

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1661, Umatilla 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**

Port of Umatilla  
P.O. Box 879  
Umatilla, OR 97882  
kimpuzey@uci.net

**Findings of Fact**

1. On March 27, 2018, the Port of Umatilla filed an application to lease the entirety of Certificate 93670 for instream use. The Department assigned the application number IL-1661.
2. The right to be leased is as follows:

**Certificate:** 93670 in the name of PORT OF UMATILLA (perfected under S-49497)  
**Use:** Municipal Use  
**Priority Date:** January 19, 1979  
**Quantity:** **Rate:** 39.3 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 |
| 4 N | 28 E | WM  | 2   | SW NW |
| 4 N | 28 E | WM  | 2   | SE NW |

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

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   |
|-----|------|-----|-----|-------|
| 4 N | 28 E | WM  | 2   | SW SE |
| 4 N | 28 E | WM  | 3   | NE NE |
| 4 N | 28 E | WM  | 3   | NW NE |
| 4 N | 28 E | WM  | 3   | SW NE |
| 4 N | 28 E | WM  | 3   | SE NE |
| 4 N | 28 E | WM  | 3   | NW SW |
| 4 N | 28 E | WM  | 3   | SW SW |
| 4 N | 28 E | WM  | 3   | SE SW |
| 4 N | 28 E | WM  | 3   | NE SE |
| 4 N | 28 E | WM  | 3   | NW SE |
| 4 N | 28 E | WM  | 3   | SW SE |
| 4 N | 28 E | WM  | 3   | SE SE |
| 4 N | 28 E | WM  | 4   | NE NE |
| 4 N | 28 E | WM  | 4   | SE NE |
| 4 N | 28 E | WM  | 4   | NE SE |
| 4 N | 28 E | WM  | 4   | SE SE |
| 4 N | 28 E | WM  | 8   | SE SE |
| 4 N | 28 E | WM  | 9   | NE NE |
| 4 N | 28 E | WM  | 9   | SW NE |
| 4 N | 28 E | WM  | 9   | SE NE |
| 4 N | 28 E | WM  | 9   | NE SE |
| 4 N | 28 E | WM  | 9   | NW SE |
| 4 N | 28 E | WM  | 9   | SW SE |
| 4 N | 28 E | WM  | 9   | SE SE |
| 4 N | 28 E | WM  | 10  | ALL   |
| 4 N | 28 E | WM  | 11  | NW NE |
| 4 N | 28 E | WM  | 11  | SW NE |
| 4 N | 28 E | WM  | 11  | SE NE |
| 4 N | 28 E | WM  | 11  | NE NW |
| 4 N | 28 E | WM  | 11  | NW NW |
| 4 N | 28 E | WM  | 11  | SW NW |
| 4 N | 28 E | WM  | 11  | SE NW |
| 4 N | 28 E | WM  | 11  | NE SW |
| 4 N | 28 E | WM  | 11  | NW SW |
| 4 N | 28 E | WM  | 11  | SW SW |
| 4 N | 28 E | WM  | 11  | SE SW |
| 4 N | 28 E | WM  | 11  | NE SE |
| 4 N | 28 E | WM  | 11  | NW SE |
| 4 N | 28 E | WM  | 11  | SW SE |
| 4 N | 28 E | WM  | 11  | SE SE |
| 4 N | 28 E | WM  | 12  | NW NW |
| 4 N | 28 E | WM  | 12  | SW NW |
| 4 N | 28 E | WM  | 12  | SE NW |
| 4 N | 28 E | WM  | 12  | NE SW |
| 4 N | 28 E | WM  | 12  | NW SW |
| 4 N | 28 E | WM  | 13  | NW NE |
| 4 N | 28 E | WM  | 13  | SW NE |
| 4 N | 28 E | WM  | 13  | SE NE |
| 4 N | 28 E | WM  | 13  | NE NW |
| 4 N | 28 E | WM  | 13  | SW NW |
| 4 N | 28 E | WM  | 13  | SE NW |
| 4 N | 28 E | WM  | 13  | NE SW |
| 4 N | 28 E | WM  | 13  | NW SW |
| 4 N | 28 E | WM  | 13  | SW SW |
| 4 N | 28 E | WM  | 13  | SE SW |

