

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-993, Certificates 74146 and 74147,) FINAL ORDER ON PROPOSED
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

Bend Metro Park & Recreation District
200 Pacific Park Lane
Bend, OR 97701

Lessor #2

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

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill St.
Bend, Oregon 97701
gen@deschutesriver.org

Findings of Fact

1. On April 22, 2009, the DRC, TID, and Bend Metro Park and Recreation District filed an application to lease a portion of Certificates 74146 and 74147 to instream use. The Department assigned the application number IL-993.

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

Certificate: 74146
Use: Irrigation
Season of Use: April 15 through October 15
Priority Date: September 1900
Acres: 57.7 acres
Quantity: Rate: 0.824 CFS (limited to 1/70th CFS/acre)
Duty: 103.86 Acre-Feet (AF) (limited to 1.8 AF/acre)
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

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	Tax Lot	Acres
16 S	11 E	WM	21	NE SE	600	6.7
16 S	11 E	WM	21	SE SE	600	4.7
16 S	11 E	WM	21	SE SW	600	28.2
16 S	11 E	WM	21	SW SE	600	18.1

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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

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

Certificate: 74147

Priority Date: October 29, 1913

Use: Irrigation

Acres: 47.3 acres

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: Rate: Season 1: 0.591 CFS (limited to 1/80th CFS/acre)
 Season 2: 0.788 CFS (limited to 1/60th CFS/acre)
 Season 3: 1.460 CFS (limited to 1/32.4th CFS/acre)

Duty: 468.74 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
16 S	11 E	WM	21	NE SW	600	10.4
16 S	11 E	WM	21	NW SE	600	15.0
16 S	11 E	WM	21	SW SE	600	21.9

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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

4. 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.
5. The Lessor and Lessee have requested to protect water instream from the Tumalo Feed Canal POD on Tumalo Creek described in Findings of Fact #2 and #3 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.

- 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 #1: From the Tumalo Feed Canal POD (as described in Findings of Fact #2 and #3) to the confluence with the Deschutes River

Priority Date	Instream Rate (CFS)								Instream Volume (AF)
Certificate 74146									
	4/1 - 4/15	4/15 - 4/30	5/1 - 5/14	5/15 - 9/ 14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	10/27 - 10/31	
9/1900		0.285	0.285	0.285	0.285	0.285			103.86
Certificate 74147									
19/29/1913	0.591	0.591	0.788	1.460	0.788	0.591	0.591		468.74
Totals	0.591	0.876	1.073	5.771	1.073	0.876	0.591	0.00	572.60

Instream Reach #2: In the Deschutes River from the confluence with Tumalo Creek to the Madras Gage

Priority Date	Instream Rate (CFS)								Instream Volume (AF)
Certificate 74146									
	4/1 - 4/15	4/15 - 4/30	5/1 - 5/14	5/15 - 9/ 14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	10/27 - 10/31	
9/1900		0.285	0.285	0.285	0.285	0.285			103.86
Certificate 74147									
19/29/1913	0.591	0.591	0.788	1.460	0.788	0.591	0.591		468.74
Totals	0.591	0.876	1.073	5.771	1.073	0.876	0.591	0.00	572.60

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 - 4/15	4/15 - 4/30	5/1 - 5/14	5/15 - 9/ 14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	10/27 - 10/31	
9/1900		0.285	0.285	0.285	0.285	0.285			103.86
Certificate 74147									
19/29/1913	0.205	0.205	0.205	0.205	0.205	0.205	0.205		85.14
Totals	0.205	0.490	0.490	0.490	0.490	0.490	0.205	0.00	189.00

- 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.

- There are supplemental water rights, Certificates 74147, 74148, 74149, and 76520, appurtenant to lands described in Findings of Fact #2 and #3. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. The Lessor as requested that the lease terminate on October 31, 2013.
14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

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.

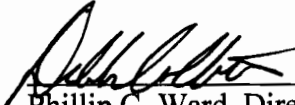
ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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 during the term of the lease.
3. The lease will terminate on October 31, 2013. For multiyear leases, the Lessor *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 (April 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 6th day of July 2009.


Phillip C. Ward, Director *pcw*

Mailing date: JUL 10 2009