

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

In the Matter of Instream Lease Application    )    DETERMINATION and FINAL ORDER ON  
IL-1828, Jackson County                            )    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**

Linda Kay Marr  
Linda Kay Marr Trustee Et Al  
Mace Properties LLC  
183 Gresham Street  
Ashland, OR 97520

**Findings of Fact**

1. On August 19, 2020, Linda Kay Marr of Linda Kay Marr Trustee Et Al and Mace Properties LLC filed an application to lease the entirety of Certificate 81917 and 90534 for instream use. The Department assigned the application number IL-1828.
2. During the months of September through January, the application was put on hold to work out the concern from the Watermaster about proving the water will not be used, and the possibility of amending the application. All issues were resolved and the application processing is moving forward.
3. The first right to be leased is as follows:

**Certificate:**       81917 in the name of Robert Mace (perfected under Permit S-25859)  
**Use:**                Industrial Use  
**Priority Date:**    November 18, 1958  
**Quantity:**        **Rate:** 0.30 Cubic Foot per Second (CFS)  
                          **Limit:** The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.30 cubic foot per second, or its equivalent in case of rotation, measured at the point of diversion at the source.

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:** Rogue River, tributary to the Pacific Ocean

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	2 W	WM	15	NW SE	2	2438 FEET NORTH AND 1450 FEET WEST FROM THE SE CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	2 W	WM	15	SW SE

4. Certificate 81917 does not specify the period of allowed use. However, use of industrial is assumed to be year round use unless otherwise specified in the certificate.
5. The second right to be leased is as follows:

**Certificate:** 90534 in the name of Robert U Mace Testamentary Charitable Trust (perfected under Permit S-25859)

**Use:** Industrial Use

**Season of Use:** Year-round

**Priority Date:** November 18, 1958

**Quantity:** **Rate:** 0.33 Cubic Foot per Second (CFS)

**Volume:** 118.35 Acre-Feet (AF)

**Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.33 cubic foot per second, further limited to a volume of 118.35 acre feet each year, or its equivalent in case of rotation, measured at the point of diversion.

**Source:** Rogue River, tributary to the Pacific Ocean

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	2 W	WM	15	NW SE	2	2348 FEET NORTH AND 1360 FEET WEST FROM THE SE CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	2 W	WM	15	NE SW	3
36 S	2 W	WM	15	SE SW	
36 S	2 W	WM	15	NW SE	2
36 S	2 W	WM	15	SW SE	

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.
7. At the full instream rate and volume requested for Certificate 90534, water may only be protected instream for 180 days at a volume of 118.35 and rate instream of 0.33 cfs. The full instream period requested by the Lessor is 5 years, assuming a 365 day period. To prevent enlargement of the right and to maximize the instream use, the requested instream

use requires modification. The instream use period will be modified to a 365 day instream period and reduced amount of cfs instream to maximize the instream use.

8. The instream use has been modified to prevent enlargement and is as follows:  
Rogue River, tributary to the Pacific Ocean

**Instream Reach:** From the POD (as described in Findings of Fact No's. 3 and 5) to the mouth of the Rogue River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
81917	11/18/1958	0.30	217.19	January 1 through December 31
90534		0.16	118.35	

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:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - 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 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.

16. The Lessor has requested that the lease terminate on December 2025. The lease may commence on the date this final order is signed.
17. 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. 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.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 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 (January 1 through December 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 FEB 23 2021.

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

Mailing date: FEB 24 2021

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