



State of Oregon  
Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900

# Application for Instream Lease

*A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrd.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).*

## Pursuant to ORS 537.348(2) and OAR 690-077

Optional Identification by Lessor/Lessee: \_\_\_\_\_  
Lease Application Number (assigned by WRD): SL-18

The water right to be leased is located in Wasco County.

This Lease is between:

**Lessor #1:**

Name Charlie Hanna  
Mailing address 3500 Japanese Hollow Road  
City, State, Zip Code The Dalles, OR, 97058  
Telephone number \_\_\_\_\_  
E-mail address\*\* \_\_\_\_\_

**Lessor #2, 3, etc. (provide same information as identified above)**

N/A

**Lessee (if different than Oregon Water Resources Department):**

Name The Freshwater Trust  
Mailing address 65 SW Yamhill Street Suite 200  
City, State, Zip Code Portland, OR 97202  
Telephone number (503)-222-9091  
E-mail address\*\* david@thefreshwatertrust.org

**\*\*BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.**

**Trustee:**

Oregon Water Resources Department  
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## ~I~ Water Right Holder and Water Right Information

- 1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 1 S, Range 14 E, Section 17 and 20 and Tax Lot number 3000. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

1.2 Lessor #2 is the (Check one):

- Not applicable
- Official representative of \_\_\_\_\_, the irrigation district which conveys water to the subject water rights.
- Another party with an interest in the subject water rights representing \_\_\_\_\_.

1.3 For the water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No(s). 55642

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program.  Yes  No or other Federal program: \_\_\_\_\_

**1.5 Water Rights Proposed to be Leased Instream.**

The first right to be leased identified in Section 1.3 is further described as follows:

Certificate No.: 55642

(If you need to enter another leased right, please use the additional water right form.)

Legal Season of Use: Not listed

Is the entire water right certificate being leased?  Yes  No

If no, list below the acres of the subject water right by legal description of township, range, section, and ¼ ¼ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

T	R	Sect	¼ ¼	Tax Lot	Acres	Type of Use	*Page #	*Priority Date	*Previous Lease #
*(Identify pertinent page numbers of certificate, if certificate is greater than 10 pages; identify priority date, if there is more than one on the certificate. If any portion of the right proposed to be leased was leased previously, the previous lease number may be identified. Identification of a previous lease is optional.)									
1.									IL-
2.									IL-
3.									IL-
4.									IL-
5.									IL-

[Attached maps must identify the water right holder, township, range, section, ¼ ¼, tax lot number, map orientation, and scale.]

Total number of acres being leased, if for irrigation (or other acre equivalent uses): 31.85

Acre-feet of storage, if applicable: N/A

Maximum rate associated with the right to be leased (cfs): .398

(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with the right to be leased (ac-ft): 95.55

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: \_\_\_\_\_

**1.6 Validity of rights to be leased as described in Section 1.5 of this form and on any Additional Water Right Form. Lessor(s) attests (mark one) that:**

- the water has been used over the past five years according to the terms and conditions of the water right certificate or as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)(\_\_\_\_)(include necessary supporting documentation as Attachment 3).

## ~II~ Instream Water Right Information

**2.1 Public use.** This lease will increase streamflows that will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

**2.2 Instream use created by lease of the water right described in Section 1.5.**

The instream use to be created is described as follows:

In the Fifteenmile Creek  
Tributary to Columbia River in the Hood Basin.

Instream volume in acre-feet (may be up to the same as the duty identified in Sec 1.5): 47.78

Instream rate in cfs (may be up to the same as the rate identified in Sec 1.5): .398

(If not certain of the instream rate or volume, please contact the Department for more information on how to fill out this section of the application).

- Instream use protected at the point of diversion (POD).
- Or within a proposed reach.

Describe the proposed reach (an instream reach generally begins at the POD and generally ends at the mouth of the source creek/river). If possible list the reach by river mile): From the POD to the mouth of Fifteenmile Creek.

Please check this box if you are not sure of the proposed reach and want water to be protected within a reach below the POD, if possible.

(If no reach is identified or the above box is not checked, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD.)

If the POD is not described on the Certificate or if there is more than one POD listed on the certificate, then the specific POD must be described: POD is located in NW 1/4 NW 1/4 Section 20, T1S, R 14E, W.M.

