

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

In the Matter of the Proposed Lease of                    )     DETERMINATION and  
Existing Water Rights for Instream,                    )     FINAL ORDER ON PROPOSED  
Certificate 85409, County                                 )     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.

**Lessor #1**

Rogue River Valley Irrigation District (RRVID)  
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**Lessor #2**

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**Lessee**

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**Findings of Fact**

1. On June 30, 2008 the City of Eagle Point, Rogue River Valley Irrigation District (IRRVID) and the Oregon Water Trust (OWT) filed an application to lease all of Transfer T-10160 for instream use. The Department assigned the application instream lease number IL-953.
2. Transfer T-10160 was approved by the Department on June 5, 2007 (*See Special Order Volume 72, Page 255.*) At the time instream lease application IL-953 was submitted to the Department, the water right described in T-10160 was still inchoate and could not be leased instream until the Department issued a certificate confirming the changes approved under Transfer T-10160.

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.

3. On March 20, 2009 the Department issued water Right Certificate 85409 confirming the changes approved by Transfer T-10160 and began processing instream lease application IL-953.

4. The right to be leased is as follows:

**Certificate:** 85409 in the name of CITY OF EAGLE POINT

**Use:** MUNICIPAL

**Season of Use:** March 1 through October 31

**Priority Date:** MARCH 31, 1910

**Quantity:** **Rate:** 1.25 CUBIC FEET PER SECOND

**Limit:** 356.94 Acre-Feet per year

**Source:** FOUR MILE LAKE RESERVOIR within the KLAMATH RIVER BASIN, water draining or flowing into CASCADE CANAL and FISH LAKE RESERVOIR within the ROGUE RIVER BASIN. Water is conveyed from FOUR MILE LAKE via the CASCADE CANAL, and held, and stored in FISH LAKE. Water is re-diverted and released into the NORTH FORK LITTLE BUTTE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
36 S	1 E	WM	8	SW SW		POD #1: BRADFORD DROP
36 S	2 E	WM	20	SE NE		POD #2: NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW		POD #3: FOUR MILE LAKE DAM - 3600 FEET NORTH AND 4200 FEET WEST FROM THE SE CORNER OF SECTION 9;
37 S	4 E	WM	4	SE SE		POD #4: FISH LAKE DAM - 4000 FEET SOUTH AND 600 FEET WEST FROM THE NE CORNER OF SECTION 4
36 S	2 W	WM	13	SW NW	41	POD #5: ROGUE RIVER - 3961.8 FEET SOUTH AND 1883.3 EAST FROM THE NE CORNER OF DLC 42

5. The place of use of this right is within the city limits of the City of Eagle Point, which includes:

Township	Range	Meridian	Sec	¼ ¼
35	S 1 W	W.M.	34	SW NE
35	S 1 W	W.M.	34	SE NE
35	S 1 W	W.M.	34	SE NW
35	S 1 W	W.M.	34	NE SW
35	S 1 W	W.M.	34	SE SW
35	S 1 W	W.M.	34	SE ¼
35	S 1 W	W.M.	35	SW NW
35	S 1 W	W.M.	35	NW SW
35	S 1 W	W.M.	35	SW SW
36	S 1 W	W.M	2	NW NW
36	S 1 W	W.M	2	SW NW
36	S 1 W	W.M	2	SE NW

Township		Range		Meridian	Sec	¼ ¼
36	S	1	W	W.M	2	SW ¼
36	S	1	W	W.M	3	NE ¼
36	S	1	W	W.M	3	NW ¼
36	S	1	W	W.M	3	SW ¼
36	S	1	W	W.M	3	SE ¼
36	S	1	W	W.M	4	SE NE
36	S	1	W	W.M	4	NE SE
36	S	1	W	W.M	4	SE SE
36	S	1	W	W.M	9	NE NE
36	S	1	W	W.M	9	SE NE
36	S	1	W	W.M	10	NE ¼
36	S	1	W	W.M	10	NW ¼
36	S	1	W	W.M	10	NE SW
36	S	1	W	W.M	10	NW SW
36	S	1	W	W.M	11	NW NE
36	S	1	W	W.M	11	SW NE
36	S	1	W	W.M	11	NW ¼
36	S	1	W	W.M	11	NE SW
36	S	1	W	W.M	11	NW SW
36	S	1	W	W.M	11	NW SE

6. 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). No comments were received.
7. The applicant requested that water be protected instream during the period May 11 through October 31, a 174 day period, at the full rate (1.25 CFS) and full volume (356.94 AF). At the full rate for 174 days, the maximum volume would be exceeded. However, to avoid injury and enlargement, the rate may be reduced to 1.03 CFS for the 174 day season requested by the Applicants.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
North Fork Little Butte Creek, tributary to Little Butte Creek

**Instream Reach:** From River Mile 1 on the North Fork Little Butte Creek (described as POD #2 in Finding of Fact #4), to the confluence of the North and South Forks of Little Butte Creek, at approximately River Mile 17, to the mouth of Little Butte Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
85409	March 31, 1910	1.03 CFS	356.94 AF	May 11 through October 31

9. Other conditions to prevent injury and enlargement are:

Instream flows shall be based on flows as measured at the Little Butte Creek Gage at Lake Creek (Station #14346700) and at Eagle Point Gage (LBEO) and shall be in addition to water delivered into Little Butte Creek for other obligations.

Total diversions through the Main Canal from North Fork and South Fork of Little Butte Creek shall not exceed 140.0 CFS at any one time.

The portion of water protected instream under this lease shall be based on the same percentage of diversion and delivery rate that RRVID is diverting to rights of the same priority within the district. When RRVID is diverting water on a percentage basis, RRVID shall report to the District 13 Watermaster's office the percentage diverted under March 31, 1910 priority date. This information only needs to be reported to the Watermaster's office once RRVID is diverting water on a percentage basis (less than 1/100<sup>th</sup> cfs/acre). Subsequent reports need to be made to the Water master's office within one day of when changes are made to the percentage of water being diverted. Once RRVID begins diverting water on a percentage basis, the amount of water leased instream shall be adjusted by that same percentage. In the event that RRVID stops delivery of irrigation water prior to October 1, the Watermaster shall be notified and the delivery for instream use shall also stop.

10. The lease application requests to protect water instream from the North Fork Little Butte Creek into Little Butte Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (North Fork Little Butte Creek) but may be protected further if measurable in the receiving stream (Little Butte Creek). See OAR 690-077-0015 (8). The quantity that may be leased instream from North Fork Little Butte Creek is measurable into Little Butte Creek and may be protected instream in Little Butte Creek.
11. 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.
12. Based upon review of the application, comments received, information provided by the Department's Water master, 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.
13. 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.
14. The Lessor has requested that the lease terminate on October 31, 2010.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department

## 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.

## ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights during the term of the lease.
3. The lease will terminate on October 31, 2010. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (May 11) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 12<sup>th</sup> day of May, 2009.

  
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Phillip C. Ward, Director *PW*

Mailing date: MAY 13 2009