



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

## **Notice of Open Comment Period Conversion of Powerdale Hydroelectric Right To an Instream Water Right on Hood River**

**Comments on this draft final order to convert hydroelectric use under Water Right Certificate 46965 to an instream right are requested from interested citizens, organizations, governmental entities, and other parties.**

**The draft final order and draft certificate may be viewed at the Water Resources Department, 725 Summer Street NE, Salem, Oregon 97301.**

**Comments may be submitted in writing to the Oregon Water Resources Department, 725 Summer Street NE, Salem, Oregon 97301 by October 20, 2011.**

### **Conversion of Hydroelectric use to instream water right on Hood River**

Certificate #: 46965  
Amount of water: 140 cubic feet per second (priority date - 1901)  
360 cubic feet per second (priority date - 1911)  
Source of water: Hood River  
Location: former Powerdale Dam site: SE ¼ SE ¼ Section 11, Township 2 North,  
Range 10 East, W.M.

Documents are available at this link:

<http://filepickup.wrd.state.or.us/files/Publications/Powerdale.pdf>

For Further Information Contact: Mary Grainey 503-986-0833.

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON

IN THE MATTER OF THE CONVERSION OF                    } DRAFT  
HYDROELECTRIC WATER RIGHT CERTIFICATE        } FINAL  
46965 IN THE NAME OF PACIFIC POWER            } ORDER  
AND LIGHT COMPANY TO AN INSTREAM RIGHT       }

The Pacific Power and Light Company (Company) perfected the use of 500 cubic feet per second (cfs) of water from the Hood River, at Powerdale Dam, for hydroelectric power purposes as evidenced by water right certificate 46965. The priority date of this right is 1901 for 140 cubic feet per second (cfs) of water and 1911 for 360 cfs.

On November 7, 2006, a large flood caused significant damage to the Powerdale hydroelectric project.<sup>1</sup> The flowline from the dam to the powerhouse was destroyed, so that hydroelectric use was no longer possible at the project. The Company determined that the hydroelectric project would not be economical to repair or relicense and has decommissioned the dam and powerplant facility. On December 22, 2010, the Company submitted written consent for the hydroelectric water right under certificate 46965 to be converted to an instream water right pursuant to ORS 543A.305. (Exhibit 1)

ORS 543A.305(5) provides:

“Five years after the use of water under a hydroelectric water right ceases, . . . or at any time earlier with the written consent of the holder of the hydroelectric water right, up to the full amount of the water right associated with the hydroelectric project shall be converted to an in-stream water right, upon a finding by the Water Resources Director that the conversion will not result in injury to other existing water rights. In making the evaluation, the director shall consider the actual use of the hydroelectric project and the resulting impacts on actual use by other existing water rights as of October 23, 1999. The director may include mitigation measures as conditions of the instream water right to avoid injury and to ensure the continuation of authorized water uses by other existing water rights.”

The Company has submitted data to the Department that shows up to 500 cfs of water use for power purposes at the Powerdale project. In practice, hydroelectric production at the Powerdale site followed a “run-of-the-river” pattern. Flows of 500 cfs were used in seasons of winter and spring when streamflows were high. But, when less water was available in summer, then electricity production would be lower. Under the Federal Energy Regulatory Commission license for the project, the Company was required to bypass flows of 100 cfs or more to maintain water instream. The Water Resources Department would not “regulate off” junior water users to enable the Company to bypass

<sup>1</sup> PacifiCorp Energy letter to Federal Energy Regulatory Commission, February 1, 2007, [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20070206-0191](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20070206-0191)

water downstream. Therefore, the Company used only the water that was available after all other uses upstream had been met. The hydroelectric project did not cause injury to any upstream water user.

An excellent indicator of the amount of water that was available for use at the Powerdale site is the U.S. Geological Survey's (USGS) streamflow gage approximately 2 miles upstream of Powerdale Dam – Hood River at Tucker Bridge, near Hood River, OR - Gage 14120000. Exhibit 2 shows the continuous period of record at Tucker Bridge from October 1, 1964 thru September 30, 2010.

