

Hydroelectric Reauthorization Task Force



Report to the Sixty-ninth
Legislative Assembly
1997



Prepared by the
**Oregon Water Resources
Department**
On behalf of the task force

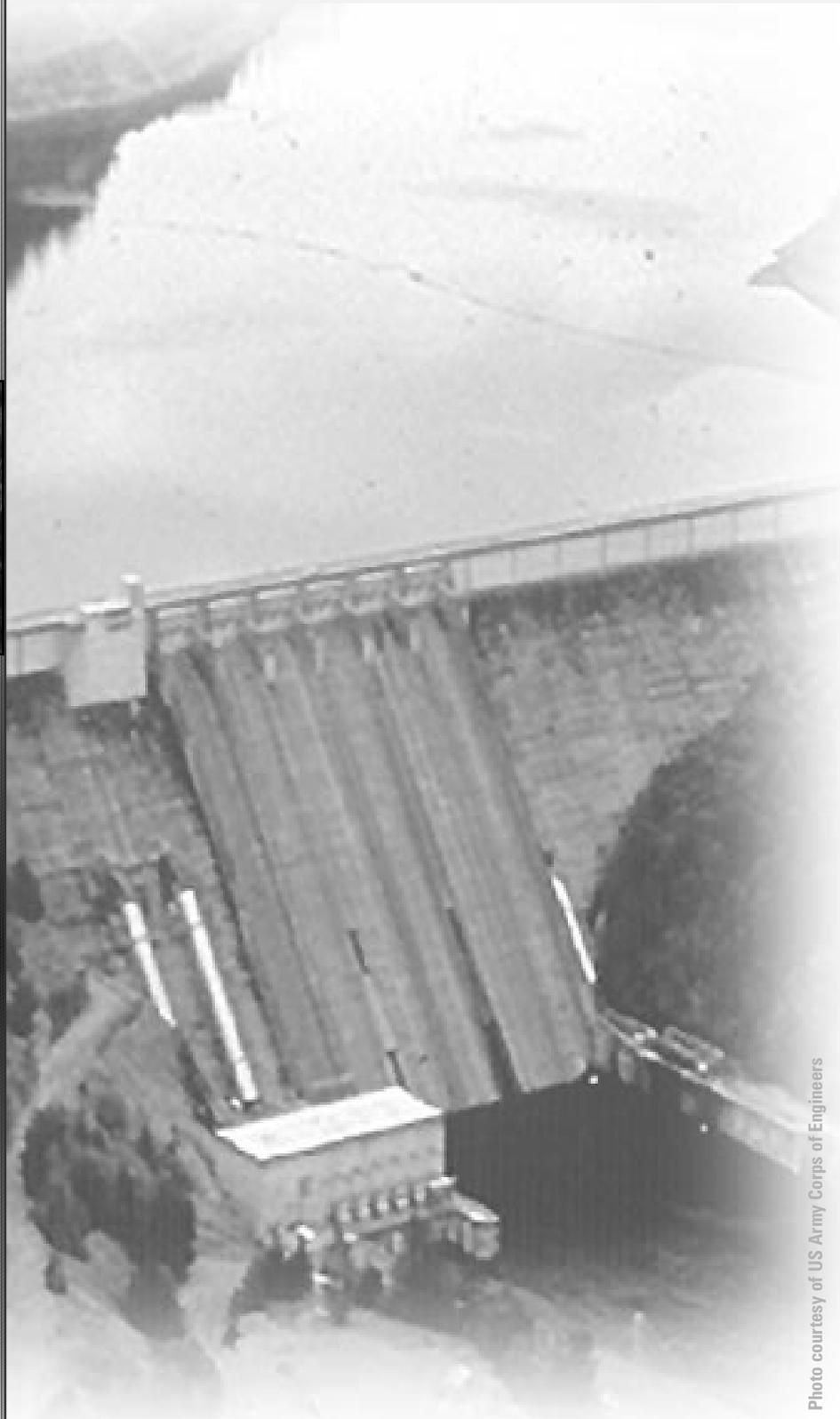


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Executive Summary

Background

Oregon has 166 state-authorized hydroelectric power projects. Most of them operate under licenses expiring within the next 15 years. State law does not include provisions for reauthorizing these projects. A task force created by the 1995 Legislature, and chaired by the Water Resources Department Director, has been meeting for 18 months to draft such a program and to suggest reauthorization standards. This report summarizes the task force's recommendations to the 1997 Oregon Legislature. It provides a description of the reauthorization program proposed by the task force as well as an account of the thought process leading up to key recommendations.

Since 1931, Oregon law has maintained a two-track system for authorizing hydroelectric projects, issuing up to 50-year licenses for privately-owned projects while granting permanent, non-expiring water rights for public projects. The state considers a state license as the functional equivalent of a water right, except that it is for a fixed term. The 1931 law allowed private projects, already issued water rights by the State Engineer, to continue operating under those rights (referred to as power claims by WRD). The 1931 law did not include provisions for reauthorizing private projects because the expectation was that the state would take over ownership of the licensed facilities once the sponsors recovered their investments. In 1995, House Bill 3087 repealed the takeover language, created the task force and instructed it to draft a process for evaluating whether, and under what conditions, existing projects should be reauthorized.

Is a state program essential?

The task force considered whether it was essential for Oregon to mount its own reauthorization program, since the Federal Energy Regulatory Commission (FERC) also regulates certain hydroelectric facilities. Forty-seven of the 166 projects in Oregon meet criteria requiring them also to be licensed by FERC. The task force concluded that a state reauthorization process was necessary, even for the 47 hydro projects that also must undergo federal reauthorization.

Who should manage the state program?

The task force concluded that Oregon's water right process was the most appropriate regulatory forum for reauthorizing hydroelectric projects. Oregon already has in place a comprehensive system for allocating rights to water. The Water Resources Department is required to make a public interest determination (in deciding whether to grant a water right) that considers the broad spectrum of interests potentially affected by a particular water use.

Guiding principles for a reauthorization program

Developing a process and specific reauthorization standards to apply across a broad range of projects posed some difficulty. Projects vary greatly in size, complexity and the degree of resource impacts. The task force wanted a process that was consistent with FERC's procedures, and did not require applicants to repeat studies or other efforts necessary to comply with federal standards. Most important, the state program should allow public participation at each step to reduce conflicts over resources and the possibility of future litigation. In

A state reauthorization program is needed to:

- Provide a state forum for consideration of whether, and under what conditions, facilities should be reauthorized.
- Ensure a strong, state voice in decisions affecting water resources and create a mechanism for coordination of agency positions in federal reauthorization actions.
- Develop clear new standards appropriate for projects that were built according to standards of an earlier era.
- Maintain the priority dates of the water rights in the original licenses.
- Provide for continuing state oversight of all hydro projects in Oregon, particularly those not licensed by FERC.

reaching agreement on standards and policies, the task force members made many compromises and concessions. While the members sometimes disagreed on the legal or policy implications of draft language, after extensive discussions they concurred on the following general policies:

- 1. Project status and priority:** The task force agreed the original priority dates of the project licenses should be maintained if new water rights are issued. Issuing water rights with new priority dates would put the projects at risk from claims by senior water right holders.
- 2. Environmental values and public resources:** The central issue of reauthorization is the question of what mitigation for past and future environmental impacts will be required in return for a grant of extended operating authority. Current environmental standards are much more restrictive than those in force when the projects first were licensed. Some mitigation measures state officials believed would be adequate when projects were first licensed, have not been effective, and many projects continue to impact fish, wildlife and recreation resources. Reauthorization is perhaps the state's best opportunity to require reasonable environmental improvement measures which could help restore damaged resource conditions over time.

