

**OREGON WATER RESOURCES DEPARTMENT
WATER RIGHTS DIVISION**

Hydroelectric Reauthorization of HE 217 and HE 222
Pelton/Round Butte Facilities

Final Order

Summary of Recommendation: The Oregon Water Resources Department (the “Department”) reauthorizes a water right for the continued operation of the Pelton Round Butte Hydroelectric Project (the “Project”), with conditions, based on its findings that the proposed use will not impair or be detrimental to the public interest, and the Project meets other applicable state laws.

Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS) have filed a joint application for the reauthorization of HE 217 and HE 222. The project is also known as FERC Project No. 2030.

Project Description: The Project is located between River Miles 100 and 120 on the Deschutes River, near Madras, in Jefferson County, in central Oregon. The Project consists of three developments.

The Round Butte Development consists of a 440-foot high rock-filled dam, a powerhouse containing three 125 MW generating units, and appurtenant facilities. Round Butte Dam forms Lake Billy Chinook, which has a surface area of approximately 4,000 acres at full-pond elevation of 1945 feet (MSL), and which impounds approximately 9 miles of the Deschutes River, 7 miles of the Crooked River, and 13 miles of the Metolius River. The reservoir stores 500,000 acre-feet of water, of which 78,000 is useable on a daily basis for power generation, and up to 250,000 acre-feet is useable in extraordinary circumstances.

The Pelton Development consists of a 204-foot high concrete arch dam, a powerhouse containing three 32.4 MW generators, and appurtenant facilities. Pelton Dam forms Lake Simtustus, a 7-mile reservoir with a surface area of approximately 540 acres at full pond elevation of 1,580 feet. The reservoir stores 31,000 acre-feet of water of which 3700 acre-feet are usable daily.

This is a final order in other than contested case. The applicant may request a contested case hearing as provided under ORS 543A.130(3) by submitting the information required for a protest under ORS 543A.120 within 14 days after the Director issues this final order, ORS 543A.130(6).

This order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 days of the date of service.

The Reregulating Development consists of 88-foot high, concrete and rockfill dam, a powerhouse containing a 19.5 MW generating unit, and appurtenant facilities. The Reregulating Dam forms the Reregulating Reservoir, a 2.5-mile long impoundment with a maximum surface area of approximately 190 acres at full-pond elevation of 1,435 feet. The Project also includes a 2.9 mile fish ladder from Lake Simtustus to the Deschutes River below the Reregulating Dam.

The Round Butte and Pelton developments are store-and-release facilities that operate in the peaking mode. Releases are made from the two developments during system peak electric power demand periods and are curtailed during off-peak periods. The reregulating project stores and releases water at a near constant level for the Deschutes River below the Project. Outflows from the reregulating dam will be managed to more or less equal inflows to the Project.

The Project occupies a total of approximately 8,300 acres, including approximately 2,480 acres located on private lands owned by the Licensees and other non-governmental entities, approximately 5,665 acres located on lands owned by CTWS, U. S. Forest Service (USFS), and U. S. Bureau of Land Management (BLM), and 138 acres on lands owned by the State of Oregon. As constructed, the Project inundated approximately 41 miles of the Deschutes, Crooked, and Metolius Rivers. Portions of the Deschutes, Crooked, and Metolius Rivers above the Project, and the Deschutes River below the Project, have been designated as Wild and Scenic Rivers pursuant to the Wild and Scenic Rivers Act of 1968.

Application History: On March 10, 1961 and January 15, 1962, PGE was granted two state licenses to appropriate and use water flow not to exceed 11,700 cubic feet per second (cfs) of water from the Deschutes River for the development of 494,591 theoretical horsepower at Round Butte Dam and 202,091 theoretical horsepower at Pelton Dam.

The first state license for the Pelton Round Butte Hydroelectric Project (Project) was issued nine years after the federal license was approved. Construction of the Project was initially protested by the state because of the anticipated, irreversible impacts to fish, aquatic, riparian and terrestrial resources. Because of delay in state approval, the first state license, HE 217, will not expire until 2010, nine years after expiration of the project's federal license. The second license, HE 222, expires in 2011.

In 1982, the CTWS applied to construct a powerhouse adjacent to the Reregulating Dam and for authority to generate power. The Federal Energy Regulatory Commission (FERC) provided its approval for construction and operation. State license, HE 222, was amended in 1982, to allow the CTWS to use up to 6000 cfs of water to develop 28,636 theoretical horsepower and to generate 19 Megawatts of power at the facility. The power facilities are operated by PGE under an agreement with the CTWS.

In July 1996, PGE submitted an initial consultation document to the Oregon Water Resources Department (Department) for reauthorization of the Project. The Department and the Hydroelectric Application Review Team (HART) consisting of Oregon Department of Environmental Quality (ODEQ), Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department

(OPRD), and Oregon State Marine Board (OSMB) responded to the request and suggested study plans on November 12, 1996.

In March 1997, the CTWS submitted an Initial Consultation Document to the public for reauthorization of the Project, indicating that the CTWS intended to compete with PGE for the federal license on the projects.

In July 1997, the CTWS submitted a notice of intent to the director of the Department indicating they also intended to apply for reauthorization of the Project and enclosed the CTWS Initial Consultation Document.

In August 1997, PGE requested that the Department consider renewal of its state water rights at the same time it is seeking renewal of its federal license. The director of the Department signed an order on September 29, 1997, linking the timelines of the state and federal review processes.

On August 12, 1997, the Department gave public notice of the initial application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the application. No comments were received from the public within the 45-day comment period.

PGE submitted a draft application to the HART in December 1998, and the CTWS submitted a draft application to the HART in April 1999. The HART prepared two separate Draft Provisional State Positions for the two applications and released them for public review in July 1999. The provisional state positions were mailed to the applicants in August 1999.

During 2000, PGE and the CTWS negotiated a settlement and decided to submit an amended joint application to FERC and the HART. In September 2000, the Draft Joint Application Amendment (DJAA) was released for public review. The HART provided comments on the DJAA to the joint applicants in December 2000.

During June of 2001, PGE and CTWS submitted a Final Joint Application Amendment (FJAA) to FERC and the HART. Before filing the FJAA, PGE and CTWS filed applications for water quality certifications pursuant to Section 401 of the Clean Water act with the Oregon Department of Environmental Quality (ODEQ) and the CTWS Water Control Board (WCB). On June 24 and June 25, 2002, respectively, ODEQ and the WCB each issued water quality certifications for the Project.

FERC issued its Scoping Document 1 document on October 4, 2001. In response to FERC's request for comments, HART provided comments to FERC and the joint applicants in December 2001.

In March of 2002, HART provided comments to the joint applicants on their FJAA through preparation of the Second Unified State Position (SUSP).

