

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

In the Matter of Instream Lease Application) SUPERSEDING and CORRECTING FINAL
IL-1821, Jackson County) ORDER ON 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

Medford Water Commission
200 S. Ivy Street, #177
Medford, Oregon 97501
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Findings of Fact

1. On June 17, 2020, the Medford Water Commission filed an application to lease the entirety of Certificates 6740, 7434, 9821, and 15846 and a portion of Certificates 5107 and 89748 for instream use. The Department assigned the application number IL-1821.
2. On August 27, 2020, the Department issued an order approving Instream Lease IL-1821, as evidenced by Special Order Volume 117, Pages 385-392. Following issuance of the order, scrivener's errors were found in the order. This order is being issued to correctly identify the priority dates that are being leased instream.
3. The portion of the first right to be leased is as follows:

Certificate: 5107 in the name of Thomas Stanley (perfected under Permit S-3550)

Use: Irrigation of 54.0 acres and domestic including stock

Priority Date: October 17, 1917

Quantity: **Rate:** 0.68 Cubic Foot per Second (CFS)

Volume: 243.0 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, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation

Source: Two Springs, tributary to Four Bit Creek a tributary to Big 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 (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	34	SE SE	1.0
35 S	3 E	WM	34	SW SE	1.0
35 S	3 E	WM	34	NE SE	33.0
35 S	3 E	WM	34	NW SE	19.0
Total Acres					54.0

4. Certificate 5107 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	25	NW SW	1300 FEET NORTH AND 700 FEET EAST OF THE SE CORNER OF SECTION 26

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

Certificate: 6740 in the name of Harry L. Heryford (perfected under Permit S-4637)

Use: Irrigation of 130.0 acres

Priority Date: June 10, 1920

Quantity: **Rate:** 1.63 Cubic Foot per Second (CFS)

Volume: 585.0 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, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: Willow Creek, tributary to Big Butte Creek

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	20	NE SE	25.0
35 S	3 E	WM	20	NW SE	35.0
35 S	3 E	WM	20	SW SE	35.0
35 S	3 E	WM	20	SE SE	35.0
Total Acres					130.0

6. Certificate 6740 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	28	SE NW	SOUTH 49 DEGREES, 8 MINUTES EAST AND 2859.5 FEET FROM THE NW CORNER OF SECTION 28

7. The third right to be leased is as follows:

Certificate: 7434 in the name of John F. Down (perfected under Permit S-4854)

Use: Irrigation of 93.0 acres

Priority Date: November 12, 1920

Quantity: **Rate:** 1.00 Cubic Foot per Second (CFS)

Volume: 418.5 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, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: Four Bit Creek, tributary to Big Butte Creek

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	26	NE NE	33.0
35 S	3 E	WM	26	NW NE	30.0
35 S	3 E	WM	26	SW NE	20.0
35 S	3 E	WM	26	SE NE	10.0
Total Acres					93.0

8. Certificate 7434 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	25	NE NW	2500 FEET WEST AND 1203 FEET SOUTH OF THE NE CORNER OF SECTION 25

9. The fourth right to be leased is as follows:

Certificate: 9821 in the name of E. D. Cook (perfected under Permit S-3283)

Use: Irrigation of 32.5 acres and domestic

Priority Date: November 27, 1916

Quantity: **Rate:** 0.40 Cubic Foot per Second (CFS)

Volume: 146.25 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, shall be limited

to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: Four Bit Creek, tributary to Big Butte Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	22	NE SW	NONE DESCRIBED ON CERTIFICATE.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	22	SW NW	29.0
35 S	3 E	WM	22	SE NW	3.5
Total Acres					32.5

10. Certificate 9821 does not provide a measured distance of the location of the point of diversion. Based upon additional information provided by the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	22	NE SW	SOUTH 37 DEGREES, 50 MINUTES EAST AND 4170 FEET FROM THE NW CORNER OF SECTION 22

11. The fifth right to be leased is as follows:

Certificate: 15846 in the name of L. N. Best (confirmed by decree of the Circuit Court of the State of Oregon for Jackson County, and the said decree entered of record at Salem, in the Order Record of the State Engineer, in Volume 4, at page 1)

Use: Irrigation of 21.0 acres

Priority Date: 1905

Quantity: **Rate:** 0.42 Cubic Foot per Second (CFS)

Volume: 94.5 Acre-Feet (AF)

Limit: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.42 cubic foot per second.