**Conditions to prevent injury, if any (use this section to indicate a more restrictive period of use than allowed by the water right):**

- None
- The instream flow will be allocated on a daily average basis up to the described rate from 7/15 through 9/30.
- Other (describe): Any other conditions the watermaster deems necessary to prevent injury and account for channel loss.

(Note: The Department may identify additional conditions to prevent injury and/or enlargement.)

If you need to enter more instream uses, please use the additional water rights form.

**2.3 Term of lease.** This lease shall terminate on October 1, 2012.

**2.4 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). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

### ~III~ Other Information

- 3.1 Accuracy.** The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The lease only exercises the water rights being leased, for the term of the lease. It shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.
- 3.2 Lease.** Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.
- 3.3 Precedent.** 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 a new injury review shall be required, and a prior lease shall not set a precedent for the amount of water to be leased or transferred instream.
- 3.4 Suspension of original use.** During the period of the lease, the water right holder 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.
- 3.5 Termination provision.**
- For multiyear leases, the Lessor(s) shall have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:
    - Written notice to the Department;
    - Consent by all parties to the lease; and/or
    - Written notice to the Watermaster's office.
  - For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.
- 3.6 Modification to prevent injury.** Allocation of water to the 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. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

3.7 Fees. Pursuant to ORS 536.050, the following fee is included:

- \$400 for an application with four or more landowners or four or more water rights.  
 \$250 for all other applications.

Lessor #1: \_\_\_\_\_

*Charlie Hanna*

Date: \_\_\_\_\_

*2-29-2012*

Charlie Hanna

For additional Lessors, type in space for signature and date

\_\_\_\_\_

*Alan Horton*

Lessee: \_\_\_\_\_

Date: \_\_\_\_\_

*2-29-12*

Alan Horton, Managing Director

The Freshwater Trust

Other Attachments as Needed:

Attachment 1: Tax Lot Map. (See instructions.)

Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked).

Attachment 4: Split Season Instream Use Form



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 Water Resources Department  
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# Application for Split Season Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrd.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).

- Attachment 4 (Standard Leasing Form).**
- Attachment 5-D (Pooled Leasing Form).**

**The standard instream water right form or for pooled leases, the appropriate pooled lease forms, pursuant to ORS 537.348(2) and OAR 690-077 must also be filled out before a Split Season Use Instream Lease Application can be processed.**

*Note: Split season use lease applications must be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose. (OAR 690-077-0079)*

**1. Existing and Instream Use Periods**

For the water right being leased instream, as described in Section 1.5, include monthly or partial season rate or duty limitations, if appropriate.

This section replaces the "Total volume, Rate in cfs, and Allowed period of use" portions of Section 2.2 on the standard or pooled instream leasing forms.

The water right will be used for its existing purpose from 5/1 to 7/14.  
 The water right will be used for instream use period is from 7/15 to 9/30.

	Rate (cfs)		Conversion Factor 1 cfs = 1.983471 ac-ft/day		Number of days		Duty (ac-ft)
<b>Existing Use</b>	<u>.321</u>	*	1.983471	*	75.00	=	<del>47.78</del> <u>47.78</u>
use if needed		*	1.983471	*		=	(.00)
use if needed		*	1.983471	*		=	(.00)
<b>Instream Use</b>	<u>.309</u>	*	1.983471	*	78	=	<del>47.78</del> <u>47.78</u>
use if needed		*	1.983471	*		=	(.00)
use if needed		*	1.983471	*		=	(.00)
<b>Total</b>	n/a		n/a		n/a		<del>95.55</del> <u>95.55</u>

**2. Measurement and Reporting**

The water right lessor or lessee shall contact the watermaster to determine the necessary measurement and reporting requirements associated with leasing a water right.

The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Director, or provide for third party measurement and reporting to the satisfaction of the Director. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

(a) Location(s) and type(s) of measuring device(s): 4-inch totalizing flow meter at POD (NW 1/4 NW 1/4, Section 20)

(b) Frequency of measurement: Lessee will report beginning and ending meter readings for the irrigation period as well as report readings at least once per month during the irrigation period.

(c) Parties responsible for the respective measurements: Lessee is responsible for collecting and reporting meter readings. Watermaster will also read Lessee's meter monthly to verify.

