

STATE OF OREGON
WATER RESOURCES DEPARTMENT
LICENSE FOR HYDROELECTRIC PROJECT 363
A MAJOR PROJECT OF
2074 THEORETICAL HORSEPOWER

WHEREAS, by act of the Legislature of the State of Oregon, ORS 543.010 to 543.620 and 543.990, as amended, hereinafter called the Hydroelectric Act, the Water Resources Director is authorized to issue licenses to acquire and hold the right to the use of the waters within the state, and for the construction, operation and maintenance of facilities for the generation and utilization of hydroelectric energy; and

WHEREAS, James B. Boyd and Janet A. Boyd, hereinafter called the licensees, whose address is Route 1, Box 6052, Hermiston, Oregon 97838, made application in due and proper form to the Director for a license for a power project designated as Project HE 363 in the records of the Director; and known as the Jim Boyd Hydroelectric Project, and for authority to construct, maintain and operate in the County of Umatilla, State of Oregon, certain project works necessary or convenient for the development, transmission and utilization of hydroelectric energy, and for use of the waters of the Umatilla River for generation of such electric energy; and

WHEREAS, the project is a major project for development of 2074 theoretical horsepower with proposed installed plant capacity of 1100 kilowatts; the licensee has paid to the Director all fees required prior to issuance of this license in accordance with the provisions of the Hydroelectric Act and the rules and regulations of the Director; and no application for said project, or in conflict therewith, has been filed by any municipal corporation or public utility district; and

WHEREAS, the licensee has filed maps, plans and specifications as required by ORS 543.290, and the Director finds the project will be well adapted to the utilization of the water power involved and hereby approves same; and

WHEREAS, the licensee on the 22 day of AUGUST, 1985, accepted in writing the terms and conditions of the Hydroelectric Act and of this license for Project HE 363;

NOW, THEREFORE, the Director hereby issues this license to the licensee for the purpose of constructing, operating and maintaining the project works hereinafter described as necessary or convenient for the development, transmission and utilization of hydroelectric energy, and to appropriate, acquire, and hold the right to use the waters of the Umatilla River to the extent hereinafter set forth. This license is issued on condition that licensee shall comply with all the terms and conditions of the Hydroelectric Act and Laws of Oregon relating thereto, with the Rules and Regulations of the Director pursuant thereto as fully set forth herein, and shall be subject also to the following express conditions, limitations and exceptions:

ARTICLE I.

Definition of Project

The word "project" as used in this license means the complete unit, improvement, and development, including among other things, powerhouses, waterwheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with said unit or any part thereof, right of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation, and maintenance of any such unit.

ARTICLE 2.

Description of Project

A concise, general description of Project HE 363 is as follows:

The Jim Boyd Power Project proposes the use of 500 cubic feet per second, measured at the point of diversion from said stream, to develop 2074 theoretical horsepower utilizing a gross head of 36.5 feet. A concrete weir 3.5 feet in height located in the SE 1/4 SW 1/4, Section 16, Township 4 North, Range 28 East, WM, will divert up to 500 cubic feet of water per second from the Umatilla River through a canal approximately 5700 feet in length to the penstocks and power house located adjacent to the Umatilla River in the SW 1/4 NW 1/4 said Section 16. Three five foot diameter and two four foot diameter penstocks will supply water to five Flygt submersible turbine/generator units with a total installed capacity of 1100 kilowatts. Approximately 200 feet of new transmission line would be required to join Pacific Power and Light's existing facilities.

Exhibits

The location and character of the project are more specifically shown and described among the following designated exhibits filed to accompany the application and hereby made part of this license.

Exhibit A:	Affidavits of citizenship.
Exhibit C:	Location of project works.
Exhibit D:	Evidence of compliance with state laws.
Exhibit E:	Nature of proposed appropriation of water.
Exhibit F:	Evidence of right to occupy project lands.
Exhibit G:	Evidence of financial ability.
Exhibit H:	Operation of project works.
Exhibit I:	Estimated power capacity and annual energy output.
Exhibit J:	General location map.
Exhibits K thru M:	Approved plan and specifications.
Exhibit N:	Cost estimates.
Exhibit O:	Construction schedule.

No substantial changes shall be made in the maps, plans, specifications and statements described and designated as exhibits herein until such changes have been approved by order of the Director. To the extent any changes in maps, plans or specifications are hereafter approved by the Director, the approval of such change shall be deemed to amend the description of the license accordingly.

