

**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 Use, ) FINAL ORDER ON PROPOSED  
Certificates 85288, 85876 and 84949 ) INSTREAM LEASE  
Jackson County )

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)  
3139 Merriman Road  
Medford, Oregon 97501

**Lessor #2**

U.S. Bureau of Reclamation (BOR)  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706-1234

**Findings of Fact**

1. On June 25, 2010 Rogue River Valley Irrigation District, filed an application to lease a portion of Water Right Certificates 84949 and 85288 for instream use. The Department assigned the application number IL-1084.
2. On September 3, 2010 the U.S. Bureau of Reclamation (BOR) notified the Department that BOR had no objections to the proposed instream lease.
3. On October 11, 2010 RRVID requested the Department to amend Instream Lease Application IL-1084 by including Certificate 85876, which is supplemental to Certificate 85876.
4. On October 11, 2010, RRVID requested the Department to amend Instream Lease Application IL-1084 by removing the lands listed under Certificate 81635 and replacing those lands with Certificate 84949 as follows:

MANUFACTURING						
Twp	Rng	Mer	Sec	Q-Q	Rate (cfs)	Tax Lot
36S	1W	WM	22	NW NE	0.50	201, 202, 203
36S	1W	WM	22	NE NW		

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.

5. The portion of the first right to be leased is as follows:

**Certificate:** 85288 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT  
(perfected under Permit E-19)

**Use:** IRRIGATION of 97.3 ACRES

**Priority Date:** JULY 23, 1909

**Rate:** 0.536 CUBIC FEET PER SECOND (cfs)

**Limit:** ONE-HUNDREDTH of one cfs per acre

**Source:** NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

**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 CREEK: 40 FEET NORTH AND 620 FEET WEST FROM E <sup>1</sup> / <sub>4</sub> 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 E <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 29

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
36S	2W	WM	32	SE NW	1700	14.2
36S	2W	WM	32	NE SW	1700	2.2
36S	2W	WM	32	NE SW	1500	1.1
36S	2W	WM	32	NE SE	1500	12.2
36S	2W	WM	32	NW SW	1500	34.8
36S	2W	WM	32	SW SW	1500	3.3
36S	2W	WM	35	SW SE	2604	3.5
36S	2W	WM	35	SW SE	2608	1.3
37S	2W	WM	4	NW SE	2900	8.0
37S	2W	WM	4	NE SE	2900	8.7
37S	2W	WM	4	SW NW	2100	5.9
37S	2W	WM	4	NW SW	2100	2.1
<b>TOTAL:</b>						<b>97.3</b>

6. The portion of second right to be leased is as follows:

**Certificate:** 85876 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT  
(perfected under Permit S-407)

**Use:** SUPPLEMENTAL IRRIGATION of 97.3 ACRES

**Priority Date:** MARCH 31, 1910

**Rate:** 0.436 CUBIC FEET PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre

**Source:** FOUR MILE LAKE RESERVOIR, within the Klamath River Basin; waters draining or flowing into the CASCADE CANAL; and FISH LAKE RESERVOIR, within the Rogue River Basin

**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 CREEK: 40 FEET NORTH AND 620 FEET WEST FROM E¼ CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM: 3600 FEET NORTH AND 4200 FEET EAST FROM SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM: 4000 FEET SOUTH AND 600 FEET EAST FROM NE CORNER OF SECTION 4

**Authorized Place of Use for Supplemental Irrigation:** Same lands as described in Findings of Fact #5.

7. The portion of third right to be leased is as follows:

**Certificate:** 84949 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-407)

**Use:** MANUFACTURING

**Priority Date:** MARCH 31, 1910

**Rate:** 0.436 CUBIC FEET PER SECOND (cfs)

**Limit/Duty:** Limited to an amount actually used beneficially not to exceed 7.35 CFS

**Source:** FOUR MILE LAKE RESERVOIR, within the Klamath River Basin; waters draining or flowing into the CASCADE CANAL; and FISH LAKE RESERVOIR, within the Rogue River Basin

**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 CREEK: 40 FEET NORTH AND 620 FEET WEST FROM E¼ CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM: 3600 FEET NORTH AND 4200 FEET EAST FROM SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM: 4000 FEET SOUTH AND 600 FEET EAST FROM NE CORNER OF SECTION 4

**Authorized Place of Use:**

MANUFACTURING						
Twp	Rng	Mer	Sec	Q-Q	Rate (cfs)	Tax Lot
36S	1W	WM	22	NW NE	0.50	201, 202, 203
36S	1W	WM	22	NE NW		

8. 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.
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

BEAR CREEK, tributary to the ROGUE RIVER

**Instream Reach:** From the PODs described in Finding of Fact #5 to Bear Creek via 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 and then to the mouth of Bear Creek.

Certificate	Priority Date	Instream Rate	Supplemental Rate	Period Protected Instream
85288	JULY 23, 1909	0.536 cfs		June 20 through October 11
85876	MARCH 31, 1910		0.436 cfs	
84949	MARCH 31, 1910	0.50 cfs		

10. Other conditions to prevent injury and enlargement are:

- A. Water protected instream Water shall be measured at the Bear Creek Gauge, BCMO 143588000.
- B. RRVID shall divert water at the PODs described in Finding of Fact #5. 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.
- C. RRVID 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.
- D. RRVID shall report to the District 13 Watermaster's office the amount of water being delivered under Certificate 85288 to the Bear Creek Gage (BCMO 143588000). After the initial report, subsequent reports need to be made to the Watermaster's office within one day of when delivery changes are made.
- E. RRVID 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.

F. 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 the July 23, 1909, and March 31, 1910 priority dates. 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 Watermaster'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.

11. Certificate 85876 is supplemental to Certificate 85288. Certificate 85288 is a deficient water right. Certificate 85876 shall be protected instream so that a total of 1/100 cfs per acre is leased instream under Certificate 85288 and the supplemental right, Certificate 85876.
12. There are additional supplemental water rights, Certificates 85316, 80575, 80576, 80577 and 83729 appurtenant to all or a portion of the lands described in Finding of Fact #5. The Lessor and Lessee 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, 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.
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 requested that the lease will terminate on October 11, 2010.

### **CONCLUSIONS OF LAW**

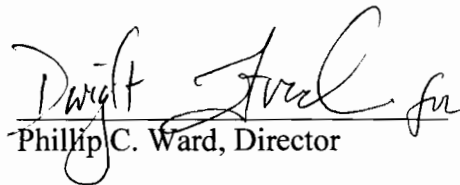
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

**ORDER**

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During the term of the lease, the former place of use will no longer receive water as part of the rights proposed for lease in the application, any supplemental rights, including Certificates 85316, 80575, 80576, 80577 and 83729 or any other layered water rights for irrigation use, including ground water registrations.
3. The lease will terminate on October 11, 2010.

Dated at Salem, Oregon this 11 day of October 2010.

  
Phillip C. Ward, Director

Mailing date: OCT 12 2010