

The Department determined that the application included all the elements of ORS 543.765 (2). The project meets the requirements of ORS 543.765(1) in that it has a calculated generation capacity of 76 theoretical horsepower (THP), which is considerably less than 40 MW maximum for in-conduit municipal projects allowed under ORS 543.765(1)(b).

Oregon Department of Fish and Wildlife (ODFW) filed timely comments on the application. No other comments were received.

The City received ODFW approval, in a letter from John Zauner dated July 13, 2022, of its fish screen and bypass devices to prevent fish species from entering the conduit where the proposed turbine will be located. ODFW did not find a nexus between fish entrainment and operation of the hydropower facility. The re-diversion relies on an artificial obstruction in the Tualatin River to obtain water. This artificial obstruction, a small elevation rock weir, was determined by ODFW to be a partial fish passage barrier to native migratory fish migration, from early summer to early fall, when flows drop. The City agrees to pay the annual Fish Passage Restoration fee to OWRD per ORS 543.765(14).

The project is also known by its Federal Energy Regulatory Commission (FERC) docket number CD22-2-000. On February 2, 2022, the FERC issued a notification that the Sexton Mountain Hydroelectric Facility (Project) meets qualifying conduit hydropower facility criteria, under Federal Power Act (FPA) section 30(a), and therefore is not required to be licensed under Part 1 of the FPA.

Project Description:

The City has water rights for municipal use from Barney Reservoir via the Tualatin River in the Willamette River basin. This application will use water already diverted through the pipeline for municipal purposes. No additional water shall be diverted for hydroelectric purposes.

Water will be diverted from Barney Reservoir at TOWNSHIP 1 SOUTH, RANGE 6 WEST, SECTION 35 NE ¼ NW ¼, then rediverted from the Tualatin River at the Joint Water Commission's (JWC), Spring Hill Pumping Intake Plant located 500 FEET NORTH AND 410 FEET EAST FROM SW CORNER OF SECTION 8, being within the SW ¼ SW ¼, SECTION 8, TOWNSHIP 1 SOUTH, RANGE 3 WEST, W.M. The diverted water is treated at the JWC water treatment plant and pumped to the two 20 million-gallon (MG) Fernhill Reservoirs. Water from the Fernhill Reservoirs is delivered to the City of Beaverton through a 48-inch diameter JWC South Transmission Line, which conveys water for approximately 13.9 miles, until it transitions to the of Beaverton 30-inch line that fills its 15 MG and 5 MG Sexton Mountain Reservoirs. The hydropower project will operate at the same location as the Sexton Mountain Pump Station and the 15 MG Sexton Mountain Reservoir, located at Tax Lot 9701, NE ¼ NE ¼, SECTION 29, TOWNSHIP 1 SOUTH, RANGE 1 WEST, W.M. and will utilize up to 6.68 cubic feet per second (CFS) and 100 feet of head to generate 76 THP.

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 is already allocated for municipal purposes under water right Certificate 81020 and shall conform to this water right. No additional water shall be allocated for hydroelectric purposes. Water will pass through the pipeline to the powerhouse then will return to the City's distribution system for use by residential and commercial customers. The resulting wastewater enters the sanitary sewer system, is treated, and returns to the Tualatin River. No loss of water is expected from the Project to the municipal system.

b) Maximum economic development of the water

This Project allows for water to be used for multi-purposes including municipal 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 existing pipelines, canals and diversion facilities. No changes are expected to any of these existing facilities.

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

The amount of water available for beneficial use is known from records of municipal diversions that were provided back to 2012 for certificate 81020. No additional water will be diverted for this Project. A maximum of 6.68 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 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 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 Willamette Basin Program (OAR 690-502). 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 a 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. Department finds that the project will not impair or be detrimental to the public interest based on the standards of 537.170(8).

Authorization of the project constitutes a change in the permit status per ORS 509.585 that triggers the Oregon Fish Passage Policy. The JWC Spring Hill Pumping Plant intake relies on a water source diverted by an artificial obstruction, a small elevation rock weir that is a partial barrier to native migratory fish from early summer to early fall, when flows decline. To address the requirements found in ORS 543.765(5)(a) the City can either provide fish passage, apply for a fish passage waiver or exemption from ODFW Commission, or pay an annual fee to the Department. The City has agreed to pay an annual fee into the fish passage fund as set out in ORS 543.765(5)(b) and 543.765(14)(a)(D).

If unanticipated circumstances or emergency situations arise where fish or wildlife are being killed, harmed, or endangered by project facilities, the City shall immediately take appropriate action to prevent further loss. The City shall notify the nearest ODFW office within 24 hours and comply with measures required by ODFW to prevent additional injury or mortality.

Conclusions of Law

Considering 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 waterpower 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.

ISSUED: **SEP 09 2022**

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

Dwight French, Administrator
Water Right Services Division, *for*
Thomas M. Byler, Director
Oregon Water Resources Department

Attachment 1 Certificate