

OREGON WATER RESOURCES DEPARTMENT

**Proposed Final Order on the
City of Walla Walla's
Hydroelectric Project**

Persons, organizations or agencies objecting to the proposed final order may file a protest to this proposed order within 45 days of issuance of the proposed order. A protest must be in writing and received at the Oregon Water Resources Department by 5 p.m. on **November 20, 2009**, and must be accompanied by a fee of \$600.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

Regarding the)	
Hydroelectric Water Right)	Proposed Final Order
For City of Walla Walla)	Amending Hydroelectric
)	License No. HE 523

This matter comes before the Director of the Oregon Water Resources Department (Department) on application of City of Walla Walla (City) to amend operations of a hydroelectric Project under License HE 523 by augmenting and redistributing flows. The issue before the Director is whether conditions specified for operation of the Project, together with the recommended measures to protect, mitigate or enhance the natural resources of the State are sufficient to meet the standards of Oregon Revised Statute (ORS) 537.835, 543A.025, and Oregon Administrative Rule (OAR) 690-053.

This order presents proposed findings of fact and conclusions of law to find that the standards of ORS 537.835, 543A.025 and OAR 690-053 have been met with regards to the proposed Project operations. Accordingly, the Department proposes to issue an amended water right for hydroelectric use for this Project.

I. APPLICATION HISTORY

On April 29, 2009, the City applied to the Department for 10 cubic feet per second (cfs) of water from Mill Creek to be used annually between November 1 and April 15 for hydroelectric generation. This request is for water to augment the existing hydroelectric project that is authorized under HE 523 to withdraw up to 28 cfs for combined municipal and hydroelectric uses. Because the existing hydroelectric license limits the water that can be withdrawn to only that which is also needed for municipal use, the new allocation (which assumes water will be returned to Mill Creek or placed in temporary underground storage per surface water right S-54483) would allow more hydroelectric production at times when there are high flows available in Mill Creek. Less water would be used for both municipal and hydroelectric purposes during the low flow times of the year.

The Department determined that the application, maps and information required by ORS 537.835 and OAR 690-53 were complete.

Notice of open comment period and public hearing was included in the Department’s weekly public notice published on May 26, June 2, 9, and 16, 2009. In addition, notice was published on May 29, June 5 and 12, 2009 in the Valley Herald, a weekly newspaper serving the Walla Walla Valley and Milton-Freewater areas.

A public hearing was held at the public library in Milton-Freewater on June 18, 2009, at 6:30 p.m. Representatives of the City gave an overview of the project details. Water Resources Commissioner Ray Williams attended the meeting. There were three members of the general public

in attendance. The comment period was open until June 29, 2009. No written comments were received by the Department.

The amendment application was noticed on August 11, 2009, for a 30 day public comment period and distributed to those entities identified in OAR 690-053-015(4). No comments were received as a result of that notice.

The City has entered into a settlement agreement to maintain certain instream flows regarding the diversion of an additional 20 cfs of water for municipal purposes under water right Permit No. S-54483. The conditions of that Permit are also included in this proposed water right as they relate to the new hydroelectric water use.

