

## **Routine Program Change**

### **Updating Oregon's Enforceable Policies Regarding Hydroelectric Projects**

**O.R.S. §§ 543.010-543.440, 543.610, 543.760-543.990**

**July 24, 2014**

#### **I. Introduction**

The Oregon Coastal Management Program requests that the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) approve updates to the OCMP to reflect changes to Oregon's statutes regarding hydroelectric projects. Oregon requests concurrence that these updates constitute a Routine Program Change.

Section II.A describes the relevant program in ORS chapter 543 and identifies changes to the statutes since OCRM's previous approvals. Section II.B identifies those sections that state "enforceable policies" that are used in Oregon's federal consistency review determinations. Section II.C shows that the submitted updates are a Routine Program Change under NOAA regulations and guidelines.

#### **II. Analysis of Routine Program Change**

##### **A. Discussion of the Program in Chapter 543**

The OCMP was initially approved by NOAA in 1977. It included sections of ORS Chapter 543, setting hydroelectric project requirements and prohibitions. In 1987, OCRM approved a routine program change that updated most of the statutes of ORS Chapter 543 that were incorporated in 1977 and added ORS § 543.015, declaring the state policy of protecting the natural resources of the state from the adverse impacts of hydroelectric power development, ORS § 543.017, setting the minimum environmental standards for hydroelectric power development, ORS §§ 543.255 and 543.257, setting the procedures and requirements for cumulative impacts assessments of proposed hydroelectric projects, and ORS § 543.265, requiring permittees and licensees to evaluate or allow the State Department of Fish and Wildlife to evaluate the effectiveness of fish protection measures. In 1987, the OCRM also approved the removal of ORS § 543.135, providing exceptions to state laws for projects approved by FERC prior to March 16, 1961, the statute having been repealed by the Oregon Legislature in 1985.

Oregon now seeks to update and incorporate further sections of ORS chapter 543 to reflect current management policies. The attached table includes the full listing of statutory provisions addressing hydroelectric projects, including those which remain unchanged since prior OCRM approval. This is in order to ensure that the full current program remains part of the OCMP, and establishes the 2013 Edition of the Oregon Revised Statutes as the effective baseline for all of these statutory provisions, should they be further modified in the future. We are also attaching the full current versions of the statutes.

As shown in the attached table, many of the changes to the amended sections since their last OCRM approval, whether in 1977 or 1987, are simple grammatical edits. Specifically, “employee” was corrected to “employee;” “aesthetic” replaced “esthetic;” “regulation” was changed to “rule” in three instances; “which” became “that” in two instances; “whenever,” “in case,” and “in the event” each became “if” in at least one instance; “considers necessary” replaced “deems necessary;” “thereunder” was changed to “under a license;” “thereof” became “of the project works” twice and “of a project” once; “qualified person” replaced “qualified licensee;” “A preliminary permit may be issued by the Water Resources Commission to any person” was changed to “The Water Resources Commission may issue a preliminary permit to any person;” and “the same fees and mileage that are paid to witnesses summoned to appear as such in the courts of this state” became “the fees and mileage provided for witnesses in ORS 44.415(2).”

Other changes included cross-reference revisions. The often referenced range of statutes “ORS 543.010 to 543.620” has been replaced with “ORS 543.010 to 543.610” to account for the Oregon Legislature’s repeal of ORS 543.620 in 1995. In one instance, “ORS 543.010 to 543.620” was replaced with the list “ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610,” providing greater specificity regarding the applicability of the exemption for cities, towns, and other municipal corporations of the state. Reference to “ORS 543.725” was changed to “ORS 536.015,” the Oregon Legislature having repealed the former and enacted the latter in 1991. Reference to the range of statutes “ORS 536.300 to 536.350” was replaced with “ORS 536.295 to 536.350,” reflecting the enactment of ORS 536.295 in 1989. Reference to “537.505 to 537.525” was replaced with “537.505 to 537.534,” reflecting the enactment of ORS 537.531, 537.532, and 537.534 in 1995. Reference to “ORS 183.310 to 183.550,” the Administrative Procedures Act, became “ORS chapter 183.”

Other changes included textual simplifications, name clarifications, and minimal rearrangements in administrative responsibilities. Two textual simplifications concerned amounts to be paid, replacing details for calculations with “just compensation” or referencing another statute for that information. Name clarifications included replacing “commission” with “Water Resources Commission” and “department” with “State Department of Fish and Wildlife.” In a few instances, reference to the Water Resources Commission was changed to the Water Resources Department, reference to the Water Resources Director was changed to the Water Resources Department, reference to the Water Resources Commission was changed to the Water Resources Director, reference to the Water Resources Director was changed to the Water Resources Commission, and reference to the Water Resources Department was added to reference to the Water Resources Commission. The Water Resources Director is the administrative head of the Water Resources Department, and the Water Resources Department was established under the Water Resources Commission, so they are related entities. In addition, several references to the Energy Facility Siting Council were removed.

Beyond these editorial changes, further updates are described below:

### *General Provisions*

ORS § 543.010. This section, previously incorporated into the OCMP, defines terms used in this chapter. Since its last OCMP update, the Oregon Legislature removed the definition of “net investment,” coinciding with the repeal of ORS § 543.510 and §543.520 and the removal of a significant portion of subsection (4) of ORS §543.050, all concerning “net investment” and all in 1995.

ORS § 543.012. This section, enacted in 1997, provides that, other than enumerated procedural sections, this chapter does not apply to reauthorizations of existing projects. In addition, it declares that references to licenses in enumerated sections of this chapter are also references to water rights.

ORS § 543.014 & Chapter 152 of Oregon Laws 2011. These sections were enacted in 2007 (amended in 2009) and 2011, respectively. They concern wave energy projects, exempting those that do not require a license under the Federal Power Act and that meet certain other conditions from regulation under the chapter and, until 2022, exempting those that do require a license under the Federal Power Act and that meet certain other conditions from the standards specified in ORS § 543.017.

ORS § 543.017. This section was incorporated into the OCMP in 1987. It identifies the minimum standards regarding environmental and public interest protections for the development of hydroelectric power. Since 1987, the Oregon Legislature added the requirement that the Water Resources Commission consider present and future power needs when deciding whether to allocate water for a new plant, and stating that nothing in the section limits the authority of state agencies to make recommendations regarding license conditions for an existing hydroelectric project.

ORS §§ 543.050–543.055. These sections, previously incorporated into the OCMP, grant the Water Resources Commission authority to issue permits and licenses for hydroelectric power facility construction and maintenance, to examine all records to effectively oversee the industry, and to hold hearings and take testimony. Since the last OCMP update of these sections, the Oregon Legislature has removed the requirement that the commission promulgate accounting regulations, replaced the authority of the commission to appoint a hearing examiner for contested cases with the requirement that such cases be conducted by an administrative law judge, and removed express authority of the commission to take action upon the record as though it had conducted the hearing.

#### *Hydroelectric Project Fees*

ORS §§ 543.075–543.095. These sections were enacted in 1999. They require persons authorized to operate hydroelectric projects, including FERC licensees, to pay annual fees and project specific fees that compensate state agencies for administrative expenses. They also identify the procedures for calculating the fees, procedures for issuing and collecting them, and penalties for not paying them. In addition, these sections identify the procedures for the reauthorization of state water rights for federally licensed hydroelectric projects and authorize amendment of hydroelectric water rights.

#### *Appropriation of Water for Power; Application of Law*

ORS §§ 543.160–543.175. These sections were enacted between 1983 and 1985. They prohibit private parties, state agencies, and local entities from constructing a hydroelectric facility or structure on

specific sections of the Deschutes River, with exceptions, and from constructing or maintaining such a facility or structure on Squaw Creek. They also prohibit private parties from constructing or maintaining a hydroelectric facility or structure on the North Santiam River. All of the areas referenced in these sections are outside the boundaries of Oregon’s coastal zone.

#### *Preliminary Permits; Licenses*

ORS §§ 543.210–543.230, 543.250. These sections, previously incorporated into the OCMP, identify the process, fees, and limitations associated with preliminary permits for proposed hydroelectric projects in the state. Since the last OCMP update of these sections, the Oregon Legislature made explicit that these preliminary permits are required for anyone proposing to operate such a project and added the requirement that the Water Resources Commission conduct a contested case hearing if anyone requests one within the time allotted. The legislature also replaced “commission, or its hearing examiner” with “administrative law judge” for purposes of the contested case hearings, extended the maximum length of time for which a preliminary permit may be issued, and shortened the amount of time for which notice of the application must be published.

ORS § 543.240. This section is being removed from the OCMP because the Oregon Legislature repealed it in 1991. It identified the purpose for which preliminary permits may be issued as enabling the applicant to make necessary examinations, surveys, and other preparations necessary to carry forward the work.

ORS § 543.257. This section is being removed from the OCMP because the Oregon Legislature repealed it in 2007. It required the Water Resources Commission to initiate rulemaking proceedings to implement the consolidated review of pending and existing hydroelectric projects for the purpose of determining cumulative effects, as required under ORS 543.255.

ORS §§ 543.260 & 543.300. These sections, previously incorporated into the OCMP, identify the conditions, fees, administrative discretion, and rulemaking authorities associated with licenses for hydroelectric projects in the state. Since the last OCMP update of these sections, the Oregon Legislature has added the requirement that license terms run for the same duration as FERC licenses and has exempted from the annual fee of not more than \$1 per horsepower those water rights reauthorized under ORS Chapter 543A.

ORS § 543.280. This section, previously incorporated into the OCMP, sets requirements regarding preliminary permits and licenses, most notably those concerning fees. Since the last OCMP update of this section, the Oregon Legislature has added the method for calculating the project fee and the fee schedule, the requirement that applicants for preliminary permits issued by FERC also apply for state preliminary permits, the requirement that applicants for preliminary permits or licenses pay the state a project fee to cover the expenses incurred in processing the application and a surcharge if the project is sited where anadromous fish or threatened or endangered species are present, and the requirement that the commission periodically provide applicants an itemized expense list.

#### *Financing of Projects; Liens; Bond of Licensee*

ORS §§ 543.510–543.520. These sections are being removed from the OCMP because the Oregon Legislature repealed them in 1995. They announced the policy of the Water Resources Director to be the establishment of a system of accounts under which the net investment of a licensee be amortized and paid, identified what is to be done with surpluses, declared a project free and clear property of the state if the whole net investment in that project was amortized and repaid, and required the Water Resources Director to issue new licenses for five-year periods until the net investment in the project had been fully amortized and reimbursed.

ORS §§ 543.525–543.560. These sections are being removed from the OCMP because they are not enforceable policies. They restrict the issuance of obligations, securities, property, etc. in connection with the financing of a licensed project; set requirements for the sales of such projects; and require the licensee to execute a bond to the state.

#### *Acquisition of Project by State or Municipality*

ORS § 543.620. This section is being removed from the OCMP because the Oregon Legislature repealed it in 1995. It authorized the operation, lease, and disposal, in the manner provided by law, of any property the state acquired or was devolved upon or vested in the state pursuant to ORS 543.010 to 543.620.

#### *Use of Existing Water Right for Hydroelectric Purposes*

ORS §§ 543.760 & 543.765. These sections were enacted in 2007, and the latter amended in 2013. They identify requirements and procedures for certificates to use water for hydroelectric purposes within an artificial water delivery system under an existing water right.

#### *Penalties*

ORS § 543.990. This section was enacted in 1955 and amended most recently in 2011. It identifies penalties for violations of this chapter, including listing as Class B misdemeanors violations of ORS § 543.010 to § 543.610 or conditions made a part of any license issued thereunder.

### **B. Enforceable Policies**

OCRM initially approved Oregon’s Coastal Management Program, including entire state statutes as part of the approved program. Subsequently OCRM has requested that states identify enforceable policies within their statutes as updates are submitted. While Oregon seeks to incorporate all updates to ORS § 543.010 to § 543.440, § 543.610, and § 543.760 to §543.990 into the OCMP, we have identified specific sections that define enforceable policies for federal consistency purposes.

Each of the sections identified specifies a substantive enforceable policy, identifies when a permit or license is required, or provides enforceable mechanisms for implementation of the substantive provisions. Statutory sections not defined as enforceable are those that are purely procedural, that contain only statements of findings, or that merely grant state officials authority to undertake administrative acts not affecting the potential activities of federal actors or licensees.

