

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

In the Matter of the Proposed Lease of                    )     DETERMINATION and  
Existing Water Rights for Instream Use,                )     FINAL ORDER ON PROPOSED  
Certificates 14246 and 13447, Polk 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**

Melvin Finegan  
17940 Fall City Road  
Dallas, OR 97338

**Findings of Fact**

1. On August 13, 2008, Melvin Finegan filed an application to renew instream lease L-565, involving a portion of Certificates 14246 and 13447. The Department assigned the application number IL-565.
2. The portion of the first right to be leased is as follows:

**Certificate:** 14246  
**Use:** Irrigation  
**Acres:** 2.5 acres  
**Priority Date:** August 11, 1939  
**Season of Use:** April 1 through September 30  
**Quantity:** Rate: 0.03 CFS  
Duty: 6.25 AF  
**Source:** Little Luckiamute River, tributary to the Big Luckiamute River  
**Authorized Place of Use:**

Certificate	Township		Range		Meridian	Sec	1/4 1/4		Acres
14246	8	S	6	W	W.M.	22	NE	SE	0.10
14246	8	S	6	W	W.M.	22	SE	SE	2.4
							Total		2.5

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):**

Township		Range		Meridian	Sec	¼ ¼		Location
8	S	6	W	W.M.	27	NE	NE	Being within Frederick Waymire D.L.C. 47

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

**Certificate:** 13447  
**Use:** Irrigation  
**Acres:** 2.8 acres  
**Priority Date:** September 30, 1930  
**Season of Use:** April 1 through September 30  
**Quantity:** Rate: 0.03 CFS  
Duty: 7.0 AF  
**Source:** Little Luckiamute River, tributary to the Luckiamute River  
**Authorized Place of Use:**

Certificate	Township		Range		Meridian	Sec	1/4 1/4		Acres
13447	8	S	6	W	W.M.	22	SE	SE	1.0
13447	8	S	6	W	W.M.	27	NE	NE	1.8
							Total		2.8

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

Township		Range		Meridian	Sec	¼ ¼		Location
8	S	6	W	W.M.	27	NE	NE	Being within Frederick Waymire D.L.C. 47

4. 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.

5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Little Luckiamute River, tributary to the Luckiamute River

**Instream Reach:** From the Point of Diversion, as described in Findings of Fact #2 and #3, to the mouth of the Little Luckiamute River

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

6. 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.

7. 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.

8. 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.
9. The lease will commence on April 1, 2009, and terminate on October 31, 2013.
10. The Lessor has indicated that they will not have the option of terminating the lease early without consent by all parties to the lease.

### 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 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 during the term of the lease.
3. The lease will commence on April 1, 2009, and terminate on October 31, 2013. The Lessor may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 3<sup>rd</sup> day of December, 2008.



*R* Phillip C. Ward, Director

Mailing date: DEC 09 2008