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CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 30, 1993 (Date)

by the Water Resources Department (Department) Water Rights (Division)

to become effective Upon Filing (Date)

The within matter having come before the Water Resources Commission (Department) (Division) after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: January 1, 1993

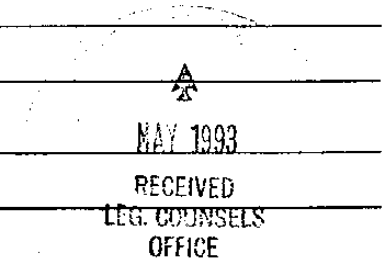
NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules)

Amended:
(Existing Rules)

Repealed:
(Total Rules Only)

690-51-010 through 690-51-410



as Administrative Rules of the Water Resources Department (Department) (Division)

DATED this 19 day of May, 19 93

By: *Wm. J. Rupp* (Authorized Signer)

Title: Director

Statutory Authority: ORS 536.025 and 536.027 or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter:

The revisions define the process of review and coordination between the applicant, agencies and the public through four stages of project review. Second, the revisions modify the information requested in the preliminary permit and the permit or license application to be consistent with the federal filing requirements. These revisions also delegate authority to the Director of the Water Resources Department to accept, review and take action on applications which leaves authority with the Commission to resolve disputes on study issues and take final actions where exceptions are filed.

Other Information Contact: Rick Craiger (Rule Coordinator) Phone: 378-8455 ext.266

OREGON WATER RESOURCES DEPARTMENT
 ADMINISTRATIVE RULES
 CHAPTER 690
 DIVISION 51
 APPROPRIATION AND USE OF WATER FOR HYDROELECTRIC POWER AND
 STANDARDS FOR HYDROELECTRIC APPLICATIONS

Purpose

690-51-000 These rules establish definitions, information requirements, filing procedures, hearing requirements, fees, and standards for hydroelectric development. The Water Resources Commission 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.

{adopted 10-13-86}

Definitions

690-51-010 Terms used in ORS 537.170, 543.015, 543.017, 543.220, 543.225 543.255, 543.257 and in these rules are given the following meanings:

- (1) "Affected local government" means any local government, as defined in OAR 690-05-015, 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 freshwater to spawn.
- (3) "Approved Project" means a Permit application filed under ORS 537 or a Preliminary Permit or License application filed under ORS 543 which has been approved by the Water Resources Commission.
- (4) "Available Water" means water not subject to statutory limits on use and which would not interfere with amounts needed for existing water permits, rights and minimum perennial streamflows. 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.
- (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 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) "Hydro Task Force" (HTF) representatives of the following state agencies, and other agencies as necessary, appointed by the Strategic Water Management Group pursuant to ORS 536.145 and chaired by the Water Resources Department:

Department of Agriculture
 Water Resources Department
 Department of Environmental Quality
 Department of Energy
 Department of Fish and Wildlife
 Department of Forestry
 Division of State Lands
 Parks and Recreation Department
 Department of Land Conservation and Development

- (13) "Improve" means to enhance.
- (14) "License" means a hydroelectric License issued to nonmunicipal applicants as provided in ORS Chapter 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 an administrative rule established to support aquatic life or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur.
- (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 hydroelectric applicants as provided in ORS Chapter 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 Planning 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 Basin Fish and Wildlife Program (1987); Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying protected areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(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.

{ adopted 10-13-86; amended: 6-21-90; 4-30-93 }

Projects to Be Considered by the Commission

690-51-020

(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 others shall be major projects.

(3) Except as provided by Oregon Laws, (OL), 1985, Chapter 569, Section 27, these rules shall apply to any application for which the hearing record was not closed prior to the effective date of these rules. Projects to which OL, 1985, CH 569 do not apply, shall be subject to the provisions of OAR Chapter 690, Divisions 50 and 74.

