

BEFORE THE WATER POLICY REVIEW BOARD

OF THE

STATE OF OREGON

In the Matter of the Referral of )  
Permit Application 63249 )  
involving use of water from )  
the Crooked River for )  
Hydroelectric Power )  
)

FINDINGS OF FACT,  
CONCLUSION AND  
ORDER

Deschutes Valley Water District has submitted Permit Application 63249 for a hydroelectric project exceeding 100 theoretical horsepower.

The permit application was referred to the Water Policy Review Board by the Director of the Water Resources Department under the provisions of ORS 537.170.

A hearing on the matter was held in Madras, Oregon, on July 29, 1982. As a result of said hearing, the Water Policy Review Board makes the following:

FINDINGS OF FACT

1. Permit Application 63249 for a hydroelectric project on the Crooked River was submitted by the Deschutes Valley Water District.
2. The proposed project will use up to 1,500 cfs of water to generate 4.5 megawatts of power.
3. The proposed project will divert water from the Crooked River at about river mile 7.2, upstream from Opal Springs.
4. The Deschutes Valley Water District has water rights for 28.6 cfs from Opal Springs.
5. The Deschutes Valley Water District supplies water from Opal Springs to the Culver area for domestic use.
6. Opal Springs is the district's sole source of water.
7. The district has owned and operated the Opal Springs pumping plant and related facilities since 1958.
8. The district has water rights for 269.5 cfs from the Crooked River for non-electric power production.

9. The Opal Springs pumping plant diverts water from the Crooked River to operate hydraulic pumps which lift spring water out of the Crooked River Canyon.
10. The proposed project will modify and add to the existing pumping facilities in order to generate hydroelectric power.
11. The district has negotiated but not signed an agreement with PP&L for sale of the power.
12. The district owns most of the project lands.
13. The diversion works are located on lands managed by the Bureau of Land Management under a FERC power site withdrawal.
14. Receipt of a FERC license would authorize the district to use the diversion for a hydroelectric project.
15. The district has applied for a FERC license.
16. The district lands are zoned for range use and exclusive farm use.
17. A hydroelectric facility is allowed as a conditional use under existing zoning for the area.
18. The district has applied for a conditional use permit from the Jefferson County Planning Commission.
19. Prineville and Ochoco Reservoirs, upstream from the proposed project, have a minor affect on flows in the Crooked River at the project site.
20. River flows at the project site are heavily influenced by springs which discharge into the river upstream from the proposed project.
21. Spring flow into the river is nearly constant in volume, temperature and quality year round.
22. U.S.G.S. gaging station #14087400 is located one half mile below the project site.
23. Flow records for gage #14087400 show an average annual flow of 1,555 cfs and maximum and minimum flows of 6,660 cfs and 912 cfs, respectively.
24. The project reach has been classified by the Department of Fish and Wildlife as a wild trout stream.
25. The Crooked River is a tributary of the Deschutes River upstream from Pelton and Round Butte Dams.
26. Anadromous fish are excluded from the Crooked River by Pelton and Round Butte Dams on the Deschutes River.

27. The district has signed an agreement with the Department of Fish and Wildlife to maintain 50 cfs in the Crooked River below the project diversion dam.
28. The proposed project is a run-of-the-river project.
29. About 1,500 feet of the Crooked River will be affected by the proposed project.
30. There is no development in the project vicinity other than the facilities of the Deschutes Valley Water District.
31. There are no water rights in the area other than the district's.
32. The proposed project is estimated to cost \$12.5 million.
33. The proposed project will increase the district water pumping capability, generate power and produce revenue to offset district expenses.
34. Impacts on wildlife in the area are expected to be minimal.
35. The primary recreational activities in the project area are fishing and rafting.
36. Impacts on recreation in the area are expected to be minimal.
37. The district has applied for a fill permit from the U.S. Corps of Engineers.
38. The district has applied for certification of the project from the Department of Environmental Quality.
39. The Crooked River Canyon in the project vicinity is more than 900 feet deep.
40. The proposed project would be visible only from the canyon rim or from within the canyon.
41. The proposed project will have no known adverse affects on aesthetic, historic or archeological values.
42. The project site is a short distance upstream from Lake Billy Chinook.
40. Under the Deschutes-Lower Crooked River Basin program power development is a classified use of water.

#### OFFICIAL NOTICE

The Water Policy Review Board has taken official notice of the records of the Water Resources Department pertaining to water use permits on the Crooked River in the project vicinity.

## ULTIMATE FINDINGS

ORS 537.170 (3a) through (3g) directs the Water Policy Review Board in its determination of impacts on the public interest from hydroelectric projects.

1. The proposed project represents a non-consumptive use of water which will affect about 1,500 feet of the Crooked River. The applicant owns essentially all the land on either side of the river through the project reach. Streamflow and water quality above and below the project area will not be affected. Development potential above or below the project area will not be affected. Recreational use in the project area will continue. There are no known water rights, other than the applicant's, in the project area. Water rights above and below the project area will not be affected.
2. The proposed project represents a greater economic development of the waters involved than now exists. Immediate economic benefits of the project are twofold; 1) revenue from the sale of power and 2) capability to meet future demands for domestic water.
3. The proposed project represents greater control over the water than now exists for the purpose of generating hydroelectric power. The proposed project will have no apparent effects on drainage, sanitation or flood control.
4. Streamflow records indicate sufficient water for the proposed use. There are no known water rights in the project vicinity which might affect or be affected by the proposed project.
5. The proposed project will enlarge upon an existing beneficial economic, practicable and reasonable use of water and generate electricity in the process.
6. There is no evidence that the proposed project will affect or be affected by any vested or inchoate water rights on the Crooked River.
7. Power development is an allowed use of the waters of the Deschutes-Lower Crooked River Basin. No special restrictions or limitations on hydroelectric power development apply to the Crooked River in the proposed project reach.