Thus, statements of policy, requirements for authorizations, lists of conditions for authorizations, provisions for rules that define regulatory requirements, and definitions that specify the content of obligations and requirements are enforceable policies. The sections in this Routine Program Change stating enforceable policies are: 543.010, 543.012, 543.014, 543.015, 543.017, 543.050, 543.060, 543.075, 543.078, 543.080, 543.082, 543.088, 543.090, 543.092, 543.110, 543.120, 543.140, 543.150, 543.160, 543.165, 543.170, 543.175, 543.210, 543.225, 543.250, 543.255, 543.260, 543.265, 543.270, 543.280, 543.290, 543.300, 543.410, 543.420, 543.430, 543.440, 543.610, 543.760, 543.765, 543.990, and the uncodified temporary provisions from 2011 concerning wave energy projects. The attached table identifies these with an X and describes the content of each section.

These policies are rendered enforceable by the permits and licenses authorized under ORS § 543.050, § 543.210, § 543.260, § 543.280, § 543.290, and § 543.765; by the authority of the Water Resources Commission to protect the public interest under ORS § 543.225, to prevent adverse cumulative effects under ORS § 543.255, and to conserve and best utilize water power under ORS § 543.270; by the authority of the Water Resources Commission and Water Resources Department to access projects and the maps and other documents concerning those projects in ORS § 543.060; by the authority of the Water Resources Department to assess the effectiveness of fish protection measures in ORS § 543.265; by the authority of the Water Resources Director to amend a claim in order to assess project specific fees in ORS § 543.092; by the authority of the state and municipalities to acquire hydroelectric projects in ORS § 543.610; by the obligation of hydroelectric project operators to compensate state agencies for their oversight of the implementation of protection, mitigation, and enhancement measures in ORS § 543.078, § 543.080, § 543.088, and § 543.090; by the obligation of those using water in an artificial delivery system for hydroelectric purposes to prevent the waste of water, measure and report the quantity of water diverted, and install necessary fish protection measures in ORS § 543.765; and by prohibited actions in ORS § 543.017, § 543.110, § 543.120, § 543.160, § 543.165, § 543.170, § 543.175, and § 543.440. Enforcement implementation includes injunction of acts by a licensee under ORS § 543.430, revocation of licenses under ORS § 543.430, termination of licenses under ORS § 543.410 and § 543.420, cancellation of temporary permits under ORS § 543.250, administrative review of and invalidation of hydroelectric certificates under ORS § 543.765, fee increases and preference liens on property under ORS § 543.082, and penalties under ORS § 543.990.

### **C. Action as Routine Program Change**

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this section explains why this update to Oregon's program is a Routine Program Change and does not constitute an amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM's 1996 Program Change guidance states that a "substantial change" is a high threshold requiring case-by-case determination. Statutory changes are identified in the attached table. The table relates each change to Oregon's authority as previously approved as part of the OCMP in 1977 or in subsequent RPCs (1987 in this instance). Each change is described in detail in the right-hand column of the table.

*1. Uses subject to management.*

This submittal does not identify new uses subject to management. References to wave energy are exemptions for qualifying facilities from the regulation of hydroelectric power production under this chapter.

*2. Special management areas.*

This submittal does not designate or change special management areas. It does not establish new criteria for special management areas.

*3. Boundaries.*

This submittal does not change the boundaries of Oregon's coastal zone.

*4. Authorities and organization.*

This submittal does not change Oregon's administration of the OCMP. The same interconnected authorities as approved in prior RPCs (the Water Resources Director, the Water Resources Department, and the Water Resources Commission) continue to apply the programs in this chapter, even if a few roles have been switched among them.

*5. Coordination, public involvement, and the national interest.*

This submittal does not change any coordination, public involvement, or national interest provisions of the OCMP.

Accordingly, this submittal is a Routine Program Change, and Oregon requests OCRM concurrence.

## Hydroelectric Projects

### Changes to Statutes in the Program since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
GENERAL PROVISIONS						
543.010	Definitions for ORS 543.010 to 543.610	Defines the terms “Actual original cost” and “Project” as used in Sections 543.010 to 543.610	X	1987	1995	<ul style="list-style-type: none"> <li>• Replaced “As used in ORS 543.010 to 543.620” with “As used in ORS 543.010 to 543.610”</li> <li>• Removed Subsection (3) defining “Net investment”</li> </ul>
543.015	Policy	Declares it the policy of the state to support the responsible development of hydroelectric power plants and the protection of natural resources	X	1987	1985	<ul style="list-style-type: none"> <li>• None</li> </ul>
543.017	Minimum standards for development of hydroelectric power; public interest considerations; rules	Identifies the minimum standards for the protection of anadromous salmon and steelhead and other wildlife and habitat resources, as well as the requirements for mitigation; gives the commission rulemaking authority to carry out policy set forth in ORS 543.015	X	1987	1993 1995 2007	<ul style="list-style-type: none"> <li>• Replaced “which” with “that” in the second sentence of Subsection (1)(d)</li> <li>• Added a comma after “acceptable” in the last sentence of Subsection (1)(d)</li> <li>• Added Subsection (1)(e) discussing the requirement for considering future power needs when deciding whether to allocate water for a new plant</li> </ul>

<sup>1</sup> Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						<ul style="list-style-type: none"> <li>Deleted the last sentence of Subsection (2) discussing the need to consult with the Energy Facility Citing Council when adopting rules</li> <li>Added Subsection (3) allowing state agencies to make recommendations regarding licensing conditions for plants</li> </ul>
543.050	Powers of Water Resources Commission as to permits, licenses, investigations, reports, forms and examination of records	Gives the Commission power to issue permits and licenses to construct and maintain hydroelectric power plants, to make rules and regulations to regulate the industry, and to examine all records to effectively oversee the industry	X	1987	1995	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” in Subsections (3), (4), (5), and (6)</li> <li>Removed from Subsection (4): “...and make all rules and regulations with respect thereto deemed necessary or expedient. The Water Resources Commission shall employ and promulgate standard regulations for accounting, determination of depreciation, amortization, net investment, rate of return and allocation of earnings, etc., and a certified copy of such accounting data shall be filed with the Water Resources Commission from time to time, as may be required by the commission.”</li> </ul>
543.055	Hearings and witnesses	Grants the Water Resources Commission the authority to hold hearings and take testimony and outlines the general		1987	1989 1999 2003	<ul style="list-style-type: none"> <li>Replaced the first sentence of Subsection (2), allowing the commission to appoint a hearing examiner, with a sentence placing the</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
		procedures for conducting the hearings and taking witness testimony				<p>authority to conduct hearings with an administrative law judge</p> <ul style="list-style-type: none"> <li>• Replaced the phrase “A hearing examiner so appointed shall have” with the phrase “The administrative law judge has” in the second sentence of Subsection (2)</li> <li>• Replaced “The hearing examiner” with “The administrative law judge” in the third sentence of Subsection (2)</li> <li>• Removed from Subsection (2): “The commission may take action upon such record to the same extent as though the hearing has been conducted and presided over by the commission.”</li> <li>• Deleted the word “same” before “fees” in Subsection (4)</li> <li>• Replaced “that are paid” with “provided” in Subsection (4)</li> <li>• Replaced “summoned to appear as such in the courts of this state” with “in ORS 44.415(2)”</li> </ul>
543.060	Investigations; access to project, maps, books and other project data	Gives the Commission right-of-access to all projects	X	1987	Unclear	<ul style="list-style-type: none"> <li>• Changed “employe” to “employee”</li> </ul>
APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW						

<b>ORS Section</b>	<b>Current Title</b>	<b>Description</b>	<b>Enf. Policy</b>	<b>Last OCRM Approval</b>	<b>Updates Adopted &amp; Effective<sup>1</sup></b>	<b>Changes Since Last Approval</b>
543.110	Appropriation and use of water for power is governed by this chapter	Forbids the appropriation of state waters for the development of hydroelectric plants except when authorized by ORS 543.010 to 543.610	X	1987	Unclear	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610”</li> </ul>
543.120	Water power projects to be in conformity with this chapter	Forbids the construction of hydroelectric power plants except in conformance with ORS 543.010 to 543.610	X	1987	Unclear	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610”</li> </ul>
543.140	Projects or developments constructed by federal government excepted from law	Exempts hydroelectric power plants constructed by the United States from the provisions of ORS 543.010 to 543.610	X	1987	Unclear	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610”</li> </ul>
543.150	Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts	Exempts cities, towns, and municipal corporations from the provisions of listed sections and associated regulations, but reserves rights under ORS 543.260, 543.270, and 543.610 to such municipalities; grants the commission the authority to exercise its powers in relation to utility districts as the law allows	X	1987	1991	<ul style="list-style-type: none"> <li>Replaced the inclusive “ORS 543.010 to 543.620” with a list of specific sections: “ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610”</li> </ul>
<b>PRELIMINARY PERMITS; LICENSES</b>						
543.210	Preliminary permits; application; contents; fee	Outlines requirements and fees for preliminary permits to construct a hydroelectric power plant in the state of Oregon	X	1987	1991	<ul style="list-style-type: none"> <li>Added two sentences, requiring persons proposing to operate a hydroelectric project in Oregon and persons applying to FERC for a</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						<p>license to operate a hydroelectric project in Oregon to apply for a preliminary permit, to the beginning of Subsection (1)</p> <ul style="list-style-type: none"> <li>• Replaced “A preliminary permit may be issued by the Water Resources Commission to any person...” with “The Water Resources Commission may issue a preliminary permit to any person...” in Subsection (1)</li> <li>• Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” in Subsections (1) and (3)</li> <li>• Replaced “...applicant shall pay to the state the minimum sum of \$50, and a further sum, not exceeding \$200, as shall be determined by the commission” with “applicant shall pay to the state the portion of the total project fee required in ORS 543.280” in Subsection (4)</li> <li>• Removed “If the commission grants a preliminary permit the applicant shall pay to the state, at the time the preliminary permit is issued, and in addition to the application fee, the sum of five cents for each theoretical horsepower as computed by the commission and covered by the permit” from Subsection (4).</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
543.220	Notice of filing of application; waiting period	Provides notice requirements for proposed hydroelectric projects		1987	2011	<ul style="list-style-type: none"> <li>• Replaced “Whenever” with “If” in Subsection (1)</li> <li>• Replaced “commission” with “Water Resources Commission” in Subsection (1)</li> <li>• Replaced “which” with “that” in Subsection (1)(a)</li> <li>• Replaced “four successive weeks” with “two successive weeks” in Subsection (2)</li> </ul>
543.225	Hearing on application; notice; policy	Provides notice requirements for holding a public hearing and the general policy for determining whether a project is within the public interest	X	1987	Unclear	<ul style="list-style-type: none"> <li>• Replaced “ORS 536.300 to 536.350” with “ORS 536.295 to 536.350” and “537.505 to 537.525” with “537.505 to 537.534” in Subsection (3)(g)</li> </ul>
543.230	Hearings on application; rules; protest	Gives the Water Resources Commission the authority to hold hearings upon application and contested case hearings upon request; provides that every application for hydroelectric projects are subject to protest by private persons and public districts and sets forth requirements for notice and filing of such protests with the commission		1987	1993 1995 1999 2003	<ul style="list-style-type: none"> <li>• Replaced “regulation” with “rule” in Subsection (1)</li> <li>• Added to Subsection (1): “However, upon request by any person made within 30 days after the Water Resources Director issues an order pertaining to cumulative impacts under ORS 543.255, the Water Resources Commission shall conduct a contested case hearing in accordance with the applicable provisions of ORS chapter 183 and any rules adopted by the commission.”</li> <li>• Replaced “ORS 543.010 to 543.620”</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						<p>with “ORS 543.010 to 543.610” in Subsection (2)</p> <ul style="list-style-type: none"> <li>• Replaced “esthetic” with “aesthetic” in the first sentence of Subsection (2)</li> <li>• Replaced “commission, or its hearing examiner” with “administrative law judge” both times it appears in the third sentence of Subsection (2)</li> </ul>
543.250	Permit; duration; transfer; cancellation; priority; terms and conditions; denial	Provides for a three year limit on the duration or preliminary permits and establishes priority of right for the holder to the proposed project for the duration of the permit; grants the commission the discretion to set binding terms and conditions for individual permits and to deny permit applications	X	1987	1993	<ul style="list-style-type: none"> <li>• Replaced “two years” with “three years” and deleted subsequent clause regarding one year renewal</li> <li>• Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610”</li> </ul>
543.255	Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability	Provides the procedures and requirements for assessing the cumulative impacts of proposed hydroelectric projects	X	1987	1993 1995 (2x)	<ul style="list-style-type: none"> <li>• Replaced “Water Resources Commission” with “Water Resources Department” in Subsection (1)</li> <li>• Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” in Subsections (1) and (5)</li> <li>• Replaced “the commission shall” with “the department shall” in Subsection (1)</li> <li>• Replaced “commission” with “department” and deleted subsequent reference to the Energy Facility Siting</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						<p>Council in Subsection (1)(a)</p> <ul style="list-style-type: none"> <li>• Replaced “the commission determines” with “the department determines” in Subsection (2)</li> <li>• Replaced “the commission shall issue” with “the Water Resources Director shall issue” in Subsection (2)</li> <li>• Replaced “the commission’s determination” with “the department’s determination” in Subsection (2)</li> <li>• Replaced “the commission’s decision” with “the department’s decision” in Subsection (2)</li> <li>• Replaced “the commission determines” with “the department determines” in Subsection (3)</li> <li>• Replaced “the commission shall conduct” with “the Water Resources Director shall conduct” in Subsection (3)</li> <li>• Replaced “ORS 183.310 to 183.550” with “ORS chapter 183” in Subsections (3)</li> <li>• Replaced “before the commission or the Energy Facility Siting Council” with “before the department” in Subsection (3)</li> <li>• Added “or the department” after “commission” in the third sentence of</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						Subsection (3) <ul style="list-style-type: none"> <li>Added “or department” after “commission” in the last sentence of Subsection (3)</li> <li>Replaced “the commission’s decision” with “the department’s decision” in the last sentence of Subsection (3)</li> <li>Replaced “hydroelectric purposes” with “a new hydroelectric project” in Subsection (5)</li> </ul>
543.260	Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district	Establishes the duration of licenses issued under these provisions and the commission’s discretion to deny applications and to give preference to public utility districts	X	1987	1995	<ul style="list-style-type: none"> <li>Replaced “qualified licensee” with “qualified person” in Subsection (1)</li> <li>Added a sentence after the first sentence in Subsection (1) requiring license terms to run concurrently with FERC licenses, when applicable</li> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” twice in Subsection (1)</li> </ul>
543.265	Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost	Conditions the granting of any water right permit or license on the grantees acquiescence to monitoring by the State Department of Fish and Wildlife to ensure the protection of fish	X	1987	1995	<ul style="list-style-type: none"> <li>Replaced “Water Resources Director” with “Water Resources Department”</li> <li>Replaced “allow the department to perform” with “allow the State Department of Fish and Wildlife to perform”</li> </ul>
543.270	Preference in granting permit or license; municipal use	Allows the commission to prioritize projects that conserve and utilize hydro power, but acknowledges the preference for	X	1987	1985	<ul style="list-style-type: none"> <li>None</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
		water use by municipal corporations				
543.280	Fee payments by licensee	Provides the procedures and requirements for assessing fees to applicants for state preliminary permits and licenses to pay for the application review process	X	1977	1991	<ul style="list-style-type: none"> <li>• Subsection (1) now requires applicants for preliminary permits issued by FERC to also apply for state preliminary permits</li> <li>• Subsection (2) now requires applicants for preliminary permits or licenses to pay a reasonable fee to cover expenses incurred in reviewing the application</li> <li>• Subsection (3) now provides the method for calculating the fee in Subsection (2)</li> <li>• Added Subsection (4), regarding the fee schedule</li> <li>• Added Subsection (5), regarding additional fees for projects sited where anadromous fish or threatened or endangered species are present</li> <li>• Added Subsection (6), requiring the commission to provide periodically an itemized expense list to applicant</li> </ul>
543.290	Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data	Requires applicants to submit detailed plans, maps, and cost estimates at the request of the Commission, and provides that the incorporation of such information into a license is final and binding upon the applicant	X	1987	1985	<ul style="list-style-type: none"> <li>• None</li> </ul>

