

Enrolled House Bill 3038

Sponsored by Representative JENSON; Representatives ACKERMAN, ANDERSON, BARKER, BARNHART, BERGER, BEYER, BOONE, BOQUIST, BROWN, BRUUN, BURLEY, DALLUM, ESQUIVEL, FARR, FLORES, GARRARD, GILMAN, HUNT, KITTS, KOMP, KRIEGER, KROPF, KRUMMEL, LIM, MARCH, NOLAN, ROBLAN, SCHAUFLE, G SMITH, THATCHER, TOMEI, WHISNANT, WIRTH, WITT, Senators ATKINSON, BATES, BURDICK, DEVLIN, FERRIOLI, JOHNSON, KRUSE, MONNES ANDERSON, MORRISSETTE, MORSE, NELSON, SHIELDS, B STARR, C STARR, WALKER, WESTLUND, WINTERS

CHAPTER

AN ACT

Relating to municipal water right permit extensions; creating new provisions; amending ORS 537.230, 537.250, 537.409 and 537.630; and declaring an emergency.

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

SECTION 1. ORS 537.230 is amended to read:

537.230. (1) **Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute** the construction of any proposed irrigation or other work [*shall be prosecuted*] with reasonable diligence and [*be completed*] **complete the construction** within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

(2) **The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:**

(a) **The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;**

(b) **The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and**

(c) **For the first extension issued after the effective date of this 2005 Act for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection**

agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

[2] (3) Except as provided in ORS 537.240 [or] and 537.248 and subsection (2) of this section, the **Water Resources** Department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

[3] (4) Except as provided in subsection [(4)] (5) of this section and ORS 537.409, upon completion of beneficial use as required under [subsection (1) of] this section, the permittee shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the Water Resources Department, which shall accompany the request for a water right certificate submitted to the department under ORS 537.250. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

[(4)] (5) The Water Resources Director may waive the requirement under subsection [(3)] (4) of this section that a permittee hire a water right examiner certified under ORS 537.798 if:

(a) The permit is a supplemental water right that shares the same distribution system and same place of use as the primary water right; and

(b) The department determines that there is sufficient information in the records of the department to determine proof of beneficial use.

[(5)] (6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions.

SECTION 2. ORS 537.630 is amended to read:

537.630. (1) **Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute** the construction of a well or other means of developing and securing the ground water [*under a permit issued pursuant to ORS 537.625 shall be prosecuted*] with reasonable diligence and [*be completed*] **complete the construction** within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. **However,** the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. **In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.**

(2) **The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which the permit for municipal use is issued under ORS 537.625. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years.**

However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and

(c) For the first extension issued after the effective date of this 2005 Act for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

[(2)] (3) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after the completion, or if the construction is completed before the date of approval, within 30 days after the date of approval, the permit holder shall file a certificate of completion with the **Water Resources** Department, disclosing:

(a) The depth to the water table;

(b) The depth, diameter and type of each well, and the kind and amount of the casing;

(c) The capacity of the well pump in gallons per minute and the drawdown thereof;

(d) The identity of the record owner of any property that was described in the application for a permit under ORS 537.625 but is not included in the certificate of completion; and

(e) Any other information the department considers necessary.

[(3)] (4) Upon completion of beneficial use necessary to secure the ground water as required under [subsection (1) of] this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after applying the water to beneficial use or the beneficial use date allowed in the permit, the permit holder shall submit the survey as required by the Water Resources Department to the department along with the certificate of completion required under subsection [(2)] (3) of this section. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

[(4)] (5) After the department has received a certificate of completion and a copy of the survey as required by subsections [(2) and (3)] (3) and (4) of this section that show, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795 and 537.992, the department shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in ORS 537.700.

[(5)] (6) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

[(6)] (7) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under subsection [(4)] (5) of this section for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions.

SECTION 3. ORS 537.250 is amended to read:

537.250. (1) After the Water Resources Department has received a request for issuance of a water right certificate accompanied by the survey required under ORS 537.230 [(3)] (4) that shows, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the department shall issue to the applicant a certificate of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the applicant as provided in that section.

(2) When issuing a water right certificate under subsection (1) of this section in the name of a district as defined in ORS 540.505, or in the name of a government agency for a district, the department may issue the water right certificate for land not described in the permit in accordance with ORS 537.252.

(3) Rights to the use of water acquired under the provisions of the Water Rights Act, as set forth in a certificate issued under subsection (1) of this section, shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate, subject only to loss:

(a) By nonuse as specified and provided in ORS 540.610; or

(b) As provided in ORS 537.297.

SECTION 4. ORS 537.409 is amended to read:

537.409. (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 re-

quest 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 [(3)] (4), 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 this section shall submit a survey prepared by a water right examiner certified under ORS 537.798. The survey required under this subsection shall apply to the storage reservoir and to the secondary use of the water in the reservoir.

SECTION 5. (1) The amendments to ORS 537.230 and 537.630 by sections 1 and 2 of this 2005 Act relating to the time to commence and complete construction apply to permits issued by the Water Resources Department on or after the effective date of this 2005 Act.

(2) The amendments to ORS 537.230 and 537.630 by sections 1 and 2 of this 2005 Act apply to requests for extensions of time to complete construction or to perfect a water right made before, on or after the effective date of this 2005 Act, whether or not construction has commenced under a permit prior to the request.

(3) All final orders by the department that resulted in the issuance of a water right permit, the issuance of a water right certificate or the approval of an extension of time to complete construction or to perfect a water right for a municipal use that were issued before the effective date of this 2005 Act are not subject to challenge in an administrative or judicial proceeding with respect to the requirement to commence and complete construction within a specified period of time.

SECTION 6. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House April 14, 2005

Repassed by House June 17, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 15, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State