

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

IN THE MATTER OF THE CONVERSION OF	}	
HYDROELECTRIC WATER RIGHT CERTIFICATE	}	
81901 IN THE NAME OF ANGELA PORTER	}	PROPOSED FINAL ORDER
TO AN INSTREAM WATER RIGHT	}	

Summary of Proposed Final Order

This Proposed Final Order converts Water Right Certificate 81901 to an instream right for 2.9 cubic feet per second (cfs) in Deep Creek, tributary to the Clackamas River, in Clackamas County, Oregon. This Instream Conversion of the hydroelectric water right terminates Certificate 81901. Conversions of hydroelectric water rights to in-stream water rights are authorized as provided by ORS 543A.305 and OAR Chapter 690, Division 54.

Findings of Fact

Calvin C. Horger and Elizabeth Horger perfected the use of 2.9 cfs of water from Deep Creek, tributary to the Clackamas River, in Clackamas County, Oregon for hydroelectric power purposes as evidenced by water right certificate 81901. No part of the water right has been transferred under ORS 540.520 or ORS 540.530. During the time of hydroelectric use, all 2.9 cfs of water was used to produce hydroelectric power. No part of the right was used in conjunction with another water right under ORS 543.765 or was part of a larger distribution system for municipal, irrigation, or other beneficial purposes. No portion of the right was used in conjunction with multi-purpose dam releases.

The priority date of the water right is April 16, 1981.

The location of the diversion of the water right was NW ¼ SE 1/4, SECTION 31, T 2 S, R 5 E, W.M.; SOUTH 71 DEGREES 30 MINUTES WEST, 1340 FEET FROM THE EAST 1/4 CORNER OF SECTION 31.W.M., Clackamas County, Oregon.

The water right associated with certificate 81901 was limited in duration, expired on December 31, 2021, and was not extended or reauthorized since that date. The water right associated with certificate 81901 has not been used since it expired.

There will be no injury to existing water rights from the conversion of the water right from a hydroelectric water right to an instream water right, based on the following:

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. 2.9 cfs of water was used to produce hydroelectric power.

WRD has records no of water right certificates or permits that are junior to October 23, 1999, that are upstream of the point of diversion.

Conclusions of Law

Water right certificate 81901 is a hydroelectric water right. *See* ORS 543A.005(8); OAR 690-054-0010(6). Water right certificate 81901 is associated with a Project. *See* ORS 543A.005(5); ORS 543.010(2); OAR 690-054-0010(11); OAR 690-054-0020(1). The hydroelectric water right was beneficially used and beneficial use ceased when the time limited water right expired on December 31, 2021. *See* OAR 690-054-0020(1)(b).

Water right certificate 81901 is eligible for conversion to an Instream Water Right. *See* ORS 543A.305(3); OAR 690-054-0000; OAR 690-054-0020(1)(a-d). 2.9 cfs of water right certificate 81901 are eligible for conversion to an Instream Water Right under OAR 690-054-0020(2) and OAR 543A.305(3). The priority date for the Instream Water Right is April 16, 1981. *See* ORS 543A.305(2). The point of division is NW ¼ SE 1/4, SECTION 31, T 2 S, R 5 E, W.M.; SOUTH 71 DEGREES 30 MINUTES WEST, 1340 FEET FROM THE EAST 1/4 CORNER OF SECTION 31. W.M., Clackamas County, Oregon. *See* ORS 543A.305(2).

There will be no injury to existing water rights through the conversion of water right certificate 81901 to an Instream Water Right. *See* ORS 543A.305(3); OAR 690-054-0020(3).

The new instream water right has been subordinated, consistent with the original hydroelectric water right. OAR 690-054-0040(6)(b)(C) provides a rebuttable presumption that if the water right is already subordinated to Other Existing Water Rights as of March 10, 2006, no injury will occur to water rights existing as of October 23, 1999, and 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 Final Order

2.9 cfs of water, authorized under water right certificate 81901, shall be converted from a Hydroelectric Water Right to an Instream Water Right under ORS 543.305(3) at the location of the former point of diversion on Deep Creek, tributary to the Clackamas River.

A new water right certificate for instream use shall be issued with a priority date of April 16, 1981, and shall be subordinated, same as the previous water right. The time-limited hydroelectric water right HE 318, certificate 81901, is terminated and this certificate supersedes it. The water right certificate is attached as Exhibit A to this Proposed Final Order. *See* OAR 690-054-0080.