**LEASE**  
**(Tidwell Place)**

THIS LEASE, Made and entered into this first day of April, 2010 by and between PAUL M. LIMMEROOTH and VELMA A. LIMMEROOTH, husband and wife, as to an undivided one-half and EDWIN A. KAYSER, M.D. as to an undivided on-half, hereinafter referred to as the "Lessors", and WALTER C. HANNA and LESLIE HANNA, husband and wife, hereinafter referred to as the "Lessees", WITNESSETH:

**PREMISES LET.** In consideration of the rent to be paid and the covenants and provisions hereof to be fulfilled, Lessors demise and let to Lessees and Lessees hire and rent from Lessors all irrigated land contained within the following described real property situated in Wasco County, Oregon:

Northeast quarter of Section 19; West half of Northwest quarter, and those portions of the Northeast quarter of Northwest quarter and Northwest quarter of Northeast quarter lying North and West of the county road, as it existed on October 26, 1903, of Section 20; and South half of South half of Section 17 all in Township 1 South, Range 14 East of the Willamette Meridian; EXCEPTING from said Section 17, the following:

Beginning 8.50 chains West and 4.29 chains North of the quarter section corner between Sections 17 and 20 Township 1 South, Range 14 East of the Willamette Meridian; thence North 61°34' East 2.00 chains; thence North 44°56' East 2 chains; thence North 27°42' East 2 chains; thence North 81°35' West 0.03 chains; thence North 12°56' East 1.71 chains; thence North 9°35' West 1.15 chains; thence North 4°30' East 1.865 chains; thence West 1.22 chains; thence North 12°43' West 2.695 chains; thence



north 23°11' West 2 chains; thence West 1.81 chains; thence South 13.275 chains to the place of the beginning; AND ALSO EXCEPTING all the premises lying West of the former Great Southern R.R. right of way and immediately North of the premises last excepted, having as a Western boundary an extension of the same line as premises last before excepted, which said premises last described and excepted have heretofore been conveyed to the Boyd Elevator.

AND ALSO EXCEPTING the following described tract of land: Beginning at a point 561.00 feet West of the Northwest corner of the South half of the Southeast quarter of Section 17, Township 1 South, Range 14 East of the Willamette Meridian; thence West along a fence line 35.0 feet to an iron rod driven in the fence line; thence leaving said fence and going South 36°44' West 572.8 feet; thence South 84°10' West 606.90 feet; thence South 64°20' West 449.1 feet to the intersection of a fence corner; thence South 30°05' East along the average line of a fence and extension thereof 654 feet, more or less, to the center line of the abandoned great Southern Railroad right of way line; thence easterly along Railroad center line 1,062 feet, more or less, to a point 1190.0 feet South of the point of beginning; thence North 1190.0 feet, more or less, to the point of beginning.

EXCEPT AND RESERVING TO LESSORS all dry land crop and pasture ground and all buildings and improvements on the above described real property.

PERSONAL PROPERTY LET: In addition to the real property described hereinabove, Lessors demise and let to Lessees and Lessees hire and rent from Lessors all irrigation equipment on the demised premises. Said irrigation equipment is more particular described in Exhibit "A" and by this reference incorporated as if fully set out herein.

**RENT:** Lessees, in consideration of the leasing of the premises covenant and agree with the Lessors to pay to Lessors cash rent for said premises and property in the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) annually, payable \$2,500 to Paul M. Limmeroth and Velma A. Limmeroth and \$2,500 to Edwin A. Kayser, M.D., due on the 1<sup>st</sup> day of April of each year, commencing with the April 1, 2010 and continuing thereafter so long as this lease, or any renewals thereof, remain in full force and effect.

**TERM:** This Lease shall operate and be effective for a period of five (5) years beginning on the ~~first~~ first day of April, 2010, and terminating on the first day of April, 2015.

**PROPERTY TAXES:** Lessors shall pay all real property taxes owing on the leased premises.

**FARMING PRACTICE:** It is agreed that Lessees shall farm said premises in all ways in the best accepted manner according to the usage and customs of the community in which the premises are located and in Keeping with good husbandry.

**FARMING OPERATION:** Lessees shall furnish all farm machinery, equipment, tools and vehicles necessary to farm and operate the premises. Lessees shall pay for all spray fertilizer and seed utilized in farming the premises. Lessees shall also be responsible for all utility costs associated with irrigating the leased premises.

