Chapter 543A

2009 EDITION

Reauthorizing and Decommissioning Hydroelectric Projects

GENERAL PROVISIONS

543A.005 Definitions
543A.010 Findings
543A.015 Purpose
543A.020 Policy
543A.025 Minimum standards for decision on reauthorization of water right; rules

WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A STATE PROJECT

543A.030 Notice of intent
543A.035 Reauthorization application and public comment
543A.040 Process determination
543A.045 Public scoping meeting
543A.050 Application report
543A.055 Hydroelectric Application Review Team review of application; draft proposed final order; public comment

WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A FEDERALLY LICENSED PROJECT

543A.060 Coordination of state and federal reauthorization processes
543A.065 Changes to expiration date of water right for existing project
543A.071 Water Resources Department notification to holder of hydroelectric license or water right for hydroelectric purposes; response of holder
543A.075 Notice of intent to apply for reauthorization of right to use water for hydroelectric purposes
543A.080 Submission of preliminary application information
543A.085 Public scoping meeting
543A.090 Mid-study status report; public meeting; period for comment on status report
543A.095 Draft application
543A.100 Final application for water right; application for water quality certification
543A.105 Hydroelectric Application Review Team review of final application; unified state position in federal proceeding
543A.110 Water quality certification
543A.115 Final unified state position

PROCESS FOR COMPLETING REAUTHORIZATION OF WATER RIGHT FOR EITHER STATE OR FEDERALLY LICENSED PROJECT

543A.120 Proposed final order
543A.125 Approval or rejection of application for reauthorization
543A.130 Contested case hearing; final order
543A.135 Exceptions to final order
543A.140 Terms, limitations and conditions of water right
543A.145 Water right certificate
543A.150 Modification of time limits

DECOMMISSIONING

543A.300 Decommissioning; rules
543A.305 Conversion of hydroelectric water right to in-stream water right; exceptions

HYDROELECTRIC APPLICATION REVIEW TEAM

543A.400 Duties of Hydroelectric Application Review Team

FEES AND EXPENSES

543A.405 Application fees
543A.410 Fee schedule; appeal
543A.415 Reauthorization fee

MISCELLANEOUS

543A.800 Effect of hydroelectric reauthorization process on existing rights
543A.805 Reference to licensee or license
543A.810 Effect of amendment or repeal of law

GENERAL PROVISIONS

543A.005 Definitions. As used in ORS 543A.005 to 543A.415:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Water Resources Director.

(4) "Federally licensed project" means an existing project licensed under ORS 543.260 that is also licensed by and has been or will be reviewed by the Federal Energy Regulatory Commission under the Federal Power Act, as amended.

(5) "Project" has the meaning given in ORS 543.010.

(6) "State project" means an existing project for which the authority to operate is a time-limited water right for the use of water for hydroelectric purposes and that is not licensed by the Federal Energy Regulatory Commission. "State project" includes a project granted an exemption by the Federal Energy Regulatory Commission.

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

(8) "Water right" includes the use of water for hydroelectric purposes pursuant to a license issued under ORS 543.260. [1997 c.449 §1]

543A.010 Findings. The Legislative Assembly finds that many hydroelectric projects within the state hold water rights for hydroelectric purposes for a limited time period, and that those water rights will expire. State law does not currently prescribe a means for reauthorizing the use of water for hydroelectric purposes. Therefore, the Sixty-eighth Legislative Assembly created a hydroelectric task force to recommend a process and standards for a coordinated state review of existing facilities. The hydroelectric task force was composed of representatives of interested state agencies, investor-owned utilities, publicly owned utilities, municipalities, environmental organizations, agricultural organizations and nonutility owners of hydroelectric projects. In its report to the Sixty-ninth Legislative Assembly, the hydroelectric task force included legislative recommendations that served as the foundation for the provisions of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. [1997 c.449 §2]

543A.015 Purpose. It is the purpose of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 to establish a process for developing a coordinated state position to be reflected in governmental proceedings related to the reauthorization of existing hydroelectric facilities. The coordinated state position shall be reflected in state decisions, including but not limited to decisions relating to the allocation of water, certification of water quality and other state regulatory actions, as well as in state comments on federal actions, including relicensing by the Federal Energy Regulatory Commission. [1997 c.449 §3]

543A.020 Policy. 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 ORS 543A.025, 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. [1997 c.449 §4]

543A.025 Minimum standards for decision on reauthorization of water right; rules. (1) Following the process set forth in ORS 543A.005 to 543A.410, 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.

(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 Water Resources Department shall require:

(A) Mitigation for:

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

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

(B) 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.

(b) All conditions included in a water right certificate issued to reauthorize the use of water for hydroelectric purposes shall be consistent with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for the protection, mitigation and enhancement of the fish and wildlife resources of the region.

(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 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.

(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 and in rules adopted by other state agencies with regulatory or advisory responsibility for the project.

(4) The Water Resources Commission shall adopt all rules necessary to carry out the policy set forth in ORS 543A.020 and to implement the minimum standards set forth in subsection (2) of this section. In the absence of implementing rules, the department may act on applications for reauthorization of a project subject to the standards set forth in this section.

(5) As used in this section, "mitigation" means addressing the adverse effects of a project proposed for reauthorization 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. [1997 c.449 §5]

WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A STATE PROJECT

543A.030 Notice of intent. (1) Not later than three years before the expiration of a water right for a state project, the Water Resources Department shall notify the project owner of the expiration of the water right and request that the owner advise the department whether the owner intends to seek reauthorization of the water right for the state project.