However, projects seeking reauthorization include multi-million-dollar private investments that collectively represent a major force in Oregon's economy and provide a valuable source of renewable electric energy. The policy and standards recommended by the task force in HB 2119 reflect a recognition that existing projects have both benefits and costs, and the overall goal is to maximize benefits while minimizing costs. The task force's objective, therefore, is to favor reauthorization of projects as long as their continued operation will be consistent with applicable state standards and the plans, policies and goals of the Oregon Department of Fish and Wildlife. Members of the task force agreed that modifications causing further resource losses should not be allowed, unless fully mitigated. Projects seeking reauthorization should be required to take reasonable steps to restore and rehabilitate the natural resources of the state.

- 3. State agency coordination:** Currently, agencies work independently in the FERC process, and conditions suggested by one agency may conflict with another. The task force concluded that the state should discuss conflicting issues in advance and present the state's position in a unified form when commenting to FERC.
- 4. Preserving state agency authority:** Currently, several state agencies have authority over water resource management. The task force concluded that the integrity of current state agency standards and programs, and authorities granted by federal law, should be maintained.

Proposed process for reauthorizing hydroelectric projects:

Because of the diversity of projects, the task force decided more than one review procedure would be needed. Consequently, two review procedures are proposed: one for projects falling entirely under Oregon's jurisdiction and a second for projects also licensed by FERC. To provide full coordination of state interests, the task force proposes that the reauthorization reviews be conducted by a new interagency group called the Hydroelectric Application Review Team, or HART. This team would be made up of state agency representatives with an interest in natural resource management.

For projects authorized by FERC and the state, the task force has outlined a five-year procedure that follows the FERC reauthorization process. The state reviewers will use the information developed in the FERC process to the greatest extent possible. Project owners whose FERC licenses expire before their state license, may elect to undergo the state process at the same time. If the state license expires beforehand, WRD may extend the license.

Projects solely under state jurisdiction will be divided into two categories: those for which enough information exists to make a quick decision, and those where more information is needed to determine their impacts. Each process includes two or more public review periods. At the end of all review procedures, a water right will be issued for the project, if appropriate. For federally-licensed projects, the HART review will also produce a draft water quality certificate from the Department of Environmental Quality, authorized by Section 401 of the Clean Water Act, and suggest the basis for fish and wildlife recommendations to FERC from the Oregon Fish and Wildlife Department.



Contents

- Section 1 Introduction**
 Background
 Takeover Repeal
- Section 2 Hydroelectric Reauthorization**
The basic principles of the program
 A. Is a state program essential?
 B. Who should manage the state reauthorization program?
 C. Guiding principles for a reauthorization program.
- Section 3 Proposed Reauthorization Program**
For Oregon Hydroelectric Projects
 A. The Review Team
 B. The Decision Products
 C. State Review Process (for projects not federally licensed)
 D. Joint State-Federal Review (for projects licensed by both Oregon and FERC)
 E. Implementation and Funding
- Section 4 Policy and Standards**
To Govern Reauthorization Decisions
 A. General State Policy
 B. Public Interest Standards
 C. Fish and Wildlife Mitigation Standards
 D. Other Resource Protection Standards
 E. Unresolved Issues
- Section 5 House Bill 2119 with recommended amendments**
- Section 6 Attachments**
 A. Process Flow Charts
 B. 1995 legislation and task force membership
 C. Task force minutes
 D. Current water right and hydroelectric licensing laws
 E. Federal standards and relationship to state jurisdiction
 F. List of state-authorized projects
 G. Descriptions of state jurisdiction projects and joint state/federal jurisdiction projects



Oregon currently has 166 state-authorized hydroelectric power projects, most of them operating under licenses that will expire within the next 15 years. However, state law does not currently include provisions for reauthorizing these projects. A task force created by the 1995 Legislature has been meeting for 18 months to draft such a program and to suggest reauthorization standards. This report summarizes the task force's recommendations to the 1997 Oregon Legislature.

Background:

Since 1931, Oregon has maintained a two-track system for authorizing hydroelectric projects, issuing up to 50-year licenses for privately-owned projects while granting permanent, non-expiring water rights for public projects. The state considers a state license as the functional equivalent of a water right, except that it was for a fixed term. The system reflects the Northwest's historical preference for publicly sponsored development of power resources. The 1931 licensing law provided that the state would take over ownership of the licensed facilities once the sponsors recovered their investments. Language authorizing the takeovers of private projects was part of the 1931 Act. Consequently, no provisions were included for reauthorizing projects whose initial licenses had expired.

Before 1931, hydroelectric project sponsors received state authorization by applying for permanent water rights, which were issued by the office of the State Engineer, a predecessor of the Water Resources Department. The 1931 law left this system intact for publicly sponsored projects and allowed those private projects already granted permanent water rights by the State Engineer to continue operating under those rights (called power claims by the department).

Takeover Repeal:

In 1995, the Legislature turned away from the state takeover policy that formed the basis of the two-track licensing system. The Legislature passed House Bill 3087, which repealed the takeover language and directed the Water Resources Department to form a task force to draft a process for evaluating and reauthorizing existing projects. Membership of the task force was specified in the legislation (see Attachment B for the list of members). The measure also extended the expiration dates of projects whose licenses were set to expire before the convening of the 1997 Legislature.

The Hydroelectric Reauthorization Task Force, chaired by Martha Pagel, Water Resources director, has been engaged in that task since September 1995. The department arranged for a professional facilitator to help run the meetings, which were operated on a consensus basis. Minutes and meeting notices were prepared and distributed to interested members of the public and press.

This report is an effort to provide a description of the reauthorization program proposed by the task force as well as an account of the thought process leading up to its key decisions. The recommendations reflect consensus by the members of the group. However, while the task force reached consensus on the final recommendations, the members sometimes disagreed on the reasons for a recommendation and the legal or policy positions underlying compromise language. (See Attachment C)

*The basic principles of the program***A. Is a state program essential?**

The task force considered whether it was essential for Oregon to mount its own reauthorization program, since the Federal Energy Regulatory Commission also regulates hydroelectric facilities and has an extensive reauthorization program. Forty-seven of the 166 projects in Oregon meet criteria requiring them to be licensed by FERC as well as the state. Some felt that Oregon's role more properly would be to participate in the federal reauthorization process to protect state interests.

