

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use, Certificate(s) 76320, 76321, 76322, and)	PROPOSED INSTREAM
76323, Deschutes County, Oregon)	LEASE

FINDINGS OF FACT

1. A Short-Term Lease Application, which proposed to lease all or a portion of certificate(s) 76320, 76321, 76322, and 76323 for instream purposes was submitted to the Department by:

Lessor
Miller Tree Farm, LLC
110 NE Greenwood Ave.
Bend, OR 97701

2. The instream lease application included the required fees. The Department assigned this lease agreement number L-481.
3. 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).
4. The irrigation season was identified in the application as March 1 through October 31. The correct irrigation season is April 1 through October 31.
5. The applicant has requested to lease four water rights instream. Certificates 76320 (East Jones Pit Reservoir) and 76322 (North Ridge Reservoir) are storage rights and allow the storage of City of Bend Wastewater for Irrigation Use. Certificate 76321 is for the appropriation of water from City of Bend Wastewater and East Jones Pit Reservoir for Irrigation. Certificate 76323 is for the appropriation of water from City of Bend Wastewater and North Ridge Reservoir for Irrigation. To prevent injury or enlargement, the water rights shall be leased instream as follows:

The amount of water to be leased instream from all four rights shall not exceed 0.6 cfs. The total volume to be leased will be 105 acre-feet, being:

Certificate 76320 & 76321 - 0.6 cfs up to 105 acre-feet with 31 acre-feet coming from storage.

Certificate 76322 & 76323 - 0.6 cfs up to 105 acre-feet with 2.7 acre-feet coming from storage.

Water shall be protected instream June 1 through August 27.

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

6. The use of water under certificate 76323 is supplemental and shall be protected instream only if the full rate and duty under certificate 76321 is not available during the period for which water is being leased instream. Subsequently, water stored under certificate 76322, being a source of water under certificate 76323, will also be protected instream only if the full rate and duty under certificate 76321 is not available during the period for which water is being leased instream.
7. No water shall be stored in either of the two reservoirs. Any water presently in either of the reservoirs must be evacuated.
8. The instream reach is from the point of diversion to the mouth of Tumalo Creek.
9. Based upon review of the application, comments received, and information provided by the Department's Watermaster, the Department finds that the lease, as modified, will not result in injury or enlargement.
10. The lease will terminate on December 31, 2008. The instream lease application requested that water be protected under the terms of the lease through August 7, 2009. However, water may only be leased for five-year periods. Therefore, the duration of the lease has been modified to December 31, 2008.

CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

Therefore, it is ORDERED that the Short-Term Lease as described in application L-481 as modified is APPROVED.

Dated at Salem, Oregon this 9th day of February 2004.


for Paul R. Cleary, Director