(2) If the owner does not intend to seek reauthorization, the owner shall, within 90 days after receiving notice under subsection (1) of this section, inform the department of the disposition of the state project.

(3) If the owner intends to seek reauthorization, the owner shall, within 90 days after receiving notice under subsection (1) of this section, submit to the department a notice of intent to file an application for reauthorization of the water right. The notice of intent shall:

(a) Include a statement of the applicant's intent to continue operation of the state project; and

(b) Describe the state project, including but not limited to the location and capacity of the state project and the identification of affected Indian tribes and local government entities.

(4) The department shall cause public notice to be given upon receipt of a notice of intent. The public notice shall include the date of expiration of the water right and a description of the state project.

(5) Only the project owner may apply to reauthorize the water right for a state project. [1997 c.449 §6]

543A.035 Reauthorization application and public comment. (1) Within 60 days after submitting a notice of intent under ORS 543A.030, the applicant shall submit to the Water Resources Department an application to reauthorize the water right for the state project on a form prescribed by the department.

(2) The reauthorization application for a water right for the use of water for hydroelectric purposes shall set forth:

(a) The name and post-office address of the applicant;

(b) The location of the project by county and stream and, when appropriate, by city or nearby city;

(c) The amount of water in cubic feet per second;

(d) The theoretical water horsepower; and

(e) Any other information required in the application form.

(3) Upon receipt of a reauthorization application for the use of water for hydroelectric purposes, the Water Resources Department shall convene the Hydroelectric Application Review Team for the state project. The team shall consist of representatives of the Water Resources Department, the Department of Environmental Quality and the State Department of Fish and Wildlife and may include a representative of any other state agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the state project.

(4) Within seven days after receiving a reauthorization application under subsection (3) of this section, the department shall notify any person who responded to the notice of intent and give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and participate in the reauthorization process.

(5) Within 45 days after the public notice under subsection (4) of this section, any person interested in the application shall request future notices about the state project and may submit written comments to the department. [1997 c.449 §7]

543A.040 Process determination. (1) Within 60 days after the close of the period allowed for public comment under ORS 543A.035, the Hydroelectric Application Review Team shall determine whether the reauthorization application for the water right contains sufficient information to determine whether reauthorization of the state project will comply with ORS 543A.025.

(2) If the team decides that sufficient information is available to determine whether reauthorization of the water right for the state project will comply with ORS 543A.025, the team shall proceed with expedited processing of the reauthorization application. The team shall review the application and any public comments received on the application and prepare a draft proposed final order, including findings of fact and conclusions of law, for the water right. Upon completion of the draft proposed final order, the team shall give public notice of the draft proposed final order in the weekly notice published by the Water Resources Depart-

ment. The notice shall include a request for comments on the draft proposed final order.

(3) Within 60 days after the public notice under subsection (2) of this section, any person interested in the draft proposed final order shall submit written comments to the team. A person who submits written comments under this subsection shall identify the provision of the draft proposed final order in question and specify why the person objects to or supports the provision. The team shall review the comments received and may revise the draft proposed final order. Unless the department receives a request under subsection (4) of this section, the team shall submit a proposed final order to the department within 30 days after the close of the period for public comment on the draft proposed final order.

(4) If the draft proposed final order prepared by the team under subsection (2) of this section proposes to deny the application for reauthorization of the water right, the applicant may request the department to process the application in accordance with ORS 543A.045 to 543A.055. The applicant shall submit a request under this subsection within the 60-day period allowed for public comment on the draft proposed final order.

(5) Unless the department receives a request under subsection (4) of this section, the department shall issue the proposed final order in accordance with the provisions of ORS 543A.120 to 543A.300.

(6) If the team determines that additional information is necessary to determine whether reauthorization of the state project will comply with ORS 543A.025, the applicant shall comply with the process established in ORS 543A.045 to 543A.055 and 543A.120 to 543A.300. [1997 c.449 §8]

543A.045 Public scoping meeting. (1) If the Hydroelectric Application Review Team finds additional information is necessary to complete the reauthorization process, the applicant, in conjunction with the team, shall convene a public scoping meeting.

(2) The applicant shall be responsible for conducting the public scoping meeting. The team, federal agencies, federally recognized Indian tribes and members of the public shall be invited to participate. The purpose of the public scoping meeting shall be to allow an opportunity for the participants to review the information available and to:

(a) Discuss a proposed schedule for completion of the reauthorization process;

(b) Discuss studies and additional information that may be needed; and

(c) Identify other resources and other health and safety issues of the state that must be considered in the reauthorization process.

(3) At the public scoping meeting, the team shall:

(a) Explain to the public the process for reauthorizing the state project; and

(b) Identify to the public the members of the team.

(4) Within 90 days after the public scoping meeting, the team shall publish notice of the availability of the plan for completing the review process, including a time schedule. The plan shall be developed by the Water Resources Department in consultation with the applicant. [1997 c.449 §9]

543A.050 Application report. In accordance with the schedule established pursuant to ORS 543A.045, and after conducting the studies and collecting the additional information identified at the public scoping meeting under ORS 543A.045, the applicant shall prepare an application report and file the report with the Hydroelectric Application Review Team. The application report shall include study results, proposed mitigation measures, applicable state statutes and rules and any necessary changes to the operation of the hydroelectric project required to comply with such statutes and rules. [1997 c.449 §10]

543A.055 Hydroelectric Application Review Team review of application; draft proposed final order; public comment. (1) The Hydroelectric Application Review Team shall review the application report prepared under ORS 543A.050 and prepare a draft proposed final order approving or denying the reauthorization of the water right. The draft proposed final order shall include the findings required for a proposed final order under ORS 543A.120. Upon completion of the draft proposed final order, the Water Resources Department shall give public notice of the draft proposed final order in the weekly notice published by the department. The notice shall include a request for comments on the draft proposed final order.

