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Lease Agreement Number 88

JUN 4 1999

WATER RESOURCES DEPT.
SALEM, OREGON

**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:

Lessors:

Harold E. and Jane Wyman
20250 Marsh Road
Bend, OR 97701
(541) 389-8583

The water right to be leased is located in Grant County

Lessee:

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

Trustee:

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

~I~

- 1.1 Lessors are the owners (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 / Permit No.: C-68356 / P-33401
Priority date: March 29, 1968 Type of use: Irrigation
Place of use:

0.1 acres in SW¹/₄ NW¹/₄
20.1 acres in NW¹/₄ SW¹/₄

Section 4
3.2 acres in NE¼SE¼
Section 5
T9S R27E W.M.

Number of acres, if for irrigation: 23.4
Rate: 1/40 cfs per acre
Duty: Not to exceed 5 acft per acre during irrigation season
Season of Use: April 1 through September 30
Point of Diversion (POD): 5170 feet South and 1430 feet East from the NW¼ Corner of Section 4 being within the NE¼NW¼ Section 9 T-9S R-27E W.M.

- 1.4 **Subject Water Rights.** Lessors propose to lease all of the water rights listed in 1.3, above.

The right to be leased are further described as follows:

Certificate / Permit No.: C-68356 / P-33401
Priority date: March 29, 1968 Type of use: Irrigation
Place of use:

0.1 acres in SW¼ NW¼
20.1 acres in NW¼ SW¼
Section 4
3.2 acres in NE¼SE¼
Section 5
T9S R27E W.M.

Number of acres, if for irrigation: 23.4
Rate: 0.59 cfs
Duty: Not to exceed 117 acft during the season of use
Season of Use: April 1 through September 30
Point of Diversion (POD): 5170 feet South and 1430 feet East from the NW¼ Corner of Section 4 being within the NE¼NW¼ Section 9 T-9S R-27E W.M.

- 1.5 **Validity of Rights.** Lessors have stated that the subject water right is not subject to nonuse under ORS 540.610 (2) (e) due to enrollment of the property, depicted as Exhibit D, into the Federal Conservation Reserve Program. As identified in ORS 540.610 (2) (e), presumption of forfeiture due to enrollment in this program can be rebutted and the validity of the subject water rights are therefore intact.
- 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 has been determined to consist of benefits to fish life as described by a statement issued from the Oregon Department of Fish and Wildlife contained in Exhibit E.

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

North Fork John Day River

Tributary to John Day River in the John Day River Basin.

Location From river mile 12± to confluence with the John Day River.

Priority date: March 29, 1968

Use: Described in Section 2.1, above

Total maximum volume: 117 acft

Rate in cfs: 0.59

Period of use: April 1 through September 30.

- 2.3 **Term of lease.** This Lease shall commence upon approval of the lease and continue through September 30, 1999.

- 2.4 **Compensation.** The Lessors have agreed to lease subject water right for the sum of \$1.00, or 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.** Lessors intend to manage and participate in the protection of the instream use by not irrigating during any irrigation season the lease is in affect.
- 2.7 **Modification or termination provisions.** No provisions are applicable to this lease.

~III~

- 3.0 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:
- 3.1 Lessors are currently entitled to appropriate water under the water rights described in Section 1.4.
- 3.2 The landowner agrees not to reinstate the method of water conveyance and irrigate in order to ensure water is not diverted or applied on lands to which subject right is attached during the lease period.
- 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: Two clerical errors appear to have been introduced into Certificate No. 68356 which describes 3.2 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 9 South, Range 27 East, W.M. in addition to the legal point of diversion being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9. This certificate was issued to describe water rights confirmed by Certificate No. 64757 not modified by Special Order Volume 48, page 102 issued on February 4, 1994. Certificate No. 64757 identifies 3.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 9 South, Range 27 East, W.M. and states the legal point of diversion to be within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9; this information is also verified by various transfer application maps and other certificates issued since the original water right was perfected. It is therefore the opinion of the Watermaster that the location of the place of the use of 3.2 acres being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the point of diversion being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 described in Certificate No. 68356 is erroneous; the correct place of use is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the correct point of diversion is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$. The Watermaster has determined to process the lease as such.

Watermaster: Kelvin Rose District 4

Oregon Water Resources Department
Grant County Courthouse
201 South Humbolt Street, Suite 180
Canyon City, Oregon 97820

Date: 6/2/99

The Undersigned Lessors and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete.

Lessor: Harold E. Kipman Date: 25 May 1999

Lessor: Jane C. Kipman Date: 25 May 1999

So ordered by Lessee/Trustee: Rufus A. Smiley Date: 7/4-99