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**PERMANENT ADMINISTRATIVE RULES**

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 11/19/2015 by the  
Water Resources Department 690  
\_\_\_\_\_  
Agency and Division Administrative Rules Chapter Number  
Diana Enright (503) 986-0874  
\_\_\_\_\_  
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\_\_\_\_\_  
Address

To become effective 01/01/2016 Rulemaking Notice was published in the July 2015 Oregon Bulletin.

**RULE CAPTION**

Amendments to Division 51 of Oregon Administrative Rules Chapter 690 related to Hydroelectric Projects  
\_\_\_\_\_

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

690-051-0000, 690-051-0010, 690-051-0020, 690-051-0030, 690-051-0050, 690-051-0060, 690-051-0090, 690-051-0095, 690-051-0130, 690-051-0140, 690-051-0150, 690-051-0160, 690-051-0170, 690-051-0180, 690-051-0190, 690-051-0200, 690-051-0210, 690-051-0220, 690-051-0230, 690-051-0240, 690-051-0250, 690-051-0280, 690-051-0290, 690-051-0320, 690-051-0350, 690-051-0380, 690-051-0400

**REPEAL:**

690-051-0270, 690-051-0310, 690-051-0330, 690-051-0340, 690-051-0360, 690-051-0370

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 536.025, ORS 536.027, ORS 537 and ORS 543

**Other Authority:**

**Statutes Implemented:**

ORS 537 and ORS 543

**RULE SUMMARY**

The rules are being amended for 5 purposes:

Sections of the Rule that require burdensome financial accounting for utilities or other developers are being repealed in keeping with the repeal of certain related statutes. Other references in the rule to statutes or rules that have been repealed are being updated or eliminated.

To define the process for adjusting fees for annual inflation in keeping with the recommendations of a fee advisory review panel appointed under ORS 543.085.

To provide specific examples of how to meet the natural resources standards.

To streamline the process for issuing proposed final orders and to eliminate the requirement for a contested case hearing if no protest is filed.

To allow the Director to handle exceptions to a proposed order after a contested case hearing and to issue a final order.

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Rules Coordinator Name

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**OREGON ADMINISTRATIVE RULES  
DIVISION 51**

**APPROPRIATION AND USE OF WATER FOR HYDROELECTRIC POWER  
AND STANDARDS FOR HYDROELECTRIC APPLICATIONS**

**690-051-0000**

**Purpose**

These rules establish definitions, information requirements, filing procedures, hearing requirements, fees, and standards for hydroelectric development. The Water Resources Commission and the Director shall use these rules to process applications for permits to appropriate water for hydroelectric projects, Preliminary Permits and hydroelectric licenses under ORS Chapters 537 and 543.

Stat. Auth.: ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

**690-051-0010**

**Definitions**

Terms used in ORS 537.170, 543.015, 543.017, 543.220, 543.225, 543.255, and in these rules are given the following meanings:

- (1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the use of water for hydroelectric purposes, or the construction of all or part of proposed or existing project facilities would be located.
- (2) "Anadromous Salmon and Steelhead" means an individual fish, or a run, stock, or population of any species of salmon or any steelhead trout that:
  - (a) Is naturally or hatchery spawned in freshwater;
  - (b) Spends a portion of its life in the ocean; and
  - (c) Returns to fresh water to spawn.
- (3) "Approved Project" means a Permit application filed under ORS Chapter 537 for hydroelectric power use or a Preliminary Permit or License application filed under ORS Chapter 543 which has been approved by the Water Resources Commission or Director.

(4) "Available Water" means water not subject to statutory limits on use and which would not interfere with amounts needed for existing water right permits, certificates, or decrees including minimum perennial streamflows, and instream water rights as established under ORS 537.332 through 537.360 and OAR 690-077. Available water shall be based on stream gage records or, if stream gage records are not available, flow estimates using generally accepted methods of hydrologic analysis. At the location where water from a hydroelectric project would be returned to the stream and is available for other instream or consumptive uses downstream, it is not considered to be contributing to over-appropriation of any downstream water availability sub-basin.

(5) "Commission" means Water Resources Commission.

(6) "Compensate" means to recover, replace, or substitute for loss from unavoidable or unforeseen adverse impacts of an action.

(7) "Cumulative Impact" means the collective effect resulting from incremental actions of past, present, or pending projects, developments or facilities.

(8) "Director" means the Water Resources Director or staff authorized by the Director to administer these rules.

(9) "Enhance" means to improve natural resource conditions over pre-project levels.

(10) "Existing Facility" means any permanent physical structure for the diversion, conveyance, control, or use of water, whether or not in current use.

(11) "Governmental Entity" means any federal or state agency and local government as defined in ORS 294.004, irrigation district formed under ORS Chapter 545 and a water control district formed under ORS Chapter 553.

(12) "Agency Representatives" means any representatives of the following state agencies and other agencies as necessary that may be consulted by the Water Resources Department on the particular natural resources for which each is responsible:

(a) Department of Agriculture;

(b) Water Resources Department;

(c) Department of Environmental Quality;

(d) Department of Energy;

(e) Department of Fish and Wildlife;

(f) Department of Forestry;

(g) Department of State Lands;

(h) Parks and Recreation Department;

(i) Department of Land Conservation and Development.

(13) "Improve" means to enhance.

(14) "License" means a hydroelectric license containing a time-limited water right issued to non-municipal applicants as provided in ORS 543.210 - 543.320.

(15) "Major Hydroelectric Project" means any hydroelectric project greater than 100 theoretical horsepower.

(16) "Minor Hydroelectric Project" means any hydroelectric project less than or equal to 100 theoretical horsepower.

(17) "Maximum Economic Development" means achievement of the greatest net practical economic gain to the people of the state.

(18) "Minimum Perennial Streamflow", also minimum streamflow, means the minimum flow in a stream designated by an administrative rule adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.300(2), and 536.310(7) to support aquatic life, to minimize pollution and to maintain recreation values.

(19) "Mitigation" means taking action or measures that avoid, minimize, rectify, reduce or compensate for impact.

(20) "Modify" means to alter the appearance, character, structure, function or operation of an existing facility.

(21) "Net Loss" means that the magnitude, quality or type of natural resource lost, exceeds the magnitude, quality or type of natural resource provided by mitigation, restoration or enhancement.

(22) "Permit" means a Permit to appropriate water for hydroelectric development issued to municipal corporations as provided in ORS Chapter 537.

(23) "Preliminary Permit" means a Preliminary Permit issued to non-municipal hydroelectric applicants as provided in ORS 543.210 - 543.320.

(24) "Project" means any hydroelectric power project as defined in ORS 543.010.

(25) "Project Facilities" means all parts of the project necessary for or related to power generation. Project facilities shall include dams, diversion structures, reservoirs, forebays, conveyance structures, penstocks, turbines, tailraces, navigation locks, fish ladders, fish screens, recreation facilities, tunnels, transmission lines, substations, buildings, structures and other such works necessary or related to the project.

(26) "Project Vicinity" means:

(a) All lands and waters required for project facilities; and

(b) All lands and waters which project construction or operation could reasonably be expected to affect.

(27) "Proposed Project" means a project for which an application has been received but not acted on by the Commission or Director.

(28) "Protected Area" means an area where the Northwest Power and Conservation Council believes hydroelectric development would have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity or their habitat as designated in the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted on August 10, 1988, and subsequently amended (September 14, 1988 and August 8, 1990, August 13, 1992) pursuant to P.L. 96-501.

(29) "Public Facilities" means private and public lands and structures that provide for transportation, power, communication, water supply, waste treatment, drainage, flood control, recreation and community services to meet public needs for health, safety and welfare.

(30) "Public Utility" means a utility regulated by the Public Utility Commissioner, under ORS Chapter 757, that provides electric power to consumers.

(31) "Restoration" means to return the condition of a natural resource to its pre-project state.

(32) "River Basin" means:

(a) A subbasin designated by the Commission; or

(b) A major river drainage not otherwise divided by the Commission.

(33) "Significant" means having importance in terms of the context and intensity of an action and its result.

(34) "Study Plan" means a document prepared by or on the behalf of the applicant which provides detailed descriptions of proposed methods for evaluating project impacts and

effectiveness of potential mitigation measures.

(35) "THP" means theoretical horsepower, computed by multiplying the flow in cubic feet per second by the amount of fall in feet and dividing the product by 8.8.

(36) "Wasteful, Uneconomic, Impracticable or Unreasonable" as used in ORS 537.170 and 543.225 shall have the following meanings:

(a) A use of water in greater quantities or at greater rates than necessary to achieve proposed project purposes;

(b) A use of water for which quantifiable public and private economic costs exceed quantifiable public and private economic benefits over the life of the project as demonstrated in the record;

(c) A use of water which could not reasonably be developed with the available means or methods;

(d) A use of water which would preclude present beneficial uses or other uses with a reasonable expectation of being developed during the proposed life of the project, which have a greater value to the public.

(37) "Water-Dependent Recreational Opportunity" means a recreational opportunity that can occur only on or in water, such as swimming, boating, water skiing, and fishing.

(38) "Water-Dependent Recreational Opportunity of Statewide Significance" means a recreation opportunity that, combined with natural qualities of the water resource involved, has exceptional value. Factors that may contribute to statewide significance include special designation, high demand, uniqueness, outstanding or unusual natural surroundings, irreplaceable qualities or relatively limited availability. Recreation opportunities readily available on other waters shall not be considered of statewide significance.

(39) "Wild Game Fish" means any fish, run, stock or population of fish belonging to a family of fish listed in ORS 496.009 and which is sustained through natural reproduction.

Stat. Auth.: ORS 197, ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0020**

### **Projects to be Considered by the Commission and/or Director**

(1) The Commission or Director where designated by these rules or separate order, shall consider

projects for which applications for Permits to appropriate water for hydroelectric purposes under ORS 537.140 and applications for Preliminary Permits or Licenses under ORS 543.010 to 543.620 have been filed.

