

PONDS AND RESERVOIRS

537.400 Reservoir permits. (1) All applications for reservoir permits shall be subject to the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the application, that the applicant has provided notice of the application to the operator of the reservoir and, if applicable, that an agreement has been entered into with the entity delivering the stored water. When beneficial use has been completed and perfected under the secondary permit, the Water Resources Department shall take the proof of the water user under the permit. The final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

(2) Whenever application is made for permit to store water in a reservoir or pond for any beneficial use which does not contemplate future diversion of the stored water except by livestock drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir permit and no secondary permit shall be required. However, in cases where water from a stream is required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the applicant for permit to store water in such reservoir or pond shall also file an application for permit to appropriate the waters of the stream.

(3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the application shall comply with standards established by the Water Resources Commission. The survey required under ORS 537.230 shall be prepared by a water right examiner certified under ORS 537.798 and shall be submit-

ted to the department before the department issues the water right certificate.

(4) If a dam safety review is required under ORS 540.350, the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued.

(5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an application for a reservoir permit for which a dam safety review is required under ORS 540.350 and issue a permit, subject to the condition that before the reservoir may be filled, the permittee shall submit to the department evidence that the permittee owns, or has written authorization or an easement permitting access to, all lands to be inundated by the reservoir. [Formerly 537.300; and then 537.345; 1993 c.557 §3; 1993 c.595 §9; 1995 c.365 §6; 2005 c.37 §3]

537.405 Exempt reservoirs; written notification to department; injury to other users. (1) Reservoirs in existence on or before January 1, 1995, that store less than 9.2 acre-feet of water or with a dam or impoundment structure less than 10 feet in height, are found to be a beneficial use of the water resources of this state. Except as provided in subsection (4) of this section, such reservoirs are exempt from regulation by the Water Resources Commission and the Water Resources Department and are not required to obtain a permit or certificate under ORS 537.140 to 537.252.

(2)(a) On or before January 31, 1997, an owner of a reservoir constructed before January 1, 1995, shall provide written notification to the department of the existence of the exempt reservoir. The written notification shall include the quantity of water stored by the reservoir, the source of the water used to fill the reservoir and a map or drawing of sufficient quality and scale to establish the general location of the reservoir by tax lot, township, range and section and to the nearest quarter-quarter section.

(b) Any person who submitted a notice of exemption for a reservoir under ORS 537.141 and qualified for the exemption shall be allowed an exemption.

(3) Within 90 days after receiving written notification under subsection (2) of this section, the department shall provide notice of the exemption in the manner the department determines to be the most appropriate.

(4) Detailed, legally obtained information demonstrating that a specific reservoir exempt under subsection (1) of this section