

Lease agreement # 10

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

This Lease Agreement is between:

Lessors:

Laura Smith Ellis and G.T. Smith, Trustees of the Benny and Laura Ellis Trust,
dated July 14, 1994
18485 N. Applegate Road
Grants Pass, OR 97527
(541) 846-6521-Phone (Laura)
(541) 488-1200-Phone (G.T.)
(541) 488-3200-Fax (G.T.)

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

Lessee:

Oregon Water Trust
111 SW Front Avenue
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 Lessors are the authorized agents 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 rights attached to the property in

Exhibit B. The rights are listed below as follows:

Certificate Nos. 57592, 57595 and 62400

- 1.4 **Subject Water Rights.** Lessors propose to lease a portion of water right No. 57592 and all of water right No. 57595 listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 57592

Source: Applegate River

Priority date: April 16, 1912

Type of use: Irrigation

Place of use: (map of irrigated lands is in *Exhibit D.*)

T 38S, R 4W, S 21, NE 1/4, NE 1/4-19 acres

T 38S, R 4W, S 21, NW 1/4, NE 1/4-24.3 acres

T 38S, R 4W, S 21, NE 1/4, NW 1/4-5.7 acres

Number of acres, if for irrigation: 49 acres (44 as part of lease)

Acre-feet of storage: None

Rate: 0.61 cfs (0.548 cfs to be leased)

Duty: None

Season of use: April 1-October 31

Point of diversion (POD):

T 38S, R 4W, S 21, NE 1/4, NE 1/4, W.M.; 1130 FEET SOUTH & 10 FEET WEST
FROM NE CORNER SECTION 21

Conditions or other limitations, if any: None

Water Right Identification No.: 57595

Source: Applegate River

Priority date: July 21, 1947

Type of use: Irrigation

Place of use: (map of irrigated lands is in *Exhibit D.*)

T 38S, R 4W, S 21, NW 1/4, NE 1/4-2.64 acres

T 38S, R 4W, S 21, NE 1/4, NW 1/4-27.60 acres

Number of acres, if for irrigation: 30.24 acres

Acre-feet of storage: None

Rate: 0.38 cfs

Duty: 136.08 acre feet

Season of use: April 2-October 31

Point of diversion (POD):

T 38S, R 4W, S 21, NW 1/4, NE 1/4, W.M.; 1280 FEET SOUTH & 1830 FEET

WEST FROM NE CORNER SECTION 21

Conditions or other limitations, if any: None

Water Right Identification No.: 62400

Source: Applegate Lake Reservoir, a Tributary of the Applegate River

Priority date: July 22, 1981

Type of use: Supplemental irrigation

Place of use: (map of irrigated lands is in *Exhibit D.*)

T 38S, R 4W, S 21, NW 1/4, NE 1/4-26.94 acres

T 38S, R 4W, S 21, NE 1/4, NW 1/4-33.30 acres

T 38S, R 4 W, S 21, NE 1/4, NE 1/4-19.00 acres

Number of acres, if for irrigation: 79.24 acres

Acre-feet of storage: None

Amount: 50 acre feet

Duty: 4.5 acre feet per acre

Season of use: April 2-October 31

Point of diversion (POD):

T 38S, R 4W, S 21, NE 1/4, NE 1/4, and NW 1/4 NE 1/4W.M.; 1280 FEET SOUTH & 1830 FEET WEST FROM NE CORNER SECTION 21. Applegate Dam located within T 40 S, R 4 W, Section 25, W.M.

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessors attest 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 and, if the rights are for irrigation, on all lands indicated in *Exhibit D.*
- 1.6 **Lease.** 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.

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:

provided by evidence contained in Exhibit E, such as a signed statement by lessee, or other party, explaining how the lease will benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public use.

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

No. 57592

Applegate River, tributary to Rogue River in the Rogue Basin

Location: RM 25.3 to the mouth of Applegate River

Priority date: April 16, 1912

Use: Described in Section 2.1, above

Total volume: None

Rate: 0.548 cfs

Period of use: April 1-October 31

Conditions to prevent or mitigate injury, if any: None

No. 57595

Applegate River, tributary to Rogue River in the Rogue Basin

Location: RM 25.3 to the mouth of Applegate River

Priority date: July 21, 1947

Use: Described in Section 2.1, above

Total volume: 136.08 acre feet

Rate in cfs: 0.38 cfs

Period of use: April 2-October 31

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate from May 5 until October 31, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 180 days to insure the duty limitation is not exceeded during the period of use described above.

No. 62400

Applegate Lake Reservoir, a tributary of the Applegate River, tributary to Rogue River in the Rogue Basin

Location: RM 25.3 to the mouth of Applegate River

Priority date: July 22, 1981

Use: Described in Section 2.1, above

Total volume: 50 acre feet

Rate in cfs: Not applicable (see below).

Period of use: Not applicable (see below).

Conditions to prevent or mitigate injury, if any: This is a supplemental irrigation right to the primary irrigation and will not be used to irrigate any lands during the term of this lease, nor will it be applied toward the instream flow right that is the subject of this lease.

- 2.3 **Term of lease.** This Lease shall commence on April 1, 2000 (not before execution by the parties) and continue through October 31, 2001.
- 2.4 **Compensation.** Lessors have agreed to lease the water right 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.** 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 Lessors are 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: Certificate 62400 which provides supplemental irrigation water to 79.24 acres listed in Certificates 57592 and 57595 will not be exercised.

Watermaster:
 Larry Menteer
 Field Operations, WRD
 10 South Oakdale, Room 106
 Medford, OR 97501
 (541) 776-7056-Phone
 (541) 776-7189-Fax
Larry Menteer
 Date: *12-1-99*

District: *13*

IV.

The Undersigned Lessors, 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 #1: *[Signature]* Date: *12-17-1999*

Lessor #2: *[Signature]* Date: *12-17-1999*

Lessee: OREGON WATER TRUST Date: *12-6-1999*

BY: *[Signature]*
 So ordered by Trustee: *[Signature]* Date: *1-24-2000*

Director, Oregon Water Resources Department

Effective Date of Lease Agreement: