

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1789, 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**

Medford Water Commission (MWC)  
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Medford, Oregon 97501  
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**Co-Lessor**

Talent Irrigation District (TID)  
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Talent, OR 97540  
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**Co-Lessor**

U. S. Bureau of Reclamation (USBOR)  
E. Gail McGarry, Manager  
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**Findings of Fact**

1. On March 2, 2020, the MWC, TID and USBOR filed an application to lease portions of Certificate 79212 and 83727 to instream use. The Department assigned the application number IL-1789.
2. 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 14.45 acres  
**Priority Date:** May 23, 1912  
**Quantity:** **Rate:** limited to 0.041 Cubic Feet 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 of 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	2 W	WM	1	SE SW	1.25	Medford Water Commission
38 S	2 W	WM	1	SE SW	2.80	
				Total	4.05	

3. 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:** Supplemental Irrigation of 7.10 acres

**Priority Date:** September 6, 1915

**Quantity:** **Rate:** Supplemental Irrigation: limited to 0.071 CFS

**Duty:** Supplemental Irrigation: 18.82 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), tributaries of 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
<b>Supplemental Irrigation of 7.10 ac</b>						
38 S	2 W	WM	1	NE SW	3.05	Medford Water Commission
38 S	2 W	WM	1	SE SW	1.25	
38 S	2 W	WM	1	SE SW	2.80	
				Total	7.10	

4. 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.

5. 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.

6. To avoid the possibility of injury or enlargement, the Co-Lessors have requested that the rights be protected instream at no more than a rate of 1/100<sup>th</sup> cfs per acre. The instream quantities listed in Finding of Fact No. 7 reflect this consideration as well as the reduction of duty to 2.65 acre-feet per acre.
7. 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. 2 and 3) to approximately (~) 3.1 miles downstream to the next downstream senior water right, being Certificate 15937 (at approximately~ River Mile 2).

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
79212	May 23, 1912	0.03	10.73	April 1 through September 30

**Supplemental Instream Use:**

**Instream Reach:** From the POD (as described in Findings of Fact No. 2 and 3) to approximately (~) 3.1 miles downstream to the next downstream senior water right, being Certificate 15937 (at approximately~ River Mile 2).

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83727	September 6, 1915	0.052	18.82	April 1 through September 30

8. 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.

The period protected instream will begin at the time TID starts to deliver water for the season, and 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.

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

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. The Co-Lessors have requested that the lease terminate on September 30, 2020. The lease may commence on the date this final order is signed.

### **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:**

Therefore, it is ORDERED:

1. 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 September 30, 2020.

Dated at Salem, Oregon this APR 23 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR,  
Oregon Water Resources Department

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

Mailing date: APR 24 2020