

der ORS 537.405. Upon receipt of a request under this subsection, the department shall refund all fees and convert the application to a notice of exemption. [1995 c.752 §3]

**537.409 Alternate permit application process for qualifying reservoirs; injury to existing users or fishery resources; public interest review; rules.** (1) In lieu of the process set forth in ORS 537.140 to 537.211 for applying for a water right permit, an owner of a reservoir may submit an application to the Water Resources Department to issue a water right permit under ORS 537.211 or a certificate under ORS 537.250 according to the process set forth in this section if the reservoir:

(a) Has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height;

(b) Does not injure any existing water right;

(c) Does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and

(d) Is not prohibited under ORS 390.835.

(2) An application for a water right permit for a reservoir under subsection (1) of this section shall provide sufficient information to demonstrate compliance with the criteria set forth in subsection (1) of this section. The application shall:

(a) Include the quantity of water to be stored by the reservoir, a map indicating the location of the reservoir and the source of the water used to fill the reservoir; and

(b) Be accompanied by the fee established in ORS 536.050 (1)(q).

(3) The map required under subsection (2) of this section need not be prepared by a water right examiner certified under ORS 537.798. The map submitted with the application shall comply with standards established by the Water Resources Commission.

(4) Within 60 days after receiving an application under subsection (1) of this section, the Water Resources Department shall provide public notice of the application in the manner the department determines to be the most appropriate.

(5) Within 60 days after the department provides public notice under subsection (4) of this section, any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir:

(a) Would result in injury to an existing water right; or

(b) Would pose a significant detrimental impact to existing fishery resources.

(6) In accordance with rules established by the Water Resources Commission for an expedited public interest review process for applications submitted under this section or in response to a request under subsection (5) of this section, the department shall conduct a public interest review of the reservoir application. The review shall be limited to issues pertaining to:

(a) Water availability;

(b) Potential detrimental impact to existing fishery resources; and

(c) Potential injury to existing water rights.

(7) Within 180 days after the department receives an application for a permit under subsection (1) of this section, the department shall issue a final order granting or denying the permit or granting the permit with conditions.

(8) If the department issues an order under subsection (7) of this section denying the permit, the applicant may request a contested case hearing, which shall be conducted in accordance with applicable provisions of ORS chapter 183.

(9) If the department does not find injury or impact under subsection (6) of this section and the department issues a final order under subsection (7) of this section allowing the issuance of a permit, the order shall be subject to judicial review of orders in other than contested cases as provided in ORS chapter 183.

(10) Notwithstanding the requirement for a survey under ORS 537.230, a survey of the appropriation is not required for a reservoir that has a storage capacity of less than 9.2 acre-feet of water. For a reservoir qualifying under this subsection, a permittee shall submit to the department a claim of beneficial use within one year after the date of completion of construction. A claim of beneficial use for a reservoir qualifying under this subsection shall require only a written affidavit signed by the permittee that includes the following:

(a) The dimensions of the reservoir.

(b) The maximum capacity of the reservoir in acre-feet.

(c) A map identifying the location of the reservoir. The map shall comply with standards established by the Water Resources Commission. The map required under this subsection need not be prepared by a water right examiner certified under ORS 537.798.

(11) Any person applying for a secondary permit for the use of stored water from a reservoir qualifying under subsection (10) of