

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1155, 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 13, 2011, the DRC, Central Oregon Irrigation District, and TID, on behalf of various water right holders, filed an application to lease a portion of Certificates 74146, 74147, 76106, and 83571 for instream use. The Department assigned the application number IL-1155.
2. 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 rights to be leased described in Findings of Fact #6, #7 and #8 is consistent with the water right of record in so far as possible.
3. On June 27, 2011, the applicant submitted revised application maps for some of the lands involved in the lease application.

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 following portion of Certificate 83571, issued in the name of Central Oregon Irrigation District, is requested to be leased instream:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot	Water Right Holder (Lessor #1)
16S	11E	W.M.	35	NE SE	8.0	2000	Tumalo Properties, LLC
16S	11E	W.M.	35	SE SE	2.0	2002	Richard and Monica Miron

The Department has identified that this portion of Certificate 83571 has been affected by transfer T-9849, which was approved by the Department on August 3, 2005, as evidenced by Special Order Volume 66, Page 19. This portion of Certificate 83571 is inchoate and may not be leased instream at this time. On June 28, 2011, TID requested to remove this portion of Certificate 83571 from the instream lease application.

5. On June 28, 2011, TID also requested to remove the following portion of Certificate 76106 from the proposed lease application:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Right Holder (Lessor #1)
16S	11E	W.M.	35	NE SE	2.0	2000	Tumalo Properties, LLC

This portion of Certificate 76106 may have been moved from its authorized location and need a transfer to change its place of use.

6. On June 28, 2011, TID also requested to remove the following portion of Certificate 74146 from the proposed lease application:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tax Lot	Acres	Water Right Holder (Lessor #1)
16S	11E	W.M.	26	SE NW	9/1900	204	12.0	Nathan and Penelope Levin

7. On July 7, 2011, the DRC requested to modify the proposed reach for the portion of pond maintenance under Certificate 74146 and the industrial use under Certificate 74147. The DRC requested that the reach for these uses extend from the point of diversion down to the point of return flows.
8. The portion of the first right to be leased has been clarified and modified from the lease application and is as follows:

Certificate: 74146

Use: Irrigation of 103.26 acres, being 5.0 acres under the August 5, 1900 priority date, 51.56 acres under the September, 1900 priority date, 9.0 acres under the May 27, 1907 priority date, and 37.7 acres under the June 1, 1907 priority date
Pond Maintenance (0.5 acre equivalent under the September, 1900 priority date)

Season of Use: April 15 through October 15

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

Quantity: **Irrigation:**

Rate: 1.647 Cubic Feet per Second (CFS) (limited to 1/70th CFS/acre), being

August 5, 1900	September, 1900	May 27, 1907	June 1, 1907
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0.071 CFS	0.737 CFS	0.129 CFS	0.539 CFS
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Duty: 137.25 Acre-Feet (AF) (limited to 1.8 AF/acre), being

August 5, 1900	September, 1900	May 27, 1907	June 1, 1907
9.0 AF	92.81 AF	16.2 AF	67.86 AF

Pond Maintenance:

Rate: 0.007 Cubic Feet per Second (CFS) (limited to 1/70th CFS/acre) under the September, 1900 priority date

Duty: 0.9 Acre-Feet (AF) (limited to 1.8 AF/acre) under the September, 1900 priority date

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)	
IRRIGATION									
16 S	11 E	WM	11	SE SW	9/1900	801	4.7	Michael and Roberta Christianson	
16 S	11 E	WM	14	NE NW	9/1900	600	9.0	Michael and Roberta Christianson	
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	2505	1.96	Cynthia Ingman	
16 S	11 E	WM	24	NW SE	9/1900	1300	2.5	David Thwing	
16 S	11 E	WM	25	SW NE	9/1900	500	0.5	Christopher Gilman & Louise Owenby	
16 S	11E	WM	27	SW NW	9/1900	206	6.5	Thomas Anderson	
16 S	11E	WM	27	NW SE	9/1900	203	8.8	Jeffrey & Susan Rola	
16 S	11E	WM	34	SW NW	8/5/1900	602	5.0	Laurel Ann Crum	
16 S	11E	WM	35	NW NW	6/1/1907	1000	19.7	Ellis Rev. Living Trust	
16 S	11E	WM	35	SW SE	9/1900	2100	5.0	Stephen Greenholz	
16 S	12 E	WM	17	SW NW	6/1/1907	2004	7.5	Columbia Properties Resources, LLC	
16 S	12 E	WM	18	SE SE	6/1/1907	1700	10.5	Bruce LaVeau	
16 S	12 E	WM	30	NW SE	5/27/1907	2100	3.4	C.L.R. Inc.	
17 S	11 E	WM	3	NW NW	9/1900	200BB	3.0	Richard & Judy Rotondi	
17 S	11 E	WM	11	NW SW	9/1900	1601	1.0	Peter & Jacqueline McCook	
17 S	11 E	WM	13	NW NW	5/27/1907	809	1.6	C.L.R. Inc.	
17 S	11 E	WM	13	NW NW	5/27/1907	817	4.0	C.L.R. Inc.	
							Total	103.26	
POND MAINTENANCE									
16 S	11 E	WM	22	SW SW	9/1900	2200	0.5	Goebel Trust	

