

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON

IN THE MATTER OF THE CONVERSION OF                    }  
HYDROELECTRIC LICENSE HE 241                        }  
TO AN INSTREAM WATER RIGHT                         }       FINAL ORDER

**Summary of Recommendation**

The Department recommends that Hydroelectric License HE 241, originally in the name of Hillis Trenbeath, be converted to an instream right for four cubic feet per second (cfs) in the Bronson Creek, tributary to Chehalem Creek in Yamhill County, Oregon.

**Findings of Fact**

Hydroelectric License HE 241, originally issued in the name of Hillis Trenbeath, authorized the use of 4 cubic feet per second (cfs) of water from Bronson Creek, tributary to Chehalem Creek in Yamhill County, Oregon.

The priority date of this right is April 8, 1977.

The license was effective as of the date of issuance and terminated on December 31, 1997. Under the provisions of ORS 543A.150 the expiration date has been extended until December 31, 2000.

The license was assigned to Robert and Robin Stern on January 7, 1997.

On December 30, 1997, Robert and Robin Stern applied to the Water Resources Department (Department) for reauthorization of the hydroelectric project. Reauthorization was completed and certificate 76688 was issued. It expired December 31, 2020.

**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

A small rock and earthen dam, a wooden flume, a gate to control flume flow, and a water wheel water attached to a generator were located in the SW ¼ SW ¼, Section 14, Township 3 South, Range 3 West, W.M. . The capacity of the powerhouse was six 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.

The hydroelectric license for the project terminated December 31, 2020. An annual license was issued for a year while the owner, Robin Stern, decided whether to relicense or decommission the project. On August 18, 2021, John Zauner - ODFW and Craig Kohanek - OWRD visited HE 241 to confirm whether decommissioning measures for the hydroelectric project were warranted. ODFW determined that the dam, constructed for the HE 241 Hydroelectric Project, is no longer a barrier to downstream or upstream fish passage as it seriously eroded and no longer blocks or impedes fish passage. Removal of the dam as a component of decommissioning was therefore unnecessary. Furthermore, during the site visit ODFW did not identify any items or measures for the project owner to complete for decommissioning of the project to be finished.

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**

In practice, it is unlikely that in all months of the year that there would be sufficient streamflow for the hydroelectric project to divert the full amount of the water right up to 4 cfs.

#### **Consideration of Injury or Impacts to Other Existing Water Rights:**

HE 241 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 241 is eligible for conversion to an in-stream water right pursuant to OAR 690-054-0020 and ORS 543A.305.

Use of water under the hydroelectric water right has ceased and reauthorization of the project is not being pursued.

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

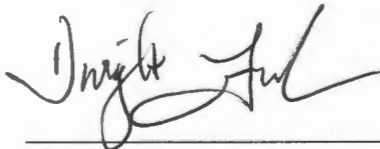
The hydroelectric water right has already been subordinated to all other beneficial consumptive uses. OAR 690-054-0040(6)(b)(C) provides a rebuttable presumption that if the water right is already subordinated no injury will occur and that no mitigation measures are required to ensure the continuation 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 4 cfs of water authorized under Hydroelectric License HE 241 shall be converted to an instream water right at the location of the former point of diversion on Bronson Creek, tributary to Chehalem Creek.

Hydroelectric License HE 241 is terminated. A new water right for instream use shall be issued with a priority date of April 3, 1977, and it shall be subordinated to other beneficial consumptive uses in the same manner as the original water right, per the attached draft proposed water certificate.

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