[http://waterdata.usgs.gov/or/nwis/dv?cb\\_00060=on&format=gif\\_default&begin\\_date=1964-10-01&end\\_date=2010-09-30&site\\_no=14120000&referred\\_module=sw](http://waterdata.usgs.gov/or/nwis/dv?cb_00060=on&format=gif_default&begin_date=1964-10-01&end_date=2010-09-30&site_no=14120000&referred_module=sw)

There are no water rights authorized to withdraw water from the mainstem Hood River between Tucker Bridge and the former Powerdale dam site. Flows at the Powerdale dam site are assumed to be 10 to 40 cfs greater than at Tucker Bridge because of inflows from Odell and Neal Creeks and from the Farmers Irrigation District's hydroelectric project.

Therefore, for purposes of determining whether streamflows can be met without injury to existing rights, streamflows recorded at Tucker Bridge are considered to be conservative estimates of the streamflows at the Powerdale site.

Exhibit 2 is a table of minimum streamflow values from the U.S. gage at Tucker Bridge for every day of the year for the past 46 years of record. Table 1 shows the streamflow in cubic feet per second that has always been available at Tucker Bridge within a particular month.

Table 1. Minimum daily streamflows at Tucker Bridge from 10-01-1964 thru 09-30-2010 (cubic feet per second)

Jan	Feb	Mar	Apr	May 1-15	May 16-30	Jun	Jul	Aug	Sep	Oct	Nov	Dec
167	220	328	501	511	320	224	202	160	144	200	219	281

Exhibit 3 and Table 1 show that minimum daily streamflows at the Tucker Bridge gage have always been greater than 140 cfs for every day within the past 46 years of record.

An instream flow of 140 cfs with priority of 1901 is not expected to require the regulation of upstream water rights with priority dates earlier than October 23, 1999, and will not result in injury to other existing water rights. Therefore, no mitigation measures will be required to avoid injury or to ensure the continuation of authorized water users for this amount of instream flow.

In a similar manner, Table 1 shows that from April 1 through May 15 flows are always greater than 500 cfs. An instream flow of 500 cfs from April 1 through May 15 is not expected to require the regulation of upstream water rights with priority dates earlier than October 23, 1999, and will not result in injury to other existing water rights. Therefore, no mitigation measures will be required to avoid injury or to ensure the continuation of authorized water uses for 360 cfs of instream flow with priority of 1911 for the period

April 1 through May 15.

In a similar manner, Table 2 shows the streamflows with priority dates of 1901 and 1911 that are not expected to require the regulation of upstream water rights and will not result in injury to other existing water rights. No mitigation measures will be required to avoid injury or to ensure the continuation of authorized uses with priority dates earlier than October 23, 1999.

Table 2 – CFS of water available instream without need for mitigation

priority	Jan	Feb	Mar	Apr	May		Jun	Jul	Aug	Sep	Oct	Nov	Dec
					May 1-15	May 16-30							
1901	140	140	140	140	140	140	140	140	140	140	140	140	140
1911	27	80	188	360	360	180	84	62	20	4	60	79	141
	167	220	328	500	500	320	224	202	160	144	200	219	281

Any additional instream flows from those shown in Table 2 would require mitigation measures to ensure the continuation of other existing authorized water uses with priority dates earlier than October 23, 1999.

Table 3 – CFS of water to be converted to an instream water right

priority	Jan	Feb	Mar	Apr	May		Jun	Jul	Aug	Sep	Oct	Nov	Dec
					May 1-15	May 16-30							
A 1901	140	140	140	140	140	140	140	140	140	140	140	140	140
B 1911	27	80	188	360	360	180	84	62	20	4	60	79	141
C 1911	333	280	172			180	276	298	340	356	300	281	219
Total	500	500	500	500	500	500	500	500	500	500	500	500	500

Therefore as shown in Table 3, Row A above, 140 cfs of water with a priority date of 1901, evidenced by water right certificate 46965 shall be converted to an instream water right at the location of the former Powerdale dam site.

In addition, instream rights in Row B above, with priority date of 1911, evidenced by water right certificate 46965 shall be converted to an instream water right at the location of the former Powerdale dam site.

In addition, instream rights in Row C above, with priority date of 1911, shall be converted to an instream water right at the location of the former Powerdale dam site, and these rights shall be subordinated to other existing authorized water uses with priority dates earlier than October 23, 1999.

