

House Bill 3438

Sponsored by Representatives MCLANE, HELM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows owner of reservoir located on specified property within Big Butte Creek drainage area to register reservoir with Water Resources Department. Establishes application and qualification deadlines. Exempts registered reservoir from water right permit and water right certificate requirements. Prohibits diversion or other uses of reservoir water. Makes reservoir use subservient to water rights. Requires property owner to measure and report flows into and out of reservoir. Requires department to order removal of reservoir if not registered. Requires department to cancel registration and order removal of reservoir if reservoir ceases to meet requirements.

A BILL FOR AN ACT

1
2 Relating to the registration of reservoirs within the Big Butte Creek drainage area; creating new
3 provisions; and amending ORS 538.430.

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

5 **SECTION 1.** ORS 538.430 is amended to read:

6 538.430. (1) Subject to water rights existing on May 29, 1925, the City of Medford, in Jackson
7 County, is granted the exclusive right to use for municipal purposes all the waters of Big Butte
8 Creek, a tributary of Rogue River situated in Jackson County, and of the springs at the head which
9 form the creek, and of its tributaries. The City of Medford, any of its officers, and others on its
10 behalf may appropriate all the waters for these purposes and an application therefor may be made
11 for the benefit of the city, either by it in its own name, or by any of its officers or by any other
12 person on its behalf. No person shall appropriate or be granted a permit to use any of the waters
13 except as provided in this section, and for the use and benefit of the city. But the City of Medford
14 may, under this grant, divert such waters from their watershed and convey them to the city and
15 elsewhere for use by it for municipal purposes, either within or without the city limits. All of such
16 waters are withdrawn from future appropriation, except for such use and benefit of the City of
17 Medford; provided however, that the Eagle Point Irrigation District may establish and use an addi-
18 tional point of diversion below the diversion point in use on April 1, 1953, under its permit number
19 6396 which authorizes the appropriation of not to exceed 100 cubic feet per second.

20 (2) Subject to rights existing on July 21, 1953, to the use of the waters of Big Butte Creek, and
21 of the springs at the head which form the creek, and of its tributaries, including the rights granted
22 in subsection (1) of this section to the City of Medford to the use of such waters and the right of
23 future appropriation of such waters, the Eagle Point Irrigation District is granted the right to ap-
24 propriate and use up to and including 100 cubic feet per second of the waters of Big Butte Creek,
25 using the diversion site of the Eagle Point Irrigation District existing on April 1, 1953, for the pur-
26 pose of generating electric energy; provided, however, that not less than 10 cubic feet per second
27 of said waters shall be permitted to pass said diversion point and remain in the channel of said
28 stream at all times other than times when said waters are diverted for irrigation purposes. The

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 Eagle Point Irrigation District may:

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

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

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

9 (4) Subsections (1) and (2) of this section shall not prevent the appropriation of the waters of
 10 Clark Creek, in Jackson County, for the development of hydroelectric power not to exceed two
 11 megawatts if the facility will be constructed and operated in compliance with recommendations by
 12 the State Department of Fish and Wildlife concerning fish conservation, including streamflow re-
 13 quirements based upon biological criteria.

14 **(5)(a) Notwithstanding subsections (1) to (4) of this section, the owner of the property**
 15 **located in Township 34S, Range 1E, Section 36, northwest quarter of the southwest quarter,**
 16 **and designated by Jackson County as tax lot 1101, may apply to the Water Resources De-**
 17 **partment on or before July 1, 2020, to have a reservoir registered with the department if the**
 18 **reservoir:**

19 **(A) Is located on the property; and**

20 **(B) Existed prior to January 1, 2000.**

21 **(b) The department may grant registration of the reservoir if, on or before July 1, 2021,**
 22 **the property owner provides proof satisfactory to the department that the reservoir:**

23 **(A) Stores not more than 9.2 acre-feet of water;**

24 **(B) Has a dam or impoundment structure that is not more than 10 feet in height;**

25 **(C) Has outlet works capable of releasing water to maintain the reservoir within its au-**
 26 **thorized limits and to allow regulation for other water rights; and**

27 **(D) Has fish passage as required by the State Department of Fish and Wildlife.**

28 **(c) The registration of a reservoir under this subsection establishes the reservoir as a**
 29 **water use that is exempt from water right permit or certificate requirements. The registra-**
 30 **tion is not a water use subject to transfer. Water in a reservoir registered under this sub-**
 31 **section may not be diverted and may not be used outside of the reservoir. A person may not**
 32 **obtain a secondary permit to use water stored in the reservoir.**

33 **(d) A registration under this subsection is subordinate to water rights issued before, on**
 34 **or after the reservoir registration date. The Water Resources Department may regulate a**
 35 **reservoir registered under this subsection for the benefit of water rights.**

36 **(e) The property owner shall measure flows into and out of a reservoir registered under**
 37 **this subsection and provide the department with monthly reports of those flows.**

38 **(f) If the property owner does not register the reservoir as provided under paragraphs**
 39 **(a) and (b) of this subsection, the department shall order removal of the reservoir. The de-**
 40 **partment shall terminate a registration issued under this subsection and require removal of**
 41 **the reservoir if the reservoir:**

42 **(A) Is not adequately equipped and maintained for the measurement of flows into and out**
 43 **of the reservoir;**

44 **(B) Does not have outlet works capable of releasing water in accordance with the condi-**
 45 **tions for registration;**

1 (C) Does not have properly maintained provisions for fish passage meeting requirements
2 imposed by the State Department of Fish and Wildlife;

3 (D) Stores more than 9.2 acre-feet of water; or

4 (E) Has a dam or impoundment structure that exceeds 10 feet in height.

5 **SECTION 2.** (1) An application for registration of a reservoir under ORS 538.430 (5) must
6 be in written form acceptable to the Water Resources Department.

7 (2) The department may charge a processing fee for an application made under ORS
8 538.430 (5), not to exceed the fee amount established in ORS 536.050 (1)(q) for an application
9 to store water under ORS 537.409. The department may reject an application that:

10 (a) Does not contain the information required to establish that the reservoir qualifies
11 under ORS 538.430 (5)(a); or

12 (b) Is not accompanied by the appropriate fee.

13 (3) If the department considers a survey necessary to confirm that the storage amount
14 of the reservoir does not exceed 9.2 acre-feet of water or that the dam or impoundment
15 structure does not exceed 10 feet in height, the department may require the applicant to
16 provide a survey of the reservoir performed by a certified water right examiner or a profes-
17 sional engineer.

18 **SECTION 3.** Section 2 of this 2019 Act is repealed January 2, 2022.
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