

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

In the Matter of the Proposed Short-Term) DETERMINATION and
Lease of Existing Water Rights for Instream) FINAL ORDER ON
Use, Certificates 74146, 74147, 74148,) PROPOSED INSTREAM
74149, and 76520, Deschutes County,) LEASE
Oregon

FINDINGS OF FACT

1. On March 22, 2004, a Short-Term Lease Application, which proposed to lease a portion of certificates 74146 (primary from Tumalo Creek, tributary to the Deschutes River), 74147 (primary and supplemental), 74148 (supplemental), 74149 (supplemental), and 76520 (supplemental) for instream purposes was submitted to the Department by:

Lessor #1
Bend Metro Parks and Recreation District
200 Pacific Park Lane
Bend, OR 97701

Lessor #2
Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701

Lessee
Deschutes Resource Conservancy
P.O. Box 1560
Bend, OR 97709

2. The Department assigned this lease agreement number L-513.
3. The lease application when submitted to the Department did not include all of the information required under OAR 690-077-0077(3). Due to the complex nature of the water rights to be leased, the Department requested that the applicant allow the Department to complete the application.
4. The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

5. The right to be leased, as requested by the applicant and determined by the Department, is as follows:

Certificate: 74146
Priority Date: September 1, 1900
Use: Primary Irrigation
Acres: 57.7 acres
Season of Use: April 15 through October 15
Quantity: Rate: 0.82 Cubic Foot per Second (CFS) (limited to 1/70th CFS/acre)
 Duty: 103.86 Acre-Feet (AF) (limited to 1.8 AF per acre, measured at or within 1/2 mile of the land to be irrigated)
 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 Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	11	E	W.M.	23	SW	NE	Tumalo Feed Canal - N. 70° 21' W.; 1550 feet from East 1/4 corner, Section 23
18	S	10	E	W.M.	2	NW	SW	N. 14° 02' W.; 1713 feet from South 1/4 corner, Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	11	E	W.M.	21	NE SE	600	9/1/1900	6.7
16	S	11	E	W.M.	21	SE SE	600	9/1/1900	4.7
16	S	11	E	W.M.	21	SE SW	600	9/1/1900	28.2
16	S	11	E	W.M.	21	SW SE	600	9/1/1900	18.1
							Total	57.7	

Certificate: 74147
Priority Date: October 29, 1913
Use: Primary Irrigation & Supplemental Irrigation (supplemental to certificate 74146)
Acres: Primary: 47.3 acres
 Supplemental: 57.7 acres
Season of Use: April 1 to November 1, further limited as follows:
 April 1 to May 1 and October 1 to November 1 described herein as Season 1
 May 1 to May 15 and September 15 to October 1 described herein as Season 2
 May 15 to September 15 described herein as Season 3
Quantity: Primary: Rate: Season 1: 0.59 CFS (limited to 1/80th CFS/acre)
 Season 2: 0.79 CFS (limited to 1/60th CFS/acre)
 Season 3: 1.46 CFS (limited to (1/32.4th CFS/acre)
 Duty: 468.74 AF (limited to 9.91 AF per acre)

Supp.: Rate: 0.82 CFS
 Duty: 467.95 AF

Source: Tumalo Creek, tributary to the Deschutes River

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	11	E	W.M.	23	SW	NE	Tumalo Feed Canal (Tumalo Creek POD #1) - N. 70° 21' W.; 1550 feet from East 1/4 corner, Section 23

Authorized Place of Use for Primary Irrigation:

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	11	E	W.M.	21	NE SW	600	10/29/1913	10.4
16	S	11	E	W.M.	21	NW SE	600	10/29/1913	15.0
16	S	11	E	W.M.	21	SW SE	600	10/29/1913	21.9
							Total	47.3	

Authorized Place of Use for Supplemental Irrigation:

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	11	E	W.M.	21	NE SE	600	9/1/1900	6.7
16	S	11	E	W.M.	21	SE SE	600	9/1/1900	4.7
16	S	11	E	W.M.	21	SE SW	600	9/1/1900	28.2
16	S	11	E	W.M.	21	SW SE	600	9/1/1900	18.1
							Total	57.7	

