

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

In the Matter of Instream Lease Application )  
IL-1423, Polk County ) DETERMINATION and  
) FINAL ORDER ON PROPOSED  
) 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**

Alan and Janice Frost  
14060 Elkins Rd.  
Monmouth, OR 97361

**Findings of Fact**

1. On June 27, 2014, Alan and Janice Frost filed an application to lease the entirety of Certificates 65744, 65745, 65746, 49728, 65747, 65748, and 65749, and a portion of Certificate 44889 for instream use. The Department assigned the application number IL-1423.
2. The application included a number of inconsistencies in the description of the rights to be leased. The description of each right is clarified in this final order.
3. The portion of the first right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 44889 in the name of C.A. Twiss (perfected under Permit S-34380)  
**Use:** Irrigation of 69.1 acres, being 46.9 acres from the Luckiamute River with priority dates of May 12, 1969 and August 1, 1969, and 22.2 acres from the Little Luckiamute River with a priority date of May 12, 1969  
**Priority Date:** Luckiamute River: May 12, 1969 and August 1, 1969  
Little Luckiamute River: May 12, 1969  
**Quantity:** **Rate:** Luckiamute River: 0.58 CFS, being 0.37 Cubic Foot per Second (CFS) for May 12, 1969, and 0.21 CFS for August 1, 1969  
Little Luckiamute River: 0.28 CFS  
**Volume:** Luckiamute River: 117.25 Acre-Feet (AF)  
Little Luckiamute River: 55.5 AF

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.

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River and Little Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twps	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	16	56	NW SW	POD No. 1 (Luckiamute River): 3720 FEET SOUTH AND 460 FEET EAST FROM THE SW CORNER OF LOT 5 IN THE SE SE OF SECTION 8
9 S	5 W	WM	17	56	SW SE	POD No. 2 (Luckiamute River): 4870 FEET SOUTH AND 1600 FEET WEST FROM THE SW CORNER OF LOT 5 IN THE SE SE OF SECTION 8
9 S	5 W	WM	8	56	SE SE	POD No. 3 (Little Luckiamute River): 460 FEET NORTH AND 550 FEET WEST FROM THE SW CORNER OF LOT 5 IN THE SE SE OF SECTION 8

**Authorized Place of Use:**

Twps	Rng	Mer	Sec	DLC	Q-Q	Acres
<b>Luckiamute River – Irrigation of 46.9 acres</b>						
9 S	5 W	WM	16	56	NW NW	6.1
9 S	5 W	WM	16	56	SW NW	24.3
9 S	5 W	WM	16	56	NW SW	0.3
9 S	5 W	WM	17	56	SW NE	14.9
9 S	5 W	WM	17	56	SE NW	0.9
9 S	5 W	WM	17	56	NE SE	0.2
9 S	5 W	WM	17	56	NW SE	0.2
<b>Little Luckiamute River – Irrigation of 22.2 acres</b>						
9 S	5 W	WM	9	56	SW SW	0.1
9 S	5 W	WM	16	56	NW NW	18.4
9 S	5 W	WM	16	56	SW NW	3.7

4. The second right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65744 in the name of Alan L. and Janice L. Frost (perfected under Permit S-19639)

**Use:** Irrigation of 50.0 acres

**Priority Date:** October 26, 1950

**Quantity:** **Rate:** 0.62 CFS (the quantity of water available at the new point of diversion, together with that diverted at the original diversion shall not exceed 0.62 CFS or its equivalent in case of rotation, if available at the original point of diversion: SW SE, Section 17, T9S, R5W, WM; 730 feet south and 3370 feet west from the SE corner of DLC 56, measured at the point of diversion from the source)

**Volume:** 125.0 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth CFS (or its

equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	17	69	SE SE	630 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	16	56	NW SW	5.0
9 S	5 W	WM	17	56	NE SE	20.0
9 S	5 W	WM	17	56	NW SE	19.6
9 S	5 W	WM	17	56	SW SE	5.4
<b>Total Acres</b>						<b>50.0</b>

5. The third right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65745 in the name of Alan L. and Janice L. Frost (perfected under Permit S-30218)