Issued SEP 23 2025

Katherine Ratcliffe

Katherine Ratcliffe, Administrator Water Right Services, for
Ivan Gall, Director
Oregon Water Resources Department

Right to a Hearing

You have the right to a contested case hearing under ORS 183.415 with 60 days of service of this Proposed Final Order. The hearing will be held under the authority of the Department, as delegated in part to an administrative law judge at the Office of Administrative Hearings, under ORS chapters 183, 536, and 543A, OAR chapter 137, division 3, OAR chapter 690, division 54, and OAR chapter 690, division 2. See OAR 690-054-0070.

Protests and Requests for Standing

Any person may submit a protest to the Department that requests a contested case hearing. OAR 690-054-0060(2). A protest is appropriate when a person maintains a position against the proposed final order. OAR 690-054-0060(2); OAR 690-002-0010(6). A protest must be in writing and include the name, address, and telephone number of the protestant; a description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented; a description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest; a detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency; any citation of legal authority supporting the protest, if known; and statements of facts which support the allegation that the proposed conversion instream should not be acted upon as proposed by the proposed final order. OAR 690-054-0060(2). A protest must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the position in the protest by the close of the protest period. See OAR 690-054-0060(5). A protest must be accompanied by a \$1,425 fee. ORS 536.050(1)(j).

Any person who supports the proposed final order may request standing at a contested case hearing. A request for standing must be in writing, signed, and include the name, mailing address, and telephone number of the person; if the request is for a group, association or other organization, the name, address, and telephone number of the represented group; a statement that the person supports the proposed final order as issued; a detailed statement of how the person would be harmed if the proposed final order was modified; raise all reasonably ascertainable issues and submit all reasonably available positions supporting the person's position. See OAR 690-054-0060(3), (5). If a hearing is held, any person who has filed a timely request for standing may later file a petition for party status in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 137-003-0535. OAR 690-054-0060(4).

Protests to and requests for standing under this proposed final order must be received by OWRD within 60 days from the date of service of this proposed final order at the following address:

Oregon Water Resources Department
Attention: Will Davidson
725 Summer Street NE, Suite A
Salem, OR 97301

See OAR 690-054-0060(1); OAR 690-054-0050(2). The proposed final order and supporting documents can be viewed at the Water Resources Department, 725 Summer Street NE, Salem, Oregon 97301. For further information, please contact: Martin Sanchez, Martin.sanchez@water.oregon.gov

Default

A default will enter under the following circumstances:

This proposed final order will become effective unless a person timely requests a hearing. Additionally, if a hearing is requested, and the person requesting the hearing withdraws the request for a hearing, notifies the Department or the administrative law judge that they will not appear or fail to appear at a scheduled hearing, the Director will issue a final order by default. The agency has designated the agency file, including all materials submitted by a party, as the record, and the record constitutes a prima facie case. See OAR 137-003-0672.

Information about a Hearing

At a contested case hearing, you have the right to be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.

Parties to a contested case hearing, including partnerships, corporations, associations, governmental subdivisions or public or private organizations, are generally represented by an attorney. If a party is an agency, corporation, partnership, limited liability company, trust, government body or unincorporated associated, it must be represented by an attorney licensed in Oregon, unless, consistent with OAR 690-002-0020 and OAR 137-003-0555, the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The telephone number of the Oregon Military Department is: 1 (503) 584-3571. The Oregon Military Department does not have a toll free number. The internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>.

Exhibit A

STATE OF OREGON
COUNTY OF CLACKAMAS
PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT
SALEM, OR 97301

confirms the right to use the waters of DEEP CREEK, a tributary of the CLACKAMAS RIVER, to maintain an instream flow for public use.

The right is established under Oregon Revised Statutes 543A.305 based on the conversion of Hydroelectric License HE 318 to an instream water right.

The date of priority is APRIL 16, 1981.

The instream water right 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 March 10, 2006.

The right is limited to not more than 2.9 CUBIC FEET PER SECOND.

This right is for flows to be maintained in DEEP CREEK at the site of the former point of diversion under HE 318 located within the NW ¼ SE 1/4, SECTION 31, T 2 S, R 5 E, W.M.; SOUTH 71 DEGREES 30 MINUTES WEST, 1340 FEET FROM THE EAST ¼ CORNER OF SECTION 31. W.M., Clackamas County, Oregon.

THIS SPACE RESERVED FOR
APPEAL RIGHTS
ON THE ACTUAL CERTIFICATE
WHEN IT IS ISSUED.

PROPOSED

Hydroelectric license HE 318 is terminated. This Water Right Certificate supersedes Hydroelectric

License HE 318.

Issued

DRAFT CERTIFICATE

PROPOSED

Katherine Ratcliffe, Administrator
Water Right Services Division, for
Ivan Gall, Director,
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates Number XXXXX

PROPOSED

Mailing list for PFO for conversion of hydroelectric water right to an instream water right.