In order to protect the flows at the former Powerdale dam site, the Department will use a combination of data from the USGS gage at Tucker Bridge (14120000) and inflows from Odell and Neal Creeks and return flow from Farmer's Irrigation District Hydro-Electric Unit #2. In order to ensure that other uses are not unnecessarily required to experience frequent "on/off" regulation, the Department will consider using a 2 or 3 day smoothing of the average daily flows at the Tucker Bridge gage. The Department welcomes comments on the procedures for measuring or reasonably estimating the average daily flows to be protected.

This instream right is not additive to other existing instream rights (certificates 59747, 59679, nor 76155.)

Water right certificate 46965 is cancelled and a new water right for instream use shall be issued as described above.

Dated at Salem, Oregon this            day of .

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PHILLIP C. WARD, DIRECTOR  
Oregon Water Resources Department

STATE OF OREGON  
COUNTY OF HOOD  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT  
SALEM, OR 97301

confirms the right to use the waters of HOOD RIVER, a tributary of the COLUMBIA RIVER to maintain an instream flow.

The right is established under Oregon Revised Statutes 543A.305 based on the conversion of a water right evidenced by certificate 46965 in the name of the Pacific Power and Light Company for hydroelectric power use in the Powerdale Plant.

This right is for flows to be maintained in the HOOD RIVER at the location of the FORMER POWERDALE DAM in the SE¼ SE ¼, SECTION 11, TOWNSHIP 2 NORTH, RANGE 10 EAST, W.M.

The following flows (cubic feet per second) are assigned instream:

	priority	Jan	Feb	Mar	Apr	May 1- 15	May 16- 30	Jun	Jul	Aug	Sep	Oct	Nov	Dec
A	1901	140	140	140	140	140	140	140	140	140	140	140	140	140
B	1911	27	80	188	360	360	180	84	62	20	4	60	79	141
C	1911	333	280	172			180	276	298	340	356	300	281	219
Total		500	500	500	500	500	500	500	500	500	500	500	500	500

The instream rights in Row C above, with priority date of 1911, are subordinated to other authorized water uses with priority dates earlier than October 23, 1999.

This instream right is not additive to existing instream rights for Hood River - certificates 59747, 59679, nor 76155.

This certificate is issued to convert the hydroelectric water right under certificate 46965 to an instream water right. Certificate 46965 is superseded by this certificate.

**Notice of Right to Petition for Reconsideration or Judicial Review**

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.

Dated at Salem, Oregon this        day of November, 2011

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PHILLIP C. WARD, DIRECTOR  
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates Number .

December 22, 2010

Phillip C. Ward, Director  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301

**Subject:** Assignment of Certificate 46965 for Instream Conversion

Dear Director Ward:

On behalf of PacifiCorp, I am pleased to submit the enclosed Request for Assignment, along with the required fee of \$75.00, to be filed in connection with the Powerdale Hydroelectric Project (Powerdale).

The assignment conveys all of PacifiCorp's interest in the decreed water right evidenced by Certificate 46965 (Certificate) for hydroelectric power production at Powerdale. The assignment is provided to the Oregon Water Resources Department (OWRD) pursuant to Section 4.3.1 of the Powerdale Hydroelectric Project Settlement Agreement entered into between OWRD and PacifiCorp, along with other Parties, on June 6, 2003 (Settlement Agreement).

The Settlement Agreement states that within 90 days of permanent cessation of power at Powerdale, PacifiCorp shall "assign its PacifiCorp Hydroelectric Water Right for the Powerdale Project (Certificate No. 46965) to OWRD for conversion to an instream water right pursuant to ORS 543A.305." As documented in prior communications between PacifiCorp and OWRD, power production at Powerdale was terminated prematurely in November 2006, as a result of a flood event. However, PacifiCorp has continued to use water under the Certificate for decommissioning purposes. Use of water use was finally terminated on September 30, 2010, and this assignment is therefore submitted consistent with the 90-day timeline described in the Settlement Agreement.