(2) Within 60 days after the public notice under subsection (1) of this section, any person interested in the draft proposed final order shall submit written comments to the team.

(3) Within 30 days after the close of the period for public comment on the draft proposed final order, the team shall make any revisions necessary in response to comments received and submit a proposed final order to the department.

(4) The department shall complete the reauthorization process in accordance with the provisions of ORS 543A.120 to 543A.300. [1997 c.449 §11]

WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A FEDERALLY LICENSED PROJECT

543A.060 Coordination of state and federal reauthorization processes. (1) For a federally licensed project, the Water Resources Department and the Hydroelectric Application Review Team shall conduct the state reauthorization review, to the maximum extent feasible, in a manner that is consistent with and avoids duplication of federal agency review. Such coordination shall include, but need not be limited to:

(a) Whenever feasible, elimination of duplicative application, study and reporting requirements;

(b) Hydroelectric Application Review Team use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable state standards;

(d) Whenever feasible, joint hearings and issuance of a state water right decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any state hydroelectric water right that are consistent with the conditions established, or required to be incorporated into licensing, by the federal agency.

(2) In order to better coordinate with the review of the project by the Federal Energy Regulatory Commission, the team may, at the request of an applicant, make changes to the process set forth in ORS 543A.060 to 543A.115, if the changes do not diminish opportunities for public input otherwise provided by ORS 543A.060 to 543A.115. [1997 c.449 §12]

543A.065 Changes to expiration date of water right for existing project. (1) Notwithstanding the expiration date set forth in a water right for an existing federally licensed project, upon the request of the holder of the water right, the Water Resources Department may:

(a) Extend the expiration date of the water right, for a period of up to 15 years, to correspond to the expiration date of the federal license for the project; or

(b) Process an application for reauthorization of the water right prior to the actual expiration date of the water right in order to correspond with the expiration of the federal license for the project.

(2) For a project with a water right that expires more than 15 years before the expiration date of the federal license for the project, the Hydroelectric Application Review Team shall evaluate the project under the process and standards established in ORS 543A.005 to 543A.025 and 543A.060 to 543A.410 for a state project. A reauthorized water right for such a project may be for a term concurrent with the federal license. [1997 c.449 §13]

543A.070 [1997 c.449 §14; repealed by 1999 c.873 §14 (543A.071 enacted in lieu of 543A.070)]

543A.071 Water Resources Department notification to holder of hydroelectric license or water right for hydroelectric purposes; response of holder. (1) Not later than six years before the expiration of any state or federal hydroelectric license or state authorized water right issued to a federally licensed project, the Water Resources Department shall notify the holder of the date of expiration of the right or license and shall ask that the holder advise the department whether the holder intends to seek reauthorization or relicensing.

(2) If the holder does not intend to seek reauthorization, the holder shall inform the department within 90 days after receiving notice under subsection (1) of this section of the proposed disposition of the federally licensed project.

(3) If the holder intends to seek reauthorization, the holder shall inform the department within 90 days after receiving notice under subsection (1) of this section whether the holder intends to seek reauthorization of the water right concurrently with the federal relicensing.

(4) A holder seeking relicensing and reauthorization concurrently:

(a) Shall not, by applying for reauthorization, under ORS 543A.075 and in the absence of agreement by the holder, be deemed to have accelerated the actual expiration date of the project's water right; and

(b) May, upon providing concurrent notification to the Federal Energy Regulatory Commission, withdraw and void its application for reauthorization at any time prior to issuance of the final water right certificate issued by the Water Resources Director without prejudice to its right to reapply for reauthorization of its water right.

(5) Any water right issued by the Water Resources Department pursuant to an application filed under this chapter shall become effective upon the issuance of the new water right. The existing water right shall be canceled immediately upon issuance of the new water right.

(6) A holder not electing to concurrently seek reauthorization but seeking relicensing shall notify the Water Resources Department

of its position and shall indicate in the notification its plans for the project and the project's state water right.

(7) In the absence of agreement by the holder to pay the application fees under ORS 543A.405, and notwithstanding the provisions of ORS 543A.015, the state is not required to develop and provide a coordinated state position. [1999 c.873 §15 (enacted in lieu of 543A.070)]

543A.075 Notice of intent to apply for reauthorization of right to use water for hydroelectric purposes. (1) Each person operating an existing federally licensed project and intending to apply for reauthorization shall submit to the Water Resources Department a notice of intent to file an application for reauthorization of the water right for the project. If the person intends to seek reauthorization concurrently with federal relicensing, the notice of intent shall be submitted at the same time the person provides the information to the department under ORS 543A.071 (3). The notice of intent shall include:

(a) The name and post-office address of the applicant;

(b) The federal project number;

(c) The expiration date of the federal license and state water right for the project;

(d) An unequivocal statement of the applicant's intention to file an application for reauthorization of the state water right;

(e) The location of the project by county and stream and, when appropriate, by city or nearby city;

(f) The amount of water in cubic feet per second; and

(g) The project capacity.

