

**Oregon Water Resources Department
Water Rights Division**

**Hydroelectric Reauthorization
Project HE 556**

Proposed Final Order

NOTE: This is a Proposed Final Order issued pursuant to Oregon Revised Statutes (ORS) 543A.120.

Summary of Recommendation: The Hydroelectric Application Review Team (HART) recommends the reauthorization of a hydroelectric project with conditions.

Application History

On March 21, 2003, Richard D. Jones (Applicant) applied for a minor hydroelectric water right to divert 0.1333 cubic feet per second (cfs) of water from an unnamed stream, tributary to Cow Creek. The Project uses 240 feet of hydraulic head and a Harris Turbine system to generate 3.6 theoretical horsepower for domestic use.

On April 8, 2003, notice of the application was included in Department weekly public notice publication that was distributed to local governments, state and federal agencies, public interest groups and interested citizens.

As part of the original application review process, twenty-one state and federal agencies were consulted.¹ On or about July 27, 2003, OWRD sent a copy of the application and a

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 specified in ORS 183.484(2). Pursuant to OAR 137-004-080 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 is filed, the petition shall be deemed denied.

¹ The twenty-one federal and state agencies consulted include the Bureau of Land Management, Bureau of Indian Affairs, Bureau of Reclamation, Department of Geological and Mineral Industries, Division of State Lands, Legislative Commission on Indian Services, National Marine Fisheries Service, National Park 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 Natural Heritage Advisory Council, Oregon Parks and Recreation Department, Oregon Water Resources Department, State Historic Preservation Office, United States Army Corps of Engineers, United States Fish and Wildlife Service, United States Forest Service, and the United States Geological Survey.

questionnaire to those twenty-one state and federal agencies 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 the Department in making its findings of fact.

The application to reauthorize HE 556 was submitted June 2, 2023, and on June 6, 2023, notice of the HE 556 reauthorization application appeared in Department's public notice for a 45-day public comment. Persons interested in the application could request future notices about the state project and submit written comments to the Department.

On August 8, 2023, the Department provided public notice of the Draft Proposed Final Order in its weekly notice. The public notice included a request for written comments within 60 days of publication of the notice. No comments were received.

Findings of Fact

1. Site Visit:

On June 2, 2023, Hydroelectric Application Review Team (HART) members Martin Sanchez & Craig Kohanek of the Department, and Jason Brandt & John Zauner of ODFW of the visited the site and conferred with the Project owner/operator. The powerhouse is located just above a pond that serves as a "bulge in the system" for the irrigation operation and power generated is used on site. There is a small generator just above the reservoir connected to the Harris Turbine with tailwater discharged into the reservoir.

2. Location

The point of diversion is located 654 feet North and 2666 feet West from the North $\frac{1}{4}$ corner in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 11, Township 32 South, Range 5 West, W.M. The power plant is located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, Township 32 South, Range 5 West, W.M. There are no neighbors within 300 feet of the powerhouse.

3. Water Rights

Water use for hydroelectric purposes is non-consumptive, and may be made on a year-round basis, when water is available. As conditioned, the proposed use will not interfere with any existing water rights or permits for the use of water. OAR 690-518, the Umpqua Basin Program, classifies the waters of Cow Creek for power development. The Project is not located within a state designated scenic waterway.

4. Fish and Wildlife Resources:

The Project is located on a tributary to Cow Creek with no fish presence. The only concerns for fish and wildlife are in the summer months where flow of the diverted stream is typically at its

lowest flow for the year. The project has storage tanks that should be filled in the wet season to reduce impact to wildlife.

5. Basin Plan:

The Project is consistent with the Water Resources Commission's (WRC's) Umpqua Basin Program; OAR Chapter 690 Division 516.

6. Water Quality:

DEQ had no comments on water quality and only request was to add the standard water quality conditions.

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 690-051-0190 to -0260.

7. Public Land Safety:

The Department previously notified the Oregon Department of Geology and Mineral Industries (DOGAMI), the agency responsible for seismic and geologic hazards, of the request for authorization. DOGAMI concluded and the Department concurs, that this small project does not to pose a significant risk to public health and safety from geologic and seismic hazards.

8. Wetland Resources:

The Department previously notified the Division of State Lands (DSL), the agency responsible for management of wetlands, of the request for authorization. The DSL did not identify any wetlands impacts. The Department concurs with that assessment and finds no impacts to wetlands.

9. Other Resources:

a. Recreation: The Department previously notified the State Parks and Recreation Department, the agency responsible for recreational opportunities within the state, of the request for authorization. The Parks Department identified no recreation impacts. The Department concurs with that assessment.

b. Historic, Cultural and Archaeological: The Department previously notified the State Historic and Preservation Office, the agency responsible for historic, cultural, and archaeological resources, of the request for authorization and received no feedback

Conclusions of Law

Based upon the findings, the Department concludes that the use will not impair or be detrimental to the public interest under ORS 543A.025 (1). In addition, the project satisfies the minimum requirements set forth in ORS 543A.025 (2).

No preference for this use is granted under the provisions of ORS 536.310(12).

The proposed use complies with the State Agency Agreement for land use.

Recommendation

The HART recommends reauthorization of the Project and further recommends that the draft water right certificate attached be issued for a period of 20 years as conditioned therein.

Issued **OCT 20 2023**

A handwritten signature in black ink, appearing to read "Dwight French", is written over a horizontal line.

