

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1279, Certificates 74146, 74147, 76106,) FINAL ORDER ON PROPOSED
83571, Deschutes County) 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

Pooled Instream Lease for several landowners
(described in Findings of Fact #5, 6, 7 and 8)

Lessor #2

Tumalo Irrigation District (TID)
64697 Cook Ave.
Bend, OR 97701
tid@tumalo.org

Lessor #3

Central Oregon Irrigation District (COID)
1055 SW Lake Court.
Redmond, OR 97756
laura@coid.org

Lessee

Deschutes River Conservancy (DRC)
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On March 29, 2013, the DRC, COID, and TID, on behalf of various water right holders, filed an application to lease a portion of Certificates 74146, 74147, 76106, and 83571 for instream use. The Department assigned the application number IL-1279.
2. On June 25 and 26, 2013, the Department identified information and application materials necessary to complete the lease application.
3. On June 26, 2013, COID's signature on the lease application was received.
4. On July 3, 2013, the DRC clarified that that the instream use associated with the 2.0 acres equivalent of industrial use under Certificate 74147 should only have a reach extending down to the Madras Gage.
5. Certificates 74146, 74147, and 76106 describe the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the rights to be leased have changed since these certificates were issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots

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.

identified on the water right of record have been partitioned or subdivided. The portion of the water rights to be leased described in Findings of Fact #5, #6, #7, and #8 is consistent with the water right of record in so far as possible.

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

Certificate: 74146 in the name of Tumalo Irrigation District
Use: Irrigation of 29.4 acres, being 20.4 acres under the September, 1900 priority date and 9.0 acres under the May 27, 1907 priority date
Season of Use: April 15 through October 15
Priority Date: September 1900, and May 27, 1907
Quantity: Rate: 0.42 Cubic Foot per Second (CFS) (limited to 1/70th CFS/acre), being

September, 1900	May 27, 1907
0.291 CFS	0.129 CFS

Duty: 52.92 Acre-Feet (AF) (limited to 1.8 AF/acre), being

September, 1900	May 27, 1907
36.72 AF	16.20 AF

The quantities listed are as determined by decree of the Circuit Court of Deschutes County, in Volume 1, Page 135, and Volume 16, Page 188.

Source: Tumalo Creek, tributary to the Deschutes River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor #1)
16 S	11 E	WM	22	NW SE	9/1900	1500	4.0	Bugas Family Trust
16 S	11 E	WM	27	SE NW	9/1900	207	2.0	Pechin Revocable trust
16 S	11 E	WM	35	NE NE	9/1900	100	10.0	Lee and Ruth Vezina
16 S	12 E	WM	30	NW SE	5/27/1907	2100	3.4	C.L.R. Inc.
17 S	11 E	WM	12	SW SW	9/1900	800	4.4	Joyce Coats Rev. Trust, Eric Coats, Trustee
17 S	11 E	WM	13	NW NW	5/27/1907	809	1.6	C.L.R. Inc.
17 S	11 E	WM	13	NW NW	5/27/1907	817	4.0	C.L.R. Inc.
Total							29.4	

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	POD #1 (TUMALO FEED CANAL) – N 70 DEGREES 21' W; 1550 FEET FROM THE EAST ¼ CORNER OF SECTION 23
18 S	10 E	WM	2	NW SW	POD #2 – N 14 DEGREES 02' W; 1713 FEET FROM THE SOUTH ¼ CORNER OF SECTION 2

7. The portion of the second right to be leased has been clarified from the lease application and is as follows:

Certificate: 74147 in the name of Tumalo Irrigation District
Priority Date: October 29, 1913
Use: Irrigation of 49.36 acres and 2.0 acres equivalent of Industrial Use
Season of Use: April 1 to November 1, further limited as follows:
 April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1
 May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2
 May 15 to Sept. 15 described herein as Season 3

Quantity:

Irrigation

Rate: Season 1: 0.617 CFS (limited to 1/80th CFS/acre)
Season 2: 0.823 CFS (limited to 1/60th CFS/acre)
Season 3: 1.523 CFS (limited to 1/32.4th CFS/acre)
Duty: 489.16 AF (limited to 9.91 AF per acre)

Industrial

Rate: Season 1: 0.025 CFS (limited to 1/80th CFS/acre)
Season 2: 0.033 CFS (limited to 1/60th CFS/acre)
Season 3: 0.062 CFS (limited to 1/32.4th CFS/acre)
Duty: 19.82 AF (limited to 9.91 AF per acre)

