

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

In the Matter of Instream Lease Application)
IL-1205, Certificates 83381,)
Jackson County)
)

DETERMINATION and
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 Irrigation District
5045 Jacksonville Hwy.
Central Point, Oregon 97530

Findings of Fact

1. On March 26, 2012 Medford Irrigation District (MID) filed an application to lease a portion of Certificate 83381 for instream use. The Department assigned the application number IL-1205.
2. On September 18, 19 and 20, 2012 MID submitted additional information, clarifying the rights to be leased and correcting several mapping errors.
3. Many of the rights to be leased herein have previously been leased under Instream Lease Application numbers IL-756, IL-774, IL-854, IL-861, IL-864, IL-889 and IL-907.

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

Certificate: 83381 in the name of MEDFORD IRRIGATION DISTRICT

Use: IRRIGATION of 133.86 ACRES

Priority Date: JULY 23, 1909

Rate: 1.33 CUBIC FEET PER SECOND (CFS)

Limit/Duty: 1/100 cfs per acre or its equivalent for each acre irrigated, during the irrigation season of each year. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 88.87 CUBIC FEET PER SECOND INTO MEDFORD CANAL AT BRADSHAW DROP, or its equivalent in case of rotation.

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: NORTH and SOUTH FORKS, LITTLE BUTTE CREEK, tributaries to LITTLE BUTTE CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK: 40 FEET NORTH AND 620 FEET WEST FROM THE E¼ 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 E¼ CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	16	SE SW	0.4
37 S	2 W	WM	24	SW SW	2.7
37 S	2 W	WM	25	SW SW	3.92
37 S	2 W	WM	26	NE NE	0.32
37 S	2 W	WM	26	NW NE	3.57
37 S	2 W	WM	26	SW NW	4.93
37 S	2 W	WM	27	SE NE	5.98
37 S	2 W	WM	35	NE NE	0.61
37 S	2 W	WM	35	NW NE	9.95
37 S	2 W	WM	35	SW NE	1.18
37 S	2 W	WM	35	SE NE	0.99
37 S	2 W	WM	35	NE NW	11.21
37 S	2 W	WM	35	SE NW	1.95
37 S	2 W	WM	36	NW SE	0.30
38 S	1 W	WM	1	SW NE	4.70
38 S	1 W	WM	6	NE NW	3.43
38 S	1 W	WM	6	SW NW	15.46
38 S	1 W	WM	6	SE NW	11.01
38 S	1 W	WM	6	NW SW	4.90
38 S	1 W	WM	10	SE NW	1.44
38 S	1 W	WM	10	NE SW	4.51
38 S	1 W	WM	15	NE NW	2.60
38 S	2 W	WM	1	SW NW	3.70
38 S	2 W	WM	1	SW NE	3.80
38 S	2 W	WM	1	SE NE	8.00
38 S	2 W	WM	1	NE SE	15.40
38 S	2 W	WM	1	NW SE	6.90
TOTAL:					133.86

5. Certificate 83381 does not specify the irrigation season. OAR 690-250-0070 established a 245-day default irrigation season between March 1 and October 31. However, to provide the greatest benefit to the environment and to avoid any potential for enlargement, the Applicant requested water be protected instream from June 20 through October 31.

6. 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 in response to that notice.

7. The instream use 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
83381	JULY 23, 1909	1.33	June 20 through October 31

8. 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, priority date. This information only to 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.

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.

9. Supplemental water right Certificates 83383, 80578, 83728 and Permit S-4951 are appurtenant to all or a portion of the lands described in Finding of Fact # 4. The Lessor requested that these water rights not be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended.

10. 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.

11. 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.

12. 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.
13. The Lessor requested that the lease terminate on October 31, 2012.

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, 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, 2012.

Dated at Salem, Oregon this 24 day of September, 2012.



Dwight French, Water Right Services Administrator, for
PHILIP C. WARD, DIRECTOR

Mailing date: SEP 26 2012

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@wrds.state.or.us.