However, many task force members felt that simply allowing the licenses of existing hydro projects to expire was no solution because the licenses granted authority to use waters of the state. The task force concluded that a state reauthorization process was needed, even for the 47 hydro projects that also must undergo federal reauthorization. The reasons for reaching this conclusion varied among the members. Some members felt that continuing state oversight of all hydro projects is crucial to the state's interests. Allocating water is one of the chief functions of state government, critical to the protection of the state's resources and economy. Allowing a system whereby these decisions are made by chance, or by a government agency with priorities set by people who reside outside the state, would not be in the best interests of the citizens of Oregon.

Task force members representing FERC-licensed power producers agreed that a unified state position could facilitate the FERC reauthorization process, improve state influence at the federal level and make government more efficient. Without a coordinated state program, individual state agencies may take positions in the FERC reauthorization process that conflict with those of other state agencies. For example, agencies could recommend different minimum bypass flows depending on whether the agency's mandate was for preservation of fish runs or protection of recreational values.

Many of the public interest groups and some state agency task force members concluded that to allow the projects to continue operating according to conditions in effect prior to the license expiration also was not a reasonable alternative. Originally, the projects were licensed with many uncertainties as to the extent of their environmental impacts. The uncertainties were acceptable, in part, because of the expectation that the projects would be taken over by the state and could be shut down upon expiration of the 50-year licenses. In the case of the federally licensed projects, the expectation was that the projects would be reviewed every 50 years to be certain they were still in the public interest. These members felt that the state needed a stronger role in the development of new license conditions for federally licensed projects.

For projects not subject to federal licensing, a decision to allow the projects to continue operation without state reauthorization reviews would violate a long-standing, if tacit, understanding between the regulatory agencies and the public. Such a decision would essentially be a grant of public resources to private individuals without a forum for the full public consideration of the issues. And, even if the continued operations were to be temporary, 50 years, for example, Oregon would lose the only chance it has had since the initial licensing of these projects to review them and require new operating conditions to protect state resources. A state reauthorization program would provide a forum for consideration of whether, and under what conditions, facilities should be licensed.

Finally, without a new reauthorization law, a good deal of uncertainty would exist about the projects continued operation. Oregon law prohibits the operation of a hydroelectric project without a valid license or water right (ORS 543.120). Project owners might be forced to apply for a new license or shut down immediately as soon as their licenses expired. In addition, if expiring state licenses forced the shut down of federally licensed projects, the question of federal preemption could involve the state in long, expensive litigation. License expiration could lead to major legal difficulties for the projects, even if state officials favored their continued operation.

A state reauthorization program is needed to:

- Provide a state forum for consideration of whether, and under what conditions, facilities should be reauthorized.
- Ensure a strong, state voice in decisions affecting water resources and create a mechanism for coordination of agency positions in federal reauthorization actions.
- Develop clear new standards appropriate for projects that were built according to standards of an earlier era.
- Maintain the priority dates of the water rights in the original licenses.
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Once the water rights had expired, the projects' priority dates for the use of water might no longer be valid. If the priority dates are no longer valid, project owners would receive new priority dates junior to other users, including instream water rights. (Priority dates determine who gets water in a time of shortage.)

A clear reauthorization process and standards would provide certainty for project operators, the state and the public as to what standards in state law will apply to existing projects. Without legislative direction to the contrary, advice from the Attorney General's office suggests that projects seeking reauthorization would be required to meet the demanding siting standards in current hydroelectric licensing laws for new projects. The state's new water availability standards could bar licenses in many cases. Finally, river basin plans adopted by the Water Resources Department could preclude licenses in some cases where streams have been withdrawn from additional hydroelectric power generation.

B. Who should manage the state reauthorization program?

The task force concluded that Oregon's water right process was the most appropriate regulatory forum for reauthorizing hydroelectric projects. The courts have consistently held that states have authority over the allocation of water. The Federal Power Act requires that applicants for a FERC license comply with the requirements of state laws with respect to the appropriation of water for power purposes (Sections 9 and 27). Oregon already has in place a comprehensive system for allocating rights to water. The Water Resources Department is required to make a public interest determination in deciding whether to grant a water right that considers all interests. The task force decided to use the process and standards generally in place to allocate water, with modifications to reflect the unique characteristics of existing hydroelectric projects and to coordinate with the FERC process.

Because the Department of Environmental Quality has a unique position of authority over hydroelectric projects needing a federal license, consideration was given to placing any new hydro reauthorization program under the DEQ. Section 401 of the Federal Clean Water Act requires federally licensed activities resulting in a discharge, including hydro projects, to obtain special clean water certificates, widely referred to as “401 Certificates.” The authority for issuing these certificates has been delegated to DEQ by the Environmental Protection Agency. Under federal law, FERC cannot license a facility without an approved 401 certificate. In addition, a recent court case suggests that the state agency has the authority to include a variety of conditions in its 401 certificate determination that may not be directly based on numeric water quality criteria. This is an avenue that has been used in some Eastern states, including Maine, for review of hydro projects.

After some deliberations, the task force concluded that Oregon’s water right process was more appropriate. Since the 401 Certificate authority is a delegated one, the EPA would be the ultimate arbiter of whether the 401 review could consider economic interests in the water or recreational facilities, as well as the more traditional water quality issues. The entire 401 authority could be lost without the cooperation of EPA or by congressional action. The potential limitation or loss of this authority was of concern to state agencies.

Further, 401 Certificates are required only for FERC-licensed projects, not those licensed only by Oregon. The 401 Certificate may not be broad enough to encompass all the reauthorization issues of importance to Oregon. If DEQ were to mount a reauthorization program for all these projects both state and federally licensed, it would have to greatly expand its expertise and staffing while creating a far-reaching new program. This development would further divide authority for water management, with Water Resources continuing to issue water rights for all other uses while the DEQ would issue licenses and 401 Certificates for hydro development.

C. Guiding principles for a reauthorization program:

Developing a process and specific standards to apply across a broad range of projects posed some difficulty. Projects vary greatly in size, complexity and the degree of resource impacts they cause. The task force wanted a process that was consistent with FERC’s procedures, and did not require applicants to repeat studies or duplicate efforts made to comply with federal standards. Members also wanted a process that would maximize the state’s ability to influence FERC decision-making and reduce the likelihood of a claim of preemption of state authority. Most important, the task force wanted a state program that would allow public participation at each step along the way to reduce conflicts over resources and the possibility of future litigation.

The task force concluded that the reauthorization program should be constructed and standards drafted so that the following values are protected:

1. Environmental values and public resources:

The central issue of reauthorization is the question of what mitigation for past and future environmental impacts will be required in return for continued use of the water. Current environmental standards are much more restrictive than those in force when the

projects first were licensed. Some mitigation measures state officials believed would be adequate when projects were first licensed, have not been effective, and many projects continue to have unacceptable, detrimental impacts on fish, wildlife and recreation.

