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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**WRD 1-2021**

CHAPTER 690

WATER RESOURCES DEPARTMENT

**FILED**

12/10/2021 4:52 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Removes language relating to hydroelectric project annual fees to conform rule with statute

EFFECTIVE DATE: 12/10/2021 THROUGH 06/07/2022

AGENCY APPROVED DATE: 12/03/2021

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**NEED FOR THE RULE(S):**

With the passage of House Bill 2143 during the 2021 Legislative Session, existing Water Resources Department rule provisions relating to annual fees for hydroelectric projects conflict with statute. House Bill 2143, which is codified as 2021 Oregon Laws (OL) Chapter (Ch.) 516, became effective the 91st day after sine die. Under the new statutory annual fee structure, the licensee is required to annually pay the applicable fee under Oregon Revised Statute (ORS) 543.078 as amended by 2021 OL Ch. 516 for the hydroelectric project on or before January 1 each year. The Department has determined that rulemaking is required to conform the current Oregon Administrative Rule (OAR) with statute and is developing a permanent rule to remove existing language in OAR 690-051-0400 that relates to annual fees. However, with annual fees due on or before January 1, 2022, it is not possible to adopt a permanent rule before annual fees are due. Given the conflict between the current rule and the new statutory annual fee structure, there is a potential for confusion regarding the assessment of annual fees due on or before January 1, 2022. In order to mitigate this confusion and provide immediate guidance for licensees, the Water Resources Commission has voted to adopt a temporary rule to amend OAR 690-051-0400 to conform with statute.

**JUSTIFICATION OF TEMPORARY FILING:**

(1) Given the differences between the Department's current rule governing annual fees (OAR 690-051-0400) and the new statutory annual fee structure of 2021 OL Ch. 516, there is a substantial likelihood of confusion regarding the correct amount of the annual fee due on or before January 1, 2022. This confusion may result in licensees submitting an amount different than the amount due under the new law and potentially an amount different than other similarly situated licensees. This result is contrary to the intent of the Legislature in adopting House Bill 2143. (2) The Department estimates there are around 120 hydroelectric project licensees who will be subject to the annual fee requirements of 2021 OL Ch. 516. These licensees include individuals, small businesses, irrigation districts, and municipalities. (3) If the differences in assessment of the annual fee due under the Department's current rule and under the new law cause confusion and ultimately payment of different annual fees, some licensees may be seriously prejudiced by paying more than other licensees who are similarly situated. It is in the public interest to implement the fee schedule authorized by the 2021 Legislature, as that fee schedule is necessary to address budgetary shortfalls to support hydroelectric programs at three state agencies, enabling these programs to carry out their statutory duties to serve the public and hydroelectric project owners. (4) By amending OAR 690-051-0400 to remove existing language

relating to annual fees, the temporary rule will reduce the likelihood of confusion regarding the correct amount of the annual fee due on or before January 1, 2022, and ensure all licensees who are similarly situated are submitting the same amount under the new annual fee structure.

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DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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AMEND: 690-051-0400

RULE SUMMARY: Removes language relating to hydroelectric project annual fees to conform rule with statute.

CHANGES TO RULE:

690-051-0400

~~Fees: Filing and Annual Application Filing Fees ¶¶~~

(1) An applicant for a Preliminary Permit or License for a project or for a Permit to appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a Permit should be granted.¶¶

(2) The amount of the total project fee required under section (1) of this rule shall be:¶¶

(a) For a project of less than 100 theoretical horsepower, \$1,000;¶¶

(b) For any project of 100 theoretical horsepower or more, an amount equal to \$5,000 plus \$1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of \$100,000;¶¶

(3) The project fee shall be payable in advance of each of four stages of project review as described in OAR 690 051 0095 as follows:¶¶

(a) For minor projects less than 100 theoretical horsepower, fifty percent of the fee at the time the application is filed and the fifty percent remaining fee charge when the License is issued;¶¶

(b) For major projects, the fee shall be collected as follows:¶¶

(A) Stage One 20 percent; not to exceed \$2,500;¶¶

(B) Stage Two 30 percent;¶¶

(C) Stage Three 30 percent;¶¶

(D) Stage Four 20 percent.¶¶

(c) If any stage is skipped, the fee at the time of submittal shall be the total application fee due up to and including the stage of current application review.¶¶

(4) In addition to the project fee required under this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.¶¶

~~(5) An annual fee as described in ORS 543.710 shall be required for each Permit issued under ORS Chapter 537.¶¶~~

~~(6) Each License issued shall be conditioned to require the payment of an annual fee as follows:¶¶~~

~~(a) For the first 25 THP or fraction thereof, \$1 per THP; and¶¶~~

~~(b) For each THP in excess of 25, 20 cents.¶¶~~

~~(7) (a) For fees assessed under ORS 543.078(2) each holder of a hydroelectric right shall pay an amount, in 1998 dollars, equal to \$0.405 per theoretical horsepower covered by the water right for the project. The annual fee shall be adjusted annually for inflation according to (c) below.¶¶~~

~~(b) For fees assessed under ORS 543.088 each holder of a hydroelectric right shall pay an amount, in 1998 dollars, equal to \$0.125 per theoretical horsepower covered by the water right for the project. The annual fee shall be adjusted annually for inflation according to (c) below.¶¶~~

~~(c) Fees shall be adjusted using the "GDP-IPD", Gross Domestic Product – Implicit Price Deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business (See Table 1.1.9 line 1.) for September of each year prior to the January due date for the fees. If this index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Department shall make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.~~

~~Statutory/Other Authority: ORS 536.025, 536.027, 537, 543, 2021 OL Ch. 516~~

~~Statutes/Other Implemented: 2021 OL Ch. 516~~