Relicensing Settlement Agreement: After reviewing the preliminary conditions and recommendations submitted to FERC, PGE and CTWS invited all parties to the FERC proceeding to discuss the possibility of negotiating a settlement. On January 31, 2003, the parties formed a Settlement Working Group ("SWG") to pursue settlement negotiations. ODEQ, ODFW, OWRD, and OPRD

participated in the SWG, which met for a period of thirteen months, until March 2004. An agreement in principle on all issues was reached by all Parties in March 2004; and representatives of the SWG continued to meet for four more months to complete documentation of the Settlement Agreement. The Settlement Agreement was executed on July 13, 2004. On July 29, 2004, PGE and CTWS filed the Settlement Agreement and all supporting exhibits and appendices with FERC.

The Settlement Agreement is a comprehensive settlement resolving all issues raised by all parties to this proceeding. The Settlement Agreement includes a number of exhibits, which reflect the specific substantive agreements of all Parties and which are incorporated into and made a part of the agreement itself. These are as follows:

- Exhibit A: Proposed License Articles.
- Exhibit B: Interim measures that PGE and CTWS will implement prior to issuance of a new license.
- Exhibit C: Project Operating Plan describing in detail the operating rules for the Pelton Round Butte Project which are incorporated into the terms of the Settlement Agreement through the proposed license articles.
- Exhibit D: Fish Passage Plan for the restoration of fish passage at the Project.
- Exhibit E: Terrestrial Resources Management Plan (detailed outline) to minimize and mitigate Project-related impacts to terrestrial wildlife and vegetation.
- Exhibit F: Description of Trout Creek Habitat Improvement Project describing a channel enhancement project on Trout Creek, a tributary to the lower Deschutes River.
- Exhibit G: List of Measures to be included in the Recreational Resources Implementation Plan to implement a comprehensive package of improvements at the recreational developments at the Project.
- Exhibit H: Pelton Round Butte Fund Implementation Plan providing for the establishment of a \$21.5 million fund to support resource projects in the Deschutes Basin and to acquire or lease instream water rights, or participate in water conservation projects, each of which would result in increased instream flows that benefit aquatic habitat.
- Exhibit I: Lower River Gravel Study Design, describing a study and experimental gravel augmentation program to evaluate gravel mobility, supply, and use by spawning salmonids in the lower Deschutes River.
- Exhibit J: Cultural Resources Management Plan describing cultural resource protection techniques and consultation procedures that will be incorporated into Project operation and maintenance practices.
- Exhibit K: Implementation Committees to be consulted in the development of the various monitoring and adaptive-management plans.

As noted, Exhibit A to the Settlement Agreement sets out proposed license articles, which are an integral part of the Settlement Agreement. They implement the substantive agreements of the Parties and are intended to be included in the license and to become license obligations enforceable by FERC.

The Settlement Agreement also includes a number of Appendices. The Appendices reflect obligations imposed on the Joint Licensees by Governmental Parties or to be assumed by the Joint Licensees pursuant to agreements that will not be entered into by all Parties. The appendices are as follows:

- Appendix A: Water Quality Certificates issued on June 24, and June 25, 2002, respectively, by the ODEQ and CTWS WCB, and to be included as conditions of the new license.
- Appendix B: Draft Hatchery Contract with ODFW, pursuant to which the Joint Licensees will fund the operation of the Round Butte Hatchery for the term of the new license.
- Appendix C: Draft Law Enforcement Agreement, pursuant to which the Joint Licensees will fund Jefferson County to increase law enforcement in the Project area to ensure that certain of the PME measures implemented pursuant to the terms of the Settlement Agreement are effective.
- Appendix D: Road Maintenance Agreement Term Sheet, pursuant to which the Joint Licensees will provide funds to Jefferson County maintain and upgrade identified roads adjacent to the Project.
- Appendix E: Revised Wild and Scenic Rivers Determinations issued by USFS and BLM.
- Appendix F: NOAA Fisheries Best Management Practices.

By order dated June 21, 2005 (the FERC License), FERC approved the Settlement Agreement and issued a new 50-year license that modified in part the proposed license articles. The Settlement Agreement and FERC License are on file at the Oregon Water Resources Department. In the event of any inconsistency between the terms of the FERC License and the Settlement Agreement, the terms of the FERC License control. However, pursuant to the Settlement Agreement, any provisions of the Settlement Agreement that are not addressed in the FERC License and are not otherwise inconsistent with the License remain in effect as agreements of the Parties that are not enforceable by FERC.

On March 21, 2006, the Department published a notice of the Proposed Final Order (PFO) and the draft certificate for this Project. PGE, CTWS, ODFW, WaterWatch of Oregon and American Rivers filed timely protests to the PFO and the draft certificate.

This Final Order and the Certificate of Water Right include changes in response to the protests. These include: the definition of the relationship between the FERC license and the Settlement Agreement, the finding that the Project's water rights do not make a call for regulation for the benefit of the Lower Deschutes River instream water rights futile, the

Fall Flow Augmentation agreement, the Long Term Low Flow agreement, the Refill Allowance, and other editorial changes.

Project Specifications: PGE and CTWS have requested the following uses:

Amount of Water: 11,700 cfs water diversions from the Deschutes River at the Round Butte and Pelton powerhouses. Storage in Lake Billy Chinook of 500,000 acre-feet of water, of which 78,000 acre-feet are useable for power generation and up to 250,000 acre-feet are useable in extraordinary circumstances, and storage in Lake Simtustus of 31,000 acre-feet of water, of which 3700 acre-feet are useable for power generation. Diversions from storage of up to 14,000 cfs for peaking generation. Diversion of 6000 cfs of water for power generation at the reregulating dam.

Use of Water: Power generation and incidental lawn watering.

Source of Water: Deschutes River.

Area of Proposed Use: River Mile 120.1 to 100.1.

Policy, Public Interest Determination, Standards, And

Information Considered: The policy, process and standards for reauthorization of Oregon hydroelectric water rights are set out in ORS 543A. They are summarized below.

A. Policy It is the policy of the State of Oregon under ORS 543A.020:

- to reauthorize the use of water by existing projects provided that such projects meet the standards established in ORS 543A.925, are consistent with other applicable state laws and will not impair or be detrimental to the public interest.
- to recognize that existing projects have resulted in both benefits and costs to society, and that the opportunity exists on reauthorization to promote the public benefits while minimizing the public costs;
- to maintain or enhance the natural resources of the state and to protect the natural resources of the state from adverse impacts caused by the continued existence of a project;
- to protect the health and safety of the residents of the state; and
- to require the Department and other affected state agencies to conduct a coordinated review of projects seeking reauthorization in order to develop a unified state position in any local, state or federal proceedings related to the reauthorization of hydroelectric projects.

Under ORS 543A.125 the Department may approve or reject applications for reauthorization:

- Subject to the provisions of ORS 543A.125(2), ORS 543A.130, and ORS 543A.140, the Department shall approve all applications for reauthorization of a water right for the use of water for hydroelectric purposes made in proper form, unless the proposed reauthorization conflicts with existing rights;
- The Department shall reject any application for a permit to appropriate water to develop hydroelectric power if the Department finds that the proposed project does not comply with the standards set forth in ORS 543A.025 or rules adopted by the Water Resources Commission under ORS 543A.025.

