

STATE OF OREGON
COUNTY OF LINN
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

FALLS CREEK H.P. Limited Partnership
PO BOX 23508
EUGENE, OR 97402

confirms the right to use the waters of FALLS CREEK, tributary to the SOUTH SANTIAM RIVER for HYDROELECTRIC USE of 7143 theoretical horsepower.

This time-limited certificate is issued under application HE 410.

The date of priority is AUGUST 24, 1982 for 16.5 CUBIC FEET PER SECOND (CFS); OCTOBER 28, 1982, for 3.5 CFS; and APRIL 29, 1983, for 6.4 CFS.

The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 26.4 CFS measured at the point of diversion from the source.

The point of diversion is located in:

NE ¼ SE 1/4, SECTION 5
TOWNSHIP 14 SOUTH, RANGE 4 EAST, W.M.

The authorized place of use is:

SW ¼ NE 1/4, SECTION 32
TOWNSHIP 13 SOUTH, RANGE 4 EAST, W.M.

The use of water is limited to the amount that the generation facilities can beneficially use without waste, and shall not exceed the specifications noted in the water right. The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source for domestic, municipal, irrigation or any other beneficial consumptive use.

Appeal Rights: This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.

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 Director finds that the project is well adapted to the development and utilization of the water power involved, that no application for this project or in conflict with this project has been filed by any municipality or utility district, and that the water right holder has paid to the Oregon Water Resources Department (OWRD) all fees required prior to the issuance of this certificate.

PROJECT DESCRIPTION

Falls Creek originates in a meadow and flows downstream to the Project diversion structure at river mile 2.35. The dam is 5.5' in height and creates a reservoir 80' wide by 136' feet in length and 5' deep. The reservoir overflows through two sets of screens. The primary screens consist of three self-cleaning 8' long panels with wedge wire Ogee screens. One CFS of water passes down a channel at the base of the screens to discharge into the original Falls Creek stream channel and satisfy the required 1 cfs minimum bypass flow. This bypass flow also flushes "trash" material from the screens back into the stream. The water that enters the screen chamber discharges into a 30-inch penstock that is 7,380 feet in length, almost all of which is buried. The penstock narrows to 20-inches as it enters the powerhouse. The powerhouse contains a Gilkes 34-inch Twin Jet horizontal pelton wheel and generator with maximum capacity of 4.96 megawatts. Tailwater from the Project discharges into a steel culvert with a metal grate on the downstream end to prevent fish access. The water then travels through a small chute of exposed bedrock and discharges into the South Santiam River near river mile 57.5.

WATER RIGHT CERTIFICATE CONDITIONS

The Certificate holder shall comply with all statutes and rules applicable to the Project.

1. The certificate is effective from the January 1, 2020 through December 31, 2059. It is to be exercised consistent with the conditions contained in the license. This may be reauthorized under laws existing at that time.
2. The licensee shall comply fully with the provisions of the order of the Water Policy Review Board dated May 23, 1983. The order provides that the agreement between the licensee and the Oregon Department of Fish and Wildlife, dated November 26, 1982, be made a condition of the license. Copies of the order and agreement are attached for reference.
3. The project facilities are more particularly described and shown on the map filed with the application and designated as Exhibit A. Said exhibit is hereby approved by the Director and made a part of this certificate. No substantial change to the project shall be made unless approved by the Director and incorporated into this certificate by appropriate amendment or special order.
4. In consideration of this license and the benefits and advantages accruing thereunder to the Licensee, it is expressly agreed by the Licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the Licensee be

prevented from compliance with any provisions of this license or of the Hydroelectric Act by the operation of any valid Federal law, or the lawful order, rule or regulation of any Federal governmental agency exercising exclusive jurisdiction in the premises, it shall not be deemed to be in default, or under any liability to the State of Oregon for failure to perform the same during the period of such disability.

