

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

In the Matter of Split-Season Instream) DETERMINATION and FINAL ORDER ON
Lease Application SL-63, Jackson 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

Trout Unlimited
Attn: Chrysten Rivard & Julie Cymore
1777 Kent Street Suite 100
Arlington, VA 22209

Findings of Fact

1. On December 18, 2023, Chrysten Rivard and Julie Cymore of Trout Unlimited, filed an application to lease Certificate 96389 for instream use. The Department assigned the application number SL-63.

2. The right to be leased is as follows:
 - Certificate:** 96389 in the name of Robert E. and Deborah S. Russell (confirmed by Little Butte Creek Decree of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1)
 - Use:** Power Development
 - Season of Use:** April 1 through March 31
 - Priority Date:** 1872
 - Quantity:** **Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially and shall not exceed 16.0 Cubic Feet per Second (CFS) from April 1 through October 31 and 16.0 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.
 - Source:** Little Butte Creek, tributary to the Rogue River

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.

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	3	NE NE

3. 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.
4. The instream lease application, as proposed, is a split season lease.

Use of water under the water right included in this lease may continue for the existing use up to the rate and volume specified in the below table consistent with the water right limitations in Finding of Fact No. 2. The rate and volume is identified as follows:

Certificate	Existing Use Rate (CFS)	Existing Use Volume (AF)	Existing Use Period
96389	16.0	6759.67	January 1 to July 31
	16.0	2856.20	October 2 to December 31

5. The instream use is as follows:
Little Butte Creek, tributary to the rogue River

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
96389	1872	16.0	1967.60	August 1 to October 1

6. Other conditions to prevent injury and enlargement are:

The Lessor and Watermaster shall work together to measure and report the use of the existing water right and the instream water right as needed. The Watermaster will work with the Lessor to measure at the measuring device located at Station 14347798.
7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. 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.
9. 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.
 10. 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.
 11. 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.
 12. 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.
 13. 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.
 14. The Lessor has requested that the lease terminate on October 1, 2028. The lease may commence on the date this final order is signed.
 15. 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. During the term of this lease, the place of use will continue to receive water as identified in Finding of Fact No. 4 and in the following table:

Certificate	Existing Use Rate (CFS)	Existing Use Volume (AF)	Existing Use Period
96389	16.0	6759.67	January 1 to July 31
	16.0	2856.20	October 2 to December 31

4. The term of the lease will commence upon approval of the instream lease and terminate on October 1, 2028. 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 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 APR 26 2024.

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

Mailing date: APR 29 2024

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