

STATE OF OREGON
COUNTY OF BAKER
HYDROELECTRIC LICENSE

THIS LICENSE ISSUED TO:

BRENT KERNS
45298 POCAHONTAS ROAD
HAINES, OR 97833

confirms the right to use of the waters of a WILLOW CREEK, tributary to POWDER RIVER, for the HYDROELECTRIC PRODUCTION of 3.8 THEORETICAL HORSEPOWER (THP).

This hydroelectric license was filed under application HE 620. The date of priority is JANUARY 24, 2022. The maximum amount of water to be diverted is 0.11 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 600, SW¼ NE¼ of SECTION 4, TOWNSHIP 8 SOUTH, RANGE 38 EAST, W.M.

The authorized place of use is located: Taxlot 600, NW¼ NW 1/4 of SECTION 3, TOWNSHIP 8 SOUTH, RANGE 38 EAST, 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 applicant constructed a minor hydroelectric project with approximately 300 feet of head to develop 3.8 theoretical horsepower (THP) to generate electricity year-round for on-site use.

The applicant diverts up to 50 gallons per minute (0.11 cubic feet per second) from Willow Creek tributary to the Powder River. Willow Creek flows year-round and serves as the principal source of irrigation for the Diamond K Ranch (certificates 4192 and 92938).

The applicant constructed a 1-foot tall by 8' wide wood diversion dam that impounds the water, which enters a screened 8-inch diameter steel pipe. The 8-inch diameter steel pipe narrows to a 4-inch diameter PVC penstock for the majority of its length and descends 300 feet down the hillside where it passes through the turbines.

Discharge from the tailrace water enters another pipe allowing it to return to Willow Creek.

LICENSE CONDITIONS

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

1. The priority date for the proposed water right is January 24, 2022, and 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 applicant shall comply with all statutes and rules applicable to the Project.
4. The license is effective from the date of issuance through December 31, 2042. 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 applicant shall construct and build the Project according to the maps, plans and specifications filed with and approved by the WRD 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 applicant 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 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.
8. The Project shall 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. Best management practices to minimize erosion and control sediment as identified by ODEQ will be followed for the In-water construction work, including any streambank excavation, and 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 in close proximity to mitigate wildlife habitat loss.
9. The Project shall be designed to minimize visual, aesthetic and noise impacts.
10. If any cultural material is discovered during Project construction, all activities shall stop, and an archaeologist contacted to assess the discovery. In addition, the State Historic Preservation Office shall be contacted. 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. The permit holder shall maintain and operate the Fish Screen at the diversion intake. The Fish Screen shall be maintained and operated to Oregon Department of Fish and Wildlife (ODFW) approval. The permit holder shall be responsible for

the operation and all repair and maintenance necessary to keep the Fish Screen in proper working order.

12. All fish and wildlife mitigation features shall be properly maintained for the duration of the project (543A.025 (2) (a) and (5) (d).
13. The permit holder shall not divert more than ten percent of the natural flow from Willow Creek. The permit holder shall, with the approval of WRD, install a measuring device to monitor the flow of Willow Creek and regulate the amount of water diverted at the intake accordingly.
14. If at any time an unanticipated situation arises in which the permit holder 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 permit holder or operator shall immediately take appropriate action to prevent further loss. The permit holder or operator shall, within 24 hours, notify the ODFW La Grande Fish District Office and comply with the measures required by ODFW to prevent additional fish and wildlife injury or mortality. The permit holder shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW.
15. The permit holder shall allow the WRD Director and authorized agents and employees of the ODEQ, ODFW, and WRD free and unrestricted access upon reasonable notice, in, through, or 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.
16. Issuance of the license does not absolve the permit holder from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Certificate holder is made aware that permits may be required from the United States 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 in waters of the state.
17. WRD shall coordinate a HART Project site visit every 5 years to review the Project and its operation.
18. The applicant shall allow the WRD Director and authorized agents and employees of the ODEQ, ODFW, and WRD 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.

19. 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 shall the State of Oregon be liable.
20. 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.
21. The applicant shall pay, upon receiving an invoice from WRD, an annual fee to WRD in the amount of \$15.00, (per ORS 543.078(2)(c)). This amount shall be due by the date specified on the invoice.
22. 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 WRD. The Owner shall comply with the decommissioning standards under OAR 690-52.
23. 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).
24. 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 WRD Director.
 - ORS 543.560 which requires the applicant to execute to the State of Oregon a bond to the effect that the applicant shall promptly make payment to all persons supplying labor, material, machinery, etc.

Issued JUL 03 2025

Katherine Ratcliffe

Katherine Ratcliffe, Administrator
Water Right Services Division, *for* Ivan
Gall, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates Number 97820