

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1781, Klamath 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

PacifiCorp, an Oregon Corporation
825 NE Multnomah Street, Suite 1700
Portland, Oregon 97232
Jordana.Taylor@PacifiCorp.com

Findings of Fact

1. On January 22, 2020, PacifiCorp, an Oregon Corporation filed an application involving the entirety of Klamath Adjudication Claim KA-167 and Water Right Certificate 24508 for instream use. The Department assigned the application number IL-1781.

2. The first right to be leased is as follows:

Claim: KA-167 in the name of PacifiCorp, DBA Pacific Power and Light Co. (Partial Order of Determination Water Right Claim No. 167)
Use: Power
Season of Use: January 1 through December 31
Priority Date: November 1, 1895
Quantity: **Rate:** 150.0 Cubic Feet per Second (CFS) measured at the point of diversion
Source: Link River, tributary to Klamath River
Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
38 S	9 E	WM	30	NW SE	4	NOT DESCRIBED ON CLAIM

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	32	NW NW	7	EAST SIDE POWER PLANT

3. Claim KA-167 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's files, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	9 E	WM	30	NW SE	LATITUDE: 42.0 DEGREES, 14.0 MINUTES, 3.02 SECONDS NORTH LONGITUDE: 121.0 DEGREES, 48.0 MINUTES, 4.33 SECONDS WEST

4. The second right to be leased is as follows:

Certificate: 24508 in the name of The California Oregon Power Company (perfected under Permit S-6768)

Use: Development of 5341 Theoretical Horsepower (Power)

Priority Date: February 24, 1919

Quantity: Rate: 1,000.0 Cubic Feet per Second (CFS)

Source: Link River, tributary to Klamath River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
38 S	9 E	WM	30	NW SE	7	NOT DESCRIBED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	9 E	WM	32	NW NW	7

5. Certificate 24508 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's files, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
38 S	9 E	WM	30	NW SE	7	LATITUDE: 42.2342501025 LONGITUDE: -121.8014191716

6. Certificate 24508 does not specify the period of allowed use. However, use of water for Power is assumed to be year round use unless otherwise specified in the certificate.
7. Certificate 24508 states: the right herein granted is limited to the appropriation of water from Link River for development of 5341 theoretical horsepower; and the right hereby acquired for the appropriation of water for power development under this permit shall be, is deemed to be, and is hereby expressly made subject and subordinate in right and time to any appropriations of water which may hereafter be made at points above on Upper Klamath Lake or its tributaries, for irrigation, or for storage for irrigation purposes for use on lands in Oregon, and is hereby accepted by the applicant subject to this limitation.

8. 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.
9. The instream use is as follows:
Link River, tributary to Klamath River

Instream Reach: From the POD (as described in Finding of Fact No. 3 and No. 5) to
*Point of Return

Claim/Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
KA 167	November 1, 1895	150.0	108,595.0	January 1 through December 31
Cert 24508	February 24, 1919	1,000.0	723,966.9	

*POINT OF RETURN: LATITUDE: 42.0 DEGREES, 13.0 MINUTES, 29.33 SECONDS NORTH
LONGITUDE: 121.0 DEGREES, 47.0 MINUTES, 44.34 SECONDS WEST

10. Other conditions to prevent injury and enlargement are:

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right claim and the water right certificate.
12. The protection of flows within the proposed reach 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 reach of the instream water right.
13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
14. The instream use created by this instream lease shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

15. By adding to these existing instream water rights within the same reach, during the months of August, September and October, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow. The estimated average natural flow may not be exceeded unless criteria for exceeding are met.
16. The Department has determined that the estimated average natural flows may be exceeded due to the water rights proposed to be leased is within an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.
17. 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.
18. 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.
19. 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.
20. The Lessor has requested that the lease terminate in April of 2025. The leasing season for this water right is January to December and a lease may only be active for a period of five years. Therefore, the lease may commence on the date this final order is signed and terminate on December 31, 2024.
21. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

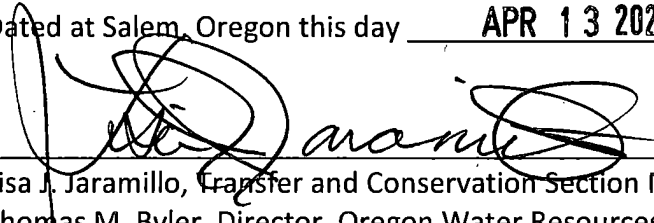
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 APR 13 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: APR 14 2020

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.