**Use:** Irrigation of 25.0 acres

**Priority Date:** January 27, 1965

**Quantity:** **Rate:** 0.31 CFS (if available at the original point of diversion: SW SE, Section 17, T9S, R5W, WM; 630 feet south and 3090 feet west from the SE corner of DLC 56, measured at the point of diversion from the source)

**Volume:** 62.5 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth CFS (or its equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	17	69	SE SE	630 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	17	56	NE SW	10.6
9 S	5 W	WM	17	56	SE SW	14.4
<b>Total Acres</b>						<b>25.0</b>

6. The fourth right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65746 in the name of Alan L. and Janice L. Frost (perfected under Permit S-34380)

**Use:** Irrigation of 18.1 acres

**Priority Date:** May 12, 1969

**Quantity:** **Rate:** 0.23 CFS (or its equivalent in case of rotation, if available at the original point of diversion: NW SW, Section 16, T9S, R5W, WM;

550 feet north and 730 feet west from the SE corner of DLC 56,  
measured at the point of diversion from the source)

**Volume:** 45.25 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth CFS (or its equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	17	69	SE SE	630 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	17	56	SE NW	12.2
9 S	5 W	WM	17	56	NE SW	5.9
<b>Total Acres</b>						<b>18.1</b>

7. The fifth right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 49728 in the name of C.A. Twiss (perfected under Permit S-30218)  
**Use:** Irrigation of 63.7 acres, being 40.5 acres from the Luckiamute River and 23.2 acres from the Little Luckiamute River

**Priority Date:** January 27, 1965

**Quantity:** **Rate:** 0.80 CFS, being 0.29 CFS from the Little Luckiamute River and 0.51 CFS from the Luckiamute River  
**Volume:** 159.25 AF, being 101.25 AF from the Luckiamute River and 58.0 AF from the Little Luckiamute River

**Limit:** together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year

**Source:** Little Luckiamute River and Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	8	56	SE SE	POD No. 1 (Little Luckiamute River): 4610 FEET NORTH AND 1830 FEET WEST FROM THE SE CORNER OF JAMES SMITH DLC 56
9 S	5 W	WM	17	56	SW SE	POD No. 2 (Luckiamute River): 630 FEET SOUTH AND 3090 FEET WEST FROM THE SE CONRER OF JAMES SMITH DLC 56

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
<b>Luckiamute River – Irrigation of 40.5 acres</b>						
9 S	5 W	WM	17	56	SW NE	5.5
9 S	5 W	WM	17	56	SE NE	1.1
9 S	5 W	WM	17	56	NE SE	10.1
9 S	5 W	WM	17	56	NW SE	18.8

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	17	56	SW SE	5.0
<b>Little Luckiamute River – Irrigation of 23.2 acres</b>						
9 S	5 W	WM	8	56	SE SE	16.4
9 S	5 W	WM	9	56	SW SW	2.0
9 S	5 W	WM	16	56	NW NW	0.7
9 S	5 W	WM	17	56	NE NE	4.1

8. The sixth right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65747 in the name of Alan L. and Janice L. Frost (perfected under Permit S-34380)

**Use:** Irrigation of 3.5 acres

**Priority Date:** May 12, 1969

**Quantity:** **Rate:** 0.04 CFS (or its equivalent in case of rotation, if available at the original point of diversion: SW SE, as projected within DLC 56, Section 17, T9S, R5W, WM; 4870 feet south and 1600 feet west from the SW corner of Lot 5 in the SE SE of Section 8, measured at the point of diversion from the source)

**Volume:** 8.75 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth CFS (or its equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	16	56	NW SW	500 FEET NORTH AND 730 FEET WEST FROM THE SE CORNER OF DLC 56

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	16	56	NW SW	3.5

9. The seventh right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65748 in the name of Alan L. and Janice L. Frost (perfected under Permit S-30218)

**Use:** Irrigation of 6.9 acres

**Priority Date:** January 27, 1965

**Quantity:** **Rate:** 0.09 CFS (if available at the original point of diversion: SE SE, as projected within DLC 69, Section 17, T9S, R5W, WM; 600 feet south and 1900 feet west from the SE corner of DLC 56, measured at the point of diversion from the source)

**Volume:** 17.25 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of One-eightieth CFS (or its equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	17	69	SE SE	630 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	17	56	NE SW	6.9

10. The eighth right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 65749 in the name of Alan L. and Janice L. Frost (perfected under Permit S-30218)

