Proposed Rule Changes are for several purposes:
To eliminate references to statutes or rules that have been repealed,
To define the process for adjusting fees for annual inflation,
To provide specific examples of how to meet the natural resources standards,
To simplify the process for proposed final orders and contested case hearings,
To allow the Director to handle exceptions and to issue a final order.

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, [*543.257*] 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, [*rights*] **certificates, or decrees including** [*and*] 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 div**er[***i*]sion, 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) *["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*] **"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) [*Division*] **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)** [*established*] to support aquatic life**,** [*or*] **to** minimize pollution **and to maintain recreation values**. [*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 nonmunicipal 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 [*Planning*] **and Conservation** Council believes hydroelectric development would have unaccept[-]able 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 ([*1987*] **2014**); [*Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992);*] including [*amendments identifying*] 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 <u>and/or Director</u>

(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.

[*(3) Except as provided by Section 27, Chapter 569, Oregon Laws (OL) 1985, 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 Chapter 569, Oregon Laws 1985 do not apply, shall be subject to the provisions of OAR Chapter 690, Divisions 50 and 74.*].

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 [*Restriction*] <u>Notice</u> on Filing

(1) [*No application shall be accepted by the Commission or Water Resources Department for a project in any of*] **<u>Whenever a proposed project is located within one of</u>** the following designated resource areas**<u>, the Department shall provide notice of the application to the managing agency</u>**:

(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.

(2) An application is exempt from the restrictions of section (1) of this rule, 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 from the agency managing the designated resource area.]

Stat. Auth.: ORS 537 & ORS 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86

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 [*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.*]

(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 (4) 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 [*public and private agencies*] **government entities.** Consultation shall occur before an application for a License or Permit is filed. The first consultation may occur with the [*Hydro Task Force*] **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 [*Planning*] **and Conservation** Council (NP[P]**C**C), if the proposed project is within a Protected Area designated by the Columbia River Basin Fish and Wildlife Program ([1987]**2014**); [*Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992);*] including [*amendments identifying*] 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 Environ[-]mental 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) [*State Forestry*] **Oregon** Department **of Forestry**.

(5) Wetlands:

(a) [*Division*] **Oregon Department** of State Lands (DSL);
(b) [*The Natural Heritage Advisory Council*] **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[*; and*
(d) Oregon Natural Heritage Data Base (The Natural Heritage Advisory Council).]

(10) Natural Areas: [*Natural Communities and Geological Features: Oregon Natural Heritage Data Base (The Natural Heritage Advisory Council).*] **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

690-051-0090 Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards

[*(1) Under ORS 543.300(7), the Commission may waive any or all procedural 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]**1**) An application shall be filed for each minor License or Permit. **An application must contain the information in OAR 690-051-0070.** [*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 690-051-0030 **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, [*or Commission in the case where a protest has been referred to the Commission pursuant to paragraph (f)(E) of this section*] 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 [*public notice, technical review, filing of objection and public hearing*] **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 [*mailing*] **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 [*mails*] **sends** 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*] **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 [*technical review*] **proposed final order** shall include the action proposed to be taken on the minor hydroelectric application;

(e) The [*technical report*] **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 [*objections*] **protests** must be received by the Director (60 days from the date [*of mailing*] **it was distributed**);

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

(A) Transmit [*the objection*] **copies of any protest timely filed** to the applicant and all [*objectors, and*] commentors;
(B) [*Base 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 690-002-0030 through 690-002-0080.
(*E) If a protest is timely filed, the Director*] **Evaluate the protest to determine whether significant issues are raised and if so** shall refer the application, with accompanying [*objection and*] protest, to the [*Commission*] **Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685** for [*review*] **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) [*Any minor project that would violate the standards in OAR 690-051-0190 through 690-051-0260 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.*] **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 an 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, [***N*] **n**otice 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** [*Hydro Task Force (HTF)*]. The Department shall set a meeting date with the applicant to appear before the **other agency representatives** [*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 690-051-0060 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 [*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 690-051-0080;

(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 [*approval*] **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** [*Commission shall resolve any dispute and*] inform all participants **of requests and responses to study requests that are received** [*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 [*newsletter*] **public notice**;

