

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

In the Matter of Instream Lease Renewal ) DETERMINATION and  
IL-81, Certificates 21312 and 36341, Polk ) FINAL ORDER ON PROPOSED  
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**

Victoria Avery  
5130 Waymire Road  
Dallas, OR 97338

**Lessee**

The Freshwater Trust (TFT)  
65 SW Yamhill St., Suite 300  
Portland, Oregon 97204

**Findings of Fact**

1. On April 10, 2013, George P. Ryan Trust and Arletha M Ryan Trust and The Freshwater Trust filed an application to renew Instream Lease IL-81, involving all of Certificates 21312 and 36341 for instream use. However, the lease application was not signed by both trustees.
2. On August 29, 2013, a superseding instream lease renewal form was submitted to the Department signed by the Freshwater Trust and the new landowner, Victoria Avery.
3. On July 9, 2009, the Department issued an order approving the renewal of instream lease IL-81, as evidenced by Special Order Volume 78, Pages 371-374. The previous order incorrectly identified a rate and instream period. This order is being issued to renew and clarify the rate allowed to be used instream and the instream period, consistent with the original application.

4. The first right to be leased is as follows:

**Certificate:** 21312 in the name of Charles Ryan (as perfected under Permit S-20476)  
**Use:** Irrigation of 20.0 acres  
**Priority Date:** December 8, 1949  
**Quantity:** **Rate:** 0.25 Cubic Foot per Second (CFS)  
**Volume:** 50.0 Acre-Feet (AF)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 acre feet (AF) per acre for each acre irrigated during the irrigation season of each year  
**Source:** LITTLE LUCKIAMUTE RIVER, tributary to LUCKIAMUTE 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 (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	6 W	WM	27	NE NE	46	None specified

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
8 S	6 W	WM	26	46	NW NW	0.4
8 S	6 W	WM	26	46	SW NW	1.0
8 S	6 W	WM	27	46	NE NE	12.4
8 S	6 W	WM	27	46	SE NE	6.2
Total						20.0

5. Certificate 21312 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
8 S	6 W	WM	27	NE NE	46	LATITUDE: 44.85217667 LONGITUDE: -123.39871979

6. The second right to be leased is as follows:

**Certificate:** 36341 in the name of Cornie Ryan (as perfected under Permit S-31338)  
**Use:** Irrigation of 31.8 acres  
**Priority Date:** April 4, 1966  
**Quantity:** **Rate:** 0.40 Cubic Foot per Second (CFS)  
**Volume:** 79.5 Acre-Feet (AF)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year  
**Source:** Little Luckiamute River, tributary to Willamette River

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

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	6 W	WM	26	SW NW	46	POD #1 - 1180 FEET NORTH AND 400 FEET WEST FROM THE NW CORNER OF SMITH D.L.C. NO. 43
8 S	6 W	WM	26	SW NW	46	POD #2 - 670 FEET NORTH AND 200 FEET WEST FROM THE NW CORNER OF SMITH D.L.C. NO. 43

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	26	SW NW	45	7.6
8 S	6 W	WM	26	SW NW	46	8.8
8 S	6 W	WM	27	SE NE	46	15.4
Total						31.8

7. Certificate 36341 identifies the source as Little Luckiamute River tributary of Willamette River. However, the Luckiamute River Decree identifies the Little Luckiamute River as a tributary of the Luckiamute River.

8. Certificates 21312 and 36341 do not specify the irrigation season. However, the Luckiamute Decree identifies the irrigation season as April 1 through September 30.
9. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on April 23, 2013, pursuant to OAR 690-077-0077(1). No comments were received.
10. As identified in Finding of Fact #3, the instream use is being modified to be consistent with the original lease application and is as follows:  
Little Luckiamute River tributary to Luckiamute River

**Instream Use Resulting from Certificate 21312**

**Instream Reach:** From the POD (as described in Finding of Fact #5) to the confluence with the Luckiamute River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
21312	December 8, 1949	0.25	50.0	June 1 through September 8

**Instream Use Resulting from Certificate 36341**

**Instream Reach #2:** From POD #1(as described in Finding of Fact #5) to the confluence with the Luckiamute River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
36341	April 4, 1966	0.40	79.5	June 1 through September 8

11. 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.
12. 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. 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.
13. 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.
14. The Lessor has requested that the lease terminate on September 30, 2018. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2014, being the first day of the irrigation season.
15. 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. 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence on April 1, 2014 and terminate on September 30, 2018. For multiyear leases, 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 (June 1 through September 8) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur. The Lessor may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 2 day of January, 2014.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0898*

Mailing date: JAN 07 2014