

Enrolled
House Bill 2785

Sponsored by Representative SCHAUFLEER

CHAPTER

AN ACT

Relating to hydroelectric projects.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in section 2 of this 2007 Act, “water right” means a water use established by an adjudication under ORS chapter 539 as evidenced by a court decree or a certificated ground water or surface water right that is issued for some use other than for hydroelectric power and that serves as the underlying water right for an application to use water for hydroelectric purposes.

SECTION 2. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may apply to the Water Resources Department for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant’s existing water right. If the proposed hydroelectric project qualifies for a Federal Energy Regulatory Commission exemption, the applicant may use the expedited application process under this section.

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

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

(b) A copy of a Federal Energy Regulatory Commission exemption application, if applicable.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Fish screens, by-pass devices and fish passages as required by the State Department of Fish and Wildlife.

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

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

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

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

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

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

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

(i) That the right to use water under a certificate issued under this section is invalidated if the Federal Energy Regulatory Commission exemption related to the certificate is canceled or invalidated.

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

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

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

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

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

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

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

(13) An applicant for a certificate issued under this section must provide evidence of a Federal Energy Regulatory Commission exemption before a certificate can be issued, if applicable.

(14) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and 543.270.

Passed by House May 1, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 1, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

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Secretary of State