

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-991, Certificates 74146, 74147, and) FINAL ORDER ON PROPOSED
76106, 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, and 7)

Lessor #2

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

Lessee

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

Findings of Fact

1. On April 17, 2009, the DRC and TID, on behalf of various water right holders, filed an application to lease a portion of Certificates 74146, 74147, and 76106 to instream use. The Department assigned the application number IL-991.
2. On June 26, 2009, the Lessee, and on July 7, 2009, the Lessor requested to modify the lease application to remove 3.1 acres under Certificate 74146 located as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor #1)
16 S	12 E	WM	17	NE SE	9/1900	2500	3.1	Deschutes River Ranch Group

3. In addition, on July 14, 2009, the Lessor and Lessee requested to modify the lease application to remove an additional 4.72 acres under Certificate 74146 located as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor #1)
16 S	12 E	WM	16	SW NW	9/1900	700	3.92	Deschutes River Ranch Group
						800	0.8	

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. 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 identified on the water right of record have been partitioned or subdivided. The portion of the water right to be leased described in Findings of Fact #5, #6 and #7 is consistent with the water right of record in so far as possible.
5. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 74146
Use: Irrigation
Season of Use: April 15 through October 15
Priority Date: September 1900, May 27, 1907 and June 1, 1907
Acres: 102.48 acres, being 50.78 acres under the September 1900 priority date, 15.3 acres under the May 27, 1907 priority date, and 36.4 acres under the June 1, 1907 priority date
Quantity: Rate: 1.464 CFS (limited to 1/70th CFS/acre), being
September, 1900: 0.725 CFS
May 27, 1907: 0.219 CFS
June 1, 1907: 0.520 CFS
Duty: 184.46 Acre-Feet (AF) (limited to 1.8 AF/acre), being
September, 1900: 91.4 AF
May 27, 1907: 27.54 AF
June 1, 1907: 65.52 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	12 E	WM	19	NE SE	9/1900	2001	2.35	Martin & Joann Zapp
16 S	12 E	WM	9	SW NW	9/1900	500	1.43	David J. Ponsford
16 S	11 E	WM	27	SE NW	9/1900	207	2.0	Pechen Rev. Trust
16 S	12 E	WM	16	NW NW	6/1/1907	600	2.4	Dean O. Morton
16 S	12 E	WM	9	NW SW	6/1/1907	900	13.0	Craig & Rebecca Morton
16 S	12 E	WM	9	SW SW	6/1/1907	900	1.3	
17 S	11 E	WM	11	NE SW	9/1900	1600	10.0	Theodore & Eloise Lyster
17 S	11 E	WM	13	NE NW	5/27/1907	817	0.2	Harris Kimble
17 S	11 E	WM	13	NW NE	5/27/1907	817	6.1	
16 S	11 E	WM	35	NW NW	6/1/1907	1000	19.7	Ellis Rev Living Trust
16 S	11 E	WM	22	NW NW	9/1900	401	1.0	Gail Hayes Davis
16 S	11 E	WM	28	NW SE	9/1900	1000	10.3	Audrey Colker
17 S	11 E	WM	4	NW NE	9/1900	500A	6.0	Ann Wright Cobb
16 S	11 E	WM	11	SE SW	9/1900	801	4.7	Michael & Roberta Christianson
16 S	11 E	WM	14	NE NW	9/1900	600	9.0	Michael & Roberta Christianson
16 S	12 E	WM	30	NW SE	5/27/1907	2100	3.4	C.L.R. Inc.
17 S	11 E	WM	13	NW NW	5/27/1907	817	4.0	C.L.R. Inc.
17 S	11 E	WM	13	NW NW	5/27/1907	809	1.6	C.L.R. Inc.
16 S	11 E	WM	22	NW SE	9/1900	1500	4.0	Bugas Family Trust
						Total	102.48	

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

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

Certificate: 74147

Priority Date: October 29, 1913

Use: Irrigation and Industrial Use

Acres: 118.85 acres of irrigation and 2.0 equivalent acres 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: 1.486 CFS (limited to 1/80th CFS/acre)
 Season 2: 1.981 CFS (limited to 1/60th CFS/acre)
 Season 3: 3.668 CFS (limited to 1/32.4th CFS/acre)

