

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the City of Portland) FINAL ORDER APPROVING
Application for a new minor) PC 914
hydroelectric project, Multnomah County)

Pursuant to OAR 690-051-0090(6), this final order is being issued with findings that the proposed project together with recommended measures to protect, mitigate, or enhance the natural resources of the State is consistent with the minimum standards in ORS 543.017 and the requirements in OAR 690-051-0160 through 690-051-0270, and that the project would not impair or be detrimental to the public interest as provided in ORS 543.225.

A. APPLICATION HISTORY

On May 31, 2022, The City of Portland (Applicant) applied for a minor hydroelectric project (Project) to divert up to 6 cubic feet per second (cfs) of water from Washington Park Reservoirs, in Multnomah County, Oregon. The proposed project will use about 55 feet of head to develop 38 theoretical horsepower (THP) to generate electricity for use onsite. The project would operate year-round.

On August 2, 2022, notice of the application was included in OWRD’s weekly public notice publication for a thirty-day review and comment period seeking input on how the proposed Project would affect various resources. In addition, was distributed to county, state, regional and federal agencies¹ along with a questionnaire for a thirty-day review and comment period seeking input on how the proposed Project would affect various resources. Timely comments were received and considered by OWRD in making its findings of fact.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a Final Order in other than a contested case. This order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review must be filed within the 60-day time period for specified by ORS 183.484(2). Pursuant to OAR 137-004-0080 you may 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.

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¹ The federal, regional, state, and local agencies consulted include: Bureau of Land Management, County of Coos, Oregon Department of Geology and Mineral Industries, Legislative Commission on Indian Services, National Park Service, National Marine Fisheries Service, Northwest Power and Conservation Council, Oregon Department of Agriculture, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Oregon Department of State Lands, Oregon Parks and Recreation Department - State Historic Preservation Office, Oregon Water Resources Department, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and U.S. Forest Service.

Timely comments were received from the Oregon Department of Fish and Wildlife (ODFW), United States Department of Agriculture-Forest Service, the Northwest Power and Conservation Council (NWPPCC), Oregon Department of Environmental Quality (ODEQ), and the United State Fish and Wildlife Service. All comments were considered by OWRD in making its findings of fact.

On September 20, 2022, notice of the proposed final order was included in OWRD's weekly public notice. No comments, requests for standing, or protests on the proposed final order were received by the November 18, 2022, deadline.

B. PROJECT DESCRIPTION

The Project is located in Multnomah County. The Project will utilize 6 cfs of water within the City of Portland's water distribution infrastructure and will housed in a concrete underground vault. Water will descend 55 feet through an existing pipe, then split-off to a 28-inch diameter steel pipe where it will pass through the turbine and generate 38 theoretical horsepower of electricity for onsite use. Discharge from the tailrace enters another pipe and is distributed to the Applicant's customers.

On Thursday, August 4, 2022, Greg Semler of Inpipe Energy, John Zauner of ODFW; and Craig Kohanek of OWRD, and a couple of City of Portland Employees visited the Project site. No potential for significant impacts were identified during the site visit.

C. LOCATION

The point of diversion is in Tax Lot 100, within the NW ¼ NW 1/4 , Section 4 Township 1 South, Range 1 East, Willamette Meridian (W.M.). The land is owned by the Applicant. There are no neighbors within 300 feet of the proposed powerhouse.

D. WATER USE

Water availability: Water is available on a year-round basis from the reservoir(s) as currently operated by the Applicant. Moreover, hydroelectric production is a non-consumptive use of water and once it has been used to generate electricity it will be distributed to the Applicant's customers for their use.

Existing water rights: The water that would be used for the Project is stored in the Applicant's reservoirs. Consistent with OAR 690-051-0380, the right shall be subordinated to all other authorized uses.

Basin Program: The proposed project is within the Willamette Basin, more specifically the Lower Willamette Basin, and proposes to use the same water as the Applicant currently delivers to its municipal and industrial customers. The water that would be used is not a new allocation from any stream system.

E. STANDARDS

All proposed new minor (under 100 theoretical horsepower) hydroelectric projects in Oregon, such as this Project, must meet the resource protection standards contain in OAR 690-051-0170-0290.

F. FINDINGS OF FACT

- **Protection of Designated Resource Areas and Special Management Areas (OAR 690-051-0170)**

This Project is being developed on land that is entirely owned by the Applicant and is not part of a special management area for a federal, state or county agency.

