

5. A portion of the lands involved in this lease, originated on 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
16 S	12 E	WM	17	NE NE	9/1/1900	100	3.8	Margaret Marshall Trust
17 S	11 E	WM	11	SE NW	9/1/1900	600	30.2	Joyce Coats Trust, Eric Coats Trustee

6. The portion of the first right to be leased 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: Irrigation of 95.22 acres, being 18.6 acres under the August 5, 1900 priority date; 67.62 acres under the September 1900 priority date; and 9.0 acres under the May 27, 1907 priority date

Priority Date: August 5, 1900, September, 1900, 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 Point of Diversions (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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Landowner
16 S	11 E	WM	24	SW NW	9/1900	501	5.00	Leslie & Lewis Bierly
	12 E		9	SW NW	9/1900	500	1.43	Dennis Noelle & Rosanne Sizer
			17	NE NE		100	3.80	Margaret Marshall Trust
			30	NW SE		5/27/1907	2100	3.40
			1	SE NW	9/1900	406	9.39	John Shepard
17 S	11 E	WM	11	SW NW	8/5/1900	500	14.60	Joyce Coats Trust, Eric Coats Trustee
				SW NW	9/1900		7.80	
				SE NW	8/5/1900	600	4.00	
				SE NW	9/1900		30.20	
				NE SW		1600	10.00	
	13	NW NW	5/27/1907	809	1.60	817	4.00	C.L.R. Inc.
Total							95.22	

7. 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. The applicant has requested that water be protected May 1 through October 15.

8. 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. 6), 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. 6), 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 POD under Certificate 74146 shall be reduced, if this instream lease is approved.

Priority Date	Rate	Volume
August 5, 1900	0.249 CFS	33.48 AF
September, 1900	0.637 CFS	121.72 AF
May 27, 1907	0.118 CFS	16.20 AF
Totals	1.004 CFS	171.40 AF

9. 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 55.79 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: 0.697 CFS (limited to 1/80th CFS/acre)
 Season 2: 0.930 CFS (limited to 1/60th CFS/acre)
 Season 3: 1.722 CFS (limited to 1/32.4th CFS/acre)

Volume: 552.88 AF (limited to 9.91 AF 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 No. 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	Landowner
16S	11 E	WM	23	NW SW	516	2.00	Mark Murzin & Krista Knoernschild
				NE SW		3.00	
16S	12 E	WM	30	SE NE	100	13.20	C.L.R. Inc.
				NE SE		2000	
				NW SE	2100	1.90	
						0.70	
17 S	11 E	WM	13	NW NW	809	3.00	Eric & Brianna Cadwell
				NE NW	817	6.13	
			14	NE NE	817	3.50	C.L.R. Inc.
Total						55.79	

10. Certificate 74147 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the right to be leased have changed since Certificate 74147 was 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 is described in Finding of Fact No. 9 is consistent with the water right of record in so far as possible.
11. There are supplemental (Certificate 74147, 74148, 74149, and 76520, and 88894) water rights appurtenant to all or a portion of the lands described in Findings of Fact No. 6 and 9. 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.
12. 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.
13. 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.
14. The Lessor and Lessee have requested to protect water instream from the POD on Tumalo Creek (described in Findings of Fact No. 6 and 9) 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.
15. 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			0.101	0.101	0.101	0.101		33.48
9/1900			0.366	0.366	0.366	0.366		121.72
5/27/1907			0.049	0.049	0.049	0.049		16.2
Certificate 74147								
10/29/1913	0.697	0.697	0.93	1.722	0.93	0.697	0.697	552.88
Totals	0.697	0.697	1.446	2.238	1.446	1.213	0.697	724.28

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

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			0.101	0.101	0.101	0.101		33.48
9/1900			0.366	0.366	0.366	0.366		121.72
5/27/1907			0.049	0.049	0.049	0.049		16.2
Certificate 74147								
10/29/1913	0.242	0.242	0.242	0.242	0.242	0.242	0.242	100.42
Totals	0.242	0.242	0.758	0.758	0.758	0.758	0.242	271.82

16. 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.

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

18. 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 POD, within the reach of the instream water right. As such, the rate and volume of water protected instream has been reduced in Instream Reach No. 2 (Finding of Fact No. 15) to prevent injury and enlargement.

19. 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.

20. 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.

21. 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.

22. 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.
23. 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.
24. The Lessor and Lessee have requested that the lease terminate on October 31, 2014. The lease may commence on the date this final order is signed.

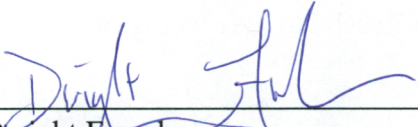
Conclusions of Law

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 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, 2014.

Dated at Salem, Oregon this 24 day of September, 2014.



Dwight French
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

SEP 25 2014

Mailing date: _____

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