As stated in the Settlement Agreement, the assignment is made "as is" with no representation or warranty concerning the water right or whether it may be converted to an instream water right. However, as further provided in the Settlement Agreement, if PacifiCorp's use of water under the water right should become an issue in the conversion process, we are prepared to cooperate with OWRD in defending the validity of the water right by providing documentation regarding the history of use at Powerdale, as OWRD may deem necessary.

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DEC 27 2010

WATER RESOURCES DEPT  
SALEM, OREGON



Phillip C. Ward, Director  
December 22, 2010  
Page 2

We are pleased to provide this Assignment as part of the decommissioning and instream conversion process contemplated in the Settlement Agreement. If you have questions or need any additional information from PacifiCorp, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Landolt", with a long horizontal stroke extending to the right.

Randy Landolt  
Managing Director, Hydro Resources

Enclosures

cc: Mary Graine, OWRD  
John Sample, PacifiCorp  
Todd Olson, PacifiCorp

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DEC 27 2010  
WATER RESOURCES DEPT  
SALEM, OREGON

STATE OF OREGON

COUNTY OF HOOD RIVER

CERTIFICATE OF WATER RIGHT

This Is to Certify, That PACIFIC POWER AND LIGHT COMPANY

of Public Service Building, Portland, State of Oregon, 97204, has a right to the use of the waters of Hood River

a tributary of Columbia River for the purpose of hydroelectric power (10,227 THP) in Powerdale Plant

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Hood River County, and the said decree entered of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 17, at page 333; that the priority of the right thereby confirmed dates from 1901 for 140 cubic feet per second and 1911 for 360 cubic feet per second that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 500.0 cubic feet per second.

The point of diversion is located in the NE 1/4 SE 1/4, Section 11, T. 2 N., R. 10 E., W. M., being 50 feet West and 400 feet North from the SE corner of Section 11.

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

NE 1/4 SE 1/4 Section 36 T. 3 N., R. 10 E., W. M.

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DEC 27 2010

WATER RESOURCES DEPT SALEM, OREGON

And said right shall be subject to all other conditions and limitations contained in said decree. The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed

this date November 29, 1978.

James E. Sexton Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 39, page 46965



**Oregon Water Resources Department**  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301  
 (503) 986-0900  
 www.wrd.state.or.us

# Request for Assignment

If for multiple rights, a separate form and fee for each right will be required.

I, PacifiCorp, successor to Pacific Power & Light  
 (Name of Applicant / Permit / Transfer Holder / License Holder/GR Certificate of Registration)

825 NE Multnomah, Suite 1500                      Portland                      OR                      97232-2131                      503-813-6688  
 (Mailing Address)                                      (City)                      (State)                      (Zip)                      (Phone #)

- hereby assign all my interest in and to application/permit/transfer/license/GR Certificate of Registration;
- hereby assign all my interest in and to a portion of application/permit/transfer/license/GR Certificate of Registration; (You must include a map showing the portion of the application/permit/transfer/license/GR Certificate of Registration to be assigned.)
- hereby assign a portion of my interest in and to the entire application/permit/transfer/license/GR Certificate of Registration:

Application # Certificate 46965 ; Permit # \_\_\_\_\_ ; Transfer # \_\_\_\_\_  
 -OR-  
 License # \_\_\_\_\_ ; GR Statement # \_\_\_\_\_ ; GR Certificate of Registration # \_\_\_\_\_

As filed in the office of the Water Resources Director, to:

Oregon Water Resources Department  
 (Name of New Owner)

725 Summer St. NE, Suite A                      Salem                      OR                      97301-1266  
 (Mailing Address)                                      (City)                      (State)                      (Zip)                      (Phone #)

**Note:** If there are other owners of the property described in the Application, Permit, Transfer, License, or GR Certificate of Registration, you must provide a list of all other owners' names and mailing addresses and attach it to this form.

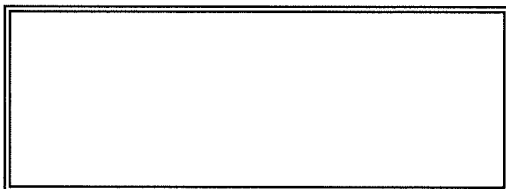
I hereby certify that I have notified all other owners of the property described in this Application, Permit, Transfer, License, or GR Certificate of Registration of this Request for Assignment

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Applicant/Permit Holder \_\_\_\_\_

Applicant/Permit Holder \_\_\_\_\_

**DO NOT WRITE IN THIS BOX**



The completed "Request for Assignment" form *must* be submitted to the Department along with the recording fee of \$75.