However, projects seeking reauthorization include multi-million-dollar private investments that collectively represent a major force in Oregon's economy and provide a valuable source of renewable electric energy. Industry task force members suggested that if these projects are shut down, the energy they produce would have to be replaced by some other resource, most likely fossil fuel burning facilities. They say that many projects have created new lakes and wetlands that are widely used by the public for recreation and which provide habitat for fish and wildlife. Restoring streams to pre-project conditions would make some projects unprofitable and, in some cases, might even be undesirable or impossible. However, members agreed that a reauthorization program is perhaps the state's best opportunity to require project owners to take reasonable environmental improvement measures which could help restore damaged resource conditions over time. Therefore, any process must allow all important interests to be evaluated.

The task force spent much time attempting to balance the need to recognize these projects for the benefits they provide, with the recognition that many have imposed serious environmental costs on Oregon streams. The task force concluded that on reauthorization, further environmental damage should not be allowed, and some enhancement to natural resources should be required. Some members felt that with diminishing resources and more threatened and endangered species listings, some projects must be modified to protect state resources. The task force also concluded that this was the area where specific standards must be outlined in the draft legislation to explain the extent to which mitigation will be required on reauthorization. The Task Force agreed that the "no dead fish" standard in current law for new projects would not be applied to existing facilities.

A primary issue discussed by the task force in determining mitigation requirements, was the "baseline" by which the licensing standards would be applied. "Baseline" means at what time the environmental impact of the project would be judged. If the baseline were to be the environment that existed before the project was constructed, then the mitigation required could be extensive. There was general consensus in the task force that project owners should not automatically be required to take mitigation measures that would restore conditions to those that existed before the project was constructed. However, some members felt that some mitigation for past impacts should be required, particularly in cases where mitigation was never provided in the original license, where originally required mitigation actions were not implemented or in cases where mitigation measures state regulators thought would work did not. Others were very opposed to this position and believed instead that only continuing and new impacts should be considered for mitigation. As a compromise, the task force agreed to the minimum requirements specified in Section 4 (C) on page 21 of this report, which avoid defining a baseline.

Task force members also agreed that in setting resource goals for the future and imposing conditions on reauthorization, state agencies could consider pre-project conditions. In other words, if a healthy run of anadromous fish existed above the project before it was constructed, then one of the goals could be to reestablish that run over time. However, because of the difficulty in getting agreement on the language in the bill

that would express this general concept, the task force decided to use another approach in setting minimum mitigation standards. This approach would clearly state that conditions cannot get worse, and that some restoration and rehabilitation of resources would be required on reauthorization of a project. The restoration language would provide the opportunity to set conditions on future operation that would help restore fish runs, if that is the goal of ODFW.

2. Project status and priority:

The task force agreed that the standards applied by the state should recognize the important benefits to the state provided by these projects. Millions of dollars have been invested by utility customers and stockholders in construction of many projects to provide a more reliable and renewable source of energy than power generated through fossil fuels. The Task Force concluded it would not be necessary to apply all of the strict standards used in siting new projects to those seeking water-use reauthorizations.

Further, the task force agreed that original priority dates of the project licenses should be maintained when new water rights are issued. Issuing water rights with new priority dates would put the projects at risk from claims by senior water right holders, including instream water rights. This decision was a significant compromise for environmental group representatives who viewed reauthorization as an opportunity to reconsider impacts to the aquatic habitat caused by water diversions for power production. Without a new state law permitting reauthorization with original priority dates, existing projects would be required to seek new water rights with junior priority dates and meet existing siting standards.

3. State agency coordination:

An important issue for the power industry members of the Task Force who were concerned with government efficiency, was the extent to which state agencies would be presenting a unified position on projects undergoing FERC reauthorization. Currently, agencies work independently in the FERC process, and conditions suggested by one agency may conflict with another. The task force concluded that the state should discuss conflicting issues in advance, and to the extent current law allows, present the "state's position" in a unified form when commenting to FERC. Conflicts among state agencies should be resolved by agency directors.

4. Preserving state agency authority:

Currently, several state agencies have authority over various aspects of water resource management. The Water Resources Department issues water rights, DEQ regulates water quality, DSL manages the fill and removal and wetlands programs, ODFW manages fish and wildlife programs. The Task Force concluded that the integrity of current state agency standards and programs should be maintained and that standards specific to the reauthorization of projects should be limited in number and scope. For example, WRD should perform the same public interest determination on reauthorization that is used when considering other water right applications, as modified by the bill to account for unique characteristics of hydro projects. The task force also concluded that the integrity of DEQ's 401 certification program in the federal hydroelectric licensing process should be safeguarded.



Hydroelectric projects in Oregon vary in complexity from small backyard projects lighting a single cabin to major developments capable of powering entire cities. They also can be divided into two major regulatory classes: those falling entirely within Oregon’s jurisdiction and those licensed both by the state and the federal government. Because of the diversity of projects, the Hydroelectric Reauthorization Task Force recognized that a variety of review procedures would be needed to cope with several distinct categories of projects. Many small installations, licensed only by the state, produce electricity for home or farm use, and involve no transfer of power off-site. With some exceptions, reauthorization of such limited, smaller projects is not expected to raise major issues of fish passage, recreational impacts and environmental impacts. For federally licensed projects, the task force recognized the need for a reauthorization program coordinated with FERC’s process.

Proposed:

Two Separate Reauthorization Procedures

- **State Review Process:**
Projects under state jurisdiction
— only 119 facilities
- **Joint State-Federal Review Process:**
Projects licensed by both Oregon and FERC
— 47 facilities

These considerations led the task force to propose two separate review procedures: one for projects falling entirely under Oregon’s jurisdiction and a second for larger projects also licensed by FERC. In both cases, the aim has been the same: to devise a clear, fair and open system to judge whether, and under what conditions, new water rights should be issued for projects on which the state licenses are expiring.

A. The Review Team

To provide full coordination of state interests, the task force proposes that the reauthorization reviews be conducted by a new interagency group called the Hydroelectric Application Review Team, or HART. This team would be made up of state agency representatives from three core agencies, with officials of other agencies being assigned to serve on the team whenever a project review raised issues within the agency’s area of concern. The core agencies would include the Water Resources Department, the Department of Environmental Quality and the Department of Fish and Wildlife. Agencies expected to participate on a case-by-case basis include the departments of Land Conservation and Development, Agriculture, Forestry, Economic Development, Geology and Mineral Industries, Parks and Recreation, the Division of State Lands, the Office of Energy, the Marine Board and the Public Utility Commission.

Agency directors would appoint the members of HART, who would be authorized to represent their own agencies during project deliberations. The Water Resources Department would serve as the coordinating agency and would provide administrative support for the review group. HART’s review duties would not be limited to those projects whose state licenses are expiring. A second large category of projects requiring state review are those with permanent state water rights which also are entering the FERC

reauthorization process. These include publicly-owned projects and those built before 1931. In these cases, even though project sponsors need not apply for state reauthorization, a forum is needed so that a coordinated state position on each project can be determined for presentation during the federal reauthorization hearings. The legislative task force recommended that HART perform both functions.

B. The Decision Products

1. *State Review Process (projects entirely within state jurisdiction):*

At the conclusion of the state review process, HART would prepare a proposed order approving or denying reauthorization of the water right and forward it to the Water Resources Department who makes the final reauthorization decision. The order would contain complete descriptions of the project, including any design changes, mitigation measures, habitat enhancements and any other conditions required of applicants. The Water Resources Department director is required to take public comment before issuing the order, and the director could modify the HART recommendation. However, it is expected that major differences would be ironed out during the earlier review process. If recommended, the director's action would be to issue the applicant a water right authorizing future operation of the project.