Duty: 1,177.8 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	11	SE SW	801	5.3	Michael & Roberta Christianson
16 S	11 E	WM	27	SE NW	207	1.5	Pechen Rev. Trust
16 S	11 E	WM	28	NW NW	502	3.25	Durlin Hickok & Carol Wallace
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	2100	1.9	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	NW SE	2100	0.7	C.L.R. Inc.
16 S	11 E	WM	34	SE NE	1000	13.0	Nancy Coleman
16 S	11 E	WM	35	SE NW	1500	2.4	Robert & Gretchen Pederson
17 S	11 E	WM	13	NE NW	817	14.6	Harris Kimble
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	13	NW NW	817	10.94	Harris Kimble
17 S	11 E	WM	13	SW NW	817	6.4	Harris Kimble
17 S	11 E	WM	13	SE NW	817	4.6	Harris Kimble
17 S	11 E	WM	13	NW SW	817	12.2	Harris Kimble
17 S	11 E	WM	14	NE NE	11400	3.5	C.L.R. Inc.
Total						118.85	

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
2.0 EQUIVALENT ACRES OF INDUSTRIAL USE							
16 S	12 E	WM	30	NE SE	100	2.0	CLR, Inc.

Authorized Point of Diversion:

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

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

Certificate: 76106
Priority Date: December 8, 1961
Use: Irrigation
Acres: 36.16 acres
Season of Use: April 15 through October 15 (as established by Tumalo Creek Decree)
Quantity: Rate (limited to 1/70th CFS/acre): 0.52 CFS
Duty (limited to 2.5 AF/acre): 90.4 AF, further limited to a maximum of 50.31 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	11	SE SW	801	8.0	Michael & Roberta Christianson
16 S	11 E	WM	14	NE NW	600	7.0	Michael & Roberta Christianson
16 S	11 E	WM	22	NW SE	1500	7.0	Bugas Family Trust
16 S	12 E	WM	16	SW NW	700	4.76	Deschutes River Ranch Group
17 S	11 E	WM	2	NE NW	200	3.0	Bowgun Properties, LLP
17 S	11 E	WM	2	NE NW	201	6.1	Bowgun Properties, LLP
17 S	11 E	WM	14	SE NE	11800	0.3	Craig & Cindy Elkins
Total						36.16	

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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

8. 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.
9. 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.

10. 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 #5 and #6. For the purposes of this lease, water shall be protected instream under Certificates 74146, 74147, and 76106 beginning at the Tumalo Feed Canal point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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

11. The Lessor and Lessee have requested to protect water instream from the Tumalo Feed Canal POD on Tumalo Creek described in Finding of Fact #10 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.

12. 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 #10) 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		0.251	0.251	0.251	0.251	0.251			91.4
5/27/1907		0.076	0.076	0.076	0.076	0.076			27.54
6/1/1907		0.18	0.18	0.18	0.18	0.18			65.52
Certificate 74147									
19/29/1913	1.511	1.511	2.014	3.730	2.014	1.511	1.511		1,197.62
Certificate 76106									
12/8/1961	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	90.4
Totals	1.721	2.228	2.731	4.447	2.731	2.228	1.721	0.21	1,472.48

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		0.251	0.251	0.251	0.251	0.251			91.4
5/27/1907		0.076	0.076	0.076	0.076	0.076			27.54
6/1/1907		0.18	0.18	0.18	0.18	0.18			65.52
Certificate 74147									
19/29/1913	1.511	1.511	2.014	3.730	2.014	1.511	1.511		1,197.62
Certificate 76106									
12/8/1961	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	90.4
Totals	1.721	2.228	2.731	4.447	2.731	2.228	1.721	0.21	1,472.48

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		0.251	0.251	0.251	0.251	0.251			91.4
5/27/1907		0.076	0.076	0.076	0.076	0.076			27.54
6/1/1907		0.18	0.18	0.18	0.18	0.18			65.52
Certificate 74147									
19/29/1913	0.521	0.521	0.521	0.521	0.521	0.521	0.521		215.91
Certificate 76106									
12/8/1961	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	65.09
Totals	0.617	1.178	1.178	1.178	1.178	1.178	0.617	0.15	465.46

13. 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.

14. There are supplemental water rights, Certificates 76714, 74147, 84148, 74149, and 76520, appurtenant to lands described in Findings of Fact #5, #6, and #7. 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.

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. 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.

17. 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.

18. 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.

19. The Lessor has requested that the lease terminate on October 31, 2009.

CONCLUSIONS OF LAW

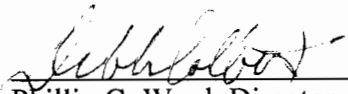
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, 2009.

Dated at Salem, Oregon this 22nd day of July 2009.


Phillip C. Ward, Director *FW*

Mailing date: JUL 27 2009