

AGENDA ITEM B
NOVEMBER 19, 2015

Request for Adoption of Rules
OAR 690-051

Appropriation And Use Of Water For
Hydroelectric Power And Standards
For Hydroelectric Applications

NEED FOR RULE UPDATES

- 1. To Eliminate References to Statutes or Rules that have been Repealed**
- 2. To Define the Process for Adjusting Fees for Annual Inflation**
- 3. To Provide Specific Examples of How to meet the Natural Resources Standards**
- 4. To Simplify the Process for Proposed Final Orders and Contested Case Hearings**
- 5. To Allow the Director to Handle Exceptions and to Issue a Final Order**

RAC PARTICIPANTS

- **Suzanne Adkins – Eugene Water & Electric Board**
- **Rich Bowers - Hydropower Reform Coalition**
- **Chris Brun – Confederated Tribes of the Warm Springs Indian Reservation**
- **Jer Camarata – Farmer’s Irrigation District**
- **Julie Carter – Columbia River Inter-Tribal Fish Commission**
- **John Esler – Portland General Electric Co.**
- **Marilyn Fonseca – Oregon Department of Environmental Quality**
- **Nathan Gardiner – Idaho Power Company**
- **Ken Homolka – Oregon Department of Fish and Wildlife**
- **Audie Huber – Confederated Tribes of the Umatilla Indian Reservation**

RAC PARTICIPANTS

- **Jed Jorgensen – Energy Trust of Oregon**
- **Rick Kepler – Oregon Department of Fish and Wildlife**
- **Jan Lee - Northwest Hydroelectric Association**
- **Gary Marcus – Falls Creek Hydroelectric Project Owner and Operator**
- **Kate Miller – Trout Unlimited**
- **Peter Mohr – Water Law Attorney**
- **Rebecca O'Neil – Oregon Department of Energy**
- **Martha Pagel – Water Law Attorney**
- **Kimberley Priestley - WaterWatch of Oregon**
- **Tracy Rutten – League of Oregon Cities**
- **John Sample - PacifiCorp**
- **Erik Steimle – ERM, Environmental Consultant**

RAC MEETING DATES

October 31, 2014

November 24, 2014

March 2, 2015

PUBLIC HEARING

JULY 22, 2015
in Salem

- ❖ **ODFW attended.**
- ❖ **No oral comments.**
- ❖ **Written comment period was open for 2 more weeks.**

REPEAL RULES ON KEEPING FINANCIAL RECORDS FOR AMORTIZATION PURPOSES

OAR 690-051-310

OAR 690-051-330

OAR 690-051-334

OAR 690-051-360

OAR 690-051-370

ADOPT INFLATION FACTOR FOR FEES

**Gross Domestic Product – Implicit
Price Deflator (GDP-IPD)**

**U.S. Department of Commerce
Bureau of Economic Analysis**

Survey of Current Business

Table 1.1.9 – Line 1 for September

\$0.405 in 1998 → \$0.565 in Sept 2015

<http://www.bea.gov/scb/index.htm>

HOUSEKEEPING UPDATES

- 1. Expedited Applications**
- 2. Assigning Water Instream after Decommissioning**
- 3. Hydro Task Force replaced by Agency Reps**
- 4. Northwest Power and Conservation Council -
Columbia River Basin Fish and Wildlife Program
2014 – Protected Areas 1992**
- 5. Water Availability and Instream Water Rights**
- 6. References to Natural Heritage Data Base**
- 7. Update References to Repealed Statutes**

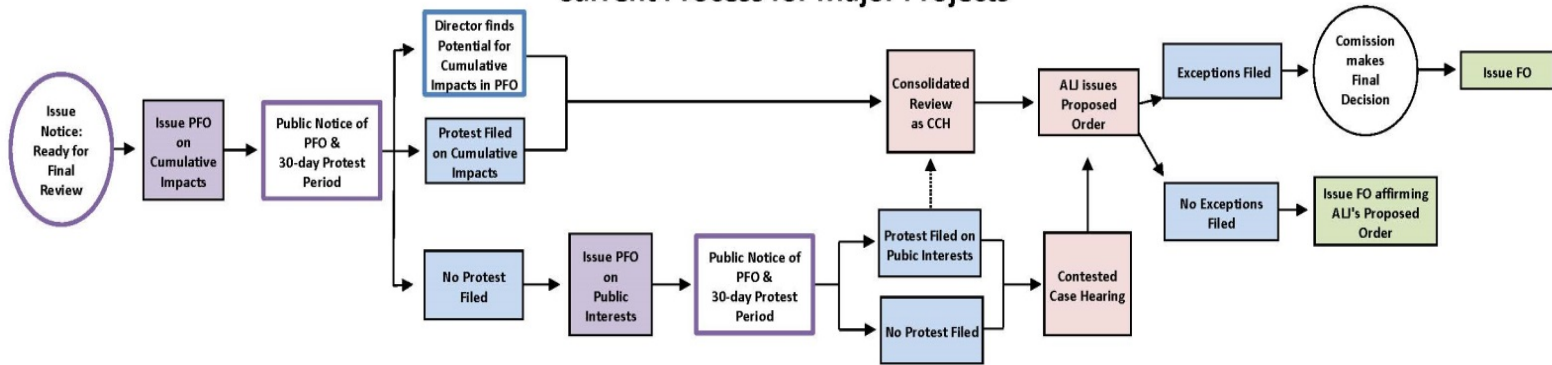
RESOURCE STANDARDS

- 1. Reflect Statutory Language and Require Acceptable Mitigation**
- 2. Refer to ODFW Screening and Passage Statutes and Other Habitat Protection Strategies**
- 3. Align Energy Facility Siting Council Statutory Directives and the Need for Power Standard**

