

Requested by Representative MCLANE

**PROPOSED AMENDMENTS TO
HOUSE BILL 3421**

1 On page 1 of the printed bill, line 2, after “reservoirs” insert “; creating
2 new provisions; and amending ORS 537.147 and 540.045”.

3 Delete lines 4 through 30 and delete pages 2 and 3 and insert:

4 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part
5 of ORS chapter 537.**

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

10 **“(2) The department shall maintain a registry of historic-use res-
11 ervoirs. A historic-use reservoir does not require a water right permit
12 or water right certificate.**

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

18 **“(4) A reservoir may not continue to be registered as a historic-use
19 reservoir if the storage amount for the reservoir or the height of the
20 dam or impoundment structure for the reservoir is increased from the
21 storage amount or height at the time of registration. The owner of the**

1 **historic-use reservoir shall maintain any headgates, measuring devices**
2 **and outlet controls required by the department in proper working or-**
3 **der.**

4 **“SECTION 3. (1) Notwithstanding any other provision of ORS**
5 **chapter 536, 537 or 538, the owner of a reservoir may apply to the**
6 **Water Resources Department as provided in this section to have the**
7 **reservoir registered as a historic-use reservoir as defined in section 2**
8 **of this 2017 Act if:**

9 **“(a) The reservoir has been in existence since on or before January**
10 **1, 2000;**

11 **“(b) The reservoir is located in an area withdrawn from appropri-**
12 **ation under ORS chapter 538; and**

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

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

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

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

21 **“(b) The amount of water stored by the reservoir;**

22 **“(c) The height of the dam or impoundment structure for the res-**
23 **ervoir;**

24 **“(d) The water source supplying the reservoir;**

25 **“(e) Information describing the location, type and characteristics**
26 **of any headgates, measuring devices and outlet controls for the res-**
27 **ervoir;**

28 **“(f) A map or drawing of the reservoir and surrounding vicinity, to**
29 **scale and meeting any requirements in department rules; and**

30 **“(g) Information supplied by the State Department of Fish and**

1 **Wildlife demonstrating that the reservoir does not have a significant**
2 **detrimental impact on existing fishery resources or can be modified**
3 **to not have a significant detrimental impact on existing fishery re-**
4 **sources.**

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

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

16 **“(a) Does not contain the information described in subsection (2)**
17 **of this section;**

18 **“(b) Is not timely filed; or**

19 **“(c) Is not accompanied by the appropriate fee.**

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

26 **“(6) No later than 90 days after accepting an application, the de-**
27 **partment shall publish notice of the application in the weekly notice**
28 **published by the department and once each week for two successive**
29 **weeks in a newspaper having general circulation in the county where**
30 **the reservoir is primarily located. The applicant shall pay in advance**

1 the cost of newspaper publication.

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

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

10 “(a) A timely objection is received under subsection (7) of this sec-
11 tion;

12 “(b) The department proposes to deny registration; or

13 “(c) The applicant objects to requirements contained in a proposed
14 conditional approval.

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

21 “(10) If the department holds a contested case hearing on the ap-
22 plication, the department shall issue a final order approving or deny-
23 ing registration, or issue a conditional approval, no later than 180 days
24 after the close of the contested case hearing.

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

30 “(12) The department may issue a conditional approval for a reser-

1 **voir:**

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

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

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

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

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

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

29 **“(b) Increases the reservoir storage amount or the height of the**
30 **dam or impoundment structure after issuance of the conditional ap-**

1 **proval.**

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

7 “SECTION 4. ORS 537.147 is amended to read:

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

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

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

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

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

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

1 required by ORS 537.153 (2).

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

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

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

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

12 **“SECTION 5.** ORS 540.045 is amended to read:

13 “540.045. (1) Each watermaster shall:

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

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

20 “(c) Divide the waters of the natural surface and ground water sources
21 and other sources of water supply among the canals, ditches, pumps, pipe-
22 lines and reservoirs taking water from the source for beneficial use, by reg-
23 ulating, adjusting and fastening the headgates, valves or other control works
24 at the several points of diversion of surface water or the several points of
25 appropriation of ground water, according to the users’ relative entitlements
26 to water.

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

1 of the watermaster.

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

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

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

10 “(4) As used in this section, ‘existing water rights of record’ includes all
11 completed permits, certificates, licenses and ground water registration
12 statements filed under ORS 537.605, **historic-use reservoirs described in**
13 **section 2 of this 2017 Act** and related court decrees.

14 **“SECTION 6. Section 3 of this 2017 Act is repealed January 2, 2035.**
15 **The repeal of section 3 of this 2017 Act does not affect the registration**
16 **status of a reservoir under section 2 of this 2017 Act.”.**

17