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

(3) Stage Three -- 30 Percent of Fee: **Final** Applica[-]tion**, [***and*] Cumulative Impact **and Public Interest** Review**s,** [*and*] Determination**s 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 [*mail*] **send** notice of [*its availability*] **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 [*developer*] **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 [*Commission*] **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[*n*] **proposed final** order [*on*] **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 potential*] 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 distribute**d [***it*] to state and federal agencies, Indian tribes**,** [*and*] **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.**

[*(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;*] **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 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.*] **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 [*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 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 [*or final proof survey*] **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

690-051-0130 Public Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings

(1) [*A contested case hearing shall be held on any License or Permit application in excess of 100 THP, and on any application for 100 THP or less, as determined necessary pursuant to OAR 690-051-0090 for which the Commission determines it is in the public interest.*

(2)] 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 ([*3*] **2**) of this rule

([*3*] **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.

(4) 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 [*time and place for holding]* **conduct of contested** hearings shall be **as provided in OAR 137-003-0501 through -0700.** [*fixed by the Director. In case no protest or objection against an application is filed by the time announced in the hearing notice, the*] **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 [*Remonstrances*] Requests for Standing

(1) All protest and **requests for standing [***objections*] 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.

[*NOTE: Rules Pertaining to Preparation, filing and service of protests are found at OAR 690-002-0030 to 690-002-0050.*]

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 [*meet*] **comply with** the [*general and resource specific*] **minimum** standards **in ORS 543.017 and the requirements of OAR** 690-051-0170 to OAR 690-051-[*0260. Economic and need for power standards in OAR 690-051-0270 and 690-051-0280 must be met as well. When required, a project must also be reviewed with other projects pursuant 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 [*Protection of*] Designated Resource Areas and Special Management Areas

(1) **The Director shall consult with the managing agency for any [***P***] p**roposed 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 **[**, *shall be*] **to determine conditions that may be required to ensure the proposed use is** consistent with the authorized use of the area. [*The*

Director, or Commission in actions where exceptions have been filed to the Director's proposed order requiring Commission action, shall decide if a project is consistent only after review of input from the managing agency. If the Director or Commission approves a project that is not consistent, findings that support the action shall be made.]

(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 [*Protected Area*] **special management area** under federal law or regulation; and
(j) Areas under study by state agencies for inclusion in or designation as a [*Protected Area*] **special management area** under state statute or regulation.
(k) Protected areas designated by the Columbia River Basin Fish and Wildlife Program ([*1987*] **2014**); [*Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992);*] including [*amendments identifying*] 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 [*as designated in ORS 390.460*] shall be consistent with the policy in [*ORS 390.415 as determined by the Commission after considering the recommendation of the Oregon Columbia River Gorge Commission*] **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 [*general*] **the project vicinity**. Resource specific rules may impose stricter standards. In order to approve an application, the Director, *[or Commission when exceptions have been filed to the Director's proposed order on the License or Permit, shall have due regard for*] **must determine the natural resources of the state will be maintained or enhanced.** [*and enter appropriate findings on*] **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. [*Proposed mitigation must be in the project vicinity;]*
(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 archaeologic; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Director's discretion, [*or the Commission's discretion in the case where an exception has been filed to the Director's proposed order,*] 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[, *or Commission in cases where an exception has been filed to the Director's proposed order,*] 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.** [*have due regard for water resources.*] In order to approve an

application, the Director[, *or in cases where the final order is issued by the Commission, the Commission, shall enter appropriate findings on the following standards*] **shall have due regard for**:

(1) The[*re is available water to provide for reasonable operation of the proposed project*] **amount of waters available for appropriation for beneficial use;**.

(2) **Whether [***T*] **t**he proposed use will [*not*] preclude or interfere with any existing rights or permits for the use of water.

(3) **Whether [***T*] **t**he 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 [***T*] **t**he project is consistent with achieving maximum economic development of the waters involved.

(5) **Whether [***T*] **t**he project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity.

(6) **Whether [***T*] **t**he project will [*not*] constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(7) **Whether [***T*] **t**he 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 [***T*] **t**he project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control.

(9) **Whether [***C*] **c**onstruction and operation of the proposed project [*shall*] compl[*y*]**ies** 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 [*and approved by the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission*].