(2) Projects shall be further classified as minor and major projects. For the purpose of these rules, a minor project shall be any project proposing to develop 100 THP or less. All other shall be major projects.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### **690-051-0030**

#### **Notice on Filing**

(1) Whenever a proposed project is located within one of the following designated resource areas, the Department shall provide notice of the application to the managing agency:

(a) National parks;

(b) National monuments;

(c) Wilderness areas established by federal law;

(d) Bureau of Land Management areas of critical environmental concern established under federal law;

(e) Wild and scenic rivers established by federal law;

(f) Estuarine sanctuaries established under Public Law 92-583;

(g) Federal research natural areas established under federal regulation;

(h) State parks and waysides;

(i) Scenic waterways designated under ORS Chapter 390;

(j) State wildlife refuges; or

(k) State dedicated natural heritage areas established under ORS Chapter 273.

Stat. Auth.: ORS 537 & [ORS 543](#)

Stats. Implemented:



Hist.: WRD 14-1986, f. & ef. 10-13-86

## **690-051-0040**

### **Preliminary Permit not Required**

No License or Permit shall be issued within six months of either approving the Preliminary Permit or acceptance of the License or Permit application. A Preliminary Permit is unnecessary where the project is a minor project.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0050**

### **Applications: Filing Procedure**

- (1) All applications to use water for hydroelectric purposes shall be filed with the Director at Salem, Oregon. Applications shall be typed so that the paragraphs and headings correspond with the information required. All applications shall be accompanied by the documents specified in OAR 690-051-0070, or 690-051-0100, and shall be dated and designated as "Exhibit A", "Exhibit B", etc.
- (2) If the information required by these rules does not apply to the proposed project, it shall be noted on the application with a brief statement why the information does not apply.
- (3) Information required to file an application is listed in the rules reference in section (1) of this rule. At any time, the Director may require additional information from the applicant.
- (4) Applications on which no hearing has been held, shall meet all the requirements in these rules.
- (5) Any municipal corporation of this state or utility district organized under section 12, Article XI, Oregon Constitution who has applied to the Federal Energy Regulatory Commission (FERC) for a preliminary permit, an exemption from licensing, or a notice of intent to construct a qualifying conduit hydropower facility shall, at the same time, apply to the Water Resources Department for:
  - (a) a permit under ORS 537.140 to appropriate water for a hydroelectric project, or
  - (b) for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right under ORS 543.765.

(6) Any person other than in (5) above who has applied to the FERC for a preliminary permit, a license, an exemption from licensing, or a notice of intent to construct a qualifying conduit hydropower facility shall, at the same time apply to the Water Resources Department for:

(a) a state preliminary permit under ORS 543.210,

(b) a license under ORS 543.260, or

(c) a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right under ORS 543.765.

(7) An applicant for a new hydroelectric project shall submit to the Department a complete copy of any application filed with FERC or similar application to another federal agency responsible for authorizing the project.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0060**

### **Consultation**

All applicants shall consult with appropriate government entities. Consultation shall occur before an application for a License or Permit is filed. The first consultation may occur with the agency representatives after the Preliminary Permit application has been accepted. Evidence of the consultation shall be filed with the License or Permit application. At a minimum, applicants shall consult with the Water Resources Department and affected local governments and the agencies under each heading listed below:

(1) Fish and Wildlife Resources:

(a) Oregon Department of Fish and Wildlife (ODFW);

(b) U.S. Fish and Wildlife Service (USF&WS);

(c) National Marine Fisheries Service (NMFS);

(d) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian services; and

(e) Northwest Power and Conservation Council (NPCC), if the proposed project is within a Protected Area designated by the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted August 10, 1988, as subsequently amended (September 14,

1988 and August 8, 1990, August 13, 1992).

(2) Water Quality: Oregon Department of Environmental Quality (DEQ).

(3) Historic, Cultural and Archaeological Resources:

(a) State Historic Preservation Officer (SHPO); and

(b) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian Services.

(4) Forestlands:

(a) U.S. Forest Service;

(b) U.S. Bureau of Land Management; and

(c) Oregon Department of Forestry.

(5) Wetlands:

(a) Oregon Department of State Lands (DSL);

(b) Oregon Parks and Recreation Department (OPRD); and

(c) U.S. Army Corps of Engineers.

(6) Scenic -- Aesthetic Resources,

(a) Planning department of each affected local government;

(b) DEQ (re noise standards);

(c) Federal managing agency, if public land or a national Wild and Scenic River; and

(d) Oregon Parks and Recreation Department.

(7) Recreation Resources:

(a) Oregon Parks and Recreation Department;

(b) Federal managing agency, if public land or a national Wild and Scenic River; and

(c) Planning department of each affected local government.

(8) Land Use and Access:

(a) Planning department of each affected local government;

(b) Appropriate state land management agencies;

(c) Federal managing agency, if public land; and

(d) Landowner(s), if private land.

(9) Threatened and Endangered Species:

(a) ODFW;

(b) USF&WS; and

(c) NMFS.

(10) Natural Areas: OPRD.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0070**

### **Applications for Preliminary Permits: Contents and Scope of Evaluation**

All applications for Preliminary Permits shall include information described in this rule. The applicant shall supply the information in sufficient detail to evaluate the potential for cumulative impacts with other proposed, approved and existing projects in the river basin. Information shall also be sufficient to identify interests, issues and areas of concern that require detailed assessment in the application for a License for hydroelectric development. An application shall be deemed incomplete and shall not be accepted for filing if it lacks any of the following required information.

(1) The name and address of the applicant including every person, association of persons, domestic corporation, or municipality that has any proprietary right or interest in the project. If the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or any such other appropriate legal authority, evidencing that the municipality is authorized under such laws to engage in the business of development, transmitting, or distributing power.

- (2) A description of the location of the project, giving the county or counties within which located and stream or streams from which water is to be appropriated.
- (3) The quantity of water to be appropriated.
- (4) If a reservoir is to be used in connection with the project, the application shall state the quantity of water to be stored, the maximum surface area in acres, the name of the stream(s) on which the reservoir is to be located or the name of the stream(s) or aquifer from which the stored water is to be collected or both.
- (5) The head to be utilized and the number of THP to be developed. The number of THP shall be determined by multiplying the quantity of water to be diverted in cubic feet per second by the vertical head in feet and dividing the product by 8.8.
- (6) The approximate location of the point(s) of diversion and the quantity of water to be taken at each point.
- (7) The approximate length of the proposed canal, pipeline or other conduit, the approximate location of the proposed power plant and the point where water will be returned to some natural stream.
- (8) The approximate height of diversion or storage dams and the material from which they will be constructed.
- (9) A legible map to be prepared on U.S. Geological Survey topographic quadrangle sheets showing the general location of the project including all dams, reservoirs, canals, pipelines, forebays, power plants, and streams, and the location of such data shall be given with respect to township and section lines. If on unsurveyed land, the location shall be with respect to projections of township and section lines.
- (10) A statement describing the proposed use or market for the power to be developed.
- (11) The name and mailing address of all property owners:
  - (a) Within 300 feet of the project boundary if the project is within an urban growth boundary; or
  - (b) Within 1,000 feet if the project is outside of an urban growth boundary giving also the amount of land under the adjacent property owners ownership in acres or hectares.
- (12) The length of time for which a Preliminary Permit is desired. A Preliminary Permit may be issued for a period not exceeding two years. This period may be extended by order of the Director. An extension may not exceed one year.
- (13) An exhibit A, the application must contain a description of the proposed project, specifying

and including, to the extent possible:

(a) The number, physical composition, dimensions, general configuration and, where applicable, age and condition, of any dams, spillways, penstocks, powerhouses, tailraces, or other structures, whether existing or proposed, that would be part of the project;

(b) The total estimated average annual energy production and installed capacity (provide only one energy and capacity value), the estimated number, rated capacity, and, where applicable, the age and condition, of any turbines and generator, whether existing or proposed, that would be part of the project works.

NOTE: The energy production figures submitted with the Preliminary Permit are recognized as estimates. The actual values will be established in the draft License application.

(c) Any other information demonstrating how the proposed project would develop, conserve, and utilize in the public interest the water resources of the state.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0080**

### **Application of Standards to Preliminary Permits**

(1) Preliminary Permit applications shall be approved unless the Director finds the proposed project would not be in the public interest because of significant adverse impacts on natural resources or other uses of the water involved. The Commission shall act on all Preliminary Permits proposed in a designated Protected Area.

(2) Information in the application and hearing record will be used to assess the public interest and to form conditions to be included in the Commission or Director's order on the application. Approval of a Preliminary Permit application shall not convey the right to construct any project facilities. Issuance of a Preliminary Permit shall not constitute approval or assurance of approval for any subsequent application for hydroelectric license for the project. Failure to comply with conditions in the approval order may result in the cancellation of the Preliminary Permit.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0090**

## **Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards**

(1) An application shall be filed for each minor License or Permit. An application must contain the information in OAR 690-051-0070. No application shall be filed for a project in a designated resource area described in OAR 690-051-0030 without the consent of the managing agency.

(2) The Department shall receive the application together with the filing fee and date stamp the application which will thereafter serve as the priority date of the application. If the application is for an area withdrawn from hydroelectric development by the Commission the application and filing fee may be returned.

(3) The Department may schedule a site visit to the proposed project with other agency representatives. A public hearing shall be held only if the Director deems it in the public interest to do so. The hearing may be limited to specific issues. Notice of the hearing shall meet the requirements specified in OAR 690-051-0130(3). Upon acceptance of a minor hydroelectric application, the following review process shall apply:

(a) Upon filing of a minor hydroelectric application, the Director shall notify the following groups and individuals of the information described in subsection (b) of this section:

(A) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(B) Property owners within 300 feet of the proposed powerhouse;

(C) Affected Indian tribes; and

(D) All persons on the Department's weekly notice list.