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DEC 27 2010



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
FAX 503-986-0904

December 28, 2010

Randy Landolt  
Managing Director, Hydro Resources  
PacifiCorp  
825 NE Multnomah, Suite 1500  
Portland, OR 97232

RE: Assignment of Certificate 46965 for Instream Conversion

Dear Mr. Landolt:

On behalf of Director Phil Ward, thank you for the assignment of Certificate 46965 for hydroelectric power production at the Powerdale hydroelectric facility to the Oregon Water Resources Department. The assignment was provided pursuant to Section 4.3.1 of the Powerdale Hydroelectric Project Settlement Agreement entered into on June 6, 2003.

The Department accepts the assignment "as is" with no representation or warranty concerning the water right or whether it may be converted to an instream water right. The Department shall process the water right ORS 543A.305 for conversion of a hydroelectric water right to an instream water right.

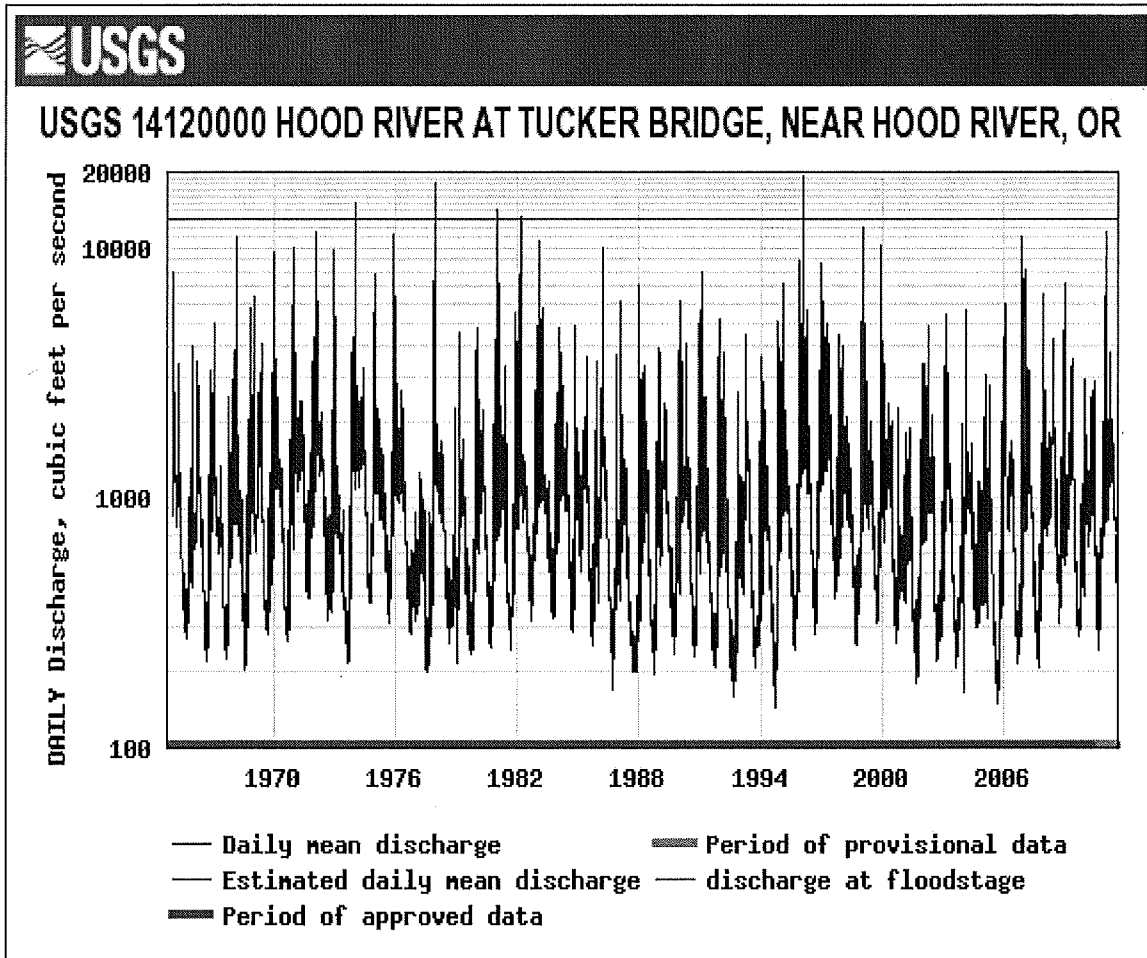
There is no fee for the assignment of a water right under ORS 543A.305 to the Department. Therefore, we are returning your check of \$75.00 to you. If you have any questions, please contact Mary Graine at 503-986-0833.

