

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF APPLICATION 61243 IN)
THE NAME OF FARMERS IRRIGATION DISTRICT) PROJECT BACKGROUND,
FOR A PERMIT TO APPROPRIATE WATER FROM) FINDINGS OF FACT,
GATE, CABIN AND NORTH FORK GREEN POINT) CONCLUSIONS OF LAW AND
CREEKS FOR USE IN EXISTING HYDROELECTRIC) FINAL ORDER
POWER PROJECTS, HOOD RIVER COUNTY)

PROJECT BACKGROUND

Application 61243 was filed in February 1981 for a permit to appropriate surface water in the Hood Basin for hydroelectric generation at three powerhouses. No protests were filed against this application. The application was subsequently split into four applications, three of which were taken to public hearing and approved: Application 62989 for Powerhouse 1, approved November, 1981; and Application 64061 (Powerhouse 2) and Application 68131 (Powerhouse 3), approved February, 1983. Powerhouse 1 is no longer in operation and that permit has been cancelled. Powerhouse 3 utilizes up to 35 cfs from Dead Point, South Pine, North Pine and Ditch Creeks, conveyed through the Low Line Canal. It is normally operated only outside the irrigation season. Powerhouse 2 utilizes this 35 cfs plus up to 73 cfs from the main stem Hood River. It is normally operated year-round.

Application 61243 proposes to divert up to 20 cfs from North Fork Green Point Creek, and up to 5 cfs from Cabin and Gate Creeks combined, until the balance of the 35 cfs approved for Powerhouse 3 has been diverted, or until minimum flows are limiting in the main stem of Green Point Creek. Water will be diverted under this application when the quantity of water from Dead Point, South Pine, North Pine and Ditch Creeks is insufficient to operate powerhouses 2 and 3 at full capacity during the non-irrigation season (October 15 to April 15). Total power production with the additional 25 cfs is projected at 22.1 million kilowatts per year.

Water is proposed to be taken at existing irrigation diversions and conveyed through an existing canal system consisting of metal pipe and flume, unlined canal, concrete and wooden flume, and spiral rib pipe in various locations. No new construction other than installation of fisheries mitigation and enhancement measures, and periodic upgrading of open canals to pipe, is proposed.

A cumulative impacts review has been conducted. An Interim Order finding that there is no potential that the proposed diversions on Gate, Cabin and North Fork Green Point Creeks may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the Hood Basin was entered by the Commission on May 11, 1990. The Interim Order further directed the Department to reconvene the hearing on Application 61243, as amended, to determine whether it would be in the public interest to grant this application.

Notice of Hearing was sent to the applicant, all individuals and organizations participating in the cumulative impacts review, and all individuals and groups required to receive notice as described in the Department's rules. Notice of Hearing was published during February, 1990 in four consecutive weekly issues of the Hood River News. No petitions for party status or interested agency status were filed within the time period allowed, or at any time thereafter.

An order directing the filing of written direct testimony and outlining issues to be addressed was issued July 11, 1990.

The hearing was held September 5, 1990, at the offices of the Water Resources Department. Counsel for applicant FID and witnesses Jerry Bryan, Project Manager and Richard Craven, Consultant, were present. The hearing record was left open to allow the applicant to submit a copy of the power purchase agreement with Pacific Power and Light, the special use permit from the U.S. Forest Service, the letter of authorization from Longview Fibre Co., and the estimate of annual kilowatt production revised to reflect agreed-on minimum bypass flows. The documents were received on September 9, 1990.

A Proposed Order was served on applicant FID on October 31, 1990. No exceptions having been filed within the time allowed, and having now fully considered the testimony and evidence in the entire record, the following Final Order is entered.

EVIDENTIARY RULING

The documents described above and received on September 9, 1990 are accepted into the record. Exhibit numbers are assigned as Applicants 5, 6, 7, and 8, respectively.

FINDINGS OF FACT

1. All statements of fact contained in the Interim Order on Cumulative Impacts, Volume 44, page 249, Water Resources Department Special Order Book, and in the Project Background section of this Proposed Order are hereby incorporated as findings of the Commission.

2. Protection of Designated Resource Areas and Special Management Areas (OAR 690-51-170)

(A) No adverse effects were noted by any agency having responsibility for any special management areas or special management areas described in 690-51-170.

(B) The project is outside the Columbia Gorge Management Area and the Columbia Gorge Scenic Area.

(C) Only 1.5 acres of state forest land will be permanently removed from production. This land was permanently removed from production at the time Powerhouse 3 was built. This does not constitute an adverse effect on the State Forestry Department's management program for this area.

3. Mitigation, No Net Loss (OAR 690-51-180)

(A) All mitigation measures (screening, minimum bypass flows) will be in the project vicinity.