The task force judged that the authorizing document should correctly be termed a water right, not a license. Thus, under this proposal the expiring state licenses would be replaced by a water right for a specified term of years.

2. *Joint state-federal reviews:*

In the case of projects also licensed by FERC, HART would prepare the same proposed reauthorization order for the Water Resources director. However, it would also draft a proposed Clean Water Certificate required in Section 401 of the Clean Water Act and forward it to the Department of Environmental Quality. It would also draft proposed conditions to protect fish and wildlife and forward them to the Department of Fish and Wildlife for use in the state-federal consultation process required under Section 10 (J) of the Federal Power Act.

Once approved by the directors of the three agencies, these three documents would form the core of a coordinated state position on reauthorization of FERC-licensed

Decision Products

A. *State Review Process*

(for projects not federally licensed)

1. HART issues draft reauthorization order with conditions
2. WRD issues or denies water right with conditions

B. *Joint State-Federal Review Process*

1. HART issues draft reauthorization order
2. HART issues draft Water Quality Certificate
3. HART issues draft fish and wildlife conditions
4. DEQ issues water quality certificate
5. ODFW makes final fish and wildlife recommendations to FERC
6. FERC makes federal reauthorization decision with state input
7. WRD issues or denies water right

projects, and they would be forwarded to the federal agency for use in its review. Following a FERC decision, the federal action would be reviewed by the state participants, and, if consistent with previous understandings reached among the parties, would trigger the issuance of the required water right from Water Resources. If the decision is inconsistent with FERC's, the state would have the opportunity to modify the water right to make it consistent.

C. State Review Process (For Projects Not Federally Licensed)

Currently, 119 of the 166 state-authorized hydroelectric projects fall entirely under state jurisdiction and are not licensed by FERC, although some fall within federal jurisdiction but have been exempted from license requirements by FERC. Of these, 82 have licenses which expire within the next ten years.

In general, the projects subject only to state jurisdiction are located on non-navigable waterways, do not supply power to interstate commerce and are small, having outputs between 1 and 600 theoretical horsepower (between 3/4 and 448 kilowatts). Descriptions, including maps and specifications, of a few projects typical of this category are included in Attachment G at the end of this report. This group of projects includes some with far-reaching public policy impacts as well as many whose impacts are small or insignificant. The task force is proposing a two-tier review process that would allow a more limited short-form review where enough information exists to make a quick decision, while requiring a more thorough long-form evaluation for projects where information is lacking or which raise important natural resource and public policy issues.

1. Sponsors apply for reauthorization

At least three years before expiration of the hydroelectric license, WRD would notify the project owner of the expiration date and supply a copy of the forms on which to apply for renewal. Filing of the application would trigger a 45-day public review in which Water Resources would seek public comment on issues that might be raised by the proposed reauthorization. Should the owner decline to seek reauthorization, the department would require the filing of a detailed description of the steps and timetables for dismantling the project and removing equipment from waterways. The task force also recommends that the department be given limited authority to temporarily extend existing licenses, if necessary, to prevent expiration and loss of water right priority dates during the review process.

2. Project assigned long or short review

After the application has been submitted and public comments have been gathered and reviewed, HART would meet to determine if enough information exists to decide if the project, because of its small size or limited public impacts, qualifies for an abbreviated, or "short-form" review. In this process, one or more scoping or field study steps may be omitted, if appropriate, greatly speeding the review process. HART would authorize the short-form review only in cases where a review of the application and the public comments indicate that no significant public policy questions need further examination or enough information exists to decide whether the project can be reauthorized.

3. “Short-Form” review steps

In cases where initial discussions reveal that no field studies or other new information is required, all applicable standards are being met, and the project’s operation raises no significant public policy questions, then HART would immediately prepare a draft renewal order. Public comment on the proposed renewal order would be gathered during a 60-day review and a proposed final order, taking the comments into account, would be forwarded to the Water Resources Department. The Water Resources Director would continue public review of the proposal following the general procedures for proposed water rights.

These procedures include issuance of a proposed final order, a second public review period, an opportunity to file legal objections, and, in some cases, a contested case hearing and a review by the Water Resources Commission. (Copies of the water right review statutes and process are included in Attachment D at the end of this report.) At the conclusion of the review, the director would issue or deny a water right, with conditions, for the future operation of the project.

4. Full-scale review

In the initial review of the application, HART may discover that reauthorization raises important policy issues that need further discussion, or that the issues cannot be decided without further technical analysis or field studies of environmental impacts and mitigation plans. In this case, review by the “short-form” procedure would not be adequate, and a full-scale review would be undertaken instead.

HART’s first step would be to convene a well-publicized “scoping” meeting, inviting representatives of interest groups, natural resources agencies and the public. Discussions would identify issues of concern and information gaps. HART would then prepare a timetable for field studies and other information-gathering tasks the applicant would be required to complete.

At the end of the study period, the applicant would be required to

Review of Projects Without Federal Licenses

A. “Short-Form” Review

1. HART finds no major issues or information gaps
2. HART sends draft final order to Water Resources
3. WRD follows the public notice and review process currently in Oregon law.
4. Water Resources denies or issues water right for specified time period.

B. Full-Scale Review

1. HART finds unresolved issues or information gaps
2. HART convenes scoping meeting, orders studies by applicant
3. Applicant completes studies, submits final application
4. HART drafts renewal position, gathers public comment
5. HART delivers proposed final order to WRD
6. WRD reviews according to current water right law public notice requirements
7. WRD denies or issues water right with conditions

submit an expanded application report, conveying the study results and describing any project modifications or mitigation measures that might be planned. HART would prepare a draft of its reauthorization recommendations, including an expiration date, sending it out for a 60-day public review. After receiving comments, HART would deliver its proposed final order to the Water Resources director for action. From this point, the Water Resources review would be identical to that for the short-form procedure, following the same steps as other water right applications. The ultimate outcome of the process would be either reauthorization denial or issuance of a water right for a term of years for the project's future operation. The expiration date for the right would be set for up to 50 years in the future and be placed as a condition in the water right.

D. Joint State-Federal Review (For Projects Licensed by Both Oregon and FERC)

The evaluation of large hydroelectric projects falling under both state and federal jurisdiction is one of the most difficult and challenging of regulatory problems. The sensitive issue of federal preemption, the emergence of far-reaching new environmental concerns and the lack of congruence between the existing state and federal licensing laws all conspire to lengthen and complicate any procedure for reauthorizing these facilities.

To minimize this complexity, the task force has outlined a procedure that follows, as closely as possible, the FERC reauthorization process. It calls on state agencies to participate with the applicant well in advance of federal hearings to ensure that adequate information is gathered on which to base decisions. It proposes that, in all but extraordinary cases, state action on expiring projects be withheld until the federal licenses approach their expiration dates and the FERC review begins. It is expected that, during the joint review, state reviewers will use the information developed in the FERC process to the greatest extent possible in drafting a state position. Finally, the cost of reauthorization is expected to be borne largely by the applicants, as is required under federal rules.

