

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1446, Deschutes County) FINAL ORDER ON 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 on behalf of several water right holders (identified in Findings of Fact No. 12 and 15)

Co-Lessor

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 March 24, 2105, the DRC and TID, on behalf of several water right holders, filed an application to lease a portion of Certificates 74146 and 74147 for instream use. The Department assigned the application number IL-1446.
2. On June 8 and 9, 2015, the Department requested additional information to clarify the portion of Certificate 47146 to be leased instream. Additional information, including revised application maps, was received on June 9 and 18, 2015.

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.

- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on April 7, 2015, pursuant to OAR 690-077-0077(1). Comments were received on April 27, 2015, within the 21 day comment period, from Nunzie Gould. Ms. Gould expressed concern with a portion of Certificate 74146 to be leased instream located as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor)
16 S	12 E	WM	18	SE SE	6/1/1907	1700	10.0	Bruce J. LaVeau

Ms. Nunzie identified that it was not clear that the above described acreage had been used in the last five years and could be subject to forfeiture. She also identified that this acreage may have been involved in a prior transfer application, being Transfer T-7178.

- Transfer Application T-7178 was submitted to the Department on June 20, 1994. The transfer was then withdrawn as evidenced by Special Order Volume 52, Page 15, signed by the Department on January 5, 1998.
- A portion of Certificate 74146 originally appurtenant to the place of use described in Finding of Fact No. 3 was transferred to another place of use in 1996 under Transfer T-7466, which was approved by the Department on March 27, 1996, as evidenced by Special Order Volume 50, Page 255.
- When Certificate 74146 was issued by the Department on June 19, 1997, it did not include changes made under Transfer T-7466, which were still inchoate (not yet confirmed) at the time. For tax lot 1700, Certificate 74146 identified 15.9 acres of irrigation as appurtenant to this tax lot. Under Transfer T-7466, 5.4 acres of irrigation were removed and transferred to another property. This left 10.5 acres of irrigation remaining on tax lot 1700. The Lessor (Bruce J. LaVeau) has requested to lease 10.0 of these remaining acres to instream use under IL-1466. It does not appear that any additional transactions have affected this property and that these 10.0 acres are available to be leased to instream use.
- Under ORS 540.610, a water right (or portion thereof) may become subject to forfeiture if not exercised for a period of five successive years. When filing an instream lease application, the Lessor and/or Co-Lessor must identify whether the water right has been used in the five years prior to the submission of the instream lease application (OAR 690-077-0076(3)(h)).
- In Instream Lease Application IL-1146 both the Lessors and Co-Lessor have attested that the portions of the water rights to be leased have been used in the five years prior to submission of the lease application. Specifically, with regard to the portion of Certificate 74146 described in Finding of Fact No. 3, the Lessor has identified that the portion of the right requested to be leased was leased previously under Instream Lease Application IL-1155.
- Under ORS 538.348(2), the lease of a water right (or portion thereof) to instream use under an instream lease application constitutes beneficial use. The portion of Certificate 74146 described in Finding of Fact No. 3 was included as part of Instream Lease IL-1155, which was approved by the Department on July 13, 2011, as evidenced by Special Order Volume

84, Page 719. The lease of this portion of Certificate 74146 was within the five years prior to the submission of Instream Lease Application IL-1446.

10. The 10.0 acres of irrigation requested to be leased instream by the Lessor from tax lot 1700 has been beneficially used in the five years prior to the submission of the instream lease application and meets the criteria under OAR 690-077-0076(3)(h).
11. A portion of the lands involved in this lease originated from Certificate 76106. Allocation of Conserved Water project CW-9 cancelled Certificate 76106 and incorporated acreage under the 9/1900 priority date onto Certificate 74146 (as described in Special Order Volume 54 page 826, and Volume 64 page 157). Lands involved in this transaction, included in this lease, are as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Landowner
17 S	11 E	WM	11	NE SE	9/1900	1000	2.0	Adams Family Trust
17 S	11 E	WM	13	SW NE	9/1900	103 (formerly lot 100)	13.7	Joyce E. Coats Revocable Trust
17 S	11 E	WM	13	SE NE	9/1900	104 (formerly lot 100)	25.6	
17 S	11 E	WM	13	NE SW	9/1900	500	11.2	
17 S	11 E	WM	13	NE SE	9/1900	100	15.4	
17 S	11 E	WM	13	NW SE	9/1900	100	19.6	
17 S	11 E	WM	13	SW SE	9/1900	100	2.5	
17 S	11 E	WM	11	NW SW	9/1900	1601	2.0	
16 S	11 E	WM	27	NW SE	9/1900	203	10.0	Jeffrey and Susan Rola
17 S	11 E	WM	11	NE NW	9/1900	302	5.0	Wesley Miller and Vonda Jiles