The Department finds that the Project complies with the standards and requirements of this rule.

- **Mitigation, No Net Loss (OAR 690-051-0180)**

This application was submitted to 20 federal, state, regional and county entities to ensure that natural resources that were considered included: water quality, wildlife, scenic and aesthetic resources, historic, cultural, and archeological lands, forest resources, geology, fish life and recreation.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, will result in no net loss of natural resources as detailed further below.

- **Water Resources (OAR 690-051-190(1-8))**

Based on a review of the information contained in the file and in Section D above, the Department finds that the Project complies with the standards and requirements of this rule.

▪ **Water Quality**
(OAR 690-051-0190(9))

This project proposes adding a turbine to the City of Portland's drinking water distribution system. The addition of a turbine, according to the Applicant, is comparable to an end-suction water pump which is typically used in water distribution systems. There are no bearings or lubricants in contact with the water and the turbine shaft is water lubricated, as are the existing pressure reducing valves. The applicant must comply with drinking water standards for oil and lubricants. In addition, protections shall be installed to prevent a potential turbine failure leading to discharge of lubricants into the drinking water. Oregon Department of Environmental Quality (ODEQ) in consultation with the Oregon Department of Human Services Drinking Water Program establishes the following conditions for the water right:

1. Any materials in contact with potable water be certified under the National Sanitation Foundation Standard 61 or equivalent.
2. Any lubricants used in the turbine are to be made of materials that are safe for human and animal consumption or are food-grade.
3. Plans for modification to the public water supply system shall be reviewed and approved by the Oregon Department of Human Services Drinking Water Program.
4. The Project shall comply with noise ordinances.
5. The Project will be housed almost entirely in a subsurface vault in an urban setting, so it is unlikely to disturb fragile or unstable soils or to cause erosion that would impair other water uses. If this were to occur during operation, after construction is complete, the Applicant is responsible for remedying the situation in consultation with, and to the satisfaction of the City of Portland Bureau of Development Services and ODEQ. The Applicant must obtain and comply with all necessary construction permits.

▪ **Fish Resources**
(OAR 690-051-0200)

Power is generated using water from the Bull Run River that is distributed by the Portland Water Bureau's existing subsurface municipal water distribution system. The City of Portland, in consultation with ODFW and numerous federal agencies and other partners, developed a Habitat Conservation Plan (HCP) that addresses the impacts of the Bull Run Reservoir municipal water supply operations for both Endangered Species Act (ESA) listed species and non-ESA listed species and their habitat(s). The HCP includes 49 measures designed to improve habitat for anadromous and resident fish in the Bull Run Basin. The city continues to fulfill the implementation of these measures. In addition to the HCP, the City of Portland also applied for and received a fish passage waiver in 2010 from the Oregon Fish and Wildlife Commission that provides

for and meets fish passage needs for the Bull Run Reservoirs. Because the City of Portland has effectively addressed impacts to fish and wildlife and the need for fish screens, bypass devices and fish passage at their Bull Run Reservoirs, the water source for the proposed project: ODFW has determined that this project will not impact fish and does not warrant fish screening, bypass devices and fish passage in this proceeding.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

- **Wildlife**
(OAR 690-051-0210)

The proposed Project would be located entirely in an existing underground vault that is part of the Applicants municipal water distribution system. All project features will be buried (I.e., project pipes, turbine\generator, transmission line, etc.).

The location, design, construction, or operation of the proposed project will not jeopardize the continued existence of wildlife species that have been designated or officially identified as threatened or endangered or as conservation strategy species nor have adverse impacts been identified to wildlife, wildlife habitat, nesting and wintering grounds, or wildlife migratory routes.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

- **Plant Life**
(OAR 690-051-0220)

The location, design, construction, or operation of the proposed project will not jeopardize the continued existence of plant species that have been officially proposed or designated as threatened or endangered.

Based on a review of the facts contained in the file and a site visit to the location where there will be land disturbances and construction, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

- **Recreation**
(OAR 690-051-0230)

The Project is being developed within the Applicant's municipal infrastructural property. Thus, there are no public recreation areas within the Project area.

