

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON

|                                         |   |             |
|-----------------------------------------|---|-------------|
| IN THE MATTER OF THE CONVERSION OF      | } |             |
| HYDROELECTRIC WATER RIGHT CERTIFICATE   | } |             |
| 77010 IN THE NAME OF E. GEORGE SITKEI,  | } | FINAL ORDER |
| CHERRY CREEK FARM, TO AN INSTREAM RIGHT | } |             |
| OAR 690-054                             | } |             |

**Summary of Recommendation**

The Department recommends that Water Right Certificate 77010 in the name of E. George Sitkei, Cherry Creek Farm, be converted to an instream right for 3.4 cubic feet per second (cfs) in Cherry Creek, Tributary to Muddy Creek.

**Findings of Facts**

of E. George Sitkei, Cherry Creek Farm, perfected the use of 3.4 cubic feet per second (cfs) of water from Cherry Creek, Tributary to Muddy Creek, for hydroelectric power purposes as evidenced by water right certificate 77010.

The priority date of this right is December 16, 1980, for 3.4 cfs of water.

The location of the diversion was SW ¼ SE 1/4 of Section 1, Township 15 South, Range 6 West, W.M., Benton County .

Project owners submitted their notice of intent to decommission the project March 18, 2019. Oregon Administrative Rules 690-054 provide for the conversion of this hydroelectric right to an instream right.

**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.

## 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:

(C) Whether Other Existing Water Rights as of October 23, 1999, are junior to and upstream of the Hydroelectric Water Right;

(D) 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;

(E) 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; or

(F) Any other available evidence that may assist the Director to make a finding on Injury;"

## **History of the Conversion Process**

Project owners submitted their notice of intent to decommission project on March 18, 2019. Oregon Administrative Rules 690-054 provide for the conversion of this hydroelectric right to an instream right.

Notice for consideration was posted on the department's public notice on July 18<sup>th</sup>, 2023. No comments were submitted prior to the 30 deadline that ended on August 18, 2023.

The Director makes a preliminary finding that the full amount of the water right up to 3.4 cfs is eligible for conversion. 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.

The Director makes the following preliminary findings on the potential for injury and whether mitigation measures may be necessary to avoid injury and to ensure the continuation of other authorized water rights as of October 23, 1999.

Concerning actual use of the project: the hydroelectric project actually used up to 3.4 cfs of water until December 2019 when the owners submitted their intent to decommission project. Following the receipt of Notice of Intent to decommission the project on March 18, 2019

### **Consideration of Actual Water Use**

Concerning actual use of the project: the hydroelectric project actually used up to 3.4 cfs of water until December 2019 when the project owners submitted their intent to decommission project.

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 and permits that are junior to December 16, 1980, and are upstream of the original point of diversion. A full listing of authorized points of diversion in the Willamette basin is available at:  
[Water Right POD Summary \(state.or.us\)](#)

Many of the water rights are reported on annually by the irrigation districts.  
[WRIS Query Results - Search by Stream \(state.or.us\)](#)

Most (if not all) of the upstream surface water rights are NOT regulated annually by the watermaster.

### **FINAL ORDER**

3.4 cfs of water from Cherry Creek, at the site of the former diversion point, is converted to an instream water right superseding water right certificate 77010.

The priority date of this right is December 16, 1980.

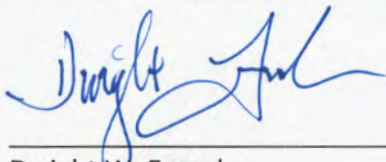
The location of the right is SW ¼ SE 1/4 of Section 1, Township 15 South, Range 6 West, W.M., Benton County.

The right granted herein is expressly made inferior in right and subsequent in time to any authorized appropriation of water from this source for domestic, municipal, irrigation or any other beneficial consumptive use, or for storage for such purposes, that was made prior to July 24, 2001.

This instream right is not additive to other existing instream rights.

Water right certificate 77010 is cancelled and a water right certificate for instream use shall be as attached.

Issued MAR 22 2024



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