ARTICLE 3.

The licensee shall comply fully with the provisions of the order of the Water Policy Review Board dated February 24, 1983. The order provides for minimum flows and that the licensee cooperate with the Oregon Department of Fish and Wildlife. a copy of the order is attached for reference.

ARTICLE 4.

The licensee shall furnish the Director with a monthly progress report of construction of Project HE 363. Included in this report shall be a statement of the claimed cost covering each of the accounts involved.

ARTICLE 5.

Period of License

This license is effective as of August 28, 1985, and shall terminate December 31, 2035.

ARTICLE 6.

Jurisdiction

In consideration of this license and the benefits and advantages accruing thereunder to the licensee, it is expressly agreed by the licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the licensee be prevented from compliance with any provisions of this license or of the Hydroelectric Act by the operation of any valid Federal law, or the lawful order, rule or regulation of any Federal governmental agency exercising exclusive jurisdiction in the premises, it shall not be deemed to be in default, or under any liability to the State of Oregon for failure to perform the same during the period of such disability.

ARTICLE 7.

The licensee shall begin construction of the project facilities within one year of the date of issuance of this license; shall complete construction of the project facilities within three years of the date of issuance of this license; and thereafter shall maintain the project facilities in good working order. If the licensee fails to begin or complete construction of the project facilities within the time limits fixed in this license or any lawful extension thereof; or if, after completing construction, fails to use or operate the project facilities for any period of five consecutive years, the Director shall, after due notice, terminate this license by written order. If at any time after two years nonuse of water for this project, there shall be any conflicting application for or claim to the use of this water, then the licensee may be required by the Director to show cause why the conflicting application should not be granted and this license terminated.

ARTICLE 8.

Water Right Granted

Subject to the provisions of Article 3 and prior appropriations, this license grants the licensee the right to use 500 cubic feet per second of water from the Umatilla River provided that the right to the use of water will be limited to the amount which the generation facilities will utilize efficiently. The priority of the right hereby granted is October 21, 1981. On termination of this license, such right to the use of water shall revert to the public. The right granted herein is 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.

ARTICLE 9.

Period of Water Right

The right to the use of the waters in connection with the development of this project shall be vested with the licensee during the time this license or any lawful renewal or extension thereof is in force.

ARTICLE 10.

Annual License Fee

An annual license fee of \$414.80 shall be paid by the licensee on or before January 1 of each calendar year for each calendar year from the first calendar year after the project is completed to 2035; inclusive, being 20 cents for each of the 2074 theoretical horsepower authorized herein for Project HE 363.

Should the terms and conditions of the license be extended at its expiration, the licensee shall pay such annual fees as the Director, or his successor having jurisdiction in the matter at the time, shall fix.

ARTICLE 11.

Depreciation

The amount of the annual charges for depreciation expenses to be included in the cost of operation shall be determined on a sinking fund basis computed by the use of service lives subject to approval of the Director; provided, that, for the purpose of depreciation, the services lives of the original units of property shall not exceed the unexpired period of this license; provided further, that the Director may upon further determination and in his discretion, extend the depreciation period of the original units of the project beyond the life of the license. In determining the amount of the annual charges for depreciation expenses to be included in the cost of operation prior to the time of final action of the Director in fixing the actual legitimate cost of the original project as provided for in ARTICLE 12 of the License, the original legitimate cost of the items in each account number as set forth in the "Initial Cost Statement" to be filed by the licensee, as provided for in said Article, shall be used.

ARTICLE 12.

Determination of cost of project

- (a) Initial Cost Statements: The licensee shall file within one year after the time the project is ready for service, an initial statement, under oath, with one additional conformed copy thereof showing the amount claimed by the licensee as the actual legitimate cost of the project, as defined in subsection 2 of ORS 543.010, on forms as prescribed or otherwise approved by the Director.

Similar statements with respect to net additions and betterments to the project shall be filed in the same manner before April 1 of each and every succeeding year during the term of this license or any lawful extension thereof, unless the Director shall otherwise direct.

