

**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 80570 and 80572, Jackson) INSTREAM LEASE
County))

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 #1

Bear Creek Orchards, Inc.
P.O. Box 299
Medford, Oregon 97501

Lessor #2

Medford Irrigation District (MID)
1340 Myers Lane
Medford, OR 97501

Lessee

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

Findings of Fact

1. On May 27, 2008, Bear Creek Orchards, MID, and the OWT filed an application to renew instream lease IL-851, involving a portion of Certificates 80570 and 80572. The Department assigned the application number IL-851.
2. The portion of the first right to be leased is as follows:

Certificate: 80570 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit E-19)

Use: IRRIGATION of 24.6 ACRES

Priority Date: JULY 23, 1909

Rate: 0.18 CUBIC FEET PER SECOND (cfs)

Limit: ONE-HUNDREDTH cfs per acre

Duty: Not described on certificate.

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 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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 W	WM	21	SW NE	12.8
37 S	2 W	WM	21	SW NW	10.7
37 S	2 W	WM	21	NE SW	0.6
37 S	2 W	WM	21	NW SE	0.5

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

Certificate: 80572 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)

Use: SUPPLEMENTAL IRRIGATION of 24.6 ACRES

Priority Date: MARCH 31, 1910

Rate: 0.18 CUBIC FEET PER SECOND (cfs)

Limit: ONE-EIGHTIETH cfs per acre

Duty: Not described on certificate.

Source: FOUR MILE LAKE RESERVOIR, within the KLAMATH RIVER BASIN; and waters draining or flowing into the CASCADE CANAL; and FISH LAKE RESERVOIR, within the ROGUE RIVER BASIN; as constructed under Permit R-50

Authorized Point of Diversion:

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

Authorized Place of Use: Same as described in Finding of Fact #2.

4. 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.

- The instream use is clarified 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 Lake Creek (#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
80570	JULY 23, 1909	0.18	June 21 through October 31
80572	MARCH 31, 1910	0.07*	June 21 through October 31
	<i>Total Instream</i>	<i>0.25</i>	<i>June 21 through October 31</i>

* May be protected instream up to 0.18 cfs when the primary right (Certificate 80570) is insufficient to deliver 0.18 cfs. The total instream rate shall not exceed 0.25 cfs.

- Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that MID is diverting to rights of the same priority within the district. When MID is diverting water on a percentage basis, MID 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 need be reported to the Watermaster's office once MID is diverting water on a percentage basis (less than the 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 MID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage. In the event that MID stops delivery irrigation water prior to October 31, the Watermaster shall be notified and the delivery for instream use shall also stop.

- Certificate 80572 is supplemental to Certificate 80570. Certificate 80570 is limited to a 1/100 cfs per acre, but is a deficient water right. Certificate 80572 shall be protected instream so that a total of 1/100 cfs per acre is leased instream between Certificates 80570 and 80572.
- There are supplemental water rights, Certificate 80578 and Permit 25915, appurtenant to all or a portion of the lands described in Finding of Fact # 2. 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.
- 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.
- 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.

11. 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.
12. The Lessor and Lessee have requested that the lease terminate on October 31, 2008.

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. The former place of use will no longer receive water as part of these rights, any supplemental rights, including Certificate 80578 and Permit S-25915, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2008.

Dated at Salem, Oregon this 20th day of August, 2008.

Phillip C. Ward
Phillip C. Ward, Director

Mailing date: AUG 25 2008