<b>ORS Section</b>	<b>Current Title</b>	<b>Description</b>	<b>Enf. Policy</b>	<b>Last OCRM Approval</b>	<b>Updates Adopted &amp; Effective<sup>1</sup></b>	<b>Changes Since Last Approval</b>
543.300	Conditions governing license; fees; waiver of conditions	Establishes the conditions governing the issuance of licenses under these provisions and reinforces the authority of the commission to enact binding rules and regulations governing hydroelectric projects	X	1987	1999	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” in Subsections (1), (4), and (6), and three times in Subsection (7)</li> <li>Added Subsection (8) exempting water rights reauthorized under ORS Chapter 543A from Subsection (5)</li> </ul>
543.310	Disposition of moneys collected	Requires the monies collected under these provisions, except as provided in ORS 536.015, to be deposited in the General Fund		1987	1991	<ul style="list-style-type: none"> <li>Replaced “ORS 543.725” with “ORS 536.015”</li> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610”</li> </ul>
543.320	Effect of amendment or repeal of law	Reserves the right to alter, amend, and repeal sections of this chapter; prohibits those changes from affecting licenses previously issued under those sections or associated rights		1987	Unclear	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” both times it appears</li> </ul>
<b>TIME FOR CONSTRUCTION; TERMINATION, REVOCATION OR TRANSFER OF LICENSE</b>						
543.410	Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license	Establishes the requirements for the timely commencement of project construction and provides for termination of licenses in the absence of construction	X	1977	1985	<ul style="list-style-type: none"> <li>Replaced “Water Resources Director deems necessary” with “Water Resource Commission considers necessary” in Subsection (1)</li> <li>Replaced “Water Resources Director directs” with “commission directs” in Subsection (1)</li> <li>Replaced “Water Resources Director” with “commission” in Subsection (2)</li> <li>Replaced “In case” with “If” at the start of Subsection (3)</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						<ul style="list-style-type: none"> <li>Replaced “thereof” with “of the project works” both times it appears in Subsection (3)</li> <li>Replaced “Water Resources Director” with “commission” both times it appears in Subsection (3)</li> </ul>
543.420	Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser	Provides for the termination of rights of licensee and seizure of project assets upon the cessation of construction of a project under license that had begun but has not been completed within the time prescribed in the license	X	1977	1985	<ul style="list-style-type: none"> <li>Replaced “In case” with “If” at the start of the section</li> <li>Replaced “request of the Water Resources Director” with “request of the Water Resources Commission”</li> <li>Replaced “by the Water Resources Director” with “by the commission”</li> </ul>
543.430	Proceedings after completion of project for violation of license terms; authority of court; sale of project	Authorizes the AG, at the request of the commission, to institute proceedings to revoke licenses for violations of statutory provisions, license conditions or requirements, and commission rules and regulations; establishes jurisdiction for such proceedings in the circuit court where the project (or a substantial part thereof) is located; allows the sale of project assets and license rights and privileges	X	1977	1985	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” all three times it appears</li> <li>Replaced “Director, institute” with “Commission, institute”</li> <li>Deleted “in equity”</li> <li>Replaced “or major part thereof,” with “or the major part of a project”</li> <li>Deleted “of commission or omission”</li> <li>Replaced “lawful regulation” with “rule”</li> <li>Replaced “order of the Water Resources Director” with “order of the commission”</li> <li>Replaced “regulations” with “rules”</li> <li>Replaced “of the Water Resources</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						Director” with “of the commission” <ul style="list-style-type: none"> <li>Replaced “In the event” with “If” at the start of the third sentence</li> </ul>
543.440	Transfer of license, rights or property; effect	Requires approval for voluntary transfers of licenses or rights governed by this provision and outlines the legal rights and duties of the successor	X	1977	1985	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” all three times it appears</li> <li>Replaced “thereunder” with “under a license”</li> <li>Replaced “written approval of the Water Resources Director” with “written approval of the Water Resources Commission”</li> <li>Replaced “Water Resources Director or sale upon” with “commission or sale upon”</li> </ul>
ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY						
543.610	Acquisition of project by state or municipality	Provides for the taking, upon payment of just compensation, of hydroelectric projects for maintenance and operation by the state or municipality	X	1977	1983	<ul style="list-style-type: none"> <li>Replaced “ORS 543.010 to 543.620” with “ORS 543.010 to 543.610” in Subsection (1)</li> <li>Replaced “upon payment of the fair value of the property taken over, not exceeding the net investment as defined in subsection (2) of ORS 543.010, plus” with “upon payment of just compensation, including” in Subsection (1)</li> <li>Removed “The net investment shall be determined in accordance with the provisions of ORS 543.010 to</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>1</sup>	Changes Since Last Approval
						543.620” from Subsection (1) <ul style="list-style-type: none"> <li>Replaced “commission” with “Water Resources Commission” in Subsection (1)</li> </ul>

Statutes to Be Incorporated into the Program

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>2</sup>	Statutory History
GENERAL PROVISIONS						
543.012	Applicability of chapter to reauthorization of existing hydroelectric project	Excludes reauthorizations of existing projects from the chapter, except for the provisions of ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990; provides that licenses referenced in ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990 or issued under ORS	X		1997	<ul style="list-style-type: none"> <li>Enacted in 1997</li> </ul>

<sup>2</sup> Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>2</sup>	Statutory History
		543.010 to 543.610 are also considered references to water rights issued under ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A				
543.014	Exemption for wave energy project; conditions	Provides requirements for the exemption of wave energy projects from regulation under this chapter	X		2007 2009 (2x)	<ul style="list-style-type: none"> <li>Enacted in 2007, amended in 2009</li> </ul>
Sections 1 to 4, chapter 152, Oregon Laws 2011	Temporary provisions relating to wave energy projects subject to federal licensing	Provides the requirements for the exemption from the minimum standards set forth in ORS 543.017 of wave energy projects that do not qualify under ORS 543.14; applies only to applications submitted prior to December 31, 2021 and includes a sunset clause of January 2, 2022	X		2011	<ul style="list-style-type: none"> <li>Enacted in 2011</li> </ul>
<b>HYDROELECTRIC PROJECT FEES</b>						
543.075	Definitions for ORS 543.075 to 543.092	Provides definitions for provisions ORS 543.075 to 543.092	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.078	Annual fee for hydroelectric project	Requires holders of hydroelectric power plant licenses to pay an annual fee and outlines the procedure for	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>

<b>ORS Section</b>	<b>Current Title</b>	<b>Description</b>	<b>Enf. Policy</b>	<b>Last OCRM Approval</b>	<b>Updates Adopted &amp; Effective<sup>2</sup></b>	<b>Statutory History</b>
		calculating the fee amount				
543.080	Project specific fees; summary of project specific expenditures	Provides for additional fees for specific projects to cover agency expenses in overseeing the implementation of required protection, mitigation, and enhancement measures and outlines procedures for issuing such fees	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.082	Invoice for fees; overdue fee; interest on delinquent fees	Outlines procedures for issuing invoices and collecting on delinquent accounts	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.085	Periodic review of annual fee	Requires Water Resources Director to appoint a review panel every eight years to review the annual fee amount and to collect stakeholder comments regarding the fee; establishes a presumption that the fee will not change and provides general guidance on how to overcome that presumption			1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.088	Payment of costs or fee for reauthorization or relicensing of project	Provides procedures for the reauthorization of state water rights for federally licensed hydroelectric projects; establishes the fees assessed for relicensing	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>2</sup>	Statutory History
543.090	Payment of expenses of Hydroelectric Application Review Team for project operating under federal license and state power claim or uncertificated claim	Requires FERC licensees that are also operating under the authority of a power claim or uncertified claim to pay expenses related to the review and decision of a Hydroelectric Application Review Team; provides requirements for the relicensing fees for such holders	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.092	Amendment of hydroelectric water right or claim; rules; unilateral amendment of power claim or uncertificated claim to assess project specific fees	Allows for the amendment of hydroelectric water rights and sets forth the requirements for such amendments	X		1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>
543.095	Challenges to certain statutes related to hydroelectric projects	Allows persons to challenge the constitutionality of Chapters 449 and 873, regardless of whether they sought benefits under, complied with, or participated in the drafting, enactment, or implementation thereof; allows persons to challenge the constitutionality of any statute regardless of whether they participated in the drafting, enactment, or implementation			1999	<ul style="list-style-type: none"> <li>Enacted in 1999</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>2</sup>	Statutory History
		thereof				
APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW						
543.160	Hydroelectric facility on North Santiam River prohibited; exception	Forbids the construction or maintenance of any hydroelectric plant on the North Santiam River after October 15, 1983	X		1983	<ul style="list-style-type: none"> <li>Enacted in 1983</li> </ul>
543.165	Hydroelectric facility on part of Deschutes River prohibited	Forbids private parties, state entities, and local governments from constructing any hydroelectric facility or structure between mile 172 and 227 of the Deschutes River; forbids state officials from issuing permits to construct such a facility	X		1985	<ul style="list-style-type: none"> <li>Enacted in 1985</li> </ul>
543.170	Hydroelectric facility on Squaw Creek prohibited	Forbids private parties, state entities, and local governments from constructing any hydroelectric facility or structure on Squaw Creek; forbids state officials from issuing permits to construct such a facility	X		1985	<ul style="list-style-type: none"> <li>Enacted in 1985</li> </ul>
543.175	Hydroelectric facility on Deschutes River within City of Bend prohibited; exception	Forbids private parties, state entities, and local governments from constructing of any hydroelectric facility or structure between mile 165 and the headwaters of the Deschutes	X		1985	<ul style="list-style-type: none"> <li>Enacted in 1985</li> </ul>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective <sup>2</sup>	Statutory History
		River within the city limits of the City of Bend and forbids state officials from issuing permits to construct such a facility; exempts facilities meeting all of the criteria within				
<b>USE OF EXISTING WATER RIGHT FOR HYDROELECTRIC PURPOSES</b>						
543.760	Definition of water right	Defines “water right” as used in ORS 543.765	X		2007	<ul style="list-style-type: none"> <li>Enacted in 2007</li> </ul>
543.765	Certificate to use water for hydroelectric purposes; expedited application process; fees	Provides procedures and requirements for obtaining a certificate to use water for hydroelectric purposes within an artificial water delivery system under an existing water right	X		2007 2013	<ul style="list-style-type: none"> <li>Enacted in 2007</li> </ul>
<b>PENALTIES</b>						
543.990	Penalties	Identifies violations of ORS 543.530(3) as Class A misdemeanors, violations of ORS 543.010 to 543.610 and associated license conditions as Class B misdemeanors, and false testimony as perjury	X		1955 1985 1999 2003 2011	<ul style="list-style-type: none"> <li>Unclear when enacted, amended in 1955, 1985, 1999, 2003, 2011</li> </ul>