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) [*The Director and Commission shall have due regard for fish resources in general. In order to approve an application, the Director, or in cases where exceptions have been filed to the*

Director's proposed order, the Commission, shall enter appropriate findings on the following standards:

(a) Project facilities and operations will not have significant adverse impacts on fish populations;

(b) Project facilities and operations will not unreasonably interfere with upstream and downstream passage of fish through the project vicinity. The Director, or in cases where the final order is approved by the Commission, the Commission may make exceptions to this standard in special cases where fish populations have been significantly damaged by past activities and the proposed single- or multiple-purpose project development will improve existing fish populations;

(c) Project facilities and operation have been designed to mitigate, to the greatest extent practicable, adverse impacts upon spawning, rearing or other habitat areas necessary to maintain the levels and existing diversity of fish species;]

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 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.

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

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

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

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

([2] **5**) [*The Director and Commission shall have due regard for wild game fish.*] No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the Director [*, or in cases where exceptions have been filed to the Director's proposed order, the Commission, shall enter appropriate findings on*] **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).

([3] **6**) [*The Director and Commission shall have due regard for salmon and steelhead fish and habitat.*] 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*[, or in cases where the Commission approves the final order, the Commission, shall enter appropriate findings on*] **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 ([*2*] **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.

([*4*] **7**) In order to approve an application for a project within the Columbia River Basin, the Director[*, or in cases where exceptions have been filed on the proposed order, the Commission*] shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the **Northwest Power and Conservation Council (NPCC**) [*NPPC's*] Columbia River Basin Fish and Wildlife Program. [*Certification of compliance by the NPPC shall satisfy this standard.*]

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

[*The Director and Commission shall have due regard for wildlife.*] **Wildlife and wildlife habitats in the project vicinity shall be maintained or enhanced.** In order to approve an application, the Director[*, or in cases where an exception has been filed on the proposed order, the Commission, shall enter appropriate findings on*] **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 Natural Heritage Data Base as endangered, threatened or limited in Oregon; or*]

[*(c)*] Identified by the Oregon Fish and Wildlife Commission **or ODFW** as threatened**,** [*or*] 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 [*NPPC's*] **NPCC's** Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan. [*Certification of compliance by the NPPC shall satisfy this standard.*]

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

[*The Director and Commission shall have due regard for plant life* .] In order to approve an application, the Director[, *or the Commission in cases where an exception has been filed to the Director's proposed order, shall find*] **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** [*Oregon Natural Heritage Data Base*] as endangered, threatened or **candidate species** [*limited*] 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

[*The Director and Commission shall have due regard for 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[*, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on*] **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) [*The Director and Commission shall have due regard for* h] **H**istoric, cultural and archaeological resources **shall be maintained or enhanced**. In order to approve an application, the Director[*, or in cases where an exception has been filed to the Director's proposed order, the*

Commission shall enter appropriate findings on] **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

[*The Director and Commission shall have due regard for land resources.*] In order to approve an application, the Director[*, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on*] **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 [*-0010(20)*] or identified by the [*Oregon Natural Heritage Data Base*] **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) Design, location, construction and operation of the proposed project will avoid or minimize adverse impacts on natural communities or geological features identified by the Oregon Natural Heritage Data Base as threatened or endangered in Oregon.*]

([*9*] 8) Project facilities located in geologically unstable areas are designed with appropriate safeguards.

([*10*] 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

[*690-051-0270 Economics*
The Director and Commission shall have due regard for project economics. In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission shall find that the applicant, along with all co-owners, possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction, maintenance, operating, mitigation and compensation costs.]

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

690-051-0280 Need for Power

In order to approve an application, the Director, **shall consider whether the Project is economically reasonable and consistent with the policies of ORS 543.017(1)(e) and ORS 469.310.** The Director[, *or in cases where the Commission approves the final order, the Commission*] shall [*find*] **apply the following standards**:

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

(a) [*The forecasts of the Regional Conservation and Electric Power Plan of the NPPC or state energy demands*] **Consultation with the Oregon Department of Energy on the most current regional power plan for an analysis on whether there is a 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.

