



State of Oregon
Water Resources Department
725 Summer Street NE, Suite "A"
Salem, Oregon 97301-1271
(503) 986-0900

Application for Short-Term Instream Lease

Pursuant to ORS 537.348(2) and OAR 690-077-0077

Optional Identification by Lessor/Lessee: MITIGATION CREDIT PROJECT
Lease Agreement Number (assigned by WRD): L-494

This Lease Agreement is between:

Lessor #1:

(Name) Kelldano Ranch, LLC
(Mailing address) PO Box 3323
(City, State, Zip Code) Sunriver, OR 97707
(Telephone number) 541-480-0962

Lessor #2, 3, etc.

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

Lessee (if different than Oregon Water Resources Department):

(Name) Deschutes Water Exchange
(Mailing address) PO Box 1560
(City, State, Zip Code) Bend, OR 97709
(Telephone number) 541-322-4079

Trustee:

Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301-1271
(503) 986-0900

~I~ Ownership and Water Right Information

1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 21 S, Range 11 E, Section 19, 29, & 30 and Tax Lot number 900 & 903. If the water right appurtenant to these lands is also appurtenant to lands owned by others, then Attachment 1, (tax lot map of lessor's property) 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 lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. [6, 7, 8, 10, 11, 12 and supplemental rights 2004, 2006, 2007 and 2008](#)

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.5 **Subject water rights.** Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: [6](#)

Priority date: [1901](#) Type of use: [Irrigation and Domestic Use](#)

Legal Season of Use: [April 1 to August 15 & year round for the domestic use \(lks note - only if the domestic use is being leased\)](#)

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T , R , Section , 1/4 1/4 - acres to be leased

Enter additional places of use here, using format above:

Page (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: [49.5](#)

Acre-feet of storage, if applicable:

Maximum rate associated with subject water rights (cfs): [0.71](#)

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

Maximum duty associated with subject water rights (ac-ft): [N/A](#)

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

Conditions or other limitations, if any:

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

1.6 **Validity of rights.** Lessor(s) attests (mark one) that:

the water has been used over the past five years according to the terms and conditions of the owner's 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 owner's 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 which 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. The instream use to be created is described as follows:

Paulina Lake and Paulina Creek

Tributary to Little Deschutes River in the Deschutes Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): Paulina Lake to where Hwy 97 crosses Paulina Creek

Maximum volume in acre-feet: 148.5

Rate in cfs: 0.71

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from May 1 through August 13 (a period of 105 days) (lks note - this is not necessarily the period you need to use. See also third to last paragraph in the letter from the Department).
- Other (describe): to prevent injury and enlargement, 3.0 acre-feet per acre limitation per Watermaster

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 November 30, 2008.

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, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This 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. All Lessors agree 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 690-077-0077.

- 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- 0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term 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 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. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.
- 3.5 Termination provision.**
 For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised (____), with 30 day written notice to the Department.
 For multiyear leases, lessor *shall not* have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.
- 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.** Effective October 1, 2003, pursuant to ORS 536.050 (1)(v) (2003 SB 820), the following fee is included:
 \$200 for an application with four or more landowners or four or more water rights.
 \$100 for all other applications.

Lessor #1: _____ Date: _____

For additional Lessors, type in space for signature and date

Lessee: _____ Date: _____

Other Attachments as Needed:

- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
- Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
- 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 1.5 is checked)
- Attachment 4: Split Season Instream Use Form

Instructions for the Standard Instream Leasing Form

When Do I Use This Form?

Most individuals will use the “Standard Lease Form”. If you wish to lease more than one water right, then also use the “Additional Water Rights Form” for each additional water right to be leased. For more information on the different types of Lease Forms go to <http://www.wrd.state.or.us/programs/stewardship/forms/Instructions/Overall.pdf>.

Instructions for Completing a Lease Form

Lease Agreement Number: Water Resources Department staff in Salem will assign this number.

Required Parties to the Lease

Lessors: The lessor is the owner, or an authorized agent, of the property where, during the term of the lease:

- Water use will be suspended; or
- Water stored in a reservoir will be released for instream use.