Source: Fourbit Creek, tributary to Big Butte Creek

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	22	SW NW	18.0
35 S	3 E	WM	22	SE NW	3.0
Total Acres					21.0

12. Certificate 15846 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	22	SE NW	LATITUDE: 42.5122504467 LONGITUDE: -122.4543107045

13. The sixth right to be leased is as follows:

Certificate: 89748 in the name of J. H. Stanley, C. E. Stanley and Fred Stanley (perfected under Permit S-3579)
Use: Irrigation of 141.0 acres
Priority Date: November 2, 1917
Quantity: **Rate:** 1.76 Cubic Foot per Second (CFS)
Volume: 634.5 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, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: Four Bit Creek, tributary to Big Butte Creek
Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 E	WM	15	NW SW	17.0
35 S	3 E	WM	15	SW SW	30.0
35 S	3 E	WM	15	SE SW	27.0
35 S	3 E	WM	16	NE SE	37.0
35 S	3 E	WM	16	SE SE	30.0
Total Acres					141.0

14. Certificate 89748 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	3 E	WM	22	SE NW	1790 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 22

15. Certificates 5107, 6740, 7434, 9821, 15846, and 89748 do not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.

16. Certificate 5107 is limited to a maximum diversion of one-eightieth cfs per acre. Therefore, to avoid enlargement may not be protected instream at a rate higher than one-eightieth cfs per acre.

17. 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.

18. To maximize the instream protection and full duty of the water right, the rate protected instream has been reduced to protect the full 214-day period instream.
19. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Two Springs, tributary to Four Bit Creek, tributary to Big Butte Creek

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 4) to the confluence with Four Bit Creek continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5107	10/17/1917	0.57	243.0	April 1 through October 31

Willow Creek, tributary to Big Butte Creek

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 6) continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
6740	6/10/1920	1.38	585.0	April 1 through October 31

Four Bit Creek, tributary to Big Butte Creek

Instream Reach No. 3: From the POD (as described in Finding of Fact No. 8) continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
7434	11/12/1920	0.99	418.5	April 1 through October 31

Four Bit Creek, tributary to Big Butte Creek

Instream Reach No. 4: From the POD (as described in Finding of Fact No. 10) continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
9821	11/27/1916	0.34	146.25	April 1 through October 31

Four Bit Creek, tributary to Big Butte Creek

Instream Reach No. 5: From the POD (as described in Finding of Fact No. 12) continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
15846	1905	0.22	94.5	April 1 through October 31

Four Bit Creek, tributary to Big Butte Creek

Instream Reach No. 6: From the POD (as described in Finding of Fact No. 14) continuing through the confluence with South Fork Big Butte Creek and then continuing to the mouth of Big Butte Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
89748	11/2/1917	1.49	634.5	April 1 through October 31

20. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

21. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

22. 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.

23. 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.

24. 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.
25. 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.
26. 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.
27. 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.
28. The Lessor has requested that the lease terminate on October 31, 2025. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2021, being the first day of the irrigation season.
29. The Lessor has requested the option of terminating the lease early with written notice to the Department.

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. This correcting order supersedes Special Order Volume 117, Pages 385-392.
3. 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 irrigation water rights, including ground water registrations and permits.

4. The term of the lease will commence on April 1, 2021 and terminate on October 31, 2025. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 through October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day SEP 09 2020.



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

Mailing date: SEP 10 2020

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.