

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

In the Matter of the Proposed Short-Term )  
Lease of Existing Water Rights for Instream )  
Use, Certificate 73396, Columbia County )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

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 short-term instream lease applications.

**Lessor #1**  
Portland General Electric Company  
121 SW Salmon Street  
Portland, OR 97204

**Lessor #2**  
Eugene Water and Electric Board  
P.O. Box 10148  
Eugene, OR 97440-2148

**Lessor #3**  
PacifiCorp  
825 NE Multnomah  
Portland, OR 97232

**Findings of Fact**

1. Portland General Electric Company, Eugene Water and Electric Board and PacifiCorp filed an application to lease a portion of Certificate 73396 to instream use. The Department assigned the application number L-691.
2. The portion of the right to be leased is as follows:

**Certificate:** 73396  
**Priority Date:** August 3, 1970  
**Season of Use:** Year-round  
**Rate:** 79.2 Cubic Foot per Second (CFS)  
**Source:** Columbia River, tributary to the Pacific Ocean  
**Authorized Place of Use:**

<b>NUCLEAR PLANT COOLING &amp; FIRE SUPPRESSION SYSTEM</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Lot</b>
6 N	2 W	WM	1	NW NW	1
6 N	2 W	WM	2	NE NE	
7 N	2 W	WM	35	SE SE	
7 N	2 W	WM	36	SW SW	3

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.

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 N	2 W	WM	36	SW SW (LOT 3)	150 feet North and 920 feet East from the SW corner of Section 36

3. On September 2, 2004 the applicant submitted notification of a specific to general industrial use change (Nuclear Plant Cooling to General Industrial use) for 89.1 cfs under the right evidenced by Certificate 73396, as allowed under OAR 690-380-2340. The notice meets the requirements of OAR 690-380-2340, thereby allowing the exercise of the right for general industrial use at the authorized place of use. However, the notification does not result in issuance of a superseding certificate to document a permanent change in the right of record.
4. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
5. The instream use is as follows:  
Columbia River  
Tributary to the Pacific Ocean in the Columbia Basin

**Instream Reach:** At the POD (as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
73396	8/3/1970	79.2	Year-round

6. The place of use will continue to receive a portion of water during the term of the lease. The water right to be leased allows the diversion of up to 89.5 CFS, being 0.4 CFS for Fire Suppression and 89.1 CFS for Cooling. The applicant has requested to lease 79.2 cfs of the water used for Cooling. The quantity of water diverted at the POD, upon approval of this instream lease, will be limited to 0.4 cfs for Fire Protection and 9.9 cfs for Cooling.
7. Water has been used within the last five years for industrial uses according to the terms and conditions of the right and the notification pursuant to OAR 690-380-2340, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A diversion structure and equipment to use the full amount of water allowed under the existing right have been present within the last five years, including pumps, and distribution piping.
9. 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.
10. 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.

11. The lease will terminate on December 31, 2010. The lease application originally identified the termination date as October 1, 2010. However, instream leases end on the last day of the period of allowed use, in this case, being December 31.
12. The lessor has requested the option of terminating the lease early with written notice to the Department by December 1 of the preceding year.

#### CONCLUSIONS OF LAW


The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

#### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. During the term of this lease, the quantity of water used at the existing place of use, as evidenced by certificate 73396, shall be limited to a maximum diversion of 0.4 CFS for Fire Suppression and 9.9 CFS for Cooling.
3. The lease shall terminate on December 31, 2010. The lessor shall have the option of terminating the lease in advance of each year, with notification to the Department by December 1 of the preceding year.

Dated at Salem, Oregon this 28<sup>th</sup> day of February 2006.

  
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FOR Phillip C. Ward, Director

Mailing date: MAR 03 2006