

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

In the Matter of Instream Lease Application    )    DETERMINATION and FINAL ORDER ON  
IL-1825, Jackson County                            )    PROPOSED INSTREAM LEASE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (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  
3139 Merriman Road  
Medford, OR. 97501  
rrvid@rrvid.org

**Findings of Fact**

1. June 23, 2020, Rogue River Irrigation District filed an application to lease a portion of Certificates 85288, 85876, 85877, 80575, 80576, and 83729 for instream use. The Department assigned the application number IL-1825.
2. Interest in a portion of the water right to be leased instream has been conveyed from the original landowners. The lease application identifies RRVID as the interest holder in the portions of the water rights to be leased. Individual agreements, along with supporting documentation, identify that interest in a portion of the right to be leased is held by the RRVID. For the purpose of this instream lease, the Department has determined that the RRVID is an interest holder in the right and is authorized to lease the pertinent portions of the water rights instream.

3. The portion of the right to be leased is as follows:

**Certificate:**       85288 in the name of the Rogue River Valley Irrigation District (perfected under Permit E-19)  
**Use:**                Primary Irrigation of 5.7  
**Priority Date:**    July 23, 1909  
**Quantity:**        **Rate:** 0.07 Cubic Foot per Second (CFS) for Primary Irrigation  
                          **Volume:** 17.1 Acre-Feet (AF) for Primary Irrigation

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.

**Limit:** One-hundredth CFS per acre

**Source:** North and South Forks of Little Butte Creek, tributaries to Little Butte Creek

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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 THE 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 THE E1/4 CORNER OF SECTION 29

**Authorized Place of Use:**

Primary Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
36 S	2 W	WM	26	SE SE	4.50	3601
37 S	2 W	WM	13	NW NW	0.10	1800
37S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400
37 S	2 W	WM	10	NW SW	0.50	1900
Total:					5.70	

4. Certificate 85288 does not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.
5. Certificate 85288 does not specify a duty limit per acre. However, based on information provided by the applicant, an appropriate duty limit per acre, for purposes of this instream lease, is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste. This is reflected in the volume specified in Finding of Fact No. 3.
6. Certificate 85288 is a deficient water right. If water were diverted simultaneously to all authorized lands described in the right at the maximum rate and duty allowed at the maximum rate and seasonal volume for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands described in the right at the maximum rate and duty allowed, the portion of the right involved in this instream lease would be limited as described in the table below, these are also the quantities by which the diversion under Certificate 85288 shall be reduced, if this instream lease is approved.

Instream Rate	Instream Volume
0.07 CFS	17.10 AF

7. The portion of the right to be leased is as follows:

**Certificate:** 85876 in the name of Rogue River Valley Irrigation District (constructed under Permit R-50; perfected under Permit S-407)

**Use:** Supplemental Irrigation of 5.70 Acres

**Priority Date:** MARCH 31, 1910

**Quantity:** **Rate:** 0.07 Cubic Foot per Second (CFS)

**Volume:** 17.1 Acre-Feet (AF)

**Limit:** ONE-EIGHTIETH of one CFS per acre

**Source:** Four Mile Lake Reservoir, Cascade Canal, and Fish Lake Reservoir tributary the Rogue River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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 THE E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM- 3600 FEET NORTH AND 4200 FEET WEST FROM THE SE CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM- 4000 FEET SOUTH AND 600 FEET WEST FROM THE SE CORNER OF SECTION 4

**Authorized Place of Use:**

Supplemental Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
36 S	2 W	WM	26	SE SE	4.50	3601
37 S	2 W	WM	13	NW NW	0.10	1800
37 S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400
37 S	2 W	WM	10	NW SW	0.50	1900
Total:					5.70	

8. The portion of the right to be leased is as follows:

**Certificate:** 85877 in the name of Rogue River Valley Irrigation District (perfected under Permit S-1705)

**Use:** Supplemental Irrigation of 5.70

**Priority Date:** June 24, 1913

**Quantity:** **Rate:** 0.07 Cubic Foot per Second (CFS)

**Volume:** 17.1 Acre-Feet (AF)

**Limit:** ONE-EIGHTIETH of one CFS per acre

**Source:** Antelope Creek, tributary to Little Butte Creek

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	30	SW NE	HOPKINS CANAL- 770 FEET NORTH AND 1650 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

**Authorized Place of Use:**

Supplemental Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
36 S	2 W	WM	26	SE SE	4.50	3601
37 S	2 W	WM	13	NW NW	0.10	1800
37 S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400

Supplemental Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
37 S	2 W	WM	10	NW SW	0.50	1900
Total:					5.70	

