

STATE OF OREGON
COUNTY OF COOS
PERMIT TO APPROPRIATE THE PUBLIC WATERS

COOS BAY * NORTH BEND WATER BOARD
2305 OCEAN BOULEVARD
P.O. BOX 539
COOS BAY, OR 97420-0108

is issued this permit to use the waters of UPPER PONY CREEK RESERVOIR, constructed under Reservoir Permit R-1064 and expanded under Reservoir Permits R-8518 and R-12870, a tributary of PONY CREEK, for HYDROELECTRIC PRODUCTION of 2.8 THEORETICAL HORSEPOWER.

This permit is issued under application S-86389 (Power Claim - PC 886). The date of priority is NOVEMBER 2, 2004. The amount of water to be diverted is 0.45 CUBIC FEET PER SECOND (cfs). The project will divert water through a screened pipeline 3 inches in diameter and 10 feet long. The project will use a pelton wheel and 55 feet of gross head to develop 2.8 theoretical horsepower of energy to be stored in a battery to operate a remote video monitoring system.

The point of diversion is located at Upper Pony Creek Spillway - SW ¼ SW ¼, SECTION 28, TOWNSHIP 25 SOUTH, RANGE 13 WEST, W.M.

The authorized place of use is

SW ¼ SW ¼
SECTION 28,
TOWNSHIP 25 SOUTH, RANGE 13 WEST, W.M.

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.

The use of water is limited to the amount that the generation facilities can utilize efficiently, and shall not exceed the specifications noted in this permit.

The use of water under this permit is inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive uses. Water use for hydroelectric purposes as specified in this permit may be made on a year-round basis, when water is available.

PERMIT CONDITIONS

Upon a review of the application and input received from state and federal agencies and private citizens, OWRD finds that the Project, with the conditions set forth below, will not violate the standards expressed in Oregon Administrative Rules (OAR) 690-051-0160 through -0270, and is consistent with the public interest. No other application has been filed in competition with this application. The Project is well adapted to the development and utilization of the waterpower involved.

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

1. The permittee shall comply with all statutes and rules applicable to the Project.
2. The permittee shall be exempt from annual fees under *OAR 690-051-0400(5)* and *ORS 543.710*. The permittee shall submit an annual claim statement as provided in *ORS 543.720*.
3. Upon a decision to terminate the hydroelectric use for more than five years, the permittee shall comply with any decommissioning statutes and rules in effect at that time. On termination of the permit, the right to use water shall revert to the public.
4. The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens are not necessary. The required screens are to be in place, functional, and approved by ODFW before diversion of any water.
5. The permittee shall construct and build the project according to the maps, plans and specifications filed with and approved by the Department, and within the time fixed by the permit or by any lawful extension thereof. The project map will be incorporated into the permit. No substantial change to the project shall be made unless approved by the Director and incorporated into this permit by amendment or special order.
6. The permittee 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 Department not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.

7. The permittee shall complete construction of the Project within two years of the date the permit is issued.
8. No voluntary transfer of this permit or of any property acquired, constructed or operated pursuant to the permit issued under ORS 537.289 shall be made to any nonmunicipal entity so as to result in a loss of ownership of the permit by a municipal corporation or district. The holder of this permit must remain qualified as a municipal applicant under ORS 537.285 and 537.287. If the municipal corporation or district proposes to generate hydroelectric power jointly with a nonmunicipal entity, any proposed changes in the agreement between the municipal corporation and the nonmunicipal entity must be reviewed by the Department to determine whether the permittee remains qualified as a municipal applicant. If the department determines that a permittee no longer qualifies as a municipal applicant, the department shall notify the permittee and any nonmunicipal entity that the parties have 90 days to amend their joint relationship to continue qualifying as a municipal corporation or district. If the permittee fails, after receiving notice under ORS 537.289(2), to amend the joint agreement so the permittee continues to qualify as a municipal applicant, or if the permittee has assigned ownership of the permit to an entity other than a municipal corporation or district, the Department shall initiate proceedings to cancel the permit.
9. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41. To protect from any significant future temperature-related adverse impacts to aquatic organisms, any future modifications of vegetation surrounding Project waters should be carefully evaluated. The permittee shall consult with ODEQ prior to undertaking any activity that directly or indirectly results in removal of vegetation adjacent to Project waterways. Waterways include, but are not necessarily limited to bypass reaches, siltation/forebay ponds, open-channel diversions, and above ground pipes.
10. Notwithstanding any specific conditions established by this permit, the permittee 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.
11. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
12. Although there are no known cultural sites within the Project area, if any cultural material is discovered during Project construction, all activities should stop and an archaeologist contacted to assess the discovery. It is a Class B misdemeanor to impact an archaeological site (ORS 358.905-955) and a Class C felony to impact Indian Burials

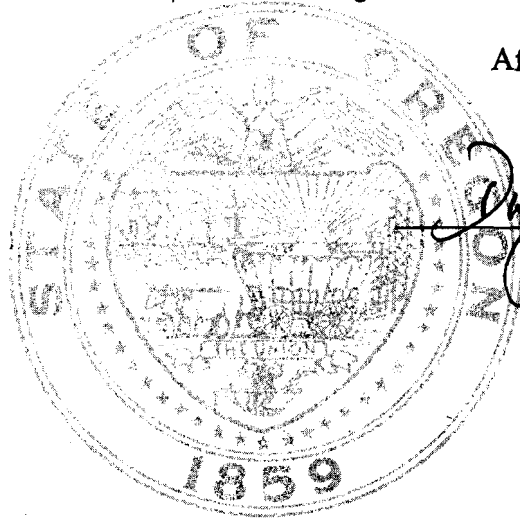
(ORS 97-740-990).

13. The permittee shall allow the OWRD Director and authorized agents and employees of the Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department 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.
14. The permittee 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 therefore.
15. Issuance of this permit does not absolve the permittee from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The permittee is 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.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

WITNESS the signature of the Water Resources Director,

Affixed November 2, 2005.



Phillip C. Ward
Phillip C. Ward, Director