(2) Upon receipt of a notice of intent under subsection (1) of this section, the department shall:

(a) Convene the Hydroelectric Application Review Team for the project. The team shall consist of representatives of the Water Resources Department, the Department of Environmental Quality and the State Department of Fish and Wildlife and may include a representative of any other agency that has regulatory or advisory responsibility for the project or a resource or hazard affected by the project.

(b) Provide public notice of the receipt of the notice of intent. The public notice shall provide the date of the public scoping meeting to be conducted under ORS 543A.085 and include a description of the hydroelectric project, the location of the project, the expiration dates of the water right for the project and the Federal Energy Regulatory Commission license for the project, and information pertaining to how an interested person may obtain future notices about the application and participate in the reauthorization process.

(3) Any person who is authorized by the Federal Energy Regulatory Commission to apply for a license for a federally licensed project may apply to reauthorize a water right for the project. The team shall process such applications under the standards and process set forth in ORS 543A.060 to 543A.300 for a federally licensed project. A nonowner applicant may obtain a water right with the priority date of the expiring water right only if the applicant submits a notice of intent within six months after the owner submits a preliminary application as described in ORS 543A.080, or within 30 days after June 30, 1997, whichever is later. [1997 c.449 §15; 1999 c.873 §16]

543A.080 Submission of preliminary application information. Within 30 days after an applicant provides a notice of intent under ORS 543A.075, the applicant shall provide to the Water Resources Department a preliminary application, which shall be the first-stage consultation document of the Federal Energy Regulatory Commission. The preliminary application shall include the following information:

(1) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range and section, and also showing the specific location of all existing and proposed project facilities, including but not limited to roads, transmission lines and other appurtenant facilities;

(2) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or a penstock;

(3) A summary of the existing operational mode of the project and any proposed changes;

(4) Identification of the environment affected or to be affected, the significant resources and hazards present and the applicant's existing and proposed environmental protection, mitigation and enhancement plans, to the extent known at that time;

(5) Streamflow and water information;

(6) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(7) Any other information required in the application form provided by the department. [1997 c.449 §16]

543A.085 Public scoping meeting. (1) Not less than 30 days but not more than 60 days after submitting the preliminary application information as required under ORS 543A.080, the applicant, in conjunction with the Hydroelectric Application Review Team, shall convene a public scoping meeting. To the extent practicable, the applicant shall conduct the public scoping meeting at the first stage of the Federal Energy Regulatory Commission review of the federal license for the project.

(2) The applicant is responsible for conducting the public scoping meeting and shall invite the team, federal agencies, federally recognized Indian tribes and members of the public to participate. The purpose of the public scoping meeting is to allow an opportunity for the participants to review the information available and to:

(a) Discuss a proposed schedule for completion of the reauthorization process;

(b) Discuss studies and additional information that may be needed; and

(c) Identify other resources and other health and safety issues of the state that must be considered in the reauthorization process.

(3) At the public scoping meeting, the team shall:

(a) Explain to the public the process for reauthorizing the project; and

(b) Identify to the public the members of the team.

(4) Following the public scoping meeting, the team shall allow 60 days for public comment on the preliminary application information, the proposed schedule, proposed studies and other resources and other health and safety issues to be considered in the reauthorization process.

(5) Within 90 days after the public scoping meeting, the applicant shall develop and submit study proposals to the team. Upon receipt of the proposals, the team and the applicant shall publish notice of the availability of the proposals and allow 30 days for the public to provide comments on the proposals.

(6) Based on its review of the comments and recommendations on the study proposals from the Hydroelectric Application Review Team, other state agencies and local governments, federally recognized Indian tribes and members of the public, the applicant shall prepare final study proposals and methodology and submit the final study proposals and methodology to the team. Upon receipt of the final study proposals and methodology, the team shall make the applicant's study proposals and methodology available to the public.

(7) The study proposals shall allow at least two years for completing the studies. [1997 c.449 §17; 2001 c.369 §1]

543A.090 Mid-study status report; public meeting; period for comment on status report. (1) Upon completion of the first year of studies, the applicant shall prepare a mid-study status report and present the mid-study status report to all interested persons at a public meeting. Following the public meeting, the Hydroelectric Application Review Team, other state agencies and local governments, federally recognized Indian tribes, federal agencies and members of the public shall have 30 days to comment on the status report and suggest changes to the studies.

(2) The applicant shall consider any comments received in response to the mid-study status report and make any necessary changes prior to completing the second year of studies. [1997 c.449 §18; 2001 c.369 §2]

543A.095 Draft application. (1) Not later than one year before the applicant files a final application with the Federal Energy Regulatory Commission to reauthorize the federal license for the hydroelectric project, the applicant shall file with the Hydroelectric Application Review Team:

(a) A draft application for a water right for the project, which shall be the Federal Energy Regulatory Commission draft application; and

(b) Information regarding potential water quality impacts of the project.

(2) The applicant shall provide the team with copies of any agency and public comment submitted to the applicant in the Federal Energy Regulatory Commission proceedings or in the state reauthorization proceedings.

(3) The applicant shall include with the application required under subsection (1) of this section the final report on the studies conducted pursuant to ORS 543A.085.