B. Public Interest Determination: Under ORS 543A.025(1), the Department Director shall issue a water right for continued operation of an existing hydroelectric project if there is a finding that the proposed use will not impair or be detrimental to the public interest. The public interest determination is made considering the following factors:

- conserving the highest use of the water for all purposes;
- the maximum economic development of the waters involved;
- the control of the waters of this state for all beneficial purposes, including drainage and flood control;
- whether water is available for the appropriation for beneficial use;
- prevention of wasteful, uneconomic, impracticable or unreasonable use of the water involved;
- the protection of vested and inchoate water rights must be considered; and
- the state water rights policy under ORS 536.295 to 536.350 and 537.505 to 537.534.

C. Standards: ORS Chapter 543A defines the state's hydroelectric reauthorization process and establishes the public interest standards a project must meet in order to be reauthorized and receive a new water right. The standards are found in ORS 543A.025(2) and include the following:

- mitigation for new adverse impacts, and ongoing adverse impacts existing at the time of reauthorization, with appropriate measures designed to promote the restoration and rehabilitation of fish and wildlife resources in accordance with the goals, plans, guidelines, and policies of the Oregon Fish and Wildlife Commission;
- water right conditions must be consistent with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for the protection, mitigation, and enhancement of fish and wildlife resources in the region;
- the project must comply with water quality standards adopted by the Environmental Quality Commission;

- the project must not endanger the public health and safety, and must be operated to provide practical protection from vulnerability to seismic and geologic hazards;
- wetlands resources shall be protected, maintained, or enhanced; and
- other resources in the project vicinity shall be protected, maintained or enhanced, including recreational, scenic and aesthetic, historic, cultural and archaeological, and botanical resources. The project must not result in a net loss of existing resources.

ORS 543A.025(3) provides that:

- in determining the mitigation, restoration and rehabilitation measures, the Department considers historic impacts, ongoing impacts, and projected future impacts of the project, and the existence and success of past mitigation measures associated with the project; and
- required mitigation, restoration and rehabilitation may include measures to restore or replace the benefits of historic resource conditions in order to meet resource goals contained in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission and in rules adopted by other state agencies with regulatory or advisory responsibility for the project.

ORS 543A.120 also requires consideration of:

- the applicable basin program;
- the compatibility of the proposed use with applicable land use plans and information set forth in the application report or final report on studies;
- water availability and the amount of water necessary for the proposed use;
- whether the proposed use would result in injury to existing water rights; and
- whether the proposed use would impair or be detrimental to the public interest as provided in ORS 543A.025.

D. Information Considered in Reviewing an Application for Reauthorization

In reviewing applications, the HART may consider any relevant information, including, but not limited to, the following:

- draft and final license applications, and other documents submitted by the applicants to the FERC, the Department and others;
- comments, studies, and other documents by state, local, and federal agencies, and the public;
- consultation with state, local, and federal agencies, and others;
- the provisions of any applicable basin program;
- the provisions of any applicable comprehensive plan or zoning ordinance;
- the amount of water available for the proposed use;

- determinations on whether the proposed use would impair or be detrimental to the public interest;
- pending senior applications and existing water rights of record;
- requirements in the Scenic Waterway statute (ORS 390.805 to 390.925);
- provisions in applicable local, state, or federal statutes, administrative rules, and case law; and
- listing of threatened, endangered or sensitive species under the Endangered Species Act.

Findings of Fact

ORS 543A.025(1)

Review of the project under standards of 543A.025(1) for determining that the proposed use will not impair or be detrimental to the public interest.

a) Conserving the highest use of water for all purposes.

The Deschutes River Basin Program provides: OAR 690-505-0050(1)(b) The maximum economic development of this state and the attainment of the highest and best use of the waters of the lower main stem Deschutes River from river mile 100.0 to river mile 120.0 and the attainment of an integrated and balanced program for the benefit of the state as a whole will be achieved through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, hydroelectric power, fish, wildlife and recreation purposes and the aforementioned waters of the main stem Deschutes River are hereby so classified;

The Project proposes to pass additional water downstream when water is available to enhance fish, wildlife, and recreation uses. In addition, the Project is required to maintain stable reservoir levels, which also protects and enhances fish, wildlife, and recreational uses in the reservoirs.

In the Settlement Agreement the parties agreed that this project would be subordinate to all existing and future appropriations of water from the Deschutes River for domestic, municipal, irrigation or any other beneficial consumptive use. This means that the hydroelectric project could not make a call against existing or future municipal (or other) diversions upstream of the project.

b) Maximum economic development of the water

The Deschutes River Basin Program provides for the maximum economic development of the water in the lower main stem of the Deschutes from river mile 100.0 to river mile 120.0 by including, among other things, hydroelectric power. The Project provides electricity to about 300,000 homes in Oregon. It also provides economic benefit to the local area by employing 37 employees, with combined annual salaries of \$1.75 million. PGE's direct Project-related purchases in the local community are about \$200,000 per year. Property taxes associated with the Project are \$1.75 million per year, which benefits schools and hospitals in the county. In

addition, recreation-related tourism associated with the Project reservoirs contributes at least \$25 million annually to the region's economy. Finally, PGE pays annual rental fees to the Confederated Tribes for Project-related use of Tribal lands. These fees are now approximately \$10 million per year. This Project will provide for maximum economic development of the water.

c) Control of water for beneficial purposes

The water is retained in the Project's reservoir for beneficial purposes including recreation, fisheries, and hydroelectric purposes. The Project's three reservoirs are seasonally drawn down each fall to provide for safe passage of anticipated flood flows to minimize damage to life and property. The Project provides for the control of water for beneficial purposes.

d) Amount of water available for appropriation for beneficial use.

The Settlement Agreement and FERC License have set out the operating parameters for water use for the project. Those are explained below.

Run-of-River Operations: As required by the FERC License and the Settlement Agreement, the applicants will hold river flows below the Reregulating Facility to within +/-10 percent of the measured project inflow except under the following conditions: 1) days with measured inflow in excess of 6,000 cfs; 2) any event that triggers the Project Emergency Action Plan; 3) power emergencies, as defined in the Western States Coordinating Council Minimum Operating Reliability Criteria (March 8, 1999) as such criteria may be amended during the term of the FERC license; 4) equipment failures or emergencies at one of the project dams or powerplants; and (5) reservoir drawdowns needed for safe passage of anticipated flood flows to minimize damage to life and property.

Ramping Rates in the lower Deschutes River below the Reregulating Dam: As required by the FERC License and the Settlement Agreement, the project shall be operated to limit changes to lower river stage to 0.05 ft/hr and 0.2 ft/day from May 15 through October 15 and to 0.1 ft/hr and .4 ft/day from October 16 through May 14, except during specific extraordinary circumstances. These extraordinary conditions are: (1) flood events; (2) any event that triggers the Project Emergency Action Plan; (3) rapid changes in project inflow, when the rate of inflow change exceeds the proposed stage change limits; and (4) equipment failures or emergencies at the Reregulating Facility. The compliance point for measuring ramping rates shall be the USGS Madras Gage No. 14092500.