Certificate: 74149

Priority Date: 1905

Use: Supplemental Irrigation (supplemental to certificates 74146 & 74147)

Acres: 105.0 acres, being

57.7 acres supplemental to certificates 74146 and 74147

47.3 acres supplemental to certificate 74147

Season of Use: April 1 to November 1

Quantity: Rate: 2.62 CFS CFS (limited to 1/40th CFS/acre), being

57.7 acres = 1.44 CFS

47.3 acres = 1.18 CFS

Duty: 437.85 AF (limited to 4.17 AF/acre), being

57.7 acres = 240.61 AF

47.3 acres = 197.24 AF

Rate and duty are described in the provisions and limitations contained in Paragraph 33 of said order of determination dated Jun 21, 1926 (Decree dated February 10, 1928, signed by T.E.J. Duffy, Circuit Court)

Source: Deschutes River, tributary to the Columbia River

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	32	NW	NE	Bend Feed Canal - 100 feet South and 550 feet East from N1/4 Corner of Section 32

Authorized Place of Use for Supplemental Irrigation to certificates 74146 and 74147:

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	11	E	W.M.	21	NE SE	600	9/1/1900	6.7
16	S	11	E	W.M.	21	SE SE	600	9/1/1900	4.7
16	S	11	E	W.M.	21	SE SW	600	9/1/1900	28.2
16	S	11	E	W.M.	21	SW SE	600	9/1/1900	18.1
								Total	57.7

Authorized Place of Use for Supplemental Irrigation to certificate 74147:

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	11	E	W.M.	21	NE SW	600	10/29/1913	10.4
16	S	11	E	W.M.	21	NW SE	600	10/29/1913	15.0
16	S	11	E	W.M.	21	SW SE	600	10/29/1913	21.9
								Total	47.3

Certificate: 74148

Priority Date: April 7, 1911

Use: Supplemental Irrigation (supplemental to certificates 74146, 74147, and 74149)

Acres: 105.0 acres, being

57.7 acres supplemental to certificates 74146, 74147, 74179

47.3 acres supplemental to certificate 74147 and 74179

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as Season 1

May 1 to May 15 and September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

Quantity: Volume: Season 1: 78.75 AF (limited to 0.75 AF/acres)

Season 2: 52.5 AF (limited to 0.5 AF/acre)

Season 3: 777.0 AF (limited to 7.4 AF/acre)

There are no rate limitations on this certificate.

Source: Crescent Lake Reservoir, constructed under permit R-102, tributary to Crescent Creek

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
24	S	6	E	W.M.	11	SE SW	SW SE	N/A

Authorized Place of Use for Supplemental Irrigation to certificates 74146, 74147, & 74149:

Township	Range		Meridian	Sec	1/4 1/4		Tax Lot #	Priority Date	Acres
16	S	11	E	W.M.	21	NE SE	600	9/1/1900	6.7
16	S	11	E	W.M.	21	SE SE	600	9/1/1900	4.7
16	S	11	E	W.M.	21	SE SW	600	9/1/1900	28.2
16	S	11	E	W.M.	21	SW SE	600	9/1/1900	18.1
								Total	57.7

Authorized Place of Use for Supplemental Irrigation to certificate 74147 & 74149:

Township	Range		Meridian	Sec	1/4 1/4		Tax Lot #	Priority Date	Acres
16	S	11	E	W.M.	21	NE SW	600	10/29/1913	10.4
16	S	11	E	W.M.	21	NW SE	600	10/29/1913	15.0
16	S	11	E	W.M.	21	SW SE	600	10/29/1913	21.9
								Total	47.3

Certificate: 76520

Priority Date: December 8, 1961

Use: Supplemental Irrigation (supplemental to certificates 74146, 74147, 74148 and 74149)

Acres: 105.0 acres, being
 57.7 acres supplemental to certificates 74146, 74147, 74149, 74148
 47.3 acres supplemental to certificate 74147, 74148 and 74149

Season of Use: April 1 to November 1

Quantity: Duty: 1040.55 AF (limited to 9.91 AF/acre), being
 57.7 acres = 571.81 AF
 47.3 acres = 468.74 AF

