



March 31, 2021
House Committee on Energy and Environment
Representative Marsh, Chair

Testimony on House Bill 2143
Submitted by:

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Thank you for the opportunity to provide testimony in support of House Bill 2143, which simplifies and increases annual fees paid by hydroelectric projects in order to maintain current services at the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality.

Background

The Oregon Water Resources Department (OWRD), Oregon Department of Fish and Wildlife (ODFW), and Oregon Department of Environmental Quality (DEQ) have shared responsibility for licensing, oversight, and reauthorization of approximately 100 operators and 160 non-federally owned hydroelectric projects on behalf of the State. State agencies regulate projects owned by public and private utilities, municipalities, irrigation districts, and private citizens.

ORS 543.015 and ORS 543A.020 identify the policies of the state in regards to hydroelectric projects seeking to obtain the benefits of hydropower. The policies charge state agencies with protecting natural resources, and public health and safety. Those policies also direct state agencies to participate to the fullest extent in any local, state, or federal proceeding related to new hydroelectric power development or relicensing in order to protect Oregon's natural resources. State agencies provide recommendations on and ensure compliance with state and federal laws that regulate hydroelectric development, such as the Federal Power Act, the Fish and Wildlife Coordination Act, and the Clean Water Act.

Annual fees

First established in 1911 and last updated in statute in 1999, annual fees are the main source of revenue that support base agency functions. Annual fees are paid by all projects, often linked to the project size and relicensing status, and are necessary to ensure that current staffing levels, activities and funding are appropriate to fulfill the objectives of the hydroelectric programs at the OWRD, ODEQ, and ODFW.

Agency Services and Capacity

Each agency provides a unique set of services, most of which are supported by annual fees.

Oregon Water Resources Department

- OWRD's hydroelectric program has a total capacity of 2.1 FTE funded by annual fees and application fees. The Department's primary area of work involves water right compliance and Hydroelectric Fund administration. This includes conducting site inspections at existing projects to ensure they are complying with the terms and conditions of state water rights licenses. In addition, OWRD represents the state's joint position during the Federal Energy Regulatory Commission (FERC) relicensing process. OWRD also manages billing of fees, administration, and distribution of funds to other agencies from the Hydroelectric Fund.

Oregon Department of Fish and Wildlife

- ODFW's hydroelectric program has a total capacity of 11.18 FTE funded by annual fees and application fees (7.00 FTE) and project specific implementation fees (4.18 FTE). Program staff conduct work to provide appropriate fish and wildlife protection and mitigation recommendations for hydroelectric projects in Oregon. This includes recommendations in compliance with state laws as well as FERC prescriptions pursuant to Section 10(j) of the Federal Power Act (FPA); Section 30(c) of the FPA, the Fish and Wildlife Coordination Act, and Section 10(a)(1) of the FPA for the protection, mitigation, and enhancement of fish and wildlife and their habitat associated with any FERC license or exemption.

Oregon Department of Environmental Quality

- DEQ's hydroelectric program has a total capacity of 2.50 FTE funded by annual fees and application fees (2.05 FTE), reauthorization fees (0.05 FTE), and project specific implementation fees (0.4 FTE). DEQ is responsible for implementing state and federal law to protect Oregon's water quality, including implementing the Clean Water Act. The water quality certification typically includes operating, monitoring, and management conditions designed to ensure project operations will not violate water quality standards and beneficial uses will be protected.

Staff for all agencies also respond to public records and media inquiries, update policies and rules, assist the public with pre-licensing consultations, serve as a technical resource, participate on the Hydroelectric Review Team, and coordinate permitting responsibilities and licensing work associated with FERC. As part of the application and relicensing processes, the agencies work to facilitate and craft agreements for mitigation measures to minimize impacts of hydroelectric projects on fish and wildlife, plants and wetlands, recreation, historic, cultural and archeological resources, and land and soils resources. Agencies also participate in work groups that implement adaptive management plans for resource protection and mitigation measures for new and existing projects, and reviews implementation plans for construction and decommissioning of projects.

