

Oregon Water Resources Department
Water Right Services Division

Hydroelectric Reauthorization
Project HE 547

Proposed Final Order

NOTE: *This is a Proposed Final Order issued pursuant to Oregon Revised Statutes (ORS) 543A.120.*

Summary of Recommendation: The Hydroelectric Application Review Team (HART) recommends the reauthorization of a hydroelectric project HE 547 with conditions.

Application History

On December 2, 1994, Steve Cole (Owner) applied for a minor hydroelectric water right to divert 0.3 cubic feet per second (cfs) of water from an unnamed stream, tributary to Tenmile Creek, in Lane County. The Project uses 160 feet of hydraulic head and a Pelton wheel to generate 5.45 theoretical horsepower (thp) for onsite use.

On December 14, 1994, notice of the application was included in WRD's weekly public notice 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 must be consulted. On or about December 14, 1994, WRD 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 WRD in making its findings of fact.

The application to reauthorize HE 547 was submitted July 14, 2023. On July 25, 2023, notice of the HE 547 reauthorization application appeared in WRD's public notice for a 60-day public comment. Persons interested in the application could request future notices about the Hydroelectric Project and submit written comments to the WRD.

On May 6, 2025, WRD provided public notice of the Proposed Final Order in its weekly notice. The public notice included a request for comments, information about how to submit a protest or request standing, along with the corresponding fee within 45 days of publication of the notice. No protests or requests for standing were received.

Due to a procedural error, WRD provided public notice of the Draft Proposed Final Order in its weekly notice on September 2, 2025. No Comments were received.

Findings of Fact

1. Project Description:

The Project, located in Lane County, Oregon, diverts 0.3 cfs of water from an unnamed stream, tributary to Tenmile Creek. Using 160 feet of hydraulic head, it generates 5.45 theoretical horsepower for onsite domestic use.

The Project involves a diversion dam and small reservoir (holding tank). The dam is a concrete structure, approximately 12.2 feet long by 4.1 feet high. Two sheets of ½ inch plywood are on top of the dam structure, containing a screen in the center of the plywood to help keep debris from entering the holding tank and clogging the pipe screen. A pipe extends from the reservoir to the turbine. The pipe is made of PVC and consists of 600 feet of 6-inch pipe and 1000 feet of 4-inch pipe.

2. Site Visit:

On October 8, 2024 Hydroelectric Application Review Team (HART) members Martin Sanchez & Craig Kohanek of the WRD, and Jonathan Cox of the Oregon Department of Fish & Wildlife (ODFW), drove to the applicant's address of 6808 Tenmile Creek Road in Yachats, Oregon. An invitation was extended to the Oregon Department of Environmental Quality (ODEQ), but representatives for ODEQ were not able to attend. HART members met the owners on the property and walked to the project location. They followed the system upstream from the discharge point to the foundation of where the old turbine was located. They then followed the 4 inch PVC piping up the property to the point of the diversion dam. The unnamed stream used

by the Project is small, steep in gradient, and is not fish-bearing. No fish or wildlife concerns were identified.

3. Location:

The points of diversion are located within the SW ¼ SW¼ of section 30, Township 15 South, Range 11 West, W.M., in Lane County, Oregon.

There are no other property owners within 300 feet of the project.

4. Water Use:

Water availability:

Water is available from the unnamed stream at a 50% exceedance level in WRD's Water Availability Reporting System. Water use for hydroelectric purposes is non-consumptive, and may be made on a year-round basis, when water is available. As conditioned, the project does not interfere with any existing water right certificates or permits. OAR 690-518, the Mid-Coast Basin Program, classifies the waters of Tenmile Creek for power development. The Project is not located within a state designated scenic waterway.

Existing water rights: As conditioned, the Project will not interfere with any existing rights or permits for the use of water. This water right is inferior in right and subsequent in time to any appropriation of water upstream for beneficial uses that were issued before this use was initiated.

5. Fish and Wildlife Resources:

Based on a review of the facts contained in the file, the WRD finds that the Project complies with the standards and requirements of ORS 543A.025 and OAR 690-051-0200.

6. Basin Plan:

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

7. Water Quality:

ODEQ requested that WRD add the standard water quality conditions but provided no additional comments on water quality. The Project complies with the standards and requirements of ORS 543A.025

All proposed new minor (under 100 theoretical horsepower) hydroelectric projects in Oregon, such as this Project, must meet the resource protection standards contain in OAR 690-051-0190 to -0260.

8. Public Land Safety:

WRD 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 WRD concurs, that this small Project does not to pose a significant risk to public health and safety from geologic and seismic hazards.

