

Hydroelectric Program Overview and Rulemaking

OAR Chapter 690 Division 51


**Appropriation and Use of Water
for Hydroelectric Power and
Standards for Hydroelectric Applications**

-- Dwight French
-- Mary Grainey

➤ **Thank You to the Rules Advisory Committee**

- **22 Members**
- **Participated in 3 Meetings in Salem**
- **Reviewed 4 Drafts of the Proposed Amendments**
- **More Work to be Done**

Outline

- **History of Hydroelectric Program**
 - **Annual Fees**
 - **Housekeeping Updates**
 - **Resource Standards**
 - **Hearings Process**
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Hydroelectric Act of 1931

- **ORS 543.110**
- **After February 26, 1931, no right to appropriate or to use the waters of . . .this state . . . in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for during the periods or extensions thereof stated in ORS 543.010 to 543.610, and pursuant to the provisions thereof.**

Federal Government Exempt

- **ORS 543.140**
- **The provisions of ORS 543.010 to 543.610 shall **not** apply to any water power project or development constructed by the United States.**

Municipal Corporations

- **ORS 543.150** - The provisions of ORS 543 related to preliminary permits, licenses, record keeping, and state or municipal take-overs do **not** apply to municipal corporations or utility districts.
- These may receive a water right permit under **ORS 537** – that does not expire

Hydroelectric Licenses

- Under ORS 543 – A New Hydroelectric Commission for privately developed projects
- Licenses issued for up to 50 years
- Project includes all physical structures, storage, transmission lines, rights of way, **flowage rights**, etc. necessary and appropriate
- ORS 543.520 required project to be taken over by State at the time it was fully amortized (50 years)

In 1995 - 64 Years Later

- **ORS 543.510 requirement of amortization of net investment was repealed**
- **ORS 543.520 requirement that upon amortization a project becomes the property of the State was also repealed**
- **Cleared the path for reauthorization of existing Projects under ORS 543A**

Financial Record Keeping

➤ **Repeal record keeping rules and/or rules regarding transfer of project to a public utility**

- **OAR 690-051-310**
- **OAR 690-051-330**
- **OAR 690-051-334**
- **OAR 690-051-360**
- **OAR 690-051-370**

Annual Fees per Theoretical Horsepower (THP)

- **Revenues are shared with ODFW and ODEQ**
- **Fee Review Panel met in 2009 and made Recommendation**


Annual Fees Inflation Factor

- Fee After Reauthorization - ORS 543.078(2)
 - in **1998 dollars**, equal to **\$0.405** per theoretical horsepower
- Shall be adjusted annually for inflation according to rules established by the Water Resources Commission.

Inflation Factor

- 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.
- <http://www.bea.gov/scb/index.htm>
- \$0.405 in 1998 → \$0.557 in Sept 2014

Housekeeping Updates

- **Traditional Application Review Process for New Projects vs. Expedited Process for Projects on Existing Conduits ORS 543.765**
 - **Water may be Assigned Instream per ORS 543A.305 after Decommissioning of a Project.**
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Housekeeping Updates

- **Hydro Task Force is removed in favor of Agency Representatives**
- **Northwest Power and Conservation Council
– 2014 Plan, 1992 Protected Areas**
- **Reference to Instream Water Rights for Water Availability Purposes**
- **References to Natural Heritage Data Base**

Federal Energy Regulatory Commission (FERC)

- Licenses or Exemptions for All Major Projects
 - Federal Land
 - Navigable Waterways
 - Interstate Commerce
- Has Authority to Balance Need for Power with Environmental Protections

Review Process

- **For Major Projects greater than**
 - **100 Theoretical Horsepower**

- **4 Stages Similar to the FERC Process**
 - **Preliminary Permit**
 - **Consultation and Study Plans**
 - **Draft Application**
 - **Final Application**

Preliminary Permit

- Reserves Place on the River and a Priority Date
- 2 years to Prepare Studies, Maps and Plans for a Final License Application
- Public Hearing and Site Visit in Local Area
- Opportunity for Competing Applications from Municipal Corporations ORS 543.260(3)
- Does **Not** Authorize Construction Nor Use of Water

Consultation

- **Departments of . . .**
 - **Fish and Wildlife**
 - **Environmental Quality**
 - **Parks and Recreation**
 - **U.S. Fish and Wildlife**
 - **National Marine Fisheries Service**
 - **Native American Tribes**
 - **U. S. Bureau of Reclamation**
 - **U.S. Forest Service**
 - **Others**

Study Plans and Draft Applications

- **Opportunity for State and Federal agencies to Work with Applicant to:**
 - **Define Potential Impacts of Project**
 - **Develop Mitigation Strategies**
- **Final Application to FERC and State Agencies**

Final Application

- **Will Receive Public Notice from FERC, Oregon State Water Resources and DEQ for a 401 Water Quality Certificate**
- **FERC Prepares an Environmental Impact Statement**
- **National Marine Fisheries Service and U.S. Department of Fish & Wildlife Prepare Biological Opinions on Endangered Species**