5. The certificate holder shall maintain the Project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the Project, and all parts thereof, conformably to the rules of the Water Resources Commission (Commission) not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610. (ORS 543.300(4))

6. No voluntary transfer of the license or of any property acquired, constructed or operated pursuant to the license issued under ORS 543.010 to 543.610 shall be made without written approval of the Commission. Any successor or assignee of any license under any project acquired, constructed or operated by the Applicant, whether by voluntary transfer approved by the Commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original Applicant. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. (ORS 543.440)

7. The Project must comply with the water quality standards stated in OAR Chapter 340, Division 41, ORS 468B.048, and Section 303 of the Clean Water Act. The Project must meet water quality requirements including numeric and narrative standards, protect beneficial uses, and not degrade existing water quality.

8. The Project shall be designed and operated to minimize visual, aesthetic and noise impacts.

9. If any cultural material is discovered during Project construction, all activities should stop and an archaeologist contacted to assess the discovery. It is a Class B misdemeanor to impact an archaeological site (ORS 358.905-955) and a Class C felony to impact Indian Burials (ORS 97-740-990).

10. A minimum instream flow of 1 cfs shall at all times be bypassed at the diversion structure during project operation to benefit aquatic and wildlife resources downstream from the project. During low flow conditions when inflow into the project diversion pool becomes less than 1 cfs and the powerhouse is not operating, the forebay shall be maintained at full pool as inflow allows for the benefit of wildlife resources. Maintenance occurs during the first three weeks of summer when the powerhouse is not operating. The pool is temporarily lowered for maintenance and repairs. This usually takes one or two days. Maintenance typically requires dropping pool

elevation to the elevation at which flow does not pass over the fish screen. On rare occasions, if there has been major damage to the diversion, the forebay elevation may be lowered below this point and maintenance may take up to three weeks. During these times all Falls Creek flows bypass the diversion structure and enter Falls Creek downstream of the diversion.

11. The certified holder shall maintain the screen over the diversion intake to prevent fish migration downstream through the project diversion. The holder shall be responsible for all screen repair and maintenance necessary to keep the fish screen in proper working order.

12. The tailrace structure and associated bar grating will be maintained as necessary to reduce erosion, scour, and fish entry into the tailrace and turbine.

13. If at any time an unanticipated situation arises in which the owner or operator observes or suspects that fish, wildlife, or their habitat may be harmed by any of the project facilities or as the result of project operation, the operator shall immediately take appropriate action to prevent further loss. The operator shall, within 24 hours, notify the nearest office of the Oregon Department of Fish and Wildlife (ODFW) and comply with the measures required by ODFW to prevent additional injury or mortality. The owner shall subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW.

14. The Applicant shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD free and unrestricted access upon reasonable notice, 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.

15. Issuance of the license does not absolve the Applicant from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Applicant is made aware that permits may be required from the United State Army Corps of Engineers under Section 404 of the Clean Water Act, or from the Division of State Lands for removal and fill of material.

16. The Applicant shall be liable for all damages occasioned to the persons or property of others by the construction, operation, or maintenance of the Project facilities, and in no event will the State of Oregon be liable therefore.

17. Use of water is governed by this license. However, the operations of the Project by the Applicant so far as those operations affect the use, storage and discharge from storage of waters affected by the Applicant, shall at all times be controlled by such reasonable rules as the Commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe. (ORS543.300(3)).

18. Public Health and Safety: The Department may reopen this certificate, if the Director

makes a clear showing of significant threat to the public health, safety or the environment that was not identified and addressed during the project reauthorization proceeding and that requires modification of the certificate. (ORS 543A.145 (5)) Such changes could include, but are not limited to, the following:

- a. New federal listing or a change in status or recovery plan of a threatened or endangered species that may be affected by the project.
- b. Change in a water quality standard for a water quality parameter that may be affected by the project.
- c. Development of a Total Maximum Daily Load for a water quality parameter that may be affected by the project.
- d. Change in baseline environmental conditions such as climate change which may cause the project to not meet water quality standards.