(B) Replacement of open earthen canal with pipe as funds are available will reduce or eliminate existing impacts, and potential future impacts, on water quality due to canal failure and breach.

(C) Minimum bypass flows agreed on by applicant and state and federal fisheries resource agencies will be met at all times during project operation.

(D) No concerns about any other natural resources were expressed.

(E) No construction will be conducted instream other than installation of mitigation and enhancement measures agreed to by pertinent state and federal fisheries agencies.

(F) All mitigation measures which reasonably can be completed will be fully functional when the project begins diversion for hydroelectric power generation from the sources requested herein.

(G) The collective benefits of the use of waters applied for for use in the existing hydroelectric facilities equal or exceed the collective adverse impacts, which are negligible, on natural resources.

(H) The appropriation of waters for use in the existing generation facilities will create no net loss of natural resources.

(I) The Commission finds all proposed mitigative measures acceptable.

4. Water Resources (OAR 690-51-190)

(A) Water will be diverted under this permit for use in the existing hydroelectric projects only during the months of October through April 15. During October, allowable diversions may be less than requested and the powerhouses may be required to operate at partial capacity in order to meet minimum flow requirements and instream water rights. With the occasional exception of October, water is available to provide for the reasonable operation of the project.

(B) Diversion under this permit will have the most junior priority date on Gate, Cabin and North Fork Green Point Creeks. Existing senior rights on North Fork Green Point Creek are for irrigation use during the irrigation season. The proposed diversions will not interfere with any existing water rights or permits.

(C) The proposed use is consistent with the Hood River Basin Program.

(D) The project will utilize available water during the non-irrigation, high-flow period of the year while maintaining established minimum streamflows, instream water rights, and agreed-on minimum bypass flows for fisheries protection. Portions of the funds derived from the additional power sales revenues will be utilized for conveyance system upgrading by converting open canal to pipe. Conversion to pipe will have the added benefit of increasing water pressure, reducing transmission losses and reducing or eliminating canal failures.

(E) The proposed use is consistent with achieving the maximum economic development at the existing project site.

(F) The proposed use is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity while maintaining established and agreed-on instream flows.

(G) The amounts of water requested for the proposed use are not greater in quantity or rate than is necessary to achieve the purposes of the project. There do not appear to be any quantifiable public and private economic costs; the proposed use would have quantifiable public and private economic benefits in that it will produce additional power available to the public, produce additional power revenues not presently available, result in conveyance system improvements to the benefit of the environment, and will result in enhancement measures for fisheries. The proposed use can reasonably be developed with available means. The proposed use will not preclude present beneficial uses; there are no other uses expected to be developed during the life of the project. The proposed use will not constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(H) The project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes.

(I) The proposed use is consistent with controlling the waters of the state for all beneficial purposes.

(J) With the exception of installation of screening and certain enhancement measures discussed below, there will be no construction negatively impacting water quality. Water quality may be enhanced by conversion of existing open canal to pipe, thereby reducing the potential for increased turbidity due to historic canal failures. Cool base flows, steep canyon walls and overhanging riparian vegetation assist in keeping water temperatures low. Diversion will

be during periods of high flow, October 1 through April 14, when temperatures are normally between 55-39 degrees Fahrenheit. The diversion and use as proposed complies with water quality standards established in OAR Chapter 340, Division 41.

5. Fish Resources (OAR 690-51-200)

(1) Fish Resources In General

(A) Interim minimum bypass flows for Green Point Creek below the confluence of the North and South Forks of Green Point Creek have been agreed to between the applicant and the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and the Oregon Department of Fish and Wildlife (ODFW) at the following flow levels:

October 16 through December 31 -- 30 cfs
January 1 through April 14 ---- 60 cfs

These flows will be reviewed periodically over the five years following issuance of the permit to determine if adjustments are necessary. The ODFW has indicated that these flows will sufficiently protect fish populations in the mainstem of Green Point Creek from any impact of the proposed diversion.

(B) Applicant has developed a plan for immediate mitigation measures and for enhancement activities and studies to be implemented and conducted over the five years following issuance of the permit to use water. The plan is entitled "FID Plans to Comply with Terms and Conditions" (Plan) established by ODFW, NMFS and the USFWS. These agencies have reviewed and approved the applicant's Plan.

(C) Species of fish found in Gate Creek have been identified as limited to brook trout. Species identified in Cabin Creek are limited to cutthroat trout. North Fork Green Point Creek contains resident trout. There are no anadromous fish in these creeks. Anadromous fish are found in limited numbers, due to passage barriers and lack of spawning and rearing habitat, in the mainstem of Green Point Creek.

(D) Project facilities and operations will not have significant adverse impacts on fish populations.

