

# House Bill 2853

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT (at the request of Representative Mike McLane)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 ORS 537.147 and 540.045.

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

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

5 **SECTION 2. (1) As used in this section, "historic-use reservoir" means a reservoir reg-**  
6 **istered pursuant to an application filed on or before January 31, 2022, and approved by the**  
7 **Water Resources Department.**

8 **(2) The department shall maintain a registry of historic-use reservoirs. A historic-use**  
9 **reservoir does not require a water right permit or water right certificate.**

10 **(3) A historic-use reservoir is subject to the distribution of water by the watermaster as**  
11 **provided under ORS chapter 540. The priority date for a historic-use reservoir is the date the**  
12 **owner files an application with the department for registration of the reservoir as a**  
13 **historic-use reservoir.**

14 **(4) A reservoir may not continue to be registered as a historic-use reservoir if the stor-**  
15 **age amount for the reservoir or the height of the dam or impoundment structure for the**  
16 **reservoir is increased from the storage amount or height at the time of registration. The**  
17 **owner of the historic-use reservoir shall maintain any headgates, measuring devices and**  
18 **outlet controls required by the department in proper working order.**

19 **SECTION 3. (1) Notwithstanding any other provision of ORS chapter 536, 537 or 538, the**  
20 **owner of a reservoir may apply to the Water Resources Department as provided in this**  
21 **section to have the reservoir registered as a historic-use reservoir as defined in section 2**  
22 **of this 2019 Act if:**

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

24 **(b) The reservoir is located in an area withdrawn from appropriation under ORS chapter**  
25 **538; and**

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

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

28 **(2) A reservoir may be registered as a historic-use reservoir only as provided in this**  
29 **section. An application under this section must be in written form acceptable to the depart-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **ment and include:**

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

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

5 (c) The height of the dam or impoundment structure for the reservoir;

6 (d) The water source supplying the reservoir;

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

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

11 (g) Information supplied by the State Department of Fish and Wildlife demonstrating that  
12 the reservoir does not have a significant detrimental impact on existing fishery resources  
13 or can be modified to not have a significant detrimental impact on existing fishery resources.

14 (3) In addition to the information described in subsection (2) of this section, if necessary  
15 to confirm that the storage amount of the reservoir or the height of the dam or  
16 impoundment structure complies with subsection (1) of this section, the Water Resources  
17 Department may require the applicant to provide a survey of the reservoir performed by a  
18 certified water right examiner or a professional engineer.

19 (4) An application under this section must be filed no later than January 31, 2022. The  
20 department may charge an application processing fee, not to exceed the amount established  
21 in ORS 536.050 (1)(q) for an application to store water under ORS 537.409. The department  
22 may reject an application that:

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

24 (b) Is not timely filed; or

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

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

31 (6) No later than 90 days after accepting an application, the department shall publish  
32 notice of the application in the weekly notice published by the department and once each  
33 week for two successive weeks in a newspaper having general circulation in the county  
34 where the reservoir is primarily located. The applicant shall pay in advance the cost of  
35 newspaper publication.

36 (7) Any written objections to an application must be received by the department no later  
37 than 90 days after publication of the application in the weekly notice published by the de-  
38 partment. An objection must be supported by detailed, legally obtained information. An ob-  
39 jection to an application may be filed only by a person alleging that the reservoir injures an  
40 existing water right.

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

43 (a) A timely objection is received under subsection (7) of this section;

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

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

1 (9) If the department does not hold a contested case hearing on the application, the de-  
 2 partment shall issue a final order approving or denying registration, or issue a conditional  
 3 approval under subsection (12) of this section, no later than 180 days after the expiration of  
 4 the period allowed for filing of objections under subsection (7) of this section.

5 (10) If the department holds a contested case hearing on the application, the department  
 6 shall issue a final order approving or denying registration, or issue a conditional approval,  
 7 no later than 180 days after the close of the contested case hearing.

8 (11) The department may deny registration if the department finds that the reservoir  
 9 does not meet the criteria established in subsection (1) of this section or that the unavail-  
 10 ability of practicable and adequate remedial measures prevents the issuance of a conditional  
 11 approval.

12 (12) The department may issue a conditional approval for a reservoir:

13 (a) That injures an existing water right identified in a timely objection under subsection  
 14 (7) of this section, subject to reasonable mitigation efforts adequate to address the injury.