Source: Tumalo Creek, tributary to the Deschutes River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
IRRIGATION							
16 S	11 E	WM	14	NE SW	502	3.2	Landsbergen Family Trust
16 S	11 E	WM	27	SE NW	207	1.5	Pechin Revocable Trust
16 S	12 E	WM	30	SE NE	100	13.2	C.L.R. Inc.
16 S	12 E	WM	30	NE SE	100	16.0	C.L.R. Inc.
16 S	12 E	WM	30	NE SE	2000	5.0	C.L.R. Inc.
16 S	12 E	WM	30	NE SE	2100	1.9	C.L.R. Inc.
16 S	12 E	WM	30	NW SE	2100	0.7	C.L.R. Inc.
17 S	11 E	WM	13	NW NW	809	3.0	C.L.R. Inc.
17 S	11 E	WM	13	NW NW	817	1.36	C.L.R. Inc.
17 S	11 E	WM	14	NE NE	11400	3.5	C.L.R. Inc.
Total						49.36	
2.0 EQUIVALENT ACRES OF INDUSTRIAL USE							
16 S	12 E	WM	30	NE SE	100	2.0	C.L.R., Inc.

Authorized POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	Tumalo Creek POD #1 (Tumalo Feed Canal) – N 70 degrees 21' W; 1550 feet from the East ¼ corner of Section 23

8. The portion of the third right to be leased has been clarified from the lease application and is as follows:

Certificate: 76106 in the name of Tumalo Irrigation District

Priority Date: December 8, 1961

Use: Irrigation of 23.24 acres

Season of Use: April 15 through October 15 (as established by Tumalo Creek Decree)

Quantity: Rate (limited to 1/70th CFS/acre): 0.33 CFS
Duty (limited to 2.5 AF/acre): 58.1 AF, further limited to a maximum of 32.33 AF from storage

Source: Tumalo Creek and Upper Tumalo Reservoir, constructed under Permit R-2743, tributaries of the Deschutes River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
16 S	11 E	WM	1	SW SE	500	1.6	Brian Puziss
17 S	11 E	WM	12	SW SW	800	21.64	Joyce Coats Rev. Trust, Eric Coats, Trustee
					Total	23.24	

Authorized POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SE NE	Tumalo Creek – 2080 feet South and 1310 feet West from the NE corner of Section 23
16 S	11 E	WM	33	SE SW	Upper Tumalo Reservoir

9. The portion of the forth right to be leased is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District

Use: Irrigation of 2.0 acres

Priority Date: October 31, 1900 and December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31

May 1 through May 14 & September 16 through September 30

May 15 through September 15

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/80th cubic foot per second (CFS) per acre

Season 2: limited to 1/60th CFS per acre

Season 3: limited to 1/32.4th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals (POD #9) as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17S	12E	W.M.	32	NW NE	TID BEND FEED CANAL POD #9: 2050 WEST FROM THE NE CORNER OF SECTION 32

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot	Water Right Holder (Lessor #1)
17 S	11 E	WM	24	NW NE	2.0	200	Brooks Resources Corp.

10. The Department has information that the season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 15 through September 30 described herein as Season 2

May 15 through September 14 described herein as Season 3

11. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #9), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #9), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD #9 under Certificate 83571 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.025 CFS	0.033 CFS	0.044 CFS	19.82 AF
December 2, 1907			0.018 CFS	

12. 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.
13. The lease application requests to protect water instream under Certificate 76106 beginning from Upper Tumalo Reservoir. However, Upper Tumalo Reservoir is an off channel reservoir. Water is diverted from Tumalo Creek, through a canal, and into the reservoir. There is no outlet from the Reservoir back to Tumalo Creek. Water protected instream under Certificate 76106 shall be from live flow only and begin at the point of diversion on Tumalo Creek.
14. It appears that the point of diversion for Certificate 76106 on Tumalo Creek is also the Tumalo Feed Canal point of diversion identified for Certificates 74146 and 74147 as described in Finding of Fact #6 and #7. For the purposes of this lease, water shall be protected instream from Tumalo Creek under Certificates 74146, 74147, and 76106 beginning at the Tumalo Feed Canal point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	Tumalo Feed Canal – N 70 degrees 21' W; 1550 feet from the East ¼ corner of Section 23

15. The lease application requests to protect water instream from Tumalo Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream, Tumalo Creek, but may be protected further if measurable in the receiving stream, the Deschutes River (OAR 690-077-0015 (8)). The quantity that may be leased instream from Tumalo Creek is measurable into the Deschutes River and may be protected instream in the Deschutes River.
16. The Lessor and Lessee have requested that the instream use created as a result of the lease of irrigation use under Certificates 74147, 76106, and 83571 be protected instream from the Tumalo Feed Canal POD on Tumalo Creek (as described in Finding of Fact #13) and from the Bend Feed Canal on the Deschutes River (as described in Finding of Fact #8) to the

mouth of the Deschutes River. A portion of the water diverted at the POD returns to Tumalo Creek and to the Deschutes River along the proposed reach. All return flows from the existing use are back in the river system once river flows reach the Madras Gage. To prevent injury or enlargement of the right, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.

