

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690
WATER RESOURCES DEPARTMENT

FILED

12/29/2021 10:03 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Removes language relating to hydroelectric project annual fees to conform rule with statute

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/31/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Breeze Potter
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/26/2022

TIME: 9:00 AM

OFFICER: Breeze Potter

ADDRESS: Remote

Zoom Videoconference

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19, the public hearing will be held by videoconference call. To join the hearing by computer use this link: <https://us02web.zoom.us/j/89604545820?pwd=S01PYTA2aFIZVzNPV2gvTW1xVGVIz09> and enter the meeting ID (896 0454 5820) and passcode (i28uSL). To join by telephone dial +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 and enter the meeting ID (896 0454 5820) and passcode (879750). Upon joining the videoconference call, you will be asked to announce your name. To prevent background noise, attendees may be muted. Individuals who want to submit oral testimony must email breeze.k.potter@water.oregon.gov or call (971) 720-0963 to sign up no later than 9:15 AM January 26, 2022. The public hearing will close no later than 10:00 AM but may close as early as 9:20 AM if all individuals that have signed up to testify have had the opportunity to enter their comments into the record. Auxiliary aids for persons with disabilities are available upon advance request. Please notify the contact listed above as soon as possible, but at least 48 hours in advance of the meeting.

NEED FOR THE RULE(S)

With the passage of House Bill (HB) 2143 during the 2021 Legislative Session, existing Water Resources Department rule provisions relating to annual fees for hydroelectric projects conflict with statute. HB 2143, which is codified as 2021 Oregon Laws (OL) Chapter (Ch.) 516, became effective the 91st day after sine die. Under the new statutory annual fee structure, the licensee is required to annually pay the applicable fee under Oregon Revised Statute (ORS) 543.078 as amended by 2021 OL Ch. 516 for the hydroelectric project on or before January 1 each year. The Department has determined that rulemaking is required to conform the current Oregon Administrative Rule (OAR) with statute by

removing existing language in OAR 690-051-0400 that relates to annual fees. The annual fees are outlined in statute; therefore, the outdated rule text can be removed. On December 10, 2021, the Department filed a temporary rule amending OAR 690-051-0400 to remove existing language relating to annual fees. The temporary rule is in effect from December 10, 2021 to June 7, 2022. This rulemaking proposes to make the temporary changes to OAR 690-051-0400 permanent by removing language that relates to hydroelectric project annual fees.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 2143 (2021), HB2143 (oregonlegislature.gov).
2021 Oregon Laws Chapter 516, 0516 (oregonlegislature.gov).

FISCAL AND ECONOMIC IMPACT:

The provisions of the rules related to annual fees for hydroelectric projects are superseded by the new annual fee structure of HB 2143 (2021 OL Ch. 516). Removal of existing rule language relating to annual fees clarifies the annual fee requirements and has no additional impact on the annual fees paid by hydroelectric project owners as required by statute.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed amendments to OAR 690-051-0400 are not expected to impose additional costs to state agencies, units of local government, or the general public beyond the costs imposed by statute. The Oregon Water Resources Department will assess annual fees for hydroelectric projects under the statutory fee framework. (2)(a) There are about 120 entities that presently hold hydroelectric water rights or licenses including individuals, small businesses, irrigation districts, and municipalities and will be assessed annual fees according to the new statutory annual fee structure in 2021. (b) The amendment of these rules to conform with statute will not require small businesses to keep new records or report new information to the Department. There are no reporting, recordkeeping, or administrative activities and costs expected beyond the status quo to comply with these rules. (c) The amendment of these rules to conform with statute will not require small businesses to obtain professional services, equipment, labor, or other administrative costs to comply.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The issues regarding annual fees for hydroelectric projects were fully considered by the 2021 Legislature. Small businesses were among the group of stakeholders who received information from the Department regarding proposed changes before and during the session. These rules remove language relating to hydroelectric project annual fees to conform the rules to statute and do not implement any additional requirements.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The issues regarding annual fees for hydroelectric projects were fully considered by the 2021 Legislature. The Department shared information about the proposed changes with a stakeholder group including major hydroelectric project owners before and during the legislative session. These rules remove language relating to hydroelectric project annual fees to conform the rules to statute and do not implement any additional requirements.

AMEND: 690-051-0400

RULE SUMMARY: Removes language relating to hydroelectric project annual fees to conform rule with statute

CHANGES TO RULE:

690-051-0400

~~Fees: Filing and Annual Application Filing Fees ¶¶~~

- (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.~~
- Statutory/Other Authority: ORS 536.025, 536.027, 537, 543, 2021 OL Ch. 516
- Statutes/Other Implemented: 2021 OL Ch. 516