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

PROPOSED FINAL ORDER COMMENTS, PROTESTS, AND REQUESTS FOR STANDING

1. Any person may submit comment(s) or protest against a proposed final order. Comments or protests must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the proposed final order.
2. A protest shall be in writing and shall include (OAR 690-051-0150(2)):
 - (a) The name, address and telephone number of the protestant;
 - (b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
 - (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - (e) Any citation of legal authority supporting the protest, if known; and
 - (f) For persons other than the applicant, the protest fee required under ORS 536.050.
3. Upon receiving a protest, the Director shall evaluate the protest to determine whether significant issues are raised and if so, shall refer the application, with the accompanying protest, to the Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing. If the Director determines the protests do not raise significant issues, the Director shall issue a final order and a hydroelectric license containing a time-limited water right. A final order issued pursuant to this section is a final order in other than a contested case subject to judicial review under ORS 183.484. (OAR 690-051-0090(3)(f))
4. Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. The request for standing must be in writing, signed by the requester, and include the following (OAR 690-051-0150(3)):
 - (a) The requester's name, mailing address and telephone number;
 - (b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

5. The Department shall send a copy of all protests and requests for standing received to the applicants, the protestant(s), if any, and to each person who requested standing.

NOTICE TO ACTIVE-DUTY SERVICE MEMBERS: Active-Duty service members have a right to stay these proceedings under federal Service Members Civil Relief Act, App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

Protests, requests for standing, and comments must be received in the Water Resources Department in Salem, Oregon no later than **5:00 p.m. on December 9, 2023.**

**STATE OF OREGON
COUNTY OF DOUGLAS
CERTIFICATE OF WATER RIGHT**

THIS CERTIFICATE ISSUED TO

Richard D. Jones
Patti Vest & Timothy Carter
623 Azalea Glen Rd.
Azalea OR 97410

for the right to use the waters of Unnamed Stream, tributary of Cow Creek, for development of 3.6 theoretical horsepower for Domestic use.

The date of priority is March 21, 2003. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.1333 CUBIC FEET PER SECOND measured at the point of diversion from the source.

The point of diversion is located as follows:

The point of diversion is located 654 feet North and 2666 feet West from the North $\frac{1}{4}$ corner in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 11, Township 32 South, Range 5 West, W.M.

The Director finds that the project is adapted to the development and utilization of the waterpower involved, that no application for this project or in conflict with this project has been filed by any municipality or utility district, and that the water right holder has paid to the Water Resources Department (Department) all fees required prior to the issuance of this certificate.

A description of the place of use to which this right is appurtenant is as follows:

NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, Township 32 South, Range 5 West, W.M.

WATER RIGHT CERTIFICATE CONDITIONS

1. The Owner shall comply with all statutes and rules applicable to the Project.
2. The Owner shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$15.00, (ORS 543.078 (2)(c)). This amount shall be due by the date specified in the invoice.

3. Upon a decision to terminate the hydroelectric use for more than five years, the Owner 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.
4. If the Owner 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 OWRD.
5. Use of water is governed by this water right. However, the operations of the Project by the Owner so far as those operations affect the use, storage and discharge from storage of waters affected by the Owner, shall at all times be controlled by such reasonable rules as the WRC may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The Owner shall release water from the Project reservoir at such rate in cfs, or such volume in acre-feet per specified period of time, as the WRC may prescribe.
6. The Owner 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 WRC not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.
7. No voluntary transfer of the water right or of any property acquired, constructed or operated pursuant to the water right issued under ORS 543.010 to 543.610 shall be made without written approval of the WRC. Any successor or assignee of any water right under any project acquired, constructed or operated by the Owner, whether by voluntary transfer approved by the WRC or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the water right and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original Owner thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the water right shall terminate.
8. The following requirements of ORS 543 are hereby waived, under authority of OAR 690-051-0350:
 - ORS 543.510 which requires the Owner to establish and maintain amortization reserves to be applied in reduction of the net investment.

- ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the WRC.
 - ORS 543.520 which provides that on amortization of the net investment the Project shall become the property of the State of Oregon.
 - ORS 543.550 relating to liens against the Project and providing that any sale shall be of the whole property embraced in the Project unless a partial sale is approved by the OWRD Director.
 - ORS 543.560 which requires the Owner to execute to the State of Oregon a bond to the effect that the Owner shall promptly make payment to all persons supplying labor, material, machinery, etc.
9. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41. No significant temperature-related problems have been identified nor are they expected given the existing Project facilities, operations and management. However, 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 water right holder 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 water right, the water right holder 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 Owner shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD 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 Owner 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.
15. Issuance of the water right does not absolve the Owner from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Owner 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.
16. The Owner shall comply with conditions identified below by Oregon Department of Fish and Wildlife
 - The unnamed stream used by the project is not fish-bearing due to the steepness of its gradient and lack of livable space for fish. Continued use meets the minimum standards in ORS 543A.025(2).
 - If at any time an unanticipated situation arises in which the operator 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 Oregon Department of Fish and Wildlife (ODFW); in no case shall such contact occur later than the next business day. The operator shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW (ORS Chapter 543A.025).
 - All the fish and wildlife mitigation features shall be properly maintained for the duration of the project (ORS 543A.025 (2)(a) and (5)(d).
 - All maintenance activities shall be completed using best management practices to minimize soil and ground disturbance. All areas where soil is disturbed shall be planted with native vegetation, monitored, and maintained over the course of the permit. ODFW's recommended in-water work period for the South Umpqua River and tributaries is July 1-September 15, and any instream maintenance activities should be completed during that time period.

- The water right holder shall maintain the project tailrace as necessary to reduce erosion and scour.
- Diversions for hydroelectric generation shall not completely dewater the stream, particularly in bypass reaches.

Issued

DRAFT - THIS IS **NOT** A CERTIFICATE

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