

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of City of Astoria's)	FINAL ORDER APPROVING
Application to use its existing water right for)	PC 898
hydroelectric purposes, Clatsop County)	

Authority:

ORS 543.765 (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may apply to the Oregon Water Resources Department (Department) for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right. ORS 543.765 (3) (b) The Department may issue a final order and certificate to use water for hydroelectric purposes upon making a final determination that the proposed hydroelectric use does not impair, or is not detrimental to, the public interest in a manner provided in ORS 537.170 (8).

Application History:

The City of Astoria's (City) application for use of its existing water right for hydroelectric purposes was received by the Department on August 12, 2013. Upon receipt of the application the Department assigned an application number of PC 898. The project is also known by its Federal Energy Regulatory Commission docket number CD13-6. On September 10, 2013, the Department placed the application on its weekly public notice for a 30 day comment period, closing on October 10, 2013, and provided notice to the Oregon Department of Fish & Wildlife (ODFW) and Oregon Department of Environmental Quality (ODEQ). No comments on the application were received.

Department staff attended a site visit on September 28, 2011. The site visit included Bear Creek Reservoir Dam, the tailrace and the site location where the turbine and generator will be housed.

On August 27, 2013, the City notified the Department of their willingness and desire to contribute to the fish passage fund established by SB 837 (Oregon Laws 2013, Chapter 674) in lieu of installing fish passage at Bear Creek dam.

On November 21, 2013, the Federal Energy Regulatory Commission (FERC) issued a determination that the Bear Creek Watershed Hydroelectric Project (Project) meets qualifying conduit hydropower facility criteria, and therefore is not required to be licensed under Part I of the FPA.

Project Description:

The City has an existing water right Certificate 82236 for use of water from Bear Creek and Bear Creek Reservoir, tributary to the Columbia River, for municipal uses. This application would use water under this certificated water right that is already diverted to the City's water treatment plant near Main Lake, about 10 miles from the Astoria city limits. No additional water shall be diverted for hydroelectric purposes.

The project will be constructed within the City's existing municipal water system. After leaving the water treatment plant, the water is discharged into a 21 inch diameter steel pipe at the top of the Bear Creek Dam and descends approximately 100 feet in elevation to where a hydroelectric turbine will be housed. The turbine will use up to 6.0 cubic feet per second (cfs) of water for hydroelectric generation. This will provide approximately 68.2 theoretical horsepower (thp) of capacity. After the water passes through the turbine the water it will continue to the City of Astoria's existing water supply system for distribution for municipal use. The hydroelectric works, located on the downstream face of the dam include: a vault to house the turbine, an alternator, a power conversion system, and other accessory equipment.

Findings of Fact:

The Department has reviewed the Project under standards of 543.765 (3)(b) for determining that the proposed use does not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

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

Water used for this Project has already been allocated for municipal purposes under water right Certificate 82236. No additional water shall be allocated for hydroelectric purposes. Water discharges from the water treatment plant into a 21 inch diameter pipe at the top of Bear Creek Dam and descends about 100 feet in elevation to where a hydroelectric turbine will be housed. After passing through the turbine the water will discharge into the City's existing water supply system. No loss of water is expected from the Project.

- b) Maximum economic development of the water

This Project allows for water to be used for multi-purposes including municipal use and hydroelectric power generation. The economic benefits of the water are increased by this Project.

- c) Control of water for beneficial purposes

The Project provides for the control of water for beneficial purposes utilizing the existing water treatment plant, dam, penstocks, reservoirs, pipelines, and diversion facilities. No changes are expected to any of these existing facilities.

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

Annual water use reporting records since 1989 on file with the Department demonstrate that up to 6.0 cfs of water has been available for diversion under water right Certificate 82236. No additional water will be diverted for this Project. A maximum of 6.0 cfs is expected to be available for the Project.

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

The Project's operation increases the economic benefits of the water by providing a new source of hydroelectric power and revenues while maintaining municipal use benefits. It prevents wasteful, uneconomic, impracticable or unreasonable uses of water

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

Since the Project will not divert any additional water than is allowed under the existing municipal use water right, all other vested and inchoate rights are protected and will not be affected by the issuance of this water right.

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 North Coast Basin Program (OAR 690-501). The classifications apply to new allocations of water and are intended to protect existing rights, established duties of water, and relative priorities of rights. Because this Project does not require any new allocation of water and is allowed to be added to an existing use under ORS 543.765, the use is consistent with the existing basin Program.

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.

The Department finds that the project will not impair or be detrimental to the public interest based on the standards of 537.170(8).

Conclusions of Law:

Taking into account the following factors of ORS 537.170(8):

(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.

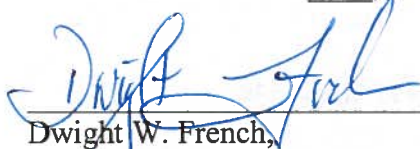
(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

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

The project is well adapted to the development and utilization of the water power involved. The proposed hydroelectric use does not impair, or is not detrimental to, the public interest in a manner provided in ORS 537.170 (8).

The Department shall issue the attached certificate.