Statutes that Were in the Program but Have Been Repealed since Last OCRM Approval  
or Are Otherwise Being Removed

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
PRELIMINARY PERMITS; LICENSES				
[543.240]	Purpose of issuing permits	Identifies the purpose for which preliminary permits may be issued as enabling the applicant to make necessary examinations, surveys, and other preparations necessary to carry forward the work	1987	<ul style="list-style-type: none"> <li>• Repealed in 1991</li> </ul>
[543.257]	Rules for implementing consolidated review process	Requires the Water Resources Commission to initiate rulemaking proceedings to implement the consolidated review process under ORS 543.255; identifies review requirements	1987	<ul style="list-style-type: none"> <li>• Repealed in 2007</li> </ul>
FINANCING OF PROJECTS; LIENS; BOND OF LICENSEE				
[543.510]	Reserve for amortization of investment	Announces the policy of the Water Resources Director of establishing a system of accounts under which the net investment of a licensee is amortized and paid; identifies what is to be done with surplus	1977	<ul style="list-style-type: none"> <li>• Repealed in 1995</li> </ul>

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
[543.520]	Complete amortization of investment prior to expiration of license; vesting of property in state; incomplete	Declares a project to become property of the state, free and clear of all claims, liens, and rights if the whole net investment in that project is amortized and repaid; requires the Water Resources Director to issue new licenses for five-year periods until the net investment in the project has been fully amortized and reimbursed	1977	<ul style="list-style-type: none"> <li>• Repealed in 1995</li> </ul>
[543.525]	ORS 543.530 to 543.550 not applicable to regulated utilities	Declares the provisions of ORS 543.530 to 543.550 not to apply to any licensee which is a utility as defined in ORS 757.005 and regulated by the Public Utility Commission of Oregon	1977	<ul style="list-style-type: none"> <li>• None</li> </ul>
[543.530]	Issuance by licensee of stocks, bonds or other interest without authorization of Water Resources Commission prohibited	Prohibits licensees from issuing any share of corporate stock, any bond, or other evidence of interest in or indebtedness of the licensee, or assume any obligation or liability of any person in connection with the financing, acquisition, construction, maintenance or operation of any project, unless and until the commission authorizes the issue or assumption; sets the conditions	1977	<ul style="list-style-type: none"> <li>• Amended in 1985</li> </ul>

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
		for making such an order; authorizes the commission to grant or deny the application regarding the issue or assumption		
[543.540]	Consideration for bonds, stocks and other securities; restrictions; corporate shares; sale price of securities; discount from face value	Prohibits the issuance of bonds, notes, or other obligations or securities or corporate stock in connection with the financing, construction or acquisition of any project under a license issued pursuant to specific sections of this chapter, except for cash or property; sets requirements for issuance for property, for corporate shares issued in connection with any such project, and for all bonds and other obligations or securities	1977	<ul style="list-style-type: none"> <li>• Amended in 1985</li> </ul>
[543.550]	Liens prohibited; exceptions; what may be included by mortgage, trust deed or sale; determination of investment in case of sale of part	Prohibits liens for labor, services, materials, machinery, and equipment upon any property acquired, constructed or made a part of any project under license issued pursuant to specific sections of this chapter; sets requirements for voluntary sales and sales upon a judgment of foreclosure	1977	<ul style="list-style-type: none"> <li>• Amended in 1985, 2003</li> </ul>

<b>ORS Section</b>	<b>Title at Last Approval</b>	<b>Description</b>	<b>Last OCRM Approval</b>	<b>Changes Since Last Approval</b>
[543.560]	Bond of licensee or letter of credit securing claims of suppliers; enforcement of obligation; action for sums due State Accident Insurance Fund Corporation	Requires the licensee to execute to the state a bond, with good and sufficient sureties or an irrevocable letter of credit issued by an insured institution, before entering upon the work of construction or acquisition of any project; authorizes those supplying the licensee with any labor, services, material, machinery, or equipment to bring action for payment; identifies the venue for such action	1977	<ul style="list-style-type: none"> <li>• Amended in 1985, 1991, 1997</li> </ul>
<b>ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY</b>				
[543.620]	Property acquired by state; disposal	Authorizes the operation, lease, and disposal, in the manner provided by law, of any property the state acquires or is devolved upon or vested in the state pursuant to ORS 543.010 to 543.620	1977	<ul style="list-style-type: none"> <li>• Repealed in 1995</li> </ul>

**The Text of ORS Chapter 543 Statutes Included in the July 24, 2014 RPC  
2013 Edition Oregon Revised Statutes**

GENERAL PROVISIONS

**543.010 Definitions for ORS 543.010 to 543.610.** As used in ORS 543.010 to 543.610:

(1) “Actual original cost” includes the sum paid to the state at the time the application was made for a preliminary permit; the sum paid or secured to be paid to the state by the applicant for license at the time such application was made; such sums as may be paid to the United States or any department thereof; and such sums as shall have been reasonably and prudently expended in preliminary investigations, explorations and organization expenses, as determined by the Water Resources Commission.

(2) “Project” means a complete unit, improvement or development. It includes, among other things, power houses, water wheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with the unit or any part thereof, rights of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of any such unit. [Amended by 1985 c.673 §139; 1995 c.229 §1]

**543.012 Applicability of chapter to reauthorization of existing hydroelectric project.** (1) Except for the provisions of ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990, nothing in this chapter shall apply to the reauthorization of an existing project.

(2) All references in ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990 to a license or a license issued under ORS 543.010 to 543.610 also shall be considered a reference to a water right issued under ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A. [1997 c.449 §42]

**543.014 Exemption for wave energy project; conditions.** A wave energy project is exempt from regulation under this chapter, except as provided in ORS 543.050 (3), 543.055 and 543.060 if:

- (1) The project generates electricity from wave energy;
- (2) The project is located within Oregon’s territorial sea, as defined in ORS 196.405;
- (3) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts; and
- (4) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is not required to either construct or operate the project. [2007 c.212 §2; 2009 c.405 §§1,2]

**543.015 Policy.** The Legislative Assembly declares that it is the policy of the State of Oregon:

- (1) To protect the natural resources of this state from possible adverse impacts caused by the use of the waters of this state for the development of hydroelectric power.

(2) To permit siting of hydroelectric projects subject to strict standards established to protect the natural resources of Oregon.

(3) To require the Water Resources Commission, the Energy Facility Siting Council, the Department of Environmental Quality and other affected state agencies to participate to the fullest extent in any local, state or federal proceedings related to hydroelectric power development in order to protect the natural resources of Oregon. [1985 c.569 §2]

**543.017 Minimum standards for development of hydroelectric power; public interest considerations; rules.** (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation that may result in a wild game fish population, or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities that, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity, including water quality, wildlife, scenic and aesthetic values, and historic, cultural and archaeological sites, shall be maintained or enhanced. No activity may be approved that, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable, the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting

Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project. [1985 c.569 §3; 1993 c.544 §6; 1995 c.229 §2; 2007 c.71 §176]

(Temporary provisions relating to wave energy projects subject to federal licensing)

**Note:** Sections 1 to 4, chapter 152, Oregon Laws 2011, provide:

**Sec. 1.** Section 2 of this 2011 Act is added to and made a part of ORS chapter 543. [2011 c.152 §1]

**Sec. 2.** (1) A wave energy project that does not qualify under ORS 543.014 is exempt from the minimum standards specified in ORS 543.017 if:

- (a) The project generates electricity from wave energy;
- (b) The project is located within Oregon's territorial sea, as defined in ORS 196.405;
- (c) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts;

(d) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is required to either construct or operate the project and the license provides for adaptive management to prevent or mitigate unexpected adverse impacts on the environment, fish and wildlife resources, commercial fishing and recreation; and

(e) The project is constructed and operated subject to an agreement with the Water Resources Department, State Department of Fish and Wildlife, Department of State Lands, Department of Land Conservation and Development, Department of Environmental Quality, State Department of Energy and State Parks and Recreation Department.

(2) The agreement specified in subsection (1)(e) of this section:

(a) Must provide for the collection and analysis of information necessary or desirable to determine, and measures to prevent or mitigate, the impact of the project on the environment, fish and wildlife resources, commercial fishing and recreation; and

(b) May be developed with the assistance of an advisory group consisting of representatives of each local government and federally recognized Indian tribe that is affected by the wave energy project.

(3) The Water Resources Commission may adopt rules regarding projects described in this section to implement the policies of ORS 543.015, specify provisions for adaptive management and provide for the distribution of the information specified in subsection (2) of this section.

[2011 c.152 §2]

**Sec. 3.** Section 2 of this 2011 Act applies only to wave energy projects for which an application is made to the Department of State Lands on or before December 31, 2021. [2011 c.152 §3]

**Sec. 4.** Section 2 of this 2011 Act is repealed January 2, 2022. [2011 c.152 §4]

**543.020** [Repealed by 1961 c.224 §20]

**543.030** [Repealed by 1961 c.224 §20]

**543.040** [Repealed by 1961 c.224 §20]

**543.050 Powers of Water Resources Commission as to permits, licenses, investigations, reports, forms and examination of records.** The Water Resources Commission may:

(1) Issue preliminary permits, as provided in ORS 543.210 to 543.250, to any person qualified to become a licensee.

(2) Issue licenses, as provided in ORS 543.260, to citizens of the United States, associations of citizens, or private corporations organized under the laws of the United States or any state of the United States, to appropriate, initiate, perfect, acquire and hold the right to the use of waters within the state, including waters over which the state has concurrent jurisdiction, and to construct, operate and maintain dams, reservoirs, power houses, conduits, transmission lines, and all other works and structures necessary or convenient for the use of the waters in the generation and utilization of electricity.

(3) Conduct investigations and collect information the commission considers necessary or useful for the purposes of ORS 543.010 to 543.610 and cooperate with the federal government and adjoining states concerning all such matters, particularly with reference to waters forming the boundary between this state and another state.

(4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under ORS 543.010 to 543.610.

(5) Examine at any time all accounts, books of account and documents and data related to the business of a licensee under ORS 543.010 to 543.610; and require a licensee to submit, whenever required by the commission, reports and statements under oath containing information as to assets, liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid, amortization and other reserves, net investment, cost of any project constructed, maintained or operated, in whole or in part, cost of maintenance, operation, renewals, replacements, cost of production, transmission, distribution and sale of electricity, and other data as the commission may require.

