

BEFORE THE STATE ENGINEER OF OREGON

Klamath County

IN THE MATTER OF THE APPLICATION)
OF THE CALIFORNIA OREGON POWER)
COMPANY FOR A NEW CERTIFICATE OF)
WATER RIGHT TO BE ISSUED IN LIEU)
OF THAT RECORDED IN STATE RECORD)
OF WATER RIGHT CERTIFICATES,)
VOLUME 3, PAGE 2436.)

O R D E R

AUTHORIZING ISSUANCE OF NEW
CERTIFICATE AND CANCELLING
SUPERCEDED CERTIFICATE

On December 4, 1919, the State Water Board of Oregon issued to B. E. Kerns and J. W. Kerns under the provisions of Section 53, Chapter 216, Oregon Laws 1909, a certificate recorded in State Record of Water Rights Certificates, Volume 3, Page 2436 to the use of not to exceed 55 cubic feet per second of water of Klamath River for developing 100 theoretical horsepower in Lot 1, Section 36, Township 39 South, Range 7 East, W. M. The priority of right dated from June 22, 1911 and the right to the use of water for power purposes was limited to 40 years, subject to a preference right of renewal under the laws existing at the date of expiration of such right.

On May 1, 1951, the California Oregon Power Company, successor to B. E. Kerns and J. W. Kerns, applied to the State Engineer for a renewal of said certificate for an additional period of 40 years from June 22, 1951.

Subsequent to June 22, 1951, the Attorney General of Oregon was requested for an opinion as to the interpretation of Section 116-427, O.C.L.A. In response thereto, he advised the State Engineer that certificates issued under the provisions of Section 53, Chapter 216, Oregon Laws, 1909 and Chapter 283, Section 10, Oregon Laws 1923, would expire and all rights terminate upon the expiration of the 40 year period unless the owner of such certificates, had prior to the date of expiration, surrendered the old certificates and had been issued new certificates

In a letter dated November 27, 1951, addressed to Roberts, Kellington and Branchfield, Medford, Oregon, concerning this opinion, the Attorney General stated that due to the uncertainty which existed in the mind of the State Engineer as to the proper construction to be placed upon the statute, their client, the California Oregon Power Company, was placed in a state of repose in that there were certain determinations to be made before any action could be taken upon the application of the Company and that the letter of the Company of May 1 would be held to constitute an application for renewal of certificate, and the surrender of the old certificate would be a formal requirement to be complied with upon the State Engineer receiving an opinion from the Attorney General as to the proper construction to be placed upon the statutes involved.

NOW THEREFORE, it hereby is ORDERED that pursuant to Section 116-426, O.C.L.A., a Certificate of Water Right be issued to The California Oregon Power Company and recorded on Page 19,651, Volume 14, State Record of Water Right Certificates, for the use of not to exceed 55 cubic feet per second of water from Klamath River utilizing a fall of 16 feet to develop 100 theoretical horsepower in Lot 1 of Section 36, Township 39 South, Range 7 East, W. M., in Klamath County, Oregon, with a date of priority of June 22, 1911; said certificate to supercede the certificate recorded in State Record of Water Right Certificates, Volume 3, Page 2436.

BE IT FURTHER ORDERED that said water right certificate recorded in State Record of Water Right Certificates, Volume 3, Page 2436, be and the same is hereby cancelled.

Dated at Salem, Oregon, this 10th day of December, 1951.


CHAS. E. STRICKLIN
State Engineer