(b) The notice shall include but is not limited to the following information:

(A) Application file number;

(B) Applicant name and address;

(C) Amount of proposed water use;

(D) Common name of water source;

(E) Location of the proposed point of diversion and point of power generation;

(F) Purpose for which the power would be used;

(G) Total amount of power to be developed;

(H) If a pond or reservoir is part of the project, how much water will be impounded.

(c) A 30-day comment period shall commence on the day the Department sends the notice. The notice shall state the date comments must be received by the Department;

(d) Following the comment period, the Department shall prepare a proposed final order with findings to address whether the proposed project together with any recommended measures to protect, mitigate, or enhance the natural resources of the State is consistent with the minimum standards in ORS 543.017 and the requirements in OAR 690-051-0160 through 690-051-0270 and whether the project would impair or be detrimental to the public interest as provided in ORS 543.225. The proposed final order shall include the action proposed to be taken on the minor hydroelectric application;

(e) The proposed final order shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. The report shall state the date by which protests must be received by the Director (60 days from the date it was distributed);

(f) Comments or protests must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the proposed final order. Upon receiving a protest, the Director shall:

(A) Transmit copies of any protest timely filed to the applicant and all commentors;

(B) Evaluate the protest to determine whether significant issues are raised and if so shall refer the application, with accompanying protest, to the Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing. If the Director determines the protests do not raise significant issues, the Director shall issue a final order. A final order issued pursuant to this section is a final order in other than a contested case subject to judicial review under ORS 183.484.

(4) If the application is referred for a contested case hearing, a proposed order shall be issued by the Administrative Law Judge (ALJ) after the hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 days of the order. If no exceptions are filed to the ALJ's proposed order within 30 days, the Director shall issue a final order consistent with subsection (6) below.

(5) If exceptions are filed to the ALJ's proposed order, the Director shall review/hear argument (written or oral, at his/her discretion) and make the final determination for the final order.



(6) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not comply with the standards of ORS 543.017 and the requirements of OAR 690-051-0160 through 690-051-0290 or would otherwise impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order rejecting the application or modifying the proposed order to comply with ORS 543.017 and the public interest. If, after the contested case hearing the Director determines that the proposed use would comply with the standards of ORS 543.017 and would not impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order approving the application or otherwise modifying the proposed order.

(7) A final order may set forth any of the provisions or restrictions to be included in the permit or minor License concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(8) If the project is approved a Permit or minor License shall then be issued after any balance due on the application filing fee has been paid.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0095**

### **Applications for Major Projects: Scope of Evaluation and Application of Standards**

This rule establishes the process the applicant, the Department and those participating in the process must follow and defines the stages of application review and processing as required by ORS 543.280(4). The fee for each stage must be paid at the beginning of each stage of project review. If an applicant submits an application in any stage other than stage one, the total fees due up to and including that stage will be due upon submittal. Municipal corporations and utility districts follow the consultation requirements described however, no Preliminary Permit is required.

(1) Stage One -- 20 Percent of Fee: Preliminary Permit and Consultation:

(a) The Department shall receive the application together with the filing fee and date stamp the application which will thereafter serve as the priority date of the application (if the application is for an area withdrawn from hydroelectric development by the Commission the application and filing fee will be returned):

(A) The application shall be returned for correction or completion if defective. Additional

information may be requested;

(B) Upon receipt of an application that is complete and not defective, notice of the application shall be printed in the Department weekly notice.

(b) The Department shall distribute copies of the application to the other agency representatives. The Department shall set a meeting date with the applicant to appear before the other agency representatives to give a presentation of the project;

(c) The applicant shall prepare a draft study plan for the project and distribute it to the appropriate agencies listed in OAR 690-051-0060 as applicable. For each of the resources that may be impacted, the written study plan should include the following major study elements and phases:

(A) Objectives;

(B) Resource background;

(C) Rationale or justification for proposed approach;

(D) Study area;

(E) Methodology;

(F) Sampling location and number, frequency and timing of sampling;

(G) Data treatment and analysis;

(H) Report preparation;

(I) Schedule; and

(J) Review of draft and final technical reports by resource agencies.

(d) The Department shall schedule a site visit and a public hearing for the purpose of providing information and receiving public questions and comment on the proposed project. Notice of the public hearing shall conform to OAR 690-051-0130;

(e) The Department shall establish a comment period during which the other affected agencies or the public shall review and comment on the draft study plan supplied by the applicant;

(f) The Director shall issue an order to modify, approve or reject the Preliminary Permit application based upon the standard set out at OAR 690-051-0080;

(g) The Preliminary Permit is denied or issued by the Director.

(2) Stage Two -- 30 Percent of Fee: Study and Draft Application:

(a) The applicant shall modify the study plan based upon the requirements imposed by the Preliminary Permit and submit it to the agencies and the Director for review. Notice of submittal shall appear in the Department weekly notice;

(b) An agency, tribe or the public may file a request with the Director for additional specific studies within 30 days of receipt of the final study plan;

(c) The applicant must file a response to a study request within 30 days of receiving notice from the Director of the request;

(d) The Director shall inform all participants of requests and responses to study requests that are received.

(e) The applicant shall conduct the studies in coordination with state and federal agencies;

(f) The applicant shall prepare a draft License or Permit application which it submits to the state and federal agencies and Indian tribes and makes available for public review. Notice of the opportunity to review the draft application shall be posted in the Department's weekly public notice;

(g) Comments on the studies and draft License or Permit application shall be submitted within a time specified by the Director who shall forward all responses to the other agency representatives and the applicant.

(3) Stage Three -- 30 Percent of Fee: Final Application, Cumulative Impact and Public Interest Reviews, Determinations and Hearings Process:

(a) The applicant shall file the Final License or Permit application with the Water Resources Department. Permit applications filed by municipal corporations or utility districts under ORS 537.140 for hydroelectric purposes and final license applications that are not following a preliminary permit application are also subject to the requirements of a public site visit and public hearing as in OAR 690-051-0095(1)(d). The Department shall distribute the application to the appropriate consultation agencies. The Department shall send notice of the application and of the filing to the local planning authority, affected property owners and public interest groups on record at the Water Resources Department as requesting such notices. The application shall be made available to the public by the project applicant and the Department;

(b) An agency, Indian tribe or member of the public who requests additional information shall notify the Director within 60 days after the application is so filed;

(c) The applicant shall file a response to additional information request(s) within 30 days of receiving notice from the Director of the request;

(d) The Director shall either accept or reject the applicant's position on additional studies and notify the affected parties accordingly;

(e) Once the application issues are resolved, a "ready for final review" notice shall be sent to agencies and interested parties by the Director (comments must be submitted within 60 days of the final review notice);

(f) The Director shall prepare a proposed final order that determines whether the proposed Project together with the recommended measures to protect, mitigate or enhance the natural resources of the State is consistent with the minimum standards of ORS 543.017, and the requirements of OAR 690-051-0160 through 690-051-0290 and whether the Project would impair or be detrimental to the public interest as provided in ORS 543.225. The proposed final order shall also provide findings on whether the proposed project may contribute to cumulative impacts with other existing, proposed or approved hydroelectric projects in the same river basin and whether consolidated review is required under ORS 543.255 and OAR 690-051-0290.

(g) The proposed final order shall be distributed to state and federal agencies, Indian tribes, owners of other proposed, approved or existing hydroelectric projects in the same river basin and other participants. Notice of the proposed final order shall be published in the Department's weekly public notice.

(h) If the Director determines that consolidated review is required, the Department shall refer the matter to the OAH to conduct a contested case hearing only after the period to file protests has passed in order to allow for all issues regarding the proposed project to be addressed in one contested case hearing. Such hearing may be consolidated or bifurcated as the Department directs.

(i) If one or more protests are filed within 30 days after issuance of a proposed final order the Department shall refer the matter to the OAH for a contested case hearing as provided in ORS 543.230(2) and/or 543.255(3). All issues regarding the proposed project may be addressed in one hearing. The hearing may be consolidated or bifurcated as the Department directs. If no protest is filed the Director shall issue a final order consistent with subsection (l) below.

(j) A proposed order shall be issued by the ALJ after a contested case hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 days of the order. If no exceptions are filed to the ALJ's proposed order within 30 days, the Director shall issue a final order consistent with subsection (l) below.

(k) If exceptions are filed to the ALJ's proposed order, the Director shall review/hear argument (written or oral, at his/her discretion) and make the final determination for the final order.

(l) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the minimum standards of ORS 543.017 and the requirements of OAR 690-051-0160 through 690-051-0290 or would otherwise impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order rejecting the application or modifying the proposed final order to comply with ORS 543.017 and the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would comply with the standards of ORS 543.017 and would not impair or be detrimental to the public interest of ORS 543.225, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit or final License concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(m) If the project is approved a Permit or final License shall then be issued per OAR 690-051-0095(4).

(4) Stage Four -- 20 Percent of Fee: Final Plan Review and Inspection:

(a) The License or Permit shall be issued or denied with conditions that the Director deems necessary;

(b) The applicant shall submit construction specifications to the Director:

(A) The Director shall distribute the plans and specification to appropriate agencies and collate issues to be addressed by the applicant;

(B) The plans shall be approved by the Director or modified by the applicant and approved or denied.