(6) Perform all acts, exercise all powers and issue all orders which, in the judgment and discretion of the commission, are necessary to effectuate the purposes of ORS 543.010 to 543.610. [Amended by 1955 c.673 §3; 1955 c.707 §39; 1961 c.224 §13; 1985 c.673 §140; 1995 c.229 §3]

**543.055 Hearings and witnesses.** (1) The Water Resources Commission may hold hearings and take testimony orally, by deposition or in such other form as the commission considers satisfactory, either within or without this state. The Water Resources Commission may require, by subpoena, the attendance of witnesses and the production of documentary evidence.

(2) An administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, shall conduct any contested case hearing that the commission is required or permitted by law to hold. The administrative law judge has the same powers with respect to the conduct of the hearing as are granted by law to the commission, including the taking of testimony, the signing and issuance of subpoenas and the administering of oaths and affirmations to witnesses. The administrative law judge shall keep a record of the proceedings on the hearing and shall transmit such record to the commission.

(3) The commission may designate any person to take the testimony, affidavit or deposition of a witness. The person so designated may administer an oath or affirmation to any such witness and take the testimony thereof in accordance with such rules as the commission may prescribe.

(4) Witnesses appearing before the commission or any person designated by the commission to take testimony shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2). [1955 c.673 §2; 1961 c.224 §14; 1985 c.673 §141; 1989 c.980 §15; 1999 c.849 §§112,113; 2003 c.75 §46]

**543.060 Investigations; access to project, maps, books and other project data.** The Water Resources Commission, the Water Resources Director or any employee of the Water Resources Department, at all reasonable times, shall have free access to any project, addition or betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates, engineers' reports, books, accounts, records and other data relating to the project. [1985 c.673 §142]

**543.070** [Repealed by 1975 c.581 §29]

## HYDROELECTRIC PROJECT FEES

**543.075 Definitions for ORS 543.075 to 543.092.** As used in ORS 543.075 to 543.092:

(1) "1998 dollar" means a dollar amount that when adjusted for inflation or deflation equals the value of a dollar in 1998.

(2) "Holder" means a person authorized to operate a hydroelectric project under the authority of either a time-limited water right, a certificated water right or a pre-1909 uncertificated claim. "Holder" includes licensees, power claimants, uncertificated claimants and water right certificants.

(3) "Licensee" means a person authorized to operate a hydroelectric project through the means of a license containing a time-limited water right.

(4) "Power claimant" means a person authorized to operate a hydroelectric project through the means of a water right that does not expire.

(5) "Reauthorize" means the process by which a hydroelectric project holding a time-limited hydroelectric license acquires new authorization to continue operating for an additional fixed amount of time according to ORS chapter 543A.

(6) "Relicense" means the process by which the Federal Energy Regulatory Commission issues a new license to allow a hydroelectric project to continue operating past the expiration date of its current license.

(7) "Team" means a Hydroelectric Application Review Team created pursuant to ORS 543A.035, 543A.075 or 543A.300.

(8) "Uncertificated claimant" means a person authorized to operate a hydroelectric project through the means of an uncertificated claim established prior to 1909.

(9) “Water right certificant” means a person authorized to operate a hydroelectric project through the means of a time-limited certificated water right. [1999 c.873 §4]

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

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

(a) Subject to the schedule set forth in subsection (3) of this section, each holder shall pay an amount, in 1998 dollars, equal to \$0.405 per theoretical horsepower covered by the water right for the holder’s hydroelectric project. The annual fee may be set forth in the water right or may be established by order of the Water Resources Director and shall be adjusted annually for inflation according to rules established by the Water Resources Commission. The annual fee also may be adjusted through the periodic review process established in ORS 543.085.

(b) Each holder of a hydroelectric project that produces 123.5 theoretical horsepower or less shall pay an annual fee of \$50 for that project.

(3) The fee determined in subsection (2) of this section shall apply to a project on the January 1 following the occurrence of an event enumerated as follows:

(a) A licensee or water right certificant shall begin to pay the annual fee after the final order for the reauthorized water right is issued under ORS 543A.130.

(b) Notwithstanding paragraph (a) of this subsection, if a licensee holds, on October 23, 1999, an original state hydroelectric license for which the original expiration date was or is more than five years after the expiration date of the original Federal Energy Regulatory Commission license for the project, the licensee shall begin payment of the annual fee established under this section after the expiration date of the original state hydroelectric license.

(c) A power claimant, or uncertificated claimant, licensed by the Federal Energy Regulatory Commission shall begin to pay the annual fee after the Federal Energy Regulatory Commission issues a new license. A power claimant or uncertificated claimant that received a new license from the Federal Energy Regulatory Commission within 10 years prior to October 23, 1999, shall begin to pay the annual fee on January 1, 2000.

(d) A power claimant, or uncertificated claimant, whose project is exempted from licensure by the Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory Commission shall begin paying the annual fee under this section on January 1, 2008, for that project.

(4) No fee shall be assessed under ORS 543.710 for a project subject to an annual fee under this section. [1999 c.873 §5]

**543.080 Project specific fees; summary of project specific expenditures.** (1) In addition to the annual fee set forth in ORS 543.078, a holder may be required to pay project specific fees.

(2) Project specific fees are fees that compensate a state agency for the agency’s reasonable and necessary oversight of a holder’s implementation of the protection, mitigation and enhancement measures included in a water right for the project, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(3) Project specific fees shall be considered at the time of reauthorization or relicensing of a hydroelectric project and, if needed, shall be established before the proposed final order is issued under ORS 543A.115, and shall be included in the reauthorized water right or the certificate

issued pursuant to ORS 468B.040 or 468B.045. In the case of power claims and uncertificated claims, project specific fees shall be considered at the time of relicensing and, if needed, shall be included in an order of the Water Resources Director amending the claim pursuant to ORS 543.092 or in a certificate issued for the project pursuant to ORS 468B.040 or 468B.045.

(4) The need for, and amount of, a project specific fee shall be based upon the following factors:

(a) Experimental or unproven nature of the proposed mitigation;

(b) Significance of the resource affected;

(c) Need for ongoing agency involvement in reviewing the effectiveness of the proposed measure;

(d) Need for agency personnel to perform field work or research efforts; and

(e) Overall nature of the protection, mitigation or enhancement measures, including but not limited to consideration of whether the measure is simple, complex, closed-ended or adaptive and whether the measure is determined solely by the holder or by an agency or public committee.

(5) A project specific fee may not be assessed for:

(a) Work on projects other than the project for which the fee is established;

(b) Work that is paid for by the annual hydroelectric fee;

(c) Development of statewide hydroelectric policy;

(d) Coordination of statewide activities within an agency;

(e) Costs to the agency of Attorney General assistance associated with ongoing litigation; or

(f) Routine monitoring of compliance with nonadaptive management provisions of the water right, an uncertificated claim, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(6) A project specific fee shall be time-limited. One year before expiration of a project specific fee, the holder and any affected agency shall review the need, if any, to modify, extend or terminate the project specific fee. After such review, the agency shall propose a fee modification, extension or termination. Any dispute regarding the proposed fee action shall be referred to an independent fact finder selected by mutual agreement, whose costs shall be borne one-half by the holder and one-half by the agency. The fact finder shall review whether the proposed fee action is appropriate under and consistent with the criteria set forth in subsections (2), (4) and (5) of this section. The fact finder shall not review the substance of the protection, mitigation and enhancement measures contained in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The fact finder shall forward its determination in writing to the holder and agency. Upon receipt and consideration of the fact finder's determination, the agency shall notify the holder whether the project specific fee is modified, extended or terminated. If the holder is dissatisfied with the fee action, the holder may request administrative or judicial review in accordance with statutes or rules applicable to a particular agency's fee action. The written determination of the fact finder shall be admissible in any such administrative or judicial hearing. Notwithstanding any other law, a presumption shall exist in favor of the determination of the fact finder and the burden shall be on the party seeking a fee action contrary to the determination of the fact finder to demonstrate that a different fee action is justified under this section.

(7) Subject to subsections (2) to (5) of this section, the amount of a project specific fee shall be established based on an estimate of the cost to the agency of the labor, supplies and overhead expended by the agency in providing reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in the water

right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The estimate used to derive a project specific fee amount shall be determined by using increments of not more than 0.25 full-time equivalents.

(8) A project specific fee shall be payable after issuance of the final order pursuant to ORS 543A.130, or in the case of power claimants and uncertificated claimants, after the issuance of either the director's order or a certificate issued for the project pursuant to ORS 468B.040 or 468B.045. A project specific fee shall be paid in increments that are reasonably related to the work to be performed and set forth in the final order, certificate issued pursuant to ORS 468B.040 or 468B.045 or the director's order.

(9) Each agency receiving project specific fees shall, on a biennial basis, provide the holder paying the fees with a summary of project specific expenditures. [1999 c.873 §6]

**543.082 Invoice for fees; overdue fee; interest on delinquent fees.** (1) At least 45 days before the fees required under ORS 543.078 or 543.080 become due, the Water Resources Department shall issue invoices to the holder for each fee.

(2) If any holder fails to pay the fees required under ORS 543.078 or 543.080 within 15 days after the date specified in the invoice, the department shall notify the holder of the amount and nature of the overdue fee. Any such notice shall be sent to the holder by certified mail and shall include notification that the holder has 30 days from the date of the certified delivery of the notice to pay the overdue fee or the holder shall be subject to the late payment penalty provisions of subsection (3) of this section.

(3) Any fee that is not paid within 30 days of the date a holder receives certified delivery of the notice required under subsection (2) of this section shall be considered delinquent and shall be increased by 25 percent. In addition, the state shall have a preference lien for any such fee, together with interest at the rate of 10 percent per annum from the date of delinquency, upon the property of the holder used, or necessary for use, in the development of the water right, together with any improvements erected on the property for such development. Upon notice from the Water Resources Commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(4) The remedy set forth in subsection (3) of this section is in addition to any other remedy provided by law for the collection of moneys or for noncompliance with a condition of a water right order, uncertificated claim or certification under ORS 468B.040 or 468B.045. [1999 c.873 §7]

**543.085 Periodic review of annual fee.** (1) The Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of at least one representative from the following and others at the director's discretion:

- (a) The Department of Environmental Quality;
- (b) The State Department of Fish and Wildlife;
- (c) The Public Utility Commission;
- (d) The Water Resources Department;
- (e) Investor owned utilities;
- (f) Publicly owned utilities;

- (g) Municipalities;
- (h) Environmental organizations;
- (i) Agricultural organizations; and
- (j) Nonutility owners of hydroelectric projects.

(2) All holders paying annual fees under ORS 543.078 shall be notified by the Water Resources Department at least 60 days in advance of the meeting of the review panel established in subsection (1) of this section, and provided the opportunity to submit comments to the panel.

(3) Any periodic review conducted under subsection (1) of this section shall evaluate each agency's hydroelectric program to determine if current staffing levels, activities and funding are appropriate to fulfill program objectives. There shall be a presumption that the fee should not change. To overcome the presumption and alter the existing fee, the panel must find compelling reasons for alteration and must reach unanimous consent on the new fee. If the presumption is overcome, upon completion of the review process the director shall either adjust the annual fee as recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result of this section shall become effective on the January 1 following the director's action. The director shall notify all holders of any change in the annual fee and the effective date of such change. [1999 c.873 §8]

**543.088 Payment of costs or fee for reauthorization or relicensing of project. (1)**

Notwithstanding ORS 543A.405 and 543A.410, during each year of the interim period established in subsection (2) of this section, any licensee or water right certificant seeking reauthorization of a state water right to operate a federally licensed hydroelectric project shall pay the greater of:

- (a) The actual cost of the Hydroelectric Application Review Team's reauthorization activities for the year in question as established pursuant to ORS 543A.405 and 543A.410; or
- (b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for reauthorization. This amount shall be calculated in 1998 dollars.

(2) For any project, the interim period referred to in subsection (1) of this section shall begin on the January 1 immediately following submission to the Water Resources Department of a proposed final order for reauthorization of the project under ORS 543A.115 (2). For any project, the interim period referred to in subsection (1) of this section shall end on December 31 of the year the department issues a final order on reauthorization of the project pursuant to ORS 543A.130.

(3) Notwithstanding ORS 543.090, during each year of the interim period established in subsection (4) of this section, any power claimant or uncertificated claimant seeking to relicense a federally licensed hydroelectric project shall pay the greater of:

- (a) The actual cost of the team's relicensing activities for the year in question as established pursuant to ORS 543.090; or
- (b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for relicensing. This amount shall be calculated in 1998 dollars.

