

Eric Grape

RE: UO water right certificates

From recent research it was discovered that one of two water right certificates held by State Board of Higher Education, Eugene, was nearing or past a period of non-use allowing for Oregon Water Resources Department (OWRD) to implement forfeiture of certificate.

The immediate considerations whether to pursue retaining the water right are:

- Who owns the water rights of the Millrace (UO) is the owner of the Millrace. While UO holds two water certificates, losing one weakens ownership.
- UO must evidence via Affidavit of Use form (immediately) that condenser cooling certificate water right was exercised within the past five years.

The following information highlights the legal language of certificates and current status, potential for transfer use, and reasoning to pursue non-forfeiture and transfer of rights.

Certificates and Status

UO holds two water right certificates with appropriation from the Willamette River just west of the Interstate 5 bridge. Appropriation is pumped into the Eugene Millrace.

Certificate 29374 (1957) allows for 13.2 cubic feet per second (cfs) right of appropriation. Certificate use is granted for “condenser cooling in University Heating Plant,” which is now Central Power Station (CPS). The Permit (S 25233) identifies similarly the condenser cooling, with ‘Remarks’ stating “No consumptive use of water is contemplated.”

Certificate 29375 (1957) allows for 36.8 cfs right of appropriation. Certificate use is granted for “recreational, including swimming, boating and scenic enhancement.” The Permit number is the same as Certificate 29374, with recreation use, and ‘Remarks’ of “No consumptive use of water is contemplated.”

Status of 29374 (condenser cooling/CPS) is considered, but not confirmed, as not-valid. This is determined that since 2010 no record of appropriation/use has been submitted to OWRD (it was during this year the Millrace was no longer used as a cooling feature for CPS). The legal language to forfeit use is “Once a water right has been unused for five consecutive years or more, it is subject to cancellation even if the property owner begins to use the water again. Under the law, the right is presumed to be forfeited and reuse does not reinstate the right.” (See section Potential for Transfer for possible workaround to this declaration). If possible, UO must file immediately Affidavit of Use form from CPS use.

Status of 29375 (recreational) is valid and reporting is up-to-date.

Potential for Transfer

Certificate 29374 has a few scenarios for discussion.

OWRD will determine certificate not-valid due to non-use. We lose our certificate and right. UO, if motivated, would have to reapply for a new certificate.

Immediate near-future use (‘any’ use related to CPS) may re-activate right (submit Affidavit of Use form). This is email/voice information provided by North-West Oregon OWRD Water Master Michael Mattick.

Submit documentation for Transfer of Right (once Affidavit of Use accepted). There are two potentials:

- Historical input of condenser cooling waters minus the output (what was returned to Millrace) results in xxx gallons. These

gallons are consumptive use. In addition, although not specified on either certificate, the mere passing of water through the Millrace results in evaporation and groundwater sink. These processes are argued as consumptive use. Thereby both water certificates may transfer of use, having industrial, recreational and consumptive uses. These information conveyed via phone by OWRD NW Water Master and Transfer Rights Advisor (below).

- The OWRD Transfer Rights Advisor Kelly Starnes indicates that once we hurdle the Affidavit of Use form on CPS the certificates have sufficient (inherent) consumptive and non-consumptive use rights to modify both certificate intent of use.

If a transfer of use is granted then the 'use' needs to be defined in such manner as deemed appropriate and flexible enough to meet future needs. For example, we can transfer use for both certificates to reflect the same language and use. (See Reasoning to Pursue Non-Forfeiture... below).

Reasoning to Pursue Non-Forfeiture and Transfer of Rights

The future of the Millrace and pumped waters is uncertain at this time. There is no solid long-term plan, as I am aware, on continued usage of our water rights and retain ownership of Millrace. However, retaining the water rights preserves the legal ownership of the Millrace, and as such it is highly encouraged to retain as much rights as possible in the near term, until such time that UO can make a long-term decision.

With the preceding information on CPS certificate transfer of use potential, incorporating transfer of use language to both water right certificates to indicate consumptive, health, recreation, etc., and retaining both water rights for solid Millrace ownership privileges, I highly encourage UO to

attempt the condenser water right transfer to another right of use, thereby retaining certificate right.

The Transfer of Use language could incorporate the following:

Health:

- Emergency water supply for local populations
- Water stagnation, and mosquito-borne illnesses

Industrial:

- Emergency/backup water cooling supply for CPS

Recreational:

- Scenic, swimming, boating, etc.

Environmental

- Species habitat and conservation

Side note: CPS indicated interest for information on groundwater/well water right certificate (for use in emergency plant cooling and human consumption needs). This would require a new (groundwater/not surface water) water right certificate application. The following is a summary of this process:

“Most water rights are obtained in a three-step process. The applicant first must apply to the Department for a permit to use water. Once a permit is granted, the applicant must construct a water system and begin using water. After water is applied, the permit holder must hire a certified water right examiner to complete a survey of water use and submit to the Department a map and a report detailing how and where water has been applied.”