

**Short-Term Water Right Lease Agreement
for
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

Lessor:

Wayne L. Webb
P.O. Box 692
The Dalles, OR 97058
(541) 296-1012-Phone

The water rights to be leased are located in Sherman County.

Lessee:

Oregon Water Trust
111 SW Naito Parkway
Suite 404
Portland, OR 97204
(503) 226-9055-Phone
(503) 226-3480-Fax

Trustee

Oregon Water Resources Department
158 12th Street NE
Salem OR 97310
(503) 378-3739-Phone
(503) 378-2496-Fax

I.

- 1.1 Lessor holds a contract of rental of real property (*Exhibit A*) on the property shown in *Exhibit B*, having water rights that are to be leased.
- 1.2 Section 1.2 is not applicable
- 1.3 *Exhibit C* contains a copy of the certificated rights attached to the property in *Exhibit B*. The rights are listed below as follows:

Certificate Nos. 38374, 51048 and 51049

- 1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 38374

Source: Buck Hollow Creek

Priority date: December 10, 1962

Type of use: Irrigation

Place of use: (*Exhibit D-Map*)

T 3S, R 14E, S 35, NE $\frac{1}{4}$ SW $\frac{1}{4}$, 0.1 acres

T 3S, R 14E, S 35, NW $\frac{1}{4}$ SE $\frac{1}{4}$, 9.4 acres

T 3S, R 14E, S 35, SW $\frac{1}{4}$ SE $\frac{1}{4}$, 14.7 acres

T 4S, R 14E, S 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 7.4 acres

T 4S, R 14E, S 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, 5.7 acres

Number of acres: 37.3

Rate: 0.93 cfs

Duty: 149.2 acre feet

Season of use: April 1 to November 1

Point(s) of diversion (POD):

180'S and 2660' W; 1940'S and 2790'W; both from NE corner, Sec. 2, being within the NE $\frac{1}{4}$, NW $\frac{1}{4}$ and SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 2, T 4S, R 14E, W.M.

Conditions or other limitations, if any: None

Water Right Identification No.: 51048 and 51049

Source: Buck Hollow and Kerr creeks

Priority date: March 10, 1975

Type of use: Irrigation

Place of use: (*Exhibit D-Map*)

Buck Hollow Creek

T 3S, R 14E, S 35, NW $\frac{1}{4}$ SE $\frac{1}{4}$, 1.6 acres

T 3S, R 14E, S 35, SW $\frac{1}{4}$ SE $\frac{1}{4}$, 4.4 acres

T 4S, R 14E, S 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 0.5 acres

Kerr Creek & Reservoir

Primary

T 4S, R 14E, S 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 4.4 acres

T 4S, R 14E, S 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, 1.0 acres

Supplemental

T 4S, R 14E, S 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 4.4 acres

T 4S, R 14E, S 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, 3.0 acres

Number of acres: 11.9 (primary) and 7.4 (supplemental)

Rate: 0.3 (primary) and 0.18 (supplemental)

Duty: 47.6 acre feet (primary) and up to 29.6 acre feet (supplemental)

Season of use: April 1 to November 1

Point(s) of diversion (POD):

NE1/4, NW1/4 and SW1/4, NE1/4, Sec. 2, T 4S, R 14E, W.M., Buck Hollow Creek - 180'S and 2,660'W, Kerr Creek - 1,850'S and 2,520'W both from NE corner, Section 2.
Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attests that the subject water rights are legally valid by having been beneficially used according to the terms of the rights within the last five years immediately preceding the 1999 irrigation year and, if the rights are for irrigation, on all lands indicated in *Exhibit D*.
- 1.6 **Lease.** Lessor agrees to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-77-077.
- 1.7 **Suspension of original use.** During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights.
- 1.8 **Water use reporting.** The Trustee agrees to fulfill legal obligations related to water use reporting.

II.

- 2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is:
- specific uses and needs identified in *Exhibit E* as signed off by ODFW.
- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

No.: 38374

Buck Hollow Creek, tributary to the Deschutes River

Location: RM 0.8 to 0

Priority date: December 10, 1962

Use: Described in section 2.1, above

Total volume: 149.2 acre feet

Rate: 0.93 cfs

Period of use: April 1 to November 1

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis at 0.93 cfs from July 1 through September 19, or until such time that the total duty for the irrigation season is met or unless regulated off by the watermaster for prior rights.