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

9. 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 of 74.76 acres and 2.0 acres equivalent 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: 0.935 CFS (limited to 1/80th CFS/acre)
 Season 2: 1.246 CFS (limited to 1/60th CFS/acre)
 Season 3: 2.307 CFS (limited to 1/32.4th CFS/acre)
Duty: 740.87 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 and Roberta Christianson
16 S	11 E	WM	25	SW NE	500	3.0	Christopher Gilman & Louise Owenby
16 S	11 E	WM	25	NW SE	911	2.8	Edwin J. Bishop Trust
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	26	NE NE	101	9.8	Daniel Harrison & Wayne Schmotzer
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	11	NW NW	302	5.0	Wesley Miller & Vonda Jiles
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	14	NE NE	11400	3.5	C.L.R. Inc.
Total						74.76	
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

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

Certificate: 76106

Priority Date: December 8, 1961

Use: Irrigation
Acres: 133.6 acres
Season of Use: April 15 through October 15 (as established by Tumalo Creek Decree)
Quantity: Rate (limited to 1/70th CFS/acre): 1.91 CFS
 Duty (limited to 2.5 AF/acre): 334.0 AF, further limited to a maximum of 185.88 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 and Roberta Christianson
16 S	11 E	WM	14	NE NW	600	7.0	Michael and Roberta Christianson
16 S	11 E	WM	25	SW NE	500	10.0	Christopher Gilman & Louise Owenby
16 S	11 E	WM	27	NW SE	203	10.0	Jeffrey & Susan Rola
17 S	11 E	WM	11	NE NW	302	5.0	Wesley Miller & Vonda Jiles
17 S	11 E	WM	11	NW SW	1601	2.0	Peter & Jacqueline McCook
17 S	11 E	WM	13	NE SW	500	11.2	Joyce Coats Rev. Trust
17 S	11 E	WM	13	NE SE	100	14.5	Joyce Coats Rev. Trust
17 S	11 E	WM	13	NW SE	100	24.1	Joyce Coats Rev. Trust
17 S	11 E	WM	13	SE NE	100	25.6	Joyce Coats Rev. Trust
17 S	11 E	WM	13	SW NE	100	13.7	Joyce Coats Rev. Trust
17 S	11 E	WM	13	SW SE	100	2.5	Joyce Coats Rev. Trust
Total						133.6	

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

11. 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.
12. 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.
13. 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 #7 and #8. 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

14. 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.
15. The Lessor and Lessee have requested to protect water instream from the Tumalo Feed Canal POD on Tumalo Creek described in Finding of Fact #12 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.
16. 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 #12) to the confluence with the Deschutes River

Priority Date	Instream Rate (CFS)							Instream Volume (AF)
Certificate 74146								
	4/1 - 4/30	5/1 - 5/14	5/15 - 6/ 14	6/15 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
8/5/1900				0.037	0.037	0.037		9.00
9/1900				0.385	0.385	0.385		93.71
5/27/1907				0.067	0.067	0.067		16.20
6/1/1907				0.279	0.279	0.279		67.86
Certificate 74147								
10/29/1913	0.960	1.279	2.369	2.369	1.279	0.960	0.960	760.69
Certificate 76106								
12/8/1961				1.37	1.37	1.37		334.0
Totals	0.960	1.279	2.369	4.507	3.417	3.098	0.960	1281.46

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 - 4/30	5/1 - 5/14	5/15 - 6/ 14	6/15 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
8/5/1900				0.037	0.037	0.037		9.00
9/1900				0.385	0.385	0.385		93.71
5/27/1907				0.067	0.067	0.067		16.20
6/1/1907				0.279	0.279	0.279		67.86
Certificate 74147								
10/29/1913	0.960	1.279	2.369	2.369	1.279	0.960	0.960	760.69
Certificate 76106								
12/8/1961				1.37	1.37	1.37		334.0
Totals	0.960	1.279	2.369	4.507	3.417	3.098	0.960	1281.46

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 - 4/30	5/1 - 5/14	5/15 - 6/14	6/15 - 9/14	9/15 - 9/30	10/1 - 10/15	10/16 - 10/26	
8/5/1900				0.037	0.037	0.037		9.00
9/1900				0.381	0.381	0.381		92.81
5/27/1907				0.067	0.067	0.067		16.20
6/1/1907				0.279	0.279	0.279		67.86
Certificate 74147								
10/29/1913	0.325	0.325	0.325	0.325	0.325	0.325	0.325	134.57
Certificate 76106								
12/8/1961				0.986	0.986	0.986		240.48
Totals	0.325	0.325	0.325	2.075	2.075	2.075	0.325	560.92

17. 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.

18. There are supplemental water rights, Certificates 76714, 74147, 84148, 74149, and 76520, appurtenant to lands described in Findings of Fact #7, #8, and #9. 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.

19. 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.

20. 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.

21. 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.

22. The Lessor has requested that the lease terminate on October 31, 2011.

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, 2011.

Dated at Salem, Oregon this 13 day of July, 2011.


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

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUL 14 2011