Again, thank you for your cooperation in the successful decommissioning of the Powerdale hydroelectric project and in fulfillment of the Settlement Agreement.

Sincerely,

Dwight French, Administrator  
Water Rights and Adjudications Division

Exhibit 2 Continuous Streamflow Record at Tucker Bridge



**EXHIBIT 3 Minimum Streamflows at Tucker Bridge**

<b>Da y of mo nt h</b>	<b>Minimum of daily mean values for each day for 45 - 46 years of record in, cfs (Calculation Period 1964-10-01 -&gt; 2010-09-30)</b>											
	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
<b>1</b>	340	220	395	501	568	328	222	220	178	230	264	302
<b>2</b>	320	220	395	507	559	318	216	205	180	226	265	300
<b>3</b>	280	260	387	529	579	295	207	187	173	234	238	295
<b>4</b>	260	350	376	538	593	279	236	188	163	226	231	297
<b>5</b>	205	350	371	548	559	271	220	186	155	223	230	298
<b>6</b>	167	345	366	534	556	265	205	187	149	235	231	292
<b>7</b>	220	342	367	560	556	265	203	207	160	240	229	286
<b>8</b>	220	340	370	580	593	262	209	205	171	239	228	282
<b>9</b>	220	342	364	593	589	258	213	180	182	231	231	281
<b>10</b>	378	402	361	591	634	257	215	184	156	239	223	337
<b>11</b>	371	426	357	642	593	246	228	181	152	220	219	400
<b>12</b>	379	414	353	653	548	269	205	183	154	221	258	400
<b>13</b>	395	445	341	622	535	262	216	195	144	208	257	396
<b>14</b>	376	446	332	586	529	245	221	194	149	215	253	391
<b>15</b>	379	417	328	557	511	235	222	188	161	207	255	393
<b>16</b>	427	399	330	537	485	234	220	196	162	206	261	379
<b>17</b>	400	396	360	562	470	226	235	186	165	207	261	372
<b>18</b>	380	382	334	574	476	224	248	188	166	205	259	372
<b>19</b>	400	374	395	533	486	230	250	176	170	205	254	396
<b>20</b>	415	374	435	512	454	240	236	189	174	201	251	388
<b>21</b>	406	402	393	502	425	249	216	185	173	201	271	385
<b>22</b>	384	407	383	505	407	278	209	180	175	200	302	379
<b>23</b>	398	401	403	570	400	313	222	185	175	203	276	364
<b>24</b>	380	394	384	649	403	302	209	162	170	207	297	355

Day of month	Minimum of daily mean values for each day for 45 - 46 years of record in, cfs (Calculation Period 1964-10-01 -> 2010-09-30)											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
25	360	390	373	669	412	302	202	160	172	205	298	346
26	340	387	492	662	413	305	215	160	175	205	303	341
27	320	383	544	658	384	305	209	172	179	202	293	333
28	300	383	524	630	365	323	208	192	177	214	277	327
29	280	813	512	613	352	308	206	171	186	202	267	322
30	260		509	599	341	270	216	168	224	214	265	325
31	240		503		320		227	178		245		360

<http://waterdata.usgs.gov/or/nwis/dvstat/?referred module=sw&site no=14120000&por 14120000 1=546312,00060,1,1897-10-20,2010-09-30&start dt=1964-10-01&end dt=2010-09-30&format=html table&stat cds=min va&date format=YYYY-MM-DD&rdb compression=file&submitted form=parameter selection list>