(E) Passage currently is limited. Project facilities and operations will not unreasonably interfere with upstream and downstream passage in the project vicinity. Additional screening and passage improvements on Green Point Creek will benefit the fisheries.

(F) Spawning, rearing and other habitat areas are limited in Cabin, Gate and North Fork Green Point Creeks. Habitat enhancement measures to be undertaken will benefit the fisheries.

(G) There will be no unavoidable adverse impacts on fish or fish management programs.

(H) Instream enhancement activities will be constructed in a manner and on a schedule approved by ODFW, USFWS and NMFS.

(I) All mitigation measures will be fully functional when the project commences.

(J) The proposed use is consistent with ODFW management programs in force.

(2) Wild Game Fish

(A) All mitigation measures are located in the project vicinity, will be in effect at the beginning of project operation, will not cause a net loss to any individual species of wild game fish, and will not result in conversion of any wild game fish population and fishery to a hatchery dependent resource. Screening will prevent a loss of fish during both the irrigation and non-irrigation seasons. The mitigation and enhancement measures to be undertaken are consistent with ODFW management plans and programs, and employ workable and generally accepted methods and techniques best suited to the fishery resources in the project area.

(3) Anadromous Fish

(A) There are no anadromous fish in Cabin, Gate or North Fork Green Point Creeks.

(B) Diversions, conveyance and hydropower production facilities are existing.

(C) Modifications through screening, minimum flows, passage improvements, installation of spawning gravels and woody debris are reasonably certain to enhance and improve existing salmon and steelhead populations in Green Point Creek.

(D) The modifications comply with wild game fish standards in subsections (2)(a)(C) and (D) of OAR 690-51-200.

(E) The modifications are consistent ODFW fishery management plans and programs, employ workable and generally accepted methods and techniques best suited to the fish resources in the project area, have been approved by ODFW and will be overseen by that agency. Mitigation measures will be in place at the time of project operation. Enhancement measures will be undertaken on a 5-year approach with oversight and approval by ODFW and other federal fisheries agencies.

(F) The Northwest Power Planning Council's (NPPC) Columbia River Basin Fish and Wildlife Program does not apply to the project or to the streams involved.

6. Wildlife (OAR 690-51-210)

(A) No threatened or endangered species have been identified in the project area. The NPPC's Columbia River Basin Fish and Wildlife Program does not apply to the project.

(B) The location, design, construction and operation of the project will remain essentially the same, with the exception of operation of Powerhouse 3 during the non-irrigation season. No additional construction, beyond installation of mitigation and enhancement measures and canal replacement, will be associated with the proposed use.

(C) Construction of mitigation and enhancement measures, and replacement of open canal with pipe, will be done on a schedule and in a manner having prior approval of pertinent natural resource agencies so as to minimize disruption of wildlife. No land-clearing activities are proposed.

(D) Where necessary, transmission lines will be raptor-proofed.

(E) No adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes resulting from project location, design, construction or operation have been identified.

(F) No unavoidable adverse impacts on wildlife or wildlife habitat resulting from project construction methods have been identified.

(G) The project is consistent with applicable ODFW management programs for the project area.

7. Plant Life (OAR 690-51-220)

(A) No designated or officially proposed threatened or endangered plants pursuant to the Endangered Species Act of 1973 have been identified in the project area. No endangered, rare, threatened or limited plants or unique ecosystems have been identified in the project area.

8. Recreation (OAR 690-51-230)

(A) The hydroelectric power production facilities are existing. Diversion of additional water will be through the existing irrigation conveyance system during the non-irrigation season.

(B) Recreation opportunities and activities during the non-irrigation season are extremely limited due to high flows and heavy winter snows. Access during any time of the year is limited due to terrain. The proposed appropriations will not reduce the abundance or variety of recreational facilities or opportunities in the project area.

(C) There will be little to no additional visible or audible intrusion on existing recreation facilities, activities or opportunities. Any substantial increase in noise from the powerhouses beyond the original levels allowed in the conditional land use permit issued by the Hood River County Planning Office will be reviewed by the Planning Department to determine whether a further review of the county's conditional land use permit is required.

(D) There will be no unavoidable impacts on any water-dependent or non water-dependent recreation facilities, activities or opportunities in the project area.

(E) There are no unique, unusual or distinct natural features providing the focus or attraction for non water-dependent recreation activities or facilities in the project area.

(F) The proposed use will not cause the loss of, or any significant adverse impact to, any water-dependent recreation opportunities of statewide significance.

9. Historic, Cultural and Archeological Resources (OAR 690-51-240)

(A) No historic, cultural or archeological resources have been identified in the project area.

10. Land Resources (OAR 690-51-250)

(A) The project will have no adverse impacts to prime farmlands in the Hood River area. The project will have beneficial impacts on farmlands through production of hydropower revenues and upgrade of the conveyance system.

