

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

In the Matter of the Proposed Lease of)
Existing Water Rights for Instream Use,)
Certificates 83381 and 83383, 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 #2

Kogap Enterprises, Inc.
115 W. Stewart Ave.
Medford, Oregon 97501

Lessor #2

Medford Irrigation District
1340 Myers Lane
Medford, Oregon 97501

Findings of Fact

1. Medford Irrigation District (MID) and Kogap Enterprises Inc., filed an application to lease a portion of Certificates 83381, 83383, 80578, 81635 and Permit 4951 for instream use. The Department assigned the application number IL-907.
2. On July 15, 2008 MID requested that the Department remove Certificates 80578, 81635 and Permit S-4951 from instream lease application IL-907.
3. On July 17 and August 4, 2008 MID requested that the Department remove 0.76 acres and 1.10 acres, respectively, from application IL-907. The lands are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
37 S	1W	WM	21	NE NE	1.10	1100
37 S	2W	WM	2	SE SE	0.76	1000/200
TOTAL:					1.86	

4. The first right to be leased is as follows:

Certificate: 83381 in the name of MEDFORD IRRIGATION DISTRICT

Use: IRRIGATION of 129.36 ACRES

Priority Date: JULY 23, 1909

Rate: 0.94 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: 1/100 cfs per acre or its equivalent for each acre irrigated, 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: NORTH and SOUTH FORKS, LITTLE BUTTE CREEK, tributaries to LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	Not specified
36 S	2 E	WM	20	SE NE	40 FEET NORTH AND 620 FEET WEST FROM THE E¼ CORNER OF SECTION 20
36 S	2 E	WM	29	NE SE	780 FEET SOUTH AND 400 FEET WEST FROM THE E¼ CORNER OF SECTION 29

Authorized Place of Use:

IR CERTIFICATE 83381 & IS CERTIFICATE 83383						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot ¹
36 S	1W	WM	27	SE NW	15.0	1300
37 S	1W	WM	8	NE NE	2.79	700
37 S	1W	WM	8	NW NE	3.31	700
37 S	1W	WM	9	SW SE	0.5	3500
37 S	1W	WM	9	SW SE	0.8	3600
37 S	1W	WM	16	SW NE	0.7	1400/1100
37 S	1W	WM	16	SW NE	0.75	400
37 S	1W	WM	16	SE NW	3.55	300
37 S	1W	WM	16	SE NW	1.42	400
37 S	1W	WM	16	NW SE	8.4	200
37 S	1W	WM	16	NW SE	1.31	6700
37 S	1W	WM	20	NW NE	0.27	400
37 S	1W	WM	20	NW NE	0.6	3700
37 S	1W	WM	21	NW NW	0.4	900
37 S	1W	WM	21	NW NW	0.32	2500
37 S	1W	WM	34	NW NW	2.92	700
37 S	1W	WM	34	NW NW	3.76	1900
37 S	2W	WM	23	SW SE	2.34	2100
37 S	2W	WM	23	SE SE	2.0	400
37 S	2W	WM	24	SW SW	0.8	1000
37 S	2W	WM	26	NE NE	0.6	500
37 S	2W	WM	26	NE NE	1.3	1000
37 S	2W	WM	26	NE NE	0.93	2700
37 S	2W	WM	26	NE NE	1.9	3200
37 S	2W	WM	26	NE NE	0.82	3300

¹ Old/New Tax Lot Number.

37 S	2W	WM	26	NE NE	0.68	1200
37 S	2W	WM	26	NE NE	0.47	1300
37 S	2W	WM	26	NW NE	1.39	2100
37 S	2W	WM	26	NW NE	0.44	1300
37 S	2W	WM	26	NW NE	1.37	1200
37 S	2W	WM	26	NW NE	0.93	1300
37 S	2W	WM	26	NW NE	0.17	600
37 S	2W	WM	26	NW NE	0.23	700
37 S	2W	WM	26	SW NE	0.06	600
37 S	2W	WM	26	SW NE	1.04	700
37 S	2W	WM	26	SW NE	1.0	1500
37 S	2W	WM	26	NW SE	0.22	3500
37 S	2W	WM	26	SW SE	0.02	1300
37 S	2W	WM	26	SE SE	0.19	1300
37 S	2W	WM	27	NE SE	0.73	901
37 S	2W	WM	28	NE SW	0.49	3600
37 S	2W	WM	28	NW SW	1.02	3600
37 S	2W	WM	28	SW SW	0.56	3600
37 S	2W	WM	28	SE SW	0.26	3600
37 S	2W	WM	32	NE NE	0.17	1800
37 S	2W	WM	32	NE NE	0.22	2300
37 S	2W	WM	35	NE NE	0.5	800
37 S	2W	WM	35	NE NE	0.34	1000
37 S	2W	WM	35	NE NE	0.2	1100
37 S	2W	WM	35	NE NE	0.99	3000
37 S	2W	WM	35	NE NE	1.21	3600
37 S	2W	WM	35	NE NE	0.86	3400
37 S	2W	WM	35	NW NE	1.5	2100
37 S	2W	WM	35	SW NE	0.67	600
37 S	2W	WM	35	SE NE	1.9	600
37 S	2W	WM	35	SE NE	0.31	600
37 S	2W	WM	35	SE NE	1.38	1200
37 S	2W	WM	35	SE NE	2.0	1300
37 S	2W	WM	35	NE NW	1.51	800
37 S	2W	WM	35	SW NW	0.08	600
37 S	2W	WM	35	NE SE	1.95	200
37 S	2W	WM	35	NE SE	0.5	1100
37 S	2W	WM	35	NE SE	2.06	1300