Source: Crescent Lake Reservoir, constructed under permit R-2744, tributary to Crescent Creek and the Little Deschutes River

Authorized Points of Diversions (POD):

Township	Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	32	NW NE	Deschutes River (Tumalo ID Bend Feed Canal) - 2050 feet West from the NE corner of Section 32
24	S	6	E	W.M.	11	SE SW	Crescent Lake Reservoir

Authorized Place of Use for Supplemental Irrigation to certificates 74146, 74147, 74149 & 74148:

Township	Range		Meridian	Sec	1/4 1/4		Tax Lot #	Priority Date	Acres
16	S	11	E	W.M.	21	NE SE	600	9/1/1900	6.7
16	S	11	E	W.M.	21	SE SE	600	9/1/1900	4.7
16	S	11	E	W.M.	21	SE SW	600	9/1/1900	28.2
16	S	11	E	W.M.	21	SW SE	600	9/1/1900	18.1
								Total	57.7

Authorized Place of Use for Supplemental Irrigation to certificate 74147, 74149, & 74148:

Township	Range		Meridian	Sec	1/4 1/4		Tax Lot #	Priority Date	Acres
16	S	11	E	W.M.	21	NE SW	600	10/29/1913	10.4
16	S	11	E	W.M.	21	NW SE	600	10/29/1913	15.0
16	S	11	E	W.M.	21	SW SE	600	10/29/1913	21.9
								Total	47.3

6. The Lessor concurs with the above description of the rights to be leased.
7. Based upon information provided in the application and review by Department staff, the Department has determined that water may be leased instream as follows:

Certificate 74146:

Reach: From the Tumalo Feed Canal POD on Tumalo Creek to Lake Billy Chinook on the Deschutes River.

Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
9/1/1900	0.28 CFS	April 15 - Oct. 15	214	103.86 AF

Certificate 74147:

Reach: From the Tumalo Feed Canal POD on Tumalo Creek to Lake Billy Chinook on the Deschutes River.

Priority Date	Primary Rate Instream	Supplemental Rate Instream (to certificate 74146)	Period Protected Instream	Days Instream	Primary Volume Instream	Supp. Volume Instream
10/29/1913	Season 1: 0.59 CFS	Season 1: 0.72 CFS	April 1 - April 30 & Oct 1 - Oct 31	214	356.57 AF	434.97 AF
	Season 2: 0.79 CFS	Season 2: 0.96 CFS	May 1 - May 14 & Sept 15 - Sept 30			
	Season 3: 0.98 CFS	Season 3: 1.19 CFS	May 15 - Sept 15			

For the portion of this certificate that is supplemental to certificate 74146, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being, during the period April 15 through October 15, 0.44 CFS in Season 1, 0.68 CFS in Season 3, and 1.19 CFS in Season 3. During the shoulder seasons between April 1 to April 15 and October 16 through October 31, the full rates in Season 1 may be protected instream. The total additional volume that may be instream as primary is 434.56 AF. The remaining balance of supplemental water under certificate 74147 being leased instream shall only be protected instream if the full rate and duty under certificate 74146 are not available during the period for which water is being leased instream.

Certificate 74149:

Reach: From the Deschutes River POD (NW 1/4 NW 1/4, Section 32, T17S, R12E, W.M.; 100 feet South & 550 feet East from the N1/4 Corner of Section 32) to Lake Billy Chinook.

Priority Date	Supplemental Rate Instream (to certificate 74147)	Supp. Volume Instream	Supplemental Rate Instream (to certificate 74146 & 74147)	Supp. Volume Instream	Period Protected Instream	Days Instream
1905	0.069 CFS	23.39 AF	0.084 CFS	35.85 AF	April 1 - Oct. 31	214

For the portion of this certificate that is supplemental to certificate 74147, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being 0.069 CFS in Season 3 and up to 16.83 AF. The remaining balance of supplemental water under certificate 74149 being leased instream shall only be protected instream if the full rate and duty under certificate 74147 are not available during the period for which water is being leased instream.

