

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1297, Certificates 79212 and 83727,) FINAL ORDER ON PROPOSED
Jackson County) INSTREAM LEASE

Authority

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 instream lease applications.

Lessor #1

Pooled Instream Lease for water right holder
(described in Finding of Fact #3)

Lessor #2

Talent Irrigation District (TID)
PO Box 467
Talent, OR 97540
tid@talentid.org-mail

Lessor #3

Bureau of Reclamation (BOR)
Lorri Lee, Regional Director
Pacific NW Regional Office
1150 North Curtis Rd., Suite 100
Boise, Idaho 83706-1234

Findings of Fact

1. On April 11, 2013, Naumes, Inc., TID and BOR filed a pooled lease application to lease portions of Certificate 79212. The Department assigned the application number IL-1297.
2. On August 21, 2013, TID submitted application materials clarifying that supplemental Certificate 83727 is included in this lease and other necessary information addressing deficiencies in the application.
3. The portion of the first right to be leased is as follows:

Certificate: 79212, in the name of Talent Irrigation District (perfected under Permits S-1382, S-1383 and S-4537)
Use: Irrigation of 18.59 acres
Priority Date: May 23, 1912
Quantity: **Rate:** 0.23 Cubic Foot per Second (CFS)
Total Duty (based on Finding of Fact #3):83.66
Limit: One-eightieth CFS per acre during the irrigation season of each year

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.

Source: Emigrant Creek, tributary to Bear Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Description
39 S	2 E	WM	20	SE SE	Diversion is located at the toe of Emigrant Dam

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Lessor
38 S	1 E	WM	19	NE SW	200	1.82	Naumes Inc.
38 S	1 E	WM	19	NW SW	200	10.75	Naumes, Inc.
38 S	1 W	WM	24	NW NE	100	2.82	Naumes, Inc.
38 S	1 W	WM	22	SW NW	1700	2.00	TID
38 S	1 W	WM	23	NW SW	401	1.20	TID
Total:						18.59	

4. Certificate 79212 does not specify a duty for the right. However, information is available from the Watermaster identifying 4.5 acre-feet (AF) as an appropriate duty for this right.
5. Certificate 79212 does not specify the irrigation season. However, information is available from the Rogue River decree specifying the irrigation season as April 1 through October 31.
6. The second right to be leased is as follows:

Certificate: 83727, in the name of U. S. Bureau of Reclamation (perfected under Permit S-25915)
Use: Irrigation of 18.59 acres
Priority Date: September 6, 1915
Quantity: **Rate:** 0.46 Cubic Foot per Second (CFS)
Duty: 83.66 Acre-Feet (AF)
Limit: One-fortieth of one CFS per acre, not to exceed 4.5 AF per acre during the irrigation season of each year
Source: Emigrant Creek and Emigrant Reservoir (constructed under Permit R-2209), tributary to Bear Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Description
39 S	2 E	WM	20	SE SE	Diversion is located at the outlet of Emigrant Reservoir

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Lessor
38 S	1 E	WM	19	NE SW	200	1.82	Naumes Inc.
38 S	1 E	WM	19	NW SW	200	10.75	Naumes, Inc.
38 S	1 W	WM	24	NW NE	100	2.82	Naumes, Inc.
38 S	1 W	WM	22	SW NW	1700	2.00	TID
38 S	1 W	WM	23	NW SW	401	1.20	TID
Total:						18.59	

7. Certificate 83727 does not specify the irrigation season. However, information is available from the Rogue River decree specifying the irrigation season as April 1 through October 31 of each year.

8. The lease application includes the information required under OAR 690-077-0076(3). On April 23, 2013, and on July 30, 2013, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
9. The lease application requests to protect water instream from Emigrant Creek to the mouth of Bear Creek (receiving stream). An instream reach is generally from the point of diversion to the mouth of the source stream (Emigrant Creek) but may be protected further if measurable in the receiving stream (Bear Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Emigrant Creek is measurable into Bear Creek and may be protected instream into Bear Creek.
10. To avoid the possibility of injury or enlargement the Lessors have requested that the rights be protected instream at a rate of 1/100th cfs per acre. The instream quantities listed in Finding of Fact #11 reflect this consideration as well as the reduction of duty to 2.65 acre-feet per acre.
11. The instream use has been modified from the lease application to maximize the instream period and to prevent injury and enlargement (see Finding of Fact #10) and is as follows:
Emigrant Creek, tributary to Bear Creek

Instream Reach: From the POD (as described in Finding of Fact #3) approximately (~) 3.5 miles downstream to the point where Walker Creek and Emigrant Creek join to form Bear Creek (at ~ River Mile 27) to the mouth of Bear Creek.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
79212	May 23, 1912	0.148	49.26	May 1 – October 15
83727	September 6, 1915	0.148	49.26	May 1 – October 15

12. Other conditions to prevent injury and enlargement are:

The quantity of water protected instream under this lease shall be based on the same percentage diversion and delivery rate that TID is diverting to rights with the same priority within TID. In cases of shortage of supply, where the general allotment in the district has been reduced, TID may deliver less than 2.65 AF per acre in accordance with district governance for temporary instream leases. In the event TID stops delivery of irrigation water prior to the end of the period water is protected instream, the delivery for instream use shall also stop. Reporting to the Watermaster shall be consistent with any required reporting of other district operations.

13. Certificate 83727 is supplemental to Certificate 79212. The portion of Certificate 83727 being leased instream shall only be protected instream if the full rate and duty under Certificate 79212 are not available during the period for which water is being leased instream.
14. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.

15. 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. The order approving this instream 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.
16. 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.
17. The Lessor has requested that the lease terminate on October 15, 2013, the lease will terminate on the last day of the irrigation season which is October 31, 2013. The lease may commence upon approval.

CONCLUSIONS OF LAW

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

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of this instream lease and terminate on October 31, 2013.

Dated at Salem, Oregon this 22 day of August, 2013.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This document was prepared by Susan Douthit and if you have any questions, please call 503-986-0858.

Mailing date: AUG 28 2013