Final Application

- **Oregon Department of Fish and Wildlife**
 - **Prepares Recommendations for FERC**
 - **May commit to Fish Screening/Passage Agreement/Waiver**
 - **May Commit to Agreement on Bypass Flows or Ramping Rates**
 - **Other Commitments in Settlement Agreement**

Resource Standards Adopted in 1985

- ORS 543.017 Requires **no** mortality or injury to anadromous salmon or steelhead on **new** projects
- Requires project at **existing** facility to **restore, enhance or improve** anadromous fish populations within that river system
- Protect other natural resources from potential adverse impacts – No Net Loss

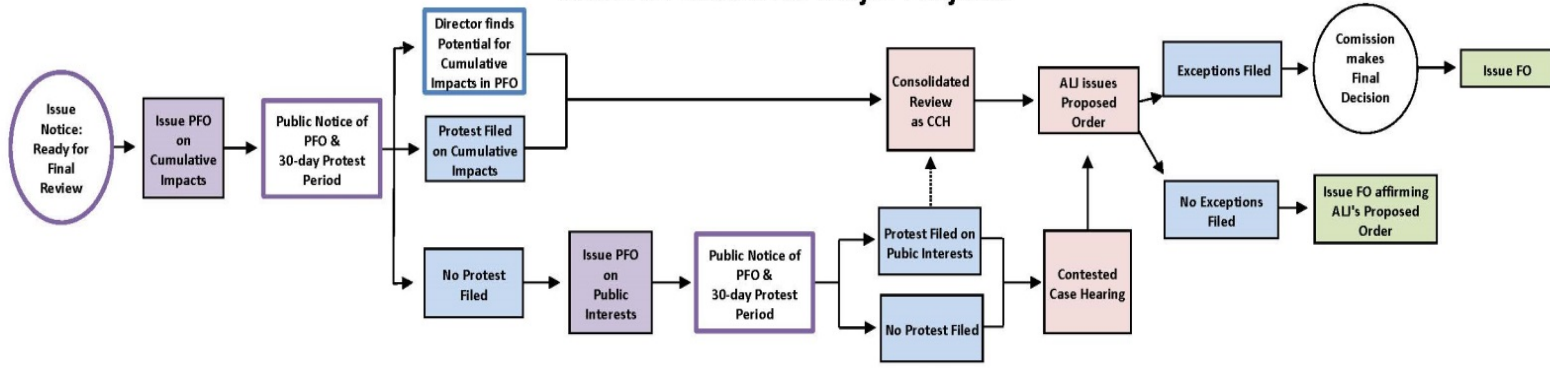
Resource Standards

- **Strengthen protection requirements to reflect statutory language and require acceptable mitigation.**
- **Specific references to ODFW screening and passage statutory standards and other habitat protection strategies.**
- **Match Need for Power standard with Department of Energy and Energy Facility Siting Council's statutory directives.**

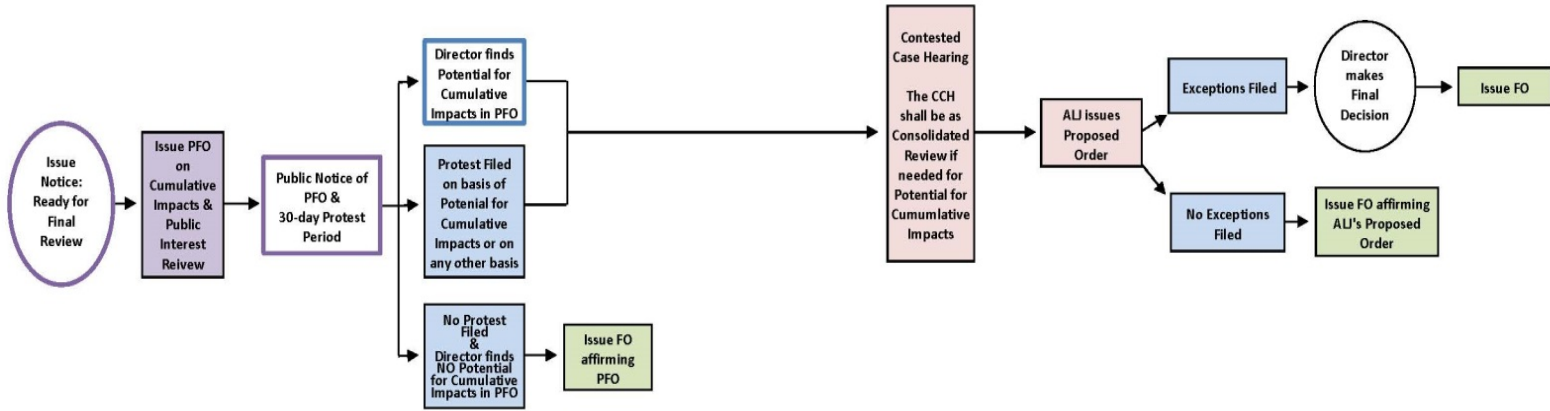
Review Process

- **ORS 543.255 - Requires Consolidated Review if there is a Potential for Cumulative Impacts with other Hydroelectric Projects in Same River Basin**
- **ORS 543.230 – Public Interest Issues – Second Path to Contested Case Hearing**

