



State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900

Application for Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

Pursuant to ORS 537.348(2) and OAR 690-077

Optional Identification by Lessor/Lessee: mid bc
Lease Application Number (assigned by WRD): IL-851

This Lease is between:

Lessor #1:

Name Bear Creek Orchards Inc.
Mailing address PO Box 299
City, State, Zip Code Medford, Oregon 97501
Telephone number 541-864-3536
Email address _____

Lessor #2, 3, etc.

#2 Medford Irrigation District

The water right to be leased is located in Jackson County.

Lessee (if different than Oregon Water Resources Department):

Name Oregon Water Trust
Mailing address 522 SW Fifth Avenue, Suite 825
City, State, Zip Code Portland, OR 97204
Telephone number 503-525-0141
Email address steve@owt.org

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SALEM, OREGON

Trustee:

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266
(503) 986-0900

~I~ Water Right Holder and Water Right Information

- 1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 37 S, Range 2 W, Section 21 and Tax Lot number 2700, 6200, 6203, 6204. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

1.2 Lessor #2 is the (Check one):

Not applicable

Official representative of Medford Irrigation District, the irrigation district which conveys water to the subject water rights.

Another party with an interest in the subject water rights representing _____.

1.3 For the water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No. 80570 prim, 80572 supp, 80578 supp, permit 25915
Only 80570 and 80572 shall be leased instream

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.5 **Water Rights Proposed to be Leased Instream.**

The first right to be leased identified in Section 1.3 is further described as follows:

Certificate No.: 80570

Priority date: July 23, 1909 Type of use: Irrigation

Legal Season of Use: April 1 through October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and ¼ ¼ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 37 S, R 2 W, Section 21, SE¼ NW¼ - 10.70 acres to be leased

Enter additional places of use here, using format above:

37S, 2W, S21 NE SW - 0.6

37S, 2W, S21 SW NE - 12.8

37S, 2W, S21 NW SE - 0.5

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Page _____ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 24.6

Acre-feet of storage, if applicable: NA

Maximum rate associated with the right to be leased (cfs): 0.246 (1/100)

(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with the right to be leased (ac-ft): 110.7

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: The right is limited to 90 cfs into the medfird canal at Bradshaw drop, or its equivalent in case of rotation, masured at pod from source

The amount used for irrigation is limited to diversion of one-hundredthof 1 cfs for each acre irrigated during season

The use shall conform to rotation system if so ordered

If you need to enter another leased right, please use the additional water rights form.

1.6 **Validity of rights.** Lessor(s) attests (mark one) that:

- the water has been used over the past five years according to the terms and conditions of the water right certificate or as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)(_) (include necessary supporting documentation as Attachment 3).

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~II~ Instream Water Right Information

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2.1 Public use. This lease will increase streamflows that will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

2.2 Instream use created by lease. The instream use to be created is described as follows:

Little Butte Creek
Tributary to Rogue River in the Rogue Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): The points of diversion are located North fork little butte creek: 40 feet north and 620 feet west from E 1/4 corner of section 20, being within the se ne of section 20, T 36 S, R 2E, WM
and

South Fork little butte creek: 780 feet south and 400 feet west from E 1/4 corner of section 29, being within the ne se of section 29, T 36 S, R 2E, WM

The instream reach will be from the confluence of the north and south forks of little butte creek, at approximately stream mile 17, to the mouth of Little Butte Creek.

The instream right should be added to any existing instream water rights up to the estimated average natural flow.

Maximum volume in acre-feet: 65.19 (2.65 ac-ft per acre)

Rate in cfs: 0.246

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from June 20 through October 31.
- Other (describe): The instream right protected under this lease shall be satisfied based on the same percentage diversion and delivery rate that MID is providing irrigation rights in the district. The instream rate proposed is based on a 1/100th cfs per acre rate.

In case of shortage of supply where the general allotment on the District has been reduced, the District may deliver less than 2.65 acre feet per acre in accordance with District policy governing temporary instream leases. In the event the District stops delivery of irrigation water prior to October 31, the delivery for instream use shall also stop. Reporting to the watermaster shall be consistent with any required reporting of other District operations.

If you need to enter more instream uses, please use the additional water rights form.

- 2.3 **Term of lease.** This lease shall terminate on October 31, 2007.
- 2.4 **Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see Section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

- 3.1 **Accuracy.** The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The lease only exercises the water rights being leased, for the term of the lease. It shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.
- 3.2 **Lease.** Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.
- 3.3 **Precedent.** 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 a new injury review shall be required, and a prior lease shall not set a precedent for the amount of water to be leased or transferred instream.
- 3.4 **Suspension of original use.** During the period of the lease, the water right holder agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights.
- 3.5 **Termination provision.**
- For multiyear leases, the Lessor(s) 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 or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:
- Written notice to the Department with original signatures;
 - Consent by all parties to the lease; and/or

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- Written notice to the Watermaster's office.
- For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.

