

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON

|                                    |   |             |
|------------------------------------|---|-------------|
| IN THE MATTER OF THE CONVERSION OF | } |             |
| HYDROELECTRIC LICENSE HE 298       | } | FINAL ORDER |
| TO AN INSTREAM WATER RIGHT         | } |             |

**Summary of Recommendation:**

The Department recommends that Hydroelectric License HE 298 be converted to an instream right for four (4) cubic feet per second (cfs) in Whiskey Creek, tributary to Parsons Creek in Lane County, Oregon.

**Findings of Fact:**

Hydroelectric License HE 298, originally issued in the name of Jack O. Barrowcliff, authorized the use of 4 cfs of water from Whiskey Creek, tributary to Parsons Creek in Lane County, Oregon.

The priority date of this right is November 26, 1980.

The license was effective as of the date of issuance and terminated on December 31, 2001.

On July 7, 1999, Jack O. Barrowcliff applied to the Water Resources Department (Department) for reauthorization of the hydroelectric project. Reauthorization was completed and certificate 76856 was issued. This license expired December 31, 2021.

On March 25, 2019, the Department received Mr. Barrowcliff's response to the Notice of Intent sent to him December 18, 2018. He stated that he would not be seeking reauthorization of the project and proposed decommissioning.

**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 project consisted of a concrete and steel intake box located in the NW ¼ SE ¼, Section 11, Township 16 South, Range 2 West, W.M., which was attached to a steel penstock that directed water to the turbine and generator in the powerhouse. The capacity of the project was 20.5 kilowatts.

The hydroelectric right was expressly made inferior in right and subsequent in time to any authorized appropriation of water from the same source made prior to April 3, 2001, and which may hereafter be made for domestic, municipal, irrigation, or any other beneficial consumptive use, or for storage for such purposes.

Thursday, September 29, 2022, John Zauner – ODFW, Chris Stine – ODEQ, and Craig Kohanek - OWRD visited the Project to determine if decommissioning measures for the hydroelectric project were warranted. ODFW determined that the screened concrete intake collection and stilling box, which was embedded in Whiskey Creek, had to be removed. No other project features were identified for removal during the site visit. 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.

In October 2023 the Barrowcliff's removed the intake box/screen and a section of penstock. ODFW's John Cox and John Zauner visited the site after removal, and confirmed the fish passage conditions were satisfactory.

#### **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:**

The hydroelectric project diverted the full amount of the water right up to 4 cfs.

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

The instream water right is 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, or for storage for such purposes, that was made prior to the date the most recent hydroelectric water right certificate was issued; April 3, 2001.

The instream right as converted shall be subordinated in the same manner as the previous license to all other authorized appropriation of water for beneficial consumptive uses or storage purposes made prior to April 3, 2001.

#### **Conclusions of Law:**

The hydroelectric water right under HE 298 is eligible for conversion to an in-stream water right pursuant to OAR 690-054-0020 and ORS 543A.305.

On March 25, 2019, the Department received Mr. Barrowcliff's reply to the Notice of Intent, sent him December 18, 2018, where he stated he did not intend to seek to reauthorize the

project and proposed its decommissioning. OAR 690-054-0020(1)(b).

Up to 4 cfs of water was used to produce hydroelectric power.

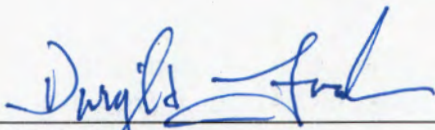
The hydroelectric water right has been subordinated to all other authorized appropriations of water for beneficial consumptive uses and storage purposes made prior to April 3, 2001. OAR 690-054-0040(6)(b)(C) provides a rebuttable presumption that if the water right is already subordinated no injury will 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 298 shall be converted to an instream water right at the location of the former point of diversion on Whiskey Creek, tributary to Parsons Creek.

Hydroelectric License HE 298 is terminated. A new water right certificate for instream use shall be issued with a priority date of November 26, 1980, it shall be subordinated to authorized appropriation of water for beneficial consumptive uses or storage purposes made prior to April 3, 2001, same as the previous water right, per the attached draft proposed water certificate.

Issued MAR 22 2024



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