For the portion of this certificate that is supplemental to certificates 74146 and 74147, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being 0.084 CFS in Season 3 and up to 20.49 AF. The remaining balance of supplemental water under certificate 74149 being leased instream shall only be protected instream if the full rate and duty under certificate 74147 are not available during the period for which water is being leased instream.

Certificate 74148:

Reach: From the POD to Lake Billy Chinook.

Priority Date	Supplemental Volume Instream (to certificate 74147 & 74149)	Supplemental Volume Instream (to certificate 74146, 74147, & 74149)	Period Protected Instream	Days Instream
4/7/1911	Season 1: 35.48 AF	Season 1: 43.28 AF	April 1 - April 30 & Oct 1 - Oct 31	214
	Season 2: 23.65 AF	Season 2: 28.85 AF	May 1 - May 14 & Sept 15 - Sept 30	
	Season 3: 192.07 AF	Season 3: 234.3 AF	May 15 - Sept 15	

For the portion of this certificate that is supplemental to certificate 74147 and 74149, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being up to 95.34 AF at a rate of up to 0.441 CFS in Season 3 for 109 days. The remaining balance of supplemental water under certificate 74148 being leased instream shall only be protected instream if the full rate and duty under certificate 74147 and 74149 are not available during the period for which water is being leased instream.

For the portion of this certificate that is supplemental to certificates 74146, 74147 and 74149, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being up to 12.89 AF at a rate of 0.23 CFS in Season 3 for 28 days. The remaining balance of supplemental water under certificate 74148 being leased instream shall only be protected instream if the full rate and duty under certificate 74146, 74147 and 74149 are not available during the period for which water is being leased instream.

Certificate 76520 (stored water from Crescent Lake Reservoir):

Reach: From the POD (Tumalo ID Bend Feed Canal - NW 1/4 NE 1/4, Section 32, T17S, R12E, W.M.; 2050 feet West from the NE Corner of Section 32) to Lake Billy Chinook.

Priority Date	Supplemental Volume Instream (to certificate 74147, 74149, & 74148)	Supplemental Volume Instream (to certificate 74146, 74147, 74149, & 74148)	Period Protected Instream	Days Instream
12/8/1961	274.35 AF	334.67 AF	April 1 - Oct. 31	214

A portion of Certificate 76520 is supplemental to certificates 74147, 74149 and 74148. A portion of certificate 76520 is also supplemental to certificates 74146, 74147, 74149, and 74148. The portion of certificate 76520 being leased instream shall only be protected instream if the full rate and duty under certificate 74146, 74147, 74149, and 74148 are not available during the period for which water is being leased instream.

8. Based upon review of the application, information provided by the Department's Watermaster, and other information, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
9. The Lessor and Lessee have requested that the lease terminate on October 15, 2008. However, the last day of the irrigation season is October 31st. Therefore, the lease will terminate on October 31, 2008. The Lessor and Lessee have also requested the option of terminating the lease early, with written notice to the Department.

CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.

3. Water is leased instream as follows:

Certificate 74146:

Reach: From the Tumalo Feed Canal POD on Tumalo Creek to Lake Billy Chinook on the Deschutes River.

Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
9/1/1900	0.24 CFS	April 1 - Oct. 31	214	103.86 AF

Certificate 74147:

Priority Date	Primary Rate Instream	Supplemental Rate Instream (to certificate 74146)	Period Protected Instream	Days Instream	Primary Volume Instream	Supp. Volume Instream
10/29/1913	Season 1: 0.59 CFS	Season 1: 0.72 CFS	April 1 - April 30 & Oct 1 - Oct 31	214	356.57 AF	434.97 AF
	Season 2: 0.79 CFS	Season 2: 0.96 CFS	May 1 - May 14 & Sept 15 - Sept 30			
	Season 3: 0.98 CFS	Season 3: 1.19 CFS	May 15 - Sept 15			

For the portion of this certificate that is supplemental to certificate 74146, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being, during the period April 15 through October 15, 0.44 CFS in Season 1, 0.68 CFS in Season 3, and 1.19 CFS in Season 3. During the shoulder seasons between April 1 to April 15 and October 16 through October 31, the full rates in Season 1 may be protected instream. The total additional volume that may be instream as primary is 434.56 AF. The remaining balance of supplemental water under certificate 74147 being leased instream shall only be protected instream if the full rate and duty under certificate 74146 are not available during the period for which water is being leased instream.

