

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1962, Deschutes County) 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

Pooled Instream Lease for several water right holders (described in Findings of Fact No's 2, 5, and 7)

Co-Lessor

Central Oregon Irrigation District (COID)
1055 SW Lake Ct.
Redmond, Oregon 97756
Jtalbott@coid.org

Co-Lessor

Tumalo Irrigation District (TID)
64697 Cook Ave.
Bend, Oregon 97703
staff@tumalo.org
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Lessee

Deschutes River Conservancy (DRC)
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Bend, Oregon 97703
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Findings of Fact

1. On April 6, 2023, DRC, COID, and TID, on behalf of several water right holders, filed an application to lease a portion of Certificates 95175, 95176, and 94956 for instream use. The Department assigned the application number IL-1962.

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

Certificate: 95175 in the name of Tumalo Irrigation District (confirmed by Tumalo Creek Decree of record at Salem, in the order Record of the Water Resources Director, in volume 1, at Page 135 and in volume 16, at Page 188)

Use: Irrigation of 55.36 acres, being 44.46 acres under the September 1900 priority date, 4.2 acres under the May 27, 1907 priority date, and 6.7 acres under the June 1, 1907 priority date

Priority Date: September 1900, May 27, 1907, and June 1, 1907

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: **Limit:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-seventieth of one cubic foot per second (or its equivalent) and 1.8 acre-feet, measured at or within one-half mile of the land to be irrigated, for each acre irrigated during the irrigation season of each year.

Source: Tumalo Creek, a tributary of the Deschutes River

Authorized Point of Diversion (POD):

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 11 E | WM | 23 | SW NE | TUMALO FEED CANAL POD 1: NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23 |

Authorized Place of Use:

| Priority Date | Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres | Water Right Holder (Lessor) |
|---------------|------|------|-----|-----|-------|---------|-------|--|
| 9/1900 | 16 S | 11 E | WM | 1 | SW SE | 500 | 1.60 | 3 Sixes, LLC |
| 9/1900 | 16 S | 11 E | WM | 1 | SW SE | 600 | 14.46 | |
| 9/1900 | 16 S | 11 E | WM | 27 | SE NW | 207 | 2.00 | Nicholas Hunter Pechin Revolvable Living Trust |
| 9/1900 | 16 S | 11 E | WM | 28 | NW SE | 1000 | 7.50 | Catherine Hollister |
| 9/1900 | 16 S | 11 E | WM | 35 | SE NE | 204 | 4.80 | Louis B. Dvorak |
| 6/1/1907 | 16 S | 11 E | WM | 35 | SE NE | | 2.70 | |
| 9/1900 | 16 S | 11 E | WM | 35 | SE NE | 600 | 4.10 | |
| 9/1900 | 16 S | 11 E | WM | 35 | SE NE | 700 | 4.00 | |
| 9/1900 | 17 S | 11 E | WM | 4 | NW NE | 500 | 6.00 | |
| 5/27/1907 | 16 S | 12 E | WM | 30 | NW SE | 2100 | 3.40 | C.L.R., Inc. |
| 5/27/1907 | 16 S | 12 E | WM | 31 | SW SE | 4300 | 0.80 | Cascade Academy of Central Oregon, Inc. |
| 6/1/1907 | 16 S | 12 E | WM | 31 | SW SE | 4200 | 1.00 | |
| 6/1/1907 | 17 S | 12 E | WM | 6 | NW NE | 301 | 3.00 | |
| Total | | | | | | | 55.36 | |

- Certificate 95175 does not specify the irrigation season. However, the Tumalo Creek Decree establishes the irrigation season for the area as April 15 to October 15.
- Certificate 95175 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 No. 2), 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 PODs (described in Finding of Fact No. 2), 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 the PODs under Certificate 95175 shall be reduced, if this instream lease is approved.

| Priority Date | Rate (CFS) | Volume (AF) |
|-----------------|------------|-------------|
| September, 1900 | 0.367 | 80.03 |
| May 27, 1907 | 0.048 | 7.56 |

| Priority Date | Rate (CFS) | Volume (AF) |
|---------------|--------------|--------------|
| June 1, 1907 | 0.079 | 12.06 |
| Totals | 0.494 | 99.65 |