9. Wetland Resources:

WRD 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. WRD concurs with that assessment and finds no impacts to wetlands.

10. Other Resources:

- a. **Recreation:** WRD 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. WRD concurs with that assessment.

- b. **Historic, Cultural and Archaeological:** WRD 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 WRD 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 Project complies with the State Agency Agreement for land use.

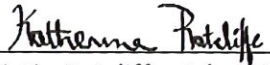
Recommendation

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 therein.

Order

Application to reauthorize HE 547 is approved, and Certificate XXXXX is issued.

Issued **MAR 10 2026**



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

PROPOSED FINAL ORDER COMMENTS, PROTESTS, AND REQUESTS FOR STANDING

1. Any person may submit comment(s) or protest against a proposed final order. Comments or protests must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the proposed final order.
2. A protest shall be in writing and shall include (OAR 690-051-0150(2)):
 - (a) The name, address and telephone number of the protestant;
 - (b) 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;
 - (c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;
 - (d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - (e) Any citation of legal authority supporting the protest, if known; and
 - (f) For persons other than the applicant, the protest fee required under ORS 536.050.
3. Upon receiving a protest, the Director shall evaluate the protest to determine whether significant issues are raised and if so, shall refer the application, with the accompanying protest, to the Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing. If the Director determines the protests do not raise significant issues, the Director shall issue a final order and a hydroelectric license containing a time-limited water right. A final order issued pursuant to this section is a final order in other than a contested case subject to judicial review under ORS 183.484. (OAR 690-051-0090(3)(f))
4. Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. The request for standing must be in writing, signed by the requester, and include the following (OAR 690-051-0150(3)):
 - (a) The requester's name, mailing address and telephone number;

STATE OF OREGON
COUNTY OF LANE
PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Kyle McBride & Venus McBride & Paul Walchli
P.O. Box 976
Yachats, OR 97498

confirms the right to use the waters of AN UNNAMED STREAM, TRIBUTARY TO TENMILE CREEK,
for HYDROELECTRIC PRODUCTION of 5.45 THEORETICAL HORSEPOWER

The date of priority is December 2, 1994. The amount of water to which this right is entitled is limited to the amount that the generation facilities can utilize efficiently and shall not exceed 0.3 CUBIC FEET PER SECOND (CFS) measured past the domestic use penstock-diversion at the place of use with a flow meter, or install a flow restrictor limited to 0.3 CFS.

The point of diversion is located as follows:

The points of diversion are UNNAMED STREAM located at SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 30, TOWNSHIP 15 SOUTH, RANGE 11 WEST, W.M.

The Director finds that the Project is adapted to the development and utilization of the waterpower involved, that no application for this project or in conflict with this project has been filed by any municipality or utility district, and that the water right holder has paid to the Water Resources Department (WRD) all fees required prior to the issuance of this certificate.

This water right is inferior in right and subsequent in time to any appropriation of water upstream for beneficial uses that were issued before this use was initiated.

A description of the place of use to which this right is appurtenant is as follows:

NW $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 31
TOWNSHIP 15 SOUTH, RANGE 11 WEST, W.M. in Lane County, Oregon

Project Description: The Project, located in Lane County, Oregon, diverts 0.3 cfs of water from an unnamed stream, tributary to Tenmile Creek. Using 160 feet of hydraulic head, and generates 5.45 theoretical horsepower for onsite domestic use.

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

5. WRD shall send a copy of all protests and requests for standing received to the applicants, the protestant(s), if any, and to each person who requested standing.

NOTICE TO ACTIVE-DUTY SERVICE MEMBERS: Active-Duty service members have a right to stay these proceedings under federal Service Members Civil Relief Act. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.of.mil>

Protests, requests for standing, and comments must be received in the Water Resources Department in Salem, Oregon no later than **5:00 p.m. on April 24, 2026.**

The Project involves a diversion dam and small reservoir (holding tank). The dam is a concrete structure, approximately 12.2 feet long by 4.1 feet high. Two sheets of ½ inch plywood are on top of the dam structure, containing a screen in the center of the plywood to help keep debris from entering the holding tank and clogging the pipe screen. A pipe extends from the reservoir to the turbine. The pipe is made of PVC and consists of 600 feet of 6-inch pipe and 1000 feet of 4-inch pipe. The stream is not fish-bearing due to its low flow, lack of suitable habitat, and steep gradient.

