



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

Instream Lease Renewal Application

Complete the questions below and include any required attachments Fill in or check boxes as indicated. (N/A= Not Applicable)	Instream Lease <input checked="" type="checkbox"/> 1324 Renewal Fee included <input checked="" type="checkbox"/>
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The undersigned hereby request Instream Lease Number 1324 be renewed.

Fees: \$130.00 for an instream lease renewal application
 Check enclosed **or** Fee Charged to customer account _____ (Account name)

Term of the Lease: The lease is requested to begin in month <u>June</u> year <u>2020</u> and end month <u>Sept</u> year <u>2024</u>	
Validity of the Right(s) (check the appropriate box): <input checked="" type="checkbox"/> The water right(s) to be leased have been used under the terms and conditions of the right(s) during the last five years or have been leased instream. <input type="checkbox"/> If the water right(s) have not been used for the last five years, right(s). Documentation describing why the water right(s) is not subject to forfeiture is provided. ORS 540.610(2).	Termination provision (for multiyear leases): The parties to the lease request: <input type="checkbox"/> a. The option of terminating the lease prior to expiration of the full term with written notice to the Department by the Lessor(s) and/or Lessee. <input checked="" type="checkbox"/> b. The option of terminating the lease prior to expiration of the full term, with consent by all parties to the lease. <input type="checkbox"/> c. The parties would not like to include a Termination Provision. (See instructions for limitations to this provision)

Yes No Conservation Reserve Enhancement Program **CREP** – Are some or all of the lands to be leased part of CREP or another Federal program (list here: CREP)?

The undersigned declare:

- The Lessor(s) agree during the term of this lease, to suspend use of water allowed under the subject water right(s) and under any appurtenant primary or supplemental water right(s) not involved in the lease application; and
- The Lessor(s) certify that I/we are the holders of the water right(s) involved in this Instream Lease. If not the deeded land owner, I/we have provided documentation demonstrating authorization to pursue the lease application and/or consent from the deeded landowner; and
- All parties affirm that information provided in this lease application is true and accurate. Circumstances have not changed and all matters involved with or affected by the original instream lease remain as they were when the lease was previously approved. We also acknowledge that the terms and conditions of the original lease, referenced herein, are incorporated by reference in their entirety.

Claire Gardner
Signature of Lessor

Date: 5.26.2019

Printed name (and title): Claire Gardner

Business name, if applicable: _____

Mailing Address (with state and zip): 46570 SW Patton Valley Road, Gaston, OR 97119

Phone number (include area code): 503-985-7211

**E-mail address: Lisa.PGH@gmail.com

↳ POA + DAUGHTER
LISA HEARD

Signature of Lessor

Date: _____

Printed name (and title): _____ Business name, if applicable: _____

Mailing Address (with state and zip): _____

Phone number (include area code): _____ **E-mail address: _____

See next page for additional signatures.

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Date: _____

Signature of Co-Lessor

Printed name (and title): _____

District/organization name: _____

Mailing Address (with state and zip): _____

Phone number (include area code): _____ **E-mail address: _____

Date: _____

Signature of Co-Lessor

Printed name (and title): _____

Business/organization name: _____

Mailing Address (with state and zip): _____

Phone number (include area code): _____ **E-mail address: _____

Date: _____

Signature of Lessee

Printed name (and title): Lacey Townsend, Executive Director

Business/organization name: Tualatin Soil and Water Conservation District

Mailing Address (with state and zip): 7175 NE Evergreen Pkwy, #400, Hillsboro, OR 97214

Phone number (include area code): 503-334-2290 **E-mail address: lacey.townsend@tualatinswcd.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 TO THE LESSOR.**

Form C
(6-1-15)

Tualatin Soil and Water Conservation District

AGREEMENT TO PURSUE LEASE OF WATER RIGHTS INSTREAM

All blanks in this agreement are to be completed by
TSWCD staff unless otherwise indicated.

Enhanced CREP Contract No. 2100

VEGBAC Contract No. _____

1) Introduction. This agreement is between the undersigned Enhanced Conservation Reserve Enhancement Program (Enhanced CREP) or Vegetated Buffer Areas for Conservation Program (VEGBAC) participants (“Participants”) and the Tualatin Soil and Water Conservation District (“District”). Under Enhanced CREP, Participants are required to lease water rights appurtenant to land enrolled in Enhanced CREP to the State of Oregon for instream use. Under VEGBAC, participants are not required to lease water rights appurtenant to land enrolled in VEGBAC for instream use, but may do so in exchange for an incentive payment if the water rights are “Qualifying Water Rights.”

Under Enhanced CREP, participants with Qualifying Water Rights receive an incentive payment for leasing the water rights instream, but participants without Qualifying Water Rights do not. All participants in either Enhanced CREP or VEGBAC, regardless of whether their water rights are Qualifying Water Rights, receive assistance in processing water rights lease applications.

The purpose of this agreement is to establish the terms and conditions under which Participants and District will pursue the approval of an instream lease of certain water rights by the Oregon Water Resources Department. The water rights to be leased are appurtenant to the area shown on the map attached as Exhibit A and incorporated herein. The parties agree as follows:

2) Duration of Lease, this Agreement. If the instream lease is approved by the Oregon Water Resources Department, the duration of the instream lease shall be five years. If the Oregon Water Resources Department approves all intended renewal(s) of the lease, the duration of the instream lease shall be ___ years. This agreement shall be effective when signed by both parties and shall continue until the instream lease terminates or the Oregon Water Resources Department denies the approval of the instream lease or any renewal of the instream lease, whichever occurs first.

