

**Oregon Water Resources Department
Water Rights Division**

**Hydroelectric Reauthorization
Project HE 571**

Final Order

NOTE: *This is a Final Order issued pursuant to Oregon Revised Statutes (ORS) 543A.130.*

Application History

On January 11, 2005, Oregon Department of Fish and Wildlife (Applicant) applied for a minor hydroelectric water right to divert 0.06 cubic feet per second (cfs) of water from the fish ladder at Mill Creek Reservoir, tributary to the Yaquina River in Lincoln County. The Project uses 50 feet of hydraulic head and a multi-nozzle Pelton wheel to generate 0.34 theoretical horsepower (thp) to power batteries for a smolt trap.

On March 22, 2005, notice of the application was included in Oregon Water Resources Department (Department) weekly public notice publication that was distributed to local governments, state and federal agencies, public interest groups and interested citizens. Recipients of the public notice included:

Oregon Department of Fish and Wildlife (ODFW)
Oregon Department of Environmental Quality (ODEQ)
Oregon Division of State Lands
Lincoln County Planning Department
Oregon Department of Forestry
Oregon Department of Agriculture
Oregon State Historic Preservation Office
Legislative Commission on Indian Services

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.

As part of the application review process, twenty-one state and federal agencies were consulted. On or about March 22, 2005, the Department sent a copy of the application and a 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 571 was submitted on August 30, 2023, and on September 26, 2023, notice of the HE 571 reauthorization application appeared in the 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. No comments were received.

On January 2, 2024, 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.

On March 12, the Department provided public notice of the Proposed Final Order in its weekly notice. The public notice included requests for standing or protests, along with the corresponding fee, within 45 days of publication of the notice. No protests or requests for standing were received.

Findings of Fact

1. Site Visit:

On June 6, 2023, Jonathan Cox with ODFW, Martin Sanchez and Craig Kohanek with the Department, members of the HART, visited the site and conferred with the project owner/operator. The Project, located within the fish ladder below the Mill Creek Reservoir, powers the batteries used to operate the smolt trap. A two-inch screened pipeline, approximately 300 feet in length resides in the upper end of the fish ladder. A single-nozzle Pelton wheel provides 12-volt DC output to two batteries.

2. Location

The point of diversion is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33, Township 11 South, Range 10 West, W.M. The reservoir is owned by the City of Toledo, and the applicant has obtained permission to operate the project. There are no other property owners within 300 feet of the proposed project.

3. Water Rights

Based on a water availability report run at 50% exceedance, water is not available in July and September-December. As hydroelectric is non-consumptive and hydroelectric water rights are subordinated to all other uses, appropriation may be made as water is available on a year-

round basis. As conditioned, the project will not interfere with any existing rights or permits for the use of water.

All reauthorized minor (under 100 theoretical horsepower) hydroelectric projects in Oregon, such as this Project, must make the findings identified in Oregon Revised Statute 543A.120.

4. Fish and Wildlife Resources:

Based on a review of the facts contained in the file, the Department finds that the project complies with the standards and requirements of ORS 543A.017 and OAR 690-051-0200.

5. Basin Plan:

OAR 690-518-0010; Mid-Coast Basin, identifies power development as a classified use and is deemed in the public interest.

6. Water Quality:

DEQ had no comments on water quality and only requested the standard water quality conditions.

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 30 years as conditioned.

Issued AUG 30 2024



Dwight French, Administrator
Water Right Services Division, for
Ivan Gall, Director
Oregon Water Resources Department