- (b) Substance: Each statement so filed shall give full, adequate and complete information with respect to the cost of the project or additions and betterments thereto as the case may be. Any statement which does not contain sufficient information will be returned to the licensee for such additional information as the Director may deem necessary.
- (c) Report on Project: When a satisfactory statement shall have been filed with the Director, the Director's representatives will make an audit on the accounts, will analyze the books, cost records, engineering reports and other records supporting such statements or pertaining to the project, will inspect the project works, and will prepare a report setting forth their finding and recommendations with respect to the cost as claimed.
- (d) Service of Report: Copies of such report and of the final report provided for in subsection (g) of this ARTICLE 12, will be served by registered mail upon the licensee at its principal place of business in Oregon and copies will be sent to such other parties as the Director may prescribe.
- (e) Time of Filing of Protests: Thirty days after service thereof will be allowed to the licensee within which to file a protest to such report. If no protest is filed within the time allowed, the Director will issue such orders as may be appropriate. If a protest is filed, a hearing will be ordered, such hearing to be held within ninety days from filing of the protest with the Director.
- (f) Burden of Proof: The burden of proof to sustain each item of the statement of claimed costs as filed shall be upon the licensee and only such items as are in the opinion of the Director supported by satisfactory proof may be entered in the project accounts of the licensee.
- (g) Finding and Final Statement: Final action by the Director will be in the form of a finding and order entered in the records of the Water Resources Department and served upon the licensee and such other parties as the Director may prescribe. The licensee shall thereafter file a final statement, under oath, in duplicate, showing the net investment revised in conformity with the order of the Director, together with a statement showing that its records have been revised in conformity with such order.

ARTICLE 13.

Reasonable rate of return

A reasonable rate of return on the net investment in the project shall be that established by The Public Utility Commissioner for Electric Utilities, subject to the approval of the Director.

ARTICLE 14.

Amoratzation reserve

Any earnings in excess of said reasonable rate of return shall be set up in a Miscellaneous Reserve Account, as credit to the Amortization Reserve, pursuant to ORS 543.510 of the Hydroelectric Act, to be disposed of in accordance with order of the Director.

ARTICLE 15.

Accounting

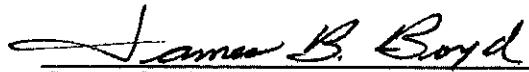
For the purpose of this license and the accounting to be followed by the Licensee, the Director adopts a system of accounts in conformity with the Uniform System of Accounts for class A and B Electric Utilities as established by the National Association of Regulatory Utility Commissioners and reserves the right to approve any revisions or modifications thereof.

ARTICLE 16.

Bond of License to Protect Laborers and Materialmen

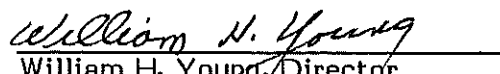
Before entering into the construction of this project, the licensee shall execute a bond as required by ORS 543.560 to be approved by the Director, and by the Attorney General of Oregon as to form, which bond shall be in addition to and not in lieu of any other liability of the licensee principal.

IN TESTIMONY OF ACCEPTANCE of all the terms and conditions of this license, ORS 543.010 to 543.620 and 543.990, and the rules and regulations of the Director pursuant thereto, the licensee has affixed his signature this 22 day of AUGUST, 1985.


James B. Boyd, Licensee


Janet A. Boyd, Licensee

IN WITNESS HEREOF, the Director of the Water Resources Department of Oregon has signed his name at Salem, Oregon this 28th day of August, 1985.


William H. Young, Director

BEFORE THE WATER POLICY REVIEW BOARD
OF THE
STATE OF OREGON

In the Matter of the Referral of)	
Hydroelectric License Application)	
HE 363 involving use of water)	FINDINGS OF FACT,
from the Umatilla River)	CONCLUSION AND
for Hydroelectric Power)	ORDER
)	

James B. Boyd has submitted Hydroelectric License Application H.E. 363 for a hydroelectric project exceeding 100 theoretical horsepower.

The license application was referred to the Water Policy Review Board by the Director of the Water Resources Department under the provisions of ORS 543.225.

The City of Hermiston was granted party status in the proceedings and subsequently withdrew on agreement by stipulation with the applicant.

