

STATE OF OREGON
COUNTY OF YAMHILL
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

VON HERITAGE ENTERPRISES LLC
17405 NW PANTHER CREEK RD
CARLTON OR 97111

503-852-7755

for the right to use the waters of KANE CREEK AND AN UNNAMED STREAM, tributaries of PANTHER CREEK, under 210 feet of gross head for HYDROELECTRIC development of 95.0 theoretical horsepower.

The date of priority is MARCH 23, 1981 for 3.0 cubic feet per second (CFS) and JULY 25, 1985 FOR 1.0 CFS. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 4.0 CUBIC FEET PER SECOND measured at the point of diversion from the source.

The use of water for power generation is limited to September 30 to June 15.

The points of diversion are located as follows:

Tax Lot 200, SW 1/4 NE 1/4, SECTION 28,
Diversion 1: 1900 Feet West and 2200 Feet South,
Diversion 2: 2500 Feet West and 1900 Feet South, Both from the SE Corner of Section 21,
Township 3 South, Range 5 West, W.M.;

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 (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 1700, NE 1/4 NE 1/4
SECTION 28
TOWNSHIP 3 SOUTH, RANGE 5 WEST, W.M.

Application HE 313

CERTIFICATE 95253

Project Description:

The project consists of a forebay at the top of a steep bluff (Tax lot 200, SWNE of Section 28). The forebay is about 80 feet wide and 200 feet long. A corrugated metal pipe stands in the forebay with a grated trash rack that diverts water into a 16 inch penstock. The 1600 feet long penstock is buried in a steep grade (210 feet of gross head) to the powerhouse. The unnamed stream has a small dam that creates a wetland and pond. The water is diverted into the forebay on Kane Creek. A 0.25 CFS bypass flow in the natural channel of West Fork Kane Creek (the unnamed stream on the water right) is required by an agreement between the original owner and the Oregon Department of Fish and Wildlife to support cutthroat trout. It was recommended to the owner/operator that this small diversion be shut-down in the low flow season May through September until flows are higher in the fall, winter and spring. About 1000 feet below the forebay the unnamed stream confluent with Kane Creek. The creek then cascades over a 40 foot waterfall (estimate based on a USGS elevation map). The waterfall appears to be a natural fish barrier.

The powerhouse is constructed of concrete and timber. It contains two turbines. The turbines are operable, one was producing power during our visit. The water is discharged from the powerhouse in a rocky area of Kane Creek. Kane Creek then flows into a 9 acre-foot pond constructed under water right permit R 4355, Certificate 34836 for recreation purposes. The project can produce 95 kilowatts at full capacity, which is sold to an electric utility.

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 (ODEQ) 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 ODEQ, 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 ODEQ shall provide to the water right holder and to Department 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.

If the Department 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.


4. The water right holder must obtain 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. To the extent that natural flow is available, the water right holder shall maintain 0.25 CFS flow of water in the natural channel of West Fork Kane Creek year round, per the written agreement with ODFW dated October 2, 1985, unless the operation or structure is modified by written agreement with ODFW. Any subsequent agreements are to be submitted to the Department and will become a part of this certificate.
7. 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)).

8. Upon permanent cessation of power generation, the owner/operator shall remove or modify project facilities to meet decommissioning standards adopted by the Department.
9. The water right holder shall pay to the Department in accordance with the provisions of ORS 543.078 (2)(b) an annual fee of \$50 on or before the first day of January of each year after issuance of this certificate.
10. The right granted herein is expressly made inferior in right and subsequent in time to any authorized appropriation of water from this source for domestic, municipal, irrigation or any other beneficial consumptive use.
11. The water right holder shall allow the Director and authorized agents and employees of the DEQ and the ODFW 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. 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.
13. 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.
14. 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).
15. 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 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).
16. 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.

17. 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.

THIS CERTIFICATE SUPERSEDES CERTIFICATE 79500.

Issued: SEP 16 2020



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

Recorded in State Record of Water Right Certificates numbered 95253