Minimum Streamflows: The certificate holders shall operate the project to maintain target flows, calculated as provided in the FERC License and the Settlement Agreement, as measured at the USGS Madras Gage No. 14092500. The monthly target flows are as follows: January 4,500 cfs, February 4,500 cfs, March 4,571 cfs, April 4,170 cfs, May 4,000 cfs, June 4,000 cfs, July 4,000 cfs, August 3,500 cfs, September 3,800 cfs, October 3,800 cfs, November 4,049 cfs and December 4,500 cfs.

The minimum flows are an increase from the existing minimum flows of 3500 cfs from March 1 through June 30, and 3000 cfs from July 1 through February 29.

As provided in the Settlement Agreement, the certificate holders may reduce flows between November 15 and June 15 by up to 150 cfs to ensure that Lake Billy Chinook is refilled to its summer operating level (minimum elevation 1944.0 feet) by June 15. This “refill allowance” modifies target outflows for the project when inflows are at or below the minimum target flows. At these times, the allowed minimum outflow is based on the lowest daily inflow recorded over the past 7 days. The allowed minimum outflows may be 150 cfs less than the lowest daily inflow recorded over the past 7 days, except under certain flow conditions as specified in the Settlement Agreement.

Reservoir Levels: As provided in the FERC License and the Settlement Agreement, the certificate holders shall operate the Round Butte project to maintain a minimum surface elevation of 1944.0 feet and a stable pool level with a fluctuation of not to exceed 1.0 foot during the period June 15 to September 15 of each year. If the reservoir has not been filled to normal operating pool level by June 15 of any year, this provision shall not prevent filling if water is available for storage while maintaining the minimum flow. The certificate holders will restrict the drawdown of Lake Billy Chinook to a maximum of 20 feet (El. 1925 feet m.s.l.) with a target of 10 feet during normal winter operations, except in extraordinary circumstances. Such extraordinary situations include a) flood events in which drawdown is needed for safe passage of flood flows to minimize damage to life and property; b) unforeseen occurrences in which drawdown is required to complete emergency repairs on project facilities; c) periodic scheduled maintenance activities that require drawdown to complete normal repairs on project facilities (including spillway gates, the intake structure, or dam structures); and d) regional power system emergencies as defined in the Western States Coordinating Council Minimum Operating Reliability Criteria (March 8, 1999), as such criteria may be amended during the term of the FERC license. As provided in the FERC License and the Settlement Agreement, the certificate holders shall restrict the drawdown of Lake Simtustus with a maximum dropdown limit of elevation of 1,576 feet m.s.l. between June 1 and August 31, and elevation 1,573 m.s.l. feet between September 1 and May 31. As provided in the FERC License and the Settlement Agreement, the certificate holders shall restrict the drawdown of the Reregulating Reservoir to 1,414 feet m.s.l.

Additional hydraulic capacity: PGE and CTWS are proposing to upgrade the turbine runners at the Round Butte Development, which would increase the hydraulic capacity from 11,700 cfs to 14,000 cfs. PGE and CTWS also propose to match the hydraulic capacity of the Pelton Development to that of the Round Butte Development. Flows greater than 10,000 cfs are available from live flow less than 1% of the time in the Deschutes basin above the reregulating dam. Flows up to 14,000 cfs may be available from flood flows in the months of January, February and/or March. (FLA pg B-10 and 11)

The efficiency upgrade to utilize flows up to 14,000 cfs will not impact the amount of water stored at the project, the amount of water passed through the units over a year, or the other operating parameters committed to by the joint applicants. Minimum flows below the Project will be enhanced and protected under the new Settlement Agreement. Water will be returned to the Deschutes River immediately below the Project, so the water use will not contribute to over appropriation in the basin, nor will it deplete flows to the instream water rights or scenic waterway downstream.

Incidental irrigation of park areas: PGE and the CTWS have requested water sufficient to irrigate 1.3 acres of lawns at Pelton Park on Lake Simtustus. Because a water availability analysis shows that water is not available for nine months of the year for new uses, the Department cannot authorize additional water for this use during the summer months from live flow. The Settlement Agreement

requires minimum flow releases from the reregulating dam at greater amounts than the prior license. It also requires more precise measurements of project inflows and closer matching of outflows to the inflows during all months of the year. The operating parameters of the Settlement Agreement will allow the incidental irrigation use to be taken from existing project operations without any decrease in flows downstream to the instream water right or the scenic waterway. The use of water for incidental irrigation of park lands is found to be within the public interest as a mitigation measure for recreation within the scope of the project and may be allowed.

e) Prevention of wasteful, uneconomic, impracticable, or unreasonable use of the water.

As mentioned above, the Deschutes River Basin Program provides that the highest and best use of the waters of the lower main stem of the Deschutes from river mile 100.0 to river mile 120.0 includes hydroelectric power. OAR 690-505-0050(1)(b). The Project's operation prevents wasteful, uneconomic, impracticable or unreasonable uses of water by drawing down in the fall for flood control and maintaining a full, stable reservoir level throughout the summer in support of other beneficial uses. These uses include, recreational boating and fishing, and maintenance of riparian habitat. Therefore, the Project prevents wasteful, uneconomic, impracticable, or unreasonable use of the water.

f) Vested and inchoate rights to use of the water and means to protect those rights.

Since the Project will be subordinate to beneficial consumptive uses, those vested and inchoate rights are protected and will not be affected by the issuance of this water right.

Target flows have been established that are 500 to 1000 cfs greater than existing target flows. As described in (d) above, during certain specified flow conditions the Project's storage rights are limited to 150 cfs or less.

In addition, as provided in the Settlement Agreement at 6.6.3, the Department has found that the existence of the Project's water rights as reauthorized by the Department does not make a call for regulation for the benefit of the Lower Deschutes River instream water rights futile. If the Department finds or is notified that the Deschutes River instream water rights (certificate numbers 73188 and 73237) are not being met, the Department will regulate off upper basin water right holders that are junior to the Deschutes River instream water rights, in accordance with applicable statutes, rules, and the Department's Field Enforcement Manual.

g) State water resources policy under ORS 536.295 - .350, 537.505 - .534.

ORS 536.295 - .350 govern classification of waters of the state such has been done in the Deschutes Basin Program. The statutes also direct consideration of applications for uses not classified in a basin program. Since the Project falls within a classification set out in the Deschutes Basin Program there are no other water resources policies enacted pursuant to these statutes that need to be considered.

ORS 537.505 - .534 govern the appropriation of groundwater and aquifer storage. Since the Project will only be issued a water right for surface water and storage, there are no water resources policies enacted under these statutes that need to be considered.

Ultimate Finding: The Department finds that the project not impair or be detrimental to the public interest based on the standards of 543A.025(1).

ORS 543A.025(2)

Review of the project under standards of 543A.025(2) follows.

a) Impacts of the project on fish, wildlife, and botanical resources

ORS 543A.025(2) requires appropriate measures for adverse impacts that occur due to new construction or operational changes to the project; and for ongoing adverse impacts existing at the time of reauthorization; and to promote restoration and rehabilitation of fish and wildlife resources. New construction and/or operational changes to the project are associated with the mitigation measures for the ongoing effects of the project. Construction and operational activities are covered by the review and approval procedures set out in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification.