Currently, 47 hydroelectric projects fall jointly under state and federal jurisdiction in Oregon. Of these, 26 have their state or federal license expiring in the next ten years. Fourteen of the 26 have permanent water rights but will require a state water quality certificate and fish and wildlife recommendations in the federal process. These projects are located on navigable waterways, supply power to interstate commerce or are on federally-owned land. Descriptions of a selection of projects typical of this category are supplied in Attachment G.

1. Steps in federal reauthorization

The FERC reauthorization process has three stages, the first two stages are carried out by the applicant generally without FERC involvement: (1) Reviewing the proposed project and deciding on the needed studies; (2) completing the studies requested by agencies and the public during the first stage, designing mitigation measures, and preparing and reviewing a draft renewal application; and (3) submitting a final application that incorporates information generated during the first two stages of consultation. Once FERC receives this final application, it gathers agency and public comments, drafts environmental statements and issues its reauthorization order which approves or denies continued operation of the project. A more complete description of the federal process is included as Attachment E.

Two main deadlines govern the federal timetable. The applicant must file with FERC a notice of intent to renew a license five years before license expiration, and the applicant must submit a reauthorization application at least two years before expiration. After that, FERC has no deadlines for completing its review of the proposal and may issue license extensions indefinitely until a new license is issued.

2. *Fitting Oregon's review into the federal process*

The task force proposes a process that will satisfy those federal deadlines, but has added procedural steps designed to allow for more involvement of the Oregon public and to allow time to work out a coordinated state position to present to FERC. In case of changes in the federal process, the task force recommends that, on request from the applicant, the agencies be allowed to change the state process to match the new federal process.

a. Matching timelines with the FERC process:

The task force concluded that the state reviews could not efficiently be conducted outside the federal process. Therefore, it has proposed that, if possible, the state reviews commence at about the time of the FERC review, even in cases where the state licenses are not scheduled to expire for many years. In those cases, the applicants would have the discretion to go through both processes at the same time or separately. In the case of projects whose state licenses are set to expire first, the task force recommends that the Water Resources Director be authorized to extend the state licenses to match the federal expiration dates for up to ten years. A public review process would be required if the extension granted by the department exceeds two years.

For projects already in the final stages of the FERC reauthorization process by the time this program is enacted, the task force recommends that HART be given the authority to determine at which point in the process the applicant belongs.

Because of the flexible timeline for the FERC reviews, the task force recognized that Oregon's review process must have the flexibility to revisit decisions made early in the process in case of long federal delays. In addition, the state's coordinated position on reauthorization must be open to re-evaluation following the conclusion of the FERC process in case new information emerges from additional studies and environmental assessments or in case FERC requirements are inconsistent with state action. This was intended to allow the state to avoid lengthy and costly litigation in cases where FERC's renewal order is inconsistent with earlier state actions.

b. First Stage: Consultation and Definition of Issues

At least 5 1/2 years before the expiration of the FERC license, the project owners would be required to begin the first-stage consultation process with the state. This is slightly earlier than is required in the federal process. FERC requires that the applicant file a notice of intent to apply for license renewal at least five years before the license expires. The additional half year would allow the state to organize HART and seek public input on project issues to while still allowing two full field seasons to get adequate data.

The applicant also is required to prepare an Initial Consultation Document (ICD) for the FERC process that will serve as a preliminary application for a state water right. The

applicant would provide public notice of the renewal application and collect comments for a 60-day period. Public comments would be forwarded to HART by the applicant. Finally, the applicant and HART would schedule a consultation meeting, with public and agency participation, to define policy issues and to settle on plans for information gathering and field studies and a timetable for the major state review steps. This meeting would also satisfy the FERC requirement for a public meeting to seek comment on the initial consultation document.

c. Second Stage: Project Studies, Preparation of Federal License Application

The applicant's study proposal and reauthorization schedule would be put out for public review, and, following a 30-day comment period, a final study plan and a reauthorization schedule would be drawn up by the applicant in consultation with state and federal officials and approved by HART.

The ensuing study period is expected to last at least two years. Studies may be more extensive for projects with major unresolved environmental issues or proposals for extensive facility modifications or plans for large-scale mitigation measures. In all cases, the applicants will be responsible for financing and completing the project studies.

After the first complete year of studies, the applicant would be required to prepare a mid-study status report and conduct a public meeting to disclose preliminary results. A 30-day public comment

Review of Projects With Federal Licenses

Following FERC procedures

A. Stage One

1. Applicant notifies of intent to seek reauthorization
2. Applicant prepares first stage-consultation document
3. HART and applicant hold public scoping meeting
4. Public comments on document and study plans

B. Stage Two

1. Applicant submits revised study plan to HART
2. HART approves final study plan
3. Public reviews and comments
4. Applicant conducts studies and prepares draft application
5. HART prepares unified response including draft 401 certificate, 10J recommendations and proposed water right order.

C. Stage Three

1. Applicant submits final application to FERC which also serves as water right application to HART
2. Applicant submits 401 water quality certificate application
3. FERC judges application complete and requests agency comments
4. HART sends provisional state position and proposed final water right order to WRD
5. WRD completes water right review
6. DEQ completes 401 review and issues certificate
7. FERC completes environmental assessments and issues reauthorization order
8. HART and WRD review and take final water right action

period would follow to provide public feedback on the status report. The applicant would be required to adjust the study plan and schedule, if necessary, based on input from the public and state and federal agencies.

Upon completion of the studies, the applicant would prepare a preliminary license renewal application. The applicant would be required to complete the task at least 12 months before the federal deadline for submitting a final license renewal application. The task force members wanted to allow the state time to prepare its position before the applicant submits its final application to FERC. The preliminary application would include study results, proposed conditions, a preliminary 401 water quality certificate position and detailed plans for any proposals to mitigate environmental impacts. The applicant would be required to conduct a joint agency public meeting on the draft application, and the public would have 90 days to review it and submit comments to the applicant and HART.

Using the draft application, its own analysis and the public comments, HART would prepare a provisional state position paper on the project, outlining the coordinated state response to be filed in the FERC reauthorization process. The position paper would include initial recommendations and conditions for a water right, draft 10(J) recommendations and initial 401 certificate recommendations. The paper would be sent out for review, and after a 30-day comment period, HART would finalize the state position. The directors of DEQ, ODFW, and WRD could change HART's proposed water right, 401 certificate, and 10(J) recommendation after conferring with HART. Once finalized, this state position would provide the applicant with state authorization for the project, if approved, and would not be changed by the state except under the circumstances outlined at the end of this section in Subsection (e).

d. Third Stage: Final Reauthorization Application and Formal Review

This is the stage when the formal, legal process begins. A final application is submitted to FERC which also serves as the final water right application to the state. The applicant would also submit a 401 water quality certificate application to DEQ. How long the process takes after this point depends on how quickly issues are considered at the federal level. FERC is under no obligation to complete review of the application by a time certain. Consequently, the state process must have the flexibility to extend time lines and to reconsider issues if new information is developed.

