

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificates 80569, 80571, 80574,)
80576, and Permit 25915, Jackson County)

DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating short-term instream lease applications.

Lessor #1
Rogue River Valley Irrigation District (RRVID)
3139 Merriman Road
Medford, Oregon 97501

Lessor #2
Bureau of Reclamation
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

Lessee
Oregon Water Trust
522 SW Fifth Avenue, Suite 825
Portland, Oregon 97204

Findings of Fact

1. RRVID, Bureau of Reclamation, and Oregon Water Trust filed an application to lease a portion of Certificates 80569, 80571, 80574, 80576, and Permit 25915, to instream use. The Department assigned the application number L-767.
2. The rights to be leased are as follows:

Certificate: 80569 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit E-19)
Use: IRRIGATION of 44.5 ACRES
Priority Date: JULY 23, 1909
Rate: 0.44 CUBIC FEET PER SECOND
Limit/Duty: ONE-HUNDREDTH CFS PER ACRE
Source: NORTH FORK LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	NONE GIVEN
36 S	2 E	WM	20	SE NE	40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTION 20

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 E	WM	29	NE SE	780 FEET SOUTH & 400 FEET WEST FROM E1/4 CORNER, SECTION 29

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 W	WM	3	NW NW	9.0
37 S	2 W	WM	3	SW NW	27.9
37 S	2 W	WM	3	SE NW	1.3
37 S	2 W	WM	3	NW SW	19.6
37 S	2 W	WM	4	SW NW	5.9
37 S	2 W	WM	4	NW SW	2.1
37 S	2 W	WM	4	NE SE	5.7
37 S	2 W	WM	4	NW SE	0.2

Certificate: 80571 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-407)
Use: SUPPLEMENTAL IRRIGATION OF 44.5 ACRES
Priority Date: MARCH 31, 1910
Rate: 0.56 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH CFS PER ACRE
Source: FOURMILE LAKE, tributary to FOURMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	NONE GIVEN
36 S	2 E	WM	20	SE NE	40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTION 20
36 S	5 E	WM	9	SW NW	3600 FEET NORTH & 4200 FEET EAST FROM SW CORNER, SECTION 9
37 S	4 E	WM	4	SE SE	4000 FEET SOUTH & 600 FEET EAST FROM NE CORNER, SECTION 4

Authorized Place of Use: Same as for Certificate 80569.

Certificate: 80574 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-1705)
Use: SUPPLEMENTAL IRRIGATION OF 44.5 ACRES
Priority Date: JUNE 24, 1913
Rate: 0.56 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH CFS PER ACRE
Source: ANTELOPE CREEK, tributary to LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	30	SW NE	770 FEET NORTH & 1650 FEET WEST FROM E1/4 CORNER, SECTION 30

Authorized Place of Use: Same as for Certificate 80569.

Certificate: 80576 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-30364)
Use: SUPPLEMENTAL IRRIGATION OF 44.5 ACRES
Priority Date: SEPTEMBER 6, 1915
Limit/Duty: 200.2 ACRE FEET (4.5 AF/AC)
Source: AGATE RESERVOIR, tributary to DRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 W	WM	25	NW NW	1090 FEET SOUTH & 1250 FEET EAST FROM NW CORNER, SECTION 25

Authorized Place of Use: Same as for Certificate 80569.

Permit: 25915
Use: SUPPLEMENTAL IRRIGATION of 44.5 ACRES
Priority Date: SEPTEMBER 6, 1915
Rate: 1.11 CFS for Supplemental Irrigation
Limit/Duty: ONE-FORTIETH CFS PER ACRE, NOT TO EXCEED 4.50 AF PER ACRE PER YEAR
Source: EMIGRANT CREEK/RESERVOIR, tributary to BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	2 E	WM	20	SE SE	TOE OF EMIGRANT DAM

Authorized Place of Use: Same as for Certificate 80569.

- The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
- The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:

Instream Reach: For Certificate 80569 in Lone Pine Creek at the Table Rock Road Gage. For all other certificates at the Jackson Street Creek Gage (BJBO) on Bear Creek.

Certificate	Priority Date	Primary Instream Rate (cfs)	Supplemental Instream Rate	Period Protected Instream
80569	July 23, 1909	0.44		June 20 through October 31
80571	March 31, 1910		0.44 cfs	June 20 through October 31
80574	June 24, 1913		0.44 cfs	June 20 through October 31
80576	September 6, 1915		200.2 AF	June 20 through October 31
Permit 25915	September 6, 1915		0.44 cfs	June 20 through October 31

- Other conditions to prevent injury and enlargement are:
 - RRVID shall divert water at the PODs described in Finding of Fact #2. Water shall be diverted and transported to Bear Creek in the Joint System Canal and the East Main

Canal and then released from the canal through the control structure used to deliver water into Bear Creek for District patrons diverting from Bear Creek.

- B. RRVID shall maintain a minimum flow through the control structure used to deliver water into Bear Creek by keeping the bottom of the diversion board open, notching the diversion board or other method of passing water that is acceptable to the watermaster, thereby allowing the leased water to return to Bear Creek at a constant rate.
 - C. RRVID shall report to the District 13 Watermaster's office the amount of water being delivered under Certificate 80569 to the Table Rock Gage. After the initial report, subsequent reports need to be made to the Watermaster's office within one day of when delivery changes are made.
 - D. RRVID shall report to the District 13 Watermaster's office the amount of water being delivered to the Bear Creek users. This quantity of water shall be additive to the amount of water being leased instream. After the initial report, subsequent reports need to be made to the Watermaster's office within one day of when delivery changes are made.
 - E. The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that RRVID is diverting to rights of the same priority within the district. When RRVID is diverting water on a percentage basis, RRVID shall report to the District 13 Watermaster's office the percentage diverted under the July 23, 1909, March 31, 1910, June 24, 1913, and September 6, 1915 priority dates. This information only needs to be reported to the Watermaster's office once RRVID is diverting water on a percentage basis (less than the 1/100th cfs/acre). Subsequent reports need to be made to the Watermaster's office within one day of when changes are made to the percentage of water being diverted. Once RRVID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage. In the event that RRVID stops delivery irrigation water prior to October 31, the watermaster shall be notified and the delivery for instream use shall also stop.
6. Certificates 80571, 80574, 80576, and Permit 25915 are supplemental to Certificate 80569. The portion of Certificates 80571, 80574, 80576, and Permit 25915 being leased instream shall only be protected instream if the full rate and duty under Certificate 80569 is not available during the period for which water is being leased instream.
 7. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
 8. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. Transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of future leases or transfers.

9. The lease will terminate on October 31, 2006.

CONCLUSIONS OF LAW

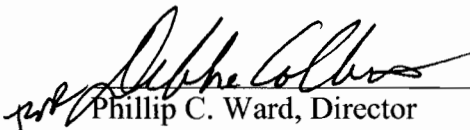
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.

Dated at Salem, Oregon this 7th day of September 2006.


Phillip C. Ward, Director

Mailing date: SEP 11 2006