

**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 38374, 51048, and 51049, )  
Sherman and Wasco 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**

Wayne L. Webb  
P.O. Box 1550  
The Dalles, Oregon 97058

**Lessee**

Oregon Water Trust  
522 SW Fifth Avenue, Suite 825  
Portland, Oregon 97204

**Findings of Fact**

1. Wayne L. Webb and the Oregon Water Trust filed an application to renew L-2, involving all of Certificates 38374, 51048, and 51049 to instream use. The Department assigned the application number IL-2.
2. The first right to be leased is as follows:

**Certificate:** 38374 in the name of ERNEST O. WEBB and AGNES M. WEBB (perfected under Permit S-28518)

**Use:** IRRIGATION of 37.3 ACRES

**Priority Date:** DECEMBER 10, 1962

**Rate:** 0.93 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 4.0 acre-feet per acre per year

**Source:** BUCK HOLLOW CREEK, tributary to DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	14 E	WM	2	NE NW	2660 FEET WEST AND 180 FEET SOUTH FROM NE CORNER OF SECTION 2

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.

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	14 E	WM	2	SE NW	2790 FEET WEST AND 1940 FEET SOUTH FROM NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
3 S	14 E	WM	35	NE SW		0.1
3 S	14 E	WM	35	NW SE		9.4
3 S	14 E	WM	35	SW SE		14.7
4 S	14 E	WM	2	NW NE	2	7.4
4 S	14 E	WM	2	SW NE		5.7

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

**Certificate:** 51048 in the name of AGNES M. WEBB (perfected under Permit R-6150)

**Use:** IRRIGATION and SUPPLEMENTAL IRRIGATION

**Priority Date:** MARCH 10, 1975

**Rate:** 11.83 ACRE FEET

**Source:** KERR CREEK, tributary to BUCK HOLLOW CREEK

**Authorized Place of Use:**

STORAGE				
Twp	Rng	Mer	Sec	Q-Q
4 S	14 E	WM	2	SW NE

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

**Certificate:** 51049 in the name of AGNES M. WEBB (perfected under Permit S-38057)

**Use:** IRRIGATION of 11.9 ACRES and SUPPLEMENTAL IRRIGATION of 7.4 ACRES

**Priority Date:** MARCH 10, 1975

**Rate:** 0.48 CUBIC FEET PER SECOND (CFS), being 0.16 CFS from BUCK HOLLOW CREEK and 0.32 CFS from KERR CREEK AND RESERVOIR

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 4.0 acre-feet per acre for IRRIGATION and 4.0 acre-feet per acre for SUPPLEMENTAL IRRIGATION

**Source:** BUCK HOLLOW CREEK, tributary to DESCHUTES RIVER, KERR CREEK, AND WEBB RESERVOIR

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	14 E	WM	2	SW NE	KERR CR: 1850 FEET SOUTH AND 2520 FEET WEST FROM NE CORNER OF SECTION 2
4 S	14 E	WM	2	NE NW	BUCK HOLLOW CR: 180 FEET SOUTH AND 2660 FEET WEST FROM NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	14 E	WM	35	NW SE	1.6
3 S	14 E	WM	35	SW SE	4.4

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	14 E	WM	2	NW NE	0.5
4 S	14 E	WM	2	NW NE	4.4
4 S	14 E	WM	2	SW NE	1.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	14 E	WM	2	NW NE	4.4
4 S	14 E	WM	2	SW NE	3.0

5. 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.

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

Buck Hollow Creek

Tributary to Deschutes River in the Deschutes Basin

**Instream Reach:** River Mile 0.8 to 0.0

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
38374	December 10, 1962	0.93	July 1 through September 18
51048 & 51049	March 10, 1975	0.30 (primary) 0.18 (supplemental)	July 1 through September 18

7. A portion of certificates 51048 and 51049 are supplemental to certificate 38374. The supplemental portion of certificates 51048 and 51049 being leased instream shall only be protected instream if the full rate and duty under certificate 38374 are not available during the period for which water is being leased instream. If the supplemental portion is used, up to 0.18 cfs can be allocated on a daily basis until an additional 29.6 acre feet, minus the amount of acre feet already received under the underlying primary portion of certificate 38374 is met.

8. 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.

9. 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.

10. 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.

11. The lease will commence on April 1, 2008 and terminate on November 1, 2008.

### CONCLUSIONS OF LAW

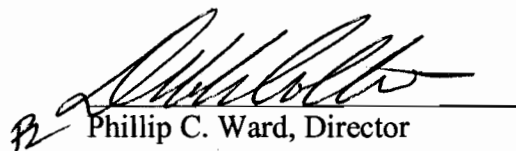
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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, 2008 and terminate on November 1, 2008.

Dated at Salem, Oregon this 25<sup>th</sup> day of March 2008.

  
Phillip C. Ward, Director

Mailing date: MAR 28 2008