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

Certificate: 74146 in the name of Tumalo Irrigation District (confirmed by Tumalo Creek Decree of record at Salem, in the Order of Record of the Water Resources Director, in Volume 1, at page 135 and in Volume 16, at page 188)

Use: 0.5 acres equivalent of Pond Maintenance (September, 1900, priority date) and Irrigation of 210.5 acres, being 172.4 acres under the September, 1900, priority date, 5.0 acres under the August 5, 1900, priority date, 29.7 acres under the June 1, 1907, priority date, and 3.4 acres under the May 27, 1907, priority date

Priority Date: September 1900, August 5, 1900, June 1, 1907, and May 27, 1907

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor)
Irrigation								
16 S	12 E	WM	17	SW SW	9/1900	2800	2.5	Del W. Everson
16 S	12 E	WM	17	SW SW	9/1900	3001	2.7	
16 S	11 E	WM	22	SW SW	9/1900	2200	8.6	Goebel Trust
16 S	11 E	WM	22	SW SE	9/1900	2500	7.7	Evan D. Moran
16 S	11 E	WM	27	NW SE	9/1900	203	18.8	Jeffrey & Susan Rola
16 S	11 E	WM	34	SW NW	8/5/1900	602	5.0	Laurel Ann Crum
16 S	11 E	WM	36	NW NW	6/1/1907	1000	19.7	Ellis Revocable Living Trust
16 S	12 E	WM	18	SE SE	6/1/1907	1700	10.0	Bruce J. LaVeau
16 S	12 E	WM	30	NW SE	5/27/1907	2100	3.4	C.L.R. Inc.
17 S	11 E	WM	1	SE NW	9/1900	406	31.0	Jeannie Legum, Mark Shepard, & John and Marion Shepard, Trustees
17 S	11 E	WM	3	NW NW	9/1900	200 BB	3.0	Richard & Judy Rotondi
17 S	11 E	WM	11	NE NW	9/1900	302	5.0	Wesley Miller & Vonda Jiles
17 S	11 E	WM	11	NW SW	9/1900	1601	3.0	Peter and Jacqueline McCook
17 S	11 E	WM	11	NE SE	9/1900	1000	3.0	Adams Family Trust
17 S	11 E	WM	13	SW NE	9/1900	100	13.7	Joyce E. Coats Revocable Trust
17 S	11 E	WM	13	SE NE	9/1900	100	25.6	
17 S	11 E	WM	13	NE SW	9/1900	500	11.2	
17 S	11 E	WM	13	NE SE	9/1900	100	14.5	
17 S	11 E	WM	13	NW SE	9/1900	100	19.6	
17 S	11 E	WM	13	SW SE	9/1900	100	2.5	
Total Acres							210.5	
Pond Maintenance								
16 S	11 E	WM	22	SW SW	9/1900	2200	0.5	Goebel Trust

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	POD NO. 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 NO. 2 – NORTH 14 DEGREES 02' WEST; 1713 FEET FROM THE SOUTH ¼ CORNER OF SECTION 2

13. 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.

14. 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 No. 12), 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. 12), 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 74146 shall be reduced, if this instream lease is approved.

