

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-1033, Certificate 83964,) FINAL ORDER ON PROPOSED
 Multnomah County) INSTREAM LEASE

Authority

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 instream lease applications.

Lessor #1

Port of Portland
 Att: Scott Carter
 PO Box 3529
 Portland, OR 97208-3529
 Scott.carter@portofportland.com

Findings of Fact

1. On March 3, 2010 Scott Carter, acting on behalf of the Port of Portland, filed an application to lease all of Certificate 83964 for instream use. The Department assigned the application number IL-1033.
2. The right to be leased is as follows:

Certificate: 83964 in the name of Port of Portland
Use: Irrigation of 166.5 acres
Priority Date: June 22, 1988
Quantity: **Rate:** 2.08 Cubic Foot per Second (CFS)
Duty: 416.25 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Columbia River a tributary of the Pacific Ocean

Authorized Point of Diversion (POD):

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

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	Acres
1 N	2 E	2 E	11	NE SW	5	18.1
1 N	2 E	2 E	11	SW SW		2.2
1 N	2 E	2 E	11	SE SW	5	27.3
1 N	2 E	2 E	11	NW SE	5	4.1
1 N	2 E	2 E	11	SW SE	4	26.0
1 N	2 E	2 E	13	NW NW		10.2
1 N	2 E	2 E	13	SW NW		22.1
1 N	2 E	2 E	14	NE NE		20.1
1 N	2 E	2 E	14	NW NE		20.7
1 N	2 E	2 E	14	SW NE	2	1.9
1 N	2 E	2 E	14	SE NE	1	13.8
TOTAL:						166.5

3. Certificate 83964 does not specify the irrigation season. However, Division 250 establishes a default season of March 1 through October 31. The default season will be used for purposes of this lease.
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 in response to that notice.
5. The instream use been modified from the lease application to prevent injury and enlargement and is as follows:

Columbia River a tributary of the Pacific Ocean

Instream Point: At POD #1, as described in Finding of Fact #2.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83964	June 22, 1988	0.86	416.25	March 1 through October 31

6. 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.
7. 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.
8. 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.

9. The Lessor requested that the lease terminate on October 31, 2014.
10. 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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will not receive water under this right during the term of the lease.
3. The lease will terminate on October 31, 2014. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 21 day of April 2010.


Phillip C. Ward, Director

Mailing date: APR 26 2010