

STATE OF OREGON  
COUNTY OF DOUGLAS  
HYDROELECTRIC LICENSE

THIS LICENSE ISSUED TO:

JON & HEATHER TRAIN (Licensee's)  
6080 NORTH FORK SMITH RIVER ROAD  
REEDSPORT, OR 97467

confirms the right to use of the waters of a SPRING & an UNNAMED CREEK, tributary to NORTH FORK SMITH RIVER, for the HYDROELECTRIC PRODUCTION of 22.8 THEORETICAL HORSEPOWER (THP).

This hydroelectric license was filed under application HE 618. The date of priority is JULY 27, 2020. The maximum amount of water to be diverted is 0.67 CUBIC FEET PER SECOND (CFS). The hydraulic head is 300 feet. The period of use is YEAR-ROUND.

The point of diversion is located: Taxlot 100, NE¼ NE¼ of SECTION 8, TOWNSHIP 20 SOUTH, RANGE 10 WEST, W.M.

The authorized place of use is located: Taxlot 200, NW¼ NE¼ of SECTION 8, TOWNSHIP 20 SOUTH, RANGE 10 WEST, 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 uses up to 0.67 CFS of water from a spring and an unnamed Creek, tributary to North Fork Smith River. The project has approximately 300 feet of hydraulic head to generate 22.8 theoretical horsepower (THP) to generate electricity year-round for use on-site or sale to the grid.

The applicants propose to construct a 6-foot tall by 5-foot wide concrete and reinforcing steel diversion dam. The dam would impound less than an acre-foot of water. Water will enter a 4-inch diameter polyethylene pipe that descends 300 feet down the hillside and an additional 600 feet to cross the North Fork Smith River. Near the base of the hillside on the east side of the river the pipe will be suspended by aerial cables anchored by supports on either side of the river. The crossing is planned at or near the existing aerial crossing for the existing water supply line; permit S-41594.

Once on the west side of the river, the pipeline will continue below-ground to a Pelton wheel in a proposed powerhouse located in the pasture outside of the flood plain. Discharge from the powerhouse tailrace would enter a second pipe co-located in the trench with the penstock pipe. Tailrace water will discharge to the North Fork Smith River near the aerial pipeline crossing of the river near where the spring and creek enter the river. No portion of the North Fork Smith River is expected to experience a reduction in streamflow. The pipe will be positioned into the North Fork Smith River to minimize erosion, scour and turbidity.

## **LICENSE CONDITIONS**

The proposed use of water is subject to the following express conditions:

1. The priority date for the proposed water right is July 27, 2020. Project operation is year-round.
2. The proposed 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 water right is inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive uses.
3. The applicants shall comply with all statutes and rules applicable to the Project.
4. The license is effective from the date of issuance through December 31, 2051. It is to be exercised consistent with the conditions contained in the license. This may be reauthorized under laws existing at that time.
5. The applicants shall construct and build the Project according to the maps, plans and specifications filed with and approved by the OWRD within two years of



issuance of the license or within any lawful extension thereof. The Project map will be incorporated into the license.

6. The applicants 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 Water Resources Commission (Commission) not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.
7. 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 applicants, 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.
8. 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. Erosion and sediment control measures shall be implemented during construction of the dam and at the tailwater return location. The work area for the low-head concrete diversion structure should be isolated from the flowing stream to prevent water contact with wet or curing concrete and any other potentially harmful chemicals. The 4-inch diameter polyethylene penstock must be anchored securely to the rock face of the hillside to prevent movement and failure. The support anchors and cabling system must be designed to prevent movement or failure. The discharge outfall must be designed to prevent scour and erosion of river embankment. Energy dissipation features, such as rocks, should be placed to reduce velocity of tailwater returning to North Fork Smith River. In-water construction work, including any streambank excavation, should be completed in the season of August 1 to September 15 to limit impacts to fish and wildlife. Riparian areas impacted during project construction must be restored/replanted. If trees are lost due to inundation behind the dam or other construction activities, they should be replaced near to mitigate wildlife habitat loss.




9. The Project shall be designed to minimize visual, aesthetic and noise impacts.
10. If any known or suspected cultural material is discovered during Project construction, all activities should stop, and an archaeologist shall be contacted to assess the discovery. In addition, the State Historic Preservation Office and the Coquille Indian Tribe shall be contacted immediately. 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).
11. 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.
12. The applicants 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.
13. Issuance of the license does not absolve the applicants from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The applicants are 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.
14. The applicants 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.
15. Use of water is governed by this license. However, the operations of the Project by the applicants so far as those operations affect the use, storage and discharge from storage of waters affected by the applicants, 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.



16. The applicants shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$22.80, (OAR 690-051-0400(6) and ORS 543A.415 or subsequent statute). This amount shall be due by the date specified on the invoice.
17. Consistent with ORS 540.610, if after completing construction of the Project, the applicants fail to use or operate the Project facilities for any period of five consecutive years, the water right shall be subject to termination by OWRD. The Owner shall comply with the decommissioning standards under OAR 690-52.
18. Upon a decision to terminate the hydroelectric use, the applicants shall comply with any decommissioning statutes and rules in effect at that time. (OAR 690-052).
19. The following requirements of ORS 543 are hereby waived, under authority of OAR 690-051-0350:
  - ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.
  - ORS 543.550 relating to liens against the Project and providing that any sale shall be of the whole property embraced in the Project unless a partial sale is approved by the OWRD Director.
  - ORS 543.560 which requires the applicants to execute to the State of Oregon a bond to the effect that the applicants shall promptly make payment to all persons supplying labor, material, machinery, etc.

Dated in Salem, Oregon on April 29, 2021

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