3.6 Modification to prevent injury. Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

3.7 Fees. Pursuant to ORS 536.050, the following fee is included:

- \$200 for an application with four or more landowners or four or more water rights.
- \$100 for all other applications.

Lessor #1: *Ron Henri* Date: *6-6-2007*
Bear Creek Orchards Inc

X For additional Lessors, type in space for signature and date

Lessor #2 *Carl Bradford* Date: *6-15-07*
Medford Irrigation District

Lessee: *Steven Parrott for OWT* Date: *5-31-07*
Oregon Water Trust

Other Attachments as Needed:

Attachment 1: Tax Lot Map. (See instructions.)

Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked).

Attachment 4: Split Season Instream Use Form

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Additional Water Right Form Standard Application for Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

~I~ Water Right Holder and Water Right Information

Section 1.5 continued from Standard Application for Instream Lease.

Subject Water Rights. Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: 80572

Priority date: March 31, 1910

Type

of use: Supplemental Irrigation of 12,356.6 acres

Legal Season of Use (if not listed on the certificate): April 1 through October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$, which will be dried up as part of this lease. Include a map (Attachment 3) showing the lands that will not receive water.

Place of use: T 37 S, R 2 W, Section 21, SE $\frac{1}{4}$ NW $\frac{1}{4}$ - 10.70 acres to be leased

Enter additional places of use here, using format above:

37S, 2W, S21 NE SW - 0.6

37S, 2W, S21 SW NE - 12.8

37S, 2W, S21 NW SE - 0.5

Page (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 24.6

Acre-feet of storage, if applicable: This is a storage right

Rate associated with leased rights (cfs): 0.307 (1/80)

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 4.5

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: conform to rotation system if so ordered
right is limited to 90 cfs into mid canal at bradshaw drop

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~II~ Instream Water Right Information

Section 2.2 continued from Standard Application for Short-Term Instream Lease.

Instream use created by lease. The instream use to be created is described as follows:

Little Butte Creek

Tributary to Rogue River in the Rogue Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): POD is Four Mile Lake Dam: 3600 feet north and 4200 feet east of se corner of section 9, being within sw nw of section 9 T 36 S, R 5E, WM. Water is conveyed in the Cascade Canal and stored in Fish Lake. Water is redivereted at the Fish Lake Dam and released into North Fork Little Butte Creek