## CONCLUSION

Unique characteristics of the project location, available streamflow and existing facilities appear to be suited to the proposed use. The proposed project does not appear to impair or be detrimental to the public interest.


ORDER

It is hereby ordered that Permit Application 63249 for a hydroelectric project on the Crooked River be and hereby is approved and that the agreement between the Deschutes Valley Water District and the Oregon Department of Fish and Wildlife for fish protection dated July 27, 1982, be attached and made a part of this Order.

It is further ordered that the application be returned to the Director of the Water Resources Department for such further proceedings as may be required by statute.

Dated September 17, 1982

WATER POLICY REVIEW BOARD

  
James E. Sexson, Director  
WATER RESOURCES DEPARTMENT

APPEALS AND JUDICIAL REVIEW

ORS 536.560 provides any order, rule or regulation of the Water Policy Review Board may be appealed to the circuit court of the county in which the property affected by such order, rule or regulation or any part of such property is situated.

ORS 183.482(1) provides that judicial review of contested cases is conferred upon the Court of Appeals. Judicial review may be obtained by filling out a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482. Until this conflict is judicially resolved, and an appeal is desired, it may be advisable to commence appeal or review procedures in the circuit court and Court of Appeals simultaneously.

AGREEMENT

Opal Springs Hydroelectric Project

Deschutes Valley Water District, Developer

This agreement is entered into this 27 day of July, 1982  
between the State of Oregon, by and through its DEPARTMENT OF FISH AND WILDLIFE,  
hereinafter called the "Department," and Deschutes Valley Water District; Route 1,  
Box 117, Madras, Oregon

\_\_\_\_\_, hereinafter called the "Developer."

RECITALS

WHEREAS the Department has the statutory responsibility and authority to  
protect and enhance anadromous and game fish in the waters of the State of  
Oregon; and

WHEREAS the Developer has proposed to divert the waters of Crooked River  
\_\_\_\_\_, a tributary to Deschutes River  
\_\_\_\_\_, \_\_\_\_\_, Oregon, for purposes of  
hydroelectric generation, said project more particularly described in the  
Developer's Application to Appropriate Water for Hydroelectric Generation  
(63249, Water Resources Department), which is by this reference incorporated  
herein;

WHEREAS the Department and Developer recognize the need to protect the fish life of Crooked River, including populations of Rainbow Trout, Dolly Varden Trout, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, against possible adverse effects of the project; and

WHEREAS, in accordance with ORS 183.415(5), the parties agree that it is in their mutual best interest to informally dispose of the issues which are the subject of this agreement rather than to suffer the time and expense involved in contesting the matter in an administrative proceeding;

NOW, THEREFORE, in light of the above and in consideration of the covenants contained herein, the parties hereto mutually agree as follows:

A. Obligations of the Developer.

Within the first year after construction of the project, the Developer will evaluate total annual fish mortality caused by power generation. The study plan for this evaluation must be approved in advance by the Department. The Developer will replace on an annual basis the amount of fish lost through power generation as determined by the evaluation. With approval of the Department, the Developer may in lieu of replacement, provide and maintain such habitat enhancement features in Crooked River that the Department agrees would adequately compensate for any fish mortality caused by the project.

The Developer agrees to maintain a flow of water in the natural channel of Crooked River as specified below from the point of diversion to the point of project discharge, in order to maintain upstream and downstream fish passage, reproduction, growth, and maintenance of fish populations using the section of Crooked River affected by the project. The specified flows shall be measured at or near the base of the dam by a permanent gage established and maintained by the Developer. Any flow from springs between the gage and discharge of the powerhouse shall be maintained in the natural channel of Crooked to augment the flow specified below.

Flow to be Left in Natural Channel

<u>Period</u>	<u>Cubic Feet Per Second</u>
Throughout the Year	50 cfs (Developed from any source above the gage described above. The Dam shall be maintained with a device to regulate spill to achieve the specified flow.)

B. Obligations of the Department.

1. The Department agrees to accept the Developer's performance of this agreement as providing adequate protection of the public's interest in the use of the waters of the affected section of Crooked River for fish



and wildlife purposes against possible adverse effects of the project; and therefore further agrees not to protest the issuance of a hydroelectric license for the project by the Oregon Water Resources Department.

C. This agreement shall remain in effect as long as the said project exists within the diversion from Crooked River and it shall be binding upon and inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate through their duly authorized officials as of the first date written.

DEVELOPER

By *Shawn - Charman*

Date \_\_\_\_\_

STATE OF OREGON

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires \_\_\_\_\_

State of Oregon  
DEPARTMENT OF FISH AND WILDLIFE

By *M L Montgomery*

Date *7/27/82*

STATE OF OREGON

County of Multnomah

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the Oregon Department of Fish and Wildlife.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires \_\_\_\_\_