(B) There are no prime forestlands or wetlands identified in the project area.

(C) There are no outstanding scenic and aesthetic views, sights or resources located in the project area by federal, state or county agencies.

(D) Project facilities exist, including diversion for Cabin, Gate and North Fork Green Point Creeks. There will be no new construction.

(E) No expansion of power production facilities will occur; therefore, the project complies with applicable noise standards.

(F) Disturbance of unstable soils or soil erosion will be reduced or eliminated as a result of canal upgrades. There will be no disturbance or erosion resulting from the location, design, construction or operation of the existing project.

(G) No natural communities, geological features or geologically unstable areas have been identified in the project area.

(H) Private landowners on which portions of the project are located have given their written authorization and have expressed no objections to the proposed use. Hood River County has issued a conditional use permit. The United States Forest Service, Mt. Hood District, has issued a Special Use Permit for the proposed use.

(I) Due to elevation and normal climatological conditions in the project area, project operation is stopped if ice forms in the canals, and water diversion is greatly reduced or halted. Running additional water through the conveyance system during the non-irrigation system may reduce the problem. Project facilities are designed to withstand damage and to allow reasonable access for project maintenance and operation under these conditions.

11. Land Use (OAR 690-51-260)

(A) The project has Conditional Use Permits issued by the Hood River County Planning Department. The project is compatible with the acknowledge comprehensive land use plan for the project area.

12. Economics (OAR 690-51-270)

(A) The applicant has funds necessary to cover estimated construction, maintenance, operating, mitigation and compensation costs.

13. Need for Power (OAR 690-51-280)

(A) There is a need for the additional power which will be produced as evidenced by a contract for sale of power between applicant and Pacific Power and Light.

(B) The project will use existing diversion and conveyance facilities which, with canal upgrades, will reduce water losses and increase the efficiency of water use.

CONCLUSIONS OF LAW

1. The proposed use satisfies the standards of OAR 690-51-170 through 690-51-280.

2. The project will not impair or be detrimental to the public interest.

3. Approval of the project with conditions for mitigation and enhancement activities is in the public interest.

ORDER

NOW, therefore, it is ORDERED that Application 61243, under a date of priority of February 11, 1981, is hereby approved, subject to the following conditions:

Instream Flow Requirements

The established minimum streamflows in the mainstem Hood River and the West Fork Hood River shall be maintained.

During the period of 5 years from the date of this permit, the following bypass flows shall be maintained in Green Point Creek from the confluence of the North and South Forks to the mouth of Greenpoint Creek during the non-irrigation season:

October 16 through December 31:	30 cfs
January 1 through April 14:	60 cfs

Fisheries Enhancement

Farmers Irrigation District shall comply in all respects with the August 17, 1990 Five-year Plan to Comply with Resource Agencies Terms and Conditions as approved by ODFW, USFWS and NMFS.

During the period of 5 years from the date of this permit, the District will conduct detailed studies concerning fisheries, bypass flows, and fisheries enhancement measures for the mainstem of Green Point Creek which have been or should be undertaken by the District. The studies will be conducted at the Districts expense. The details and methodology of such studies shall be developed among the District, the Department and ODFW.

Upon completion of the studies, the District, the Department and ODFW shall agree upon (1) the final bypass flow levels which are reasonably necessary to support aquatic life, as well as (2) what fisheries enhancement measures can and reasonably should be undertaken by the District. Agreed-on final bypass flow levels shall be forwarded to the Water Resources Department for inclusion in the certificate when issued.

General

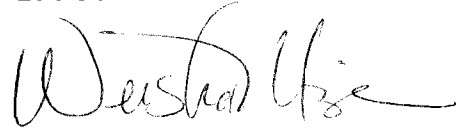
1. Any agreement developed with any private entity for the development or operation of the Project shall be consistent with OAR 690-51-410, and shall be reviewed by the Water Resources Department for such consistency prior to finalization. Any changes to any such agreement shall be reviewed and approved by the Department.

2. Prior to Project abandonment, Project facilities will be removed or modified and pre-Project conditions restored in any way reasonably required to maintain fish and wildlife production within the Project area.

3. FID shall pay annually those fees described in ORS 543.710 and OAR 690-51-400(6) and (7).

4. FID shall, for the five years following issuance of this permit, submit biannual reports describing accomplishments under, additional studies required as a result of, and recommended changes in FID's August 17, 1990 Plan for Compliance and with the conditions set out herein.

DATED and signed this 3rd day of December, 1990.



WEISHA MIZE
Hearings Referee

NOTICE: The above Final Order is issued by the Hearings Referee pursuant to authority delegated by the Water Resources Commission (Commission) pursuant to ORS 536.025(2) and OAR 690-01-041. You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.