

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1740, Jackson County ) FINAL ORDER ON PROPOSED  
) INSTREAM LEASE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor**

Rogue River Valley Irrigation District  
3139 Merriman Rd  
Medford OR 97501

**Co-Lessor No. 1**

Medford Irrigation District  
2340 Myers Lane  
Medford OR 97501-3646

**Co-Lessor No. 2**

U.S. Department of the Interior, BOR,  
Gregg Garnett, Bend Field Office  
1375 SE Wilson Ave, Suite 100  
Bend OR 97702-2607

**Findings of Fact**

1. On April 12, 2019, the Rogue River Valley Irrigation District (RRVID) filed an application to lease a portion of Certificates 85288 and 86489 for instream use. The Department assigned the application number IL-1740. Letters of concurrence from the United States Department of the Interior, Bureau of Reclamation, and Medford Irrigation District were submitted with the application.
2. On May 14, 2019, the Department contacted the Lessor to let them know of the deficiencies in the application, being mapping issues. On July 9, 2019, the Lessor submitted amended application maps and spreadsheets fixing the deficiencies.
3. The portion of the first right to be leased has been modified from the lease application and is as follows:

**Certificate:** 85288 in the name of the Rogue River Valley Irrigation District (perfected under Permit E-19)  
**Use:** Irrigation of 126.9 acres  
**Priority Date:** July 23, 1909

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.

**Quantity:**           **Rate:** 1.269 Cubic Foot per Second (CFS)  
**Volume:** 380.7 Acre-Feet (AF)  
**Limit:** One-hundredth CFS per acre  
**Source:**           North and South Forks of Little Butte Creek, tributaries to Little Butte Creek

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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 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

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	1 W	WM	9	NE SW	0.6
36 S	2 W	WM	28	SE SW	5.8
36 S	2 W	WM	28	SW SE	1.7
36 S	2 W	WM	31	NE SE	12.2
36 S	2 W	WM	31	SE SE	1.8
36 S	2 W	WM	32	NW SE	6.1
36 S	2 W	WM	32	SE NW	14.2
36 S	2 W	WM	32	NE SW	3.3
36 S	2 W	WM	32	NW SW	13.1
36 S	2 W	WM	32	SW SW	7.3
36 S	2 W	WM	35	SW SE	4.8
37 S	2 W	WM	3	SW NE	0.2
37 S	2 W	WM	3	NW NW	9.0
37 S	2 W	WM	3	SW NW	14.1
37 S	2 W	WM	3	SE NW	0.2
37 S	2 W	WM	4	NW SE	8.2
37 S	2 W	WM	4	NE SE	8.7
37 S	2 W	WM	4	SW NW	5.9
37 S	2 W	WM	4	NW SW	2.1
37 S	2 W	WM	4	SW SE	0.1
37 S	2 W	WM	4	SE SE	1.9
37 S	2 W	WM	5	SE SW	1.5
37 S	2 W	WM	5	NE NW	0.5
37 S	2 W	WM	9	NE NW	1.8
37 S	2 W	WM	13	NW NW	1.8
Total Acres					126.9

4. Certificate 85288 does not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.

5. Certificate 85288 does not specify a duty limit per acre. However, based on information provided by the applicant, an appropriate duty limit per acre, for purposes of this instream lease, is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

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

**Certificate:** 86489 in the name of the Rogue River Valley Irrigation District and Medford Irrigation District (perfected under Permit S-407)  
**Use:** Manufacturing Uses  
**Priority Date:** March 31, 1910  
**Quantity:** **Rate:** 0.66 CFS  
**Volume:** 198.0 AF  
**Source:** Fourmile Lake Reservoir, within the Klamath River Basin; and water draining or flowing into the Cascade Canal and Fish Lake Reservoir, within the Rogue River Basin; as constructed under Permit R-50

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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 THE E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	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	FISH LAKE DAM: 4000 FEET SOUTH AND 600 FEET WEST FROM THE NE CORNER OF SECTION 4

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot
36 S	2 W	WM	22	NW NE	201, 202, 203
36 S	2 W	WM	22	NE NW	

7. Certificate 86489 does not specified the period of allowed use. However, use of water for manufacturing is assumed to be year round use unless otherwise specified in the certificate.

8. There are supplemental irrigation water rights, Certificates 85876, 85877, 80575, 80576, 80577, 83729 and Permit S-4951, appurtenant to all or a portion of the lands described in Findings of Fact No. 3 and 6. The Lessors 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.

9. 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.

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

North and South Forks of Little Butte Creeks, tributary to Butte Creek for Certificate 85288 and Fourmile Lake Reservoir, draining or flowing into the Cascade Canal and Fish Lake Reservoir for Certificate 86489

**Instream Reach:** From the PODs of North and South Fork Little Butte Creek 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 (at the Bear Creek Gaging Station No. 14358800) to the mouth of Bear Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
85288	7/23/1909	1.04	380.7	April 1 – October 1
86489	3/31/1910	0.66	198.0	April 1 – October 1

11. 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 Findings of Fact No. 3. 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.

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
13. The protection of flows 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.
14. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
15. 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.
16. 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.
17. 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.
18. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
19. The Lessors have requested that the lease terminate in April 2020. The lease may commence on the date this final order is signed. The last day of the irrigation season is October 31, therefore the lease will terminate on October 31, 2020.
20. The Lessors have requested that there not be an option to terminate the lease.

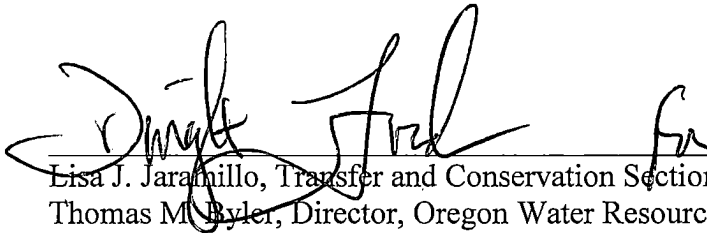
**Conclusions of Law**

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. 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 irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2020. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day     **AUG 23 2019**    .

  
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Lisa J. Jarafillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date:     **AUG 26 2019**    

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.*