(4) Upon receipt of the draft application, the team shall identify in writing to the applicant any informational and analytical deficiencies. Subject to any identified deficiencies, the team shall prepare a provisional state position on:

(a) Whether, and under what conditions, the Water Resources Department should issue the water right;

(b) Whether the project would comply with ORS 468B.040 and water quality standards adopted by the Environmental Quality Commission, and what conditions might be appropriate under 33 U.S.C. 1341(d); and

(c) Recommendations to the Federal Energy Regulatory Commission under 16 U.S.C. 803(j).

(5) Upon completion of the provisional state position, the team shall give public notice of the availability of the provisional state position. The notice shall allow 30 days for the public to comment on the provisional state position.

(6) Based on comments received during the 30-day public comment period allowed under subsection (5) of this section, the team may revise the provisional state position. The team also shall resolve any conflict between agencies about the provisional state position.

(7) After considering agency and public comments, resolving interagency conflicts and making any necessary revisions, but no later than 160 days before the date by which the final application must be filed with the Federal Energy Regulatory Commission, the team shall provide the applicant with the provisional unified position of the state. However, the provisional unified position shall not constitute a final agency determination or action under any authority. [1997 c.449 §19; 2001 c.369 §3]

543A.100 Final application for water right; application for water quality certification. Not less than two years before the expiration of the federal license for the project, the applicant shall submit the final application to reauthorize the water right and a request for certification under ORS 468B.040 and 33 U.S.C. 1341. The application submitted under this section shall be the same as the final application submitted to the Federal Energy Regulatory Commission for the new federal license for the project. [1997 c.449 §20]

543A.105 Hydroelectric Application Review Team review of final application; unified state position in federal proceeding. (1) The Hydroelectric Application Review Team shall review the applications submitted under ORS 543A.100 and prepare a second proposed unified state position, which shall include:

(a) A draft proposed final order approving or denying the reauthorization of the water right, which shall include but need not be limited to the findings required for a proposed final order under ORS 543A.120;

(b) Proposed recommendations to the Federal Energy Regulatory Commission under 16 U.S.C. 803(j);

(c) A proposed coordinated state response to the Federal Energy Regulatory Commission, including any additional information requests and recommended conditions to be included in the federal license for the project; and

(d) Proposed recommendations for certification of the project under ORS 468B.040 and 33 U.S.C. 1341, including any proposed conditions under 33 U.S.C. 1341(d).

(2) The team shall submit the second proposed unified state position to the Department of Environmental Quality. The team shall provide public notice and a 60-day opportunity for public comment on the proposals required under subsection (1)(a) to (c) of this section. The Department of Environmental Quality shall concurrently provide public notice and a 60-day opportunity for public comment on the proposed water quality certification decision and conditions required under subsection (1)(d) of this section.

(3) The team shall provide the second proposed unified state position even if an application required under ORS 543A.100 contains incomplete or deficient information or analysis. The second proposed unified state position may reflect the incomplete or deficient information or analysis.

(4) The team may submit to the Federal Energy Regulatory Commission and the applicant any proposed state response, recommendations, conditions or additional information requests, coordinated in accordance with this chapter, at any time necessary to satisfy a deadline established by the Federal Energy Regulatory Commission for the submission, even if the procedures set forth in this section for the development of a second proposed unified state position have not been completed. [1997 c.449 §21; 2001 c.369 §4]

543A.110 Water quality certification. (1) Upon completion of the public comment period for proposed recommendations under ORS 543A.105 (1)(d), the Department of Environmental Quality shall evaluate the request for water quality certification submitted under ORS 543A.100 in accordance with ORS 468B.040 and rules adopted under ORS 468B.040. The Director of the Department of Environmental Quality shall act in accordance with the proposed recommendations submitted by the Hydroelectric Application Review Team under ORS 543A.105 (1)(d) unless the director finds, based upon public comment or new information, that the project would not comply with water quality standards adopted by the Environmental Quality Commission or would not be consistent with other appropriate requirements of state law. If the director's proposed decision is not in accordance with the proposed recommendations submitted by the team under ORS 543A.105 (1)(d), the director shall seek a recommendation from the team before issuing a final decision on water quality certification. The director shall consider any further recommendation from the team, and

issue a final certification decision to the applicant and to the team.

(2) As used in this section, "director" means the Director of the Department of Environmental Quality. [1997 c.449 §21a; 2001 c.369 §5]

543A.115 Final unified state position. (1) Upon receipt of the Department of Environmental Quality's water quality certification decision, the Hydroelectric Application Review Team shall prepare a final unified state position. The final unified state position shall take into consideration public comments received, shall be consistent with the Department of Environmental Quality's water quality certification decision and shall incorporate conditions attached to any certification by the Director of the Department of Environmental Quality pursuant to 33 U.S.C. 1341(d). The final unified state position also shall include recommendations under 16 U.S.C. 803(j), any other conditions recommended for inclusion in the federal license for the project and any additional information requests to be addressed in the federal proceeding. The team also shall prepare a proposed final order on reauthorization of a water right for the project.

(2) The team shall provide the final unified state position to the applicant and to the Federal Energy Regulatory Commission. The team shall submit the proposed final order on reauthorization of the water right to the Water Resources Department. Upon receipt of the proposed final order, the department shall complete processing of the application for reauthorization of the water right in accordance with the provisions of ORS 543A.120 to 543A.300.

