

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

In the Matter of the Proposed Lease of)	DETERMINATION and
Existing Water Rights for Instream Use,)	FINAL ORDER ON PROPOSED
Certificates 80569 and 80571, Jackson)	INSTREAM LEASE
County)	

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

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

Lessee

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

Findings of Fact

1. RRVID and the Oregon Water Trust filed an application to lease a portion of Water Right Certificates 80569 and 80571 for instream use. The Department assigned the application number IL-862.
2. Naumes, Inc. is the landowner of Tax Lot 701, located in Section 19, Township 36 South, Range 1 East, W.M., to which the water rights proposed for instream lease in IL-862 are appurtenant. Robert Boggess is the Real Estate Manager/COO for Naumes, Inc. Mr. Boggess, acting on behalf of Naumes, Inc., has authorized RRVID to apply for an instream lease for the portions of Certificates 80569 and 80571, appurtenant to Tax Lot 701.
3. The first right to be leased is as follows:

Certificate: 80569 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit E-19)

Use: IRRIGATION of 43.2 ACRES

Priority Date: JULY 23, 1909

Rate: 0.24 CUBIC FEET PER SECOND (cfs)

Limit: ONE-HUNDREDTH of one cfs per acre

Source: NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK: 40 FEET NORTH AND 620 FEET WEST FROM E1/4 CORNER OF SECTION 20
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CREEK: 780 FEET SOUTH AND 400 FEET WEST FROM E1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	1 E	WM	19	SW SE	19.2
36 S	1 E	WM	19	SE SE	24.0

4. The second right to be leased is as follows:

Certificate: 80571 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-407)

Use: SUPPLEMENTAL IRRIGATION of 43.2 ACRES

Priority Date: MARCH 31, 1910

Rate: 0.22 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: FOUR MILE LAKE RESERVOIR, within the Klamath River Basin; waters draining or flowing into the CASCADE CANAL; and FISH LAKE RESERVOIR, within the Rogue River Basin

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK: 40 FEET NORTH AND 620 FEET WEST FROM E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM: 3600 FEET NORTH AND 4200 FEET EAST FROM SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM: 4000 FEET SOUTH AND 600 FEET EAST FROM NE CORNER OF SECTION 4

Authorized Place of Use for Supplemental Irrigation: Same lands as described in Finding of Fact #3.

5. 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.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Instream Reach: From the confluence of the North and South Forks of Little Butte Creek, at approximately River Mile 17, to the mouth of Little Butte Creek, as measured at the Little Butte Creek Gage at Lakecreek (#14346700) (added to any other water required to be delivered there) and at Eagle Point Gage (LBEO) (added to any other water required to be delivered there).

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
80569	JULY 23, 1909	0.24	June 20 through October 1
80571	MARCH 31, 1910	0.22*	June 20 through October 1
<i>Total</i>		<i>0.43</i>	<i>June 20 through October 1</i>

* Not to exceed 0.19 cfs except when the primary right (Certificate 80570) is insufficient to deliver 0.24 cfs.

7. Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based on 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, and March 31, 1910 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 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 of water leased instream shall be adjusted by that same percentage. In the event that RRVID stops delivery of irrigation water prior to October 1, the Watermaster shall be notified and the delivery for instream use shall also stop.

8. Certificate 80571 is supplemental to Certificate 80569. Certificate 80569 is limited to 1/100 cfs per acre, but is a deficient water right. Certificate 80571 shall be protected instream so that a total of 1/100 cfs per acre is leased instream between Certificates 80569 and 80571.
9. There is an additional supplemental water right, Certificate 80574, appurtenant to all or a portion of the lands described in Finding of Fact # 3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
10. 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.
11. 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.

12. 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.
13. The lease will terminate on October 31, 2007.

CONCLUSIONS OF LAW

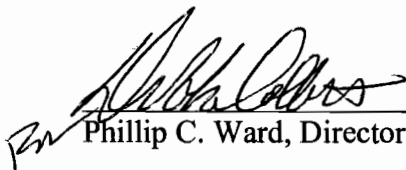
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 the rights proposed for lease in the application, any supplemental rights, including Certificate 80574 or any other layered water rights for irrigation use, including ground water registrations.
3. The lease will terminate on October 31, 2007.

Dated at Salem, Oregon this 31ST day of August 2007.


Phillip C. Ward, Director

Mailing date: SEP 07 2007