17. The Lessor and Lessee have requested that the instream use created as a result of the lease of industrial use under Certificate 74147 only be protected from the Tumalo Bend Feed Canal POD to the Madras Gage on the Deschutes River. The Department has not identified any return flows within the proposed reach associated with the industrial use.

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

Tumalo Creek, tributary to the Deschutes River

Instream Reach: From the Tumalo Feed Canal POD (as described in Findings of Fact #14) to the confluence with the Deschutes River

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 74146								
	4/1 - 4/30	5/1 - 5/14	5/15 - 5/31	6/1 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
9/1900		0.110	0.110	0.110	0.110	0.110		36.72
5/27/1907		0.049	0.049	0.049	0.049	0.049		16.20
Certificate 74147								
10/29/1913	0.642	0.856	1.585	1.585	0.856	0.642	0.642	508.98
Certificate 76106								
12/8/1961		0.17	0.17	0.17	0.17	0.17		58.10
Totals	0.642	1.185	1.914	1.914	1.185	0.971	0.642	594.23

Deschutes River, tributary to the Columbia River

Instream Reach #1: From the Bend Feed Canal POD (as described in Findings of Fact #9) to the confluence with Tumalo Creek

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 83571								
	4/1 - 4/30	5/1 - 5/14	5/15 - 5/31	6/1 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
10/31/1900	0.014	0.018	0.034	0.034	0.018	0.014	0.014	10.9
Totals	0.014	0.018	0.034	0.034	0.018	0.014	0.014	10.9

Instream Reach #2: From the confluence with Tumalo Creek to the Madras Gage

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 74146								
	4/1 - 4/30	5/1 - 5/14	5/15 - 5/31	6/1 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
9/1900		0.110	0.110	0.110	0.110	0.110		36.72
5/27/1907		0.049	0.049	0.049	0.049	0.049		16.20
Certificate 83571								
10/31/1900	0.014	0.018	0.034	0.034	0.018	0.014	0.014	10.9
Certificate 74147								
10/29/1913	0.642	0.856	1.585	1.585	0.856	0.642	0.642	508.98
Certificate 76106								
12/8/1961		0.17	0.17	0.17	0.17	0.17		58.10
Totals	0.656	1.203	1.948	1.948	1.203	0.985	0.656	605.13

Instream Reach #3: From the Madras Gage to the mouth of the Deschutes River

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 74146								
	4/1 - 4/30	5/1 - 5/14	5/15 - 5/31	6/1 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
9/1900		0.110	0.110	0.110	0.110	0.110		36.72
5/27/1907		0.049	0.049	0.049	0.049	0.049		16.20
Certificate 83571								
10/31/1900	0.009	0.009	0.009	0.009	0.009	0.009	0.009	3.6
Certificate 74147								
10/29/1913	0.214	0.214	0.214	0.214	0.214	0.214	0.214	88.85
Certificate 76106								
12/8/1961		0.13	0.13	0.13	0.13	0.13		41.83
Totals	0.223	0.512	0.512	0.512	0.512	0.512	0.223	187.20

19. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

20. There are supplemental water rights, Certificates 76714, 74147, 84148, 74149, and 76520, appurtenant to lands described in Findings of Fact #6, #7, #8, and #9. The Lessor and Lessee have not requested that these water rights be included as part of this lease application. During the term of the lease, water use under these supplemental water rights will also be suspended on the lands being leased instream.
21. 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.
22. 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.
23. 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.
24. The Lessor has requested that the lease terminate on October 31, 2013. The lease may commence on the date this final order is signed.

CONCLUSIONS OF LAW

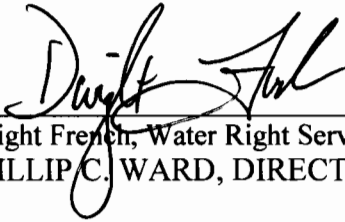
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 October 31, 2013.

Dated at Salem, Oregon this 10 day of July, 2013.



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

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUL 12 2013