Project facilities will be designed, located, constructed and operated to substantially avoid visible or audible intrusion on the existing environment. The proposed Project will not reduce the abundance or variety of recreational facilities or opportunities available in the vicinity.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

▪ **Historic, Cultural and Archaeological Resources
(OAR 690-051-0240)**

There are no known cultural sites within the Project area. The Project shall be conditioned so that, if any cultural material is discovered during construction, all activities shall stop and the State Historic Preservation Office will be 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).

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

▪ **Land Resources
(OAR 690-051-0250)**

The proposed Project is located entirely on the applicant's property, within an urban setting. Adverse impacts on prime forest lands, high value or important farmlands, agricultural lands, or wetlands due to this project are unanticipated.

The location, design, construction, or operation of the project will not disturb fragile or unstable soils, or cause soil erosion.

Project facilities shall be designed with appropriate safety standards with regards to geological hazards and naturally occurring conditions or hazards, such as flooding, landslides, or ice formation.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

▪ **Land Use
(OAR 690-051-260)**

The proposed use has been approved as consistent with the standards of Acknowledged Comprehensive Plans from the City of Portland government.

Based on a review of the facts contained in the file, the Department finds that the Project, as conditioned, complies with the standards and requirements of this rule.

PERMIT CONDITIONS

Upon a review of the application and input received from numerous state and federal agencies, OWRD finds that the proposed Project, with the conditions set forth below, will not violate the standards expressed in OAR 690-051-0160 through 0290 and is consistent with the public interest. The proposed Project is well adapted to the development and utilization of the water involved.

The Owner shall comply with all statutes and rules applicable to the Project and is subject to the following express conditions:

1. The priority date for the proposed water right is May 31, 2022.
2. The right to 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 vested in the permittee while the permit or any lawful extension is in force. This water right is inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive uses.
3. The Owner 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 water right or by any lawful extension thereof. The Project map will be incorporated into the water right permit.
4. The Owner shall complete construction of the Project within two years of issuance of this permit OAR 690-051-0390(2) or by any lawful extension.
5. 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.

6. All Oregon hydroelectric Projects 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. Since this hydroelectric Project will be integrated into the existing municipal conveyance system used for drinking water, the ODEQ has contacted and is cooperating with the Oregon Department of Human Services Drinking Water Program, which regulates municipal drinking water. The following conditions apply to this water right:
 - A. Any materials in contact with potable water will be certified under the National Sanitation Foundation Standard 61 or equivalent.
 - B. Any lubricants used in the turbine are to be made of materials that are safe for human and animal consumption or are food-grade.
 - C. Plans for modification to the public water supply system shall be reviewed and approved by the Oregon Department of Human Services Drinking Water Program.
 - D. The Project shall comply with noise ordinances.
 - E. The Project will be housed almost entirely in a subsurface vault in an urban setting, so it is unlikely to disturb fragile or unstable soils or to cause erosion that would impair other water uses. If this were to occur during operation after construction is complete, the Applicant is responsible for remedying the situation in consultation with, and to the satisfaction of the City of Portland Bureau of Development Services and ODEQ. The Applicant must obtain and comply with all necessary construction permits.
7. The Project shall be designed to minimize visual, aesthetic and noise impacts.
8. 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).
9. It is the policy of the Oregon Department of Fish and Wildlife (ODFW) to prevent the injury or loss of any game fish or non-game fish classified as sensitive, threatened, or endangered from any water body in the state, as a result of any diversion from the water body. Based on available fish resource information and project siting


information, ODFW has determined that no fish passage or screening of the diversion is required at this project.

10. If at any time an unanticipated situation arises in which the owner 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 notify and consult with the nearest office of the ODFW; in no case shall such contact occur later than the next business day. The owner shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW (ORS Chapter 543.017).
11. The Applicant shall allow the Department Director and authorized agents and employees of the ODEQ, ODFW, and the 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.
12. 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 will the State of Oregon be liable.
13. Issuance of the water right does not absolve the Applicant from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws.
14. 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 the Department.
15. Upon a decision to terminate the hydroelectric use for more than five years, the Applicant shall comply with any decommissioning statutes and rules in effect at that time. On termination of the water right, the right to use water shall revert to the public.
16. The Owner shall pay, upon receiving an invoice from Department, an annual fee to Department in the amount of \$50.00, (see ORS 543.078(2) (b)). This amount shall be due by the date specified on the invoice.

I. FINAL ORDER

The Department shall issue the attached permit.

Issued: **DEC 30 2022**



Dwight French, Administrator
Water Right Services Division, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department