

Chapter 141

Division 87

HYDROELECTRIC PROJECTS

141-087-0001

Purpose

The purpose of these rules is to provide a uniform procedure for obtaining hydroelectric power leases and easements on lands managed by the State Land Board.

Statutory/Other Authority: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0005

Definitions

(1) "Board" — State Land Board.

(2) "Division" — Division of State Lands.

(3) "Lands within jurisdiction of the Board" — Lands which have been placed under the Board's jurisdiction by the Constitution of Oregon or the Oregon state legislature. These lands include, but are not limited to, Common School Fund lands and submerged and submersible lands.

(4) "Resource" — All values of the land including, but not limited to, timber, grazing, recreational, scenic and hydroelectric power generation.

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0010

Application of Rules

These rules shall apply to all hydroelectric projects located on lands within the Board's jurisdiction which have not received final approval for all state, local, and federal permits and licenses. The approval standards of these rules shall not apply at any time to projects which are in existence or have received all state, local and federal approval on or before December 31, 1985. However, a lease shall be issued and the fee requirements imposed on all such projects at the time of renewal of the project license or exemption by the Federal Energy Regulatory Commission (FERC), or within 50 years after the date of commencing power production, whichever occurs first.

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0015

Division Application Review

The Division shall review the following applications to determine if the proposed hydroelectric project is to be constructed on lands within the jurisdiction of the Board:

(1) Applications with the Federal Energy Regulatory Commission (FERC) for a preliminary permit or license to operate a hydroelectric project or for an exemption from the FERC licensing process.

(2) Applications for a right to appropriate water for hydroelectric power under ORS Chapter 537.

(3) Applications for a preliminary permit or a hydroelectric license under ORS Chapter 543.

(4) Applications for local land use approval for a proposed hydroelectric project.

(5) Applications for a site certificate from the Energy Facility Siting Council (EFSC) under ORS Chapter 469.

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0020

Division Notice to Applicants

When the Division determines that any of the applications described in OAR 141-087-0015 are for projects to be located on land within the jurisdiction of the Board, the Division shall notify the applicant and the agency to which the application has been made, advising:

(1) That the proposed project is on lands within the jurisdiction of the Board.

(2) That prior to commencing construction of the proposed project, the applicants must obtain a lease or easement from the Board.

(3) The Board has determined that the location of a hydroelectric project in any of the following locations or circumstances would not be consistent with the conservation of the resource under sound techniques of land management and thus, a lease or easement shall not be granted if the proposed project:

(a) Is located in any of the following areas:

(A) National parks;

(B) National monuments;

(C) State parks;

(D) State wildlife refuges;

(E) Bureau of Land Management areas of critical environmental concern established under Public Law 94-579;

(F) Federal research natural areas established under 43 CFR 2070 or 36 CFR 200;

(G) Scenic waterways designated under ORS 390.805 to 390.925;

(H) Wild and scenic rivers established under Public Law 90-542;

(I) Wilderness areas established under Public Law 88.577;

(J) Estuarine sanctuaries established under Public Law 92-583;

(K) State dedicated natural heritage areas established under ORS 273.563 and 273.591;

(L) Waterways in which anadromous salmon and steelhead or their habitat are located, except when a developer proposes to modify an existing facility or existing project in such a manner which will restore, enhance, or improve anadromous fish populations within the river system.

(M) Any other categories of land identified as automatically unacceptable as of the effective date of this rule by the Water Resources Commission or, if the project is in excess of 25 megawatts, identified by EFSC.

(b) Includes land on which a species of wildlife has been identified under the Endangered Species Act as endangered and in the judgment of the Department of Fish and Wildlife, the project is inconsistent with the protection of the species;

(c) Involves land for which a timely determination has been made by the Oregon Department of Fish and Wildlife or other state agencies that the project may result in a wild game fish population or the fishery it provides, being converted to a hatchery dependent resource;

(d) Is located on land which in the judgment of the Division, the impacts of the project on the resource are of such a serious nature that the land could no longer be managed in a manner consistent with the conservation of the resource under sound techniques of land management.

(4) A lease will not be granted if a project is located on lands where it is clear that the economic return from the proposed project will not result in the greatest benefit to the people of the State of Oregon. This may include submerged and submersible lands where the Land Board has existing leases or Land Board ownership on adjacent properties the value of which for mineral extraction, timber, grazing or other development may be affected by the issuance of a lease.

(5) The applicant and affected agency will be notified by the Division if any of the above conditions exist. Within 30 days of issuance of the notice, the applicant may request the Board to review the Division's decision. In addition, the applicant may request Board review of the determination of the Board's jurisdiction over the land within 30 days of issuance of the notice advising the applicant that the land is within the jurisdiction of the Board.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0030

Division Review of Application for Lease

(1) The Division shall conduct its review of a lease application after receiving all of the following information:

(a) A copy of a water appropriations permit issued by the Water Resources Commission under ORS Chapter 537 or proposed findings on the permit approved by the Director of the Water Resources Department on all issues relevant to the Land Board's determination;

(b) If the applicant does not qualify for a municipal exemption under ORS 543.150, a copy of the hydroelectric permit issued by the Water Resources Commission under ORS Chapter 543 or proposed findings on the permit approved by the Director on all issues relevant to the Land Board determination;

(c) If the proposed project exceeds 25 megawatts, a copy of a site certificate from the Energy Facility Siting Council or proposed findings of the Council on the site certificate on all issues relevant to the Land Board's determination;

(d) A copy of the application for a hydroelectric license or exemption from FERC or, if issued, a copy of the license or exemption;

(e) Filings of the Oregon Department of Fish and Wildlife submitted in administrative proceedings before FERC, EFSC, or the Water Resources Commission;

(f) If the project is subject to any local permit requirements, a copy of the permit;

(g) A copy of the Department of Environmental Quality's order on certification of a project under section 401 of the Federal Water Pollution Control Act, Public Law 92-500, as amended, proposed findings submitted as a party to EFSC or WRC review or proposed findings approved by the Environmental Quality Commission on issues relevant to the Land Board determination;

(h) Any other information related to the Board criteria for approval necessary for the Division to conduct its review of the proposed project.