Nos.: 51048 and 51049

Buck Hollow Creek, tributary to the Deschutes River

Location: RM 0.8 to 0

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Priority date: March 10, 1975

Use: Described in section 2.1, above

Total volume: 47.6 acre feet (primary) and up to 29.6 acre feet (supplemental)

Rate: 0.3 cfs (primary) and .18 cfs (supplemental)

Period of use: April 1 to November 1

Conditions to prevent or mitigate injury (if any): The primary instream flow will be allocated on a daily average basis at 0.3 cfs from July 1 through September 19, or until such time that the total duty for the irrigation season is met or unless regulated off by the watermaster for prior rights. 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 C-38374, is met.

2.3 **Term of lease.** This Lease shall commence on April 1, 1999 (not before the date of final execution by the parties) and continue through November 1, 1999.

2.4 **Compensation.** Lessor has agreed to lease the water rights herein to the Oregon Water Trust for cash and other considerations and for the benefit of the people of the state of Oregon.

2.5 **Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see Section 2.2). No party is required to continuously measure the flow of the waterway described in Section 2.2.

Optional Provisions

2.6 **Additional monitoring.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: possibly collecting information for calculating stream discharge.

2.7 **Modification or termination provisions.** None

III.

3 **Watermaster review.** By signature below, the watermaster for the district where the subject water rights are located verifies that:

3.1 Lessor is currently entitled to appropriate water under the water rights described in Section 1.4.

3.2 A suitable control is in place so that WRD staff may regulate use of water under the subject rights to ensure water is not diverted or applied on lands to which subject rights are attached.

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3.3 Allocation of water to the new instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source.

3.4 Necessary conditions to the proposed instream use: None

Watermaster: *Larry Toll* District: *3*
Larry Toll
421 E. 7th Avenue
Courthouse Annex B
Room 218
The Dalles, OR 97058
(541) 298-4110

Date: *4/30/1999*

IV.

The Undersigned Lessor, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete.

Lessor: *Wayne S. Webb* Date: *4/30/99*

Lessee: *Andrew Purkey* Date: *5/5/99*

So ordered by Trustee: *Rufus W. Sibley* Date: *7/6-99*
Director, Oregon Water Resources Department

Effective Date of Lease Agreement: *7/4-99*

Exhibits: A through D are on record with OWRD. E is attached.

Exhibit A: Power of Attorney Documentation
Exhibit B: Description of Property and Proof of Property Ownership
Exhibit C: Copy of certificate attached to property shown in Exhibit B
Exhibit D: Detailed map illustrating lands irrigated by subject right
Exhibit E: Identification of public use to be served by instream use

EXHIBIT E

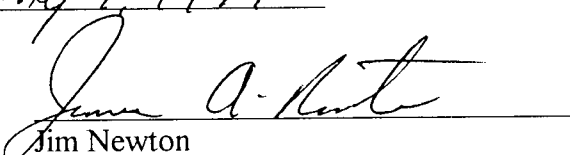
PUBLIC USE PROVIDED BY INTREAM WATER RIGHTS

I believe that the water rights described as Certificate Nos. 38374, 51048 and 51049 will provide for the conservation maintenance and enhancement of aquatic and fish life and fish habitat in Buck Hollow Creek, tributary to the Deschutes River, if temporarily converted to instream use during the 1999 irrigation season. Specifically, the following benefits will likely be provided:

- spawning and rearing habitat for summer steelhead will likely be expanded 8/10th's of a mile from the Webb point of diversion to the mouth of Buck Hollow Creek;
- live flow from Buck Hollow Creek to the Deschutes River will likely remain throughout the irrigation season, allowing juvenile summer steelhead to migrate to the confluence of the two waterways in response to changes in habitat conditions; and
- passage for early migrating adult summer steelhead back into Buck Hollow Creek could be improved.

Dated: May 7, 1999

Signed: _____


Jim Newton
ODFW Fisheries Biologist
The Dalles, Oregon