If the lands to which the subject water rights are attached fall within the boundaries of an irrigation district or other water purveyor, as defined in ORS Chapters 545, 547, 552, 553, or 554, that organization must be a party to the lease and should be listed as lessor #2.

Spouses and immediate family can all be listed as lessor #1. If another individual or organization also has an ownership in the rights being leased, they should be listed as Lessor #2, #3, etc.

Lessee: The Lessee is normally an organization, agency or individual who may compensate (or provide other consideration of value to) the Lessor for leasing the subject right for instream use.

Trustee: The Trustee is the Oregon Water Resources Department. If a person leases a

right to the State without third party involvement, the Department will also be considered the Lessee.

Other Parties: Private ditch companies, mortgage holders and others may have an interest in the lease. The legally required parties may, at their discretion, add other parties as co-lessors.

Section One

1.1 Provide the legal description for the lands being leased. Attachment 1, Tax Lot Map of Lessor’s Property, is only needed if a portion of the water right is appurtenant to lands owned by others. Tax lot maps can be found at <http://www.gis.state.or.us/data/ormap/statemap.htm>.

1.2 Identify who is Lessor #2, #3, etc., if necessary. If this section does not apply, indicate so.

1.3 Provide an inventory of all of the water rights attached to the property. Water rights information may be found at <http://stamp.wrd.state.or.us/apps/wr/wrinfo/wrinfo.php>. List all supplemental, as well as all primary rights, even if the supplemental rights are still in permit status. Indicate if the supplemental rights are not being leased instream.

Only water right certificates can be leased instream, with the exception that a secondary right to use stored water, even if in permit status, can be leased. If this type of permit is being leased, indicate that it is a permit and list its number.

1.4 Indicate if some or all of the lands are enrolled in the federal Conservation Reserve Enhancement Program. The Department will send a copy of the lease application and the associated order to the Farm Services Administration.

1.5 Complete a water right profile for each right, or portion of a right proposed to be leased for instream use. The priority date, type of use, and other information describing the right will be found on your certificate, which can be viewed on-line at <http://stamp.wrd.state.or.us/apps/wr/wrinfo/wrinfo.php>. (Note: Profiles of supplemental rights are required only when these rights are also proposed to be leased.)

“Priority date” should include the day and month, if applicable, in addition to the year.

If the entire water right is being leased, check the “Yes” box indicating this and skip to the number of acres being leased.

If the entire water right is not being leased, check the “No” box indicating this and fill in the remainder of Section 1.5.

“Acre-feet of storage” is the quantity of water that is released from a reservoir. If no reservoir is involved, indicate “N/A.”

“Maximum rate associated with leased rights” should show the total rate of use. For example, if 40 acres are being leased instream and the rate is described as 1/80 cfs/acre, then the rate would be 0.5 cfs (40 acres * 1/80 cfs/acre).

“Maximum duty associated with leased rights” should show the total duty. For example, if 40 acres are being leased instream and there is a 4 ac-ft duty per acre the maximum duty would be 160 ac-ft (40 acres * 4.0 ac-ft/ac). If no duty is listed on the certificate or in the decree, then “N/A” should be indicated.

Attachment 3, a detailed map illustrating lands under subject rights to be leased, is required if only part of a right is being leased instream. If a map is required it needs to include the Township, Range, Section, $\frac{1}{4}$ $\frac{1}{4}$, a north arrow, scale and crosshatching or other photocopyable means of differentiating the lands being leased from the remaining lands.

1.6 Only valid rights are eligible to be leased for instream use. Except for municipal water rights, a water right that has not been used for five or more years may no longer be valid under Oregon law. Once a water right is forfeited for non-use, resuming use will not make the right valid again. If the Department reasonably suspects the right may have been forfeited, it may refuse to execute the lease, or may require an affidavit attesting to the use.

By signing this Lease Agreement, Lessor #1 attests that the rights proposed to be leased have been beneficially used under the terms and conditions of the rights within the last five years. If the rights are for irrigation, the Lessor also attests that such irrigation took place on all lands being leased. If other water purveyors, such as an Irrigation District are party to the lease, the District may confirm that the water right has been exercised.