(c) The applicant shall submit a construction schedule to the Director and construction bond documentation;

(d) The Director shall issue a Notice to Proceed;

(e) The applicant shall notify the Director of the beginning of construction;

(f) The Director shall conduct a final inspection of the constructed Project. For permits issued for applications filed under ORS 537.140 a water right certificate may be acquired according to ORS 537.250.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented:  
Hist.: WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0100**

### **Application for Major License or Permit: Contents, Scope of Evaluation**

All applications for major Licenses or major Permits shall include the information described in this rule. The applicant shall supply the information in sufficient detail which also evaluates the potential for cumulative impacts with other proposed, approved and existing projects in the same river basin. An application shall be deemed incomplete and shall not be accepted for filing if it lacks any of the following information as it may apply to the project. Major projects which are of a size that an extraordinary financial burden is imposed by providing specific information required in this section may seek a waiver of the specific requirement from the Director by describing the specific nature of the hardship. The request for waiver shall be made at the time of application. The application shall contain:

- (1) The name of the applicant and the name of the project. (Specify any previous FERC project number designation);
- (2) The location of the proposed project, including -- County; township or nearby town; stream or other body of water.
- (3) The exact name, business address, and telephone number of the applicant.
- (4) Proof that the applicant is a citizen of the United States, association of citizens of the United States, domestic corporation, or municipality. If the applicant is a corporation, it shall give the date and place of incorporation with the full name and official designation of each of the principal officers and of the directors of said corporation with their respective addresses. If the applicant is an association of citizens, each member shall make an affidavit of citizenship and the association shall submit its articles of association. If there are no articles of incorporation, the fact shall be stated over the signature of each member.
- (5) Proof that the applicant complies with the statutory or regulatory requirements of the state with respect to the applicants right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the License (provide citation and brief identification of the nature of each requirement; if the applicant is a municipality, the applicant must submit copies of applicable state or local laws or municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of developing, transmitting, utilizing, or distributing power, and, the steps which the applicant has taken, or plans to take, to comply with each of the laws cited above).
- (6) An Exhibit A which shall be a description of the project. If the project includes more than

one dam with associated facilities, each dam and the associated component parts must be described together as a discrete development. The description for each development must contain:

(a) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, powerhouses, tailraces or other structures proposed to be included as part of the project;

(b) The normal maximum water surface area and normal maximum water surface elevation (mean sea level); gross storage capacity of any impoundments to be included as part of the project;

(c) The number, type and rated capacity of any proposed turbines or generators to be included as part of the project;

(d) The number, length, voltage and interconnections of any primary transmission lines proposed to be included as part of the project;

(e) The description of any additional mechanical, electrical, and transmission equipment appurtenant to the project; and

(f) A list of property owners within 300 feet of the project boundary if the project is within an urban growth boundary or within 1,000 feet if the project is outside of an urban growth boundary giving their name, address and the amount of land under their ownership in acres or hectares.

(7) An Exhibit B which shall be a statement of project operation and resource utilization. If the project includes more than one dam with associated facilities, the information must be provided separately for each discrete development. The exhibit must contain:

(a) A description of each alternative site considered in selecting the proposed site;

(b) A description of any alternative facility designs, processes, and operations that were considered;

(c) A statement as to whether operation of the power plant will be manual or automatic, an estimate of the annual plant factor, and a statement of how the project will be operated during adverse, mean, and high water years; and

(d) An estimate of the dependable and average annual energy production in kilowatt-hours (or mechanical equivalent), supported by the following data:

(A) The minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, with a specification of any adjustment made for evaporation, leakage, minimum flow releases (including duration of

releases) or other reductions in available flow; a flow duration curve indicating the period of record and the gauging stations used in deriving the curve; and a specification of the critical streamflow used to determine the dependable capacity;

(B) An area-capacity curve showing the gross storage capacity and usable storage capacity of the impoundment, with a rule curve showing the proposed operation of the impoundment and how the usable storage capacity is to be utilized;

(C) The estimated hydraulic capacity of the powerplant in terms of flow and efficiency (cubic feet per second and one-half, full and best gate), and the corresponding generator output in kilowatts;

(D) A tailwater rating curve; and

(E) A curve showing powerplant capability versus head and specifying maximum, normal, and minimum heads.

(8) A statement of system and regional power needs and the manner in which the power generated at the project is to be utilized including the amount of power to be used onsite, if any, supported by the following data:

(a) Load curves and tabular data, if appropriate;

(b) Details of conservation and rate design programs and their historic and projected impacts on system loads; and

(c) The amount of power to be sold and the identity of proposed purchaser(s).

(9) A statement of the applicant's plans for future development of the project or of any other existing or proposed water power project on the affected stream or other body of water, indicating the approximate location and estimated installed capacity of the proposed development.

(10) An Exhibit C which shall be a proposed construction schedule for the project. The information required may be supplemented with a bar chart. The construction schedule must contain:

(a) The proposed commencement and completion dates of any new construction, modification, or repair of major project works;

(b) The proposed commencement date of first commercial operation of each new major facility and generating unit; and

(c) If any portion of the proposed project consists of previously constructed, licensed or



unlicensed water power structures or facilities, a chronology of original completion dates of those structures or facilities specifying dates (approximate dates must be identified as such) of:

(A) Commencement and completion of construction or installation;

(B) Commencement of first commercial operation; and

(C) Any additions or modifications other than routine maintenance.

(11) An Exhibit D which shall be a statement of project costs and financing. The exhibit must contain:

(a) A statement of estimated costs of any new construction, modification, or repair, including:

(A) The cost of any land or water rights necessary to the development;

(B) The total cost of all major project works;

(C) Indirect construction costs such as costs of construction equipment, camps, and commissaries;

(D) Interest during construction; and

(E) Overhead, construction, legal expenses, and contingencies.

(b) If any portion of the proposed project consists of previously constructed, licensed or unlicensed water power structures or facilities, a statement of the original cost of those structures or facilities specifying for each, to the extent possible, the actual or approximate total costs (approximate cost must be identified as such) of:

(A) Any land or water rights necessary to the existing project works;

(B) All major project works; and

(C) Any additions or modifications other than routine maintenance.

(c) A statement of the estimated average annual cost of the total project as proposed, specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

(A) Cost of capital (equity and debt);

(B) Local, state, and federal taxes;

(C) Depreciation or amortization, a definitive amortization schedule; and

(D) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies;

(d) A statement of the estimated annual value of project power based on a showing of the contract price for sale of power or the estimated average annual cost of obtaining an equivalent amount of power (capacity and energy) from the lowest cost alternative source of power, specifying any projected changes in the costs (life-cycle costs) of power from that source over the estimated financing or licensing period if the applicant takes such changes into account.

(12) A statement and evaluation of the power consequences of denial of the License or Permit application and a brief perspective of what future use would be made of the proposed site if the proposed project were not constructed; and

(13) A statement specifying the source and extent of financing and annual revenues available to the applicant to meet the costs identified in section (11) of this rule.

(14) Exhibit E shall be an Environmental Report. Information provided in the report must be organized and referenced according to the itemized paragraphs below. See OAR 690-551-0060 for consultation requirements. See OAR 690-051-0170 through 690-051-0280 for a description of resource standards. Exhibit E must include a list of all publication, reports, and other literature which were cited or otherwise utilized in the preparation of any part of the environmental report. The Environmental Report must contain the following information:

(a) A General description of the locale. The applicant must provide a general description of the environment of the proposed project and its immediate vicinity. The description must include location and general information helpful to an understanding of the environmental setting.

(b) A report on water use and quality. The report must discuss water quality and flows and contain baseline data sufficient to determine the normal and seasonal variability, the impacts expected during construction and operation, and any mitigative, enhancement, and protective measures proposed by the applicant. The report must be prepared in consultation with the state and federal agencies with responsibility for management of water quality and quantity in the affected stream or other body of water. The report must include:

(A) A description of existing instream flow uses of streams in the project area that would be affected by construction and operation; estimated quantities of water discharged from the proposed project for power production; and any existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes;

(B) A description of the seasonal variation of existing water quality for any stream, lake, or reservoir that would be affected by the proposed project, including (as appropriate) measurements of: Significant ions, chlorophyll a, nutrients, specific conductance, pH, total

dissolved solids, total alkalinity, total hardness, dissolved oxygen, bacteria, temperature, suspended sediments, turbidity and vertical illumination;

(C) A description of any existing lake or reservoir and any of the proposed project reservoirs including surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate classification, and gradient for streams directly affected by the proposed project;

(D) A quantification of the anticipated impacts of the proposed construction and operation of project facilities on water quality and downstream flows, such as temperature, turbidity and nutrients;

(E) A description of measures recommended by local governments, federal and state agencies and the applicant for the purpose of protecting or improving water quality, stream flows, riparian areas, and wetlands during project construction and operation; an explanation of why the applicant has rejected any measures recommended by any agency; and a description of the applicant's alternative measures to protect or improve water quality stream flow;

(F) A description of groundwater in the vicinity of the proposed project, including water table and artesian conditions, the hydraulic gradient, the degree to which groundwater and surface water are hydraulically connected, aquifers and their use as water supply, and the location of springs, wells, artesian flows and disappearing streams; a description of anticipated impacts on groundwater and measures proposed by the applicant and others for the mitigation of impacts on groundwater; and

(c) A report on fish, wildlife, and botanical resources. The applicant must provide a report that describes the fish, wildlife, and botanical resources in the vicinity of the proposed project; expected impacts of the project on these resources; and mitigation, enhancement, or protection measures proposed by the applicant. The report must be prepared in consultation with the state agency or agencies with responsibility for these resources, including the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service (if proposed project may affect anadromous, estuarine, or marine fish resources), and any local government, state or federal agency with managerial authority over any part of the proposed project lands. The report must contain:

(A) A description of existing fish, wildlife, and plant communities of the proposed project area and its vicinity, including any downstream areas that may be affected by the proposed project and within the transmission line corridor or right-of-way. A map of vegetation types shall be included in the description. For species considered important because of their commercial or recreational value, the information provided should include temporal and spatial distributions and densities of such species. Any fish, wildlife, or plant species proposed or listed as threatened or endangered by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Fish and Wildlife or Department of Agriculture must be identified;

(B) A description of the anticipated impacts on fish and wildlife and botanical resources of the proposed construction and operation of project facilities, including possible changes in size, distribution, and reproduction of essential population of these resources and any impacts on human utilization of these resources;

(C) A description of any measures or facilities recommended by state or federal agencies for the mitigation of impacts on fish, wildlife, and botanical resources, or for the protection or enhancement of these resources, the impact on threatened or endangered species, and an explanation of why the applicant has determined any measures or facilities recommended by an agency are inappropriate as well as a description of alternative measures proposed by the applicant to protect fish and wildlife and botanical resources; and

(D) The following materials and information regarding any mitigation measures or facilities, identified under the clause in paragraph (C) of this subsection, proposed for implementation or construction:

(i) Functional design drawings;

(ii) A description of proposed operation and maintenance procedures for any proposed measures or facilities;

(iii) An implementation, construction and operation schedule for any proposed measures or facilities;

(iv) An estimate of the costs of construction, operation, and maintenance of any proposed facilities or implementation of any measures;

(v) A statement of the sources and amount of financing for mitigation measures or facilities; and

(vi) A map or drawing showing, by the use of shading, crosshatching or other symbols, the identity and location of any proposed measures or facilities.