II. PROJECT DESCRIPTION

1. The City's Twin Reservoirs Hydroelectric Project was originally allocated up to 28 cubic feet per second, measured at the point of diversion from Mill Creek, to develop 3683 theoretical horsepower utilizing a gross head of 1157.3 feet under HE 523. An existing reinforced concrete dam 10 feet in height diverts water through 14.5 miles of 30 inch pipe to the powerhouse located adjacent to the city's municipal reservoirs near Walla Walla, in the State of Washington. A pelton type wheel drives a 2250 kilowatt generator¹. The project connects to Pacific Power and Light Company transmission lines crossing the City's property.
2. The Project was approved for a FERC exemption under docket p-10376.
3. The City has applied for an additional 10 cfs of water from Mill Creek to develop an additional 1313 thp of capacity at the hydroelectric project. This capacity will be managed within the existing generation capacity of the Project. No construction changes are required to accommodate the additional water use at the Project. The existing pipeline can divert up to 38 cfs. Turbine upgrades are not anticipated in the near term.
4. The City has senior water rights on Mill Creek (1866 priority) for year-round municipal water use. Under the original Project hydroelectric license HE 523, water was allowed to be diverted only at times when it was also needed for municipal purposes. Under this amendment, additional water up to 10 cfs may be diverted from Mill Creek, between November 1 and April 15 of each year, when higher instream flows are being satisfied and when the stream's water quality is suitable for treatment at the City's water treatment facility. Water would be diverted at the City's existing point of diversion and would flow via existing pipeline to the existing powerhouse. The water would then either be: 1) injected into an underground aquifer for storage and recovery under the City's existing water rights, 2) returned directly to Mill Creek or 3) a combination of 1) and 2). Water that is recovered during summer months from underground storage offsets diversions that would otherwise deplete Mill Creek during low flow times of the year. The City has agreed to reduce the maximum amount to be exercised of its 1866 priority municipal water right to 25.5 cfs (a 2.5

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¹ See FERC Order Amending Exemption, Project 10376-004, October 30, 1992

cfs reduction) during a two-month low-flow period as described in the third paragraph of section 4, infra. Therefore, this project makes it possible to provide a public benefit such as riparian or watershed improvement. Furthermore, revenue from the hydroelectric project makes it possible for the City to fund the underground storage and streamflow enhancement elements of this project

5. The City's point of diversion is in Umatilla County, Oregon, within the NE ¼ NW ¼, Section 22, Township 6 North, Range 38 East; Willamette Meridian. Mill Creek flows into the State of Washington, through the City and into the Walla Walla River downstream of the City.
6. There are no other hydroelectric projects existing or proposed on Mill Creek or the Walla Walla River in the State of Oregon.
7. The applicant shall provide instream bypass flows that will be met before water is diverted for hydroelectric use. Those flows are:

Bypass Flow Condition:

For diversion of the additional water up to 10 cfs under the priority of April 29, 2009, flows equal to those described below must be satisfied at the USGS gage 14013000 on Mill Creek near Kooskooskie:

November	December	January	February	March	April 1-15
100 cfs	110 cfs	110 cfs	125 cfs	150 cfs	150 cfs

Peak Flow Condition:

The water right holder shall not divert water under the April 29, 2009, priority right, when the flows at the Kooskooskie gage are higher than 525.0 cfs.

III. STANDARDS FOR EVALUATION OF THE PROJECT

The City is not proposing any new construction at its hydroelectric project. The water use will be managed through the existing diversion structure on Mill Creek and the water will be used at the existing hydroelectric power plant at the City's water treatment plant in the State of Washington. This application will modify current operation practices to augment and redistribute water flows in relation to the existing water right under HE 523 for hydroelectric purposes.

ORS 537.835 allocates certain waters of Mill Creek to the City of Walla Walla providing that the City makes application to the Water Resources Commission for the appropriation, and the Commission has an opportunity to determine additional terms and conditions including minimum streamflows for the protection and benefit of the State of Oregon.

ORS 537.835 City of Walla Walla, Washington, may appropriate, impound and divert certain waters from Mill Creek.

(1) Pursuant to the provisions of ORS 537.810, consent is hereby given to the City of Walla Walla, a municipal corporation of the State of Washington, to appropriate,

impound and divert certain waters from Mill Creek, a tributary of the Walla Walla River, located in Township 6 North, Range 38, E.W.M., Umatilla County, Oregon, for the beneficial use of both the State of Oregon and within the City of Walla Walla, State of Washington, subject to the following terms and conditions:

(a) The City of Walla Walla shall pay the entire cost of constructing and maintaining this project; and

(b) The City of Walla Walla shall employ only residents and inhabitants of the State of Oregon in the construction and maintenance of the project.

(2) The Water Resources Commission may from time to time direct that a designated portion of the impounded waters shall be held in the State of Oregon for fire protection, for use by Oregon residents, for wildlife habitat needs, and to maintain proper streamflow during the summer months.

