

D R A F T

SUMMARY

Requires Water Resources Department to maintain registry of historic-use reservoirs. Exempts historic-use reservoirs from requirement to have water right permit or water right certificate. Assigns historic-use reservoir priority based on registration application date. Makes historic-use reservoir subject to distribution and flow control device requirements.

Creates temporary process for registering qualifying reservoir as historic-use reservoir. Sunsets temporary registration process January 2, 2035.

A BILL FOR AN ACT

1
2 Relating to historic-use reservoirs; creating new provisions; and amending
3 ORS 537.147 and 540.045.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part**
6 **of ORS chapter 537.**

7 **SECTION 2. (1) As used in this section, “historic-use reservoir”**
8 **means a reservoir registered pursuant to an application filed on or**
9 **before January 31, 2022, and approved by the Water Resources De-**
10 **partment.**

11 **(2) The department shall maintain a registry of historic-use reser-**
12 **voirs. A historic-use reservoir does not require a water right permit**
13 **or water right certificate.**

14 **(3) A historic-use reservoir is subject to the distribution of water**
15 **by the watermaster as provided under ORS chapter 540. The priority**
16 **date for a historic-use reservoir is the date the owner files an appli-**
17 **cation with the department for registration of the reservoir as a**

1 **historic-use reservoir.**

2 (4) A reservoir may not continue to be registered as a historic-use
3 reservoir if the storage amount for the reservoir or the height of the
4 dam or impoundment structure for the reservoir is increased from the
5 storage amount or height at the time of registration. The owner of the
6 historic-use reservoir shall maintain any headgates, measuring devices
7 and outlet controls required by the department in proper working or-
8 der.

9 **SECTION 3. (1) Notwithstanding any other provision of ORS chap-**
10 **ter 536, 537 or 538, the owner of a reservoir may apply to the Water**
11 **Resources Department as provided in this section to have the reservoir**
12 **registered as a historic-use reservoir as defined in section 2 of this 2019**
13 **Act if:**

14 (a) The reservoir has been in existence since on or before January
15 1, 2000;

16 (b) The reservoir is located in an area withdrawn from appropri-
17 ation under ORS chapter 538; and

18 (c)(A) The reservoir stores less than 9.2 acre-feet of water; or

19 (B) The dam or impoundment structure for the reservoir is less
20 than 10 feet in height.

21 (2) A reservoir may be registered as a historic-use reservoir only
22 as provided in this section. An application under this section must be
23 in written form acceptable to the department and include:

24 (a) Evidence establishing that the reservoir has been in existence
25 since on or before January 1, 2000;

26 (b) The amount of water stored by the reservoir;

27 (c) The height of the dam or impoundment structure for the reser-
28 voir;

29 (d) The water source supplying the reservoir;

30 (e) Information describing the location, type and characteristics of
31 any headgates, measuring devices and outlet controls for the reservoir;

1 (f) A map or drawing of the reservoir and surrounding vicinity, to
2 scale and meeting any requirements in department rules; and

3 (g) Information supplied by the State Department of Fish and
4 Wildlife demonstrating that the reservoir does not have a significant
5 detrimental impact on existing fishery resources or can be modified
6 to not have a significant detrimental impact on existing fishery re-
7 sources.

8 (3) In addition to the information described in subsection (2) of this
9 section, if necessary to confirm that the storage amount of the reser-
10 voir or the height of the dam or impoundment structure complies with
11 subsection (1) of this section, the Water Resources Department may
12 require the applicant to provide a survey of the reservoir performed
13 by a certified water right examiner or a professional engineer.

14 (4) An application under this section must be filed no later than
15 January 31, 2022. The department may charge an application process-
16 ing fee, not to exceed the amount established in ORS 536.050 (1)(q) for
17 an application to store water under ORS 537.409. The department may
18 reject an application that:

19 (a) Does not contain the information described in subsection (2) of
20 this section;

21 (b) Is not timely filed; or

22 (c) Is not accompanied by the appropriate fee.