If OWRD proposes to alter conditions, the order shall be in writing and shall consist of a concise statement of the underlying facts supporting the proposed order. Any appeal of the order shall be according to procedures outlined in ORS Chapter 183.

19. The Applicant shall pay on or before January 1 of each calendar year, an annual license fee, in 1998 dollars, of \$0.405 per Theoretical Horsepower (THP) for 7143 THP with adjustments inflation as provided in ORS 543.078 and ORS 543.085 (or superseding law).

20. Consistent with ORS 540.610, if after completing construction of the Project, the Applicant fails to use or operate the Project facilities for any period of five consecutive years, the water right shall be subject to termination by OWRD.

21. Upon a decision to terminate the hydroelectric use, the Applicant shall comply with any decommissioning statutes and rules in effect at that time. (OAR 690-052).

Issued in Salem, Oregon on this date: June 29, 2018.



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

Recorded in State of Water Right Certificates numbered 93868.

Oregon Water Resources Department

Final Order

For Major Hydroelectric Reauthorization HE 410 Falls Creek Hydroelectric Project

NOTE: This is a Final Order issued pursuant to Oregon Revised Statutes (ORS) 543A.120 to 543A.145.

Appeal Rights: This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.

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.

Summary of Recommendation:

The Hydroelectric Application Review Team (HART) consisting of technical staff from the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Environmental Quality (ODEQ) and Oregon Water Resources Department (OWRD) recommends the reauthorization of hydroelectric project HE 410 on Falls Creek in Linn County with conditions.

A. APPLICATION HISTORY

On March 14, 1984, Frontier Technology, Inc. was granted a time-limited (35 year) hydroelectric license, HE 410, conferring a water right to appropriate up to 26.4 cubic feet per second (cfs) of water from Falls Creek, a tributary to the South Santiam River, in Linn County, Oregon to generate hydroelectricity. The project uses 2,381 feet of head to develop 7,143 theoretical horsepower (THP) to generate electricity for sale to a private utility. The project operates when at least 3 cfs of water is available to be diverted.

On June 9, 2017 the Falls Creek H. P. Limited Partnership submitted an application to reauthorize HE 410. On June 13, 2017, notice of the application was included in the Department's weekly public notice for a 45-day comment period seeking input on how the proposed Project would affect various natural resources. A copy of the application was distributed to the Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife. (ORS 543A.035)

On January 30, 2018 a notice of the Draft Proposed Final Order and Draft Certificate to relicense the project were published in the OWRD's weekly public notice. No comments were received from the public by the April 2, 2018 deadline.

On April 17, 2018, a notice of Proposed Final Order to Reauthorize the Project was published in the OWRD's weekly public notice. Requests for comments, protest or requests for standing were required to be submitted by June 1, 2018. No requests were received.

B. PROJECT DESCRIPTION

Falls Creek originates in a meadow and flows downstream to the Project diversion structure at river mile 2.35. The dam is 5.5' in height and creates a reservoir 80' wide by 136' feet in length and 5' deep. The reservoir overflows through two sets of screens. The primary screens consist of three self-cleaning 8' long panels with wedge wire Ogee screens. One CFS of water passes down a channel at the base of the screens to discharge into the original Falls Creek stream channel and satisfy the required 1 cfs minimum bypass flow. This bypass flow also flushes "trash" material from the screens back into the stream. The water that enters the screen chamber discharges into a 30-inch penstock that is 7,380 feet in length, almost all of which is buried. The penstock narrows to 20-inches as it enters the powerhouse. The powerhouse contains a Gilkes 34-inch Twin Jet horizontal pelton wheel and generator with maximum capacity of 4.96 megawatts. Tailwater from the Project discharges into a steel culvert with a metal grate on the downstream end to prevent fish access. The water then travels through a small chute of exposed bedrock and discharges into the South Santiam River near river mile 57.5.