(d) A report on historical and archaeological resources. The application must provide a report that discusses any historical and archaeological resources in the proposed project area, the impact of the proposed project on those resources and the avoidance, mitigation, and protection measures proposed by the applicant. The report must be prepared in consultation with the State Historical Preservation Office (SHPO) and National Park Service of the U.S. Department of Interior. The report must contain:

(A) A description of any discovery measures, such as surveys, inventories and limited subsurface testing work recommended by the specified state and federal agencies for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that would be affected by construction and operation of the proposed project, together with a statement of the applicant's position regarding the acceptability of the recommendations;

(B) The results of surveys, inventories, and subsurface testing work recommended by the state and federal agencies listed above, together with an explanation by the applicant of any variations from the survey, inventory, or testing procedures recommended;

(C) An identification (without providing specific site or property locations) of any historic or archaeological site in the proposed project area, with particular emphasis on sites or properties either listed in the affected local government(s) comprehensive plan, or recommended by the SHPO for inclusion in, the National Register of Historic Places that would be affected by the construction of the proposed project;

(D) A description of the likely direct and indirect impacts of proposed project construction or operation on sites or properties either listed in, or recommended as eligible for, the National Register of Historic Places;

(E) A management plan for the avoidance of, or mitigation of, impacts on historic or archaeological sites and resources based upon the recommendations of the local government, state and federal agencies listed above and containing the applicant's explanation of variations from those recommendations; and

(F) The following materials and information regarding the mitigation measures described under paragraph (14)(d)(E) of this rule:

(i) A schedule for implementing the mitigation proposals;

(ii) An estimate of the cost of the measures; and

(iii) A statement of the sources and extent of financing;

(iv) The applicant must provide five copies of any survey, inventory, or subsurface testing reports containing specific site and property information, and including maps and photographs showing the location and any required alteration of historic and archaeological resources in relation to proposed project facilities.

(e) A report on socio-economic impacts. The applicant must provide a report which identifies and quantifies the impacts of constructing and operating the proposed project on employment, population, housing, personal income, local governmental services, local tax revenues and other factors within the cities and counties in the vicinity of the proposed project. The report must include:

(A) A description of the socio-economic impact area;

(B) A description of employment, population and personal income trends in the impact area;

(C) An evaluation of the impact of any substantial immigration of people on the impact area's governmental facilities and services, such as police, fire, health and educational facilities and programs;

(D) The onsite personnel requirements and payroll during and after project construction, including a projection of total onsite employment and construction payroll provided by month;

(E) The numbers of project construction personnel who:

(i) Currently reside within the impact area;

(ii) Would commute daily to the construction site from places situated outside the impact area; and

(iii) Would relocate on a temporary basis within the impact area.

(F) A determination of whether the existing supply of available housing within the impact area is sufficient to meet the needs of the additional population;

(G) Numbers and types of residences and business establishments that would be displaced by the proposed project, procedures to be utilized to acquire these properties, and types and amounts of relocation assistance payments that would be paid to the affected property owners and businesses; and

(H) A fiscal impact analysis evaluating the incremental local government expenditures in relation to the incremental local government revenues that would result from the construction of the proposed project. Incremental expenditures may include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(f) A report on geological and soil resources. The applicant must provide a report on the geological and soil resources in the proposed project area and other lands that would be directly or indirectly affected by the proposed action and the impacts of the proposed project on those resources. The information required may be supplemented with maps showing the location and description of conditions. The report must be prepared in consultation with the Oregon Department of Geology and Mineral Industries. The report must contain:

(A) A detailed description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources;

(B) A detailed description of the soils, including the types, occurrences, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description showing the location of existing and potential geological and soil hazards and problems, including earthquake faults, seepage, subsidence solution cavities, active and

abandoned mines, erosion, and mass soil movement and an identification of any large landslides or potentially unstable soil masses which could be aggravated by reservoir fluctuation;

(D) A description of the anticipated erosion, mass soil movement and other impacts on the geological and soil resources due to construction and operation of the proposed project; and

(E) A description of any proposed measures or facilities for the mitigation of impacts on soils.

(g) A report on recreational resources. The applicant must prepare a report containing a proposed recreation plan describing utilization, design and development of project recreational facilities, and public access to the project area. Development of the plan should include consideration of the needs of the physically handicapped. Public and private recreational facilities provided by others that would abut the project should be noted in the report. The report must be prepared in consultation with appropriate local, regional state and federal recreation agencies and planning commissions, and any other agency with managerial responsibility for any part of the project lands. The report must contain:

(A) A description of any areas within or in the vicinity of the proposed boundary that are included in, or have been designated for study for inclusion in:

(i) The National Wild and Scenic Rivers Systems;

(ii) The Oregon Scenic Waterway Program;

(iii) The National Trails System; or

(iv) The Oregon Recreation Trails System Act of 1971;

(v) Oregon Natural Heritage Conservation Areas;

(vi) A wilderness area designated under the Wilderness Act;

(B) A detailed description of existing recreational facilities within the project vicinity, and the public recreational facilities which are to be provided by the applicant at its sole cost or in cooperation with others no later than three years from the date of the first commercial operation of the proposed project and those recreation facilities planned for future development based on anticipated demand. When public recreation facilities are to be provided by other entities, the applicant and those entities shall enter into an agreement on the type of facilities to be provided and the method of operation. Copies of agreements with cooperating entities are to be appended to the plan;

(C) A provision for a shoreline buffer zone that must be within the project boundary, above the normal maximum surface elevation of the project reservoir, and of sufficient width to allow public access to project lands and waters and to protect the scenic, public recreational, cultural

and other environmental values of the reservoir shoreline;

(D) Estimates of existing and future recreational use at the project, in daytime and overnight visitation (recreation days), with a description of the methodology used in developing these data;

(E) A development schedule and cost estimates of the construction, operation, and maintenance of existing initial and future public recreational facilities, including a statement of the source and extent of financing for such facilities;

(F) A description of any measures or facilities recommended by the agencies consulted for the purpose of creating, preserving, or enhancing recreational opportunities at the proposed project, and for the purpose of ensuring the safety of the public in its use of project lands and waters, including an explanation of why the applicant has rejected any measures or facilities recommended by an agency; and

(G) A drawing or drawings, one of which describes the entire project area clearly showing:

(i) The location of project lands and the types and number of existing recreational facilities and those proposed for initial development, including access roads and trails, and facilities for camping, picnicking, swimming, boat docking and launching, fishing and hunting, as well as provisions for sanitation and waste disposal;

(ii) The location of project lands and the type and number of recreational facilities planned for future development;

(iii) The location of all project lands reserved for recreational uses other than those included in subparagraphs (g)(G)(i) and (ii) of this section; and

(iv) The project boundary (excluding surveying details) of all areas designated for recreational development, sufficiently referenced to the appropriate Exhibit G drawings to show that all lands reserved for existing and future public recreational development and the shoreline buffer zone are included within the project boundary.

(h) A report on aesthetic resources. The applicant must provide a report that describes the aesthetic resources of the proposed project area, the expected impacts of the project on these resources, and the mitigation enhancement or protection measures proposed. The report must be prepared following consultation with federal, state, and local agencies having managerial responsibility for any part of the proposed project lands or lands abutting those lands. The report must contain:

(A) A description of the aesthetic character of lands and waters directly and indirectly affected by the proposed project facilities;

(B) A description of the anticipated impacts on aesthetic resources from construction activity and



related equipment and material, and the subsequent presence of proposed project facilities in the landscape;

(C) A description of mitigative measures proposed by the applicant, including architectural design, landscaping, and other reasonable treatment to be given project works to preserve and enhance aesthetic and related resources during construction and operation of proposed project facilities; and

(D) Maps, drawings and photographs sufficient to provide an understanding of the information required under this paragraph. Maps or drawings may be consolidated with other maps or drawings required in this exhibit.

(i) A report on land use. The applicant must provide a report that describes the existing uses of the proposed project lands and adjacent property, and those land uses which would occur if the project is constructed. The report may reference the discussions of land uses in other sections of this exhibit. The report must be prepared following consultation with local planning and land management authorities, and any federal or state agency with managerial responsibility for the proposed project or abutting lands. The report must include:

(A) A description of existing land use in the proposed project area, including identification of wetlands, floodlands, and high value or important farm land identified pursuant to OAR Chapter 660, Division 33 and the coastal zone described in the Oregon Coastal Zone Management Program, and, land owned or subject to control by government agencies;

(B) A description of the proposed land uses within and abutting the project boundary that would occur as a result of development and operation of the project; and

(C) Aerial photographs, maps, drawings or other graphics sufficient to show location, extent and nature of the land uses referred to in this section.