WATER RIGHT CERTIFICATE CONDITIONS

1. The Owner shall comply with all statutes and rules applicable to the Project.
2. The Owner shall pay, upon receiving an invoice from WRD, an annual fee to WRD in the amount of \$15.00, (comprised of \$3.60 under OAR 690-051-0400(6) and \$11.40 under ORS 543A.415). This amount shall be due by the date specified in the invoice.
3. This certificate is effective from the date of issuance through December 31, 2055. On termination of this certificate, such right to the use of water shall convert to an instream water right, unless the project owner applies to the WRD to reauthorize the Project. Upon termination of this certificate, the owner shall comply with any decommissioning statutes and rules in effect at that time.
4. If the Owner fails to operate Project facilities for power generation for any period of five consecutive years, the water right shall be subject to termination by the WRD.
5. Use of water is governed by this water right. However, the operations of the Project by the Owner so far as those operations affect the use, storage and discharge from storage of waters affected by the Owner, shall at all times be controlled by such reasonable rules as the Water Resources Commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The Owner shall release water from the Project reservoir at such rate in cfs, or such volume in acre-feet per specified period of time, as the Commission may prescribe.
6. The Owner will maintain the Project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the Project, and all parts thereof, conformably to the rules of the Commission not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.
7. No voluntary transfer of the water right or of any property acquired, constructed or operated pursuant to the water right issued under ORS 543.010 to 543.610 shall be

made without written approval of the Commission. Any successor or assignee of any water right under any project acquired, constructed or operated by the Owner, whether by voluntary transfer approved by the Commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the water right and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original Owner thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the water right shall terminate.

8. The Project must meet the water quality standards stated in OAR Chapter 340, Division 41. No significant temperature-related problems have been identified nor are they expected given the existing Project facilities, operations and management. However, to protect from any significant future temperature-related adverse impacts to aquatic organisms, any future modifications of vegetation surrounding Project waters should be carefully evaluated. The water right holder shall consult with ODEQ prior to undertaking any activity that directly or indirectly results in removal of vegetation adjacent to Project waterway infrastructure. Waterway infrastructures include, but are not necessarily limited to: bypass reaches, siltation/forebay ponds, open-channel diversions, and above ground pipes.
9. Notwithstanding any specific conditions established by this water right, the water right holder must comply with all water quality standards adopted by the Environmental Quality Commission pursuant to state and federal law. ORS 468B.048 and Section 303 of the Clean Water Act.
10. The Project shall be designed to minimize visual, aesthetic, and noise impacts.
11. Although there are no known cultural sites within the Project area, if any cultural material is discovered during Project construction, all activities should stop and an archaeologist contacted to assess the discovery. It is a Class B misdemeanor to impact an archaeological site (ORS 358.905-955) and a Class C felony to impact Indian Burials (ORS 97-740-990).
12. The Owner shall allow the WRD Director and authorized agents and employees of the ODEQ, ODFW, and WRD free and unrestricted access in, through, and across the Project in the performance of their official duties, and shall allow free access to all reports, accounts, records, and other data relating to said Project.
13. The Owner shall be liable for all damages occasioned to the persons or property of others by the construction, operation, or maintenance of the Project facilities, and in no event will the State of Oregon be liable therefore.

14. Issuance of the water right does not absolve the Owner from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws pertaining to construction, or maintenance of equipment necessary to develop or operate hydroelectric equipment or systems.
15. If at any time an unanticipated situation arises in which the operator observes or suspects that fish, wildlife, or their habitat may be harmed by any of the Project facilities or as the result of Project operation, the operator shall immediately notify and consult with the nearest office of the Oregon Department of Fish and Wildlife (ODFW); in no case shall such contact occur later than the next business day. The operator shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW (ORS Chapter 543A.025).
16. All the fish and wildlife mitigation features shall be properly maintained for the duration of the project (ORS 543A.025(2)(a) and (5)(d).
17. All maintenance activities shall be completed using best management practices to minimize soil and ground disturbance. All areas where soil is disturbed shall be planted with native vegetation, monitored, and maintained over the course of the permit. ODFW's recommended in-water work period for Tenmile Creek, and tributaries is July 1-September 15, and any instream maintenance activities should be completed during that time.
18. The water right holder shall maintain the project tailrace as necessary to reduce erosion and scour.
19. Diversion for hydroelectric generation shall not completely dewater the bypass reach of the stream between the diversion dam and the powerhouse return, in order to maintain and provide continued wildlife benefits.
20. A site visit is required every five years by members of the HART to ensure project is operating under the certificate conditions.

Issued _____

DRAFT CERTIFICATE

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

PROPOSED