Once FERC determines that the application is complete, it then requests state and federal agency recommendations and proposed license conditions. If details of the final application are consistent with the project description presented to HART previously, the state's provisional position would serve as the final state position on the renewal in the federal process. HART would submit to FERC, Oregon's unified state comments, consisting of proposed water right order with conditions, Section 10 (J) fish and wildlife recommendations and conditions and a preliminary answer on the water quality 401 certificate application. After the proposed order is issued, WRD would follow the existing water right review process. The WRD director could change HART's proposed order only with justification in the form of legal findings. DEQ would complete its 401 review and issue or deny a certificate.

e. Coordinating the final state decision with FERC

Given the potential for FERC delays, the WRD director would be given authority to

extend protest periods to await additional information or final action from FERC. If FERC continues to delay, the state can choose to issue the water right or can issue an extension for up to five years with interim conditions.

Once FERC completes its environmental assessments and issues a formal reauthorization order, the WRD director, if appropriate, would issue a final water right order that would embody all the conditions agreed on during the review. The director's final order could differ from the proposed order if:

1. New information is developed during the environmental impact analysis or assessment that reveals impacts not previously known;
2. The applicant changed the final FERC application significantly;
3. FERC placed conditions and restrictions on the federal license that were inconsistent with those in the state water right; or
4. In response to a protest, after consulting with HART.

The final water right issued by WRD would have the same expiration date as the FERC license.

E. Implementation and Funding

Currently, state agencies are not adequately funded to manage a full reauthorization program or to adequately participate in the federal process. The state program for processing new hydroelectric applications depends on revenue from two sources – an annual operating fee from existing projects and application fees. The operating fee generates about \$1,040,000 per biennium. Proceeds are split, with 84 percent going to the Oregon Fish and Wildlife Department and 16 percent to the Water Resources Department. Currently, the DEQ receives no funding through annual fees, although the agency can assess fees for 401 certificate applications.

The annual operating fee is assessed according to the power capacity of a facility and is set by the Water Resources Commission for private projects with state licenses and by statute for power claims. Currently, most projects pay between 15 and 20 cents annually per theoretical horsepower (thp) per year. The task force recommends that the funding required to implement the reauthorization program be provided through a new reauthorization application fee and a reauthorization fee. Agencies estimate that up to \$500,000 per biennium will be needed to cover these costs. An overall fee of 24 cents per thp would be required to pay for existing staff and new staff needed for the reauthorization program.

Application fees would depend on the scope of state review required and would be estimated by HART at the beginning of the process after consultation with the applicant. The fee will depend on the size and complexity of the project. Applicants would not be charged for costs covered under annual fees or reauthorization fees – costs associated with maintaining permanent staff in the Oregon Departments of Fish and Wildlife, Water Resources and Environmental Quality.

The reauthorization fee would be based on the power capacity of the facility and would be assessed on state authorized projects that will be seeking reauthorization with the Federal Energy Regulatory Commission or the Water Resources Department. Projects owners would not be required to pay the fee if they are not seeking reauthorization. The reauthorization assessment would be added to the annual fee already paid by the project, resulting in a total annual payment of 24 cents per theoretical horsepower.



To Govern Reauthorization Decisions

Extensive discussions among the task force members produced a series of compromises and agreements. These agreements ultimately yielded a statement of underlying policy and a series of specific standards to govern reauthorization decisions. The language of the recommended policy and standards has been drafted into proposed amendments to House Bill 2119 and is reproduced below. Because of pre-session deadlines, it was necessary to submit HB 2119 to the Legislature before the task force reached full agreement on the fish and wildlife standards. The amendments below represent consensus among the members, although members differ in their reasons for agreeing to the proposed language. The following discussion is offered to help clarify the task force's thinking and intent in arriving at the recommended language.

A. General State Policy:

The following is proposed as an underlying policy to guide decisions on hydroelectric reauthorization as well as a policy to guide the administration of the reauthorization program:

The Legislative Assembly declares that it is the policy of the State of Oregon: (1) To reauthorize the use of water by existing projects provided that such projects meet the standards established in section 5 of this Act, are consistent with other applicable state laws and will not impair or be detrimental to the public interest. (2) To recognize that existing projects have resulted in both benefits and costs to society, and that the opportunity exists on reauthorization to promote the public benefits while minimizing the public costs. (3) To maintain or enhance the natural resources of the state and to protect the natural resources of the state from adverse impacts caused by the continued existence of a project. (4) To protect the health and safety of the residents of the state. (5) To require the Water Resources Department and other affected state agencies to conduct a coordinated review of projects seeking reauthorization in order to develop a unified state position in any local, state or federal proceedings related to the reauthorization of hydroelectric projects.

Intent: The task force wished to acknowledge that, while some projects have had environmental impacts, they are nevertheless important economic assets to the state and represent large investments by the people who sponsored them. The objective is to approve them, as long as there will not be unacceptable impacts to state resources. The group proposes this approach because the projects represent significant investments made on the basis of state and federal agency authorizations. Further, both the project designs and the agency authorizations were based on environmental standards and understandings that were in effect at the time of their original siting. Some task force members believed that reauthorization should be an opportunity to bring existing projects up to current day design standards, rather than to allow continued unacceptably high losses to the state's natural resources. However, the group recognized that in at least some cases, no project modifications, no matter how extensive, would be sufficient to meet siting requirements in current law for those locations. Yet, even in these cases, major improvements could still be made in fish runs and project operations through the proposed mitigation standards.

The task force's objective, therefore, is to favor reauthorization of projects as long as their continued operation will not cause further damage to Oregon resources that cannot be mitigated. The policy is intended to reflect a recognition that the projects have both benefits and costs, and the overall goal is, to the extent possible, to maximize benefits while minimizing costs. However, the task force agreed that modifications causing further resource losses should not be allowed. Instead, projects seeking reauthorization should generally be required to take steps to enhance the natural resources of the state.

The task force recommended that projects up for reauthorization be required to remedy any potential seismic, hydrologic or other safety hazards that could threaten lives or property. In the years since the projects' original construction, a great deal has been learned about earthquake damage and protective construction techniques. The task force also agreed that water quality standards must be met.

The recommended policy also includes a statement requiring state agencies involved in the reauthorization of hydroelectric projects to conduct a coordinated review and to develop a unified state position with regard to each project. The task force felt that project owners should be able to deal with a single entity, and arrive at a coordinated set of requirements, when asking the state for a water-use reauthorization decision. This was a highly significant point for task force members representing the electric power industry, some of whom said the coordination requirement was essential for their support of the program.

B. Public Interest Standards:

The task force recommends that hydroelectric projects receive authorization only in cases where they are found, by a clear and public process, to be in the broad public interest of the people of Oregon. It suggests a public interest review process based on one currently employed by the Water Resources Department in reviewing applications for water rights:

Standards for water rights decision. (1) Following the process set forth in sections 1 to 34 of this Act, the Water Resources Director shall issue a water right for continued operation of an existing hydroelectric project upon a finding that the proposed use will not impair or be detrimental to the public interest, considering: (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 of the waters of this state, 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.