3) Benefits. *Check A or B:*

A. X District has made a preliminary determination that the instream lease concerns less than five acres of land and Participants’ water rights are Qualifying Water Rights. If the Oregon Water Resources

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Department authorizes the instream lease and District makes a final determination that Participants' water rights are Qualifying Water Rights, District shall pay Participants an incentive payment of \$20 per acre per year of the instream lease.

Water Rights Incentive Payment:

\$20.00 x 2.69 Acres x 5 Years = \$269.00 (lump sum)

B. _____ District has made a preliminary determination that the instream lease concerns at least five acres of land and Participants' water rights are Qualifying Water Rights. If the Oregon Water Resources Department authorizes the instream lease and District makes a final determination that Participants' water rights are Qualifying Water Rights, District shall pay Participants an incentive payment of \$30 per acre per year of the instream lease.

Water Rights Incentive Payment with Large Parcel Bonus:

\$30 x _____ Acres x 5 Years = \$ _____ (lump sum)

If District makes a final determination that Participants' water rights are Non-qualifying water rights, District shall not pay Participants an incentive payment or a bonus payment. If District makes a final determination that Participants water rights are Qualifying Water Rights, Participants shall receive any incentive and bonus payments for which Participants qualify under the applicable Enhanced CREP or VEGBAC program descriptions.

- 4) **Costs.** District shall be responsible for all costs associated with obtaining the instream water rights lease, including, but not limited to, any application or processing fees charged by the Oregon Water Resources Department.
- 5) **Payment.** District and Participants acknowledge that under Oregon Water Resources Department rules, instream water rights leases must terminate after five years, and if a lease of longer duration is contemplated, the lease must be re-applied for. Accordingly, all water rights incentive and bonus payments shall correspond to the lease that is then in effect, not future leases that have not yet been approved by the Oregon Water Resources Department. Because it cannot be guaranteed that the Department will approve future leases, all future payments (provided in italics) are estimates.

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Example: An instream lease for a total of ten years is contemplated. The Oregon Water Resources Department approves an initial five-year lease. District pays Participants incentive and bonus payments that correspond to the lease. Five years later, the Oregon Water Resources Department approves another five-year lease. District then pays Participants incentive and bonus payments that correspond to the second lease.

All water rights incentive and bonus payments shall be made on a lump sum basis. If the Oregon Water Resources Department decides not to approve a lease, Participants shall not receive any water rights incentive or bonus payments that correspond to the lease.

- 6) **Out of Stream Use Prohibited.** Following the date when the lease of Participants' water rights instream takes effect, as specified in the Oregon Water Resources Department order approving the lease, Participants shall make no further out of stream use of the water rights, and shall not irrigate the acreage that was appurtenant to the water rights, for the duration of the lease.
- 7) **Mitigation Credits.** District and Participants acknowledge that Clean Water Services (CWS) is the funding source for this agreement, and that CWS may receive mitigation credit for any lease of water rights instream. Accordingly, Participants shall not be entitled to mitigation credit under the same regulations.
- 8) **Access to Property.** District shall have access to Participants' property for the purpose of monitoring compliance with the instream water rights lease. Access shall be in accordance with the Access Plan developed under District and Participants' Enhanced CREP or VEGBAC enrollment agreement.
- 9) **No Condemnation.** District and Participants acknowledge that this is a voluntary transaction and does not constitute an action for condemnation to acquire the water rights that are the subject of this agreement.
- 10) **Breach of Agreement.** A breach of the Enhanced CREP or VEGBAC enrollment agreement shall be considered a breach of this agreement. If Participants breach this agreement, District may, 15 days after providing Participants with written notice of the breach, declare this agreement to be null and void and of no further force and effect. If the breach has not been cured by Participants within such time period, Participants shall pay District all amounts previously paid by District to Participants pursuant to this agreement, if any. The parties agree that except for attorney fees and court costs, such declaration of nullity and return to District of any monies paid to Participants shall be District's only remedies for breach of this agreement.

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11) Attorney Fees. The prevailing party in any dispute arising out of this agreement shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the nonprevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.

12) Effect of Change in Law. If a law is enacted during the time this agreement is in effect that would materially change the terms of this agreement, District may require that Participants elect between the acceptance of modifications to this agreement consistent with the provisions of such law or termination of this agreement.

13) Agreement Includes Program Description. District's Enhanced CREP or VEGBAC program description, as applicable, in effect on the date of this agreement is made a part of this agreement. This includes the definitions of all capitalized terms contained in this agreement.

Certification of Participants:

Claire Gardner	
Print Name	
<i>Claire Gardner</i>	5.26.2019
Landowner Signature	Date

Print Name	
_____	_____
Landowner Signature	Date

Certification of District:

PROJECT MANAGER	

TUALATIN SOIL AND	Date
WATER CONSERVATION DISTRICT	

CONSERVATION DISTRICT	

TUALATIN SOIL AND	Date
WATER CONSERVATION DISTRICT	

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