{ adopted 10-13-86; amended: 4-30-93 }

Restriction on Filing

690-51-030

(1) No application shall be accepted by the Commission or Water Resources Department for a project in any of the following designated resource areas:

- (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 PL 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;

(2) An application is exempt from the restrictions of subsection (1), provided:

- (a) The application was filed prior to April 9, 1980;
- (b) The application was filed under ORS Chapter 537; and
- (c) The applicant has a valid lease or permit from the agency managing the designated resource area.

{adopted 10-13-86}

Preliminary Permit Not Required

690-51-040 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; or the project is a major project and the application for a License or Permit addresses all applicable rules.

{adopted 10-13-86; amended: 4-30-93}

Applications: Filing Procedure

690-51-050

(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 690-51-070, or OAR 690-51-100 and shall be dated and designated as "Exhibit A," "Exhibit B," etc.

(2) If information required by these rules does not apply to the proposed project, it shall be noted in the application with a brief statement why the information does not apply.

(3) Information required to file an application is listed in the rules referenced in section (1) of this rule. At any time, the Director may require additional information from the applicant.

(4) Applications filed before October 1, 1985, and on which no hearing has been held, shall meet all the filing requirements in these rules. Applicants shall be required to comply with these rules and will have 120 days from the date of notice to provide additional information. Failure to supply the required information may result in rejection of the application as incomplete. If more time is needed, a request must be made before the 120 days expires. Requests filed timely and showing good cause will be granted.

{adopted 10-13-86; amended: 4-30-93}

Consultation

690-51-060 All applicants shall consult with appropriate public and private agencies. Consultation shall occur before an application for a License or Permit is filed. The first consultation may occur with the Hydro Task Force 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 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 Planning Council (NPPC), if the proposed project is within a Protected area designated by the Columbia River Basin Fish and Wildlife Program (1987); Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying protected areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(2) Water Quality: 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) Bureau of Land Management; and
 - (c) State Forestry Department.
- (5) Wetlands:
- (a) Division of State Lands (DSL); and
 - (b) The Natural Heritage Advisory Council.
 - (c) 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; and
 - (d) Oregon Parks and Recreation Department.
- (7) Recreation Resources:
- (a) Oregon Parks and Recreation Department;
 - (b) Federal managing agency, if public land; 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;

(c) NMFS; and

(d) Oregon Natural Heritage Data Base, The Natural Heritage Advisory Council.

(10) Natural Communities & Geological Features: Oregon Natural Heritage Data Base (The Natural Heritage Advisory Council).

{adopted 10-13-86; amended: 6-21-90; 4-30-93}

Applications for Preliminary Permits: Contents and Scope of Evaluation

690-51-070 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 United States 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 1000 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) As an exhibit, 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.

{adopted 10-13-86; amended: 6-21-90; 4-30-93}

Application of Standards to Preliminary Permits

690-51-080 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.

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's 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.

{adopted 10-13-86; amended: 4-30-93}

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

690-51-090

- (1) Under ORS 543.300(7), the Commission may waive any or all procedural requirements but not substantive standards for a minor License or Permit. The term of a License and annual fees cannot be waived. The Commission's waiver authority is delegated to the Director.
- (2) An application shall be filed for each minor License or Permit. Contents of the application shall be prescribed by the Director. No application shall be filed for a project in a designated resource area described in OAR 690-51-030.
- (3) A public hearing shall be held only if the Director, or Commission in the case where a protest has been referred to the Commission pursuant to (f)(E) of this section deems it in the public interest to do so. The hearing may be limited to specific issues. Upon acceptance of a minor hydroelectric application, the following public notice, technical review, filing of objection and public hearing 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 rule:
 - (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 mailing 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.
 - (c) A 30-day comment period shall commence on the day the Department mails the notice. The notice shall state the date comments must be received by the Department.
 - (d) Following the comment period, the Department shall develop a technical report on the acceptability of the project considering the basin plan, scenic waterway flow requirements, potential conflict with existing water rights, and the resource protection standards in OAR 690-51-160 through 690-51-270. The technical review shall include the action proposed to be taken on the minor hydroelectric application.
 - (e) The technical report 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 objections must be received by the Director (60 days from the date of mailing).

