

Oregon Water Resources Department
Water Right Services Division

Hydroelectric Reauthorization
Project HE 576

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 576 with conditions.

Application History

On January 18, 2007, David & Mary Ann Bugni (Owners) applied for a minor hydroelectric water right to divert 2.75 cubic feet per second (cfs) of water from Suter Creek, tributary to Eagle Creek, in Clackamas County. The Project uses 38.4 feet of hydraulic head to generate 12 theoretical horsepower (thp) for onsite use.

On February 13, 2007, notice of the application was included in OWRD'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 February 14, 2007, OWRD 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 OWRD in making its findings of fact.

The application to reauthorize HE 576 was submitted February 10, 2025. On March 4, 2025, notice of the HE 576 reauthorization application appeared in OWRD's public notice for a 45-day public comment. Persons interested in the application could request future notices about the Hydroelectric Project and submit written comments to the OWRD.

On October 7, 2025, notice of the Draft Proposed Final Order to reauthorize HE 576 appeared in OWRD's public notice for a 60-day public comment. No comments were received.

Findings of Fact

1. Project Description:

The Project, located in Clackamas County, Oregon, diverts up to 2.75 cfs of water from Suter Creek, tributary to North Fork Eagle Creek. Using 38.4 feet of hydraulic head, it generates 12 theoretical horsepower for onsite domestic use.

The Project involves a 750' penstock, made of 10" diameter schedule 40 PVC pipe, that follows the run of the creek on the right side and carries the flow to the powerhouse. Once the flow enters the powerhouse, the Applicant uses pump as turbine (PAT) assemblies in lieu of a conventional turbine. They use two Paco Pumps, one for high flows (2.75 CFS), and one for low flows (0.75 CFS). Flow returns into Suter Creek via tailrace.

2. Site Visit:

On May 9, 2025, members of the Hydroelectric Application Review Team (HART) (i.e., Martin Sanchez (OWRD), Jonathan Cox (ODFW), Valerie Thompson (ODEQ), and Shelly Tattam (ODEQ) drove to the Applicant's address at 30265 SE Kowall Road near Estacada, OR. The HART members met Dave Bugni (Dave) and walked to the powerhouse near the residence.

Dave demonstrated how the hydroelectric system operates and walked the group through both systems, providing details on the emergency shut-off if pressure in the system falls below the 10 PSI mark. We then followed the flow out of the powerhouse through the project tailrace to where it returns to Suter Creek. The bypassed part of the stream, from the intake to where the water returns to Suter Creek, is approximately 750 feet.

After demonstrating how the project operates and returns flow back to Suter Creek, the group hiked upstream to the point of diversion on Suter Creek and examined the fish screen and the screen cleaning system. We then inspected the 10" PVC pipe that carries the flow to the

hydroelectric project.

3. Location:

The point of diversion is located at TAX LOT 1301, SW ¼ SW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, W.M., in Clackamas County.

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

4. Water Use:

Water use for hydroelectric purposes is non-consumptive and allowed year-round when water is available. As conditioned, the proposed use will not interfere with any existing water rights or permits for the use of water. OAR 690-518, the Willamette Basin Program, does not classify the waters tributary to the Clackamas River for power development. However, a basin exception was granted in 2007. The Project is not located within a state designated scenic waterway. Power generation is the only permitted use.

The right to use this water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use.

Water availability:

Water is available from North Fork Eagle Creek at its confluence with Eagle Creek, at a 50% exceedance level in OWRD's Water Availability Reporting System from November through June; water is not available July through October for consumptive uses. Water use for hydroelectric purposes is non-consumptive, and the applicant intends to make use of the water for hydroelectric purposes from October through June, though at two different volumes during the months of the year. The applicant intends to use 0.75 cfs from May 1 through June 30 & October 1-October 31, and 2.75 cfs November 1 through April 30.

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 OWRD 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; Willamette Basin, does not classify the waters tributary of the Clackamas River for power development. However, a basin exception was granted in 2007.

7. Water Quality:

ODEQ requested that OWRD 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:

OWRD 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 OWRD 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:

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

10. Other Resources:

- a. **Recreation:** OWRD 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. OWRD concurs with that assessment.
- b. **Historic, Cultural and Archaeological:** OWRD 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 OWRD 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.

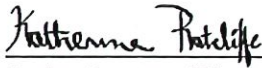
Recommendation

The HART recommends reauthorization of the Project and further recommends that the draft water right certificate attached be issued for a period of 20 Years as conditioned therein.

Order

Application to reauthorize HE 576 is approved, and Certificate XXXXX is issued.

Issued **APR 07 2026**

A handwritten signature in cursive script, reading "Katherine Ratcliffe", is written over a horizontal line.

Katherine 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 reauthorization for 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;
 - (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. OWRD 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 Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, Oregon no later than 5:00 p.m. on May 22, 2026.

STATE OF OREGON
COUNTY OF CLACKAMAS
PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

DAVID & MARY ANN BUGNI
30265 SE KOWALL ROAD
ESTACADA, OR 97023

confirms the right to use the waters of SUTER CREEK, TRIBUTARY TO THE NORTH FORK OF EAGLE CREEK, for HYDROELECTRIC PRODUCTION of 12 THEORETICAL HORSEPOWER for Domestic use.

