

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

In the Matter of the Proposed Lease of )  
Existing Water Rights for Instream Use, )  
Certificates 23064 and 37348, POLK )  
County )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

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**

John A. and C.B. Heffley  
1921 Spicetree Lane SE  
Salem, Oregon 97306

**Findings of Fact**

1. John A. and C.B. Heffley filed an application to renew L-137, involving all of Certificates 23064 and 37348 to instream use. The Department assigned the application number L-137.
2. The rights to be leased are as follows:

**Certificate:** 23064 in the name of JOHN C. OR DOROTHY E. HEFFLEY (perfected under Permit S-21176)

**Use:** IRRIGATION of 30.0 ACRES

**Priority Date:** MARCH 13, 1952

**Rate:** 0.38 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** LUCKIAMUTE RIVER, tributary to WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
9 S	5 W	WM	24	NW NE	42

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	24	NW NE	42	0.3
9 S	5 W	WM	24	SW NE	42	17.9
9 S	5 W	WM	24	NE NW	42	2.5
9 S	5 W	WM	24	SE NW	42	9.3

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.

**Certificate:** 37348 in the name of JOHN C. or DOROTHY HEFFLEY (perfected under Permit S-30682)

**Use:** IRRIGATION of 68.5 ACRES

**Priority Date:** JULY 28, 1965

**Rate:** 0.86 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** LUCKIAMUTE RIVER, tributary to WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
9 S	5 W	WM	24	NW NE	42	1350 FEET NORTH & 900 FEET EAST FROM NE CORNER, DLC 63

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	24	SW NE	42	14.5
9 S	5 W	WM	24	SE NW	42	6.5
9 S	5 W	WM	24	NE SW	42	15.4
9 S	5 W	WM	24	NW SE	42	32.1

3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.

4. The instream use is as follows:  
LUCKIAMUTE RIVER tributary to WILLAMETTE RIVER

**Instream Reach:** From POD (as described in Finding of Fact #2) to mouth of Luckiamute River

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
23064	MARCH 13, 1952	0.38	June 23 through September 30
37348	JULY 28, 1965	0.86	June 23 through September 30

5. 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.

6. 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.

7. The lease will commence on April 1, 2007 and terminate on September 30, 2011.

8. 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 shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on September 30, 2011. The lessor shall have the option of terminating the lease each year, with notification to the Department by May 23 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 8<sup>th</sup> day of February 2007.

  
for \_\_\_\_\_  
Phillip C. Ward, Director

Mailing date: FEB 12 2007