(4) For any project, the interim period referred to in subsection (3) of this section shall begin on the January 1 immediately following issuance of an annual license for the project by the Federal Energy Regulatory Commission. For any project, the interim period referred to in subsection (3) of this section shall end on December 31 of the year the Federal Energy Regulatory Commission issues a new license for the project.

(5) The Water Resources Department shall reimburse a participating agency for costs

incurred in the agency's review of a project during the year for which the fees are collected. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law. Any fees collected under subsection (1) or (3) of this section in excess of the team's actual cost of evaluation of the project for the year shall be distributed according to ORS 536.015.

(6) No fee shall be charged under this section unless the project is a federally licensed project.

(7) No fee shall be charged pursuant to subsection (1) of this section unless the Hydroelectric Application Review Team proposes to reauthorize the water right for the project in the proposed final order submitted to the Water Resources Department under ORS 543A.115 (2).

(8) Water right certificants and licensees with water rights or licenses that expire more than five years after the original federal license for the project expires shall not begin paying fees assessed under this section until after the expiration date of the original state hydroelectric license or water right. [1999 c.873 §9]

**543.090 Payment of expenses of Hydroelectric Application Review Team for project operating under federal license and state power claim or uncertificated claim.** (1) Any project operating under a hydroelectric license issued by the Federal Energy Regulatory Commission and concurrently operating under the authority of a power claim or uncertificated claim shall pay all expenses related to the review and decision of a Hydroelectric Application Review Team established under ORS 543A.075 that:

(a) Are incurred by the team and any agency participating as part of the team in the federal relicensing process; and

(b) Are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

(2) Not later than six years before the expiration of a hydroelectric license issued by the Federal Energy Regulatory Commission to any project operating concurrently under the authority of a power claim or uncertificated claim, the Water Resources Department shall contact the holder to schedule a consultation meeting regarding expected fees to be incurred by the Hydroelectric Application Review Team.

(3) Relicensing fees shall be calculated and assessed according to the terms and conditions set forth in ORS 543A.405 and 543A.410 for application fees. [1999 c.873 §10]

**543.092 Amendment of hydroelectric water right or claim; rules; unilateral amendment of power claim or uncertificated claim to assess project specific fees.** (1) Upon the request of the holder and the approval of the Water Resources Department, a hydroelectric water right or claim may be amended.

(2) The Water Resources Department shall develop rules governing the process by which a hydroelectric water right or claim may be amended. Any amendments under subsection (1) of this section shall:

(a) Be consistent with the final unified state position for the project;

(b) Be consistent with the requirements of ORS chapter 543A;

(c) Cause no injury to other water rights; and

(d) Allow for public participation in the amendment process.

(3) The Water Resources Director may unilaterally amend a power claim or uncertificated claim in order to assess project specific fees under ORS 543.080. [1999 c.873 §11]

**543.095 Challenges to certain statutes related to hydroelectric projects.** (1) As used in this section, “person” has the meaning given that term in ORS 174.100.

(2) No person shall be estopped or precluded from challenging the constitutionality or validity of any provision of chapter 449, Oregon Laws 1997, or the provisions of chapter 873, Oregon Laws 1999, as a result of having received or sought benefits under, complied with, paid fees under or filed an application under those statutes, or as a result of having participated in their drafting, enactment or implementation.

(3) Nothing in this section shall be construed to imply that a person is estopped or precluded from challenging the validity or constitutionality of any statute as a result of having participated in the drafting, enactment or implementation of the legislation that resulted in the enactment of such statute. [1999 c.873 §29]

**Note:** Legislative Counsel has substituted “chapter 873, Oregon Laws 1999,” for the words “this 1999 Act” in section 29, chapter 873, Oregon Laws 1999, compiled as 543.095. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1999 Comparative Section Table located in Volume 20 of ORS.

#### APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW

**543.110 Appropriation and use of water for power is governed by this chapter.** After February 26, 1931, no right to appropriate or to use the waters of the lakes, rivers, streams or other bodies of water within this state, including water over which this state has concurrent jurisdiction, in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for and during the periods or extensions thereof stated in ORS 543.010 to 543.610, and pursuant to the provisions thereof.

**543.120 Water power projects to be in conformity with this chapter.** After February 26, 1931, no water power project involving the use of the waters of lakes, rivers, streams or other bodies of water within this state, including waters over which this state has concurrent jurisdiction, for the generation of electricity, shall be begun or constructed except in conformity with the provisions of ORS 543.010 to 543.610.

**543.130** [Repealed by 1961 c.224 §20]

**543.135** [1961 c.100 §§2,3; repealed by 1985 c.673 §185]

**543.140 Projects or developments constructed by federal government excepted from law.** The provisions of ORS 543.010 to 543.610 shall not apply to any water power project or development constructed by the United States.

**543.150 Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts.** The provisions of ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610 shall not apply to cities, towns or other municipal corporations of this state, including utility districts organized under section 12, Article XI, Oregon Constitution, and legislation enacted thereunder; saving, however, to such cities, towns

and other municipal corporations the rights and preferences specified in ORS 543.260, 543.270 and 543.610. The Water Resources Commission shall exercise the powers in relation to utility districts as may be conferred upon the commission by any legislation providing for the creation of such utility districts. [Amended by 1985 c.673 §144; 1991 c.869 §7]

**543.160 Hydroelectric facility on North Santiam River prohibited; exception.** (1) No person shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on the North Santiam River between river mile 27 and Big Cliff Dam.

(2) Nothing in subsection (1) of this section applies to any hydroelectric facility or structure constructed on the North Santiam River prior to October 15, 1983, to the historic uses of such a hydroelectric facility or structure or to the repair or reconstruction of such a hydroelectric facility or structure at the present site. [1983 c.418 §§1,2]

**543.165 Hydroelectric facility on part of Deschutes River prohibited.** No person, state agency, local government, district or municipal corporation shall construct, and no officer or agency of the state shall issue any permit for the construction of any hydroelectric facility or structure on the Deschutes River between river mile 172 below Lava Island Falls and river mile 227 below but not including Wickiup Dam. [1985 c.560 §1]

**543.170 Hydroelectric facility on Squaw Creek prohibited.** No person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on Squaw Creek. [1985 c.560 §2]

**543.175 Hydroelectric facility on Deschutes River within City of Bend prohibited; exception.** (1) Except as provided in subsection (2) of this section, no person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on that portion of the Upper Deschutes River situated within the city limits of the City of Bend except for a facility that meets all of the following criteria:

(a) The facility is located on an existing irrigation diversion facility or structure constructed by persons.

(b) The operation of the facility would not require any water in addition to water appropriated for irrigation purposes.

(c) Operation of the facility would be limited to the period of time during which water is diverted for irrigation purposes and the diversion would not be extended for the purpose of hydroelectric power generation.

(2) Subsection (1) of this section shall not apply to the construction and maintenance of or the issuance of a permit for a hydroelectric facility or structure for which the hearing record is closed on or before the July 12, 1985, whether or not the record is later reopened by or at the direction of the Water Resources Commission for any reason.

(3) As used in this section, "Upper Deschutes River" means that portion of the mainstem Deschutes River between the North Canal Dam at approximately river mile 165 and the head waters of the Deschutes River. [1985 c.560 §3]

## PRELIMINARY PERMITS; LICENSES

**543.210 Preliminary permits; application; contents; fee.** (1) Any person who proposes to operate a hydroelectric project in Oregon shall apply for a state preliminary permit. Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. The Water Resources Commission may issue a preliminary permit to any person possessing the qualifications of a licensee as specified in ORS 543.010 to 543.610.

(2) The application for a preliminary permit shall set forth:

- (a) The name and post-office address of the applicant;
- (b) The approximate site of any proposed dam or diversion;
- (c) The amount of water in cubic feet per second;
- (d) The theoretical horsepower; and
- (e) Any other data the commission may by rule require.

(3) Upon receipt of an application for a preliminary permit the commission shall indorse on the application the date of receipt, and keep a record of the receipt of the application. The date so indorsed shall determine the priority of the use of water initiated under the provisions of ORS 543.010 to 543.610.

(4) At the time of filing application for preliminary permit the applicant shall pay to the state the portion of the total project fee required in ORS 543.280, to cover costs of recording, publishing notices and making investigations necessary to determine whether or not a preliminary permit should be granted. [Amended by 1961 c.224 §15; 1985 c.673 §147; 1991 c.869 §8]

**543.220 Notice of filing of application; waiting period.** (1) If an application is made for a preliminary permit, after said application has been referred to hearing the Water Resources Commission shall give written notice of the filing of the application to:

- (a) Any municipality or other person or corporation that, in the judgment of the commission, is likely to be interested in or affected by the proposed project; and
- (b) The owner of any land that is:
  - (A) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or
  - (B) Adjacent to the site of the proposed project.

(2) The commission shall also publish notice of the application once each week for at least two successive weeks and for such further time, if any, as the commission shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located.

(3) No application for the appropriation or use of water for the development of 1,000 theoretical horsepower or more shall be granted until at least six months after the application for a preliminary permit has been filed. [Amended by 1961 c.224 §16; 1975 c.581 §27; 1985 c.569 §23; 2011 c.52 §9]

**543.225 Hearing on application; notice; policy.** (1) The Water Resources Commission shall conduct a public hearing on any application or amended application for a preliminary

permit or for a license for a major project of more than 100 theoretical horsepower and an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if the commission concludes it is in the public interest to do so.

(2) The commission shall give proper notice of the public hearing on an application under subsection (1) of this section, to the applicant and to each protestant, if any. After the hearing, if the commission determines that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017, or would otherwise impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or 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.

(3) In determining whether the proposed project would impair or be detrimental to the public interest, the commission shall have due regard for:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the Water Resources Director for further proceedings consistent with the commission's order. [1955 c.707 §42; 1961 c.224 §17; 1975 c.581 §28; 1985 c.569 §20; 1985 c.673 §148]

**543.230 Hearings on application; rules; protest.** (1) The Water Resources Commission shall, by order or rule, provide for the time and manner of hearings upon applications. However, upon request by any person made within 30 days after the Water Resources Director issues an order pertaining to cumulative impacts under ORS 543.255, the Water Resources Commission shall conduct a contested case hearing in accordance with the applicable provisions of ORS chapter 183 and any rules adopted by the commission.

(2) Every application for the appropriation of water for the generation of electricity subject to the terms of ORS 543.010 to 543.610 shall be subject to protest or remonstrance on behalf of the public, or any district organized for public purposes, or any interested private person, on the ground that the proposed construction, development or improvement would damage or destroy

the use or utility of the stream or other body of water involved for other beneficial purposes, including propagation of fish, scenic, aesthetic, recreational, park, highway or other beneficial use. All protests and remonstrances under this subsection must be filed with the commission within the time specified in the notice and must be in writing and verified by the parties protesting, and a certified copy thereof shall be served upon the applicant for the permit. However, in the discretion of the administrative law judge, at the time of the hearing any interested party may make an oral protest if there exists any good reason therefor, and the administrative law judge shall allow the applicant to be heard in opposition thereto. Every protest or remonstrance under this subsection which is not filed and served as required in this subsection shall be deemed waived. [Amended by 1955 c.673 §4; 1955 c.707 §40; 1961 c.224 §18; 1993 c.544 §7; 1995 c.416 §41; 1999 c.849 §115; 2003 c.75 §98]

**543.240** [Repealed by 1991 c.869 §15]

**543.250 Permit; duration; transfer; cancellation; priority; terms and conditions; denial.**

A preliminary permit may be issued for a period not exceeding a total of three years. It shall not be transferable except upon written approval of the Water Resources Commission, and may be canceled by order of the commission at any time upon proof to the commission's satisfaction, after hearing, that the holder is not in good faith complying with the provisions of the permit. The holder of a preliminary permit which has not been canceled shall have priority of right to make application for a license covering the project for which the preliminary permit was issued, within the term of the permit or any lawful extension thereof. Except as otherwise specified in ORS 543.010 to 543.610, the commission may fix the terms and conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set forth all the terms and conditions. The commission may decline to grant any application for a preliminary permit. [Amended by 1985 c.673 §149; 1993 c.63 §1]

**543.255 Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability.** (1) Whenever the Water Resources Department receives an application to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the department shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the department; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the Water Resources Director shall issue an order setting forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

(3) If the department determines that pending applications or existing projects may have cumulative effects, the Water Resources Commission shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS chapter 183 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department and existing hydroelectric projects. In its final order on an application, the commission or the department shall include its findings on

cumulative impacts. The findings of the commission or department under this section must be sufficient to support the department's decision to approve or deny an application.