(3) The team may submit to the Federal Energy Regulatory Commission and the applicant any proposed final unified state position, comments, recommendations, conditions or additional information requests, coordinated in accordance with this chapter, at any time necessary to satisfy a deadline established by the Federal Energy Regulatory Commission for such submission, even if the procedures set forth in this section for the development of a final unified state position have not been completed. [1997 c.449 §22; 2001 c.369 §6]

PROCESS FOR COMPLETING REAUTHORIZATION OF WATER RIGHT FOR EITHER STATE OR FEDERALLY LICENSED PROJECT

543A.120 Proposed final order. (1) A proposed final order prepared by a Hydroelectric Application Review Team and submitted to the Water Resources Department under ORS 543A.040, 543A.055 or 543A.105 shall be based on the application of the standards set forth in ORS 543A.025 and shall reflect the complete review of the water right application for compliance with applicable statutes and rules.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program, the compatibility of the proposed use with applicable land use plans and information set forth in the application report or final report on studies;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 543A.025;

(f) A draft certificate, including any proposed conditions, or a recommendation to deny the application; and

(g) The date by which protests to the proposed final order must be received by the department.

(3) The department shall mail copies of the proposed final order, as submitted by the team, to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall give public notice of the proposed final order in the weekly notice published by the department.

(4) Any person may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

(5) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order

would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050 (1)(j).

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee.

(7) The Hydroelectric Application Review Team shall review any protest received and provide to the Water Resources Director a recommended response to any protest received.

(8) Within 120 days after the close of the period for receiving protests and after consultation with the Hydroelectric Application Review Team, the director shall:

(a) Issue a final order as provided under ORS 543A.130; or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed reauthorization of the project; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.

(9) At the request of the applicant, the department may extend the time periods set forth in subsection (8) of this section for a reasonable period of time.

(10) If the application is for reauthorization of a water right for a federally licensed project, the department may postpone the issuance of the final order until the Federal Energy Regulatory Commission license is issued. [1997 c.449 §23]

543A.125 Approval or rejection of application for reauthorization. (1) Subject to the provisions of subsection (2) of this section and ORS 543A.130 and 543A.140, the Water Resources Department shall approve all applications for reauthorization of a water right for the use of water for hydroelectric purposes made in proper form, unless the proposed reauthorization conflicts with existing rights.

(2) The department shall reject any application for a permit to appropriate water to develop hydroelectric power if the department finds that the proposed project does not comply with the standards set forth in ORS 543A.025 or rules adopted by the Water Resources Commission under ORS 543A.025. [1997 c.449 §24]

543A.130 Contested case hearing; final order. (1) If a contested case hearing is conducted under ORS 543A.120, the issues to be considered in the contested case hearing shall be limited to issues identified by the administrative law judge.

(2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this section shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under ORS 543A.120 and who requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS chapter 183 except:

(a) As provided in subsections (1) and (2) of this section; and

(b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

(4) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue.

(5) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Water Resources Director determines that the proposed reauthorization does not comply with the standards set forth in ORS 543A.025 or rules adopted by the Water Resources Commission under ORS 543A.025, the director shall issue a final order rejecting the application or modifying the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed reauthorization complies with

ORS 543A.025, the director shall issue a final order approving the application for reauthorization or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the certificate 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.

(6) If a contested case hearing is not held:

(a) Where the final order modifies the proposed final order, the applicant may request and the department shall schedule a contested case hearing as provided under subsection (3) of this section by submitting the information required for a protest under ORS 543A.120 within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(b) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS chapter 183 for appeal of orders other than contested cases.

(7) Before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed reauthorization or the proposed reauthorization as modified in the proposed final order complies with the standards set forth in ORS 543A.025.

(8) In a proceeding to reauthorize a water right for a federally licensed project, the final order may be different from the proposed final order based on:

(a) New information developed during the federal relicensing process pertaining to environmental impacts or assessments that reveals impacts not known at the time the proposed final order was issued;

(b) Significant changes in the final application to the Federal Energy Regulatory Commission;

(c) Conditions and restrictions in the Federal Energy Regulatory Commission license that are inconsistent with the water right as proposed in the proposed final order; or

(d) Protests received after the proposed final order is issued.

(9) Upon issuing a final order, the director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050 (1)(p). [1997 c.449 §25; 2003 c.75 §100]

543A.135 Exceptions to final order. (1) Within 20 days after the Water Resources Director issues a final order under ORS 543A.130 after the conclusion of a contested case hearing, any party may file exceptions to the order with the Water Resources Commission.

(2) The commission shall issue a modified order, if the exceptions are allowed, or deny the exceptions within 60 days after the close of the exception period under subsection (1) of this section. [1997 c.449 §26]

543A.140 Terms, limitations and conditions of water right. (1) The Water Resources Department may issue a water right to any applicant for reauthorization of a federally licensed project whose proposed water use complies with the standards set forth in ORS 543A.025. Every water right for a federally licensed project shall provide as a condition that the water right holder may not operate the federally licensed project unless the water right holder is authorized to operate the project by the Federal Energy Regulatory Commission.