The Project serves as a barrier to upstream and downstream migration of anadromous and resident fish within the Deschutes River system, preventing fall and spring-run Chinook salmon, Sockeye salmon, summer-run steelhead trout, and Pacific lamprey from migrating to historic spawning areas. Deschutes River bull trout, an Endangered Species Act (ESA)-listed threatened species have been divided into isolated subpopulations in Lake Billy Chinook and the Metolius River, the lower Deschutes River, and two lower river tributaries, Shitike Creek and the Warm Springs Rivers. Inland redband trout, a State of Oregon and United States Forest Service sensitive species, mountain whitefish, and other native fish species have become isolated in the Crooked, middle and upper Deschutes, and Metolius river watersheds due to lack of fish passage.

Other issues which affect fish and other aquatic species are loss of spawning and juvenile rearing habitats in riverine areas which were inundated after the dam was constructed; degraded water quality primarily due to higher water temperatures, and low dissolved oxygen levels; and fish mortality due to the operation of the turbines, increased predation, and extreme flow fluctuations.

The construction of this Project resulted in the loss of connectivity and the fragmentation of riparian habitat associated with the Deschutes, Metolius and Crooked Rivers. This loss of connectivity changes and impedes dispersal patterns of amphibians, passerine birds, and small mammals, and reduces local populations of some passerine birds. Habitat fragmentation can often lead to the isolation of small populations, which have a higher extinction rate. This fragmentation of habitat and the impacts the Project has on riparian habitats will continue into the future. The Project has encouraged development in the area and therefore habitat available for mule deer and other wildlife is decreasing. The Pelton fish ladder impedes movement and entraps big and small mammals, reptiles and amphibians. Access roads and site disturbance in

the Transmission Line Right of Way and Project area are contributing to the spread of noxious weeds that compromise the integrity or native fish and wildlife habitat. In addition, the roads and miles of Transmission Line Right of Way contribute to wildlife habitat fragmentation and potential water quality degradation from increased erosion and siltation.

The Project has also impacted botanical resources by inundation caused by construction of Lake Billy Chinook, the primary Project reservoir. The Project is responsible for ongoing inundation of 4,381 acres of botanical resources. Of this total, 3,726 acres, or 85 percent, consisted of upland cover types, including nearly 100 acres of developed land. The two most common upland cover types were shrub land and juniper, which respectively occupied about 28 percent and 27 percent of inundated area. Ponderosa pine and mixed conifer accounted for approximately 7 percent and 4 percent, respectively. Other upland cover types included shrubland/rock, shrubland/talus, grassland, exposed rock, and rock talus.

Mitigation Measures for Fish, Aquatic, and Terrestrial Resources Consistent with the Oregon Department of Fish and Wildlife (ODFW) goals, standards, policies, rules and statutes to promote, restore, and rehabilitate fish and wildlife resources, and other state agencies having regulatory or advisory responsibility for this Project, and having considered the success of past mitigation measures, the past, current, and future impacts of the Project will be addressed and minimized through mitigation measures in the FERC License and the Settlement Agreement including the following.

PGE and CTWS have committed in the Settlement Agreement to the re-establishment of fish passage upstream and downstream from the Project. As part of their obligations pursuant to the FERC License and the Settlement Agreement, PGE and the CTWS have established a Fish Committee, composed of resource agency representatives and a representative from a coalition of non-government organizations. ODFW and ODEQ are members of the Fish Committee.

Pursuant to the FERC License and the Settlement Agreement, PGE and CTWS will implement a number of specific mitigation measures. However, because of the complexity of the fish passage and reintroduction issues and the difficulty in predicting future outcomes from a reintroduction plan, the FERC License and the Settlement Agreement implement an "adaptive management" approach to fish passage in the new license. The Fish Committee will work with PGE and CTWS to implement the adaptive management approach.

All aquatic PMEs, including particularly the Fish Passage Plan, will be implemented by the Joint Licensees in consultation with the Fish Committee. In its continuing role in overseeing the implementation of this Fish Passage Plan, the Fish Committee will be responsible for monitoring progress of the activities identified in this plan, reviewing annual work plans, providing expert advice regarding work plan implementation, and evaluating the results of ongoing fish passage efforts. A key role of the Fish Committee will be determining progress towards achieving specific measures of success identified in the Fish Passage Plan. The Fish Committee will have broad responsibility for overseeing the efforts by the Joint Licensees to implement the Fish Passage Plan. Decisions made by the Fish Committee regarding the ongoing implementation of the activities included in this Fish Passage Plan will be summarized in an annual report prepared by the Joint Licensees and submitted to the Fish Committee on a schedule established either by the FERC license or the Fish Committee. Involvement by the Fish Committee will include:

- Review and approval of facility designs and annual work plans;
- Review and approval of Testing and Verification study designs and protocols;
- Review of Testing and Verification results against performance standards and other measures of success established in this Fish Passage Plan; and
- Making final determinations of whether:
 - o Testing and Verification results are sufficient to conclude that the applicable performance standards and other measures of success have been met,
 - o Additional testing and evaluation is required,
 - o Applicable performance standards and other measures of success cannot be met,
 - o Modifications should be made to the Testing and Verification protocols, or o Modifications to this Fish Passage Plan are appropriate.

As recommended by ODFW in its final 10(j) recommendations and conditions for continued operation of the Project, and as incorporated into the FERC License and the Settlement Agreement, PGE and CTWS will fund and implement a comprehensive fish passage plan that will facilitate methodical, step-by-step evaluations and decisions on fish passage while minimizing risks such as introducing diseases to the upper basin. The fish passage plan identifies times and mileposts by which the adaptive management approach to a new license will be implemented. The plan was developed in close consultation with the entities that are now represented on the Fish Committee. PGE and CTWS have agreed to begin implementation of the plan pursuant to a detailed schedule to be incorporated into the FERC license. Pursuant to the terms of the FERC License and the Settlement Agreement, PGE and CTWS will also implement a comprehensive suite of other measures designed to benefit aquatic resources affected by the Project.

PGE and CTWS shall undertake the following measures to promote restoration and enhancement of fishery resources:

- * PGE and CTWS shall develop, fund and implement a comprehensive upstream and downstream fish passage plan to the satisfaction of the Fish Committee and FERC as required by the Settlement Agreement. In addition to the fish passage plan, PGE and CTWS will implement an aquatic habitat restoration fund and a program to protect, mitigate, and enhance other aquatic resources affected by the Project.
- * PGE and CTWS shall implement the fish passage program according to the criteria, goals, and schedule prescribed in the proposed license conditions included in the Settlement Agreement.
- * If the experimental passage program does not work, PGE and CTWS commit to other mitigation actions pursuant to the terms of the proposed license conditions included in the Settlement Agreement.

* PGE and CTWS shall mitigate for water quality-related impacts in accordance with their 401 water quality certifications.