9. The portion of the right to be leased is as follows:

**Certificate:** 80575 in the name of the Rogue River Valley Irrigation District (perfected under Permit S-1706)

**Use:** Supplemental Irrigation of 1.20 Acres

**Priority Date:** June 24, 1913

**Quantity:** **Rate:** 0.01 Cubic Foot per Second (CFS)

**Volume:** 3.6 Acre-Feet (AF)

**Limit:** The amount of water used for irrigation, together with the amount secured under any other prior right existing for the same lands, is limited to a diversion of one-eightieth of one cubic foot per second (or its equivalent) for each acre irrigated during the irrigation season of each year

**Source:** Bear Creek, tributary to the Rogue River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	1 W	WM	30	NE NW	870 FEET SOUTH AND 1460 FEET EAST FROM THE NW CORNER OF SECTION 30

**Authorized Place of Use:**

Supplemental Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
37 S	2 W	WM	13	NW NW	0.10	1800
37 S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400
37 S	2 W	WM	10	NW SW	0.50	1900
Total					1.20	

10. The portion of the right to be leased is as follows:

**Certificate:** 80576 in the name of the Rogue River Valley Irrigation District (constructed under Permit R-4563 and R-6175 and perfected under Permits 30364 and 38230)

**Use:** Supplemental Irrigation of 5.70

**Priority Date:** September 6, 1915

**Quantity:** **Rate:** 0.11 Cubic Foot per Second (CFS)

**Volume:** 25.65 Acre-Feet (AF)

**Limit:** The amount of water used for irrigation together with the amount secured under any other right existing for the same lands is limited to 4.5 acre-feet for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to

any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein

**Source:** Agate Reservoir and Dry Creek, tributaries of Little Butte Creek  
**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 W	WM	25	NW NW	AGATE DAM ON DRY CREEK: 1090 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 25

**Authorized Place of Use:**

Supplemental Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
36 S	2 W	WM	26	SE SE	4.50	3601
37 S	2 W	WM	13	NW NW	0.10	1800
37 S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400
37 S	2 W	WM	10	NW SW	0.50	1900
Total:					5.70	

11. The portion of the right to be leased is as follows:

**Certificate:** 80577 in the name of Rogue River Valley Irrigation District (perfected under Permit S-2993)

**Use:** Supplemental Irrigation of 0.50 acres

**Priority Date:** May 10, 1916

**Quantity:** **Rate:** 0.01 Cubic Foot per Second (CFS)  
**Volume:** 1.25 Acre-Feet (AF)

**Limit:** The amount of water used for irrigation together with the amount secured under any other prior right existing for the same lands, is limited to a diversion of ONE-EIGHTITH of one cubic foot per second (or its equivalent) for each acre irrigated during the irrigation season of each year.

**Source:** Griffin Creek and Jackson Creek, tributaries of Bear Creek

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 W	WM	15	SW NE	GRIFFIN CREEK TO HOPKINS CANAL: 2700 FEET NORTH AND 2050 FEET WEST FROM THE SE CORNER OF SECTION 15
37 S	2 W	WM	15	SW NW	JACKSON CREEK INTO HOPKINS CANAL: 4000 FEET WEST FROM THE SE CORNER OF SECTION 15

**Authorized Place of Use:**

Supplemental Irrigation 80577						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
37 S	2 W	WM	10	NW SW	0.50	1900

12. The portion of the right to be leased is as follows:

**Certificate:** 83729 in the name of the United States Bureau of Reclamation  
(constructed under Permit R-2209, perfected under Permit 25915)

**Use:** Supplemental Irrigation of 1.20 Acres

**Priority Date:** September 6, 1915

**Quantity:** **Rate:** 0.02 Cubic Foot per Second (CFS)  
**Volume:** 5.4 Acre-Feet (AF)

**Limit:** The amount of water used for irrigation together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FOURTIETH of one cubic foot per second (or its equivalent), and 4.5 acre-feet for each acre irrigated during the irrigation season of each year, PROVIDED that the combination uses of water under permits 25915 and 25916, and all certificates issued in respect thereto, shall not exceed the maximum rate listed for each source above, at any one point in time

**Source:** Emigrant Creek(Cr) and Emigrant Reservoir (Res) Tributaries of Bear Cr; South Fork(S Fk) Little Butte Cr a tributary of Little Butte Cr; Conde Cr a Tributary of S Fk Little Butte Cr; Dead Indian Cr a tributary of S Fk Little Butte Cr; Daley Cr a tributary of S Fk Little Butte Cr; Beaver Dam Cr a tributary of S Fk Little Butte Cr; Pole Ridge Cr a tributary of S Fk Little Butte Cr; Deadwood Cr a tributary of S Fk Little Butte Cr; Keene Cr and Keene Cr Res, tributaries of Jenny Cr; Grizzly Cr and Howard Prairie Res tributaries of Jenny Cr; Soda Cr a tributary of Grizzly Cr; Little Beaver Cr a tributary of Jenny Cr

