroelectric Project (Project) is Tony Creek, tributary to Middle Fork Hood River.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and 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 diversion site is on Weyerhaeuser property. The Project diversion is created by an approximately 4' reinforced concrete dam with attached steel slots for removable stop logs to adjust the back-pool level. The dam does not have a fish ladder and is a barrier to upstream fish movement. Water enters the intake through a steel grate trash rack with approximately ½" openings that is set at 30 to 40 degrees to Tony Creek. The water enters a pipe and is transported approximately 150' to a screen vault. The fish screen system includes: three vertical screens measuring approximately 4' x 8' at the bottom of an approximately 10' deep concrete vault, and a fish bypass pipe that returns fish to Tony Creek. The current screen does not comply with Oregon Department of Fish and Wildlife criteria and requires replacement prior to the Project operating. After passing through the screen, the water enters a 16 inch pipe and travels approximately 1.7 miles before narrowing to a 14 inch pipe and then down to a 10 inch pipe for the remaining 1.7 miles before entering the manufacturing structure. There is a total of 500 feet of elevation change from the water intake to the place of use. The water then will pass through a 72 kW turbine to generate approximately 630 megawatt-hours annually, recovering energy otherwise lost at the existing pressure reduction device.

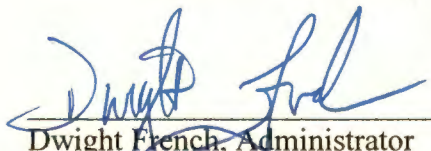
WATER RIGHT CONDITIONS

Upon review of the application, Oregon Water Resources Department (OWRD) finds that the Project, with the conditions set forth below is consistent with the public interest. The Project is well adapted to the development and utilization of the water power involved.

1. The water right holder shall comply with all statutes and rules applicable to the Project.
2. The water right holder shall construct and build the Project according to the maps, plans and specifications filed with the application within five years of issuance of this water right certificate or by any lawful extension thereof. ORS 543.765(13).
3. The water right holder shall construct, operate and maintain all fish screens, bypass devices and fish passages as required by the Oregon Department of Fish and Wildlife (ODFW). Upcountry LLC has chosen to pay the annual Fish Passage Restoration fee identified in ORS 543.765(5)(b) and 543.765(14)(a)(D) in lieu of providing fish passage.
4. The water right holder shall allow the OWRD Director and authorized agents and employees of the Oregon Department of Environmental Quality, ODFW, 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.
5. This certificate shall be invalidated upon a change in the point of diversion of water right certificate 39054. ORS 543.765(5)(g)
6. The Water Resources Department shall conduct a review of this certificate upon approval of any changes or adjustments made to the water users existing water right to determine if a revised certificate should be issued. ORS 543.765(6)

7. The right to use water under this certificate is invalidated if the Federal Energy Regulatory Commission exemption related to the certificate is canceled or invalidated. ORS 543.765(5)(h).
8. This certificate does not have its own priority date. The OWRD shall not regulate for or against this certificate. This certificate does not grant a right to divert water for hydroelectric purposes other than in conjunction with the water right as used under Certificate 39054. ORS 543.765(9) and (10).
9. This certificate is subject to review by the Department 50 years after the date of issuance pursuant to ORS 543.765(12).
10. The water right holder shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD under ORS 543.078(2)(b). This amount shall be due by the date specified on the invoice. ORS 543.765(16).
11. The water right holder shall pay, upon receiving an invoice from OWRD, an annual Fish Passage Restoration fee to OWRD under ORS 543.765(14) up and until ODFW approved fish passage is provided at the diversion dam structure. This amount shall be due by the date specified on the invoice.
12. If at any time, unanticipated circumstances or emergency situations arise in which fish or wildlife are being killed, harmed or endangered by any of the project facilities Upcountry LLC shall immediately take appropriate action to prevent further loss. Upcountry LLC shall notify the nearest ODFW office within 24 hours and shall comply with measures required by ODFW to prevent additional injury or mortality.
13. Failure to comply with any of the provisions of this water right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the water right.

Issued: APR 28 2020


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

Recorded in State Record of Water Right Certificates numbered 95007.