

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1978, Umatilla County) 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

Port of Umatilla
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Findings of Fact

1. On May 24, 2023, the Port of Umatilla filed an application to lease a portion of Certificate 96359 for instream use. The Department assigned the application number IL-1978.
2. The right to be leased is as follows:

Certificate: 96359 in the name of PORT OF UMATILLA (perfected under S-49497)
Use: Municipal Use
Priority Date: January 19, 1979
Quantity: **Rate:** 4.6 Cubic Foot per Second (CFS)
Source: Columbia River, a tributary of Pacific Ocean

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	10	NE SE	1970 FEET NORTH AND 280 FEET WEST FROM THE SE CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	2	NW NE
4 N	28 E	WM	2	SW NE
4 N	28 E	WM	2	NW NW

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	2	SW NW
4 N	28 E	WM	2	SE NW
4 N	28 E	WM	2	NE SW

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.

Twp	Rng	Mer	Sec	Q-Q
4N	28E	WM	2	NW SW
4N	28E	WM	2	SW SW
4N	28E	WM	2	SE SW
4N	28E	WM	2	NW SE
4N	28E	WM	2	SW SE
4N	28E	WM	3	NE NE
4N	28E	WM	3	NW NE
4N	28E	WM	3	SW NE
4N	28E	WM	3	SE NE
4N	28E	WM	3	NW SW
4N	28E	WM	3	SW SW
4N	28E	WM	3	SE SW
4N	28E	WM	3	NE SE
4N	28E	WM	3	NW SE
4N	28E	WM	3	SW SE
4N	28E	WM	3	SE SE
4N	28E	WM	4	NE NE
4N	28E	WM	4	SE NE
4N	28E	WM	4	NE SE
4N	28E	WM	4	SE SE
4N	28E	WM	8	SE SE
4N	28E	WM	9	NE NE
4N	28E	WM	9	SW NE
4N	28E	WM	9	SE NE
4N	28E	WM	9	NE SE
4N	28E	WM	9	NW SE
4N	28E	WM	9	SW SE
4N	28E	WM	9	SE SE
4N	28E	WM	10	ALL
4N	28E	WM	11	NW NE
4N	28E	WM	11	SW NE
4N	28E	WM	11	SE NE
4N	28E	WM	11	NE NW
4N	28E	WM	11	NW NW
4N	28E	WM	11	SW NW
4N	28E	WM	11	SE NW
4N	28E	WM	11	NE SW
4N	28E	WM	11	NW SW
4N	28E	WM	11	SW SW
4N	28E	WM	11	SE SW
4N	28E	WM	11	NE SE
4N	28E	WM	11	NW SE
4N	28E	WM	11	SW SE
4N	28E	WM	11	SE SE
4N	28E	WM	11	SE SE
4N	28E	WM	11	SE SE
4N	28E	WM	12	NW NW
4N	28E	WM	12	SW NW
4N	28E	WM	12	SE NW
4N	28E	WM	12	NE SW
4N	28E	WM	12	NW SW
4N	28E	WM	13	NE NE
4N	28E	WM	13	NW NE
4N	28E	WM	13	SW NE
4N	28E	WM	13	SW NE

Twp	Rng	Mer	Sec	Q-Q
4N	28E	WM	13	SE NE
4N	28E	WM	13	NE NW
4N	28E	WM	13	SW NW
4N	28E	WM	13	SE NW
4N	28E	WM	13	NE SW
4N	28E	WM	13	NW SW
4N	28E	WM	13	SW SW
4N	28E	WM	13	SE SW
4N	28E	WM	13	NE SE
4N	28E	WM	13	NW SE
4N	28E	WM	13	SW SE
4N	28E	WM	13	SE SE
4N	28E	WM	14	NE NE
4N	28E	WM	14	NW NE
4N	28E	WM	14	SW NE
4N	28E	WM	14	SE NE
4N	28E	WM	14	NE NW
4N	28E	WM	14	NW NW
4N	28E	WM	14	SW NW
4N	28E	WM	14	SE NW
4N	28E	WM	14	NE SE
4N	28E	WM	14	SE SE
4N	28E	WM	15	NE NE
4N	28E	WM	15	NW NE
4N	28E	WM	15	SW NE
4N	28E	WM	15	SE NE
4N	28E	WM	15	NE NW
4N	28E	WM	15	NW NW
4N	28E	WM	15	SW NW
4N	28E	WM	15	SE NW
4N	28E	WM	15	NE SW
4N	28E	WM	16	NE NE
4N	28E	WM	16	NW NE
4N	28E	WM	16	SW NE
4N	28E	WM	16	SE NE
4N	28E	WM	21	SW SE
4N	28E	WM	22	NE NE
4N	28E	WM	22	NW NE
4N	28E	WM	22	SW NE
4N	28E	WM	22	SE NE
4N	28E	WM	23	NW NE
4N	28E	WM	23	SW NE
4N	28E	WM	23	NE NW
4N	28E	WM	23	SE NW
4N	28E	WM	24	NE NW
4N	28E	WM	24	NW NW
4N	28E	WM	24	SW NW
4N	28E	WM	24	SE NW

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	24	NE SW
4 N	28 E	WM	24	NW SW
4 N	28 E	WM	24	SW SW
4 N	28 E	WM	24	SE SW
4 N	28 E	WM	27	NE SW
4 N	28 E	WM	27	NW SW
4 N	28 E	WM	27	SW SW
4 N	28 E	WM	27	SE SW
4 N	28 E	WM	27	NW SE

Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	27	SW SE
4 N	28 E	WM	28	SW NE
4 N	28 E	WM	28	NE SE
4 N	28 E	WM	28	SE SE
4 N	28 E	WM	30	SW NE
4 N	28 E	WM	30	NE NW
4 N	28 E	WM	30	NW NW
4 N	28 E	WM	30	SW NW
4 N	28 E	WM	30	SE NW

3. Certificate 96359 does not specify the period of allowed use. However, use of water for municipal use is assumed to be year round use unless otherwise specified in the certificate.
4. 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.
5. The instream use is as follows:

Columbia River, a tributary of Pacific Ocean

Instream Point: At the POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
96359	January 19, 1979	4.6	1332.1	January 1 through December 31

6. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
7. The protection of flows at the authorized point of diversion 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 downstream of the point of the instream water right.
8. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.

9. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
10. 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.
11. 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.
12. 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.
13. The Lessor has requested that the lease terminate in January 2025, however the lease must terminate at the end of the season of use, therefore the lease will terminate December 31, 2024. The lease may commence on the date this final order is signed.
14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

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 each year 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 December 31, 2024. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (January 1 through December 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day JUL 26 2023.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Mailing date: JUL 27 2023

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.