

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1416, Jackson County) FINAL ORDER ON PROPOSED
) 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 No. 1

Pooled Instream Lease for several water right holders (described in Finding of Fact No. 3 & 6)

Lessor No. 2

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

Lessor No. 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 June 16, 2014, TID, on behalf of several water right holders, and the BOR filed a pooled lease application to lease portions of Certificate 79212 and 83727 to instream use. The Department assigned the application number IL-1416.
2. On July 21, 2014 the Department requested additional map information and clarification on the primary water right to be leased for water right holder Bob Wright. On August 6, 2014, TID submitted several amended application maps, and clarified the primary water right to be leased, for water right holder Bob Wright, as Certificate 83727.
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 19.1 acres

Priority Date: May 23, 1912

Quantity: **Rate:** up to 0.239 Cubic Foot per Second (CFS)

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 | Acres | Lessor |
|---------------|-----|-----|-----|-------|-------------|---------------------------|
| 38 S | 1 E | WM | 30 | SE SE | 4.0 | Andrea Minutoli |
| | | | | SW SE | 6.3 | |
| 38 S | 1 E | WM | 32 | NE SE | 5.6 | Kim & Charlotte Pendleton |
| | | | | NW SE | 3.2 | |
| Total: | | | | | 19.1 | |

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. Use at this duty per acre would allow the diversion of up to 85.95 Acre-Feet (AF) during the irrigation season.
5. Certificate 79212 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rate allowed (described in Findings of Fact No. 3), the total rate for the water right would be exceeded. Certificate 79212 is limited to a diversion of not to exceed 166.4 CFS from all sources and further limited to a rate of 40.0 CFS from Emigrant Creek.
6. The portion of 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: Primary Irrigation of 11.8 acres and Supplemental Irrigation of 19.1 acres

Priority Date: September 6, 1915

Quantity: **Rate:** Primary Irrigation: up to 0.295 CFS
Supplemental Irrigation: up to 0.478 CFS

Duty: Primary Irrigation: 53.10 AF
Supplemental Irrigation: 85.95 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 | Acres | Lessor |
|---|-----|-----|-----|-------|-------|---------------------------|
| Primary Irrigation of 11.8 ac | | | | | | |
| 39 S | 2 E | WM | 34 | NE SE | 11.8 | Bob Wright |
| Supplemental Irrigation of 19.1 ac | | | | | | |
| 38 S | 1 E | WM | 30 | SE SE | 4.0 | Andrea Minutoli |
| 38 S | 1 E | WM | 30 | SW SE | 6.3 | |
| 38 S | 1 E | WM | 32 | NE SE | 5.6 | Kim & Charlotte Pendleton |
| 38 S | 1 E | WM | 30 | NW SE | 3.2 | |

7. Certificate 83727 appears to be a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rate allowed (described in Findings of Fact No. 6), the total rate for the water right would be exceeded. Certificate 79212 is limited to specific amounts for each source identified in the certificate. For Emigrant Creek (along with Emigrant Reservoir), use is limited to not more than 250.0 CFS.
8. Certificates 79212 and 83727 do 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.
9. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
10. 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.
11. To avoid the possibility of injury or enlargement, the Co-Lessor has requested that the rights be protected instream at no more than a rate of 1/100th cfs per acre. The instream quantities listed in Finding of Fact No. 10 reflect this consideration as well as the reduction of duty to 2.65 acre-feet per acre.
12. The application requests to protect water instream for a period of 168 days, being May 1 through October 15. At the instream rates and volumes requested based upon Finding of Fact No. 11, the instream volume would be exceeded before the end of the instream period. To cover the entire instream period, the instream rate has been further reduced.
13. The instream use has been modified from the lease application to maximize the instream period and to prevent injury and enlargement and is as follows:

Emigrant Creek, tributary to Bear Creek

Primary Instream Use:

Instream Reach: From the POD (as described in Findings of Fact No. 3 and 6) to 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 | 0.152 | 50.62 | May 1 through October 15 |
| 83727 | September 6, 1915 | 0.094 | 31.27 | |
| Total | | 0.246 | 81.89 | |

Supplemental Instream Use:

Instream Reach: From the POD (as described in Findings of Fact No. 3 and 6) to 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 |
|--------------------|----------------------|----------------------------|-----------------------------|----------------------------------|
| 83727 | September 6, 1915 | 0.152 | 50.62 | May 1 through October 15 |

14. 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.

The supplemental 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.

15. 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.
16. Based upon review of the application, 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.
17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
18. The Lessors have requested that the lease terminate on October 15, 2014. The term of an instream lease generally ends on the last day of the Irrigation Season, identified as April 1 through October 31 in Finding of Fact No. 6. Therefore, the lease may commence on the date this final order is signed and terminate on October 31, 2014.

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 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, 2014.

Dated at Salem, Oregon this 19 day of August, 2014.


Dwight French
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

Mailing date: AUG 20 2014