15 (b) That is not equipped with headgates, measuring devices and outlet controls deemed  
 16 acceptable by the department, subject to the installation of acceptable headgates, measuring  
 17 devices and outlet controls.

18 (c) That exceeds the limitations established in subsection (1) of this section for reservoir  
 19 storage amount or for dam or impoundment structure height, subject to a condition for re-  
 20 duction in the reservoir storage amount or in the height of the dam or impoundment struc-  
 21 ture.

22 (d) That has a significant detrimental impact on existing fishery resources, subject to  
 23 sufficient modification for the reservoir to not have a significant detrimental impact on ex-  
 24 isting fishery resources.

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

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

33 (b) Increases the reservoir storage amount or the height of the dam or impoundment  
 34 structure after issuance of the conditional approval.

35 (14) If the department issues a conditional approval that allows different reasonable pe-  
 36 riods to complete different specified remedial measures, the department shall issue a final  
 37 order approving or denying registration no later than 90 days after the end of the last-  
 38 expiring reasonable period.

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

40 537.147. (1) Notwithstanding the process for applying for a water right permit established in ORS  
 41 537.150 to 537.230, a person may, pursuant to this section, apply to the Water Resources Department  
 42 for a water right permit to use stored water. A person applying under this section for a water right  
 43 permit to use stored water shall submit:

44 (a) A fee, in the amount required by ORS 536.050 for applications to appropriate stored water.

45 (b) A completed application for a secondary permit, in a form determined by the department,

1 that contains the information required of applications under ORS 537.140 and 537.400 (1).

2 (c) Evidence that the proposed use of the stored water is one of the authorized uses under the  
 3 water right permit, **water right** certificate, **historic-use reservoir registration** or decree that al-  
 4 lows the storage of water.

5 (2) If an applicant provides, to the satisfaction of the department, the fee and the information  
 6 required by subsection (1) of this section, the department may, after public notice and a 30-day op-  
 7 portunity to submit comments on the application, issue a water right permit upon determining that  
 8 no public interest issues as identified in ORS 537.170 (8) have been raised through the comments  
 9 submitted.

10 (3) If the department determines that public interest issues have been identified, then the de-  
 11 partment shall treat the application under this section as an application under ORS 537.150 and  
 12 perform the public interest review required by ORS 537.153 (2).

13 (4) At a minimum, a water right permit issued by the department for use of stored water under  
 14 this section shall be conditioned to require:

15 (a) Fish screens and by-pass devices and fish passage as may be required by the State Depart-  
 16 ment of Fish and Wildlife; and

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

18 (5) Within 10 days of issuing a water right permit under this section, the department shall pro-  
 19 vide notice of the permit issuance in the weekly notice published by the department and to persons  
 20 who have submitted comments pursuant to subsection (2) of this section.

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

22 540.045. (1) Each watermaster shall:

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

26 (b) Upon the request of the users, distribute water among the various users under any partner-  
 27 ship ditch, pipeline or well or from any reservoir, in accordance with the users' existing water rights  
 28 of record in the department.

29 (c) Divide the waters of the natural surface and ground water sources and other sources of  
 30 water supply among the canals, ditches, pumps, pipelines and reservoirs taking water from the  
 31 source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other con-  
 32 trol works at the several points of diversion of surface water or the several points of appropriation  
 33 of ground water, according to the users' relative entitlements to water.

34 (d) Attach to the headgate, valve or other control works the watermaster regulates under par-  
 35 agraph (c) of this subsection, a written notice dated and signed by the watermaster, setting forth  
 36 that the headgate, valve or other control works has been properly regulated and is wholly under the  
 37 control of the watermaster.

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

39 (2) When a watermaster must rely on a well log or other documentation to regulate the use or  
 40 distribution of ground water, the regulation shall be in accordance with ORS 537.545 (4).

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

45 (4) As used in this section, "existing water rights of record" includes all completed permits,

1 certificates, licenses and ground water registration statements filed under ORS 537.605, **historic-use**  
2 **reservoirs described in section 2 of this 2019 Act** and related court decrees.

3 **SECTION 6. Section 3 of this 2019 Act is repealed January 2, 2035. The repeal of section**  
4 **3 of this 2019 Act does not affect the registration status of a reservoir under section 2 of this**  
5 **2019 Act.**

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