23 (5) If the department accepts an application, unless the reservoir
24 is causing injury to an existing water right, the department may not
25 take any action to prevent continued operation or use of the reservoir
26 as identified in the application, or of the dam, impoundment structure
27 or other works for the reservoir, unless the department has issued a
28 final order under this section denying registration.

29 (6) No later than 90 days after accepting an application, the de-
30 partment shall publish notice of the application in the weekly notice
31 published by the department and once each week for two successive

1 weeks in a newspaper having general circulation in the county where
2 the reservoir is primarily located. The applicant shall pay in advance
3 the cost of newspaper publication.

4 (7) Any written objections to an application must be received by the
5 department no later than 90 days after publication of the application
6 in the weekly notice published by the department. An objection must
7 be supported by detailed, legally obtained information. An objection
8 to an application may be filed only by a person alleging that the res-
9 ervoir injures an existing water right.

10 (8) The department may hold a contested case hearing under ORS
11 chapter 183 on the application if:

12 (a) A timely objection is received under subsection (7) of this sec-
13 tion;

14 (b) The department proposes to deny registration; or

15 (c) The applicant objects to requirements contained in a proposed
16 conditional approval.

17 (9) If the department does not hold a contested case hearing on the
18 application, the department shall issue a final order approving or de-
19 nying registration, or issue a conditional approval under subsection
20 (12) of this section, no later than 180 days after the expiration of the
21 period allowed for filing of objections under subsection (7) of this sec-
22 tion.

23 (10) If the department holds a contested case hearing on the appli-
24 cation, the department shall issue a final order approving or denying
25 registration, or issue a conditional approval, no later than 180 days
26 after the close of the contested case hearing.

27 (11) The department may deny registration if the department finds
28 that the reservoir does not meet the criteria established in subsection
29 (1) of this section or that the unavailability of practicable and ade-
30 quate remedial measures prevents the issuance of a conditional ap-
31 proval.

1 **(12) The department may issue a conditional approval for a reser-**
2 **voir:**

3 **(a) That injures an existing water right identified in a timely ob-**
4 **jection under subsection (7) of this section, subject to reasonable mit-**
5 **igation efforts adequate to address the injury.**

6 **(b) That is not equipped with headgates, measuring devices and**
7 **outlet controls deemed acceptable by the department, subject to the**
8 **installation of acceptable headgates, measuring devices and outlet**
9 **controls.**

10 **(c) That exceeds the limitations established in subsection (1) of this**
11 **section for reservoir storage amount or for dam or impoundment**
12 **structure height, subject to a condition for reduction in the reservoir**
13 **storage amount or in the height of the dam or impoundment struc-**
14 **ture.**

15 **(d) That has a significant detrimental impact on existing fishery**
16 **resources, subject to sufficient modification for the reservoir to not**
17 **have a significant detrimental impact on existing fishery resources.**

18 **(13) A conditional approval must state with specificity the miti-**
19 **gation efforts, installation, reduction, modification or other remedial**
20 **measures necessary to meet the condition of approval and must allow**
21 **the owner a reasonable period to complete the remedial measures.**
22 **Except as provided in subsection (14) of this section, the department**
23 **shall issue a final order approving or denying registration no later**
24 **than 90 days after the end of the time allowed in the conditional ap-**
25 **proval to complete the specified remedial measures. The department**
26 **may deny registration following conditional approval only if the**
27 **owner:**

28 **(a) Fails to timely complete remedial measures specified in the**
29 **conditional approval; or**

30 **(b) Increases the reservoir storage amount or the height of the dam**
31 **or impoundment structure after issuance of the conditional approval.**

1 **(14) If the department issues a conditional approval that allows**
2 **different reasonable periods to complete different specified remedial**
3 **measures, the department shall issue a final order approving or deny-**
4 **ing registration no later than 90 days after the end of the last-expiring**
5 **reasonable period.**

6 **SECTION 4.** ORS 537.147 is amended to read:

7 537.147. (1) Notwithstanding the process for applying for a water right
8 permit established in ORS 537.150 to 537.230, a person may, pursuant to this
9 section, apply to the Water Resources Department for a water right permit
10 to use stored water. A person applying under this section for a water right
11 permit to use stored water shall submit:

12 (a) A fee, in the amount required by ORS 536.050 for applications to ap-
13 propriate stored water.

