

Lease Agreement Number 112

**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 #1:**

*Cushing-Weatherford Family Trust  
Joyce V. Weatherford  
Jim Cushing, M.D.  
31352 Monterey Street 70 South La Senda drive  
Laguna Beach, CA 92677 92651*

**Lessor #2:**

*Alice W. Harper <sup>dp</sup> 6/13/02  
Lillian I. Weatherford, as trustee of and for  
the benefit of, the Lillian I. Weatherford  
Revocable Trust*

**Lessor #3:**

*Alice W. Harper  
P.O. Box 8  
Ione, Oregon 97843*

The water right to be leased is located in Gilliam County

**Lessee:**

*Oregon Water Resources Department  
158 12<sup>th</sup> Street N.E.  
Salem, OR 97310  
(503) 378-8455*

**Trustee:**

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

~I~

- 1.1 Lessor #1,2 and 3 are the owners, or authorized agents for owner (Exhibit A), of property highlighted in Exhibit B.
- 1.2 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. 3339 Permit No.2057

Page No.25032, John Day River Decree

- 1.3 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The rights to be leased are further described as follows:

Certificate (Decree): 25032

Priority date: 1906

Type of use: irrigation, domestic and stock

Place of use:

9.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$

15.4 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$

18.6 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$

Section 30

4.4 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$

0.2 acre in the SE $\frac{1}{4}$  NE $\frac{1}{4}$

Section 31

13.2 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$

7.2 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$

7.0 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$

14.4 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$

3.6 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$

3.4 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$

Section 32

Township 1 South, Range 22 East, W.M.

Number of acres, if for irrigation 96.4 acres

Acre feet of storage: none

Rate: 1/40th of one cubic foot per second per acre prior to June 1<sup>st</sup>, and thereafter not to exceed 1/80th of one cubic foot per second per acre during the remainder of the irrigation season.

Duty: a quantity of water not to exceed one acre foot per acre during any calendar month prior to June 1<sup>st</sup>, and not to exceed, during the irrigation season, four acre feet per acre.

Season of Use: April 1<sup>st</sup> to September 30<sup>th</sup> of each year

Point(s) of Diversion (POD): Cripe's ditches; Section 30, Township 1 South, Range 22 East, W.M.

Conditions or other limitations, if any: none

Certificate: 3339

Priority date: June 9, 1914

Type of use: irrigation

Place of use:

26.6 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$

17.2 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$

20.4 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$

Section 30

19.4 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$

Section 31

21.8 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$

18.5 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$

12.2 acres in the SW¼ NW¼  
19.8 acres in the NE¼ SW¼  
8.2 acres in the SE¼ SW¼  
3.0 acres in the NW¼ SE¼

Section 32

Township 1 South, Range 22 East, W.M.

Number of acres: 167.1

Acre feet of storage: none

Rate: 1/80th of one cubic foot per second per acre

Duty:

Season of Use: April 1<sup>st</sup> to September 30<sup>th</sup> of each year

Point(s) of Diversion (POD): N. 5 deg. 10'W. 1104 feet from ¼ corner between Section 5, Township 2 South, and Section 32, Township 1 South, Range 22 East, W.M., being within the NE¼SE¼SW¼ of said Section 32.

Conditions or other limitations, if any: none

- 1.4 **Validity of Rights.** Lessor #1 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.
- 1.5 **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.
- 1.6 **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.
- 1.7 **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 a specific need identified by ODFW and further described in *Exhibit E*.
- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

Certificates: 25032 and 3339

Rock Creek

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

Location Cripe's ditches; NW¼SE¼, Section 30, Township 1 South, Range 22 East, W.M. and N. 5 deg. 10'W. 1104 feet from ¼ corner between Section 5, Township 2 South, and Section 32, Township 1 South, Range 22 East, W.M., being within the NE¼SE¼SW¼ of said Section 32. To the next pod in the system with a junior priority.

[Identify applicable points or reaches of instream use by river mile, description or map.]

Priority date: 1906 and June 9, 1914

Use: Instream described in Section 2.1, above

Total volume: certificate 25032 is 385.6 acre-feet and certificate 3339 is

Rate in cfs: 1906 = 2.41 cfs (April 30<sup>th</sup> through May 31<sup>st</sup>), 1.21 cfs (June 1<sup>st</sup> through September 30<sup>th</sup>).

June 9, 1914 = 2.0 cfs.

Period of use: April 1 to Sept. 30

Conditions to prevent or mitigate injury, if any:

- 2.3 **Term of lease.** This Lease shall commence on April 1, 2000 (not before execution by the parties) and continue through Sept. 30, 2002
- 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). No party is required to continuously measure the flow of the waterway described in Section 2.2.

### Optional Provisions

- 2.5 **Additional monitoring.** Lessee intends to manage and participate in the protection of the instream use by: possibly collecting information for calculating stream discharge.
- 2.6 **Modification or termination provisions.** None

### ~III.~

- 3.0 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:
- 3.1 Due to the lack of comprehensive, current maps, the Place of Use identified by all the Water Rights of record for subject land are somewhat undefinable. The portions of the Water Rights named herein have been identified based on the best of field staff's ability and experience; it is the intent of this lease agreement to include all valid Water Rights appurtenant to the subject property.
- 3.2 Lessor #1 is currently entitled to appropriate water under the water rights described in Section 1.4.
- 3.3 A suitable control may be installed 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.
- 3.4. 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.

Watermaster: Tom Smith District 21  
(Address & telephone) (541) 384-4207  
PO Box 427  
Condon OR 97823

Date: 2-14-00

~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 #1: Tom Smith Trust Date: 02/10/00

Lessor #2: Tom Smith Trust Date: 01/30/00

Lessee #3: Mr. W. H. Hays Date: 2/14/00

So ordered by Trustee: Tom Smith Date: 4/11/2000

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

Other Exhibits As Needed:

- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use
- Exhibit F: Information related to Optional Provisions, such as Additional Monitoring or Modifications or Termination of lease