

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1563, Certificate 83381, Jackson County ) FINAL ORDER ON PROPOSED  
) INSTREAM LEASE

**Authority**

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 instream lease applications.

**Lessors**

Pooled Instream Lease for several water users  
(described in Findings of Fact No. 2)

**Co-Lessor**

Medford Irrigation District (MID)  
PO Box 70  
Jacksonville, OR 97530  
[medid@medfordid.org](mailto:medid@medfordid.org)

**Findings of Fact**

1. On June 30, 2016, MID and Robert E. Vaughn, filed an application to lease a portion of Certificate 83381, for instream use. The Department assigned the application number IL-1563.
2. The portion of the right to be leased has been modified from the lease application and is as follows:

**Certificate:** 83381 in the name of Medford Irrigation District (perfected under Permit E-19)

**Use:** Irrigation of 61.69 acres

**Priority Date:** July 23, 1909

**Quantity:** **Rate:** 0.45 Cubic Foot per Second (CFS) (prorated)

**Limit:** One one-hundredth of one CFS per acre irrigated

**Source:** North and South Forks Little Butte Creek, tributary to Little Butte Creek

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

| <b>Twp</b> | <b>Rng</b> | <b>Mer</b> | <b>Sec</b> | <b>Q-Q</b> | <b>Measured Distances</b>   |
|------------|------------|------------|------------|------------|---|
| 36 S       | 1 E        | WM         | 8          | SW SW      | Not described on certificate; Bradshaw Drop   |
| 36 S       | 2 E        | WM         | 20         | SE NE      | North Fork Little Butte Creek - 40 feet North and 620 feet West from the E1/4 corner of Section 20  |
| 36 S       | 2 E        | WM         | 29         | NE SE      | South Fork Little Butte Creek - 780 feet South and 400 feet West from the E1/4 corner of Section 29 |

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:**

| Twp           | Rng | Mer | Sec | Q-Q   | Acres        | Additional tax lot information | Lessor     |
|---------------|-----|-----|-----|-------|--------------|--------------------------------|------------|
| 37 S          | 2 W | WM  | 16  | SW NW | 3.60         | 2101                           | VAUGHN     |
| 37 S          | 2 W | WM  | 16  | NW SW | 3.99         | 2101                           | VAUGHN     |
| 38 S          | 2 W | WM  | 1   | NW SE | 6.90         | 100                            | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | NE SE | 10.60        | 100                            | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | NE SE | 4.80         | 100                            | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | NW SW | 2.30         | 100                            | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | SW NE | 3.80         | 1000                           | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | SE NE | 8.00         | 1000                           | NAUMES INC |
| 38 S          | 1 W | WM  | 6   | SE NE | 4.70         | 2600                           | NAUMES INC |
| 38 S          | 1 W | WM  | 6   | SW NW | 7.40         | 2600                           | NAUMES INC |
| 38 S          | 2 W | WM  | 1   | SE NE | 3.70         | 2600                           | NAUMES INC |
| 38 S          | 1 W | WM  | 6   | NW SW | 1.90         | 100                            | NAUMES INC |
| <b>Total:</b> |     |     |     |       | <b>61.69</b> |                                |            |

3. Certificate 83381 does not specify a duty. However, information is available from the applicant identifying 1.99 acre-feet (AF) per acre as the duty for this right.
4. Certificate 83381 does not specify the irrigation season. However, information is available from the Little Butte Creek decree identifying the irrigation season as April 1 to October 1 of each year.
5. 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) on July 12, 2016. No comments were received.
6. The instream use has also been modified to maximize the instream protection period and to prevent injury and enlargement and is as follows:  
North and South Forks of Little Butte Creek tributary to Little Butte Creek

**Instream Point:** At the North and South Fork Little Butte Creek POD's, described in Finding of Fact #2, as measured at the Little Butte Creek gauge to the confluence with Butte Creek

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|---------------------------|
| 83381       | 7/23/1909     | 0.45                | 122.76               | May 17 – September 30     |

7. Other conditions to prevent injury and enlargement are:

The portion of the water right protected instream under this lease shall be based on the same percentage of diversion and delivery rate that MID is providing irrigation rights with the same priority date within the district.

In case of shortage of supply, curtail or other necessary or required reduction in the quantity of water diverted, where the general allotment on the district has been reduced, the District may deliver less than 1.64 AF/ac in accordance with MID policy. In the event MID stops delivery of irrigation prior to October 1, the delivery for instream use shall also stop.

Any measurement necessary or required during the term of this lease shall be taken at the Little Butte Creek gauge (LBCO) located at approximately River Mile 16.5. Reporting related to this lease will be consistent with any other required reporting on District operations.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right(s).
9. The protection of flows at the authorized point of diversion/within the proposed reach is appropriate, considering:
  - a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. 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.
10. The total monthly quantities of water to be protected under existing and proposed instream rights in the reach will provide for a beneficial purpose.
11. 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.
12. There are supplemental water rights, Certificates 83383, 80578, and 83728, and Water Use Permit S-4951 appurtenant to all or portions of the lands described in Finding of Fact # 2. The Co-Lessor and Lessees have requested that these water rights not be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended.
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 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.
16. The Lessor has requested that the lease terminate in October 2016. However, the term of an instream lease generally ends on the last day of the irrigation season. Therefore, the lease may terminate on September 30, 2016. The lease may commence on the first day of the instream protection period, being June 25, 2016.


## 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. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2016.

Dated at Salem, Oregon this 22 day of August 2016.

  
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Dwight French, Water Right Services Administrator, for  
THOMAS M. BYLER, DIRECTOR  
Oregon Department of Water Resources

Mailing date: AUG 23 2016

*This document was prepared by  
Joan Smith if you have questions;  
please call 503-986-0892.*