C. PROJECT LOCATION

The point of diversion is in the NE ¼ SE ¼ of Section 5, Township 14 South, Range 4 East, Willamette Meridian (W.M.) while the powerhouse (place of use) is located in the SW¼ NE¼, Section 32, Township 13 South, Range 4 East, W.M. There are no neighbors within 300 feet of the powerhouse.

D. WATER USE

Water availability: The applicant provided data on average stream flows for each month of the year. The Project has had sufficient water to produce electricity 8 to 9 months of the year for more than 30 years.

Subordination: This water right shall continue to be subordinated to all other uses.

Theoretical Horsepower Capacity: The project has 2,381 feet of hydraulic head. The theoretical horsepower is calculated as $26.4 \text{ cfs} * 2,381 \text{ feet of head} / 8.8 = 7,143 \text{ THP}$.

Existing water rights: The Applicant seeks to reauthorize water right license HE 410 for 26.4 cfs. The priority dates of this appropriation are August 24, 1982 for 16.5 cfs, October 28, 1982 for 3.5 cfs and April 29, 1983 for 6.4 cfs. The Project returns water to the South Santiam River above its confluence with Falls Creek. There is one other water right on Falls Creek which is held by the U.S. Forest Service for road watering and dust abatement in the forest.

This project is junior in priority to all other water rights on Falls Creek. This project will not

interfere with any existing rights or permits for the use of water.

Basin Program: The Santiam River – Calapooia River Subbasin of the Willamette Basin Program [OAR 690-502-0110 (1)(A)] identifies power development as an allowed (classified) use for surface waters, this includes Falls Creek, tributary to the South Santiam River. No additional water is being requested for the reauthorization of this Project.

E. PROCESS DETERMINATION

ORS 543A.005 (6) defines a “State project” for purposes of ORS 543A.030 through 543A.055. “State project” means an existing project for which the authority to operate is a time-limited water right for the use of water for hydroelectric purposes and that is not licensed by the Federal Energy Regulatory Commission. “State project” includes a project granted an exemption by the Federal Energy Regulatory Commission. (Emphasis added).

The Falls Creek Project was granted an exemption from the Federal Energy Regulatory Commission under docket p-6661 and is not required to reauthorize that exemption as long as the Project remains essentially the same as originally constructed. Therefore, the Project’s is being reviewed as a State project for water right purposes.

The Department notified the Project owner three years before the December 2019 expiration date of the Hydroelectric License for HE 410 that he should advise the Department of whether he intended to seek reauthorization of the Project. The Project owner filed a notice of intent and an application to reauthorize the Project. The Project owner has requested a 50 year license term. (543A.145(1)).

Mary Grainey and Craig Kohanek of OWRD, and Ken Homolka and John Zauner of ODFW staff participated in a Project site visit on June 1, 2016. They inspected the Project’s diversion structure, reservoir, screens, bypass channel, standpipe and safety valve, powerhouse, and tailrace. The team also collected data at the confluence of Falls Creek and the South Santiam River.

Ken Homolka and John Zauner of ODFW, and Chris Stine of ODEQ visited the Project site again on July 25, 2017. The Project was not in operation because of low stream flows. The entire streamflow was being allowed to flow through the diversion into the Falls Creek bypass reach. About 800 feet downstream of the diversion was a natural upstream fish passage barrier. The creek went subsurface about 150 feet downstream of the diversion and reemerged below the crest of the fish passage barrier. Fish habitat was poor. The stream reach downstream of the barrier consisted mainly of bedrock and large boulders. The stream reach has a very high gradient. A culvert approximately 0.3 miles downstream of the crest of the natural fish passage barrier was also determined to be a fish passage barrier. Low flows upstream of the diversion dam provided only poor to fair fish habitat. Two brook trout were captured from the project reservoir.