(4) Any application for a project in the same river basin filed after the commission begins a consolidated review contested case hearing shall not be reviewed until the commission has issued final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a permit to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the commission may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section. [1985 c.569 §10; 1985 c.673 §193; 1993 c.544 §8; 1995 c.229 §4; 1995 c.416 §39]

**543.257** [1985 c.569 §11; 1985 c.673 §194; repealed by 2007 c.354 §1]

**543.260 Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district.** (1) A license may be issued by the Water Resources Commission to any qualified person for a period not exceeding 50 years. If the project is subject to regulation by the Federal Energy Regulatory Commission, the term shall be concurrent with and expire upon expiration of the federal license for the project. Each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.610, and such further terms and conditions as the commission may prescribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by the licensee, shall be expressed in the license. A license may be terminated for the reasons and in the manner provided in ORS 543.010 to 543.610. The form of license containing all the terms and conditions may be set forth in the preliminary permit.

(2) The commission may deny any application for a license if it appears that the applicant has failed to comply substantially with the terms and conditions of the preliminary permit or, notwithstanding the commission has issued a preliminary permit, if in the judgment of the commission the project is unfeasible or the public interest requires the denial thereof.

(3) A municipal corporation or people's utility district shall be given preference on any project in the issuance of a license, upon condition that the municipal corporation or people's utility district exercising such preference right shall be required to reimburse the holder of a preliminary permit for all reasonable actual expenditures made by the holder upon the project described or referred to therein. [Amended by 1983 c.740 §214b; 1985 c.673 §150; 1995 c.229 §5]

**543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost.** The Water Resources Department shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.158 §116; 1995 c.416 §40]

**543.270 Preference in granting permit or license; municipal use.** In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the Water Resources Commission to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference. [Amended by 1985 c.673 §151]

**543.280 Fee payments by licensee.** (1) Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. An applicant for a state preliminary permit for a new hydroelectric project shall submit to the Water Resources Commission a complete copy of any application for the project filed with the Federal Energy Regulatory Commission or other federal agency. For preliminary permits, if the copy of the federal application is filed with the commission at the same time it is filed with the federal agency, at the commission's discretion, such copy may fulfill the requirements of ORS 543.210, except for the fee requirement in ORS 543.210 (4).

(2) 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.

(3) The amount of the total project fee required under subsection (2) of this section 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.

(4) Except for projects of less than 100 theoretical horsepower, the project fee required under subsection (2) of this section shall be payable in advance before each of four stages of project review as established by rule by the Water Resources Commission. The payment schedule shall not require the applicant to pay more than \$2,500 of the project fee at the first stage of project review or more than 50 percent of the total project fee in the first two stages of the project review. For a project of less than 100 theoretical horsepower, the applicant shall pay 50 percent of the fee at the time of filing the application for a preliminary permit or application for a permit to appropriate water for power purposes and the remaining 50 percent before the commission issues a license or a water right permit. A person may withdraw an application for a hydroelectric project after any stage of project review without further payment of fees under this section.

(5) In addition to the project fee required under subsection (2) of 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.

(6) The commission shall provide an applicant a statement itemizing the staff time, resources and costs expended to review the application at each project stage. The statement shall include the costs expended by the State Department of Fish and Wildlife and the Water Resources

Department specific to the project. [Amended by 1957 c.581 §1; 1985 c.673 §152; 1991 c.869 §9]

**543.290 Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data.** The applicant for a license shall submit to and file with the Water Resources Commission:

(1) All maps, plans, specifications and cost estimates as may be required by the commission for a full understanding of the proposed project. The maps, plans and specifications, when approved by the commission, shall become a part of the license, if one is issued upon the application, and thereafter no change shall be made in any such maps, plans and specifications until the proposed change has been approved by the commission. When a proposed change is approved by the commission, the changes shall become a part of the license.

(2) Any further statements and data as may be required by the commission concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the commission. [Amended by 1985 c.673 §153]

**543.300 Conditions governing license; fees; waiver of conditions.** Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall be on, the following conditions:

(1) That the proposed project shall be such as, in the judgment of the Water Resources Commission, is well adapted to the development and utilization of the water power involved.

(2) That the licensee shall construct and build the project according to the maps, plans and specifications filed with and approved by the commission, and within the time fixed by the license or by any lawful extension thereof.

(3) The operations of the licensee so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules as the commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe.

(4) That the licensee will maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to the rules of the commission not inconsistent with ORS 543.010 to 543.610.

(5) That the licensee will pay to the state annually not more than \$1 for each horsepower covered by the license. This sum shall constitute a first lien upon the project, which lien may be enforced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the state in an action for debt. Payment of such license fees may be waived by the commission during all or any part of the period of construction. The fees need not be uniform throughout the entire period of the license, but may be for different amounts for different periods. The amount of the license fees, within the minimum and maximum limits herein specified, shall be determined by the commission and expressed in the license.

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for which a license may be issued, and the annual charge as determined by the commission under subsection (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the applicants are required to secure permits and licenses from the United States as a condition precedent to the construction of the projects, the commission may waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license may be issued and the annual charge as determined by the commission under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.610, even where the project involved exceeds 100 horsepower.

(8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS chapter 543A. [Amended by 1959 c.560 §1; 1961 c.224 §19; 1985 c.673 §154; 1999 c.873 §23]

**543.310 Disposition of moneys collected.** Except as provided in ORS 536.015, all moneys collected under the provisions of ORS 543.010 to 543.610 shall forthwith be paid to the State Treasurer and become a part of the General Fund. [Amended by 1985 c.674 §10; 1991 c.869 §10]

**543.320 Effect of amendment or repeal of law.** The right to alter, amend or repeal ORS 543.010 to 543.610, or any part thereof, hereby is expressly reserved; but no such alteration, amendment or repeal shall affect any license theretofore issued under the provisions of ORS 543.010 to 543.610, or the rights of any licensee thereunder, unless expressly assented to by the licensee.

#### TIME FOR CONSTRUCTION; TERMINATION, REVOCATION OR TRANSFER OF LICENSE

**543.410 Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license.** (1) The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall, within the time fixed in the license, complete and put into operation such part of the ultimate development as the Water Resources Commission considers necessary to supply the reasonable needs of the then available market, and shall, from time to time thereafter construct such portion of the balance of the development as the commission directs, so as to supply adequately the reasonable market demands until development is completed.

(2) The period for commencement of construction may be extended once but not longer than two additional years, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests.

(3) If the licensee does not commence actual construction of the project works or of any specified part of the project works, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to the project works or part of the project works, be terminated upon written order of the commission. [Amended by 1985 c.673 §155]

**543.420 Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser.** If construction of a project under license has been begun but has not been completed within the time prescribed in the license or in any lawful extension thereof, then the Attorney General, upon request of the Water Resources Commission, shall institute proceedings in the circuit court for the county in which some part of the project is situated, for termination of the rights of the licensee under the license, the sale of the property embraced in the project, and for such other relief as the case may demand. Any judgment or decree entered in the proceeding shall provide for distribution of the proceeds of the sale to the parties equitably entitled thereto. The purchaser at any such sale shall take the property subject to all the terms and conditions of the license under which construction was begun, except insofar as they may be modified by the commission. [Amended by 1985 c.673 §156]

**543.430 Proceedings after completion of project for violation of license terms; authority of court; sale of project.** The Attorney General shall, upon request of the Water Resources Commission, institute proceedings in the circuit court for the county in which any project, or the major part of a project is situated, after the project has been completed, for the purpose of revoking for violation of its terms any license issued under ORS 543.010 to 543.610, or for the purpose of correcting or remedying by injunction, mandamus or other appropriate writ or decree, any act by the licensee in violation of the terms of those sections, or of any rule or order of the commission. The court shall have jurisdiction of the proceedings and may issue and execute all necessary process to compel compliance with the terms of any license, the terms of ORS 543.010 to 543.610, the lawful orders and rules of the commission. If a decree revoking a license is entered, the court may sell the whole, or any part, of a project under the license; wind up the business of the licensee conducted in connection with the project; distribute the proceeds to the parties equitably entitled thereto; and make and enforce such further orders and decrees as equity and justice may require. At any such sale the purchaser shall take the rights and privileges belonging to the licensee and shall perform all the duties of the licensee under the license. The remedies provided by this section are in addition to the remedies otherwise provided by ORS 543.010 to 543.610. [Amended by 1985 c.673 §157]

**543.440 Transfer of license, rights or property; effect.** No voluntary transfer of any license or any rights under a license or of any property acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be made without written approval of the Water Resources Commission. Any successor or assignee of any licensee under any project acquired, constructed or operated by licensee, whether by voluntary transfer approved by the commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to

all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. [Amended by 1985 c.673 §158]

**543.510** [Repealed by 1995 c.229 §9]

**543.520** [Repealed by 1995 c.229 §9]

#### FINANCING OF PROJECTS; LIENS; BOND OF LICENSEE

**543.525 ORS 543.530 to 543.550 not applicable to regulated utilities.** The provisions of ORS 543.530 to 543.550 shall not apply to any licensee which is a utility as defined in ORS 757.005 and regulated by the Public Utility Commission of Oregon. [1965 c.333 §1]

**543.530 Issuance by licensee of stocks, bonds or other interest without authorization of Water Resources Commission prohibited.** (1) No licensee shall issue any share of corporate stock, or any bond, or other evidence of interest in or indebtedness of the licensee, or assume any obligation or liability as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the corporate shares, bonds or other evidence of indebtedness of any person in connection with the financing, acquisition, construction, maintenance or operation of any project, unless and until, and then only to the extent that, upon application by the licensee, and after investigation by the Water Resources Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission, by order, authorizes the issue or assumption. The commission shall make the order only if the commission finds that the issue or assumption:

(a) Is for some lawful object of the licensee, compatible with the public interest, and is necessary to, or appropriate for, the proper performance by the licensee of the terms and conditions of the license and will not impair the licensee's ability to perform the terms and conditions; and

(b) Is reasonably necessary and appropriate for such purposes.

(2) The commission may grant or deny the application to authorize the issue or assumption, or grant the same in part and deny in part, and may modify the provisions of any previous order and prescribe such terms and conditions as the commission considers necessary or appropriate in the premises. Every such application shall be made in such form and contain such data as the commission by rule may prescribe.

(3) No licensee or any director, officer, attorney or agent thereof shall knowingly assent to or concur in any issue or assumption contrary to the provisions of this section, or the orders of the commission made pursuant to this section or ORS 543.540. [Amended by 1953 c.271 §1; 1985 c.673 §159]

**543.540 Consideration for bonds, stocks and other securities; restrictions; corporate shares; sale price of securities; discount from face value.** No bonds, notes or other obligations or securities or corporate stock shall be issued in connection with the financing, construction or acquisition of any project or part of a project, under a license issued pursuant to ORS 543.010 to 543.610, except for cash or property. If issued for property, the price or value at which the property is to be acquired by the licensee and made a part of any such project must be submitted

to and approved by the Water Resources Commission before it is purchased or acquired. All corporate shares issued in connection with any such project shall have a nominal or par value. All bonds, notes or other obligations or securities, and all shares of corporate stock issued or sold by any licensee in connection with the acquisition, construction or financing of any project, or part of a project, shall be issued or sold or used in the purchase or acquisition of property at the full face or nominal value thereof, unless the commission consents to and approves the sale for cash, or the use of cash in the purchase or acquisition of property at a discount from the face or nominal value of the property. Any discount so approved and consented to shall be considered a part of the cost of financing. [Amended by 1985 c.673 §160]

**543.550 Liens prohibited; exceptions; what may be included by mortgage, trust deed, or sale; determination of investment in case of sale of part.** No lien for labor, services, materials, machinery or equipment shall exist or be acquired or enforced upon any property acquired, constructed or made a part of any project under license issued pursuant to ORS 543.010 to 543.610. No property shall be put into or made part of any such project unless owned by the licensee free and clear of all liens and claims whatsoever, except a lien created by the licensee upon the whole property embraced in the project by mortgage or deed of trust, to the end that the entire property embraced in the project be kept and maintained as an indivisible whole. The mortgage or deed of trust may include other property. Any voluntary sale or any sale upon a judgment of foreclosure, execution or otherwise, shall be of the whole property embraced in the project unless the Water Resources Commission, by an order in writing, consents to and approves of a sale of a part of the property. If less than the whole of any property embraced in a project is sold with the consent and approval of the commission, the commission shall determine at the time of the sale the actual net investment in the part sold, as well as the actual net investment in the part remaining unsold. [Amended by 1985 c.673 §161; 2003 c.576 §496]

