

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1338, Sherman County ) PROPOSED INSTREAM LEASE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor**

Martin A. and Beverly LaVelle Underhill  
PO Box 266  
Dufur, OR 97021  
[lavelleu@gmail.com](mailto:lavelleu@gmail.com)

**Findings of Fact**

1. On January 10, 2022, Martin A. and Beverly LaVelle Underhill filed an application to renew instream lease IL-1338, involving Certificates 38374 and 51049.

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  
**Quantity:** **Rate:** 0.93 Cubic Foot per Second (CFS)  
**Volume:** 149.2 Acre-Feet (AF)  
**Limit:** Shall be limited to 1/40th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 AF per acre for each acre irrigated during the irrigation season of each year  
**Source:** BUCK HOLLOW CREEK, tributary to DESCHUTES 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	Measured Distances
4 S	14 E	WM	2	NE NW	POD #1 – 180 FEET SOUTH AND 2660 FEET WEST FROM THE NE CORNER OF SECTION 2
4 S	14 E	WM	2	SE NW	POD #2 – 1940 FEET SOUTH AND 2790 FEET WEST FROM THE NW CORNER OF SECTION 2

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	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
Total Acres						37.3

3. The portion of the second 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  
**Quantity:** **Rate:** 0.16 Cubic Foot per Second (CFS) from Buck Hollow Creek and 0.32 CFS from Kerr Creek, being 0.13 CFS for primary irrigation and 0.19 CFS for supplemental irrigation  
**Volume:** 26.0 Acre-Feet (AF) from Buck Hollow Creek and 39.37 from Kerr Creek, being 16.63 AF for primary irrigation and 22.74 AF for supplemental irrigation  
**Limit:** Shall be limited to 1/40th CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 AF per acre for each acre irrigated during the irrigation season of each year  
**Source:** KERR CREEK and BUCK HOLLOW CREEK, tributary to DESCHUTES RIVER

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	14 E	WM	2	NE NW	BUCK HOLLOW CR POD – 180 FEET SOUTH AND 2660 FEET WEST FROM THE NE CORNER OF SECTION 2
4 S	14 E	WM	2	SW NE	KERR CR POD – 1850 FEET SOUTH AND 2520 FEET WEST FROM THE NW CORNER OF SECTION 2

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	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
Total Acres						37.3

4. Certificates 38374 and 51049 do not specify the irrigation season. However, the Deschutes River Decree identifies the irrigation season for the area as April 1 to November 1.
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 is as follows:

**Primary Instream Use**

Kerr Creek, tributary to Buck Hollow Creek

**Instream Reach:** From the Kerr Creek POD (as described in Finding of Fact #3) to the mouth of Kerr Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.1	16.63	July 1 through September 19

Buck Hollow Creek, tributary to the Deschutes River

**Instream Reach#1:** From the confluence of Buck Hollow with Kerr Creek to POD #2 for Certificate 38374 (as described in Finding of Fact #2) at approximately River Mile 0.8

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.10	16.63	July 1 - September 19

**Instream Reach#2:** From POD #2 for Certificate 38374 to the Buck Hollow Creek POD for Certificate 51049 (as described in Finding of Fact #3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.10	16.63	July 1 - September 19
38374	12/10/1962	0.93	149.20	
<b>Total</b>		<b>1.03</b>	<b>165.83</b>	

**Instream Reach#3:** From Buck Hollow Creek POD for Certificate 51049 to the mouth of Buck Hollow Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.26	42.63	July 1 - September 19
38374	12/10/1962	0.93	149.20	
<b>Total</b>		<b>1.03</b>	<b>165.83</b>	

**Supplemental Instream Use**

Kerr Creek, tributary to Buck Hollow Creek

**Instream Reach:** From the Kerr Creek POD (as described in Finding of Fact #3) to the mouth of Kerr Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.14	22.74	July 1 - September 19

Buck Hollow Creek, tributary to the Deschutes River

**Instream Reach:** From the confluence of Buck Hollow with Kerr Creek to the mouth of Buck Hollow Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
51049	3/10/1975	0.14	22.74	July 1 - September 19

7. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

8. A portion of Certificate 51049 is supplemental to Certificate 38374. The portion of Certificate 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.
9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
10. The protection of flows within the proposed reach 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 reach of the instream water right.
11. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
  12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
  13. 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.
  14. 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.
  15. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under 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.
  16. The Lessors have requested that the lease terminate on November 1, 2026. The lease may commence on April 1, 2022.
  17. The Lessors have requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

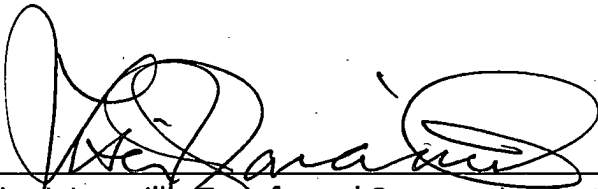
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. 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 irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence on April 1, 2022 and terminate on October 31, 2026. For multiyear leases, the lessors *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (July 1 through September 19) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day MAR 07 2022



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Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 08 2022

*This document was prepared by Stacy Phillips. If you have any questions, please call 503-986-0898.*