Certificate 74149:

Reach: From the Deschutes River POD (NW 1/4 NW 1/4, Section 32, T17S, R12E, W.M.; 100 feet South & 550 feet East from the N1/4 Corner of Section 32) to Lake Billy Chinook.

Priority Date	Supplemental Rate Instream (to certificate 74147)	Supp. Volume Instream	Supplemental Rate Instream (to certificate 74146 & 74147)	Supp. Volume Instream	Period Protected Instream	Days Instream
1905	0.069 CFS	23.39 AF	0.084 CFS	35.85 AF	April 1 - Oct. 31	214

For the portion of this certificate that is supplemental to certificate 74147, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being 0.069 CFS in Season 3 and up to 16.83 AF. The remaining balance of supplemental water under certificate 74149 being

leased instream shall only be protected instream if the full rate and duty under certificate 74147 are not available during the period for which water is being leased instream.

For the portion of this certificate that is supplemental to certificates 74146 and 74147, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being 0.084 CFS in Season 3 and up to 20.49 AF. The remaining balance of supplemental water under certificate 74149 being leased instream shall only be protected instream if the full rate and duty under certificate 74147 are not available during the period for which water is being leased instream.

Certificate 74148:

Reach: From the POD to Lake Billy Chinook.

Priority Date	Supplemental Volume Instream (to certificate 74147 & 74149)	Supplemental Volume Instream (to certificate 74146, 74147, & 74149)	Period Protected Instream	Days Instream
4/7/1911	Season 1: 35.48 AF	Season 1: 43.28 AF	April 1 - April 30 & Oct 1 - Oct 31	214
	Season 2: 23.65 AF	Season 2: 28.85 AF	May 1 - May 14 & Sept 15 - Sept 30	
	Season 3: 192.07 AF	Season 3: 234.3 AF	May 15 - Sept 15	

For the portion of this certificate that is supplemental to certificate 74147 and 74149, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being up to 95.34 AF at a rate of up to 0.441 CFS in Season 3 for 109 days. The remaining balance of supplemental water under certificate 74148 being leased instream shall only be protected instream if the full rate and duty under certificate 74147 and 74149 are not available during the period for which water is being leased instream.

For the portion of this certificate that is supplemental to certificates 74146, 74147 and 74149, an additional quantity of water may be leased instream as primary to bring the rate instream up to the maximum rate and duty allowed for the irrigated lands being leased instream, being up to 12.89 AF at a rate of 0.23 CFS in Season 3 for 28 days. The remaining balance of supplemental water under certificate 74148 being leased instream shall only be protected instream if the full rate and duty under certificate 74146, 74147 and 74149 are not available during the period for which water is being leased instream.

Certificate 76520 (stored water from Crescent Lake Reservoir):

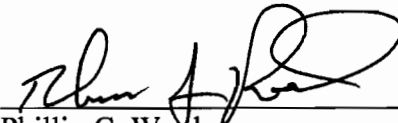
Reach: From the POD (Tumalo ID Bend Feed Canal - NW 1/4 NE 1/4, Section 32, T17S, R12E, W.M.; 2050 feet West from the NE Corner of Section 32) to Lake Billy Chinook.

Priority Date	Supplemental Volume Instream (to certificate 74147, 74149, & 74148)	Supplemental Volume Instream (to certificate 74146, 74147, 74149, & 74148)	Period Protected Instream	Days Instream
12/8/1961	274.35 AF	334.67 AF	April 1 - Oct. 31	214

A portion of Certificate 76520 is supplemental to certificates 74147, 74149 and 74148. A portion of certificate 76520 is also supplemental to certificates 74146, 74147, 74149, and 74148. The portion of certificate 76520 being leased instream shall only be protected instream if the full rate and duty under certificate 74146, 74147, 74149, and 74148 are not available during the period for which water is being leased instream.

- The lease will terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, prior to the lease being exercised (April 1), with 30 days written notice to the Department.

Dated at Salem, Oregon this 8th day of September, 2004.


 for Phillip C. Ward
 Acting Director