(3) Prior to commencing construction, the City of Walla Walla shall make application for such appropriation, impoundment and diversion to the Water Resources Commission and such appropriation, impoundment and diversion shall be allowed upon such additional terms, conditions, reservations, restrictions and provisions, including minimum streamflow, as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon. [1975 c.732 §2; 1985 c.673 §76]

On November 19, 2009, the Water Resources Commission will review the application for the 10 cfs of water to determine if additional terms, conditions, reservations, restrictions and provisions shall be imposed.

The Water Resources Department has applied the pertinent process rules under OAR 690-053 for hydroelectric licenses, power claim and certificate amendments to this application.

OAR 690-053-0001 provides: Purpose (1) The purpose of this division is to establish procedures to be used by the Water Resources Department in evaluating applications for amendments to hydroelectric licenses, power claims or certificates. These rules do not apply to new project proposals. These rules describe the type of amendments that may be considered; the process that must be followed to approve amendments; and what steps must be taken to avoid injury to other water users, prevent undesirable impacts to natural resources, and to appeal Department decisions.

(2) These rules do not apply to:

(a) A change in point of diversion.

(b) A change in point of appropriation.

(c) New uses unrelated to the hydroelectric generation use.

(d) The construction of a new dam in a location where there is no existing dam or diversion.

(e) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the surface area or elevation of an existing impoundment.

(f) Any modification to an existing hydroelectric project (including the replacement of existing turbines) which would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more or would result in an increase in the project's nameplate capacity of 2 megawatts or more as defined in regulations of the Federal Energy Regulatory Commission (FERC), 18 CFR 11.1(i).

Finding: The standards of OAR 690-0053-001 are met in the following manner. The application from the City is not for a new hydroelectric project. It does not involve a change in point of diversion; a change in appropriation; any new uses unrelated to hydroelectric generation; the construction of a new dam; any repair or reconstruction of an existing dam that would change the surface area or elevation of an existing impoundment; or replacement of the existing turbines or a change in the nameplate capacity of the existing project. No hardware changes are needed at the project to use the additional 10 cfs during the season of November 1 through April 15.

690-053-0020 Amendment Criteria

Under ORS 543.092, upon the request of the hydroelectric water right holder, and the approval of the Department, a hydroelectric water right or certificate may be amended, provided that the amendment:

- (1) Is consistent with the final unified state position for the project, if one exists;
- (2) Is consistent with the requirements of ORS Chapter 543A;
- (3) Causes no injury to other water rights that cannot be adequately mitigated as determined by the Water Resources Department; and
- (4) Allows for public participation in the amendment process.

Finding: The standards of OAR 690-053-0020 are met in the following manner.

- (1) This project is not being reviewed by FERC at this time, therefore there is not a final unified state position being prepared for the project. There is a settlement agreement between the applicant and the Department regarding instream flows to be protected in Mill Creek.*
- (2) The standards of ORS 543A.025 are discussed below.*
- (3) No injury to other water rights is expected as a result of increased diversions during the period of November 1 to April 15 of each year.*
- (4) The Department has provided for public participation in this process through public noticing, the public hearing held June 18, 2009, in Milton-Freewater, and at the Water Resources Commission meeting on November 19, 2009.*

OAR 690-053-0025 Types of amendments that will be considered under these rules

All amendments allowed in this section must be consistent with the standards in 690-053-0020.