(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 that 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 [*provided in OAR 690-051-0130 and*] 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 [*ORS*] **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[*, or in cases where an exception has been filed to the proposed order, the Commission,*] 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

[*690-051-0310 Record of Expenditures Under Preliminary Permits*

Each permittee shall keep an accurate and dependable record of all expenditures made under the Permit. If a License is issued for a project covered in whole or in part by a Permit, any and all items properly includible in the actual legitimate cost of the project representing expenditures made under the Permit and before the date of the License shall be supported by proper vouchers or other records, in the same manner required of a Licensee when no Permit has been issued; and any vouchers or records, or certified copies in support of an item properly includible in the cost of the project shall become a part of the records of the project and shall be kept and retained by the Licensee in the manner required by the Commission or Director. Records kept by standard accounting methods are acceptable.]

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[*, or in cases where the Commission approves the final order in the contested case hearing, the Commission*] 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[*, or the Commission in cases where the Commission approves the final order, the Commission*] 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[*, or the Commission in cases where the Commission approves the final order, the Commission*] may deem appropriate.

(4) If the Director[*, or the Commission in cases where the Commission approves the final order, the Commission*] 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[*, or the Commission in cases where the Commission approves the final order, the Commission*] 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[*, or the Commission in cases where the Commission approves the final order,*

the Commission] 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

[*690-051-0330 System of Accounts for Public Utilities*

Each License issued by the Director, or in cases where an exception is filed to the proposed order, the Commission, where the applicant is a public utility, shall be conditioned upon the establishment by the Licensee of a system of accounts in conformity with the Uniform Classification of Accounts for Electrical Utilities as prescribed and required by the Public Utility Commissioner of the State of Oregon. The Licensee shall be required to file with the Director one copy of all of its accounts as filed with the Public Utility Commissioner, duly certified, and such other statements, accounts, or records as the Director, or in cases where the Commission approves the final order, the Commission may require in order to furnish a full and complete knowledge of the facts necessary to carry out the provisions of ORS 543.010 to 543.620.]

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

[*690-051-0340 Accounts When the Licensee is Not a Public Utility*

When the applicant for a License is not a public utility, the Director, or the Commission in cases where the Commission approves the final order, will not require the establishment and maintenance of a system of accounts as prescribed for public utilities. The Licensee shall be required to keep and maintain books, records, accounts, and/or memoranda which will show the actual legitimate cost of construction of the project or any improvement. The Licensee shall file with the Director, under oath, when called for by the Director, or the Commission in cases where the Commission approves the final order, a statement of costs, except that a cooperative

electric association shall establish a system of accounts as may be required by the Director, or the Commission in cases where the Commission approves the final order. A cooperative electric association shall file with the Director each year, one or more copies of the accounts duly certified and other statement, accounts, or records as required for a full and complete knowledge of facts necessary to carry out the provisions of ORS 543.010 to 543 620.]

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 [*Where the Licensee is Not a Public Utility*]

For minor projects of not more than 100 THP, [*where the applicant for License is not a public utility,*] the Director[*, or in cases where a protest has been referred to the Commission, the Commission,*] in issuing Licenses, [*will*] waives the following conditions, provisions, and requirements of ORS Chapter 543:

[(1) ORS 543.510 which requires the Licensee to establish and maintain amortization reserves to be applied in reduction of the net investment]

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

[*(3) ORS 543.520 which provides that on amortization of the net investment the project shall become the property of the State of Oregon.*]

([*4*] 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.

([*5*] 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

[*690-051-0360 Minor Project by Public Utility*

Where the applicant for License for a minor project of not more than 100 THP is a public utility, the Director will treat the application the same as an application for a major project and may

waive the requirements of the Act identified in OAR 690-051-0350.]

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

[*690-051-0370 Transfer of Project to Public Utility*

Whenever a project, or any part thereof, covered by a License issued to a Licensee who is not a public utility, is transferred or conveyed to a public utility and becomes the property of the utility, or whenever a Licensee who is not a public utility changes status to that of a public utility by the sale of electricity to the public, the License issued shall terminate. In such a case, the Commission may issue a new License with provisions necessary to carry out the intents and purposes of ORS 543.010 to 543.620.]

Stat. Auth.: ORS 536, ORS 537 & ORS 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86

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[*, or in cases where the Commission approved the final order, the Commission,*] shall be vested in the Licensee while the License or any lawful extension is in force. Each License [will] **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 [shall revert to the public] **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**,** [*or*] transferred**, or converted as provided in ORS 543A.305**. [*In case of a project falling to the state by amortization under ORS 543.520, the right to use the waters previously used by the project shall continue in the state until lawfully terminated or transferred.*]

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