14 (b) A completed application for a secondary permit, in a form determined
15 by the department, that contains the information required of applications
16 under ORS 537.140 and 537.400 (1).

17 (c) Evidence that the proposed use of the stored water is one of the au-
18 thorized uses under the water right permit, **water right** certificate,
19 **historic-use reservoir registration** or decree that allows the storage of
20 water.

21 (2) If an applicant provides, to the satisfaction of the department, the fee
22 and the information required by subsection (1) of this section, the department
23 may, after public notice and a 30-day opportunity to submit comments on the
24 application, issue a water right permit upon determining that no public in-
25 terest issues as identified in ORS 537.170 (8) have been raised through the
26 comments submitted.

27 (3) If the department determines that public interest issues have been
28 identified, then the department shall treat the application under this section
29 as an application under ORS 537.150 and perform the public interest review
30 required by ORS 537.153 (2).

31 (4) At a minimum, a water right permit issued by the department for use

1 of stored water under this section shall be conditioned to require:

2 (a) Fish screens and by-pass devices and fish passage as may be required
3 by the State Department of Fish and Wildlife; and

4 (b) A measuring device at each point of diversion authorized under the
5 water right permit.

6 (5) Within 10 days of issuing a water right permit under this section, the
7 department shall provide notice of the permit issuance in the weekly notice
8 published by the department and to persons who have submitted comments
9 pursuant to subsection (2) of this section.

10 **SECTION 5.** ORS 540.045 is amended to read:

11 540.045. (1) Each watermaster shall:

12 (a) Regulate the distribution of water among the various users of water
13 from any natural surface or ground water supply in accordance with the
14 users' existing water rights of record in the Water Resources Department.

15 (b) Upon the request of the users, distribute water among the various
16 users under any partnership ditch, pipeline or well or from any reservoir, in
17 accordance with the users' existing water rights of record in the department.

18 (c) Divide the waters of the natural surface and ground water sources and
19 other sources of water supply among the canals, ditches, pumps, pipelines
20 and reservoirs taking water from the source for beneficial use, by regulating,
21 adjusting and fastening the headgates, valves or other control works at the
22 several points of diversion of surface water or the several points of appro-
23 priation of ground water, according to the users' relative entitlements to
24 water.

25 (d) Attach to the headgate, valve or other control works the watermaster
26 regulates under paragraph (c) of this subsection, a written notice dated and
27 signed by the watermaster, setting forth that the headgate, valve or other
28 control works has been properly regulated and is wholly under the control
29 of the watermaster.

30 (e) Perform any other duties the Water Resources Director may require.

31 (2) When a watermaster must rely on a well log or other documentation

1 to regulate the use or distribution of ground water, the regulation shall be
2 in accordance with ORS 537.545 (4).

3 (3) For purposes of regulating the distribution or use of water, any stored
4 water released in excess of the needs of water rights calling on that stored
5 water shall be considered natural flow, unless the release is part of a water
6 exchange under the control of, and approved by, the watermaster.

7 (4) As used in this section, “existing water rights of record” includes all
8 completed permits, certificates, licenses and ground water registration
9 statements filed under ORS 537.605, **historic-use reservoirs described in**
10 **section 2 of this 2019 Act** and related court decrees.

11 **SECTION 6. Section 3 of this 2019 Act is repealed January 2, 2035.**
12 **The repeal of section 3 of this 2019 Act does not affect the registration**
13 **status of a reservoir under section 2 of this 2019 Act.**

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