

In an attempt to prevent the need for additional registration legislation in the future, House Bill 2376 also established an alternate reservoir process for reservoirs less than 10 feet in height or storing less than 9.2 acre-feet (1 acre-foot = ~326,000 gallons). Today, this process is codified in ORS 537.409; however, with some exceptions, owners of ponds within most withdrawn areas in ORS Chapter 538 cannot apply for a permit under this process.

Today, the Department still finds ponds and reservoirs that do not have a water authorization. The Department seeks to work with these owners to help them get into compliance when a water right can be obtained, however, where there are no options, the Department requires removal of the reservoir or actions to prevent unauthorized storage of water.

Rainwater Harvesting

Although not as directly related to this legislation, when a pond or reservoir is discovered that does not have a legal water authorization, there have been assertions that the storage is “rainwater harvesting.” ORS 537.141(1)(h) *allows* for the collection of rainwater from an impervious surface, such as a roof or a parking lot, without a water right. Outside of this exception, collecting waters that run off the surface and eventually join streams does not constitute “rainwater harvesting” and *does* require a water authorization.

HB 4092

HB 4092 allows an owner of a reservoir located on a specified tax lot within the Big Butte Creek watershed and that has been in existence prior to January 1, 2000, to apply to register the reservoir by July 1, 2021. By July 1, 2022, the owner of the property must provide proof that the reservoir stores no more than 9.2 acre-feet of water, is less than 10-feet tall, has outlet works to release water, and has fish passage. The bill requires the reservoir owner to measure flows into and out of the reservoir and to submit reports to the Department. The Department is required to order removal of the reservoir if the owner fails to register or fails to comply with requirements of the registration throughout the life of the reservoir. The agency’s understanding is that the reservoir that is currently on the specified tax lot does not currently meet these requirements, and that the owners understand that they will need to make investments to modify the reservoir to ensure that it does.

The bill establishes that the registration is exempt from the need to obtain a water right, and that the water may not be used outside of the reservoir, except for fire suppression. It allows the reservoir to be regulated by the watermaster for water rights and subordinates the reservoir to other rights. The bill also specifies application procedures and the basis for rejecting an application for registration, which sunset in January 2023.

The Department provides this testimony for informational purposes and is not taking a position on this bill.