**543.560 Bond of licensee or letter of credit securing claims of suppliers; enforcement of obligation; action for sums due State Accident Insurance Fund Corporation.** Before entering upon the work of construction or acquisition of any project, the licensee shall execute to the state a bond, with good and sufficient sureties or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case, to be approved by the Water Resources Commission, to the effect that the licensee shall promptly make payment to all persons supplying labor, services, material, machinery or equipment for the prosecution of the work, and all amounts due the State Industrial Accident Fund from the licensee. Any person supplying the licensee with any labor, services, material, machinery or equipment for prosecution of the work who has not been paid therefor within 60 days after the same has been supplied, or when payment is due according to any special agreement, may, within one year after any payment has become due, bring an action against the licensee, and the sureties upon the bond, or the letter of credit issuer for payment of the amount due to the person, and prosecute the same to final judgment and execution. The action shall be brought in the name of the state upon the relation of the person to whom payment is due. The state, at the request of the State Accident Insurance Fund Corporation may prosecute an action to judgment and execution against the licensee and the sureties upon the bond or letter of credit for all sums due the State Industrial Accident Fund. [Amended by 1985 c.673 §162; 1991 c.331 §80; 1997 c.631 §487]

## ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY

**543.610 Acquisition of project by state or municipality.** (1) Upon not less than two years' notice in writing the state, or any municipality thereof, shall have the right at any time to take over and thereafter to maintain and operate any project constructed under a license pursuant to ORS 543.010 to 543.610, upon payment of just compensation, including such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the license, not taken over, as may be caused by the severance therefrom of the property taken, and shall assume all contracts entered into by the licensee which are required to have and do have the express approval of the Water Resources Commission. If the sum to be paid cannot be agreed upon by the holder of the license and the municipality or the state, as the case may be, it shall be determined in a proceeding in equity instituted by the state or municipality, as the case may be, in the circuit court of the county in which the major part of the project is located.

(2) There is also expressly reserved to the state, and any municipality thereof, the right to take over all or any part of any project by condemnation proceedings as may be provided by the laws of Oregon or the charter of any such municipality. [Amended by 1983 c.799 §8]

**543.620** [Repealed by 1995 c.229 §9]

## USE OF EXISTING WATER RIGHT FOR HYDROELECTRIC PURPOSES

**543.760 Definition of water right.** As used in ORS 543.765, "water right" means a water use established by an adjudication under ORS chapter 539 as evidenced by a court decree or a certificated ground water or surface water right that is issued for some use other than for hydroelectric power and that serves as the underlying water right for an application to use water for hydroelectric purposes. [2007 c.657 §1]

**543.765 Certificate to use water for hydroelectric purposes within artificial delivery system; expedited application process; certificate conditions; annual payments; fees.** (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may apply to the Water Resources Department for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right. If the proposed hydroelectric project meets the applicable capacity limitation under this subsection and meets either the qualifications for a Federal Energy Regulatory Commission exemption from licensing or similar qualifications of another federal agency responsible for authorizing the project, the applicant may use the expedited application process under this section regardless of which federal agency issues the authorization. To qualify under this subsection:

(a) For a project that is to be built as part of an existing dam, the capacity may not exceed five megawatts. Subsection (5)(b) of this section does not apply to a project described in this paragraph.

(b) For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunicipal facility or 40 megawatts for a municipal facility. Projects described in this paragraph must comply with subsection (5)(b) of this section.

(2) An application, which shall be on a form provided by the Water Resources Department, for a hydroelectric certificate under this section must include:

(a) The certificate number, or decree reference if no confirming certificate has been issued, of the applicant's existing water right associated with the proposed hydroelectric project.

(b) A copy of either a Federal Energy Regulatory Commission exemption application or a similar application submitted to the federal agency responsible for authorizing the project, if applicable.

(c) A proposed schedule of annual water use and an estimate of the maximum power generation of the proposed hydroelectric project.

(d) A statement by the applicant that the amount of water used by the proposed hydroelectric project will not exceed the amount authorized and used under the applicant's existing water right for beneficial use without waste.

(e) A statement that the applicant owns or otherwise controls the water conveyance system.

(f) An application processing fee of \$500. The department shall deposit fees collected under this section into the Water Resources Department Hydroelectric Fund established pursuant to ORS 536.015.

(g) A map or drawing and all other data concerning the proposed hydroelectric project, as may be prescribed by the department. The map or drawing must be of sufficient quality and scale to establish the location of the existing point of diversion and the proposed location of the hydroelectric project.

(h) If the water to be used for the proposed hydroelectric project is delivered by a public entity other than the applicant for a certificate under this section, a statement from that entity that the entity will be able to deliver water as described in the application.

(i) Evidence that the water has been used over the past five years according to the terms and conditions of the applicant's existing water right described in paragraph (a) of this subsection.

(3) If an applicant provides the information required by subsection (2) of this section:

(a) The Water Resources Department shall provide notice to both the State Department of Fish and Wildlife and the public, and provide a 30-day period for public comment.

(b) The Water Resources Department may issue a final order and certificate to use water for hydroelectric purposes upon making a final determination that the proposed hydroelectric use does not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

(4) If the Water Resources Department determines that public interest issues have been identified, the department shall issue a final order denying the application. The department shall also issue a final order denying the application if the department identifies issues related to the public interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within one year of the department's final order denying the applicant's application, files an application with the department for a preliminary permit to operate a hydroelectric project as provided in ORS 537.130 and 543.210, the applicant shall receive a credit toward the applicant's application fees in the amount of \$500.

(5) At a minimum, a certificate issued under this section must contain the following conditions:

(a) Except as provided in paragraph (b) of this subsection, fish screens, by-pass devices and fish passages as required by the State Department of Fish and Wildlife.

(b) If the application is for a hydroelectric project that is to be installed in or on a conduit delivery system, the certificate does not need to include a requirement for fish passage at the diversion point for the conduit delivery system if:

(A) The hydroelectric generating equipment for the project is not located on a dam;

(B) The hydroelectric generating equipment for the project is installed within or at the end of a conduit delivery system;

(C) The conduit delivery system is operated for the distribution of water for agricultural, municipal or industrial consumption; and

(D) Except as provided in subsection (15) of this section, the certificate includes a condition for the making of annual payments under subsection (14) of this section.

(c) That use of water be limited to periods when the applicant's existing water right is put to beneficial use without waste and that the amount used is not greater than the quantity of water diverted to satisfy the authorized specific use under the existing water right described in subsection (2)(a) of this section.

(d) That use of water be limited by rate, duty, season and any other limitations of the applicant's existing water right described in subsection (2)(a) of this section.

(e) That the applicant measure and report the quantity of water diverted.

(f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a certificate issued under this section to a district as defined in ORS 543.655.

(g) That a certificate issued under this section shall be invalidated upon a change in the point of diversion of the existing water right described in subsection (2)(a) of this section.

(h) That the right to use water under a certificate issued under this section is invalidated if the federal exemption or authorization related to the certificate is canceled or invalidated.

(i) Any other conditions the Water Resources Department deems necessary to protect the public interest.

(6) The Water Resources Department shall conduct a review of certificates issued under this section and shall issue a final order and a superseding certificate that corresponds to any changes or adjustments made to the applicant's existing water right described in subsection (2)(a) of this section.

(7) Subsection (5)(b) of this section does not affect any requirement for fish passage applicable to a project that is otherwise required by law.

(8) Upon request, the State Department of Fish and Wildlife and the Water Resources Department shall arrange a preapplication meeting with a person to discuss the requirements associated with the installation of a hydroelectric project in an artificial delivery system.

(9) A certificate issued under this section may not have its own priority date. The Water Resources Department may not regulate for or against any certificate issued under this section based on the priority date of the certificate.

(10) A certificate issued under this section does not grant a right to divert water for hydroelectric purposes.

(11) A certificate issued under this section may not be included in the determination of injury to other water rights pursuant to ORS chapter 540.

(12) A certificate issued under this section is subject to review 50 years after the date of issuance and pursuant to the terms described in this section.

(13) Failure to fully develop and put to use a certificate issued under this section within five years of issuance invalidates the hydroelectric certificate.

(14)(a) If a certificate contains a condition described in subsection (5)(b) of this section for annual payments, the payment shall be collected as provided in paragraph (c) of this subsection. Except as provided in paragraph (b) of this subsection, the annual payment amount must be:

(A) Except as provided in subparagraph (D) of this paragraph, for the first five years, four times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(B) Except as provided in subparagraph (D) of this paragraph, for the 6th through 10th years, eight times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(C) Except as provided in subparagraph (D) of this paragraph, after the 10th year, 15 times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(D) \$100 for any year in which the base hydropower fee amount assessed for the project under ORS 543.078 is less than \$100.

(b) If the certificate is for a hydroelectric project that will operate on a partial-year basis, the fee shall be three-fifths of the amount established in paragraph (a) of this subsection.

(c) The Water Resources Department shall collect the fee on behalf of the State Department of Fish and Wildlife and forward the fee moneys for crediting to the Fish Passage Restoration Subaccount created under ORS 497.141.

(15)(a) Notwithstanding subsection (14) of this section, a certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section may provide for the termination of annual payments being made under subsection (14) of this section if, after the date the project commences operation:

(A) The project provides for fish passages;

(B) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for fish passages associated with the project; or

(C) A waiver or exemption has been issued under ORS 509.585 for the project.

(b) A certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section does not need to include a condition for the making of annual payments under subsection (14) of this section if:

(A) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for the conduit delivery system to have fish passages associated with the project; or

(B) A waiver or exemption has been issued under ORS 509.585 for the project.

(16) If a certificate under this section is issued, the certificate holder must pay fees consistent with the fees described in ORS 543.078. Failure to pay a required fee invalidates a certificate issued under this section.

(17) The Water Resources Department shall issue invoices for fees required under this section, and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.

(18) An applicant for a certificate issued under this section must provide evidence of a Federal Energy Regulatory Commission exemption or approval under a similar process by the federal agency responsible for authorizing the project before a certificate can be issued, if applicable.

(19) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and 543.270. [2007 c.657 §2; 2013 c.674 §4]

**Note:** See note under 543.760.

**Note:** Section 3, chapter 674, Oregon Laws 2013, provides:

**Sec. 3.** (1) The Water Resources Department and the State Department of Fish and Wildlife shall jointly review the adequacy of the amount and structure of the annual fee described in ORS 543.765 (14) in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765 and review the functionality of the Fish Passage Restoration Subaccount and expenditures made from the subaccount. The departments shall consult with relevant interested parties in conducting the review.

(2) The departments shall commence the review described in subsection (1) of this section five years after the effective date of this 2013 Act [July 25, 2013]. Upon completing the review, the departments shall report any findings and recommendations regarding the adequacy of the fee amount and structure or the functionality of the subaccount or expenditures made from the subaccount, including any recommendations for legislation, to an interim committee of the Legislative Assembly dealing with natural resources no later than October 1, 2018. [2013 c.674 §3

**543.810** [Repealed by 2001 c.369 §9]

**543.820** [Amended by 1985 c.565 §83; 2001 c.104 §230; repealed by 2001 c.369 §9]

**543.830** [Repealed by 2001 c.369 §9]

## PENALTIES

**543.990 Penalties.** (1) Violation of ORS 543.530 (3) is a Class A misdemeanor.

(2) Violation of any of the provisions of ORS 543.010 to 543.610, or any of the conditions made a part of any license issued under ORS 543.010 to 543.610, or any subpoena of the Water Resources Commission or of an administrative law judge or any person designated by the commission to take testimony, any lawful order or rule of the commission is a Class B misdemeanor.

(3) Any person who willfully and knowingly gives false testimony concerning a material matter in any hearing before the commission, an administrative law judge or any person designated by the commission to take testimony, or in any deposition or affidavit to be used in a matter pending before the commission or administrative law judge, or willfully and knowingly verifies a false statement or report filed with the commission, commits perjury and may be prosecuted and punished as otherwise provided by law for the prosecution and punishment of perjury. [Amended by 1955 c.673 §5; 1985 c.673 §165; 1999 c.849 §117; 2003 c.75 §99; 2011 c.597 §228]