**OPERATING AND MISCELLANEOUS EXPENSE:**  
All operating and miscellaneous cost and expense of every kind and nature not specifically provided for herein to the

contrary shall be borne and paid for by Lessees, it being the intention of this Lease agreement that Lessees shall bear all of the cost and expense of the farming operation except as herein provided to the contrary.

**PERSONAL PROPERTY USE RESTRICTION:**

Lessees may not loan or permit any other person to use any of the herein leased personal property except a person employed by Lessees who are then using said personal property in the course of such employment in the farming of the herein leased real property. Lessees shall not permit said leased personal property to be used on any premises other than the herein leased premises.

**LIENS:** Lessees shall keep the premises and the leased personal property free from all liens of any type which could result from the furnishing of materials, labor, machinery hire and/or hauling or resulting from any act or omission to act of Lessees or of those acting or failing to act under, by or through Lessees.

**WATER RIGHTS:** It is acknowledged that Lessors have water rights on the leased premises. Lessees agree to make full use of the water rights and to exercise the total water rights each year during the term of this Lease. The parties to this Lease understand that water rights can be lost in whole or in part by a failure to make a full use thereof.

**GOVERNMENT PROGRAMS:** The parties hereto acknowledge that the real property leased pursuant to this agreement is not presently enrolled in any governmental program. Lessees may not enroll said property in any governmental program absent the express written consent of the Lessors. Lessors may condition any consent requested by

the Lessees upon and upward adjustment in the rental payments to be made by Lessees.

**LESSORS' RESERVATION OF HUNTING RIGHTS:**

Lessors reserve all hunting rights upon the leased premises and Lessors may, if they choose, either to grant permission or charge trespass fees for hunters to come upon the leased premises.

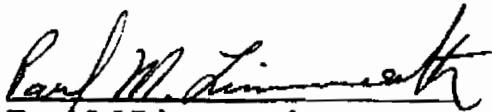
Lessors shall save and hold Lessees harmless from any liability resulting from hunting activities on the premises.

**DEFAULT:** In the event that Lessees shall fail to make any of the rental payments required pursuant to this agreement, promptly or within forty-five (45) days of their due date, or in the event that Lessees shall be in default of any of the other provisions of this agreement for more than thirty (30) days after they have received written notice of this default, Lessees shall be in default of the agreement and Lessors shall have the right of re-entry and all other rights granted to Lessors of farm real property pursuant to Oregon Law.

**ATTORNEY FEES:** In the event suit or action is instituted to enforce any of the provisions of this agreement, the prevailing party in such suit or action shall be entitled to such sums as the court may adjudge reasonable for costs and attorney fees in such suit or action, and in the event any appeal is taken from any judgment or decree, then the prevailing party shall be allowed and awarded such further sums as the appellate court shall adjudge for costs and attorney fees on such appeal. Costs for purposes of this section shall be costs as allowed by the Oregon Revised

Statutes, and, in addition, the costs associated with the taking of discovery depositions and hiring of expert witnesses.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals in duplicate effective the day and year first written above.



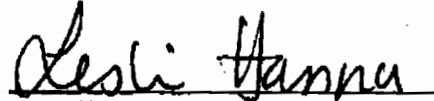
Paul M Limmeroth



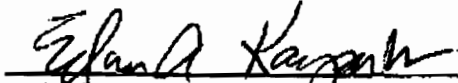
Walter C Hanna



Velma A Limmeroth



Leslie Hanna



Edwin A Kayser, M.D.

"Lessors"

"Lessees"

**CONSENT TO ENTER INTO A SPLIT SEASON INSTREAM LEASE**

1. I/we the undersigned are the deeded owners of real property ("Lessors") known as the "Tidwell Place."
2. Under a Lease Agreement dated April 1, 2010 (attached hereto, referred to herein as the "Lease"), I/we leased certain real property to Walter C. and Leslie Hanna ("Lessees") for a term of five years.
3. The Lease contains a clause barring enrollment of the property under the Lease in "any governmental program absent express written consent of the Lessors."
4. My/our signatures below represent express written consent for Lessees to enroll water rights appurtenant the leased property in a temporary instream lease during the term of the Lease.

Signed: Paul Limmeroth Date: 4-9-12

Print Name: Paul Limmeroth

Signed: Velma Limmeroth Date: 4-9-12

Print Name: Velma Limmeroth

Signed: Edwin A Kayser Date: 4/12/2012

Print Name: Edwin A. KAYSER