

**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, Certificate 79212 and Permit 25915,) Jackson County)	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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
 Patricia Thornily
 P.O. Box 446
 Talent, Oregon 97540

Lessor #2
 Talent Irrigation District (TID)
 P.O. Box 467
 Talent, OR 97540

Lessor #3
 Bureau of Reclamation
 1150 North Curtis Road, Suite 100
 Boise, Idaho 83706-1234

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

Findings of Fact

1. Patricia Thornily, TID, Bureau of Reclamation, and Oregon Water Trust filed an application to lease a portion of Certificate 79212 and Permit 25915 to instream use. The Department assigned the application number L-768.
2. The rights to be leased have been clarified from the lease application and are as follows:

Certificate: 79212 in the name of TALENT IRRIGATION DISTRICT (perfected under Permit S-1382, S-1383, S-4537)

Use: IRRIGATION of 26.3 ACRES

Priority Date: MAY 23, 1912

Rate: 0.33 CUBIC FEET PER SECOND

Limit: ONE-EIGHTIETH cfs per acre

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

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.

Authorized Place of Use:

IRRIGATION AND POSSIBLE SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	1 W	WM	26	SW NE	2.9
38 S	1 W	WM	26	NE SW	11.2
38 S	1 W	WM	26	NE SE	4.5
38 S	1 W	WM	26	NW SE	2.2
38 S	1 E	WM	19	SE SE	5.5

Permit: 25915

Use: SUPPLEMENTAL IRRIGATION of 26.3 ACRES

Priority Date: SEPTEMBER 6, 1915

Rate: 0.66 CUBIC FEET PER SECOND

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

Source: EMIGRANT CREEK/RESERVOIR, tributary to BEAR CREEK

Authorized Place of Use: Same as for Certificate 79212.

Authorized Point of Diversion: Same as for Certificate 79212.

3. 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.
4. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Instream Reach: From POD (as described in Finding of Fact #2) to the mouth of Bear Creek.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
79212	May 23, 1912	0.26	June 21 through October 31
25915	September 6, 1915	0.26	June 21 through October 31

5. Other conditions to prevent injury and enlargement are: The portion 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 1/100th 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.
6. Permit 25915 is supplemental to Certificate 79212. The portion of Permit 25915 being leased instream 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.
7. 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.

8. 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.
9. The lease will terminate on October 31, 2006.

CONCLUSIONS OF LAW

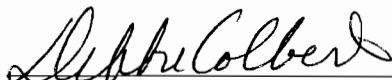
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease. If Certificate 79212 is supplemental to another right with an earlier priority date, the primary right shall not be exercised during the term of this lease.

Dated at Salem, Oregon this 29th day of August 2006.


Phillip C. Ward, Director

Mailing date: SEP 01 2006