

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1171, Certificates 79212 and 83727, ) FINAL ORDER ON PROPOSED  
Jackson County ) 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 #1**

Pooled Instream Lease for several water right holders (described in Findings of Fact #3 and 4)

**Lessor #2**

Talent Irrigation District (TID)  
P.O. Box 467  
Talent, OR 97540

**Lessor #3**

U.S. Bureau of Reclamation (BOR)  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706-1234

**Findings of Fact**

1. On May 16, 2011, Talent Irrigation District on behalf of several water right holders and the U.S. Bureau of Reclamation filed an application to lease a portion of Certificates 79212 and 83727 for instream use. The Department assigned the application number IL-1171.
2. On June 6, 2011 the f the U.S. Bureau of Reclamation (BOR) notified the Department via email, that the BOR approved the instream lease as described herein.
3. The portion of the first right to be leased is as follows:

**Certificate:** 79212 in the name of TALENT IRRIGATION DISTRICT (TID)

**Use:** Irrigation of 49.55 Acres

**Priority Date:** MAY 23, 1912

**Quantity:** **Rate:** 0.62 CUBIC FEET PER SECOND (cfs)

**Limit:** ONE-EIGHTIETH CFS per acre, further limited to a diversion of not to exceed 87 cfs at one time, and further, the diversion from Bear Creek, including Ashland Creek and Neil Creek shall not exceed 55 cfs at one time.

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: EMIGRANT CREEK, tributary to BEAR CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	2 E	WM	20	SE SE	TOE OF EMIGRANT DAM

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Land Owner
38S	1E	WM	19	SE NE	101	0.20	Judith T. Lee
38S	1W	WM	16	SW NE	1600	0.40	T. Scott Dunn
38S	1W	WM	22	SW NW	1700	2.00	Talent Irrigation District
38S	1W	WM	23	NE SW	2200	3.82	Ayala Orchards, LLC
38S	1W	WM	23	NW SW	2200	14.02	Ayala Orchards, LLC
38S	1W	WM	23	NE SE	2200	0.16	Ayala Orchards, LLC
38S	1W	WM	23	NW SW	402	0.20	Gretchen Lee
38S	1W	WM	23	SW SE	2400	0.20	Talent Irrigation District
38S	1W	WM	23	NW NE	2400	0.05	Talent Irrigation District
38S	1W	WM	23	SW SE	3200	0.30	Donald & Florence Cameron
38S	1W	WM	25	NE SW	103	1.02	Suncrest Homes/C. McIntosh
38S	1W	WM	25	NW SW	4009	0.08	Suncrest Homes/C. McIntosh
38S	1W	WM	25	NW SW	202	0.45	Suncrest Homes/C. McIntosh
38S	1W	WM	25	NE SW	4007	0.05	1005 Talent Ave.
38S	1W	WM	25	NW SW	300	0.40	Suncrest Homes/C. McIntosh
38S	1W	WM	25	NE SW	300	0.40	1007 Talent Ave.
38S	1W	WM	25	NE SW	2301	0.20	Emily/Josh Desmond
38S	1W	WM	25	NW SW	1800	0.10	Edwin/Arlene Babcock
38S	1W	WM	25	NW SW	1900	0.10	Rebecca Jackson
38S	1W	WM	25	NW SW	2000	0.10	Glen/Vola Newman
38S	1W	WM	25	NW SW	2700	0.30	Jay Michalson
38S	1W	WM	25	SW NW	7702	0.09	Thaydra Martin
38S	1W	WM	25	SW NW	7702	0.01	312 Meadow Slope
38S	1W	WM	25	SE SE	2700	0.78	Adams Group
38S	1W	WM	25	NW SE	2700	1.20	Adams Group
38S	1W	WM	25	SW SE	2700	1.52	Adams Group
38S	1W	WM	25	NW SW	104	0.14	Charles/Barbara Bonds
38S	1W	WM	25	NW SE	104	0.06	Charles/Barbara Bonds
38S	1W	WM	25	SW SE	201	0.20	Glenn Kelley
38S	1W	WM	25	SW SE	3000	0.20	Curtis/Ruby Crofoot
38S	1W	WM	25	SE SW	4701	0.16	Stephen/Allison MacIennan
38S	1W	WM	26	NE NE	3500	0.50	Kurt/Diana Entenmann
38S	1W	WM	26	SW NW	101	0.10	Christopher Martin
38S	1W	WM	26	NW SW	701	0.14	Stephen/Julie Maziarski
38S	2W	WM	2	NE SW	1500	0.70	Bernice Montes
38S	2W	WM	2	NE SE	4600	0.40	Michael/Laurie Harris
38S	2W	WM	11	SE NW	1000	1.00	Charles/Joyce Connington
39 S	1E	WM	10	SW NW	601	0.03	Glen Fredrickson
39S	1E	WM	10	SE NW	601	0.07	Glen Fredrickson
39S	1E	WM	10	SW NE	602	0.05	Glen Fredrickson
39S	1E	WM	10	SE NW	602	0.05	Glen Fredrickson
39S	1E	WM	10	NW NW	801	0.30	Scott Kurtz
39S	1E	WM	10	NW NW	802	0.20	Scott Kurtz
39S	1E	WM	10	NE NW	802	0.10	Scott Kurtz