Other fees that may be assessed by the participating state agencies on some hydroelectric facilities include reauthorization fees and project specific implementation fees. These are distinct

cost recoverable service fees that do not overlap with primary agency functions described above. Project specific fees are often negotiated with the concurrence of the utility based on the level of oversight required.

Why fee adjustments are needed

The current fee structure is complicated and leads to a large fee increase after a project undergoes the relicensing process. Since some projects have not experienced a fee increase since 1999, and others have seen increases annually, disparities between fee payers have emerged.

Specifically, larger projects pay annual fees based on the theoretical horsepower capacity of the project (1 THP= 0.75 Kilowatts). Annual fees for projects that have not been relicensed are generally \$0.28/THP and can only be modified through legislation, which was last done in 1999. Once a project has been relicensed, fees increase based on an established inflation factor and can be recommended for adjustment by the Hydroelectric Fee Review Panel, which meets every eight years. Annual fees for relicensed projects were \$0.608/THP for the year 2021. In addition, smaller projects generally pay between \$15 to \$50 year, depending on relicensing status and size.

Fee increases are necessary to keep up with increased costs, such as personnel costs, in order to prevent a reduction in services. The current inflation factor used to increase the fees has fallen short of actual state agency cost increases. Since costs are increasing at a faster rate than the inflation adjustment, budgetary gaps are exacerbated.

Additionally, agencies are experiencing increased legal expenses. Agencies need legal review of documents and as part of programmatic work. Agencies are required to have legal review of any agreements that are negotiated, as well as legal review for issues that may arise during settlement implementation. In addition, the relicensing or decommissioning of projects has increased legal expenses.

Table 1. Projected hydroelectric program shortfalls for 2021- 2023 biennium, in the absence of HB 2143 fee increase.

2021-2023 Biennial Budget	OWRD	ODFW	DEQ	Total
21-23 ending balance shortfall *	(\$127k) **	(\$353k)	(\$921k)	(\$1.401M)

*21-23 ending balance shortfalls consider agency revenues from annual fees, beginning funds balances, and target ending funds balances for the biennium. **If OWRD receives OWRD POP 103, it would not anticipate a shortfall at the beginning of the 2023 fiscal year; however, this funding would be needed to fill in the other agency’s shortfalls.

If no action is taken to adjust current fees, agencies anticipate budgetary shortfalls in the coming biennia, which may inhibit agencies from maintaining current services (Table 1). DEQ is already facing a shortfall of revenue to support program services in 2019-2021. ODFW and OWRD project a shortfall at the end of the 2021-2023 biennium.

What the bill does

HB 2143 proposes to simplify and increase the base annual fees paid by hydroelectric projects to maintain current services at OWRD, ODFW, and DEQ. This bill also proposes to equalize the annual fee rates for large projects (greater than 123.5 THP) with all projects paying the same fee, starting at a 2020 base rate of \$0.687/THP. Fees for large projects are adjusted by an inflation factor. The bill requires that a Fee Review Panel convene at least once every eight years to assess the annual fee for large projects based on programmatic needs and as the agencies' hydroelectric project portfolio shifts over time. The bill would also standardize fees for small projects less than 15 THP at \$15/year and for projects between 15 THP and 123.5 THP at \$50/year.

These fees are projected to result in a \$1.25 million revenue increase for the 2021-2023 biennium to help address anticipated agency shortfalls and reduce impacts on services.

House Bill 2143 -1 Amendment

The HB 2143 -1 amendment is unclear as currently written and could be interpreted to mean fees would be \$0.28 per THP in 2022 and 2023 even for projects that are currently paying the higher fee, which would result in a decrease of current revenues and an increase in the shortfall. It is our understanding that is not the proponent's intent.

Note that the amendment also proposes that projects that operate on rivers bordering other states will be charged annual fees based on half the amount of the total project THP. This is currently the standard practice for how the agencies assess these fees and would be unchanged by HB 2143.

Conclusion

The proposed fee adjustments in House Bill 2143 are necessary to ensure that agencies are able to continue to implement the policies of this state regarding hydropower and natural resources protection by maintaining hydroelectric program services at OWRD, ODFW, and DEQ. The agencies urge your support of House Bill 2143.