- (1) Hydroelectric water right holders as defined in ORS 543.075(2) may submit amendment applications that allow augmentations or redistribution of the volume of water allowed for diversion in the applicable hydroelectric water right only if the proposed amendments meet management goals of state wildlife or environmental quality agencies and are shown to restore, enhance or improve fish populations and/or water quality within the river systems. This includes:
 - (a) The rescheduling or redistributing of the total amount of water used over the year so that more water may be diverted during certain times of the year in exchange for reductions of water use during other times.
 - (b) Augmenting or increasing the total yearly amount of water provided that:

- (A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.
 - (B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025; and
 - (C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.
 - (D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application.
- (2) Hydroelectric water right holders may submit application amendments for the following:
- (a) Adding fish protection and/or water quality as a beneficial use.
 - (b) Changing one or more items in the "water right conditions" section of the applicable hydroelectric water right provided that, after the application has been submitted, the affected state agencies have been consulted by the project owner and agree in writing that the amendment is needed.
 - (c) Hydroelectric water right holders may submit application amendments altering the date of expiration in the applicable hydroelectric water right to match the period granted by FERC.
 - (d) Clarifying language or correcting administrative errors.
- (3) Other proposed amendments not identified in these rules may be considered by the Department provided that the proposed amendment meets the criteria in 690-053-0020.

Findings: The standards of OAR 690-053-0025 are met in that the 10 cfs of augmentation from November 1 to April 15 will only be diverted when flows in Mill creek meet specific instream flow requirements. Less water will be needed during summer seasons because of the development of an aquifer storage and recovery system.

In addition:

- (A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.*
- (B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025 as discussed below; and*
- (C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.*
- (D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application (April 29, 2009)..*

543A.025 Minimum standards for decision on reauthorization of water right

ORS 543A.025 sets standards for the Water Resources Director to determine whether the continued operation of an existing hydroelectric project would impair or be detrimental to the public interest considering:

- (1)(a) conserving the highest use of 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.

Based on a finding that the water is not consumed, but is available for other municipal purposes and/or storage to benefit later uses, water is conserved for other beneficial uses. In addition, the storage of water during high water seasons provides more water instream that will be available to other beneficial uses during low water seasons of the year. The City will limit (subject to certain conditions) its diversion during 2 months of the summer to 25.5 cfs which is 2.5 cfs less than the maximum allowed under its 1866 municipal water right.

(1)(b) The maximum economic development of the water.

Based on a finding that the power production from this Project increases the economic benefits of the waters, this standard is met.

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

This Project will have no apparent effects on drainage, sanitation or flood control.

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

Based on findings that: 1) The existing diversion structure and the City's existing water supply system provide storage and control over the waters of the Mill Creek for this Project; 2) Streamflow records are available for Mill Creek near Walla Walla at Kooskooskie (USGS gage 14013000) for the years 1980 to the present which were used to determine average water available for use; and 3) The Project is expected to operate more in the time period of November 1 to April 15, when certain minimum flows are met, and also to reserve water for summer instream flows. Therefore, water is expected to be available for beneficial use.

(1)(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the water involved.

There is no evidence in the record that the proposed use represents a wasteful, uneconomic, impracticable or unreasonable use of the waters.

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

Based on a finding that the water will only be diverted when there is sufficient water available in the season November 1 to April 15, it is not expected that any vested or inchoate water rights will be affected by the Project.

(1)(g) The state water resources policy for the Walla Walla River Basin.

Based on findings that ORS 537.835 allows the City of Walla Walla to appropriate and divert water from Mill Creek for the beneficial use of both the State of Oregon and within the City of Walla Walla, WA, and this project will maintain proper streamflows during the summer months and provide hydroelectric benefits to the City of Walla Walla, therefore this standard has been met.

(2) In determining whether the proposed use will impair or be detrimental to the public interest, the following minimum standards shall apply:

(a) For impacts to fish and wildlife resources attributable to the project, the Water Resources Department shall require:

(A) Mitigation for: (i) Adverse impacts that occur due to new construction or operational changes to the project; and (ii) Ongoing adverse impacts existing at the time of reauthorization; and

(B) Appropriate measures 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.

Finding: The City is not proposing any new construction. It currently diverts water from Mill Creek to a hydroelectric project at its water treatment facility. The City has shown that by augmenting flows during high flow periods from November 1 to April 15 and diverting less water during summer periods, conditions will be improved instream to restore, enhance or improve anadromous fish populations in the Walla Walla River system.

