

Lease Agreement Number 107

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

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

This Lease Agreement is between:

Lessor:

Fugate Farms, LLC
Route 1, Box 968
Bandon, OR 97411
(541) 347-3927 - Phone

The water right to be leased is located in Coos County

Lessee:

State of Oregon

Trustee:

Oregon Water Resources Department
158 12th Street. NE
Salem OR 97310
(503) 378-8455

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- 1.1 Lessor is the owner, or authorized agent for owner (Exhibit A), of property highlighted in Exhibit B.
- 1.2 Section 1.2 is not applicable.
- 1.3 Exhibit C contains copies of all certificated, decreed or permitted rights attached to the property in Exhibit B. Those rights are listed below as follows:

Certificate No. 73636
- 1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

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

Certificate No.: 73636
Source: Two Mile Creek

Priority date: October 22, 1946
Type of use: Irrigation
Place of use (map of irrigated lands is in Exhibit D):
T 29S, R 15W, S 24 NE1/4 NE1/4, NW1/4 NE1/4
T 29S, R 15W, S 13 SE1/4 SW1/4, SW1/4 SE1/4
Number of acres, if for irrigation 53.0
Rate: 0.66 cfs
Duty: 132.5 acre-feet (2.5 acre-feet per acre)
Season of Use: March 1 - October 31
Point(s) of Diversion (POD): Portable pumping
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 right or permit. If the right is for irrigation, beneficial must have occurred in the last five years on all lands indicated in Exhibit D.
- 1.6 **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 690-77-077.
- 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.

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- 2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is:

A specific use or need identified by DEQ, Parks or ODFW and further described in *Exhibit E*.

- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

Two Mile Creek, tributary to Pacific Ocean in the South Coast Basin
Location: RM 1.5 to mouth of Two Mile Creek
Priority date: October 22, 1946
Use: Described in Section 2.1, above
Total volume: 132.5 acre-feet
Rate in cfs: 0.66 cfs
Period of use: March 1- October 31

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis up to the rate from June 22 until September 30, or until such time that the total duty for the irrigation season is met.

- 2.3 **Term of lease.** This Lease shall commence on March 1, 2000 (not before execution by the parties) and continue through October 31, 2001.
- 2.4 **Compensation.** The Lessor has agreed to lease subject water right for the sum of \$1.00, other valuable considerations and for the benefit 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:

Weekly discharge readings from the rated weir during the time period of the lease will be telephoned, faxed, or e-mailed by Lessor to the Watermaster's office.

- 2.7 **Modification or termination provisions.**

Lessor shall have option of terminating lease for the 2001 irrigation season with written notice 30 days prior to March 1, 2001.

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- 3 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is 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/will be in place so that WRD staff may regulate use of water under the subject right to ensure water is not diverted or applied on lands to which subject right is attached.
- 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:

Lessor will construct and install a 90 degree V-notch weir and a porcelain enamel iron staff gauge with zero on the gauge corresponding to the point or crest of the V-notch. The installation will be made to the watermaster's satisfaction so that accurate measurement on the instream rights can be made.

Recognizing the possibility of significant flows within Two Mile Creek prior to June, in the interest of maintaining the safety of the culvert and road fill over Two Mile Creek, the Department does not require the installation of the weir or staff gauge prior to June 1 of each year. For the same reason, the Department recommends removing the weir after the irrigation season ends on October 31st.

Watermaster: John Drolet

District: 19



John Drolet

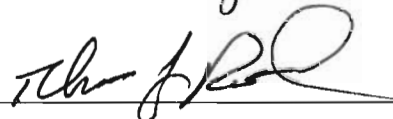
John Drolet
Field Operations, WRD
Coos County Courthouse Annex
290 N. Central Street
Coquille, OR 97423
(541) 396-3121, Ext. 254 - Phone
(541) 396-6233 - Fax
John.P.DROLET@wrd.state.or.us

Date: 01-05-00

~IV~

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.

Lessor: Sherr Fugate Date: 12-15-99

So ordered by Trustee:  Date: 2-15-2000

Exhibits:

- Exhibit A: Copy of Property Deed/Power of Attorney Documentation (if needed)
- Exhibit B: Tax Lot Map of Lessor's property
- Exhibit C: Copies of certificates, permits and decreed rights to be leased
- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use