A hearing on the matter was held in Hermiston, Oregon, on May 12, 1982. As a result of said hearing, the Water Policy Review Board makes the following:

FINDINGS OF FACT

1. Hydroelectric License Application H.E. 363 for a hydroelectric project on the Umatilla River in Umatilla County was submitted by James B. Boyd of Hermiston, Oregon.
2. The application proposes to divert up to 500 cubic feet per second to develop up to 1,417 theoretical horsepower and will have an installed capacity of 915 kilowatts.
3. The proposed project will be located on the site of a former hydroelectric plant last operated by Pacific Power & Light Company.
4. Structural elements of the proposed project include a multi-gated headworks, an open canal, penstocks, and a powerhouse containing multiple generating units.
5. The applicant owns the land on which the powerhouse, penstock and the lower end of the canal will be located.
6. The applicant has an easement for access to the lands on which the proposed canal extension will be constructed.

7. Power generation is a conditional use of the land use zone covering the project area.
8. The applicant received a conditional use permit for the project from Umatilla County.
9. The proposed project is estimated to cost \$1.4 million.
10. The applicant has applied to the Department of Energy for a Small Energy Loan for the project.
11. The Department of Energy has not approved the loan application.
12. Private financing may be available for the project as an alternative to the Small Energy Loan Program.
13. The proposed project will generate up to 3.75 million kilowatt hours of electricity annually.
14. The applicant proposes sale of the power to Pacific Power & Light Company.
15. Contract negotiations between the applicant and PP&L have not been finalized.
16. Less than a quarter mile of transmission line will need to be constructed to connect the proposed project with existing PP&L power lines.
17. The proposed new power line will be on the applicant's property.
18. The Umatilla River supports runs of wild steelhead and resident trout of importance to the State of Oregon.
19. Management of steelhead runs in the Umatilla River is a major activity of the Department of Fish and Wildlife.
20. Reintroduction of chinook salmon in the Umatilla River is a long term goal of the Department of Fish and Wildlife.
21. The Umatilla River, through the project reach, serves as a migration corridor to upstream steelhead spawning and rearing areas.
22. The applicant and the Department of Fish and Wildlife have reached a cooperative understanding regarding protective measures to be taken for fish life.
23. The protective measures include screening at the diversion headworks, velocity dissipaters at the plant discharge, instream flows and other measures as necessary.

24. Recommended flows to be allowed past the diversion point are 100 cubic feet per second from December through August and 150 cubic feet per second from September through November.
25. A flow of 150 cubic feet per second is recommended during the March through June period if spring chinook salmon become reestablished in the Umatilla River.
26. The Umatilla River and its riparian zone in the project reach has value to Hermiston area residents for recreation, aesthetics and wildlife.
27. Recreation opportunities in the project reach include fishing, hunting, river drifting, swimming and wildlife viewing.
28. The proposed project will have negligible impacts on recreational pursuits.
29. The proposed canal extension may eliminate some wildlife habitat and may affect aesthetic appeal attributed to the area.
30. The project will have minimal impacts on wildlife.
31. Minnehaha Spring discharges into the Umatilla River opposite and above the proposed point of diversion.
32. The City of Hermiston has rights to the use of water from Minnehaha Spring.
33. The applicant and the City of Hermiston agreed that the City of Hermiston would be assured of at least 20 cubic feet per second arising out of Minnehaha Spring.
34. The Water Resources Department records for the Umatilla Basin indicate that only one permit for 3.68 cubic feet per second for irrigation, withdraws water from the Umatilla River in the project reach.
35. The permit is senior to the proposed project and will not be affected by the project.
36. The Umatilla River is heavily appropriated above and below the project reach.
37. Naturally low summer flows and upstream diversions may reduce streamflow in the project reach below the agreed upon levels during the summer and fall months.
38. The project will operate anytime sufficient flow is available.
39. It is expected that project operations will be suspended during summer and/or fall months during most years due to upstream appropriations and the instream flow agreement.

40. Hydroelectric power development is classified as a beneficial use under the Umatilla River Basin Water Use Program.
41. The Umatilla Basin Program places no limitations or restrictions on the development of hydroelectric power.

OFFICIAL NOTICE

The Water Policy Review Board has taken official notice of the records of the Water Resources Department pertaining to water use permits on the Umatilla River in the project vicinity.

ULTIMATE FINDINGS

ORS 543.225(3a) through (3g) directs the Water Policy Review Board in its determination of impacts on the public interest from hydroelectric projects.

