

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

In the Matter of the Proposed Instream)	DETERMINATION and
Lease IL-1020, Certificates 79212 and)	FINAL ORDER ON PROPOSED
83727, 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

Lessee
The Fresh Water Trust (FWT)
65 SW Yamhill Suite #200
Portland, Oregon 97204

Findings of Fact

1. On June 15, 2009 the FWT, on behalf of several water right holders, Talent Irrigation District 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-1020.

2. On August 5, 2009 the Applicant submitted an amended application which contained signatures of the Pooled Applicants and of the U.S. Bureau of Reclamation.

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 85.00 Acres

Priority Date: MAY 23, 1912

Quantity: Rate: 1.06 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
38 S	1 E	WM	30	NE SE	3400	1.80	Minutoli
38 S	1 E	WM	30	SW SE	3300	4.60	Minutoli
38 S	1 E	WM	30	SW SE	3400	1.70	Minutoli
38 S	1 E	WM	30	SE SE	3300	2.20	Minutoli
38 S	1 E	WM	32	NE SE	203	5.60	Pendleton
38 S	1 E	WM	32	NW SE	203	3.20	Pendleton
38 S	1 W	WM	16	SW NE	1600	0.40	TID
38 S	1 W	WM	21	NW NE	601	0.20	Kimball
38 S	1 W	WM	21	NE NW	601	1.70	Kimball
38 S	1 W	WM	21	SW NE	601	1.00	Kimball
38 S	1 W	WM	21	SE NW	601	1.80	Kimball
38 S	1 W	WM	22	NW NW	1700	2.00	TID
38 S	1 W	WM	23	NE SW	1001	4.90	Assoc. Fruit Co.
38 S	1 W	WM	23	NE SW	2200	3.82	TID
38 S	1 W	WM	23	NW SW	2200	14.02	TID
38 S	1 W	WM	23	NW SW	402	0.20	TID
38 S	1 W	WM	23	NE SE	2200	0.16	TID
38 S	1 W	WM	23	SW SE	2400	0.20	TID
38 S	1 W	WM	25	NW NW	7702	0.09	TID
38 S	1 W	WM	25	SW NW	7702	0.01	TID
38 S	1 W	WM	25	NE SW	4007	0.05	TID
38 S	1 W	WM	25	NE SW	103	1.02	TID
38 S	1 W	WM	25	NE SW	300	0.40	TID
38 S	1 W	WM	25	NE SW	2301	0.20	TID
38 S	1 W	WM	25	NW SW	1800	0.10	TID
38 S	1 W	WM	25	NW SW	1900	0.10	TID
38 S	1 W	WM	25	NW SW	2000	0.10	TID
38 S	1 W	WM	25	NW SW	2700	0.30	TID
38 S	1 W	WM	25	NW SW	4009	0.08	TID
38 S	1 W	WM	25	NW SW	202	0.45	TID
38 S	1 W	WM	25	NW SW	300	0.40	TID
38 S	1 W	WM	25	NW SW	104	0.14	TID
38 S	1 W	WM	25	SE SW	4701	0.16	TID
38 S	1 W	WM	25	NW SE	104	0.06	TID
38 S	1 W	WM	25	SW SE	3000	0.20	TID
38 S	1 W	WM	25	SW SE	2700	1.20	TID
38 S	1 W	WM	25	SW SE	2700	1.52	TID
38 S	1 W	WM	25	SE SE	2700	0.78	TID
38 S	1 W	WM	26	NE NE	3500	0.50	TID
38 S	1 W	WM	26	SW NW	101	0.10	TID
38 S	1 W	WM	26	NW SW	701	0.14	TID
38 S	2 W	WM	1	SE SW	100	3.10	Medford Water Co.
38 S	2 W	WM	1	SE SW	1400	2.80	Medford Water Co.
38 S	2 W	WM	2	NE SE	4600	0.40	TID
38 S	2 W	WM	11	SW NW	1000	1.00	TID
39 S	1 E	WM	10	SW NE	602	0.05	TID
39 S	1 E	WM	10	NE NW	805	0.10	TID

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Land Owner
39 S	1 E	WM	10	NE NW	802	0.10	TID
39 S	1 E	WM	10	NW NW	800	0.30	TID
39 S	1 E	WM	10	NW NW	804	0.20	TID
39 S	1 E	WM	10	NW NW	801	0.30	TID
39 S	1 E	WM	10	NW NW	802	0.20	TID
39 S	1 E	WM	10	SW NW	601	0.03	TID
39 S	1 E	WM	10	SE NW	601	0.07	TID
39 S	1 E	WM	10	SE NW	602	0.05	TID
39 S	1 E	WM	11	NW SW	3601	2.80	Calvary Baptist
39 S	1 E	WM	11	SW SW	200	0.80	TID
39 S	1 E	WM	14	NE NE	900	4.20	TID
39 S	1 E	WM	14	NE NW	900	1.40	TID
39 S	1 E	WM	14	NE NW	1900	2.10	TID
39 S	1 E	WM	14	NE NW	2000	0.50	TID
39 S	1 E	WM	14	NW NW	1100	1.20	TID
39 S	1 E	WM	14	NW NW	2600	0.52	TID
39 S	1 E	WM	14	NW NW	2602	2.75	TID
39 S	1 E	WM	14	SW NW	2602	0.05	TID
39 S	1 E	WM	14	SW NW	2600	0.08	TID
39 S	1 E	WM	14	NE SW	100	1.20	TID
39 S	1 E	WM	14	NW SW	602	0.10	TID
39 S	1 E	WM	15	NE NE	6900	0.60	TID
39 S	1 E	WM	15	SE NE	1806	0.20	TID
39 S	1 E	WM	15	SE NE	2303	0.20	TID
Total:						85.00	

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: Supplemental Irrigation of 85.00 Acres

Priority Date: September 6, 1915

Quantity: Rate: 0.645 Cubic Foot per Second (cfs)

Duty: 116.1 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: 0.645 Cubic Foot per Second (cfs)

Duty: 116.1 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
37 S	1 W	WM	27	NE SE	1101	4.90	Mahar
37 S	1 W	WM	34	SE SE	3600	1.90	Aker
38 S	2 W	WM	1	NE SW	2600	1.30	Medford Water Co.
39 S	1 E	WM	25	NE NE	139	3.03	Comstock
39 S	1 E	WM	25	SE NE	139	2.97	Comstock
39 S	2 E	WM	34	NE SE	602	0.80	Wright
39 S	2 E	WM	34	NE SE	603	8.40	Wright
39 S	2 E	WM	34	NE SE	604	2.50	Wright
TOTAL:						25.8	

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
8. the Applicants have requested that the rights be protected instream at rate of 1/100 cfs per acre.
9. 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	0.85	June 20 through October 31
83727	September 6, 1915	0.25	June 20 through October 31
Total:		1.10	

10. 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 1/100th 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.

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).

11. 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.
12. 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.
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 lease will terminate on October 31, 2009.

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, 2009.

Dated at Salem, Oregon this 31ST day of August 2009.


Phillip C. Ward, Director *PCW*

Mailing date: SEP 02 2009