DATED: December 11, 2013



Dwight W. French,
Administrator Water Right Services Division *for*
Phillip C. Ward, Director
Oregon Water Resources Department

Attachment 1 Certificate

STATE OF OREGON
COUNTY OF CLATSOP
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

CITY OF ASTORIA
1095 DUANE STREET
ASTORIA, OR 97103

confirms the right to use up to 6.0 CUBIC FEET PER SECOND (cfs) of the waters of BEAR CREEK and BEAR CREEK RESERVOIR for HYDROELECTRIC PRODUCTION of 68.2 THEORETICAL HORSEPOWER (THP).

The use of water for hydroelectric purposes shall be in conjunction with water used under the right of the City of Astoria for municipal purposes, as evidenced by Certificate 82236. Use of water shall be limited to periods when the water user's water right under Certificate 82236 is put to beneficial use without waste. The amount of water used shall not be greater than the quantity of water diverted to satisfy the authorized specific use under Certificate 82236. The use of water shall be limited by rate, duty, season and any other limitations of Certificate 82236. ORS 543.765(5)(b) and (c).

The applicant shall measure and report the quantity of water diverted. ORS 543.765(5)(d).

This right was filed under application PC 898.

The point of diversion is located: 1160 FEET NORTH AND 2340 FEET WEST FROM SE CORNER OF SECTION 2, being within the SW¹/₄ SE¹/₄, SECTION 2, TOWNSHIP 7 NORTH, RANGE 8 WEST, W.M.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and 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 was filed, the petition shall be deemed denied. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate within three months after issuance of the certificate.

This statement of judicial review rights does not create a right to judicial review of this order if judicial review is otherwise precluded by law.

The authorized place of use is located: Tax Lot 200, SW¼ SE¼, SECTION 2, TOWNSHIP 7 NORTH, RANGE 8 WEST, W.M.

PROJECT DESCRIPTION

Water diverted from the Bear Creek Watershed travels to the water treatment plant. After treatment, the water is discharged into a 21 inch diameter steel pipe at the top of the Bear Creek Dam and descends approximately 100 feet in elevation to where a hydroelectric turbine is housed. Having passed through the turbine the water continues to the City of Astoria for distribution. The hydroelectric works, located on the downstream face of the dam include: a vault to house the turbine, an alternator, a power conversion system, and other accessory equipment.

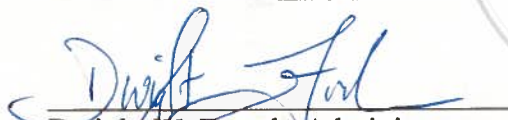
WATER RIGHT CONDITIONS

Upon review of the application, the Oregon Water Resources Department (Department or OWRD) finds that the Bear Creek Watershed Hydroelectric Project (Project), with the conditions set forth below is consistent with the public interest. The Project is well adapted to the development and utilization of the water power involved.

1. The water right holder shall comply with all statutes and rules applicable to the Project.
2. The water right holder shall construct and build the Project according to the maps, plans and specifications filed with the application within five years of issuance of this water right certificate or by any lawful extension thereof. ORS 543.765 (10)
3. The water right holder shall construct, operate and maintain all fish screens, bypass devices and fish passages as required by the Oregon Department of Fish and Wildlife (ODFW). ORS 543.765(5)(a). The City has chosen to pay the annual Fish Passage Restoration fee identified in Oregon Laws 2013, Chapter 674 in lieu of providing fish passage.
4. The water right holder shall allow the OWRD Director and authorized agents and employees of the Oregon Department of Environmental Quality (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.
5. This certificate shall be invalidated upon a change in the point of diversion authorized under Certificate 82236. ORS 543.765(5)(g).
6. The Oregon Water Resources Department shall conduct a review of this certificate upon approval of any changes or adjustments made to the water user's existing water right to determine if a revised certificate should be issued. ORS 543.765(5) (h).
7. The right to use water under this certificate is invalidated if the Federal Energy Regulatory Commission exemption related to the certificate is canceled or invalidated. ORS 543.765 (i).

8. This certificate does not have its own priority date. The Department shall not regulate for or against this certificate. This certificate does not grant a right to divert water for hydroelectric purposes other than in conjunction with the water right as used under Certificate 82236. ORS 543.765 (6) and (7).
9. This certificate is subject to review by the Department 50 years after the date of issuance pursuant to ORS 543.765(9).
10. The water right holder shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD under ORS 543.078. This amount shall be due by the date specified on the invoice. ORS 543.765 (11) and (12).
11. The water right holder shall pay, upon receiving an invoice from OWRD, an annual Fish Passage Restoration fee to OWRD under Oregon Laws 2013, Chapter 674. This amount shall be due by the date specified on the invoice. ORS 543.765 (11) and (12). Pursuant to Oregon Laws 2013, Chapter 674, this annual Fish Passage Restoration fee may be terminated after the project commences operation if the project provides fish passages, or there is an agreement between the water right holder and ODFW providing for fish passages associated with the project, or a waiver or exemption has been issued under ORS 509.585 for the project.
12. If at any time, unanticipated circumstances or emergency situations arise in which fish or wildlife are being killed, harmed or endangered by any of the project facilities the City of Astoria shall immediately take appropriate action to prevent further loss. The City of Astoria shall notify the nearest ODFW office within 24 hours and shall comply with measures required by ODFW to prevent additional injury or mortality.
13. Failure to comply with any of the provisions of this water right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the water right.

Issued December 11, 2013


Dwight W. French, Administrator
Water Right Services Division, for
Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates numbered 89004