39S	1E	WM	10	NW NW	800	0.30	Kurtz-Walsh Property LLC
39S	1E	WM	10	NW NW	804	0.20	Kurtz-Walsh Property LLC
39S	1E	WM	10	NE NW	805	0.10	Kurtz-Walsh Property LLC
39S	1E	WM	10	SW NW	5800	0.10	Melanie Mindlin
39S	1E	WM	10	SW NW	5900	0.10	Cecile Shohet
39S	1E	WM	10	SW NW	6000	0.10	Karen Jacobsen
39S	1E	WM	10	SW NW	6100	0.10	Lyle & Karen Scheer
39S	1E	WM	11	SW SW	200	0.80	Greg Gargus
39S	1E	WM	14	NE NE	900	4.20	Vernon/Ofelia Ludwig
39S	1E	WM	14	NE NW	900	1.40	IPCO Development Corp.
39S	1E	WM	14	NE NW	1900	2.10	John Dundas
39S	1E	WM	14	NE NW	2000	0.50	Pamela Campbell
39S	1E	WM	14	NW NW	1100	1.20	Edna Nelson Rod/Susan Nelson
39S	1E	WM	14	NW NW	2600	0.52	Charles Cochrane
39S	1E	WM	14	SW NW	2600	0.08	Charles Cochrane
39S	1E	WM	14	NW NW	2602	2.75	Suncrest Homes LLC
39S	1E	WM	14	SW NW	2602	0.05	Suncrest Homes LLC
39S	1E	WM	14	SW NW	4100	0.10	Douglas Fergus
39S	1E	WM	14	NE SW	100	1.20	Alex Knecht
39S	1E	WM	14	NW SW	602	0.10	Lewis/Francine Mitchell
39S	1E	WM	15	NE NE	6900	0.60	Michael/Sandra Sullivan
39S	1E	WM	15	SE NE	1806	0.20	Rogue Valley Community Dev.
39S	1E	WM	15	SE NE	2303	0.20	Mike/Sheri Hillenga
<b>Total:</b>						<b>49.55</b>	

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

**Certificate:** 83727 in the name of U.S. Bureau of Reclamation

**Use:** Primary Irrigation of 6.50 Acres and Supplemental Irrigation of 49.55 Acres

**Priority Date:** September 6, 1915

**Quantity: Rate:** 0.016 Cubic Foot per Second (cfs)

**Duty:** 29.25 Acre-Feet (AF)

**Limit:** ONE-FORTIETH CFS per acre, not to exceed 4.5 AF per acre, per year

**Source:** EMIGRANT CREEK, tributary to BEAR CREEK

**Authorized Point of Diversion:** Same as identified in Finding of Fact #3 for Certificate 79212.

**Authorized Place of Use:** Same as identified in Finding of Fact #3 for Certificate 79212.

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

**Certificate:** 83727 in the name of U.S. Bureau of Reclamation

**Use:** Irrigation of 25.8 Acres

**Priority Date:** September 6, 1915

**Quantity: Rate:** 0.16 Cubic Foot per Second (cfs)

**Duty:** 29.25 Acre-Feet (AF)

**Limit:** ONE-FORTIETH cfs per acre, not to exceed 4.5 AF per acre per year

**Source:** EMIGRANT CREEK, tributary to BEAR CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	2 E	WM	20	SE SE	TOE OF EMIGRANT DAM

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Land Owner
37S	1W	WM	27	NW SW	702	3.70	Robert/Marilyn Hutchins
37S	1W	WM	27	SW NW	702	1.20	Robert/Marilyn Hutchins
37S	1W	WM	27	NE SW	902	1.30	Robert/Marilyn Hutchins
37S	1W	WM	37	SW SE	4100	0.30	Darcella M. Mehlmauer (Dodge)
TOTAL:						6.50	

6. 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 in response to that notice.
7. To avoid the possibility of injury or enlargement the Applicants have requested that the rights be protected instream at rate of 1/100 cfs per acre.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
EMIGRANT CREEK/RESERVOIR tributary to BEAR CREEK, then to BEAR CREEK, tributary to ROGUE RIVER

**Instream Reach:** From the POD, as described in Finding of Fact #3, to mouth of Emigrant Creek, where Emigrant Creek and Walker Creek join to form Bear Creek (approximately 3.5 downstream from the POD); then from River Mile 27 on Bear Creek to the mouth of Bear Creek.

Permit	Priority Date	Instream Rate (cfs)	Period Protected Instream
79212	May 23, 1912	0.62	June 20 through October 31
83727	September 6, 1915	0.16	June 20 through October 31
<b>Total:</b>		<b>0.78</b>	

9. Other conditions to prevent injury and enlargement are:  
  
The quantity of water protected instream under this lease shall be based on the same percentage diversion and delivery rate that TID is diverting to rights of the same priority within the District. The instream rate listed is based upon a 1/100<sup>th</sup> cfs per acre rate. In cases of shortage of supply, where the general allotment in the District has been reduced, TID may deliver less than 2.65 af/ac in accordance with TID policy governing Short-Term Instream Leases. In the event that TID stops delivery of irrigation water prior to October 31, the watermaster shall be notified, and the delivery for instream use shall also stop. Any additional reporting to the watermaster shall be consistent with any required reporting of District operations.

The quantity of water protected instream under this lease shall be measured at the gauging station located at the mouth of Bear Creek (BCMO 14358800).

10. The portion of Certificate 83727 identified in Finding of Fact #4, is supplemental to Certificate 79212 and shall only be protected instream if the full rate and duty under Certificate 79212 are not available during the period for which water is being leased instream.
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 lease will terminate on October 31, 2011.

### CONCLUSIONS OF LAW

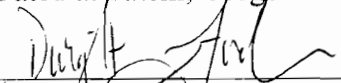
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

### 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.
3. The lease will terminate on October 31, 2011.

Dated at Salem, Oregon this 18 day of October, 2011.

  
 \_\_\_\_\_  
 Dwight French, Water Rights Services Administrator for  
 Phillip C. Ward, Director

NOV 10 2011

Mailing date: \_\_\_\_\_

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrds.state.or.us