Priority Date	Rate	Volume
Irrigation		
August 5, 1900	0.067 CFS	9.00 AF
September, 1900	1.625 CFS	310.32 AF

Priority Date	Rate	Volume
Irrigation		
May 27, 1907	0.045 CFS	6.12 AF
June 1, 1907	0.398 CFS	53.46 AF
Totals	2.135 CFS	378.90 AF
Pond Maintenance		
September, 1900	0.005 CFS	0.90 AF

15. 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)

Priority Date: October 29, 1913

Use: Irrigation of 95.21 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:

Irrigation

Rate: Season 1: 1.190 CFS (limited to 1/80th CFS/acre)

Season 2: 1.587 CFS (limited to 1/60th CFS/acre)

Season 3: 2.939 CFS (limited to 1/32.4th CFS/acre)

Duty: 943.53 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	23	NE SW	516	3.0	Mark Murzin & Krista Knoerschild
16 S	11 E	WM	23	NW SW	516	2.0	Mark Murzin & Krista Knoerschild
16 S	11 E	WM	25	NE SW	911	3.5	Edwin J. Bishop Trust
16 S	11 E	WM	25	NE SW	913	0.7	Edwin J. Bishop Trust
16 S	11 E	WM	25	NW SE	911	2.8	Edwin J. Bishop Trust
16 S	11 E	WM	26	NE NE	101	9.8	Wendy Krebs Mellor
16 S	11 E	WM	26	NE SE	600	23.11	John Regan & Brooke Collins
16 S	11 E	WM	33	NW SE	805	4.5	Dodd Family Trust
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	2000	5.0	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	NW SE	2100	0.7	C.L.R. Inc.
17 S	11 E	WM	1	SE NW	406	4.0	Jeannie Legum, Mark Shepard, & John and Marion Shepard, Trustees
17 S	11 E	WM	11	NW NW	302	5.0	Wesley Miller & Vonda Jiles
Total Acres						95.21	

Authorized POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	TUMALO CREEK POD No. 1 (TUMALO FEED CANAL) – NORTH 70 DEGREES 21' WEST; 1550 FEET FROM THE EAST ¼ CORNER OF SECTION 23

16. Certificates 74146 and 74147 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 rights to be leased described in Findings of Fact No. 12 and 15 are consistent with the water rights of record in so far as possible.
17. There are supplemental irrigation water rights appurtenant to all or a portion of the lands described in Finding of Fact No. 12 and 15. The Lessor 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.
18. 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.
19. The Lessors and Lessee have requested that the quantities protected instream originating from the pond maintenance use under Certificate 74146 be protected to the Madras Gage only.
20. The Lessors and Lessee have requested to protect water instream from the POD on Tumalo Creek (described in Findings of Fact No. 12 and 15) 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 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.
21. 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 No. 1: From the POD (as described in Finding of Fact No. 6 and 9) on Tumalo Creek and then into the Deschutes River to the Madras Gage

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
	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	
Certificate 74146								
8/5/1900		0.025	0.025	0.025	0.025	0.025		9.00
9/1900		0.872	0.872	0.872	0.872	0.872		311.22
5/27/1907		0.017	0.017	0.017	0.017	0.017		6.12
6/1/1907		0.147	0.147	0.147	0.147	0.147		53.46

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 74147								
10/29/1913	1.190	1.190	1.587	2.939	1.587	1.190	1.190	943.53
Totals	1.190	2.251	2.648	4.000	2.648	2.251	1.190	1323.33

Instream Reach No. 2: 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	
8/5/1900		0.025	0.025	0.025	0.025	0.025		9.00
9/1900		0.870	0.870	0.870	0.870	0.870		310.32
5/27/1907		0.017	0.017	0.017	0.017	0.017		6.12
6/1/1907		0.147	0.147	0.147	0.147	0.147		53.46
Certificate 74147								
10/29/1913	0.413	0.413	0.413	0.413	0.413	0.413	0.413	171.38
Totals	0.413	1.472	1.472	1.472	1.472	1.472	0.413	500.28

22. 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.

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

24. 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.

25. 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.

26. 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.

27. 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.
28. 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. 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.
29. 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.
30. The Lessor and Lessee have requested that the lease terminate on October 31, 2015. The lease may commence on the date this final order is signed.

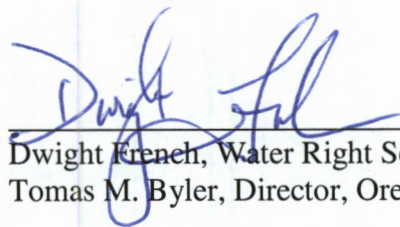
Conclusions of Law

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, 2015.

Dated at Salem, Oregon this 2 day of July, 2015.



Dwight French, Water Right Services Division Administrator, for
Tomas M. Byler, Director, Oregon Water Resources Department

JUL 07 2015

Mailing date: _____