

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1787, Yamhill 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**

J. Scott Gibson  
6280 SE Eola Hills Rd  
Amity, OR 97101  
jsgibsonmd@hotmail.com

**Findings of Fact**

1. On February 20, 2020, J. Scott Gibson filed an application to, lease the entirety of Certificate 39480 for instream use. The Department assigned the application number IL-1787.

2. The portion of the right to be leased is as follows:

**Certificate:** 39480 in the name of CHESTER J GIBSON (perfected under Permit S-33613)  
**Use:** IRRIGATION of 11.6 ACRES  
**Priority Date:** MAY 23, 1968  
**Rate:** 0.15 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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:** NORTH YAMHILL RIVER, a tributary of YAMHILL RIVER (WILLAMETTE 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:**

Twp.	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	4 W	WM	14	NE NW	1	660 FEET SOUTH AND 2460 FEET EAST FROM THE NW CORNER OF SECTION 14

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	14	NE NW	68	11.60

3. Certificate 39480 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.
4. At the full instream rate and volume requested, water may only be protected instream for 101 days. The full instream period, March 1 through October 31, is 245 days the right would be enlarged. To prevent enlargement of the right, the requested instream use requires modification. The Watermaster has recommended that the instream use period be modified to, a 101 day period to prevent enlargement and maximize the instream use.
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 and is as follows:  
North Yamhill River, a tributary of Yamhill River

**Instream Point:** At the Point of Diversion on the North Yamhill River (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
39480	May 23, 1968	0.15	29.0	June 1 through September 9

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. Other conditions to prevent injury and enlargement are: At the full instream rate and volume requested, water may only be protected instream for 101 days. The full instream period requested by the Lessor, March 1 through October 31, is 245 days. To prevent enlargement of the right, the requested instream use requires modification. The Watermaster has recommended that the instream use period be modified to, a 101 day period to prevent enlargement and maximize the instream use.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Lessor has requested that the lease terminate on October 31, 2024. The lease may commence on the date this final order is signed.
16. 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 October 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 (June 1 through September 9) 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     MAY 14 2020    .

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

Mailing date:     MAY 15 2020    

*This document was prepared by  
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please call 503-986-0892.*