ODFW staff conducted fish surveys for the Project site in early September 2017, and determined that native migratory fish are not present upstream from the natural fish passage barrier, which includes the stream reach where the diversion is located. Native migratory fish as observed and

documented in past survey by ODFW and the United States Forest Service are however present in the lower Falls Creek bypass reach from the second road crossing below the diversion site downstream to the confluence of the South Santiam River. The lower most 0.1 mi. of the Falls Creek bypass also provides rearing habitat for steelhead. ODFW staff determined that because native migratory fish are not present now, and have not historically inhabited the site upstream from the natural fish passage barrier, which includes the stream reach where the diversion is located, the Oregon Fish Passage Policy (ORS 509.585) is not triggered.

HART determined that sufficient information was available to determine that reauthorization of the Project will comply with ORS 543A.025 and expedited processing of the application shall proceed. (ORS 543A.040(2)).

F. STANDARDS (ORS 543A.025, 543A.120 (1))

All hydroelectric projects in Oregon seeking to reauthorize its time-limited water right certificate shall be based on the application of the standards set forth in ORS 543A.025 and 543A.120 and shall reflect the complete review of the water right application for compliance with applicable statutes and rules.

G. FINDINGS OF FACT (ORS 543A.120 (2))

OWRD finds that the Project complies with the standards and requirements of this rule.

1. Confirmation of Preliminary Determinations:

Falls Creek has a very steep streambed. It has an elevation change of more than 2300 feet within 2.5 miles of stream channel. According to the USGS topographic maps, the first major natural barrier about 800 feet downstream of the diversion structure has a change in elevation of more than 440 feet in a quarter of a mile distance – or a gradient of more than 33% (440 feet vertical / 1320 feet horizontal distance).

The diversion point is not within a protected area designated by the Columbia River Basin Fish and Wildlife Program of the Northwest Power and Conservation Council. The project is not located within a designated scenic waterway. The HART determined that the Project does not significantly impact fish and wildlife, water quality or other natural resources and so is consistent with findings of low impacts at the time of the original licensing. Operations consistent with the USDA Forest Service's Special Use Permit are protective of the natural resources within the Project area. (ORS 543A.120 (2)(a))

2. Key Criteria:

The Project is consistent with the Santiam River – Calapooia River Subbasin of the Willamette Basin Program [OAR 690-502-0110 (1)(A)]. The proposed use complies with the State Agency Agreement for land use. (ORS 543A.120 (2)(b))

3. Water Availability:

The original use of water for this project was authorized by the Department in 1984 under laws in effect at that time. The Project has operated on water available for more than 30

years. The project owners have not requested any additional uses for the water. (ORS 543A.120 (2)(c))

4. Water Rights:

Senior water rights do exist on Falls Creek or on downstream waters. HE 410 is subordinated to all other water rights and continued use of the project will not cause injury to these water rights. (ORS 543A.120 (2)(d))

5. Public Interest:

Based on the historic use of water for hydroelectric production, the use of water is conserved for all other purposes; provides for maximum economic development and for control of waters for all beneficial purposes, including drainage, sanitation and flood control; and is not found to be wasteful, uneconomic, impracticable, or unreasonable according to the standards of ORS 543A.025 (1).

6. Fish and Wildlife Resources:

The applicant proposed no plans for new construction or changes to operating procedures for this Project.

ODFW staff conducted fish surveys at the project diversion site in 2017. Native migratory fish were not found upstream from the natural fish barrier immediately downstream of the Project diversion dam. Limited fish habitat is available in the project bypass reach where the diversion is located. Native migratory fish are present in the lowest portion of the Falls Creek bypass reach from the second road crossing below the diversion site to the confluence with the South Santiam River. The lowest most 0.1 mile of the Falls Creek bypass also provides rearing habitat for steelhead.

Under the original license minimum bypass flows were established to maintain some flow in the creek throughout the year. The licensees shall not divert water for hydroelectric power purposes if such diversion would result in instantaneous streamflow less than 1 cubic foot per second, as measured immediately below the diversion.

Water use is discontinued during the low flow times of the year, so no additional bypass flows are recommended. ODFW recommends from early summer through early fall low flow conditions, when inflow into the project forebay diversion pool becomes less than 1 cfs, the forebay shall be maintained at full pool as inflow allows for the benefit of wildlife resources.