(j) Alternative locations, designs, and energy sources. The applicant must provide an environmental assessment of the following:

(A) Alternative sites considered in arriving at the selection of the proposed project site;

(B) Alternative facility designs, processes, and operations that were considered and the reasons for their rejection;

(C) Alternative electrical energy sources, such as gas, oil, coal, and nuclear-fueled power plants, purchased power or diversity exchange, and other conventional and pumped-storage hydroelectric plants; and

(D) The overall consequences if the License application is denied.

(15) Exhibit F consists of general design drawings of the principal project works described under Exhibit A and supporting information used as the basis of design. If the Exhibit F submitted with the application is preliminary in nature, applicant must so state in the application. The exhibit must consist of ink drawings, or drawings of similar quality, on sheets no smaller than 8-1/2 inches by 11 inches, drawn to a scale no smaller than 1 inch equals 50 feet for plans, elevations, and profiles, and 1 inch equals 10 feet for sections.

(a) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

(A) Plans (overhead view);

(B) Elevations (front view);

(C) Profiles (side view); and

(D) Sections.

(b) The applicant may submit preliminary design drawings with the application. The final Exhibit F may be submitted during or after the licensing process and must show the precise plans and specifications for proposed structures. If the project is licensed on the basis of preliminary designs, the applicant must submit a final Exhibit F for Department approval prior to commencement of any construction of the project;

(c) Supporting design report. The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed. The report must include:

(A) An assessment of the suitability of the site and the reservoir rim stability based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type of dam structure suitable for the site;

(B) Copies of boring logs, geology reports and laboratory test reports;

(C) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;

(D) Stability and stress analyses for all major structures and critical abutment slopes under all probable loading conditions, including seismic and hydrostatic forces induced by water loads up to the Probable Maximum Flood as appropriate; and

(E) The base for determination of seismic loading and the Spillway Design Flood in sufficient

detail to permit independent staff evaluation.

(d) The applicant must submit five copies of this part of the supporting design report described in subsection (15)(c) of this rule at the time preliminary and final design drawings are submitted to the Director for review. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report".

(16) Exhibit G shall be a map of the project. All maps, plans, and drawings are required to be certified by a professional engineer registered by the Board of Engineering Examiners of Oregon as required by ORS 672.010 to 672.340 and shall bear the date and number of the certificate of registration of the professional engineer. The map must consist of ink drawings or drawings of similar quality on sheets no smaller than 8-1/2 inches by 11 inches and no larger than 24 inches by 36 inches, drawn to a scale no smaller than one inch equals 1,000 feet. If more than one sheet is used, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicating that portion of the project depicted on that sheet. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within a reasonable period following the completion of project construction, a final Exhibit G showing the extent of such changes. The map must show:

(a) Location of the project and principal features. The map must show the location of the project as a whole with reference to the affected stream or other body of water and, if possible, to a nearby town or any other permanent monuments or objects, such as roads, transmission lines or other structures, that can be noted on the map and recognized in the field. The map must also show the relative locations and physical interrelationships of the principal project works and other features described under Exhibit A;

(b) Project boundary. The map must show a project boundary enclosing all project works and other features described under Exhibit A that are to be licensed. If accurate survey information is not available at the time the License application is filed, the applicant must so state, and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control or protection of environmental resources (Exhibit (E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (e.g., for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(c) Impoundments. The boundary around a project impoundment must be described by one of the following:

(A) Contour lines, including the contour elevation (preferred method);

(B) Specified courses and distances (metes and bounds);

(C) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(D) Any combination of the above methods.

(d) Continuous features. The boundary around linear ("continuous") project features such as access roads, transmission lines, and conduits may be described by specified distances from center lines or offset lines of survey. The width of such corridors must not exceed 200 feet unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet with information showing the sequence of contiguous sections;

(e) Noncontinuous features:

(A) The boundary around noncontinuous project works such as dams, spillways, and powerhouses must be described by one of the following:

(i) Contour lines;

(ii) Specified courses and distances;

(iii) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(iv) Any combination of the above methods.

(B) The boundary must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project or for other specified project purposes, such as public recreation or protection of environmental resources.

(f) Ownership of property (keyed to the ownership information in Exhibit A), including all federal, state and private ownership, must be identified as such on the map by:

(A) Legal subdivisions of a public land survey of the affected area (a protraction of identified township and section lines is sufficient for this purpose); and

(B) In the absence of a public land survey, the location of the ownerships according to the distances and directions from fixed monuments or physical features. When a federal survey monument or federal bench mark will be destroyed or rendered unusable by the construction of project works, at least two permanent, marked witness monuments or bench marks must be established at accessible points. The maps show the location (and elevation, for bench marks) of

the survey monument or bench mark which will be destroyed or rendered unusable, as well as of the witness monuments or bench marks. Connecting courses and distances from the witness monuments or bench marks to the original must also be shown.

(g) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired for easement or lease;

(h) Provisions for protection of special management areas as defined in OAR690-051-0170(2) or areas otherwise restricted from development within the project vicinity.

(17) Exhibit H shall be a technical evaluation subject to Director approval of the potential for cumulative impacts on the natural resources listed in OAR 690-051-0190 through 690-051-0250 resulting from the proposed project when considered with other existing, approved and proposed hydroelectric projects in the river basin.

[ED. NOTE: Exhibits referenced in this rule are available from the agency.]

Stat. Auth.: ORS 197, ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0130**

### **Public Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings**

(1) A public hearing shall be held on each application for a Preliminary Permit or as required under 690-051-0095(3)(a). The public hearing shall be held in a community near the proposed project with notice provided pursuant to section (2) of this rule.

(2) Notice of hearing shall be given to:

(a) The applicant;

(b) Interested parties;

(c) Property owners within the project vicinity;

(d) The affected tribe(s) as identified by the Legislative Commission on Indian Services;

(e) The governing body(ies) of any affected county(ies) or city(ies); and

(f) The planning department(s) of the affected county(ies) or city(ies) as provided by ORS Chapters 183, 537 and 543.

(3) The Director, through press releases or additional notices, also shall endeavor to provide general notice to individuals or organizations who have expressed an interest in the outcome of the proceedings.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### **690-051-0140**

#### **Time and Place of Hearings**

The conduct of contested hearings shall be as provided in OAR 137-003-0501 through -0700. The contested case hearing may be heard at the Director's office in Salem.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### **690-051-0150**

#### **Filing of Protests and Requests for Standing**

(1) All protest and requests for standing must be filed with the Director within the time specified in the notice. To become a party to a contested case hearing the fees required under ORS 536.050(1) (j), (n), and/or (o) as appropriate must also be submitted by the notice date.

(2) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to

correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(3) Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. The request for standing must be in writing, signed by the requester, and include the following:

(a) The requester's name, mailing address and telephone number;

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

(4) Any person who has filed a timely request for standing may later file a petition for party status in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 137-003-0535.

(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period.

(6) The Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.027, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0160**

**Standards for Evaluation**

The standards in OAR 690-051-0170 to 690-051-0290 implement the provisions of ORS 537.160, 537.170, 543.017, 543.225 and 543.255 for the review of all hydroelectric applications. To be approved, a project must comply with the minimum standards in ORS 543.017 and the requirements of OAR 690-051-0170 to OAR 690-051-0290, and must not impair or be detrimental to the public interest as provided in ORS 543.225.

Stat. Auth.: ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

## **690-051-0170**

### **Designated Resource Areas and Special Management Areas**

(1) The Director shall consult with the managing agency for any proposed projects having effects on a designated resource area listed in OAR 690-051-0030(1) or a special management area listed in section (2) of this rule to determine conditions that may be required to ensure the proposed use is consistent with the authorized use of the area.

(2) Section (1) of this rule applies to the following special management areas:

(a) National wildlife refuges;

(b) National recreation areas;

(c) State wildlife management areas;

(d) State forests;

(e) County parks;

(f) City parks;

(g) Special district parks;

(h) Sites listed in or determined eligible for inclusion on the National Register of Historic Places;

(i) Areas managed by federal agencies for study, inclusion or designation as a special management area under federal law or regulation; and

(j) Areas under study by state agencies for inclusion in or designation as a special management area under state statute or regulation.



(k) Protected areas designated by the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted on August 10, 1988, and subsequently amended (September 14, 1988 and August 8, 1990, August 13, 1992).

(3) All applications for projects in or affecting the Columbia Gorge shall be consistent with the policy in the Columbia River Gorge National Scenic Area. P.L. 99-663.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0180**

### **Mitigation, No Net Loss**

(1) The following standards on mitigation and no net loss are minimums. They apply to all natural resources in the project vicinity. Resource specific rules may impose stricter standards. In order to approve an application, the Director must determine the natural resources of the state will be maintained or enhanced. In making such a determination, the following standards must be applied:

(a) No activity may be approved that may result in the net loss of natural resources. In determining whether a proposed activity may result in a net loss of natural resources, the department may consider mitigation.

(b) Proposed mitigation must be in the project vicinity and determined as acceptable to the Director or Commission;

(c) All mitigation measures which reasonably can, shall be fully functional when the project begins operation; and

(d) The Collective benefits of all mitigation measures must equal or exceed the collective adverse impacts on natural resources so there is no net loss of natural resources.

(2) In applying the standards in section (1) of this rule, the Commission or Director shall:

(a) Consult with federal, state, and local resource agencies, and the appropriate affected tribe(s); and

(b) Prefer mitigation that benefits the natural resource(s) affected, over mitigation that benefits some other natural resource(s). If mitigation that benefits the affected natural resource(s) is unacceptable or not possible, mitigation that benefits some other natural resource(s) may be considered.