Section Two

2.1 Check one or more boxes to identify the public use(s) to be served by the new instream use. The use(s) may be to:

- Mitigate for a deficiency in the water supply of an existing instream right or minimum flow;
- Mitigate for a deficiency in the water supply of an instream water right application or scenic waterway (Diack) flow; or
- A specific use or need identified by Oregon Department of Fish and Wildlife, Department of Environmental Quality, or Oregon Parks and Recreation Department.

If an instream right or minimum streamflow already exists for the reach and the right proposed to be leased instream is senior to the existing right, then, unless otherwise indicated, the senior priority date of the right being leased will be substituted for a portion of the existing instream right. If the priority date is junior to an existing instream right, then the applicant should submit additional information (such as a letter from ODFW, DEQ, or OSP&RD) describing the instream benefits of making the rights additive.

2.2 This section is best completed in close consultation with the local district watermaster (a listing is available at <http://www.wrd.state.or.us/staff/index.shtml>), who will be responsible for making a number of decisions relating to the reach, amount, timing, and duration of the instream use. Variables among water rights include:

- The way in which use under the right is distributed throughout the season.
- Use allowed during a certain period of the year only.
- Specific provisions relating to total volume and rate.
- Particular conditions of individual rights which will also apply to the new use.

The watermaster will:

- Review factors such as losses, return flow, and consumptive use in determining whether the proposed location of the new use will be allowed.
- Decide if and how far the Department can protect the new instream use past the original point of diversion. (In some instances, the new use may need to be broken into reaches of decreasing amounts. The reach below the original point of diversion would be managed like the shepherding of stored water.)
- Identify any conditions to be placed on the new use, which are necessary to prevent or mitigate injury to existing rights.

If a water right is used at its maximum rate for the entire season, it will frequently exceed its allowable duty (volume), and/or need to have the season of use reduced to prevent enlargement or injury of other water rights.

2.3 The lease term begins on the date the lease application is approved by the Department, unless indicated differently in the order approving the lease. The annual term of the lease cannot fall outside any seasonal constraints of the subject water right. For seasonal uses, the term of the lease terminates on the last day use is allowed under the subject right and the basin's decree; for rights with no season, the lease terminates on December 31 of

the last year of the lease. Note that except for split-season instream use leases, only the instream use can occur during the term of the lease. Also, the term of the lease may be longer than the period for which water is protected instream under Section 2.2.

2.4 This section contains standard lease provisions.

Section Three

3.1 to 3.4. These sections contain standard lease provisions.

3.5 For multiyear leases, identify whether the lessor has the option of terminating the lease each year. The 30-day written notice to the Department must occur prior to the water being protected instream.

To clarify the date when the water being leased is exercised, a date may be included. This information may be found in Section 2.2 under "Conditions to prevent injury." If no condition is listed in Section 2.2, then the date would be the first day of "Legal Season of Use" found in Section 1.5.

3.6 This section contains standard lease provisions.

3.7 Include the appropriate fee by check or money order made out to the Oregon Water Resources Department. Applications received without the proper fee will be returned.

Next Steps

The signed Lease Application should be sent to the Water Resources Department office in Salem (725 Summer Street, NE; Suite "A", Salem, Oregon 97301). Once the lease application is received, two steps simultaneously take place:

- The watermaster or other Department field staff is contacted to prepare a written assessment of whether the lease agreement meets the requirements to suspend the original use and avoid injury or enlargement.
- The lease application is included in the Department's weekly public notice mailing. This mailing initiates a 21-day public comment period and is sent to any water purveyor listed in the proposed agreement, posted in the affected watermaster district

office, and available at http://www.wrd.state.or.us/cgi-bin/notices.pl?water_rights.

If the watermaster review indicates that no injury or enlargement will occur and no comments are received, the Director presumes that no injury or enlargement of a water right would result from the proposed Lease Application. The Director, or designee, would sign an order that executes the lease.

If the watermaster review indicates that injury or enlargement will occur, or if other comments were received, they are reviewed by all the parties to decide whether to execute the lease, execute with modifications, or deny the lease.