(2) The department may approve an application for reauthorization for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest. [1997 c.449 §28]

543A.145 Water right certificate. Any water right for the use of water for hydroelectric purposes shall:

(1) Except as provided in ORS 543A.065 (2), be for a period of not more than 50 years;

(2) If for a federally licensed project, be for the period established in the new Federal Energy Regulatory Commission license;

(3) For the quantity of water authorized for use under the expiring water right for the project, retain the same priority date as the expiring water right for the project. For enlargement of the water right beyond the amount of water authorized in the expiring water right, the priority date for the additional amount shall be the date of filing a reauthorization application under ORS 543A.035, or a notice of intent under ORS 543A.075, whichever is applicable;

(4) If for a federally licensed project, include a provision allowing the Water Resources Department to amend conditions or limitations on the water right after the Federal Energy Regulatory Commission issues the federal license for the project; and

(5) Include conditions allowing the department to reopen the certificate on a clear showing of a significant threat to the public

health or safety or the environment that was not identified and addressed during the most recent project authorization proceeding, and that requires modification of the certificate. [1997 c.449 §29]

543A.150 Modification of time limits. (1) The Water Resources Department may extend the time limits set forth in ORS 543A.005 to 543A.145 and 543A.300 for a reasonable period of time if the time limits are incompatible with the substantive requirements applicable to applications to reauthorize a water right for the use of water for hydroelectric purposes.

(2) The expiration date of the water right for any project that begins the reauthorization process under ORS 543A.005 to 543A.415 before the expiration date shall be extended by the department if necessary to allow for completion of the reauthorization process. [1997 c.449 §31]

DECOMMISSIONING

543A.300 Decommissioning; rules. (1) If any person operating a hydroelectric project fails to advise the Water Resources Department within 60 days of the time established in ORS 543A.030 or 543A.075, the Water Resources Commission may order the decommissioning of the project.

(2) The Water Resources Commission shall adopt by rule procedures for ordering a decommissioning of a project and standards for conducting a decommissioning in a manner that ensures the protection of the public health and safety and the environment. The rules shall include a provision for establishing a Hydroelectric Application Review Team for the project to coordinate the activities of all state agencies involved in the decommissioning process. [1997 c.449 §30]

543A.305 Conversion of hydroelectric water right to in-stream water right; exceptions. (1) As used in this section:

(a) "Holder" has the meaning given that term in ORS 543.075.

(b) "In-stream water right" has the meaning given that term in ORS 537.332.

(c) "Reauthorize" has the meaning given that term in ORS 543.075.

(2) An in-stream water right shall be subject to the limitations of ORS 537.350 and shall be maintained in perpetuity, in trust for the people of the State of Oregon. The priority date of the in-stream water right shall be the same as that of the converted hydroelectric water right. The location of the in-stream water right shall be the same as the point of diversion identified in the hydroelectric water right.

(3) Five years after the use of water under a hydroelectric water right ceases, or upon expiration of a hydroelectric water right not otherwise extended or reauthorized, or at any time earlier with the written consent of the holder of the hydroelectric water right, up to the full amount of the water right associated with the hydroelectric project shall be converted to an in-stream water right, upon a finding by the Water Resources Director that the conversion will not result in injury to other existing water rights. In making the evaluation, the director shall consider the actual use of the hydroelectric project and the resulting impacts on actual use by other existing water rights as of October 23, 1999. The director may include mitigation measures as conditions of the in-stream water right to avoid injury and to ensure the continuation of authorized water uses by other existing water rights.

(4) If the hydroelectric project is authorized by a pre-1909 unadjudicated claim of registration, the determination of injury shall be based upon an evaluation of the actual use as measured during the five years preceding the conversion action, and shall not constitute a determination under ORS 537.670 to 537.695 as to the underlying claim of registration of the pre-1909 use. Judicial review of a final order relating to such a conversion shall be limited to review of the conversion action.

(5) This section shall not apply to projects on boundary waters that operate with water rights issued by the State of Oregon and by any other state except upon the written request of the water right holder.

(6) If hydroelectric production is not the sole beneficial use authorized by a water right, this section shall apply only to conversion of that portion of the water right used exclusively for hydroelectric purposes.

(7) This section shall not apply if the holder, at any time prior to conversion under subsection (3) of this section, transfers the hydroelectric water right under ORS 540.520 and 540.530, except that if a time-limited hydroelectric water right is transferred under ORS 540.520 and 540.530, the provisions of this section shall apply at the time of expiration of the time-limited water right. [1999 c.873 §2]

Note: 543A.305 was added to and made a part of 543A.005 to 543A.415 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

HYDROELECTRIC APPLICATION REVIEW TEAM

543A.400 Duties of Hydroelectric Application Review Team. (1) The duties of a Hydroelectric Application Review Team shall be determined on the basis of the operating authority of the project that the team is responsible for reviewing.

(2) A team responsible for reviewing a state project shall:

(a) Make an initial determination of whether the state project may proceed under an expedited reauthorization process under ORS 543A.040 and, if so, develop a proposed final order under ORS 543A.040.

(b) If a state project does not qualify for the expedited process under ORS 543A.040:

(A) Convene a public scoping meeting under ORS 543A.045;

(B) Review the application report and prepare a draft proposed final order under ORS 543A.055;

(C) Revise the draft proposed final order and submit the proposed final order to the Water Resources Department for further processing as set forth in ORS 543A.120 to 543A.300; and

(D) Review protests received and recommended responses to the protests as required under ORS 543A.120.

(3) A team responsible for reviewing a federally licensed project shall:

(a) Represent the state in any federal proceeding to reauthorize the federal license for the project;

(b) Participate in the state process in accordance with ORS 543A.085, 543A.090, 543A.105, 543A.110 and 543A.115;

(c) Recommend a state response to a request for certification for reauthorization of a federally licensed project under ORS 468B.040; and

(d) Develop a state position as required under 16 U.S.C. 803(j).

