

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

IN THE MATTER OF THE CONVERSION OF }
HYDROELECTRIC LICENSE HE 451 }
TO AN INSTREAM WATER RIGHT } FINAL ORDER

Summary of Recommendation

The Department recommends that Hydroelectric License HE 451 originally in the names of Frederick L. and Wilma F. Plog be converted to an instream right for 45 cubic feet per second (cfs) in the Odell Creek, tributary to Hood River in Hood River County, Oregon.

Findings of Fact

Hydroelectric License HE 451 issued in the name of Frederick L. and Wilma F. Plog authorized the use of 45 cubic feet per second (cfs) of water from Odell Creek, tributary to Hood River in Hood River County, Oregon.

During its lifespan the project was assigned to a series of owners. On February 17, 2006, Ladd and Jeannette Henderson submitted a request to assign the license to James S. and Sharon S. Jans. The assignment was approved on February 24, 2006, Special Order Volume 68, Page 100.

The priority date of this right is March 11, 1983.

A concrete core rock-fill dam 15 feet in height located in the SW ¼ SW ¼, Section 14, Township 2 North, Range 10 East, W.M. diverted water through 1330 feet of penstock to the powerhouse located in the NW ¼ SW ¼, of said Section 14. The capacity of the powerhouse was 225 kilowatts.

The hydroelectric right was expressly made inferior in right and subsequent in time to any appropriation of water from this source which may hereafter be made for domestic, municipal, irrigation, or any other beneficial consumptive use.

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

The hydroelectric license for the project terminated December 31, 2010. Annual licenses were issued for several years while the owners decided whether to relicense or decommission the project. In the summer of 2016, the license holders ceased use of water for hydroelectric purposes and arranged for the project to be decommissioned and the stream restored to natural conditions.

According to the records of the Department, no part of the water right has been transferred under ORS 540.520 or 540.530. During the time of hydroelectric use, all the water was used exclusively for hydroelectric purposes, no part of the right was used in conjunction with another water right, nor in conjunction with multi-purpose dam releases.

Authorities

ORS 543A.305(3) provides, in part, that after the use of water under a hydroelectric water right ceases up to the full amount of the water right shall be converted to an instream water right, upon a finding by the Water Resources Director that the conversion will not result in injury to other existing water rights. In making the evaluation, the director shall consider the actual use of the hydroelectric project and the resulting impacts on actual use by other existing water rights as of October 23, 1999. The director may include mitigation measures as conditions of the instream water right to avoid injury and to ensure the continuation of authorized water uses by other existing water rights.

OAR 690-054-0040(6):

The Director shall determine whether conversion of a Hydroelectric Water Right to an Instream Water Right will result in Injury. In making this determination, the Director shall consider:

(a) The Actual Use of the Project. To determine the Actual Use of the Project, the Director shall consider available documentation including, but not limited to: meter records of flow through a turbine, stream gage records, records of electricity production, seasonal restrictions on use, records of water historically supplied from storage, evidence that storage capacity has or has not been decommissioned, and other evidence of use by the Project;

(b) The resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999. To determine the resulting impacts on Actual Use by Other Existing Water Rights as of October 23, 1999, the Director may consider:

(A) Whether Other Existing Water Rights as of October 23, 1999, are junior to and upstream of the Hydroelectric Water Right;

(B) Whether new regulation under Chapter 690, Division 250 would likely be required for the proposed conversion to an Instream Water Right, based upon historic

streamflow records, regulation actions historically taken by the watermaster, or other data;

(C) Whether the Hydroelectric Water Right is Subordinated to Other Existing Water Rights as of October 23, 1999. **If subordinated, there is a rebuttable presumption that no Injury will occur and that no Mitigation Measures are required to ensure the Continuation of Authorized Water Uses;** . . . (emphasis added)

Consideration of Actual Water Use

Article 3 of License HE 451 requires the licensee to comply fully with the order of the Water Policy Review Board dated October 14, 1983. The order provided for minimum flows in an agreement with the Oregon Department of Fish and Wildlife (ODFW). The order required minimum bypass flows of 10 cfs from December through June, and 7 cfs from July through November.

In practice, it is unlikely that in all months of the year after passing the minimum flows through the fish ladder, that there would be sufficient streamflow for the hydroelectric project to divert the full amount of the water right up to 45 cfs. However, one or more turbines could be shut off so that some power could be produced even at lower flows.

Consideration of Injury or Impacts to Other Existing Water Rights:

HE 451 was subordinated. It was expressly made inferior in right and subsequent in time to any appropriation of water from the same source which may hereafter be made for domestic, municipal, irrigation, or any other beneficial consumptive use.

The instream right as converted shall be subordinated in the same manner as the original license to all other beneficial consumptive uses. Thus, no upstream water rights shall be regulated off in order to meet the instream right at the original point of diversion. All existing water rights shall be allowed to continue their existing uses.

Conclusions of Law

The hydroelectric water right under HE 451 is subject to conversion to an in-stream water right under ORS 543A.305(3).

Use of water under the hydroelectric water right has ceased for a period of more than five years.

Up to 45 cfs of water was used to produce hydroelectric power.

The hydroelectric water right has already been subordinated to all other beneficial consumptive uses. OAR 690-054-0040(6)(b)(C) provides a rebuttable presumption that if the water right is

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already subordinated no injury will occur and that no mitigation measures are required to ensure the continuation of authorized water uses. The presumption has not been rebutted. No additional mitigation measures will be required to avoid injury or to ensure the continuation of authorized water users.

Proposed Order:

The Department proposes 45 cfs of water authorized under Hydroelectric License HE 451 shall be converted to an instream water right at the location of the former point of diversion on Odell Creek, tributary to Hood River.

Hydroelectric License HE 451 is terminated. A new water right for instream use shall be issued with a priority date of March 11, 1983, and it shall be subordinated to other beneficial consumptive uses in the same manner as the original water right, per the attached d water certificate.

JUN 09 2023

Issued _____



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