

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1268, 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.

Lessor #1

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

Lessor #2

Naumes, Inc.
PO Box 996
Medford, OR 97501

Findings of Fact

1. On March 7, 2013, MID and Naumes, Inc., filed an application to lease a portion of Certificate 83381 for instream use. The Department assigned the application number IL-1268.
2. On March 12, 2013, the Department received amendments clarifying the lease application.
3. The portion of the right to be leased is as follows:

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

Use: Irrigation of 65.48 acres

Priority Date: July 23, 1909

Quantity: **Rate:** 0.48 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):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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	24	SW SW	0.80	1000	MID
37 S	2 W	WM	26	NE NE	0.60	500	MID
37 S	2 W	WM	26	NE NE	1.30	1000	MID
37 S	2 W	WM	26	NE NE	0.93	2700	MID
37 S	2 W	WM	26	NE NE	1.90	3200	MID
37 S	2 W	WM	26	NE NE	0.82	3300	MID
37 S	2 W	WM	26	NE NE	1.23	1200	MID
37 S	2 W	WM	26	NW NE	0.82	1200	MID
37 S	2 W	WM	26	NE NE	0.85	1300	MID
37 S	2 W	WM	26	NW NE	0.55	1300	MID
37 S	2 W	WM	26	NW NE	0.16	600	MID
37 S	2 W	WM	26	SW NE	0.07	600	MID
37 S	2 W	WM	26	NW NE	0.21	700	MID
37 S	2 W	WM	26	SW NE	1.06	700	MID
37 S	2 W	WM	35	NE NE	0.50	800	MID
37 S	2 W	WM	35	NE NE	0.34	1000	MID
37 S	2 W	WM	35	NE NE	0.20	1100	MID
37 S	2 W	WM	35	NE NE	0.99	3000	MID
37 S	2 W	WM	35	NE SE	0.47	1100	MID
37 S	2 W	WM	35	NE SE	2.30	1300	MID
37 S	2 W	WM	36	SW SW	6.83	2200	MID
37 S	1 W	WM	32	SW SW	0.24	4100	MID
37 S	1 W	WM	32	SE SW	0.20	4100	MID
37 S	2 W	WM	22	NE NW	0.46	1400	MID
37 S	2 W	WM	26	SW NE	0.25	400	MID
37 S	2 W	WM	26	SE NE	0.16	400	MID
37 S	2 W	WM	26	NW SW	0.15	6800	MID
37 S	2 W	WM	26	SW SW	0.15	6800	MID
37 S	2 W	WM	34	NE SE	0.77	1000	MID
37 S	2 W	WM	35	NE NE	0.99	2900	MID
37 S	2 W	WM	35	SW NE	0.40	2500	MID
37 S	2 W	WM	35	SE NE	0.24	2500	MID
37 S	2 W	WM	36	NW NW	0.13	3000	MID
37 S	2 W	WM	36	SW NW	0.84	6000	MID
37 S	2 W	WM	36	NE SE	0.40	2500	MID
37 S	2 W	WM	36	NE SE	0.22	3100	MID
37 S	2 W	WM	36	NE SE	0.25	3300	MID
37 S	2 W	WM	36	NE SE	0.19	3500	MID
37 S	2 W	WM	36	NE SE	0.11	3600	MID
38 S	2 W	WM	1	SE NW	0.16	5700	MID
38 S	2 W	WM	1	NE SW	0.11	5700	MID
38 S	2 W	WM	1	SE NW	0.18	5600	MID
38 S	2 W	WM	1	NE SW	0.09	5600	MID
38 S	2 W	WM	1	SE NW	0.32	6500	MID
38 S	2 W	WM	1	SW NE	1.00	6200	MID
38 S	1 W	WM	8	SW NE	0.20	1600	Naumes Inc.

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional tax lot information	Lessor
38 S	1 W	WM	8	NW SE	0.24	1600	Naumes Inc.
38 S	1 W	WM	8	NE SW	3.00	1600	Naumes Inc.
38 S	1 W	WM	8	SE NW	6.10	1600	Naumes Inc.
38 S	1 W	WM	6	SW SE	1.30	1900	Naumes Inc.
38 S	1 W	WM	7	NW NE	10.90	1900	Naumes Inc.
38 S	1 W	WM	7	NW NE	4.30	1900	Naumes Inc.
38 S	1 W	WM	7	NW NE	0.50	200	Naumes Inc.
38 S	1 W	WM	7	NE NW	8.00	1900	Naumes Inc.
Total:					65.48		

4. 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.
5. 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.
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) on March 19, 2013. No comments were received.
7. The Lessors have requested to protect water instream during the period July 17 through October 15. October 15th extends past the end of the irrigation season, as described in Finding of Fact #5. Water may not be protected instream outside of the irrigation season without injury and/or enlargement. The instream use requires modification to prevent injury and enlargement.
8. 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 #3, as measured at the Little Butte Creek gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83381	7/23/1909	0.48	129.99	May 18 – September 30

9. 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.

10. There is a supplemental water right, Certificate 83383, appurtenant to all or a portion of the lands described in Finding of Fact # 3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
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 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.
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 15, 2013. 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, 2013. The lease may commence on the first day of the instream protection period, being June 25, 2013.

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 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, 2013.

Dated at Salem, Oregon this 12 day of June, 2013.

This document was prepared by Susan Douthit and if you have any questions, please call 503-986-0858.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: JUN 13 2013