

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

In the Matter of Instream Lease Renewal ) DETERMINATION and  
IL-565, Certificates 13447 and 14246, 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**

Joyce Finegan  
17940 Falls City Road  
Dallas, OR 97338

**Findings of Fact**

1. On September 10, 2013, Joyce Finegan filed an application to renew instream lease IL-565, involving a portion of Certificates 13447 and 14246 for instream use.
2. The portion of the first right to be leased is as follows:

**Certificate:** 13447 in the name of Eldon R. Frink (as perfected under Permit S-9895)  
**Use:** Irrigation of 2.8 acres  
**Priority Date:** September 30, 1930  
**Quantity:** **Rate:** 0.03 Cubic Foot per Second (CFS)  
**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated  
**Source:** LITTLE LUCKIAMUTE RIVER, tributary to LUCKIAMUTE RIVER

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

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	6 W	WM	27	NE NE	47	None Specified

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	22	SE SE	47	1.0
8 S	6 W	WM	27	NE NE	47	1.8
<i>Total</i>						2.8

3. Certificate 13447 does not specify a duty limitation. However, Luckiamute River Decree identifies a limitation of 2.5 acre-feet (AF) per acre or fraction thereof, irrigated during any one irrigation season. A total of 7.0 AF may be leased to instream use.

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.

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

**Certificate:** 14246 in the name of Eldon R. Frink (as perfected under Permit S-13968)

**Use:** Irrigation of 2.5 acres

**Priority Date:** August 11, 1939

**Quantity:** **Rate:** 0.03 Cubic Foot per Second (CFS)

**Volume:** 6.25 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

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

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

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	6 W	WM	27	NE NE	47	None Specified

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	22	NE SE	47	0.10
8 S	6 W	WM	27	SE SE	45	2.40
				Total		2.50

5. Certificates 13447 and 14246 do not provide a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversions may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
8 S	6 W	WM	22	SE SW	47	LATITUDE: 44.854329 LONGITUDE: -123.400448

6. Certificates 13447 and 14246 do not specify the irrigation season. However, the Luckiamute Decree identifies the irrigation season as April 1 through September 30.
7. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on September 17, 2013 pursuant to OAR 690-077-0077(1). No comments were received.

8. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:

Little Luckiamute River, tributary to Luckiamute River

**Instream Reach:** From POD's (as described in Finding of Fact #2 and #3) to the mouth of the Little Luckiamute River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
13447	September 30, 1930	0.03	7.00	June 6 through September 30
14246	August 11, 1939	0.03	6.25	June 18 through September 30

9. 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.

10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on September 30, 2015. 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.
13. The Lessor has indicated that they do not want to include a Termination Provision.

### CONCLUSIONS OF LAW

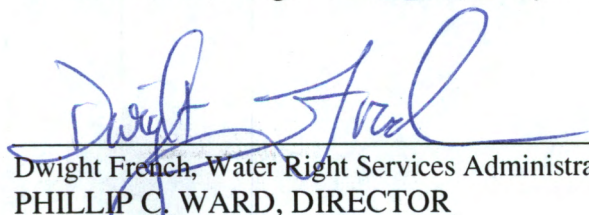
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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, 2015.

Dated at Salem, Oregon this 30 day of January, 2014.

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

FEB 03 2014

Mailing date: \_\_\_\_\_

*This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0890*