1. The Umatilla River is fully appropriated for irrigation during the summer and fall months, requiring storage releases to meet the demand for water. Water is stored annually during the non-irrigation season in both surface and underground reservoirs. High winter and spring flows from rainfall and snowmelt characteristically exceed the available storage capacity and pass downstream. Hydroelectric License Application H.E. 363 proposes the use of the high runoff to generate electricity. The Umatilla River supports a valuable anadromous and resident fishery. Implementation of the understanding between the applicant and the Department of Fish and Wildlife will provide protective measures and operational restrictions to minimize adverse impacts on fish resources. The proposed use is non-consumptive and will not interfere with other existing uses. The proposed use will contribute to a balance of uses, making beneficial use of water during all seasons.
2. The proposed project represents greater economic development of the waters involved than currently exists.
3. The proposed project will increase the control of the waters of this state to the extent that the project will derive a benefit from the water not being realized now. The project will have no impact on drainage, sanitation or flood control.
4. The proposed project will divert up to 500 cubic feet per second. Upstream depletions during summer and fall months frequently reduce flow in the project reach to levels below the agreed upon instream flows for fish. Estimated winter and spring flows regularly exceed the proposed diversion based on the long term record from U.S. Geological Survey gage #14033500, Umatilla River Near Umatilla, Oregon.
5. There is no evidence that the proposed project represents a wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

6. There is no evidence that the proposed project will affect any vested or inchoate rights to the waters of this state or to the use thereof.
7. Hydroelectric power development is designated as a beneficial use in the Water Use Program for the Umatilla River Basin. There are no special limitations or restrictions on the development of hydropower listed in the program.

CONCLUSION

The applicant proposes to rebuild a hydroelectric generating facility on the site of a dismantled hydroelectric plant formerly owned by Pacific Power & Light Company. The proposed project is located on the mainstem Umatilla River between river miles 9 and 10 near Hermiston. The proposed project will develop power principally during the winter and spring months when high run off characteristically exceeds storage capacity and other beneficial uses upstream. The applicant has demonstrated access to the project site and compliance with the county land use plan. Conditions on the proposed use for the protection of fish life and other beneficial water uses are necessary to insure the proposed use will not impair or be detrimental to the public interest.

ORDER

It is hereby ordered that Hydroelectric License Application HE.. 363 for a hydroelectric project on the Umatilla River be and hereby is approved with the following conditions:

1. Operation of the project shall be subject to the maintenance of the following flows in the Umatilla River past the point of diversion.

September - November	150 cfs
December - February	100 cfs
March - June	100 cfs ^{1/}
July - August	100 cfs

^{1/} Required in channel flows shall be 150 cfs if spring chinook are successfully reintroduced into the river.

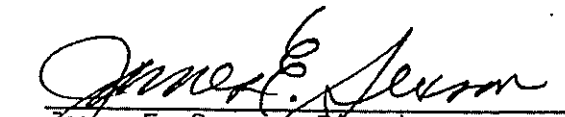
2. The licensee shall install and maintain a stream gaging device, of a type and in a location approved by the Water Resources Department, to measure the above specified flows.
3. Screening, approved by the Department of Fish and Wildlife, shall be installed and maintained at the diversion works by the licensee.
4. Velocity dissipaters, approved by the Department of Fish and Wildlife, shall be installed and maintained at the point of discharge by the licensee.

5. The licensee shall cooperate with the Department of Fish and Wildlife on such other measures that become necessary to protect fish and wildlife resources as a result of the operation of the project.
6. Any right granted through the issuance of the license shall be inferior in right and subsequent in time to any other appropriation from the source for beneficial use, except by hydroelectric use, including future storage for beneficial use.

It is further ordered that the application be returned to the Director of the Water Resources Department for such further proceedings as may be required by statute.

Dated February 24, 1983

WATER POLICY REVIEW BOARD


James E. Sexson, Director
WATER RESOURCES DEPARTMENT

APPEALS AND JUDICIAL REVIEW

ORS 536.560 provides any order, rule or regulation of the Water Policy Review Board may be appealed to the circuit court of the county in which the property affected by such order, rule or regulation or any part of such property is situated.

ORS 183.482(1) provides that judicial review of contested cases is conferred upon the Court of Appeals. Judicial review may be obtained by filling out a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482. Until this conflict is judicially resolved, and an appeal is desired, it may be advisable to commence appeal or review procedures in the circuit court and Court of Appeals simultaneously.

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