(b) All conditions included in a water right certificate issued to reauthorize the use of water for hydroelectric purposes shall be 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.

Finding: The applicant is proposing to modify an existing diversion pattern in the Walla Walla basin to improve instream conditions for the protection, mitigation and enhancement of the fish and wildlife resources of the region to be consistent with the Columbia River Basin Fish and Wildlife Program as adopted by the Northwest Power and Conservation Council.

(c) The project shall comply with water quality standards adopted by the Environmental Quality Commission.

Finding: The City is not proposing any new construction activity. Furthermore, there is no discharge from the project to a body of water in Oregon, therefore the project is not expected to impact water quality.

(d) The project shall not endanger the public health and safety. The project shall be operated in a manner that provides practical protection from vulnerability to seismic and geologic hazards.

Finding: The City is not proposing any new construction and is regulated by the FERC in relation to dam safety. The project pipeline is buried for its entire length. The system is operated in a manner to protect from seismic and geologic hazards.

(e) Wetland resources shall be protected, maintained or enhanced. The Water Resources Department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to wetland resources associated with the project, including wetlands lost or created by construction and operation of the project, and mitigation proposed by the applicant. Reauthorization that results in a net loss to existing wetland resources shall not be approved.

Finding: There will be no new construction to impact wetlands. Less water may be diverted in low flow months, as a result of the diversions at times of high flows, therefore wetlands may be benefitted.

(f) Other resources in the project vicinity including recreational opportunities, scenic

and aesthetic values, historic, cultural and archaeological sites, and botanical resources shall be protected, maintained or enhanced. The department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to such resources associated with the project, including resources lost or created by construction and operation of the project, and mitigation proposed by the applicant. If the project results in a net loss to existing resources, reauthorization shall not be approved.

Finding: Based on the improved instream flow conditions during low flow seasons of the year, other natural resources in the Project vicinity including water quality; wildlife; recreational opportunities; scenic and aesthetic values; and historic, cultural and archaeological sites are maintained or enhanced by the mitigation measures for this Project. No net loss of resources is expected from the Project.

VII. PROPOSED CONCLUSIONS OF LAW

1. The City's augmentation and redistribution of water diverted for hydroelectric purposes is proposed at its existing diversion at Mill Creek and is to be used at its existing hydroelectric project in the State of Washington. The Water Resources Commission may approve an amended project for the City under ORS 537.835 upon such additional terms, conditions, reservations, restrictions and provisions, including minimum streamflow, as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon.
2. The proposed Project as conditioned is sufficient to meet the standards of ORS 537.835, 543A.025, and OAR 690-053.

VIII. PROPOSED ORDER

Based on the findings and conclusions, the standards of ORS 537.835 and 543A.025 have been met with regards to the proposed Project. An amended hydroelectric water right shall be issued for the Project with the proposed conditions.

Issued October _____, 2009

DWIGHT W. FRENCH, Administrator of Water Rights & Adjudications
{For}
PHILLIP C. WARD, DIRECTOR
Water Resources Department

690-053-0040

Protests

(1) Any person may submit a protest against a proposed amendment order. A protest shall be in writing and include:

(a) The name, address and telephone number of the protestant.

(b) A description of the protestant's interest in the amendment and, if the protestant claims to represent the public interest, a precise statement of the public interest represented.

(c) A detailed description of how the action proposed in the amendment will be detrimental to the protestant's interest.

(d) A detailed description of how the amendment is in error or deficient and how to correct the alleged error or deficiency.

(e) Any citation of legal authority supporting the protest, if known.

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Each person submitting a protest 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 Department an opportunity to respond to the issue precludes judicial review based on that issue.

(3) Protests shall be submitted within 45 days after publication of the notice of the amendment in the weekly notice published by the Department.

Persons, organizations or agencies objecting to the proposed final order may file a protest to this proposed order within 45 days of issuance of the proposed order. A protest must be in writing and received at the Oregon Water Resources Department by 5 p.m. on **November 20, 2009**, and must be accompanied by a fee of \$600.