| Twp | Rng  | Mer | Sec | Q-Q   |
|-----|------|-----|-----|-------|
| 4 N | 28 E | WM  | 13  | NE SE |
| 4 N | 28 E | WM  | 13  | NW SE |
| 4 N | 28 E | WM  | 13  | SW SE |
| 4 N | 28 E | WM  | 13  | SE SE |
| 4 N | 28 E | WM  | 14  | NE NE |
| 4 N | 28 E | WM  | 14  | NW NE |
| 4 N | 28 E | WM  | 14  | SW NE |
| 4 N | 28 E | WM  | 14  | SE NE |
| 4 N | 28 E | WM  | 14  | NE NW |
| 4 N | 28 E | WM  | 14  | NW NW |
| 4 N | 28 E | WM  | 14  | SW NW |
| 4 N | 28 E | WM  | 14  | SE NW |
| 4 N | 28 E | WM  | 14  | NE SE |
| 4 N | 28 E | WM  | 14  | SE SE |
| 4 N | 28 E | WM  | 15  | NE NE |
| 4 N | 28 E | WM  | 15  | NW NE |
| 4 N | 28 E | WM  | 15  | SW NE |
| 4 N | 28 E | WM  | 15  | SE NE |
| 4 N | 28 E | WM  | 15  | NE NW |
| 4 N | 28 E | WM  | 15  | NW NW |
| 4 N | 28 E | WM  | 15  | SW NW |
| 4 N | 28 E | WM  | 15  | SE NW |
| 4 N | 28 E | WM  | 15  | NE SW |
| 4 N | 28 E | WM  | 15  | NW SW |
| 4 N | 28 E | WM  | 16  | NE NE |
| 4 N | 28 E | WM  | 16  | NW NE |
| 4 N | 28 E | WM  | 16  | SW NE |
| 4 N | 28 E | WM  | 16  | SE NE |
| 4 N | 28 E | WM  | 16  | NE NW |
| 4 N | 28 E | WM  | 16  | NW NW |
| 4 N | 28 E | WM  | 16  | SE NW |
| 4 N | 28 E | WM  | 21  | SW SE |
| 4 N | 28 E | WM  | 22  | NE NE |
| 4 N | 28 E | WM  | 22  | NW NE |
| 4 N | 28 E | WM  | 22  | SW NE |
| 4 N | 28 E | WM  | 22  | SE NE |
| 4 N | 28 E | WM  | 23  | NW NE |
| 4 N | 28 E | WM  | 23  | SW NE |
| 4 N | 28 E | WM  | 23  | NE NW |
| 4 N | 28 E | WM  | 23  | SE NW |
| 4 N | 28 E | WM  | 24  | NE NW |
| 4 N | 28 E | WM  | 24  | NW NW |
| 4 N | 28 E | WM  | 24  | SW NW |
| 4 N | 28 E | WM  | 24  | SE NW |
| 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 |
| 4 N | 28 E | WM  | 27  | SW SE |
| 4 N | 28 E | WM  | 28  | SW NE |

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

| Twp | Rng  | Mer | Sec | Q-Q   |
|-----|------|-----|-----|-------|
| 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 93670 does not specified 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 |
|-------------|------------------|---------------------|----------------------|---------------------------|
| 93670       | January 19, 1979 | 39.3                | 28451.90             | Year-round                |

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 on April 14, 2022. The lease may commence on the date this final order is signed.
14. The Lessor has requested the option of terminating the lease early but only with consent of all parties to the lease.


**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 April 14, 2022. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (April 15 through April 14) 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     **MAY 03 2018**    .

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

Mailing date:     **MAY 03 2018**    

*This document was prepared by Chris Kowitz. If you have any questions, please call 503-986-0883.*