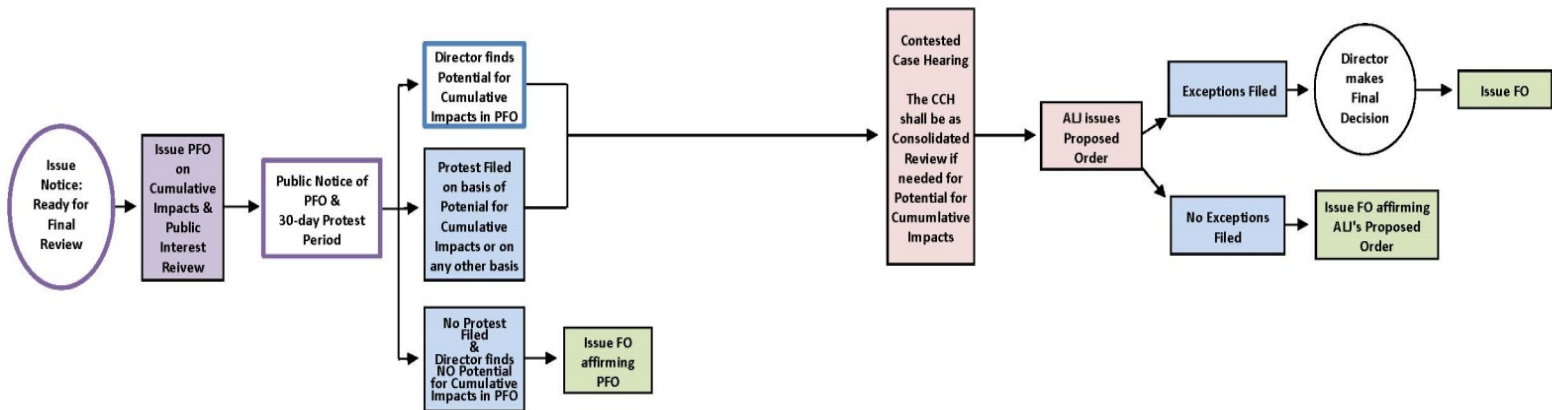
STREAMLINE REVIEW PROCESS

- 1. ORS 543.255 – Requires A Proposed Order on Potential for Cumulative Impacts w other Hydroelectric Projects in Basin**
- 2. ORS 543.230 Requires A Proposed Order on Public Interest Issues**
- 3. Consolidate or Bifurcate Protest Issues**
- 4. Allow Director to Address Exceptions and Issue Final Order**
- 5. Appeal to the Court of Appeals**