(f) Comments or objections must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the technical report. Upon receiving an objection, the Director shall:

- (A) Transmit the objection to the applicant and all objectors, and commentors.
- (B) Based upon the objection, determine if the technical report was in error and, if so, issue a revised technical report or portion thereof. Any new technical report revisions shall be disseminated and reviewed as described above.
- (C) If the objection is not considered valid by the Director, the objector shall be notified within 30 days.
- (D) The objector shall be allowed 30 days from the date of mailing of their denial to submit a protest. The form and content of the protest along with the filing and service procedure shall be in accordance with the standards set forth in OAR 690-02-030 through 080.
- (E) If a protest is timely filed, the Director shall refer the application, with accompanying objection and protest, to the Commission for review.

(4) Any minor project that would violate the standards in OAR 690-51-190 through 690-51-260 shall be proposed for rejection. The applicant shall be given the opportunity to request a contested case hearing. Notice of filing a request for a contested case hearing shall be distributed to interested parties, commentors and objectors.

{adopted 10-13-86; amended: 4-30-93}

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

690-51-095 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% 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) Notice of the application shall be printed in the Department weekly notice.

(b) The Department shall distribute copies of the application to the Hydro Task Force (HTF). The Department shall set a meeting date with the applicant to appear before the HTF 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 690-51-060 as applicable. For each of the resources that may be impacted, the written study plan should include the following major study

elements and phases: 1) objective, 2) resource background, 3) rationale or justification for proposed approach, 4) study area, 5) methodology, 6) sampling location and number, frequency and timing of sampling, 7) data treatment and analysis, 8) report preparation, 9) schedule, and 10) 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 690-51-130.

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

(f) The Director or Commission shall issue an order to modify, approve or reject the Preliminary Permit application based upon the standard set out at OAR 690-51-080.

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

(2) STAGE TWO - 30% 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 approval. 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 Commission shall resolve any dispute and inform all participants to the dispute accordingly.

(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 news letter.

(g) Comments on the studies and draft License or Permit application shall be submitted within a time certain to the Director who shall forward collated responses to the HTF and the applicant.

(3) STAGE THREE (30% of Fee) APPLICATION AND CUMULATIVE IMPACT REVIEW AND DETERMINATION

(a) The applicant shall file the License or Permit application with the Water Resources Department. The Department shall distribute the application to the appropriate consultation agencies. The Department shall mail notice of its availability 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 developer 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 Commission 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 an order on the potential the proposed project may contribute to cumulative impacts with other existing, proposed or approved hydroelectric projects in the same river basin and distribute it to state and federal agencies, Indian tribes and other participants.
- (g) If a determination is made that there is no potential for cumulative impacts the Director shall conduct a contested case hearing on the public interest issues of the application, i.e., on the merits of the application. A proposed order is issued by the Referee. If no exceptions are filed to the proposed order within 30 days, the proposed order becomes final and is signed by the Director.
- (h) If the Director determines that there is potential for cumulative impacts with other existing or pending projects in the same river basin, the Director shall conduct a consolidated review. The review shall be in the form of a contested case hearing. A proposed order shall be issued by the Referee. If no exceptions are filed to the proposed order within 30 days, the order becomes final and is signed by the Director.
- (i) If exceptions are filed to the final order, the Commission shall review/hear argument (written or oral, at its discretion) and make the final determination for the final order.

(4) STAGE FOUR (20% of Fee) FINAL PLAN REVIEW AND INSPECTION

- (a) The License or Permit shall be issued or denied with conditions that the Director or Commission, in cases where the final order is issued by the Commission, deems necessary.
- (b) The applicant shall submit construction specifications to the Director.
 - (A) The Director shall distribute the plans and specifications 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 or final proof survey.

{ adopted 4-30-93 }

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

690-51-100 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 1000 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 developments.

(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 subparagraphs below. See OAR 690-51-060 for consultation requirements. See OAR 690-51-170 through 690-51-280 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 clause (C), 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 section:

- (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 the 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 in-migration 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 3 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 paragraphs (g)(G)(i)(ii) of this section; and