37 S	2W	WM	35	NE SE	0.05	400
37 S	2W	WM	35	NW SE	0.25	1300
37 S	2W	WM	35	NW SE	2.9	800
37 S	2W	WM	35	NW SE	1.87	2500
37 S	2W	WM	35	NW SE	0.03	400
37 S	2W	WM	35	SW SE	1.6	2500
37 S	2W	WM	35	SW SE	0.67	400
37 S	2W	WM	35	SE SE	1.71	400
37 S	2W	WM	35	SE SE	0.6	2100
37 S	2W	WM	35	SE SE	0.61	3400
37 S	2W	WM	35	SE SE	1.18	3600
37 S	2W	WM	36	SW NE	0.25	600
37 S	2W	WM	36	SW NE	0.3	2900
37 S	2W	WM	36	NW NW	0.3	2600
37 S	2W	WM	36	SW NW	0.5	5800
37 S	2W	WM	36	SW NW	0.1	3500
37 S	2W	WM	36	NW SW	0.77	3200
37 S	2W	WM	36	NW SW	0.2	3500
37 S	2W	WM	36	NW SW	1.13	3600
37 S	2W	WM	36	NW SW	0.09	3800
37 S	2W	WM	36	NW SW	0.9	3900
37 S	2W	WM	36	SW SW	4.35	2200
37 S	2W	WM	36	NE SE	0.43	3200
37 S	2W	WM	36	NE SE	0.72	3700
37 S	2W	WM	36	NE SE	0.3	3000
37 S	2W	WM	36	NW SE	0.1	1500
37 S	2W	WM	36	SE SE	0.91	300
37 S	2W	WM	36	SE SE	2.48	2200
38 S	1W	WM	5	NE NW	1.9	201/700
38 S	1W	WM	8	NE NE	0.25	800
38 S	1W	WM	9	NW NW	0.32	3800
38 S	1W	WM	9	SE SE	0.15	7400
38 S	1W	WM	9	SE SE	0.17	8500
38 S	1W	WM	15	NW NW	0.2	2200
38 S	1W	WM	15	NW NW	0.21	2800
38 S	2W	WM	1	NE NE	1.2	3500
38 S	2W	WM	1	NE NE	0.55	800
38 S	2W	WM	1	NE NE	0.74	4700

38 S	2W	WM	1	NE NE	1.01	4701
38 S	2W	WM	1	NW NE	0.73	1400/10402
38 S	2W	WM	1	NW NE	0.29	800
38 S	2W	WM	1	NW NE	1.8	1000
38 S	2W	WM	1	SW NE	1.0	3701/6200
38 S	2W	WM	1	SW NE	0.6	4101/4600
38 S	2W	WM	1	SW NE	1.0	3701/6200
38 S	2W	WM	1	SE NE	0.13	4700
38 S	2W	WM	1	NE SW	0.2	502
38 S	2W	WM	1	NE SW	0.3	1100/7500
38 S	2W	WM	1	NE SW	0.4	500/1800
38 S	2W	WM	1	SE SE	1.8	4600/1900
38 S	2W	WM	2	NW NE	2.0	2902
TOTAL:					129.36	

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

Certificate: 83383 in the name of MEDFORD IRRIGATION DISTRICT

Use: SUPPLEMENTAL IRRIGATION of 129.36 ACRES

Priority Date: MARCH 31, 1910

Rate: 1.62 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH 1/80 cfs per acre or its equivalent for each acre irrigated, during the irrigation season of each year

Source: FOURMILE LAKE RESERVOIR (constructed under Permit R-50), tributary to FOURMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 E	WM	8	SW SW	Not specified
36 S	2 E	WM	20	SE NE	40 FEET NORTH AND 620 FEET WEST FROM E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	3600 FEET NORTH AND 4200 FEET EAST FROM SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	4000 FEET SOUTH AND 600 FEET EAST FROM NE CORNER OF SECTION 4

Authorized Place of Use for Supplemental Irrigation: Same lands as described in Finding of Fact #4 above.

6. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on April 15, 2008 pursuant to OAR 690-077-0077(1). No comments were received.
7. Based on Findings of Fact #2 and #3, the instream use has been modified 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	Period Protected Instream
83381	JULY 23, 1909	0.94 cfs	June 21 through October 31
83383	MARCH 31, 1910	0.35 cfs*	
Maximum Rate:		1.29 cfs	

* May be protected instream to a maximum of 0.94 cfs when the primary right (Certificate 83381) is insufficient to deliver 0.94 cfs. The maximum instream rate may not exceed 1.29 cfs.

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, and March 31, 1910 priority dates. This information only needs 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.

9. Certificate 83383 is supplemental to Certificate 83381. Certificate 83381 is limited to a 1/100 cfs per acre, but is a deficient water right. Certificate 83383 shall be protected instream so that a total of 1/100 cfs per acre is leased instream between Certificates 83381 and 83383.
10. Supplemental water right Certificates 80578, 81635 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 be suspended.
11. 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.
12. 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.

13. 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.
14. The lease will terminate on September 30, 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, 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 September 30, 2008.

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


Phillip C. Ward, Director

Mailing date: AUG 22 2008