(3) The standards in section (1) of this rule shall apply to the following natural resources: water quality; wildlife; scenic and aesthetic resources; historic, cultural, and archaeological; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Director's discretion, the standards in section (1) of this rule may apply to natural resource(s) not identified in section (3) of this rule that an applicant or interested party can demonstrate to be a natural resource of value to the public. Anyone making a showing of value for a natural resource not listed in section (3) of this rule shall also propose, for consideration, a standard for the protection of the natural resource. If agreed by the Director and upon acceptable showing of public value, an applicant may propose enhancement or other mitigation of an unlisted natural resource to offset impacts on natural resources listed in section (3) of this rule.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0190**

### **Water Resources**

The Director and Commission shall determine whether the proposed project would impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned. In order to approve an application, the Director shall have due regard for:

- (1) The amount of waters available for appropriation for beneficial use.
- (2) Whether the proposed use will preclude or interfere with any existing rights or permits for the use of water.
- (3) Whether the proposed use is consistent with the applicable State Water Resources Policies in OAR Chapter 690, Divisions 400, 410 and the Basin Program in OAR Chapter 690, Divisions 500 through 520 or, in the absence of a policy, the proposed use is consistent with the policies set forth in ORS 536.300 through 536.350.
- (4) Whether the project is consistent with achieving maximum economic development of the waters involved.
- (5) Whether the project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity.
- (6) Whether the project will constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(7) Whether the project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes.

(8) Whether the project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control.

(9) Whether construction and operation of the proposed project complies with water quality standards established in OAR Chapter 340, Division 41. Exceptions to this standard may be allowed if permitted by Division 41 rules, and granted by the DEQ.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0200**

### **Fish Resources**

(1) Per ORS 543.017, anadromous salmon and steelhead resources and habitats shall be preserved. It is the policy of the State to protect the natural resources of the state from possible adverse impacts of a project (ORS 543.015). In order to approve an application, the Director or Commission may require that applicants implement, operate and maintain measures to mitigate for possible adverse impacts specific to a Project. The Department shall consider the need for the following mitigation measures to protect fish habitats and/or fish resources including but not limited to:

(a) Providing for fish passage around diversion structures, dams or reservoirs with appropriate bypass flows, ladders and/or other measures as may be required by ODFW under ORS 509.580 to 509.585;

(b) Screening of intakes to prevent juvenile entrainment through turbines as may be required by ODFW under ORS 498.301 to 498.321;

(c) Preventing false attraction water from guiding fish into turbines at the tailrace;

(d) Controlling ramping rates to prevent stranding of fish;

(e) Avoiding delay of upstream or downstream migration;

(f) Managing wood and gravel through the project to maintain or enhance habitat conditions; and/or other impacts.

(2) Evidence of a fish screening agreement or waiver with ODFW; a fish passage waiver, exemption or agreement with the ODFW or the Oregon Fish and Wildlife Commission; and/or

an agreement to implement final terms and conditions recommended by ODFW to the FERC under Section 10(j) or 30(c) of the Federal Power Act shall satisfy these standards, as applicable.

(3) All projects which divert water away from a portion of a stream, excepting those processed under ORS 543.765, may be conditioned to provide bypass flows for aquatic habitat protection before water may be diverted for power production.

(4) Unavoidable adverse impacts on fish or to fish management programs will be mitigated;

(a) Project construction, timing and procedures are designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbances;

(b) All fishery protective measures are scheduled to be fully functional when the project commences operations; and

(c) The proposed project is consistent with ODFW management programs in force on the effective date of these rules.

(5) No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the Director shall apply the following standards:

(a) A project, any part of which is located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish, shall include acceptable mitigation measures which:

(A) Are located in the project vicinity;

(B) Are in effect at the time of adverse impact or start of project operation, whichever comes first;

(C) Will prevent a net loss to individual species of wild game fish;

(D) Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource;

(E) Are consistent with ODFW management plans and programs in force on the effective date of these rules; and

(F) Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource(s).

(6) No project shall be approved that may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. In order to approve an application, the Director shall apply the following standards:

(a) If proposed at an undeveloped site, it is not reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat; and

(b) Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include acceptable measures that:

(A) Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river;

(B) Comply with wild game fish standards in paragraphs (5)(a)(C) and (D) of this rule if the affected salmon or steelhead populations contain wild fish;

(C) Are consistent with ODFW Fishery management plans and programs in force on the effective date of these rules;

(D) Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project; and

(E) Are in effect at the time of adverse impact or start of project operation, whichever comes first.

(7) In order to approve an application for a project within the Columbia River Basin, the Director shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the Northwest Power and Conservation Council (NPCC) Columbia River Basin Fish and Wildlife Program.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. 3f. 5-19-93

## **690-051-0210**

### **Wildlife**

Wildlife and wildlife habitats in the project vicinity shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

(1) The location, design, construction or operation of the proposed project shall not jeopardize the continued existence of animal species which have been:

(a) Designated, or officially proposed by the USF&WS, or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973; or

(b) Identified by the Oregon Fish and Wildlife Commission or ODFW as threatened, endangered, limited or sensitive in Oregon.

(2) The location, design, construction and operation of project facilities will minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes.

(3) Project construction methods and scheduling will minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity.

(4) Unavoidable adverse impacts on wildlife or wildlife habitat will be mitigated in the project vicinity by acceptable methods such as replacement of vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights.

(5) The project is consistent with applicable ODFW management programs in force on the effective date of these rules;

(6) If, within the Columbia River Basin, the project is consistent with the provisions of the NPCC's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0220**

### **Plant Life**

In order to approve an application, the Director shall apply the following standard: that the location, design, construction or operation of the proposed project shall not jeopardize the continued existence of plant species which are:

(1) Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973.

(2) Identified by the Oregon Department of Agriculture as endangered, threatened or candidate species in Oregon.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0230**

### **Recreation**

No project may be approved that would result in a net loss of recreation opportunities. Scenic and aesthetic values shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

- (1) Project facilities will be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities or opportunities.
- (2) The proposed project will not reduce the abundance or variety of recreational facilities or opportunities available in the project vicinity.
- (3) Unavoidable adverse impacts on nonwater-dependent recreation facilities, activities or opportunities will be mitigated in the project vicinity by providing acceptable replacement facilities or opportunities of the same or similar nature and abundance.
- (4) The project will not have significant adverse impacts on any unique, unusual or distinct natural feature which provides the focus or attraction for non water-dependent recreational facilities or activities.
- (5) Unavoidable adverse impacts on any water-dependent recreational opportunity will be mitigated with acceptable replacement by or enhancement or another water-dependent recreational opportunity available in the project vicinity.
- (6) The proposed project will not cause the loss of or significant adverse impact to any water-dependent recreational opportunities of statewide significance.
- (7) Adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water-dependent recreational opportunity of statewide significance, will be offset by acceptable enhancement to other element(s) of the same water-dependent recreational opportunity in the project vicinity.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0240**

### **Historic, Cultural and Archaeological Resources**

(1) Historic, cultural and archaeological resources shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

(a) The project will not result in significant adverse impact(s) on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places;

(b) The project will comply with state laws to protect Indian graves (ORS 97.740 - 97.760), historical materials (ORS 273 .705 - 273.711) and archaeological objects and sites (ORS 358.905 - 358.955);

(c) Unavoidable adverse impacts on historic, cultural and archaeological resources will be mitigated in accordance with generally accepted professional standards; and

(d) Archaeological data of significance associated with a site not eligible for inclusion in the National Register of Historic Places will be recovered in accordance with generally accepted professional standards.

(2) Before filing an application for a License or Permit, developers shall consult with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate tribes about Indian historic and cultural resources in the project vicinity.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0250**

### **Land Resources**

In order to approve an application, the Director shall apply the following standards:

(1) Adverse impacts on high value or important farmlands or agricultural land as identified in OAR Chapter 660, Division 33, shall be avoided, minimized or offset by acceptable mitigation.

(2) Adverse impacts on prime forestlands as defined by the city or county and by the Oregon Forestry Department shall be avoided, minimized, or offset by acceptable mitigation.

(3) Adverse impacts on wetlands as defined by OAR 141-085 or identified by the Department of State Lands will be avoided, minimized, or offset by acceptable mitigation.

(4) Project facilities shall be designed and located to avoid or minimize adverse impacts on:



- (a) Outstanding scenic and aesthetic views and sights inventoried in city and county comprehensive plans as required by Statewide Planning Goal 5; and
  - (b) Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection including natural areas designated under ORS 273.563 to 273.591.
- (5) Project facilities will be designed and located to blend with adjacent features.
- (6) Mechanical noise caused by the project complies with applicable noise standards in OAR Chapter 340, Division 35.
- (7) The location, design, construction or operation of the project will not:
- (a) Disturb fragile or unstable soils; or
  - (b) Cause soil erosion which would impair other water uses.
- (8) Project facilities located in geologically unstable areas are designed with appropriate safeguards.
- (9) Project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation are designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0260**

### **Land Use**

- (1) The Director or Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and compatibility with Acknowledged Comprehensive Plans) in evaluating, or taking action on, a Permit or License for hydroelectric use.
- (2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 197, ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0280**

### **Need for Power**

In order to approve an application, the Director, shall make a finding on the need for power. In making this finding the Director shall consider the present and future power needs, taking into consideration:

(1) Whether there is a need for project power based upon:

(a) Consultation with the Oregon Department of Energy on the most current regional power plan for an analysis of need for development of hydropower or renewable energy resources within the Columbia River region; or

(b) Evidence of a contract for the sale of power, and

(c) 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.

