

OREGON



WATER RESOURCES
DEPARTMENT

Division 51 Temporary Rulemaking – Annual Fees for Hydroelectric Projects

Oregon Water Resources Commission

December 3, 2021

HB 2143 / 2021 OL Ch. 516

- Establishes new fee structure
- Effective 91st day sine die
- Fee due on or before January 1st each year

CHAPTER 516

AN ACT

HB 2143

Relating to annual fees for hydroelectric projects; creating new provisions; amending ORS 536.015, 543.078, 543.085, 543.090, 543.300, 543.710 and 543A.405; repealing ORS 543A.415; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 536.015 is amended to read:

536.015. (1) The Water Resources Department Hydroelectric Fund is established separate and distinct from the General Fund of the State Treasury. Except as provided in subsections (4) *[to (6)]* and (5) of this section, of the moneys in the Water Resources Department Hydroelectric Fund:

(a) A portion equal to 67 percent of the total moneys received each year shall be transferred to the fund created under ORS 496.835;

(b) A portion equal to 10.3 percent of the total moneys received each year shall be transferred to an account of the Department of Environmental Quality to be used to review applications for certification of hydroelectric projects under ORS 468B.040 and 468B.045; and

(c) All of the remaining moneys received each year are continuously appropriated to the Water Resources Commission and the Water Resources Department to provide for the payment of the administrative expenses of the commission and the department in carrying out their responsibilities related to the issuance of permits, licenses or water right certificates for hydroelectric projects.

(2) The following shall be deposited into the State Treasury and credited to the Water Resources Department Hydroelectric Fund:

(a) Fees received by the Water Resources Department for hydroelectric projects under ORS 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, *and* 543A.405 *[and 543A.415]*; and

(b) All moneys received on behalf of this account by gift, grant or appropriation from whatever source.

(3) All interest, if any, from moneys credited to the Water Resources Department Hydroelectric Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department Hydroelectric Fund.

(4) Application fees received under ORS 543A.405 shall be disbursed to the various agencies in the amounts specified in the cost reimbursement agree-

SECTION 2. ORS 543.078 is amended to read:

543.078. (1) On or before January 1 of each year, each holder shall pay to the State of Oregon an annual fee for each hydroelectric project that is subject to this section. The annual fee required by this section shall be based on the theoretical horsepower specified in the water right for each project.

(2) The amount of the annual fee required under subsection (1) of this section shall be determined in the following manner:

(a) Subject to the *[schedule set forth in subsection (3) of this section,]* **adjustment required under this paragraph, for a project producing more than**

123.5 theoretical horsepower each holder shall pay an amount, *in 1998 dollars,* equal to *[\$0.405]* a base rate of **\$0.687** per theoretical horsepower covered by the water right for the holder's hydroelectric project. The annual fee may be set forth in the water right or may be established by order of the Water Resources Director, *[and shall be adjusted annually for inflation according to rules established by the Water Resources Commission.]* **The Water Resources Commission shall annually adjust the fee established in this paragraph based on the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, using a base date of January 1, 2021.** The annual fee also may be adjusted through the periodic review process established in ORS 543.085.

(b) Each holder of a hydroelectric project that produces **15 or more theoretical horsepower but not more than 123.5 theoretical horsepower** *[or less]* shall pay an annual fee of \$50 for that project.

(c) **Each holder of a hydroelectric project that produces less than 15 theoretical horsepower shall pay an annual fee of \$15 for that project.**

(d) **The amount of theoretical horsepower upon which the fees are paid must be computed by multiplying the maximum amount of water appropriated, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the number resulting from the multiplication by 8.8.**

(e) **For a project that diverts water from a point on a river that forms a border with another state, the fee computation described in paragraph (d) of this subsection may not use as the maximum amount of water appropriated more than half of the capacity of the project.**

- Relates to filing and annual fees for hydroelectric projects
- Reflects prior fee structure
- Update required to conform with statute
- Propose removing language relating to annual fees

Temporary Rulemaking

Authorized by ORS 183.335(5)

No notice or hearing required

Effective for 180 days

Need for Temporary Rule

- Mitigate or eliminate confusion about annual fee
- Ensure similarly situated licensees pay the same amount
- Implement legislatively authorized fee schedule
- Support hydroelectric programs

Alternatives

1. Adopt the temporary rule amending OAR 690-051-0400, as contained in Attachment 2.
2. Modify and adopt the temporary rule amending OAR 690-051-0400.
3. Decline to adopt the temporary rule amending OAR 690-051-0400 and instead wait for Department staff to bring forward a permanent rule for adoption at a future meeting.

Director's Recommendation

The Director recommends Alternative 1, to adopt the temporary rule amending OAR 690-051-0400, as contained in Attachment 2.

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