

House Bill 3421

Sponsored by Representatives MCLANE, ESQUIVEL

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.

Creates temporary process for registering qualifying reservoir as historic-use reservoir. Sunsets temporary registration process January 2, 2025.

A BILL FOR AN ACT

1
2 Relating to historic-use reservoirs.

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

4 **SECTION 1. Section 2 of this 2017 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 placed**
6 **on the registry described in this section prior to January 2, 2025.**

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

9 **(3) A historic-use reservoir is subject to the distribution of water by the watermaster as**
10 **shown in water right records. The priority date for a historic-use reservoir is the date the**
11 **owner files an application with the department for registration of the reservoir as a**
12 **historic-use reservoir.**

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

18 **SECTION 3. (1) Notwithstanding any other provision of ORS chapter 183, 536, 537 or 541,**
19 **the owner of a reservoir may apply to the Water Resources Department as provided in this**
20 **section to have the reservoir placed on the registry of historic-use reservoirs described in**
21 **section 2 of this 2017 Act if:**

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

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

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

25 **(2) An application under this section must be in written form acceptable to the depart-**
26 **ment and include:**

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

29 **(b) The quantity of water stored by the reservoir;**

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

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 (d) The water source supplying the reservoir;

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

4 (f) A map or drawing of the reservoir and surrounding vicinity, to scale and meeting any
5 requirements in department rules.

6 (3) An application under this section must be filed no later than January 31, 2022. The
7 department may reject an application that does not contain the information described in
8 subsection (2) of this section. The department may charge an application processing fee, not
9 to exceed \$_____.

10 (4) If a timely application in proper form is filed with the department, and the fee de-
11 scribed in subsection (3) of this section is paid, the department may not take any action to
12 prevent continued operation of the reservoir, or of the dam or impoundment structure for
13 the reservoir, identified in the application unless the department has issued a final order
14 under this section denying registration of the reservoir.

15 (5) No later than 90 days after accepting an application, the department shall publish
16 notice of the application in the weekly notice published by the department and once each
17 week for two successive weeks in a newspaper having general circulation in the county
18 where the reservoir is primarily located.

19 (6) Any written objections to an application must be received by the department no later
20 than 90 days after publication of the application in the weekly notice published by the de-
21 partment. An objection must be supported by detailed, legally obtained information. An ob-
22 jection to an application may be filed only by:

23 (a) The State Department of Fish and Wildlife, alleging that the reservoir or the dam or
24 impoundment structure for the reservoir has significant detrimental impacts that injure
25 existing populations of fish; or

26 (b) A person alleging that the reservoir injures an existing water right.

27 (7)(a) Subject to subsection (8) of this section, the Water Resources Department shall
28 grant the reservoir registration under section 2 of this 2017 Act as a historic-use reservoir
29 if the reservoir meets the criteria established in subsection (1) of this section and:

30 (A) No timely objection is received under subsection (6) of this section;

31 (B) A timely objection is filed under subsection (6) of this section and the department
32 does not schedule a contested case hearing under subsection (9) of this section; or

33 (C) A timely objection is filed under subsection (6) of this section and the department
34 grants registration under subsection (10) of this section.

35 (b) The department may not charge a fee for a registration under paragraph (a) of this
36 subsection.

37 (8) If the reservoir is not equipped with headgates, measuring devices and outlet controls
38 that the department deems acceptable, the department may conditionally approve the regis-
39 tration subject to the installation of acceptable headgates, measuring devices and outlet
40 controls. A conditional approval must state the specific installations required and allow the
41 owner a reasonable period to complete the installations. Except as provided in subsection (11)
42 of this section, if the department issues a conditional approval of the registration, the de-
43 partment shall issue a final order granting or denying the registration no later than 90 days
44 after the end of the time allowed in the conditional approval for the completion of the in-
45 stallations. The department may deny registration following issuance of a conditional ap-

1 **proval only if the owner fails to complete the installations as required or fails to comply with**
 2 **a condition of approval described in subsection (10)(b) of this section.**

3 **(9) If a timely objection is received under subsection (6) of this section, the department**
 4 **may hold a contested case hearing under ORS chapter 183 on the application. If the depart-**
 5 **ment chooses to hold a contested case hearing, the hearing shall be limited to determining**
 6 **whether injuries alleged in timely objections filed under subsection (6) of this section exist**
 7 **and, if so, whether reasonable mitigation efforts can adequately address all of the injuries.**

8 **(10) If a hearing is held under subsection (9) of this section:**

9 **(a) The department may deny registration if the department finds that one or more in-**
 10 **juries identified in a timely objection under subsection (6) of this section exist and that rea-**
 11 **sonable mitigation efforts cannot adequately address all of the injuries.**

12 **(b) The department may conditionally approve registration if the department determines**
 13 **that one or more injuries identified in a timely objection under subsection (6) of this section**
 14 **exist, but that reasonable mitigation efforts can adequately address all of the injuries. A**
 15 **conditional approval must identify the mitigation efforts adequate to address the injuries and**
 16 **must allow the owner a reasonable period to complete the mitigation efforts.**

17 **(c) No later than 180 days after the last timely objection to the application is received**
 18 **by the department under subsection (6) of this section, the department shall issue a final**
 19 **order granting registration unless:**

20 **(A) The department issues an order denying the registration under paragraph (a) of this**
 21 **subsection; or**

22 **(B) The department issues a conditional approval of the registration under paragraph (b)**
 23 **of this subsection or under subsection (8) of this section. Except as provided in subsection**
 24 **(11) of this section, if the department issues a conditional approval of the registration under**
 25 **paragraph (b) of this subsection, the department shall issue a final order granting or denying**
 26 **the registration no later than 90 days after the end of the time allowed in the conditional**
 27 **approval for the completion of mitigation efforts. The department may deny registration**
 28 **following issuance of a conditional approval only if the owner fails to complete the mitigation**
 29 **efforts identified as adequate in the conditional approval or fails to comply with a condition**
 30 **of approval described in subsection (8) of this section.**

31 **(11) If the department issues a conditional approval that is subject to conditions under**
 32 **subsections (8) and (10)(b) of this section, and the reasonable periods allowed by the condi-**
 33 **tional approval under subsections (8) and (10)(b) differ, the department shall issue a final or-**
 34 **der granting or denying the registration no later than 90 days after the end of the**
 35 **later-expiring reasonable period.**

36 **SECTION 4. Section 3 of this 2017 Act is repealed January 2, 2025.**