Maintenance occurs during the first three weeks of summer when the powerhouse is not operating. The pool is temporarily lowered for maintenance and repairs. This usually takes one or two days. Maintenance typically requires dropping pool elevation to the elevation at which flow does not pass over the fish screen. On rare occasions, if there has been major damage to the diversion, the forebay elevation may be lowered below this point and maintenance may take up to three weeks. During these times all Falls Creek flows bypass the diversion structure and enter Falls Creek downstream of the diversion.

The existing screens shall be maintained in good condition and kept free of debris at all times. Holes and tears in screen mesh shall be immediately repaired or the screen material replaced. If the existing system is shown to cause fish injury or mortality, the licensees shall install another type of screen as recommended by ODFW.

Native migratory fish were not found and have not historically inhabited the site of the diversion dam therefore; the Oregon Fish Passage Policy (ORS509.585) is not triggered. (ORS543A.025(2)(a))

The tailrace structure and associated bar grating will be maintained as necessary to reduce erosion, scour, and fish entry into the tailrace and turbine.

7. Wildlife:

There are likely a number of sensitive mammals, birds, amphibians, and reptiles that inhabit the project area. It is not likely that project operations significantly impact their populations. Maintaining the forebay at full pool year round will ensure that habitat conditions within the forebay are not unduly degraded when the Project is not operating.

8. Pacific Northwest Electric Power and Conservation Planning Council:

Although the project is in the Columbia River basin, it is located on a stream that is not designated by the Northwest Power and Conservation Council (Council) as a protected area. Therefore, the department concludes that the project complies with the plans of the Pacific Northwest Electric Power and Conservation Planning Council. (ORS 543A.025(2)(b))

9. Water Quality:

No significant temperature-related problems have been identified nor are suspected given the existing project facilities, operations and management. As the entire penstock is buried, there is little opportunity for significant water temperature-related problems. However, to protect from any future significant temperature-related adverse impacts to aquatic organisms, any future modification of the project's penstock should be evaluated and approved by the Oregon Department of Environmental Quality. (ORS 543A.025(2)(c))

10. Public Health and Safety:

Based on a review of the facts contained in the file, the Project will not endanger the public health and safety. The Project operates in a manner that provides practical protection from seismic and geologic hazards. The Department finds that the Project complies with the standards and requirements of this rule. (543A.025(2)(d))

11. Wetland Resources:

Based on a review of the facts contained in the file, reauthorization will not result in a net loss to existing wetland resources. The Department finds that the Project complies with the standards and requirements of this rule. (543A.025(2)(e))

12. Recreation, Historic, Cultural and Archaeological Resources:

Based on a review of the facts contained in the file, no net loss of existing resources is expected from ongoing operation of this Project. The Department finds that the Project complies with the standards and requirements of this rule. (543A.025(2)(f))

H. CONCLUSIONS OF LAW

Taking into account the following factors:

- (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

the Department concludes that the use will not impair or be detrimental to the public interest under ORS 543A.025 (1). In addition, based on the findings in Section G above, the project as conditioned in the water right certificate attached herein, satisfies the minimum requirements set forth in ORS 543A.025(2). The proposed Project is well adapted to the development and utilization of the water power involved.

The HART recommends a 40 year license term. This license term should be granted based on the following findings. 1) Native migratory fish do not inhabit the stream reach immediately downstream of the project diversion or anywhere upstream of the diversion. 2) The native migratory fish population that inhabits the bypass reach between the natural barrier several hundred yards downstream of the diversion structure and the South Santiam River appears to be adequately protected. 3) The natural streamflow conditions during 3 to 4 months of the summer are often less than 1 cubic foot per second and so provide minimal aquatic habitat. 4) The Project is shutdown during the low flows times of the year. 5) And, there are no potential new or ongoing adverse impacts to fish and wildlife resources.