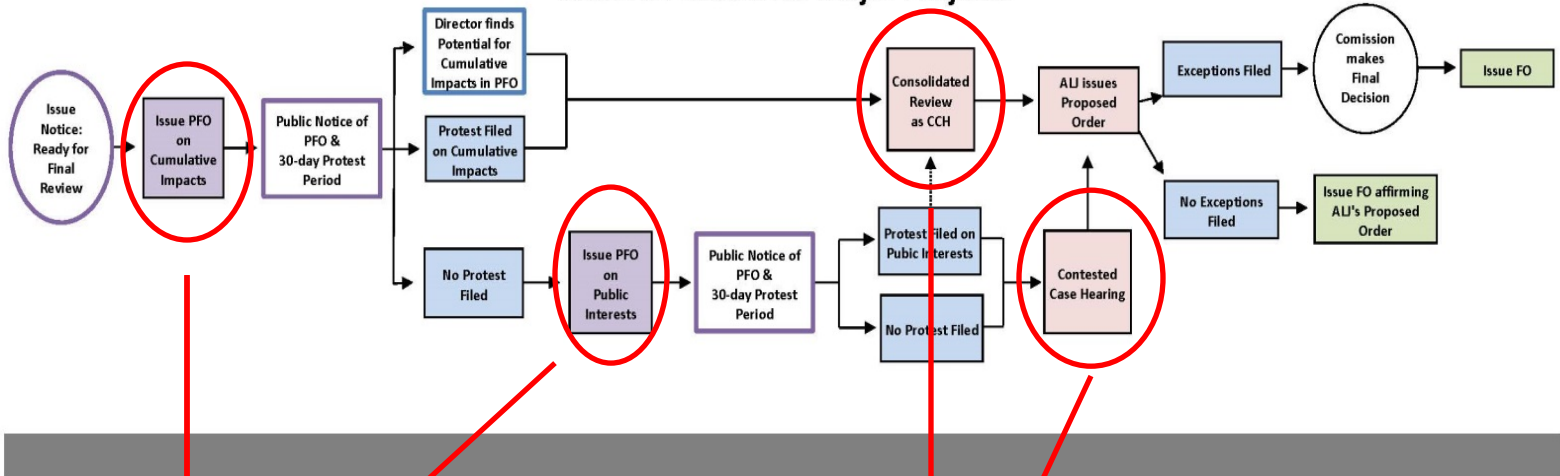
Current Process for Major Projects



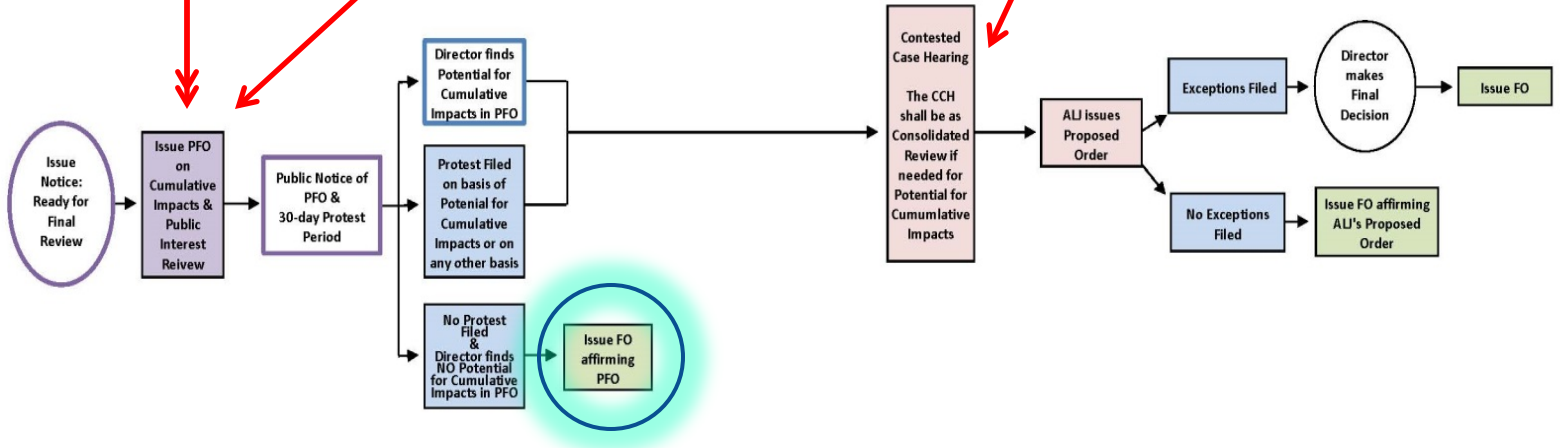
Proposed Process for Major Projects



Current Process for Major Projects



Proposed Process for Major Projects



PUBLIC COMMENT AND RESPONSE

Northwest Hydroelectric Association

- **New definition of “Available Water” provides clarity for non-consumptive uses. (page 2)**

Staff Response

- ***Recommend Rule Language as Proposed***

PUBLIC COMMENT

Northwest Hydroelectric Association

- “Request for Standing” should not be allowed for “non-aggrieved” persons as this is unique to the ORS 537 hearings process. (page 18)

Staff Response

- ORS 543.230 states “every application . . . shall be subject to protest or remonstrance on behalf of the public. . .
- *Recommend Rule Language as Proposed*

PUBLIC COMMENT

Northwest Hydroelectric Association

- **Considerations for anadromous fish standards should not apply to other wild fish. (page 23)**

Staff Response

- **The “No Net Loss” Standard (ORS 543.017(1)(c) requires mitigation for impacts to either wild fish or anadromous fish.**
- ***Recommend Rule Language as Proposed***

PUBLIC COMMENT

Oregon Department of Fish and Wildlife

- Supports proposed language for
 - 690-051-0200(1) . . . “including but not limited to (a)-(f)”
 - 690-051-0200(2) . . . “as applicable”

Staff Response

- *Recommend Rule Language as Proposed*

OTHER COMMENT

Attorneys General on Need for Power Standard

- Amend language to make a finding on the need for power, and take into consideration:
- Consultation with the Department of Energy and
- For projects greater than 25 MW, any recommendation by the Energy Facility Siting Council based on information contained in the hearing record for the application

Staff Response

- *Recommend Rule Language as Amended*

ALTERNATIVES & RECOMMENDATION

- 1. Adopt the proposed final rules**
- 2. Modify the proposed final rules then adopt**
- 3. Direct the Department to continue to work on the rules and bring back to a future commission meeting**

ALTERNATIVES & RECOMMENDATION

1. **Adopt the proposed final rules**
2. **Modify the proposed final rules then adopt**
3. **Direct the Department to continue to work on the rules and bring back to a future commission meeting**