**Use:** Irrigation of 21.5 acres

**Priority Date:** January 27, 1965

**Quantity:** **Rate:** 0.26 CFS (or its equivalent in case of rotation, if available at the original point of diversion: SW SE, as projected within DLC 56, Section 17, T9S, R5W, WM; 630 feet south and 3090 feet west from the SE corner of DLC 56, measured at the point of diversion from the source)

**Volume:** 53.75 AF

**Limit:** together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth CFS (or its equivalent) and 2.5 AF for each acre irrigated during the irrigation season of each year

**Source:** Luckiamute River, tributary to the Willamette River

**Authorized Points of Diversion (POD):**

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
9 S	5 W	WM	17	69	SE SE	600 FEET SOUTH AND 1900 FEET WEST FROM THE SE CORNER OF DLC 56

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
9 S	5 W	WM	17	56	NE SE	6.3
9 S	5 W	WM	17	56	NW SE	1.3
9 S	5 W	WM	17	56	SW SE	6.6
9 S	5 W	WM	17	56	SE SE	7.0
9 S	5 W	WM	17	69	SE SE	0.3
<b>Total Acres</b>						<b>21.5</b>

11. Certificates 44889, 65744, 65745, 65746, 49728, 65747, 65748, and 65749 do not specify the irrigation season. However, the Luckiamute River Decree establishes the irrigation season for the area as April 1 through September 30.
12. 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.
13. The Lessor did not specify whether water was proposed to be protected at each of the points of diversion or within a proposed reach. The Lessor requested that the Department determine

the appropriate reach or point for the instream use. The Watermaster has recommended that the instream use created as a result of this instream lease be located at the points of diversion.

14. The applicant also requested that the Department determine the appropriate rate, volume and timing of the instream use to be created as a result of this lease application.
15. The instream use has been modified and clarified from the lease application to prevent injury and enlargement and is as follows:

**Little Luckiamute River, tributary to the Luckiamute River**

**Instream Point No. 1:** At POD No. 1 (as described in Finding of Fact No. 7)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
49728	1/27/1965	0.29	58.0	June 23 through September 30

**Instream Point No. 2:** At POD No. 3 (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
44889	5/12/1969	0.28	55.5	June 23 through September 30

**Luckiamute River, tributary to the Luckiamute River**

**Instream Point No. 1:** At POD No. 2 (as described in Finding of Fact No. 7)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
47928	1/27/1965	0.51	101.25	June 23 through September 30

**Instream Point No. 2:** At POD No. 2 (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
44889	5/12/1969	0.37	74.47	June 22 through September 30
	8/1/1969	0.21	42.78	
<b>Total Instream</b>		<b>0.58</b>	<b>117.25</b>	

**Instream Point No. 3:** At the POD (as described in Finding of Fact No. 4, 5, 6, and 9)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
65744	10/26/1950	0.62	125.0	June 22 through September 30
65745	1/27/1965	0.31	62.5	June 22 through September 30
65748	1/27/1965	0.09	17.25	June 27 through September 30
65746	5/12/1969	0.23	45.25	June 24 through September 30
<b>Total Instream</b>		<b>1.25</b>	<b>250.00</b>	

**Instream Point No. 4:** At the POD (as described in Finding of Fact No. 8)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
65749	1/27/1965	0.26	53.75	June 19 through September 30

**Instream Point No. 5:** At the POD (as described in Finding of Fact No. 8)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
65747	5/12/1969	0.04	8.75	June 13 through September 30

16. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
17. The protection of flows at each of the authorized points 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 points of the instream water right.
18. The total monthly quantities of water to be protected under the existing and proposed instream rights at each of the points will provide for a beneficial purpose.
19. The total monthly quantities of water to be protected instream under existing and proposed instream rights in at each point do not exceed the estimated average natural flow.
20. 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.
21. 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.
22. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
23. The Lessor has requested that the lease terminate on September 30, 2014. The lease may commence on the date this final order is signed.

### **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 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 September 30, 2014.

Dated at Salem, Oregon this 17 day of September, 2014.

  
Dwight French  
Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

*This document was prepared by Laura  
Wilke and if you have any questions,  
please call 503-986-0884.*

Mailing date: SEP 19 2014