In addition PGE and CTWS shall implement the following mitigation measures:

Fall Flow Augmentation in Lower River for Fall Chinook: As provided in the FERC License and the Settlement Agreement, if project inflows fall below 3,000 cfs between September 16 and November 15, the certificate holders shall, after consultation with the Fish Committee regarding the amount of available water, rate of water release, and timing and duration of augmentation flows, release up to 200 cfs from storage in Lake Billy Chinook to maintain a daily release of 3,000 cfs. This augmentation flow is limited to a drawdown of 4 feet measured from the average Lake Billy Chinook water surface elevation recorded on September 15.

Long-Term Low Flow (LTLF) Trigger Provision

Within one year of license issuance, the Licensees shall file with the Commission (FERC) a plan to track indicators of predicted long-term low flow (LTLF) conditions in the lower Deschutes River throughout the license. The plan will provide that (i) an LTLF trigger or multiple LTLF triggers will be established, using the indicators, that signal predicted onset or realized onset of LTLF conditions in the river that are lower than historically observed at the US Geological Service Madras Gage; (ii) certain remedial actions will be initiated if an LTLF trigger is reached; (iii) these LTLF triggers will not be developed or implemented to address low flows of a non-long-term nature that may otherwise be addressed by the Fish Emergency Clause in the new license; and (iv) the LTLF trigger(s) will be reviewed and, if necessary, modified, at least every 10 years considering new information and changes in predictive capabilities. The Licensees shall develop the plan after consultation with the Fish Committee. Upon Commission (FERC) approval, the Licensees shall implement the plan.

If the LTLF trigger is reached, the Licensees shall consult with the Fish Committee, Oregon Department of Environmental Quality (ODEQ), and the Confederated Tribes of the Warm Springs Reservation Water Control Board (CTWS) WCB to identify any negative effects to aquatic resources and Federal Wild & Scenic River outstandingly remarkable values (ORVs) resulting from the lower river flows, to identify potential mitigation measures in the lower Deschutes River basin, and to determine if changes in Project operations should be implemented to ameliorate such effects. The Licensees shall also consult with the Oregon Department of Parks and Recreation and, as appropriate, the Terrestrial Resources Working Group, the Recreation Resources Working Group, and the Shoreline Management Working Group regarding potential impacts to ORVs, scenic waterway values, lake recreation, cultural/archaeological resources, shoreline erosion and riparian habitat that may result from potential changes in project operations.

If changes in Project operations are identified to mitigate any negative effects to aquatic resources and ORVs, the Licensees shall, in consultation with the agencies identified in the above paragraph, prepare and file with FERC and the Department a plan to implement such changes. The Department will process an amendment to the certificate

according to OAR 690-053. Upon Commission (FERC) approval, the Licensees shall implement the plan.

As part of its mitigation effort for wildlife resources, PGE and CTWS will establish a Terrestrial Resources Working Group. ODFW will be a member of this working group. Pursuant to the FERC License and the Settlement Agreement the Applicants shall develop a Terrestrial Resources Management Plan in consultation and agreement with the Working Group. The plan will include measures for

- Riparian and wetland restoration and protection strategy,
- Vegetation management strategy,
- Exotic and invasive vegetation management strategy,
- Comprehensive bald eagle management strategy,
- Raptor protection strategy,
- Threatened, endangered, and sensitive species and habitats of special concern protection strategy,
- Wildlife monitoring and control strategy, and
- Pelton Fish Ladder wildlife protection strategy.

PGE has purchased deer wintering range adjacent to the Project and will implement other measures to promote wildlife. The FJAA contains a good description of the wildlife resources in the Project area and the FERC License and the Settlement Agreement impose the obligation to implement a comprehensive package of mitigation measures aimed at promoting restoration of wildlife.

Finding: *PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ Sec. 401 water quality certification. In so doing, the Project will comply with the fish, wildlife, and botanical resource public interest standards contained in ORS 543A.025(2)(a) and (f) and ORS 543A.120(1).*

- b) Consistency of conditions with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for protection, mitigation and enhancement of fish and wildlife resources of the region.

Finding: The proposal is consistent with the conditions in Section 12 of the Northwest Power Planning Council's 1995 Columbia River Basin Fish and Wildlife Program. See Letter to John Esler, Portland General Electric Project Manager for the Pelton Round Butte Hydroelectric Project, from Peter J. Paquet, Manager of Wildlife and Resident Fish for the Northwest Power Planning Council, dated November 8, 1999.

- c) Compliance with water quality standards

The operation of the Project has several negative impacts on water quality in Lake Billy Chinook and the lower Deschutes River, including increased temperature, low dissolved oxygen levels, elevated pH levels, and nuisance conditions associated with algae growth.

Water temperature has profound effects on organisms that live in the water, particularly salmon, bull trout, steelhead and some amphibians. The impoundment of water behind the dams provides an environment that can result in elevated temperatures in reservoir surface waters. In addition, water discharged from the Project into the lower river is cooler in the spring and early summer, and warmer in late summer through late fall, than would be the case if Project impoundments did not exist.

Adequate concentrations of dissolved oxygen are vital to fish, invertebrates, and other aquatic life. Dissolved oxygen standards are at times not met during the summer in Lake Billy Chinook and Lake Simtustus within the hypolimnions where decaying algae exert a significant oxygen demand. As a result, the lower river does not always meet the dissolved oxygen standard because water released from the Project is withdrawn from depth, tapping the waters of lower dissolved oxygen concentration. The lower Deschutes River below the Reregulating Dam is on the Clean Water Act 303(d) list of water quality impaired water bodies for temperature and dissolved oxygen.

Fish and other aquatic organisms have evolved under specific pH conditions. If pH levels are outside of tolerable ranges, the health of these organisms can decline. Most streams in Oregon have pH values ranging between 6.5 and 8.5 and the Deschutes Basin standard is consistent with this range. Within the reservoirs, pH near the surface commonly exceeds 8.5. Lake Billy Chinook and Lake Simtustus are on the Clean Water Act 303(d) list of water quality impaired water bodies for pH.

Nuisance conditions associated with increased algae production can cause offensive tastes and odors, and be visually displeasing. Dissolved oxygen and pH imbalances are also associated with these nuisance conditions. Certain types of wastes in the water, along with certain ambient conditions can stimulate nuisance algal growths. Taste and odor problems can adversely affect public and private domestic water supplies, industrial water supply, livestock watering, fishing, boating, and water contact recreation.

Lakes Billy Chinook and Simtustus exceed the concentration-of-concern trigger value of the state's nuisance phytoplankton growth standard during the summer in part because of the artificial impoundments created by the Project dams. In addition, there is concern about the potential for total dissolved gas supersaturation, spills of oil or other hazardous substances, bacteria, and increased turbidity.

Supersaturation of atmospheric gases in water may cause crippling or lethal gas bubbles to form in the tissues of fish, which can be fatal. Such conditions could be present during startup and shutdown modes at hydroelectric projects, or with the passage of water over spillways. While the Project does not currently have a problem with supersaturation of atmospheric gases, the Project could be releasing more water over the spillways in the future in order to meet dissolved oxygen water quality concerns.

