

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1639, Multnomah 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 Portland  
PO Box 3529  
Portland, OR 97208-3529  
Dorothy.Sperry@portofportland.com

**Findings of Fact**

1. On November 1, 2017, the Port of Portland, filed an application to renew instream lease IL-1033, involving Certificate 83964 for instream use.
2. During the evaluation of the instream lease application, Department staff identified a change that should be made to the description of the protected instream point. Therefore, this lease is being assigned a new lease number to differentiate it from the original lease application. This lease application has been re-assigned lease number IL-1639.
3. The first right to be leased is as follows:

**Certificate:** 83964 in the name of PORT OF PORTLAND (perfected under Permit S-50680)  
**Use:** IRRIGATION of 166.5 ACRES  
**Priority Date:** JUNE 22, 1988  
**Rate:** 2.08 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

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 Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 N	2 E	WM	11	NW SW	2	2630 FEET NORTH AND 5280 FEET WEST FROM THE SE CORNER OF SECTION 11
1 N	2 E	WM	14	SE NE	1	2349 FEET SOUTH AND 300 FEET WEST FROM THE NE CORNER OF SECTION 14

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 N	2 E	WM	11	NE SW	5		18.1
1 N	2 E	WM	11	SW SW			2.2
1 N	2 E	WM	11	SE SW	5		27.3
1 N	2 E	WM	11	NW SE	4		4.1
1 N	2 E	WM	11	SW SE	4		26.0
1 N	2 E	WM	13	NW NW			10.2
1 N	2 E	WM	13	SW NW			22.1
1 N	2 E	WM	14	NE NE			20.1
1 N	2 E	WM	14	NW NE			20.7
1 N	2 E	WM	14	SW NE	2		1.9
1 N	2 E	WM	14	SE NE	1		13.8
Total							166.5

4. Certificate 83964 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
5. 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.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Columbia River, tributary of the Pacific Ocean

**Instream Points:** At the authorized points of diversion in Sections 11 and 14 (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
83964	6/22/1988	0.86	416.25	March 1 through October 31

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
  - e. 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 the lease terminate on October 31, 2023. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on March 1, 2018, being the first day of the irrigation season. However, a lease may only be for a period of 5 years; therefore, the lease shall terminate on October 31, 2022.
  14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

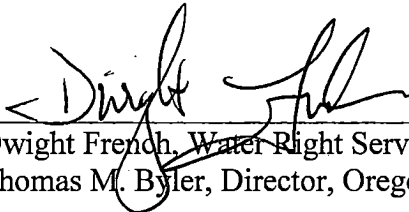
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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 on March 1, 2018. 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 (March 1 through October 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 19<sup>th</sup> day of January, 2018.

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

Mailing date: JAN 25 2018

*This document was prepared by Teri Hranac.  
If you have any questions, please call  
503-986-0881.*