(2) The Board, in its discretion, may take action on a lease application prior to receiving all of the above information, if it determines it is in the public interest to do so.

(3) If the Board approves a lease prior to the applicant obtaining all appropriate state, local and federal approvals or permits, the Board shall condition the lease upon obtaining all such approvals.

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0040

Land Board Criteria for Decision on Request for Lease

The Land Board shall base its decision on a request for a lease or easement for the development of a hydroelectric project, on lands within the jurisdiction of the Board, on the following criteria:

(1) The proposed lease should result in the lands being managed in a manner which will confer the greatest benefit on the people of the State of Oregon. In determining whether the project will confer the greatest benefit on the people of the state, the Board may consider appropriate factors including:

(a) The energy needs of the region;

(b) The economic impacts of the project;

(c) The impacts of the project on the natural resources of the area.

(2) In determining the energy needs of the region, the Board may consider all information relating to this issue, including, but not limited to:

(a) If the project is in excess of 25 megawatts, the findings of EFSC relating to energy needs in its action on a site certificate or proposed findings on the site certificate approved by EFSC;

(b) The Oregon Department of Energy's Biennial Energy Plan;

(c) The Pacific Northwest Power Planning Council's Northwest Conservation and Electricity Power Plan.

(3) In considering the economic impacts of the project, the Board shall find that the proposed lease will enhance the Common School Fund and that the state is receiving just compensation for the use of the lands. In making this determination, the Board may consider all information relating to economic impacts, including, but not limited to:

- (a) Impacts on existing Land Board leases on submerged and submersible lands;
- (b) Impacts on grazing revenues on affected Common School lands;
- (c) Impacts on timber values on Common School lands affected by the project; and
- (d) Impacts on mineral values on state owned lands affected by the project;
- (e) The proposed lease fee recommended by the Director pursuant to OAR 141-087-0050.

(4) In considering the impacts of the project on the natural resources of the area, the Board shall find that the issuance of the lease would be consistent with the criteria in OAR 141-087-0020(3) and that the proposed lease shall result in the lands being managed in a manner which will be consistent with the conservation of the resource under sound techniques of land management. In determining whether the use of the land will be consistent with the conservation of the resource, the Board may give due consideration to the findings and conclusions of other state and local agencies as listed below with respect to issues within those agencies expertise, specifically:

- (a) The findings of the Water Resources Commission or the Director of the Water Resources Department in the review of the applicant's request for a water appropriation permit or a hydroelectric license;
 - (b) The findings of the Department of Environmental Quality in the review of the proposed project under Section 401 of the Clean Water Act;
 - (c) The findings of the Oregon Department of Fish and Wildlife, in carrying out its responsibilities under state and federal law, related to evaluation of the project;
 - (d) The findings of EFSC under its siting authority when the project exceeds 25 megawatts;
 - (e) The comments of any other state, federal or local agencies or interested persons who are affected by the proposed project.
- (5) If any provisions of an acknowledged comprehensive plan and land use regulation are applicable, the approval of the lease or easement should be compatible with such provisions. Where a comprehensive plan does not regulate the use, the Board may make findings on applicable statewide planning goals.

(6) Conditions must be available for inclusion in the lease or easement which will assure the safety of the public and the preservation of economic, scenic and recreational values of the lands pursuant to ORS 274.040(4).

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 2-1986, f. & ef. 2-19-86

141-087-0050

Fees for Hydroelectric Projects on State-Owned Submerged and Submersible Lands

(1) There shall be a fee for leases or easements granted by the State Land Board pursuant to OAR 141-087-0001 through 141-087-0040. The fee shall be determined with the object of obtaining the greatest

benefit for the people of the State of Oregon consistent with the conservation of the resource under the sound techniques of land management.

(2) The fee shall be established as follows:

(a) When an application for a lease or easement is submitted, the director shall first attempt to negotiate a fee with the applicant;

(b) If the director and applicant are unable to negotiate a fee, the base fee shall be six percent of the per acre value of the adjacent upland for use as a hydroelectric facility or other rural industrial use. The base fee shall be adjusted annually to reflect the amount of increase or decrease of the U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers Price Index for Portland (Base: 1967-100);

(c) The per-acre value of the adjacent upland shall be established as follows:

(A) The director shall obtain an appraisal at the Division's expense;

(B) If the applicant rejects the director's appraisal, the applicant and director shall agree upon a second, independent appraiser, whose appraisal shall be used to calculate the fee. The cost of the appraisal shall be shared equally by the division and the applicant.

(3) When the application is complete the director shall submit the application to the State Land Board for review.

(a) For new projects the State Land Board may approve or deny an application pursuant to OAR 141-087-0040, but if the application is approved, the fee shall be the amount determined under section (2) of this rule;

(b) For existing projects that are exempt from the approval standards of these rules pursuant to OAR 141-087-0010, the fee shall be the amount determined under section (2) of this rule, and shall be retroactive to the date of application.

Statutory/Other Authority: ORS 273 & 274

Statutes/Other Implemented: ORS 273 & 274

History:

LB 6-1986, f. & ef. 5-20-86