Westside MID

Instream Lease

Bear Creek Orchards, Inc




T 37 S, R 2 W, Sections 21, WM

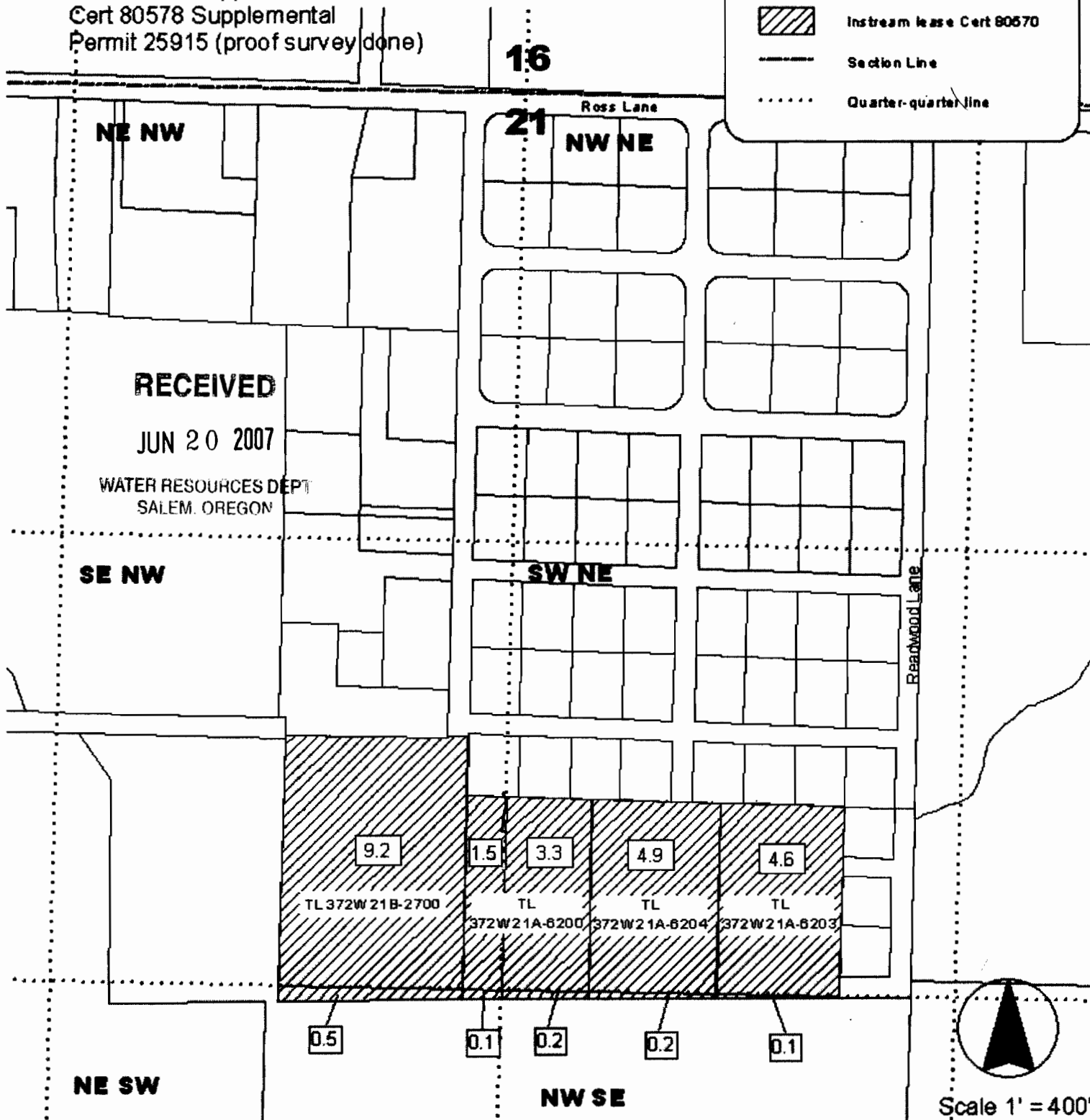
Address
PO Box 299
Medford, OR 97501

Phone
541-864-3536

Instream lease of
Cert 80570 Primary
Cert 80572 Supplemental
Cert 80578 Supplemental
Permit 25915 (proof survey done)

Legend

-  Instream lease Cert 80570
-  Section Line
-  Quarter-quarter line



and rediverted at the North Fork diversion: 40 feet north and 620 feet west from E 1/4 corner of section 20, being within the se ne of section 20, T 36S, R 2E, WM.

The instream reach for the supplemental portion of the lease will be from the confluence of the north and south forks of little butte creek, at approximately stream mile 17, to the mouth of little butte creek.

Maximum volume in acre-feet: 65.19 at 2.65 ac-ft / acre

Rate in cfs: 0.307 (1/100 per acre)

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

None

The instream flow will be allocated on a daily average basis up to the described rate from June 20 through October 31.

Other (describe): The instream right may be supplied water with this supplemental right when the primary sources are insufficient and the District is supplying water for irrigation under the supplemental right. Use of the supplemental water right to satisfy the instream right will be at a rate of 1/100th cfs per acre.

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Bob Rice

From: Bob Rice
Sent: Wednesday, June 20, 2007 3:03 PM
To: steve@owt.org
Subject: Bear Creek Orchards leases; IL-850 and IL-851; C-80570 and 80572

Hi Steve,

We received two Bear Creek Orchards/MID lease applications today. Both applications request that "The instream right should be added to any existing instream water rights up to the estimated average natural flow."

My review of the existing ISWRs reveals two minimum perennial streamflow rights (Certificates 59818 and 59820) and one right created by a transfer (Certificate 76147).

In order to make these leases additive to the existing ISWRs, we must have information that would show that there is a beneficial use in exceeding the existing ISWRs (which are as high as 120 cfs). Ideally this information should come from ODFW, DEQ, or OPRD.

Additionally, I want to confirm the proposed rates and duties on the two leases. The first lease (IL-850) for 91.6 acres requests an instream rate and duty of 0.916 cfs and 242.74 AF for both the primary and supplemental (Certificates 80570 and 80572). However, the rate is shown as a 1/100 for the primary and a 1/80 for the supplemental.

The second lease (IL-851) requests **0.246 cfs** and 65.19 AF under the primary and **0.307 cfs** and 65.19 AF under the supplemental, yet describes both as a 1/100 cfs.

Please confirm the rates and duties associated with both of these leases. If you'd like to discuss any of this, please give me a call. Many thanks!

--Bob

P.S. Have fun in WA and learn lots!

Bob Rice
Field Services Division
Water Resources Department
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(503) 986-0885
Fax: 503.986.0903
www.wrd.state.or.us