

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1409, Deschutes County ) FINAL ORDER ON PROPOSED  
 ) 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**

Bend Metro Park & Recreation District  
799 SW Columbia St.  
Bend, OR 97702

**Co-Lessor**

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

**Lessee**

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

**Findings of Fact**

1. On March 19, 2014, TID, DRC, and Bend Metro Park and Recreation District filed an application to renew instream lease IL-993, involving a portion of Certificates 74146 and 74147.
2. On April 11, 2014, the Department requested clarification of the portion of Certificate 74146 to be leased for instream use. A revised application map, consistent with the original lease application, was received from the DRC on April 29, 2014.
3. Since the portion of Certificate 74146 included in Instream Lease IL-993 was leased instream in 2009, the quantities that may be diverted at the point of diversion have been reduced due to other transfers and allocation of conserved water projects. The quantity of water that must be suspended at the point of diversion is different than the quantity identified in Special Order Volume 78, Page 340, issued approving IL-993 on July 13, 2009. Therefore, this lease has been re-assigned to IL-1409 to differentiate it from the previous lease.

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.

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

**Certificate:** 74146 in the name of Tumalo Irrigation District  
**Use:** Irrigation of 57.7 acres  
**Priority Date:** September, 1900  
**Quantity:** **Limit:** 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, tributary to the Deschutes River

**Authorized Point of Diversions (POD):**

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

**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
<b>Total Acres</b>						<b>57.7</b>

5. Certificate 74146 does not specify the irrigation season. However, the Tumalo Creek Decree establishes the irrigation season for the area as April 15 to October 15.
6. Certificate 74146 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 #3), 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 #3), 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 #1 under Certificate 74146 shall be reduced, if this instream lease is approved.

Rate	Total Volume
0.544 CFS	103.86 AF

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

**Certificate:** 74147 in the name of Tumalo Irrigation District (perfected under Permit S-19628)

**Use:** Irrigation of 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

**Priority Date:** October 29, 1913

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

**Volume:** 468.74 AF (9.91 total acre feet per acre, at the diversion during the season)

**Source:** Tumalo Creek, tributary to the Deschutes River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	POD #1 (TUMALO FEED CANAL) – NORTH 70 DEGREES 21' WEST, 1550 FEET FROM THE EAST ¼ CORNER OF SECTION 23

**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
<b>Total Acres</b>						<b>47.3</b>

8. There are supplemental water rights, Certificate 74147, 74148, 74149, and 76520, appurtenant to all or a portion of the lands described in Findings of Fact #4 and 7. The Lessor and Lessee have requested these water rights not be included as part of this lease application. During the term of the lease, water use under these rights will 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 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 to the mouth of the Deschutes River.
11. The Lessor and Lessee have requested to protect water instream from POD #1 on Tumalo Creek (described in Findings of Fact #4 and 7) 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 uses return to the river system at 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.
12. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Tumalo Creek, tributary to Deschutes River

**Instream Reach #1: From POD #1 (as described in Finding of Fact #4 and 7) to the confluence with the Deschutes River**

Priority Date	Instream Rate (CFS)								Instream Volume (AF)
<b>Certificate 74146</b>									
	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
<b>Certificate 74147</b>									
10/29/1913	0.591	0.591	0.788	1.460	0.788	0.591	0.591		468.74
<b>Totals</b>	<b>0.591</b>	<b>0.876</b>	<b>1.073</b>	<b>5.771</b>	<b>1.073</b>	<b>0.876</b>	<b>0.591</b>	<b>0.00</b>	<b>572.60</b>

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

Priority Date	Instream Rate (CFS)								Instream Volume (AF)
<b>Certificate 74146</b>									
	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
<b>Certificate 74147</b>									
10/29/1913	0.591	0.591	0.788	1.460	0.788	0.591	0.591		468.74
<b>Totals</b>	<b>0.591</b>	<b>0.876</b>	<b>1.073</b>	<b>5.771</b>	<b>1.073</b>	<b>0.876</b>	<b>0.591</b>	<b>0.00</b>	<b>572.60</b>

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

Priority Date	Instream Rate (CFS)								Instream Volume (AF)
<b>Certificate 74146</b>									
	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
<b>Certificate 74147</b>									
10/29/1913	0.205	0.205	0.205	0.205	0.205	0.205	0.205		85.14
<b>Totals</b>	<b>0.205</b>	<b>0.490</b>	<b>0.490</b>	<b>0.490</b>	<b>0.490</b>	<b>0.490</b>	<b>0.205</b>	<b>0.00</b>	<b>189.00</b>

13. 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.

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

15. 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. Return flows resulting from the exercise of the existing water right would re-enter the river downstream of the PODs, within the reach of the instream water right. As such, the rate and volume of water protected instream has been reduced in Instream Reach #3 (Finding of Fact #12) to prevent injury and enlargement.
16. 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.
  17. 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.
  18. 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.
  19. 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.
  20. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
  21. The Lessor and Lessee have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed
  22. The Lessor and Lessee have 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.

### **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, 2018. For multiyear leases, the lessor and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 through October 26) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 12 day of May, 2014.

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

*This document was prepared by  
Lanaya Blakely and if you have any  
questions, please call 503-986-0888.*

Mailing date: MAY 15 2014