I. LICENSE CONDITIONS

The proposed use of water is subject to the following express conditions:

1. The priority dates for the water right are August 24, 1982 for 16.5 cfs, October 28, 1982 for 3.5 cfs and April 29, 1983 for 6.4 cfs.
2. The proposed use of water is limited to the amount that the generation facilities can

- beneficially use without waste, and shall not exceed the specifications noted in the water right. This water right is inferior in right and subsequent in time to any future appropriation of water from this source for domestic, municipal, irrigation or any other beneficial consumptive use.
3. The Applicant shall comply with all statutes and rules applicable to the Project.
 4. The license is effective from the January 1, 2020 through December 31, 2059. It is to be exercised consistent with the conditions contained in the license. This may be reauthorized under laws existing at that time.
 5. The licensee shall comply fully with the provisions of the order of the Water Policy Review Board dated May 23, 1983. The order provides that the agreement between the licensee and the Oregon Department of Fish and Wildlife, dated November 26, 1982, be made a condition of the license. Copies of the order and agreement are attached for reference.
 6. The project facilities are more particularly described and shown on the map filed with the application and designated as Exhibit A. Said exhibit is hereby approved by the Director and made a part of this certificate. No substantial change to the project shall be made unless approved by the Director and incorporated into this certificate by appropriate amendment or special order.
 7. In consideration of this license and the benefits and advantages accruing thereunder to the Licensee, it is expressly agreed by the Licensee that the entire project, project area and project works hereinafter designated and described whether or not on the lands of the United States, shall be subject to all provisions, terms and conditions of this license. Should the Licensee be prevented from compliance with any provisions of this license or of the Hydroelectric Act by the operation of any valid Federal law, or the lawful order, rule or regulation of any Federal governmental agency exercising exclusive jurisdiction in the premises, it shall not be deemed to be in default, or under any liability to the State of Oregon for failure to perform the same during the period of such disability.
 8. The certificate holder shall maintain the Project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the Project, and all parts thereof, conformably to the rules of the Water Resources Commission (Commission) not inconsistent with Oregon Revised Statutes (ORS) 543.010 to 543.610. (ORS 543.300(4))
 9. No voluntary transfer of the license or of any property acquired, constructed or operated pursuant to the license issued under ORS 543.010 to 543.610 shall be made without written approval of the Commission. Any successor or assignee of any license under any project acquired, constructed or operated by the Applicant, whether by voluntary transfer approved by the Commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the

original Applicant. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. (ORS 543.440)

10. The Project must comply with the water quality standards stated in OAR Chapter 340, Division 41, ORS 468B.048, and Section 303 of the Clean Water Act. The Project must meet water quality requirements including numeric and narrative standards, protect beneficial uses, and not degrade existing water quality.
11. The Project shall be designed and operated to minimize visual, aesthetic and noise impacts.
12. If any cultural material is discovered during Project construction, all activities should stop and an archaeologist contacted to assess the discovery. It is a Class B misdemeanor to impact an archaeological site (ORS 358.905-955) and a Class C felony to impact Indian Burials (ORS 97-740-990).
13. A minimum instream flow of 1 cfs shall at all times be bypassed at the diversion structure during project operation to benefit aquatic and wildlife resources downstream from the project. During low flow conditions when inflow into the project diversion pool becomes less than 1 cfs and the powerhouse is not operating, the forebay shall be maintained at full pool as inflow allows for the benefit of wildlife resources. Maintenance occurs during the first three weeks of summer when the powerhouse is not operating. The pool is temporarily lowered for maintenance and repairs. This usually takes one or two days. Maintenance typically requires dropping pool elevation to the elevation at which flow does not pass over the fish screen. On rare occasions, if there has been major damage to the diversion, the forebay elevation may be lowered below this point and maintenance may take up to three weeks. During these times all Falls Creek flows bypass the diversion structure and enter Falls Creek downstream of the diversion.
14. The certified holder shall maintain the screen over the diversion intake to prevent fish migration downstream through the project diversion. The holder shall be responsible for all screen repair and maintenance necessary to keep the fish screen in proper working order.
15. The tailrace structure and associated bar grating will be maintained as necessary to reduce erosion, scour, and fish entry into the tailrace and turbine.
16. If at any time an unanticipated situation arises in which the owner or operator observes or suspects that fish, wildlife, or their habitat may be harmed by any of the project facilities or as the result of project operation, the operator shall immediately take appropriate action to prevent further loss. The operator shall, within 24 hours, notify the nearest office of the Oregon Department of Fish and Wildlife (ODFW) and comply with the measures required by ODFW to prevent additional injury or mortality. The owner shall