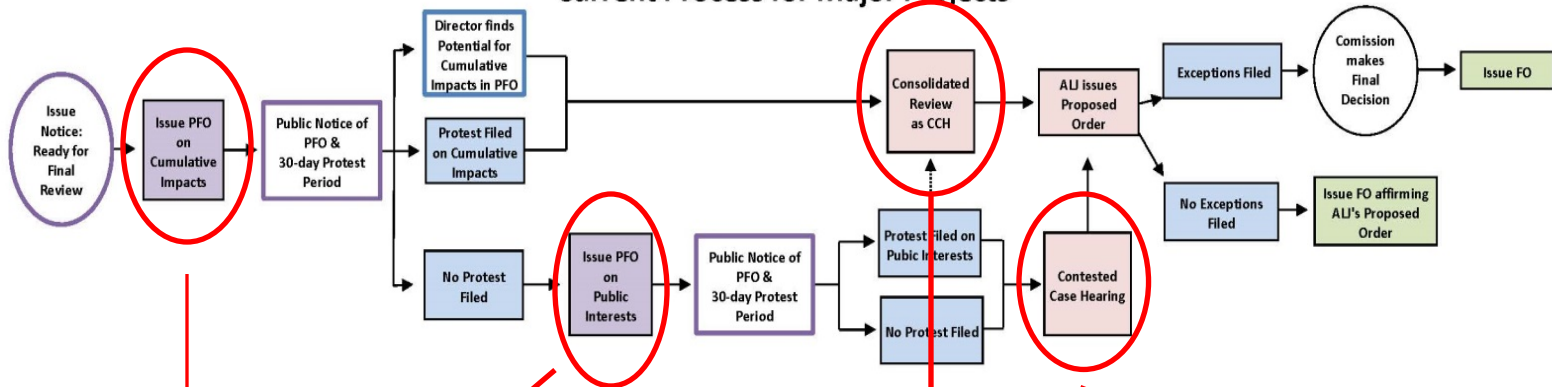
Current Process for Major Projects



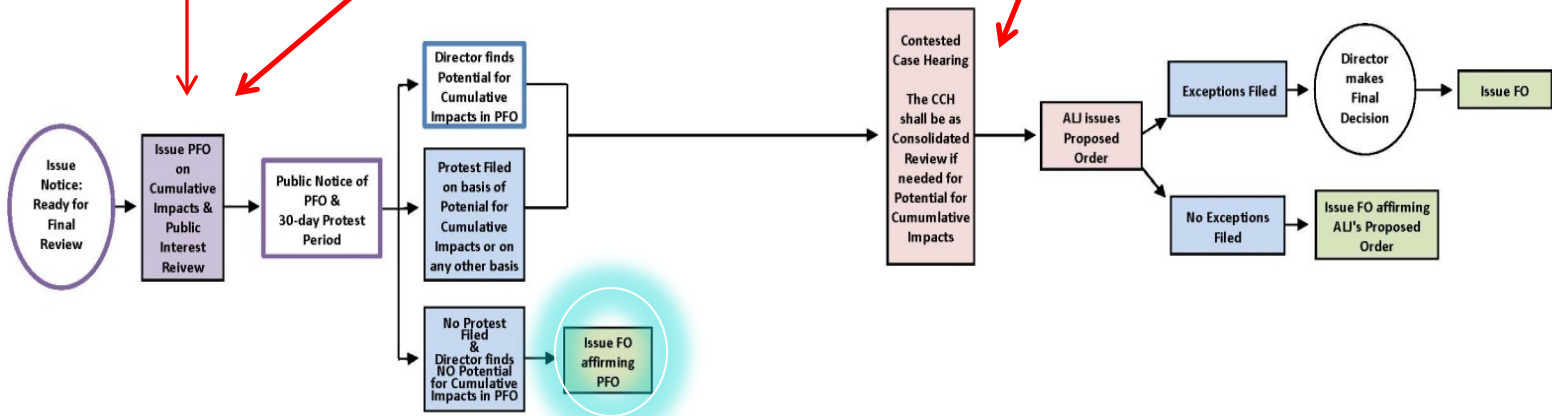
Proposed Process for Major Projects



Current Process for Major Projects



Proposed Process for Major Projects



Exceptions to a Proposed Final Order from the OAH

The Director or the Commission may address any exceptions filed on the ALJ's proposed order and then issue a final order.

The Final Order can be appealed to the Court of Appeals.

Open to whether the Director OR the Commission should address the exceptions

Any Further Questions?

- **Public Hearing to be Scheduled Soon**
- **Likely Return to Commission Later this Year with Recommended Action Item.**