Spills of toxic substances can have negative effects on fish and aquatic life, as well as wildlife and humans. While no toxic substances were found to exceed water quality standards, there is concern for potential spills of oil or other hazardous substances to the reservoirs or the lower river through the Projects' use of these substances in their everyday operations.

High levels of turbidity can be harmful to aquatic life. For example, excess turbidity may lead to fewer photosynthetic organisms available to serve as food sources for many invertebrates. This in turn may lead to a decline in invertebrate numbers which may have a resulting adverse affect on fish populations. Seasonal drawdowns in Lake Billy Chinook in combination with wave action may contribute to localized areas of higher turbidity.

Lastly, with regard to the biologic criteria and deleterious conditions standard, the Project has had a deleterious affect on fish or other aquatic life. There is generally a decline for populations of certain fish species and their habitats. The Project has blocked fish passage and the operation of the project itself results in injury and mortality of fish. Fish and aquatic organism habitat has been inundated by the impoundments, reductions in flow may lead to the dewatering of habitat, and the dams block the movement of large wood and sediment that is important for fish habitat.

These water quality issues can be addressed through proper conditions, which the Oregon Department of Environmental Quality and the CTWS WCB have identified and required through the § 401 water quality certificates for the Project. The § 401 conditions are as follows:

- * Construct and operate the Selective Water Withdrawal (SWW) facility described in the joint applicants' § 401 application which will provide the potential to significantly improve the quality of waters impounded by all three dams and discharged into the lower river. The SWW will address temperature, dissolved oxygen, pH levels, nuisance phytoplankton growth, aesthetic conditions, and the biologic criteria and deleterious conditions standards.

- * Revise and implement the Water Quality Management and Monitoring Plan (WQMMP).

- * Modify the WQMMP as necessary to meet water quality standards.

- * Monitor water quality to address the potential for increased total dissolved gas levels, and turbidity, as well as other water quality concerns.

- * Implement erosion control measures to address the potential for high turbidity.

- * Maintain and implement current Spill Prevention, Control, and Countermeasure (SPCC) plans for oil and hazardous materials to reduce the potential for and any adverse impact on water quality from a spill of oil or other hazardous substance.

- * Maintain stable reservoir levels and minimum flows, provisions for fish passage, placement of large wood in lower river, and habitat enhancement and restoration to reduce the impacts of the Project on fish and wildlife.

Finding: PGE, CTWS, and ODEQ have executed a 401 adaptive management agreement that is intended to provide additional assurance that the Project will meet water quality standards.

The Project as operated in compliance with ODEQ's and the CTWS WCB's § 401 certificates, will be in compliance with water quality standards contained in ORS 543A.025(2)(c) and ORS 543A.120(1).

d) Public health and safety/seismic and geologic hazards

Potential public health and safety impacts as a result of the Project include flooding caused by major discharge from any of the Projects dams or spillways due to critical weather conditions, or dam failure, or breaching due to seismic activities. The Project can also experience slides on the Jordan Road area, which can block vehicle access to Cove Palisades State Park.

Other safety issues arise from the Project's public use given that the Project is a popular destination for overnight camping, fishing, and numerous other recreation activities. The Settlement Agreement includes a Draft Law Enforcement Service Agreement between the Applicants and Jefferson County. The agreement provides for one land based and two marine patrol officers to maintain public safety within the Project area. The Applicants also have agreed to a Road Maintenance Agreement with the County that includes responsibility for any future slides on Jordan Road.

The Project is inspected and reviewed under the FERC dam safety program with coordination with the Department's Dam Safety Section. A Part 12 Inspection Report is filed by an independent consultant at least every 5 years with FERC.

Finding: *PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification. In so doing, the Project will comply with the public health, safety, seismic, and geologic public interest standards contained in ORS 543A.025(2)(d) and ORS 543A.120(1).*

e) Wetland resources

Approximately 21 acres of wetland habitat has been inundated by Lake Billy Chinook and Lake Simtustus.

The applicants' proposed wetland mitigation measures are described briefly as follows:

- * Acquire existing off-site wetlands to replace inundated wetlands.
- * Enlarge Pelton Waterfowl Pond and reduce the size of the existing island to increase open water area.
- * Sink and secure clustered juniper trees or other woody debris at the head of the Metolius River Arm to enhance the production of invertebrates as forage for waterfowl and other aquatic species.
- * Plant hardstem bulrush and/or common cattail sites in the Project reservoirs to increase quantity and distribution of aquatic emergent vegetation available to wildlife.
- * Continue existing off-site wetland improvements, including barriers installation at Fly Lake to eliminate off-road-vehicle damage to the site, and to prevent livestock grazing and watering from the wetlands.

* Construct “Mini-wetland” at Potter Spring, maintain road closure to Potter Springs for motorized vehicle use, and plant willows or other appropriate plant species at Burnt Snag Pond.

* Continue program of riparian habitat protection, restoration, and maintenance along portions of Trout Creek, Fly Creek, Campbell Creek, and Juniper Canyon.

Finding: PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification. In so doing, the Project will comply with the wetland resources public interest standards contained in ORS 543A.025(2)(e) and ORS 543A.120(1).

f) Recreation, Scenic and Aesthetic Values

Nearly 700,000 visitors enjoy the lands and waters in and around the Project each year. During the peak summer season, nearly 5,000 visitors come into the area each day. These high levels of recreation use can cause enforcement problems, user conflicts and resource impacts. Impacts include vegetation loss, mineral soil exposure, shoreline erosion, tree damage, sanitation and litter impacts, and other impacts by users of the campgrounds and boat launches.

The Project has continuing impacts on the scenic and aesthetic resources in the area as a result of the developments and structures associated with the Project. These structures include the dams as well as related buildings and facilities, such as powerhouses, switchyards, transmission lines, maintenance and office buildings, access roads, bridges, fisheries-related facilities. Other developments in the Project area affecting scenic and aesthetic values include campgrounds, RV resorts, day-use areas, marinas and boat docks, log booms, and shoreline homes that have been developed around Lake Simtustus and Lake Billy Chinook.

Pursuant to the FERC License and the Settlement Agreement, PGE and CTWS will implement a comprehensive range of recreation mitigation measures. These measures address the following areas:

- Land and water resource protection issues;
- Facility needs, design and placement;
- Visitor safety, education and use levels;
- Management efficiencies through increased law enforcement, improved communications, and enhanced coordination and cooperation among recreation providers; and
- The public's desire for a diversity of recreation activities in a wide spectrum of recreation settings.

As required by the FERC License and the Settlement Agreement, PGE and CTWS will form a Recreation Resources Working Group and a Shoreline Management Working Group to develop and coordinate the Recreation Resources Implementation Plan, the Emergency Communications Plan, the Integrated Interpretation and Education Plan, the Shoreline Management Plan, the Shoreline Erosion Plan, and the Aesthetic Resources Protection Plan for the Project. PGE and CTWS will also:

- consult with the landowners/recreation providers, and ODFW, on the design and siting of new recreation facilities within the Project; and
- utilize the Pelton Round Butte Comprehensive Management Plan (Recreation/Land Use/Aesthetics Component) March 1999, as guidance for recreation development and management in the Project.