(4) The Water Resources Department may also convene a team to:

(a) Coordinate the activities of all state agencies involved in decommissioning a project.

(b) Develop a unified state position for a project that is subject to federal relicensing but that operates under a water right that does not expire. The unified state position developed under this paragraph shall include the elements set forth in ORS 543A.105 except for the reauthorization of the state water right. In developing the unified state position under this paragraph the team shall participate to the fullest extent possible in all proceedings conducted pursuant to the Federal Energy Regulatory Commission relicensing process for the project. [1997 c.449 §32]

FEES AND EXPENSES

543A.405 Application fees. (1) Subject to the provisions of ORS 543A.410, any person submitting a notice of intent to seek reauthorization, a preliminary application or an application for reauthorization of a project under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay all expenses related to the review and decision of the Hydroelectric Application Review Team that are incurred by the team and any agency participating as part of the team, and that are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

(2) Every person submitting a notice of intent to seek reauthorization of a project shall submit the fee required under ORS 536.050 (1)(r) to the Water Resources Department when the notice of intent is submitted.

(3) Before submitting an application to reauthorize a state project under ORS 543A.035, the applicant shall request from the team an estimate of the costs expected to be incurred in processing the application. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits an application under ORS 543A.035.

(4) Before the close of public comment on study proposals developed by the applicant for a federally licensed project under ORS 543A.085, the team shall estimate the costs expected to be incurred in evaluating the project. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for a first payment of 25 percent of the estimated costs on a schedule established in the agreement.

(5) If costs of the team's evaluation of a project exceed the estimate in the cost reimbursement agreement, the applicant shall pay any excess costs shown in an itemized statement prepared by the team. In no event shall the team and its participating agencies incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the team provided prior notification to the applicant and a detailed projected budget the team believes is necessary to complete evaluation of the application. If costs are less

than the fee paid, the team shall refund the excess to the applicant.

(6) The Water Resources Department shall reimburse participating agencies for costs incurred in their review of a project. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law. [1997 c.449 §33; 2001 c.369 §7]

543A.410 Fee schedule; appeal. (1) All expenses incurred by the Hydroelectric Application Review Team and its participating agencies that are charged to or allocated to the fee paid by an applicant shall be necessary, just and reasonable. Upon request, the team shall provide the applicant with a detailed justification for all charges. Not later than January 1 of each year, the Water Resources Director by order shall establish a schedule of fees that those persons submitting a notice of intent must submit under ORS 543A.030 or 543A.075. The fee schedule shall be designed to recover the actual costs of evaluating the notice of intent. Fees shall be based on actual, historical costs incurred by the team and its participating agencies to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent is submitted.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant, and if the dispute is not resolved by the directors of the affected agencies, the applicant may seek judicial review in circuit court of the amount of expenses charged or allocated as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant establishes that any of the charges or allocations are unnecessary or unreasonable, the amount found to be unnecessary or unreasonable shall be refunded to the applicant. The applicant shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1997 c.449 §34]

543A.415 Reauthorization fee. (1) Except as provided in subsection (2) of this section, each holder of an existing hydroelectric license shall pay to the Water Resources Department annually a reauthorization fee in an amount per theoretical horsepower covered by the existing license that, when added to the amount per theoretical horsepower covered by the existing license that is paid under ORS 543.300, equals 28 cents for each horsepower covered by the existing license, or $15, whichever is greater, for the purpose of implementing the state reauthorization process established by this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. The reauthorization fee shall be paid until the project is reauthorized, and a water right issued, under this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. Upon reauthorization and issuance of a water right, a new annual fee shall be assessed under ORS 543.300, and the reauthorization fee shall no longer apply.

(2) The department shall notify existing license holders of the amount of the fee described in subsection (1) of this section. The notice shall state the date by which the license holder must notify the department if the license holder does not intend to reauthorize the project. The department shall assess the fee described in subsection (1) of this section unless the license holder notifies the state that it does not intend to apply to reauthorize the project upon expiration of the license. The holder of an existing hydroelectric license that notifies the department that it does not intend to reauthorize the project need not pay the reauthorization fee and may not seek reauthorization of the project upon expiration of the existing license.

(3) The department shall submit a report to the Legislative Assembly during each legislative session describing the department's use of reauthorization funds.

(4) Four cents of each 28 cents paid as a reauthorization fee as required by subsection (1) of this section shall be deposited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of Environmental Quality. [1997 c.449 §37; 1999 c.873 §17; 2003 c.14 §348]

MISCELLANEOUS

543A.800 Effect of hydroelectric reauthorization process on existing rights. (1) Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall prejudice or alter any rights granted to the state or its agencies under federal law.

(2) Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall prejudice or alter any rights of an existing federally licensed project to apply for or obtain a new federal license for the project. Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall be construed to create any preference or priority on behalf of any applicant for a federal license. [1997 c.449 §§42a,45]

543A.805 Reference to licensee or license. Notwithstanding any other provision of law, any reference to a licensee or to a hydroelectric license for a hydroelectric project shall be considered a reference to a

time-limited water right certificate for the use of water for hydroelectric purposes for the purpose of applying the provisions of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 pertaining to reauthorizing the use of water for hydroelectric purposes. [1997 c.449 §43]

543A.810 Effect of amendment or repeal of law. Amendment or repeal of any section of ORS chapter 543A does not affect any water right or the rights of any holder of a water right issued thereunder. [2001 c.369 §8]

Note: 543A.810 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.