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

Certificate: 95176 in the name of Tumalo Irrigation District (perfected under Permit S-19628)

Priority Date: October 29, 1913

Use: Irrigation of 44.00 acres

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

Season 1: April 1 through April 30 and Oct. 1 through Oct. 31

Season 2: May 1 through May 14 and Sept. 15 through Sept. 30

Season 3: May 15 through Sept. 14

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

Season 1: (limited to 1/80th CFS/acre)

Season 2: (limited to 1/60th CFS/acre)

Season 3: (limited to 1/32.4th CFS/acre)

Maximum Duty that can be applied to an acre:

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

Authorized POD:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 18 S | 10 E | WM | 2 | NW SW | TUMALO CREEK POD 2: NORTH 14 DEGREES 2 MINUTES EAST, 1713 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 2 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres | Water Right Holder (Lessor) |
|------|------|-----|-----|-------|---------|-------|---|
| 16 S | 11 E | WM | 27 | SE NW | 207 | 1.50 | Nicholas Hunter Pechin Revocable Living Trust |
| 16 S | 11 E | WM | 35 | SE NE | 600 | 0.40 | Louis B. Dvorak |
| 16 S | 11 E | WM | 35 | SE NW | 1500 | 2.40 | Robert L. Pederson |
| 16 S | 12 E | WM | 30 | SE NE | 100 | 13.20 | C.L.R., Inc. |
| 16 S | 12 E | WM | 30 | NE SE | 100 | 16.00 | |
| 16 S | 12 E | WM | 30 | NE SE | 2000 | 5.00 | |
| 16 S | 12 E | WM | 30 | NE SE | 2100 | 1.90 | |
| 16 S | 12 E | WM | 30 | NW SE | 2100 | 0.70 | |
| 16 S | 12 E | WM | 31 | SW SE | 4300 | 0.60 | Cascade Academy of Central Oregon, Inc. |
| 17 S | 12 E | WM | 6 | NW NE | 300 | 1.80 | |
| 17 S | 12 E | WM | 6 | NW NE | 301 | 0.50 | |
| | | | | | | Total | 44.0 |

6. The quantity of water that may be protected instream under Certificate 95176 requires modification. Use of water under every water right is subject to beneficial use without waste in accordance with ORS 536.310. Beneficial use is the measure and limit of all water rights (ORS 540.610). Certificate 95176 allows the diversion of up to 9.91 Acre-Feet (AF) per acre. As stated on the original permit (S-19628), the purpose of this water right is to secure the same duty for the District as fixed in the Deschutes River Decree, being 9.91 AF per acre. The Deschutes River Decree also identifies that the duty at the point of diversion includes

transmission losses of 45 percent. Based upon review of the water right record and consultation with the Watermaster, the Department has determined that the full rates and seasonal volume allowed at the point of diversion must be reduced by 45% considering beneficial use without waste.

| Priority Date | Season 1 (CFS) | Season 2 (CFS) | Season 3 (CFS) | Duty (AF) |
|------------------|----------------|----------------|----------------|-----------|
| October 29, 1913 | 0.550 | 0.733 | 1.358 | 436.04 |

7. The portion of the third right to be leased is as follows:

Certificate: 94956 in the name of Central Oregon Irrigation District

Use: Irrigation of 2.0 acres

Priority Date: October 31, 1900

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

Season 1: April 1 through April 30 & October 1 through October 31

Season 2: May 1 through May 14 & September 15 through September 30

Season 3: May 15 through September 14

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 No. 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: Deschutes River, a tributary to the Columbia River

Authorized POD:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 11 E | WM | 32 | NW NE | POD NO. 9 (T.I.D. BEND FEED CANAL): 2050 FEET WEST FROM THE NE CORNER OF SECTION 32 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres | Water Right Holder (Lessor) |
|------|------|-----|-----|-------|---------|-------|------------------------------|
| 17 S | 11 E | WM | 24 | NW NE | 200 | 2.0 | Brooks Resources Corporation |

8. Certificate 94956 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 No. 7), 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 No. 7), 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 No. 9 under Certificate 94956 shall be reduced, if this instream lease is approved.