subsequently restore any damaged fish and wildlife protection features of the project consistent with direction provided by ODFW.

17. The Applicant shall allow the OWRD Director and authorized agents and employees of the ODEQ, ODFW, and OWRD free and unrestricted access upon reasonable notice, 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.
18. Issuance of the license does not absolve the Applicant from compliance with the requirements and enforcement of the requirements under other applicable local, state, and federal laws. The Applicant is made aware that permits may be required from the United State Army Corps of Engineers under Section 404 of the Clean Water Act, or from the Division of State Lands for removal and fill of material.
19. The Applicant shall be liable for all damages occasioned to the persons or property of others by the construction, operation, or maintenance of the Project facilities, and in no event will the State of Oregon be liable therefore.
20. Use of water is governed by this license. However, the operations of the Project by the Applicant so far as those operations affect the use, storage and discharge from storage of waters affected by the Applicant, shall at all times be controlled by such reasonable rules as the Commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe. (ORS543.300(3))
21. Public Health and Safety: The Department may reopen this certificate, if the Director makes a clear showing of significant threat to the public health, safety or the environment that was not identified and addressed during the project reauthorization proceeding and that requires modification of the certificate. (ORS 543A.145 (5)) Such changes could include, but are not limited to, the following:
 - a. New federal listing or a change in status or recovery plan of a threatened or endangered species that may be affected by the project.
 - b. Change in a water quality standard for a water quality parameter that may be affected by the project.
 - c. Development of a Total Maximum Daily Load for a water quality parameter that may be affected by the project.
 - d. Change in baseline environmental conditions such as climate change which may cause the project to not meet water quality standards.

If OWRD proposes to alter conditions, the order shall be in writing and shall consist of a concise statement of the underlying facts supporting the proposed order. Any appeal of

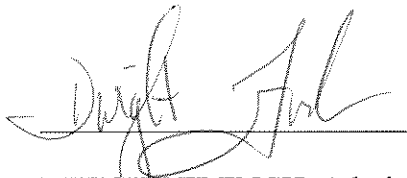
the order shall be according to procedures outlined in ORS Chapter 183.

22. The Applicant shall pay on or before January 1 of each calendar year, an annual license fee, in 1998 dollars, of \$0.405 per Theoretical Horsepower (THP) for 7143 THP with adjustments for inflation as provided in ORS 543.078 and ORS 543.085 (or superseding law).
23. Consistent with ORS 540.610, if after completing construction of the Project, the Applicant fails to use or operate the Project facilities for any period of five consecutive years, the water right shall be subject to termination by OWRD.
24. Upon a decision to terminate the hydroelectric use, the Applicant shall comply with any decommissioning statutes and rules in effect at that time. (OAR 690-052).

J. RECOMMENDATION

The Department proposes reauthorization of the project and that the water right certificate attached be issued as conditioned therein.

Issued in Salem, Oregon on this date: June 29, 2018.



DWIGHT FRENCH, Administrator
Water Right Services Division {For}
Thomas M. Byler, Director
Oregon Water Resources Department

This document was prepared by Mary Grainey. If you have any questions about any of the statements contained in this document please contact me at 503-986-0833 or Mary.s.grainey@wrд.state.or.us

Address correspondence to:

**Oregon Water Resources Department,
725 Summer Street NE, Suite A Salem, OR 97301-1271**

Fax: (503) 986-0901.