

**538.420 Portland's right to waters of Bull Run and Little Sandy Rivers; vested rights not impaired; applicability of law.**

(1) Exclusive right to the use of waters of Bull Run and Little Sandy Rivers is granted to the City of Portland. However, the Water Rights Act (as defined in ORS 537.010) shall not impair the rights of any person who, on February 24, 1909, had any vested right to or valid appropriation or bona fide notice of appropriation of the waters of either Bull Run River or Little Sandy River, under laws theretofore in effect or under any valid contract or deed of conveyance theretofore made with or by the City of Portland.

(2) ORS 541.010 to 541.080 shall not apply to Bull Run Creek or River.

**538.430 Medford and Eagle Point Irrigation District; right to waters of Big Butte Creek; generation, sale and distribution of electric energy by irrigation district.**

(1) Subject to water rights existing on May 29, 1925, the City of Medford, in Jackson County, is granted the exclusive right to use for municipal purposes all the waters of Big Butte Creek, a tributary of Rogue River situated in Jackson County, and of the springs at the head which form the creek, and of its tributaries. The City of Medford, any of its officers, and others on its behalf may appropriate all the waters for these purposes and an application therefor may be made for the benefit of the city, either by it in its own name, or by any of its officers or by any other person on its behalf. No person shall appropriate or be granted a permit to use any of the waters except as provided in this section, and for the use and benefit of the city. But the City of Medford may, under this grant, divert such waters from their watershed and convey them to the city and elsewhere for use by it for municipal purposes, either within or without the city limits. All of such waters are withdrawn from future appropriation, except for such use and benefit of the City of Medford; provided however, that the Eagle Point Irrigation District may establish and use an additional point of diversion below the diversion point in use on April 1, 1953, under its permit number 6396 which authorizes the appropriation of not to exceed 100 cubic feet per second.

(2) Subject to rights existing on July 21, 1953, to the use of the waters of Big Butte Creek, and of the springs at the head which form the creek, and of its tributaries, including the rights granted in subsection (1) of this section to the City of Medford to the use of such waters and the right of future appropriation of such waters, the Eagle Point Irrigation District is granted the right to appropriate and use up to and including 100

cubic feet per second of the waters of Big Butte Creek, using the diversion site of the Eagle Point Irrigation District existing on April 1, 1953, for the purpose of generating electric energy; provided, however, that not less than 10 cubic feet per second of said waters shall be permitted to pass said diversion point and remain in the channel of said stream at all times other than times when said waters are diverted for irrigation purposes. The Eagle Point Irrigation District may:

(a) Enter into such contracts and perform such other acts as it deems necessary or desirable for the generation of electric energy and the construction and maintenance of facilities for the generation of electric energy.

(b) Enter into such arrangements as it deems proper for the use, sale or distribution of the electric energy which is generated.

(3) In performing any of the acts under subsection (2) of this section, the Eagle Point Irrigation District shall not be deemed a public utility as defined in ORS 757.005.

(4) Subsections (1) and (2) of this section shall not prevent the appropriation of the waters of Clark Creek, in Jackson County, for the development of hydroelectric power not to exceed two megawatts if the facility will be constructed and operated in compliance with recommendations by the State Department of Fish and Wildlife concerning fish conservation, including streamflow requirements based upon biological criteria. [Amended by 1953 c.572 §2; 1963 c.231 §1; 1983 c.650 §2]

**538.440 Bend; right to waters of Tumalo Creek.** Whenever the City of Bend, Deschutes County, shall have acquired the right to appropriate or use from the Deschutes River at least 11 cubic feet per second of water for delivery into the feed canal belonging to Deschutes County Municipal Improvement District, which feed canal is now supplied from the Deschutes River at a diversion located in or near Bend, then the city may take from the direct flow of Tumalo Creek, in Deschutes County, not to exceed 11 cubic feet per second of water for providing a supply of water for domestic and municipal purposes; provided, however, that should the waters of the Deschutes River so acquired for the purpose of the exchange be appurtenant to lands calling for a different point of diversion, the place of use and point of diversion of the water may be changed to meet the requirements of this section.

**538.450 Pendleton; right to waters of Umatilla River; notice of intent; agreement with tribes.** (1) Subject to water rights existing on March 8, 1941, there is granted to the City of Pendleton, Umatilla County, and its water commission, the exclusive right to use for public or municipal