Finding: *PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification. In so doing, the Project will comply with the recreation resources public interest standards contained in ORS 543A.025(2)(f) and ORS 543A.120(1).*

g) Cultural, historic and archaeological resources:

In the area of potential effect, which includes places where ground disturbance or other forms of degradation or loss may occur as a result of the Project, 104 prehistoric sites, 30 historical sites, 140 historical linear resources (roads, fences, etc.), 150 prehistoric and 11 historical isolates were identified. These historic, cultural and archeological resources are subject to Project impacts most frequently in connection with human impacts and reservoir shoreline erosion. They are also subject to Project impacts through processes relating to road use, maintenance and erosion, campground use and development, habitat enhancements, fish ladder operation, reservoir inundation, transmission line maintenance and vehicular and pedestrian traffic.

PGE and CTWS have consulted with the State Historic Preservation Office (SHPO), which manages the state's cultural and historic resources, about Project impacts. PGE and CTWS will implement the requirements of the Cultural Resources Management Plan included in the Settlement Agreement.

Finding: *PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification. In so doing, the Project will comply with the cultural, historic, and archaeological resources public interest standards contained in ORS 543A.025(2)(f) and ORS 543A.120(1).*

Ultimate Finding: *The Department finds that the Projects meets the standards of 543A.025(2) and ORS 543A.120(1).*

ORS 543A.120(2)

Review of the project under standards of 543A.120(2) follows.

a) Confirmation of preliminary determinations The HART has participated in provisional and second reviews of the draft and final license applications, and in the settlement agreement. Recommendations were made on the Joint License Application and in the settlement process to confirm that the Project with implementation of measures to prevent, mitigate or enhance project impacts to natural resources would satisfy the standards for hydroelectric reauthorization.

b) Basin program: Hydroelectric development is an allowed use on the Deschutes River between river mile 100 and river mile 120, the Project area. (ORS 690-505-0050(1)(b))

Compatibility of proposed use with applicable land use plans: Jefferson, Wasco and Marion County Comprehensive Plans and Implementing Zoning Ordinances, Ochoco National Forest and Crooked River National Grasslands Management Plan, Cove Palisades State Park Master Plan, Two Rivers Resource Management Plan, The Deschutes National Forest Management Plan and President's Forest Plan, Warm Springs Integrated Resource Management Plans, Wild and Scenic Plans, Mount Hood National Forest Resource Management Plan, Willamette National Forest Land and Resource Management Plan, are applicable land use plans in effect within the Project boundary or in the vicinity of the Project. The Project is allowed either unconditionally or conditionally under these land use management plans. Therefore, the Department finds that the Project is compatible with applicable land use plans.

c) Water Availability: See findings under 543A.025 (1)(d) above.

d) Assessment of whether proposed use will result in injury to existing water rights.

Injury is defined as a net loss of water available to downstream water rights. The Project will operate to match outflows below the reregulating dam to inflows above Round Butte reservoir. Minimum flows below the Project will be enhanced and protected under the new Settlement Agreement. Water will be returned to the Deschutes River immediately below the Project, so the water shall continue to be available to all downstream users. The Project will remain subordinate to all beneficial consumptive uses. Operation of the Project will not result in injury to other water rights.

e) Assessment of whether proposed use is detrimental to the public interest

Ultimate Finding: PGE and CTWS shall comply with all protection, mitigation and enhancement measures contained in the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification. In so doing, the Project will not be detrimental to the public interest standards contained in ORS 543A.025 and ORS 543A.120(2)(e).

Conclusions of Law: Taking into account the following factors of ORS 543A.025(1):

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public;

(b) The maximum economic development of the waters involved;

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control;

(d) The amount of waters available for appropriation for beneficial use;

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved;

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights and;

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534;

and applying the minimum standards of ORS 543A.025(2):

(a)(A) The mitigation measures described above for adverse impacts that occur due to new construction or operational changes to the project; and for ongoing adverse impacts existing at the time of reauthorization;

(a)(B) The mitigation measures described above to promote restoration and rehabilitation of fish and wildlife resources to support goals expressed in statute or in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission;

(b) The mitigation measures described above are consistent with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for the protection, mitigation and enhancement of the fish and wildlife resources of the region.

(c) The mitigation measures described above to assure compliance with water quality standards adopted by the Environmental Quality Commission;

(d) The mitigation measures described above to address public health and safety, and practical protection from vulnerability to seismic and geologic hazards;

(e) The mitigation measures for the protection, maintenance and enhancement of wetland resources;

(f) The mitigation measures to protect maintain and enhance other resources in the project vicinity including recreational opportunities, scenic and aesthetic values, historic, cultural and archaeological sites, and botanical resources including resources lost or created by construction and operation of the project;

the project, as conditioned by the Settlement Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification will not impair or be detrimental to the public interest.

In addition, the Project meets the standards of ORS 543A.120(2) concerning

(a) the Deschutes Basin Program

(b) applicable land use plans,

(c) water availability for the proposed use,

(d) no injury will result to existing water rights, and

(e) the use will not impair or be detrimental to the public interest as provided in ORS 543A.025.

The project is well adapted to the development and utilization of the water power involved.

Therefore subject to the protection, mitigation and enhancement measures contained in the Agreement, the FERC License, and the ODEQ's Sec. 401 water quality certification, the

Department reauthorizes the Pelton/Round Butte Hydroelectric Project as shown in the attached certificate of water right.

DATED: *November 8, 2006*

A handwritten signature in cursive script, appearing to read "Dwight French", is written over a horizontal line.

Dwight French, Administrator
Water Rights and Adjudications Division
Oregon Water Resources Department

For

Phillip C. Ward, Director
Oregon Water Resources Department

Attachment 1 Certificate of Water Right

APPEALS PROCESS: ORS 543A.130(6)

The applicant may request a contested case hearing on this Final Order that shall be limited to issues based on the modifications to the proposed final order. The applicant or a protestant may appeal the provisions of this final order in the manner established in ORS chapter 183 for appeal of orders other than contested cases.

PROTESTS TO THIS FINAL ORDER MUST BE RECEIVED BY THE OREGON WATER RESOURCES DEPARTMENT, TO THE ATTENTION OF MARY GRAINEY AT 725 SUMMER ST. NE, SUITE A, SALEM, OR 97301-1271, PRIOR TO 5:00 P.M. ON NOVEMBER 22, 2006. (14 DAYS)

A protest shall be in writing and shall include (ORS 543A.120):

1. The name, address, and telephone number of the protestant;
2. A description of the protestant's interest in the final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
3. A detailed description of how the action proposed in the final order would impair or be detrimental to the protestant's interest;
4. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
5. Any citation of legal authority supporting the protest, if known; and
6. For persons other than the applicant, the protest fee required under ORS 536.050(1)(j).

Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the OWRD an opportunity to respond to the issue precludes judicial review based on that issue.