

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

In the Matter of the Proposed Short-Term )  
Lease of Existing Water Rights for Instream )  
Use, Certificates 79985, 5324, and 14209, )  
Jackson County )

) DETERMINATION and  
) FINAL ORDER ON PROPOSED  
) INSTREAM LEASE

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 short-term instream lease applications.

**Lessor**

Bear Creek Orchards, Inc., A Delaware Co.  
P.O. Box 9000  
Medford, Oregon 97501

**Lessee**

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

**Findings of Fact**

1. On June 13, 2007, Bear Creek Orchards, Inc. and the Oregon Water Trust filed an application to renew L-309. On June 15, 2007, the Oregon Water Trust clarified that it was their intent to have the water rights in the renewal application leased as they were last year, as described in Special Order Volume 69, Page 654. The Department assigned the application number IL-309.
2. The renewal application proposed to lease the same water rights as the original application. The original and renewal application mistakenly referred to as Certificate 14209 as "1420." Additionally, Certificate 42818 was included in the application original application, and also this renewal, as one of the certificates that will not be exercised during the term of the lease.
3. The Department has identified that Certificate 65148 has been cancelled as part of Transfer T-8622. A remaining right, Certificate 79985 has been issued which includes the lands requested to be leased instream.

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.

4. Consequently, instream lease application IL-309 proposes to lease a portion of Certificates 79985 and 65148 and all of Certificate 5324 for instream purposes, and proposes not to exercise temperature control Certificates 42816, 42818, or 65102 during the term of the lease.

5. The rights to be leased are as follows:

**Certificate:** 79985 in the name of PALMER CORP. (confirmed by Rogue River State Water Board decree)

**Use:** DOMESTIC, LIVESTOCK, IRRIGATION OF 277.5 ACRES

**Priority Date:** SEPTEMBER 22, 1888

**Rate:** 3.47 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre

**Source:** ROGUE RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
36 S	1 W	WM	6	NE NW	7	TABLE ROCK DITCH: 333 FEET SOUTH & 1987 FEET EAST FROM NW CORNER, SECTION 6

**Authorized Place of Use:**

DOMESTIC, STOCK, AND IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	2 W	WM	11	SE NE	12		0.80
36 S	2 W	WM	11	SE NE, NE SE		37	35.4
36 S	2 W	WM	11	SE NE	6		22.20
36 S	2 W	WM	11	SE SE		38	13.70
36 S	2 W	WM	12			37	99.7
36 S	2 W	WM	12			38	27.1
36 S	2 W	WM	12	NW NE			16.00
36 S	2 W	WM	12	SW NE	9		19.40
36 S	2 W	WM	12	SW NW	7		18.00
36 S	2 W	WM	12	SE NW	8		23.20
36 S	2 W	WM	12	NW SE	10		2.00

**Certificate:** 5324 in the name of PALMER CORP. (perfected under Permit S-5497)

**Use:** IRRIGATION of 27 ACRES

**Priority Date:** JUNE 13, 1922

**Rate:** 0.34 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre

**Source:** ROGUE RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:** None listed on certificate.

**Authorized Place of Use:**

**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	12	NE NW	20.3
36 S	2 W	WM	12	SE NW	6.7

**Certificate:** 14209 in the name of FRANK L TOUVELLE (perfected under Permit S-13413)

**Use:** IRRIGATION of 16.0 ACRES

**Priority Date:** NOVEMBER 23, 1938

**Rate:** 0.20 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 4.50 acre-feet per acre per year

**Source:** ROGUE RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	1 W	WM	6	NE NW	7

**Authorized Place of Use:**

**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	12	SW NE	13.30
36 S	2 W	WM	12	NW SE	2.70

- The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
ROGUE RIVER tributary to PACIFIC OCEAN

**Instream Reach:** For Certificates 79985 and 14209 from POD (as described in Finding of Fact #2) at approximately River Mile 134 to the Gold Ray Dam at approximately River Mile 126.

For Certificate 5324 no POD is described on the certificate. Water is to be protected from the Table Rock Ditch (as described on Certificate 79985) at approximately River Mile 134 to the Gold Ray Dam at approximately River Mile 126.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
79985	SEPTEMBER 22, 1888	3.47	May 1 through October 28
5324	JUNE 13, 1922	0.34	May 1 through October 28
14209	NOVEMBER 23, 1938	0.20	May 1 through October 28

- Other conditions to prevent injury and enlargement are: Certificates 42816, 42818, and 65102 are temperature control rights and shall not be exercised during the term of the lease.
- 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 lease will terminate on October 31, 2007.

### CONCLUSIONS OF LAW

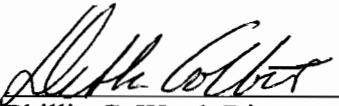
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

### ORDER

Therefore, it is ORDERED:

1. That the Short-Term 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. Certificates 42816, 42818, and 65102 are temperature control rights and shall not be exercised during the term of the lease.
3. The lease will terminate on October 31, 2007.

Dated at Salem, Oregon this 13<sup>th</sup> day of July 2007.

  
Phillip C. Ward, Director

Mailing date: JUL 17 2007