(2) Section (1) of this rule shall not apply to applications for the following types of projects:

(a) Small facilities intended to supply power for on-site uses;

(b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;

(c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or

(d) Projects by public or municipal utilities which will serve only the applicant utility's customers.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0290**

### **Consolidated Review**

(1) The Director shall enter an order on the potential that the proposed project may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the same river basin. It is presumed that if there are other existing, approved or proposed projects, in the same river basin, there is a potential for cumulative impacts. This presumption may be rebutted by showing the impacts of the proposed project are so small in extent, short-termed or localized that there is no reasonable likelihood of cumulative impacts. The Director shall consult with the agencies listed in OAR 690-051-0060 on cumulative impacts. Natural resources on which the potential for cumulative impacts will be considered are listed in OAR 690-051-0190 through 690-051-0250.

(2) If the Director determines the proposed project may have unacceptable cumulative impacts, a consolidated review shall be conducted. The review will cover all existing, approved and proposed projects in the same river basin. Existing and approved projects shall not be subject to any action by the Director or the Commission resulting from the consolidated review. If an applicant for a proposed project does not wish to be included in the consolidated review, the application may be withdrawn and refiled at a later date. The application may be subject to a later consolidated review if refiled.

(3) If two or more of the applications are competing for the same site, only one will be chosen to proceed in the consolidated review. Preference will be given to the project best suited to the site. Suitability shall be based on the criteria in OAR 690-051-0320.

(4) The consolidated review shall be conducted as a contested case hearing. Applicants and owners of all existing, approved and proposed projects in the affected basin will be advised of the need for a consolidated review contested case hearing. Applicants and owners shall be advised not less than 90 days before the hearing so they may prepare. Notice advising of the need for a consolidated review shall be sent by registered or certified mail. Separate notice will be given when the hearing actually is to take place. This notice will be as required by ORS 183.415.

(5) The consolidated review shall include a study of the individual and cumulative impacts each project would cause on the natural resources discussed in OAR 690-051-0190 through 690-051-0250. Cumulative impacts on any given natural resource shall be considered unacceptable if the level of impact would exceed any of the natural resource standards set forth in OAR 690-051-0190 through 690-051-0250.

(6) The purpose of the consolidated review will be to determine if the individual and cumulative impacts of proposed projects meet the natural resource standards in OAR 690-051-0190 through 690-051-0250. If the individual impacts of the applicant's project would exceed any of the resource standards, the application shall be rejected. When cumulative impacts on a natural resource would violate the natural resource standards, proposed projects in the consolidated review will be chosen for further consideration on the basis of the following criteria:

(a) Contribution to cumulative impact(s) -- Projects exhibiting lesser potential contribution to cumulative impact(s) will be preferred over projects exhibiting greater potential contribution to cumulative impact(s);

(b) Individual impacts on natural resources -- Projects potentially causing impact on a lesser number of natural resources and/or having a lesser degree of impact on a given resource shall be preferred over projects potentially affecting a greater number of natural resources or having a greater degree of impact on a given resource;

(c) Project suitability -- Projects making more efficient use of water, developing more capacity, having greater annual output or producing more revenue will be preferred over projects that are less efficient, develop less capacity, have less annual output or produce less revenue;

(d) Mitigation -- Projects proposing more desirable mitigation in terms of restoration, improvement or enhancement will be preferred over projects proposing less desirable mitigation; and

(e) If no distinction can be made on the criteria in subsections (a) through (d) of this section, the final basis of decision will be priority of filing.

(7) Following the conclusion of the consolidated review contested case hearing, the Director will enter an order stating the findings on each proposed project included in the review. Applications for projects not selected for further consideration on the basis of criteria in section (5) of this rule, shall be rejected.

(8) Any application not filed in time to be included in the notice of contested case hearing for a consolidated review shall not be reviewed until after the Director has entered the final order on the proceeding.

(9) If there is only one proposed project in the river basin, the Director may initiate consolidated review proceedings at the applicant's request.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0300**

### **Interim Orders**

If, after reviewing an application for a Permit under ORS 537.170, the Director determines there is insufficient information to address the standards of OAR 690-051-0170 to 690-051-0280, the Director may either enter an order rejecting the application without prejudice or enter an interim

order continuing the hearing and specifying the nature of any studies or information necessary to complete the assessment. An interim order may also contain provisions for coordination or consultation with applicable federal, state or local governmental resource agencies and owners of all lands in the project area.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0320**

### **Competing Applications**

- (1) When filed with the Director, a notice of competing application shall also be served on other applicants for the same site.
- (2) A competing application shall be filed with the Director within 180 days of the time the original application is filed. If a hearing notice for the original application has been published before 180 days have passed, a notice of intent to file a competing application shall be filed. The notice of intent shall be filed prior to the closing date for comments as stated in the hearing notice. The competing application itself shall be filed within 60 days of the comment closing date.
- (3) When determining which competing application should be given preference, the Director shall consider:
  - (a) Conservation of the waterpower involved including:
    - (A) Efficiency within the system;
    - (B) Effect on instream fisheries;
    - (C) Water quality; and
    - (D) Other factors as the Director may deem appropriate.
  - (b) Use of the waterpower involved including:
    - (A) Availability of water;
    - (B) Existing rights;
    - (C) Development of the available hydroelectric potential; and

(D) Other factors as the Director may deem appropriate.

(4) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and are equal in every other way, preference shall be given to the application with the earliest filing date.

(5) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is a municipal corporation and the other is a private developer, preference shall be given to the municipal corporation.

(6) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is the holder of a valid Preliminary Permit and has priority under ORS 543.250, preference shall be given to the holder of the Preliminary Permit.

(7) Where one application is determined to be best adapted to conserve and utilize the water-power involved and the other applicant is either a municipal corporation or has priority as the holder of a Preliminary Permit, the municipal corporation or holder of the Preliminary Permit shall be informed of specific reasons why its application is not as well adapted and shall be afforded a reasonable period of time to amend its application to be at least as well adapted as the competing application. If its application is amended to be at least as well adapted within the time allowed, preference will be given to the municipal corporation or holder of the Preliminary Permit.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0350**

### **Minor Projects, Waiver of Provisions of Act**

For minor projects of not more than 100 THP, the Director in issuing Licenses waives the following conditions, provisions, and requirements of ORS Chapter 543:

(1) ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.

(2) ORS 543.550 relating to liens against the project and providing that any sale shall be of the whole property embraced in the project unless a partial sale is approved by the Director.

(3) ORS 543.560 which requires the Licensee to execute to the State of Oregon a bond to the effect that the Licensee shall promptly make payment to all persons supplying labor, material,

machinery, etc.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0380**

### **Water Rights**

The right to the use of the waters of the State of Oregon in connection with the development of any water power project for the generation of electricity under a License issued by the Director shall be vested in the Licensee while the License or any lawful extension is in force. Each License shall be conditioned so the right to use water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the License, the right to use water may be converted as provided in ORS 543A.305. In case a project is taken over by the state or a municipality under the provisions of [ORS 543.610](#), the right to use the waters previously used by the project shall continue in the state or the municipality until lawfully terminated, transferred, or converted as provided in ORS 543A.305.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 537](#) & [ORS 543](#)

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0390**

### **Failure to Construct Project or Utilize Water**

(1) When starting construction, a Licensee must notify the Director using the form attached to the License. Similar notice must be sent to the Director when the project is completed.

(2) Whenever a Licensee fails to begin or complete construction work within the time fixed in the License or as lawfully extended or fails to proceed with construction with due diligence, or, after completing the work, fails to use or operate the project for any period of five consecutive years, the Director shall, after due notice given, terminate the License by a written order. If, after two years' nonuse of the Licensed project there is a conflicting application for or claim to use of the water, the Licensee may be required by the Director to show why the conflicting application should not be granted and the License in question terminated.

(3) The holder of a Preliminary Permit may request an extension of time to complete feasibility studies and prepare a License application. A Licensee may request an extension of time to begin

or complete construction under a hydroelectric license. Extension requests shall be made on forms provided by the Director or on an acceptable substitute prepared by the applicant.

(4) Applications for extensions of time must contain the following information:

(a) Name, address and telephone number of the applicant;

(b) File number and type of Permit or License;

(c) Length of extension requested; and

(d) Work previously completed.

(5) In considering applications for extension of time, the Director shall consider:

(a) Preliminary Permits (additional one-year maximum) including:

(A) Adequacy and timeliness of required six-month reports; and

(B) Studies completed within the term of Permit.

(b) Beginning of construction under License (one extension for maximum of two additional years); and

(c) Time to completion of construction (no statutory limit) including:

(A) Whether an extension is in the public interest; and

(B) Whether construction has been carried on in good faith and with reasonable diligence.

(6) No legally allowable request for extension of time shall be denied if the reasons for delay are litigation or required actions by other state and federal agencies.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0400**

### **Fees: Filing and Annual**

(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.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## **690-051-0410**

### **Agreements Between Municipal and Private Applicants**

(1) A district or municipal applicant and a private applicant may contract together for the purpose of developing hydroelectric power. The joint project may receive the benefit of municipal preference and proceed under the municipal application process if the benefit, interest and control retained by the district or municipal corporation is as follows:

(a) A minimum of ten percent of the gross or 30 percent of the net project income annually, at the option of the applicant, unless excepted by the Commission;

(b) The proprietary interest in the project lands; and

(c) Control over the operation of the project to the extent the district or municipal corporation can assure:

(A) Compliance with all regulations conditions and orders of the Director, or in cases where the final order is approved by the Commission, the Commission, affecting the project;

(B) Maintenance of flow, fish passage facilities, screening devices and other structural facilities and operational measures required by the Director, or in cases where the final order is approved by the Commission, the Commission or the Oregon Department of Fish and Wildlife; and

(C) Payment of annual fees required by ORS 543.710 and 543.720 and expenses required by any agreement developed under ORS 543.265.

(2) Any changes in the terms of a contract between a district/municipal corporation and private applicant that affect section (1) of this rule, shall first be approved by the Director.

Stat. Auth.: ORS 536.025, ORS 536.027, ORS 537 & ORS 543

Stats. Implemented:

Hist.: RD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93