| Priority Date | Season 1 | Season 2 | Season 3 | Total Volume |
|------------------|-----------|-----------|-----------|--------------|
| October 31, 1900 | 0.025 CFS | 0.033 CFS | 0.044 CFS | 19.82 AF |
| December 2, 1907 | | | 0.018 CFS | |

9. There are supplemental irrigation water rights appurtenant to all or a portion of the lands described in Findings of Fact No. 2, 5, and 7. The Lessor, Co-Lessors and Lessee 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.
10. 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.
11. 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 (Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Tumalo Creek is measurable into the receiving stream and may be protected into the Deschutes River.
12. The Lessors and Lessee have requested to protect water instream from the POD on Tumalo Creek 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 within the proposed reach. Return flows from the existing use are generally back in the river system once river flows reach the Madras Gage. To prevent injury or enlargement of the rights, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.
13. The instream use is as follows:
Tumalo Creek, tributary to the Deschutes River

Instream Reach No. 1: From the Tumalo Feed Canal POD (as described in Finding of Fact No. 2 and 5) on Tumalo Creek and then into the Deschutes River to the Madras Gage

| Priority Date | Instream Rate (CFS) | | | | | Instream Volume (AF) |
|---------------|---------------------|------------|-------------|-------------|--------------|----------------------|
| | Certificate 95175 | | | | | |
| | 4/1 - 4/30 | 5/1 - 5/14 | 5/15 - 9/14 | 9/15 - 9/30 | 10/1 - 10/25 | |
| 9/1900 | 0.219 | 0.219 | 0.219 | 0.219 | 0.219 | 80.03 |
| 5/27/1907 | 0.021 | 0.021 | 0.021 | 0.021 | 0.021 | 7.56 |
| 6/1/1907 | 0.033 | 0.033 | 0.033 | 0.033 | 0.033 | 12.06 |

| Priority Date | Instream Rate (CFS) | | | | | Instream Volume (AF) |
|--------------------------|---------------------|-------|-------|-------|-------|----------------------|
| Certificate 95176 | | | | | | |
| 10/29/1913 | 0.303 | 0.403 | 0.747 | 0.403 | 0.303 | 239.22 |
| Certificate 94956 | | | | | | |
| 10/31/1900 | 0.014 | 0.018 | 0.034 | 0.018 | 0.014 | 10.90 |

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

| Priority Date | Instream Rate (CFS) | | | | | Instream Volume (AF) |
|--------------------------|---------------------|------------|--------------|-------------|--------------|----------------------|
| Certificate 95175 | | | | | | |
| | 4/1 - 4/30 | 5/1 - 5/14 | 5/15 - 9/ 14 | 9/15 - 9/30 | 10/1 - 10/25 | |
| 9/1900 | 0.194 | 0.194 | 0.194 | 0.194 | 0.194 | 80.03 |
| 5/27/1907 | 0.018 | 0.018 | 0.018 | 0.018 | 0.018 | 7.56 |
| 6/1/1907 | 0.029 | 0.029 | 0.029 | 0.029 | 0.029 | 12.06 |
| Certificate 95176 | | | | | | |
| 10/29/1913 | 0.192 | 0.192 | 0.192 | 0.192 | 0.192 | 79.20 |
| Certificate 94956 | | | | | | |
| 10/31/1900 | 0.009 | 0.009 | 0.009 | 0.009 | 0.009 | 3.60 |

14. Other conditions to prevent injury and enlargement are:

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

15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

16. 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 within the proposed reach and have been accounted for in the reach from the Madras Gage to the mouth of the Deschutes River (Reach No. 2).

17. 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.

18. 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.
19. 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.
20. 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.
21. 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.
22. The Lessor, Co-Lessors, and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.
23. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

Conclusions of Law

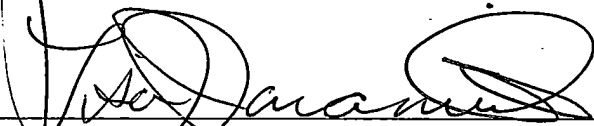
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During 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, 2023. The lease may be terminated with consent of all parties to the lease prior to specified termination date.

Dated at Salem, Oregon this MAY 09 2023.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR, Oregon Water Resources Department

Mailing date: MAY 10 2023

This document was prepared by Corey Courchane and if you have any questions, please call 503-979-3917.