

protecting fish life therein by the State Fish and Wildlife Commission:

(1) Clatskanie River and its tributaries, except Fall Creek in Columbia County, for purposes of hydroelectric generation if the facility is 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.

(2) Klaskanine River and its tributaries in Clatsop County except an unnamed tributary of the South Fork Klaskanine River in Clatsop County, on which there is located an existing fish culture project, for purposes of hydroelectric generation if the facility is less than 100 horsepower and the electricity generated is for use in conjunction with the existing fish culture project.

(3) Lewis and Clark River in Clatsop County.

(4) Sandy River and its tributaries in Multnomah and Clackamas Counties, except:

(a) Beaver Creek and its tributaries.

(b) Buck Creek and its tributaries.

(c) The tributary of the Sandy River in Multnomah County which empties into the Sandy River near the north quarter corner, section 10, township 1 south, range 4 east, Willamette Meridian, and its tributaries, and is locally known as Big Creek.

(d) All tributaries, but not the main channel, of the Sandy River are open for appropriation and storage from December 1 to June 1 of each year. Water stored during this period may be used at any time.

(e) Trout Creek in Multnomah County and its tributaries.

(5) Scappoose Creek in Columbia County.

(6) Tillasqua Creek in Clatsop County. [1953 c.222 §2; 1961 c.366 §1; 1971 c.139 §1; 1983 c.807 §4; 1987 c.392 §1]

**538.260 Existing rights not affected; appropriation and use for certain purposes permitted.** ORS 538.251 shall not affect any existing rights to appropriate or use water, or any renewals or extensions thereof, or prevent appropriation and use of such water for domestic, stock, municipal, fish culture, aesthetic, recreational, or public park purposes. [Amended by 1971 c.139 §2]

**538.270 Rogue River; withdrawal from appropriation; excepted water uses; tributaries.** Subject to water rights existing on May 26, 1967, the waters flowing in the main channel of the Rogue River from its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette Meridian in Jackson County, to its confluence with the Pacific Ocean, are with-

drawn from appropriation; except that this section shall not prevent the appropriation and use of such waters for domestic, stock, irrigation, municipal, fish, wildlife, recreation and road maintenance purposes, nor prevent the appropriation, diversion and use of the waters of any stream tributary to the river. [Amended by 1959 c.205 §1; 1967 c.310 §1; 1989 c.291 §1]

**538.280 McNulty Creek; withdrawal from appropriation; exceptions.** The waters of McNulty Creek, a tributary of Scappoose Bay, in Columbia County, are withdrawn from appropriation except for storage during the period beginning November 1 and ending on March 31 of each year in reservoirs not constructed in the channel of McNulty Creek below a line one mile west of the range line between ranges 1 and 2 west, Willamette Meridian. [Amended by 1955 c.82 §1]

**538.290 McNulty Creek; existing rights not affected.** ORS 538.280 shall not affect any existing rights to the waters of McNulty Creek that have been acquired or are in the process of being acquired under the water laws of this state. [Amended by 1955 c.82 §2]

**538.300 Milton Creek and tributaries; withdrawal from appropriation; exception; existing rights.** The unappropriated waters of Milton Creek and its tributaries, in Columbia County, are withdrawn from appropriation except for domestic use through the year and storage during the period beginning November 1 and ending April 30 of each year. Nothing contained in this section shall impair the existing rights of any person to the use of such waters.

## MUNICIPAL WATER SUPPLY

**538.410 Confirmation of water rights acquired prior to February 24, 1909, for municipal supply; rejection of applications injurious to municipal supply; statements of supply.** All rights to the waters of the lakes, rivers and streams of this state acquired before February 24, 1909, for the purposes of municipal water supply are confirmed, and no rights acquired under the Water Rights Act (as defined in ORS 537.010) shall impair the rights of any municipal corporation to waters taken before February 24, 1909. The Water Resources Commission shall reject, or grant subject to municipal use, all applications where, in the commission's judgment, the appropriation of the waters applied for impairs a municipal water supply. Municipal corporations of the state, on request of the Water Resources Commission, shall furnish a statement of the amount and source of the municipal water supply, with probable increase or extension of the same. [Amended by 1985 c.673 §79]