Intent: Since applicants will be seeking state water rights and not licenses, the task force felt that the public interest determination process used by the Water Resources Department in reviewing applications for water rights would be the most appropriate process. This public interest determination allows the department to weigh and balance all competing interests in the use of water in a given area when making judgments on granting new water rights, provided the minimum standards described below are also met. Thus, the draft legislation contains language found in ORS Chapter 537 requiring all of the uses of water to be considered and balanced in making water right decisions.

C. Minimum Fish And Wildlife Standards:

The task force recommends the following minimum mitigation standard that must be met before WRD makes a public interest determination. The standards also serve as a framework for agencies in drafting specific rules setting out state goals for fish and wildlife protection and rehabilitation:

(2) In determining whether the proposed use will impair or be detrimental to the public interest, the following minimum standards shall apply:

(a) For impacts to fish and wildlife resources attributable to the project the department shall require:

(1) Mitigation for:

(A) Adverse impacts that occur due to new construction or operational changes to the project; and

(B) Ongoing adverse impacts existing at the time of reauthorization; and

(2) Appropriate measures to promote restoration and rehabilitation of fish and wildlife resources to support goals expressed in statute or in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission.

(3) In determining the mitigation, restoration and rehabilitation measures required under subsection (2) of this section, the Water Resources Department shall consider historic impacts, ongoing impacts and projected future impacts of the project and the existence and success of past mitigation measures associated with the project. Required mitigation, restoration and rehabilitation may include measures to restore or replace the benefits of historic resource conditions in order to meet resource goals contained in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission.

*** (6) As used in this section, “mitigation” means addressing the adverse effects of an existing project by considering, in the following order of priority:

(a) Avoiding the impact altogether by not taking a certain development action or parts of that action; (b) Minimizing impacts by limiting the degree or magnitude of the development action and its implementation; (c) Rectifying the impact by repairing or rehabilitating the affected environment; (d) Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures; and (e) Compensating for the impact by replacing or providing comparable substitute resources or environments.

Intent: The group concluded that it would be neither possible nor appropriate to require existing hydroelectric projects to be modified to meet all state standards currently in effect for the siting of new hydro facilities. Those demanding standards essentially require new hydro projects to be harmless to anadromous fish, and it is doubtful that the larger of the existing projects could be made to meet new-project standards. Instead, the task force chose to rely on requirements that projects seeking reauthorization demonstrate that continued operation of the project will not cause further resource damage and that project owners will take appropriate measures to restore and rehabilitate resource conditions. The restoration required would be directed by adopted plans of the Fish and Wildlife Commission.

Task Force members envision the process of arriving at final mitigation requirements for each project to be both a collaborative one and highly site specific. Beginning at the first scoping meetings, full involvement of the public, interest groups, agencies and project sponsors should be sought. The group concluded that mitigation requirements should be based on state fish and wildlife goals for the region and the waters involved. Those goals should be clearly stated at the beginning of the reauthorization review. Participants should focus on those goals and how proposed mitigation steps might conform to them, ultimately to be drafted as conditions in a new water right or 401 water quality certificate.

The task force concluded that further adverse impacts to fish and wildlife from continued operation or expansion of these projects should not be allowed. Members felt that the water-use reauthorization process would provide an opportunity for Oregon to recover important resources. They also regarded the process as an opportunity, in some cases, to bring to the negotiating table environmental and public concerns that might not have been considered during the original siting. It was felt that, since public values and concerns have changed since the time the projects originally were sited, the reauthorization process should provide a vehicle for state officials to use today's resource goals in negotiating mitigation measures. However, it was recognized that broad and costly mitigation requirements could outstrip sponsors' ability to implement them and force closure of projects in some cases. The group wanted the standards to be workable and fair.

Further, the mitigation language is not intended to require project owners to pay cumulative costs for loss of state resources during the period of past operations. Instead, the task force felt that efforts should be devoted to solving current problems and furthering state resource goals. The task force also recognized that project owners should not be held responsible for resource impacts that cannot be attributed to the project. If other land management activities in a watershed are the primary cause of fish population declines, then hydro project owners would not be expected to take full responsibility for reaching today's goals. Assessment of resource impacts attributed to the project is expected to be a central component of field studies that in many cases will be undertaken before applicants file final reauthorization applications.

The proposed definition of mitigation was borrowed, with a few changes, from regulations of the Federal Energy Regulatory Commission in an effort to make state and federal regulations as consistent as possible. Similar language is used in other state programs. It was intended to be flexible and to allow mitigation decisions to be arrived at in an atmosphere of consultation and consensus, while setting the priorities for the decisions.

D. Other Minimum Standards:

The following standards are intended to safeguard other important state resources and to prohibit project modifications that would cause a net loss of these resources. The task force did not intend to interfere with any authority currently held by state agencies in regulating these resources but to provide some statement on minimum requirements that must be met:

- (c) The project shall comply with water quality standards adopted by the Environmental Quality Commission.
- (d) The project shall not endanger the public health and safety. The project shall be operated in a manner that provides practical protection from vulnerability to seismic and geologic hazards.
- (e) Wetland resources shall be protected, maintained or enhanced. The Water Resources Department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to wetland resources associated with the project, including wetlands lost or created by construction and operation of the project, and mitigation proposed by the applicant. Reauthorization that results in a net loss to existing wetland resources shall be not be approved.
- (f) Other resources in the project vicinity including recreational opportunities, scenic and aesthetic values, historic, cultural and archaeological sites, and botanical resources shall be protected, maintained or enhanced. The department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to such resources associated with the project, including resources lost or created by construction and operation of the project, and mitigation proposed by the applicant. If the project results in a net loss to existing resources, reauthorization shall not be approved.

Intent: This language is intended to ensure that important resources are not lost or reduced. The task force agreed that no compromises could be made in regards to water quality standards. They must be met and DEQ's authority must be preserved. With other resources, some trades-offs could be allowed. For example, some recreational opportunities may be lost as a consequence of fish mitigation measures, but action that creates the same recreational opportunity elsewhere could be adequate protection of the resource as long as there is not a net loss. The language is also intended to recognize that projects may have created some resource benefits such as recreational opportunities or new wetlands. In imposing conditions or requiring mitigation to protect and enhance state resources, regulators should consider those benefits.

E. Unresolved Issues

The task force did not have sufficient time to address the questions of what process and standards should apply when a project owner decides not to reauthorize a project and must remove the structure. HB 2119 recommends that a decommissioning task force be formed during the 1997-99 interim to recommend new laws for decommissioning facilities. Meanwhile, the measure allows the Water Resources Commission to adopt rules outlining decommissioning procedures.

In addition, the committee will develop recommendations on statute changes for processing new hydroelectric applications. Many members of the Reauthorization Task Force felt that the two processes – the one for new projects and the one for reauthorizing existing projects – should be compatible. However, the Reauthorization Task Force felt they didn't have sufficient time to resolve the issues surrounding both.