

**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 80570, 80578, and 80572,)
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 #1

College of Agriculture Science of
Oregon State University
569 Hanley Road
Central Point, Oregon 97502

Lessor #2

Medford Irrigation District (MID)
1340 Myers Lane
Medford, OR 97501

Lessee

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

Findings of Fact

1. The College of Agriculture Science of Oregon State University, MID, and Oregon Water Trust filed an application to lease a portion of Certificates 80570, 80578, and 80572 to instream use. The Department assigned the application number L-756.
2. The rights to be leased are as follows:

Certificate: 80570 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit E-19)

Use: IRRIGATION of 20.6 ACRES

Priority Date: JULY 23, 1909

Rate: 0.21 CUBIC FEET PER SECOND

Limit/Duty: ONE-HUNDREDTH cfs per acre and 4.5 AF per acre, being 92.7 AF

Source: NORTH FORK LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CR: 40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTIONS 20
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CR: 780 FEET SOUTH & 400 FEET WEST FROM E1/4 CORNER, SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	1 W	WM	6	NE NW	3.4
38 S	1 W	WM	6	SW NW	6.2
38 S	1 W	WM	6	SE NW	11.0

Certificate: 80578 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit S-2382)

Use: SUPPLEMENTAL IRRIGATION of 20.6 ACRES

Priority Date: MARCH 1, 1915

Rate: 0.26 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre and 4.5 AF per acre, being 92.7 AF

Source: BEAR CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
38 S	1 W	WM	23	SW NE	59	PHOENIX CANAL: 1500 FEET NORTH & 100 FEET EAST FROM SE CORNER, DLC 59

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	1 W	WM	6	NE NW	3.4
38 S	1 W	WM	6	SW NW	6.2
38 S	1 W	WM	6	SE NW	11.0

Certificate: 80572 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)

Use: SUPPLEMENTAL IRRIGATION of 20.6 ACRES

Priority Date: MARCH 31, 1910

Rate: 0.26 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre and 4.5 AF per acre, being 92.7 AF

Source: FOURMILE LAKE, tributary to FOURMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 E	WM	8	SW SW	NONE GIVEN
36 S	2 E	WM	20	SE NE	40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTION 20
36 S	5 E	WM	9	SW NW	3600 FEET NORTH & 4200 FEET EAST FROM SW CORNER, SECTION 9
37 S	4 E	WM	4	SE SE	4000 FEET SOUTH & 600 FEET EAST FROM NE CORNER, SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	1 W	WM	6	NE NW	3.4
38 S	1 W	WM	6	SW NW	6.2
38 S	1 W	WM	6	SE NW	11.0

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). The Department noticed the application with the Bureau of Reclamation listed as one of three co-lessors. Subsequent to noticing the application, the Bureau of Reclamation requested that they not be listed as co-lessor. No other comments were received.
4. The Bureau of Reclamation is not a co-lessor on this lease.
5. The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:

Instream Reach: At the Jackson Street Creek Gage (BJBO) on Bear Creek.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
80570	July 23, 1909	0.21	June 23 – October 31
80578	March 1, 1915	0.21	June 23 – October 31
80572	March 31, 1910	0.21	June 23 – October 31

6. Other conditions to prevent injury and enlargement are:
 - A. MID shall divert water at the PODs described in Finding of Fact #2. Water shall be diverted and transported to Bear Creek in the Joint System Canal and the East Main Canal and then released from the canal through the control structure used to deliver water into Bear Creek for District patrons diverting from Bear Creek.
 - B. MID shall maintain a minimum flow through the control structure used to deliver water into Bear Creek by keeping the bottom of the diversion board open, notching the diversion board or other method of passing water that is acceptable to the watermaster, thereby allowing the leased water to return to Bear Creek at a constant rate.
 - C. MID shall report to the District 13 Watermaster's office the amount of water being delivered to the Bear Creek users. This quantity of water shall be additive to the amount of water being leased instream. After the initial report, subsequent reports need to be made to the Watermaster's office within one day of when delivery changes are made.
 - D. 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, March 31, 1910, and March 1, 1915 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.

7. Certificate 80578 and 80572 are supplemental to Certificate 80570. The portion of Certificates 80578 and 80572 being leased instream shall only be protected instream if the full rate and duty under Certificate 80570 is not available during the period for which water is being leased instream.
8. 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.
9. 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.
10. 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.

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


Phillip C. Ward, Director

Mailing date: SEP 01 2006