Oregon Water Resources Department Water Right Services Division

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Water Right Instream Conversion of Certificate 4120 in the name of Eastern Oregon Light and Power Company **FINAL ORDER**

Summary: The Department issues this order approving conversion of certificate 4120 and issuance of an certificate for an instream water right.

Authority

The application was processed in accordance with Oregon Revised Statute (ORS) 543A.305 and Oregon Administrative Rule (OAR) Chapter 690, Division 54. These statutes and rules can be viewed on the Oregon Water Resources website:

https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx

The Department's main page is: http://www.oregon.gov/OWRD

FINAL DETERMINATIONS

1. The Director has determined that certificate 4120

<u>https://apps.wrd.state.or.us/apps/misc/vault/vault.aspx?Type=Cert&cert nbr=4120</u> for the beneficial use of hydroelectric generation is eligible for conversion based on the criteria in ORS 543A.305 that use of water under the hydroelectric water right has ceased for a period of more than 5 years.

The hydroelectric project actually used 13 cfs of water in all months of the year from 1902 through 1995 based on annual claimant forms of power production on file with the Department; stream gage records from Station 13281200 on Rock Creek near Haines, Oregon (June 1976 through March 31, 1995); physical evidence of the historic powerhouse, and documentation can be found at https://www.loc.gov/pictures/collection/hh/item/or0496/.

Concerning the resulting impacts of the proposed conversion on actual use by other existing water rights as of October 23, 1999: the Department has records of water right certificates that are junior to April 11, 1902, upstream of the original point of diversion. Historically, the upstream water rights have not been regulated under OAR 690-250 to provide water to this right. The junior water rights may be subject to regulation if the hydroelectric right is converted to an instream right. The hydroelectric right is not subordinated to any other water rights, thus

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any water right upstream of this instream water right with a priority date after October 23, 1999, is subject to regulation.

- 2. The priority date of the water right is April 11, 1902
- The point of diversion for certificate 4120 is Township 8 South, Range 38 East, Section 5 SW ¼ SW 1/4.

Mitigation measures have been proposed to avoid injury and to ensure the continuation of other existing water rights as of October 23, 1999, therefore, the Director has determined that conversion of hydroelectric water right certificate 4120 will not result in injury as defined in OAR 690-054-0010(7).

4. The Director approves the conversion of hydroelectric water right certificate 4120, together with any recommended mitigation measures to avoid injury and to ensure the continuation of authorized uses is consistent with ORS 543A.305.

FINDINGS OF FACT

Source:	ROCK CREEK, TRIBUTARY TO POWDER RIVER
Use:	HYDROELECTRIC USE TO INSTREAM USE
County:	BAKER COUNTY
Instream Location:	ROCK CREEK, TRIBUTARY TO POWDER RIVER Township 8 South, Range 38 East,
	Section 5 SW 1/4 SW 1/4.
Rate:	13 CFS REQUESTED Year-round:

- 1. On March 29, 2022, the Department gave public notice of the initial review in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
- 2. Several written comments favoring and opposing the application were received during the 30-day comment period.
- 3. To ensure conversion of the hydroelectric right to an instream right will not injure other water rights with a priority date of October 23, 1999, or earlier and consistent with ORS 543A.305(3), this right is made inferior in priority date to those rights.

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CONCLUSIONS OF LAW

The proposed conversion of a hydroelectric water right to an instream water right includes mitigation measures to avoid injury and ensure the continuation of other existing water rights as of October 23, 1999.

FINAL ORDER

The Department recommends approval of and issuance of a certificate consistent with the attached certificate.

JUN 1 9 2023

Issued:

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

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