The date of priority is January 18, 2007. The amount of water to be diverted shall not exceed 0.75 CUBIC FEET PER SECOND (CFS) from MAY 1 TO JUNE 30 and OCTOBER 1 TO OCTOBER 31, and 2.75 CFS from NOVEMBER 1 TO APRIL 30 of each year.

The use of water for power generation is not permitted from JULY 1 TO SEPTEMBER 30 due to low streamflow and the presence of coho salmon and coastal cutthroat trout.

The point of diversion is located as follows:

TAX LOT 1301, SW ¼ SW 1/4,
SECTION 18,
TOWNSHIP 3 SOUTH, RANGE 5 EAST, 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 (OWRD) 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:

TAX LOT 1100, SW ¼ SW 1/4,
SECTION 18
TOWNSHIP 3 SOUTH, RANGE 5 EAST, W.M.,

Project Description: The Project, located in Clackamas County, Oregon, diverts 2.75 cfs of water from Suter Creek, tributary to The North Fork of Eagle Creek. Using 38.4 feet of hydraulic head and generates 12 theoretical horsepower for onsite domestic use.

WATER RIGHT CERTIFICATE CONDITIONS

1. The proposed use of water is limited to the amount that the generation facilities can utilize efficiently and shall not exceed the seasonal stipulations noted in the water right.
2. The water right holder shall comply with all statutes and rules applicable to the Project.
3. Water, in the maximum amount of 0.75 cfs may be used from May 1 to June 30 and October 1 to October 31, and a maximum of 2.75 cfs may be used from November 1 through April 30 for hydroelectric purposes. The use of water for power generation is not permitted from July 1 to September 30.
4. For the protection of aquatic species present, the Project shall divert no more than 20 percent of the average monthly streamflow of Suter Creek measured upstream of the point of diversion.
5. The water right holder shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD in the amount of \$15.00, (OAR 690-051-0400(6) and ORS 543A.415). This amount shall be due by the date specified on the invoice.
6. Use of water is governed by this water right. However, the operations of the Project by the water right holder so far as those operations affect the use, storage and discharge from storage of waters affected by the water right holder, shall at all times be controlled by such reasonable rules as the Water Resources Commission (WRC) 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.
7. The water right holder shall 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 WRC not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610.
8. 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 WRC. Any successor or assignee of any water right under any project acquired, constructed or operated by the Applicant, whether by voluntary transfer approved by the WRC 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 Applicant 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.

9. The water right holder shall construct and maintain the tailrace as necessary to reduce bank erosion and instream scour and prevent fish entry.
10. In-water Project construction shall occur from July 15 through August 31, the Oregon Department of Fish and Wildlife (ODFW) established in-water work period for the Clackamas River. All construction and/or 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 license.
11. 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. The intake is piped, and no storage of water occurs for this facility. As such, the Oregon Department of Environmental Quality (ODEQ) expects the temperature, dissolved oxygen and other water quality parameters are to be largely unchanged. As required by ODFW, potential stream-side erosion sites should be monitored, and problems should be addressed promptly. In addition, it appears that soils at this location are "highly erodible" and that any construction for this Project must be completed using management practices that minimize soil disturbance. For soils that are disturbed, best management practices must be used to minimize erosion of the disturbed soils during construction. After construction is completed, the disturbed areas should be planted to stabilize the soils from future erosion. In addition, 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 canopy vegetation adjacent to Project waterways. Waterways include, but are not necessarily limited to bypass reaches, siltation/forebay ponds, open-channel diversions, and above ground pipes.
12. It is the policy of ODFW to prevent the injury or loss of any game fish or non-game fish classified as sensitive, threatened or endangered from any waterbody in the state, due to any diversion from the waterbody. Toward that end, a fish screen shall be constructed, installed and maintained in compliance with ODFW Fish Screening

Criteria. The water right holder shall be responsible for all fish screen repair and maintenance necessary to keep the fish screen in proper working order.

13. The OWRD may alter conditions of the certificate on a clear showing of a significant threat to the public health or safety or the environment that was not identified and addressed during the most recent Project reauthorization proceeding, and that requires modification of the certificate (ORS 543A. 145 (5)). Such changes could include, but are not limited to, the following:

- a) New state or federal listing, or a change status or recovery plan of a threatened or endangered species that may be affected by the Project.
- b) Change in a water quality standard for a water quality parameter that may be affected by the Project.
- c) Development of a Total Maximum Daily Load (TMDL) for a water quality parameter that may be affected by the Project.
- d) Change in average monthly streamflow that may require new measurements to ensure the protection of aquatic species.

If the OWRD proposes to alter conditions, the order shall be in writing and shall consist of a concise statement of the underlying facts supporting the proposed order. Any appeal of the order shall be according to procedures outlined in ORS Chapter 183.

14. 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.
15. The Project shall be designed to minimize visual, aesthetic and noise impacts.
16. 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).
17. The water right holder shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD 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.

18. The water right holder 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.
19. Issuance of the water right does not absolve the water right holder from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws.
20. This certificate is effective from the date of issuance through December 31, 2046. On termination of this certificate, such right to the use of water shall convert to an instream water right, unless the water right holder applies to the OWRD to reauthorize the Project. Upon termination of this certificate, the water right holder shall comply with any decommissioning statutes and rules in effect at that time.
21. If the water right holder 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 OWRD.
22. A site visit is required every five years by members of the HART to ensure the Project is operating under the certificate conditions.

Issued _____

DRAFT CERTIFICATE

PROPOSED

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