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 E	WM	20	SE SE	FROM THE OUTLET OF EMIGRANT RESERVOIR
37 S	4 E	WM	16	SE SE	1240 FEET NORTH AND 1100 FEET WEST FROM THE SE CORNER OF SECTION 1
38 S	3 E	WM	9	SW SW	1320 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 9
38 S	3 E	WM	15	SE SW	1310 FEET NORTH AND 1100 FEET WEST FROM THE S1/4 CORNER OF SECTION 15
37 S	4 E	WM	34	SW SE	750 FEET NORTH AND 480 FEET EAST FROM THE S1/4 CORNER OF SECTION 34
38 S	4 E	WM	4	NE SW	2000 FEET NORTH AND 1800 FEET EAST FROM THE SW CORNER OF SECTION 4
37 S	4 E	WM	28	SE NW	1380 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 28
38 S	4 E	WM	6	NE SE	NONE GIVEN
39 S	3 E	WM	16	SE SE	15 FEET NORTH AND 1200 FEET WEST FROM THE SE CORNER OF SECTION 16
39 S	3 E	WM	20	SE SE	800 FEET NORTH AND 750 FEET WEST FROM THE SE CORNER OF SECTION 20
39 S	3 E	WM	33	SW SW	1200 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33
38 S	4 E	WM	32	NE SW	ALSO FROM THE SE SW
39 S	4 E	WM	8	SW NW	2200 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 8
39 S	4 E	WM	19	SE SW	600 FEET NORTH AND 1930 FEET EAST FROM THE SW

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
					CORNER OF SECTION 19

**Authorized Place of Use:**

Primary Irrigation						Additional Information not on the Certificate
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
36 S	2 W	WM	13	NW NW	0.10	1800
37 S	2 W	WM	13	SW NW	0.20	1800
37 S	2 W	WM	13	SW NW	0.40	1400
37 S	2 W	WM	10	NW SW	0.50	1900
Total:					1.20	

13. Certificates involved in this instream lease do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250 shall be used to establish when water may be protected instream.
14. There are supplemental irrigation water rights, appurtenant to all or a portion of the lands described in the above Findings. The Lessors have requested that the Supplemental water rights be included as part of this lease application. The supplemental right will be protected instream in the amounts to which the rights would be available to make up a deficiency.
15. 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.
16. The instream use is as follows:

**Instream Points:** As described in the Findings of Fact No's 3, 7, 8, 9, 10, 11, and 12.

Certificate		Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
Primary	Supplemental				
85288		7/23/1909	0.07	17.10	June 1 through October 1
	85876	3/31/1910	0.07	17.10	
	85877	6/24/1913	0.07	17.10	
	80575	6/24/1913	0.01	3.60	
	80576	9/6/1915	0.11	25.65	
	80577	5/10/1916	0.01	1.25	
	83729	9/6/1915	0.02	5.40	
Totals:			0.36	87.20	

17. For the term of the lease, the Supplemental Irrigation rights as described will be protected instream when the Primary Irrigation rights are not available at the rates as described in the above table.
18. Other conditions to prevent injury and enlargement are:

- A. Water protected instream Water shall be measured at the Bear Creek Gage, BCMO 143588000.
  - B. RRVID shall divert water at the PODs described in the findings above. 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.
  - C. 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.
  - D. 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 1/100<sup>th</sup> 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 stop.
  - E. The lessor shall make daily measurements of use during the existing use period. The measuring device shall be an inline flow totalizer that is place in the first length of mainline pipe near the pump, or another device acceptable to the Director. The daily measurements shall be submitted on a monthly basis to the Jackson County Watermaster.
19. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
20. The protection of flows within the proposed reach is appropriate, considering:
- a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and



- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
21. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
22. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
23. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
24. 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.
25. If a right which has been leased is later proposed to be leased again, transferred, and/or reviewed under 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.
26. The Lessor had requested that the lease terminate on October 1, 2020.

### **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.

### **Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. During the 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 irrigation water rights, including ground water registrations and permits.

3. The term of the lease commenced on June 1, 2020 and terminated on October 1, 2020.

Dated at Salem, Oregon day JUL 30 2021.



Lisa Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: AUG 02 2021

*This document was prepared by  
Joan Smith if you have any questions;  
call 503-986-0892.*