

Lease Agreement Number: 198

**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:

The Stanek Loving Trust
(Emma Stanek)
3006 SE Baypoint Dr.
Vancouver, WA 98683

John Fulton and Ruth Fulton
3865 Fifteenmile Road
The Dalles, OR 97058
(541) 298 5845

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

Lessee:

Oregon Water Trust
111 SW Naito Parkway
Suite 404
Portland, OR 97204
(503) 226-9055-Phone
(503) 226-3480-Fax

Trustee

Oregon Water Resources Department
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739-Phone
(503) 378-2496-Fax

I.

1.1 Lessor is the owner, or the authorized agent for the owner (*Exhibit A*) of the 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 Nos.: 5652 and 63645. Certificate number 30858 is also attached since it is a supplemental right, and will not be exercised in accordance with Section 1.7.

- 1.4 **Subject Water Rights.** Lessor proposes to lease all of certificate numbers 5652 and 63645 listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 5652

Source: Eightmile and Fivemile Creeks

Priority date: 1878 (Fivemile) and 1875 (Eightmile)

Type of use: Irrigation

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

T 1N, R 14E, S 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -5.3 acres (Fivemile Creek)

T 1N, R 14E, S 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -19.4 acres (Fivemile Creek)

T 1N, R 14E, S 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -11.7 acres (Fivemile Creek)

T 1N, R 14E, S 9, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -3.4 acres (Fivemile Creek)

T 1N, R 14E, S 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -0.7 acre (Eightmile Creek)

T 1N, R 14E, S 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ -1.8 acres (Eightmile Creek)

T 1N, R 14E, S 9, SW $\frac{1}{4}$ NE $\frac{1}{4}$ -6.4 acres (Eightmile Creek)

T 1N, R 14E, S 9, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -13.2 acres (Eightmile Creek)

T 1N, R 14E, S 9, SE $\frac{1}{4}$ NW $\frac{1}{4}$ -1.6 acres (Eightmile Creek)

Number of acres, if for irrigation: 39.8 acres (Fivemile Creek)

23.7 acres (Eightmile Creek)

Rate: Shall be limited to the diversion of not to exceed one acre foot per acre during any 30 day period up to July 1st of each year and thereafter not to exceed three-fourths acre foot per acre during any 30 day period: provided, that the total quantity of water diverted during the irrigation season shall not exceed three acre feet per acre; and provided further that the rate of flow shall not exceed one-fortieth of a second foot per acre after July 1st, except in case of rotation.

Duty: 190 acre feet (3 acre feet per acre)

Season of use: Irrigation season

Point(s) of diversion (POD):

Eightmile water right: 1584' S & 2326' E and 260' S & 1450' E from NW corner of Section 9, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, T 1 N, R 14 E, W.M.

Fivemile water right: Ketchum Ditch #1 - 1380 ft. N and 360 ft E from the SW cor of

Section 9, being in the NW of SW of Sec 9, T 1 N, R 14 E, WM
Fivemile water right: Ketchum Ditch #2 - 1600 ft. N and 320 ft E from the SW cor of
Section 9, being in the NW of SW of Sec 9, T 1 N, R 14 E, WM.
Conditions or other limitations, if any: None

Water Right Identification No.: 63645

Source: Eightmile Creek and a Spring

Priority date: September 22, 1980

Type of use: Irrigation and Supplemental Irrigation

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

T 1N, R 14E, S 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -0.8 acres (primary)

T 1N, R 14E, S 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$ -0.1 acres (primary)

T 1N, R 14E, S 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -2.9 acres and stock (primary)

T 1N, R 14E, S 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -2.5 acres (primary)

T 1N, R 14E, S 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ -1.2 acres (primary)

T 1N, R 14E, S 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -4.0 acres (supplemental)

T 1N, R 14E, S 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -6.3 acres (supplemental)

T 1N, R 14E, S 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -7.9 acres (supplemental)

Number of acres, if for irrigation: 7.5 acres (primary)

18.2 acres (supplemental)

Rate: 0.325 cfs (0.32 cfs irrigation, 0.005 livestock)

0.093 cfs for primary right

0.227 cfs for supplemental right

Duty: 3 acre feet per acre

Season of use: Irrigation season

Point(s) of diversion (POD): NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 4, T 1 N, R 14 E, W.M.
NW $\frac{1}{4}$ Section 31, T 1 S, R 15 E, WM; creek - 300' S and 1790' W; spring - 1900' S
and 1450' W; both from center $\frac{1}{4}$ corner of Sec. 4

Conditions or other limitations, if any: None

1.5 **Validity of Rights.** Lessor #1 attests 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

that the water right is not subject to forfeiture under ORS 540.610

1.6 **Lease.** Lessor agrees 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:

Water Right Identification No. 5652

Eightmile Creek, tributary to Fifteenmile Creek and Fivemile Creek, tributary to Eightmile Creek

Location: Eightmile Creek water right: POD to mouth of Eightmile Creek

Fivemile Creek water right: POD to mouth of Fivemile Creek

Priority date: 1878 (Fivemile) and 1875 (Eightmile)

Use: Instream (described in section 2.1, above)

Total volume: 3 acre feet per acre (119.4 acre feet, Fivemile; ^{71.10 BR} 71.11 acre feet, Eightmile)

Rate: 0.4975 (Fivemile) & 0.29625 cfs (Eightmile)

Period of use: Irrigation season

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis at 0.4975 cfs for the Fivemile Creek water and 0.29625 cfs for the Eightmile Creek water from June 1 through September 28, or until such time that the total duty for the irrigation season is met or unless regulated off by the watermaster for prior rights.

Water Right Identification No.: 63645

Source: Eightmile Creek and a Spring

Priority date: September 22, 1980

Use: Instream (described in section 2.1, above)

Location of use: POD to mouth of Eightmile Creek

Rate: 0.093cfs for primary right (0.005 cfs for livestock not included in lease)

Duty: 22.5 acre feet (3 acre feet per acre)

Period of use: Irrigation season

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis at 0.093 cfs from June 1 through September 28, or until such time that the total duty for the irrigation season is met or unless regulated off by the watermaster for prior rights.

- 2.3 **Term of lease.** This Lease shall commence on April 1, 2001 (not before the date of final

execution by the parties) and continue through September 30, 2002.

- 2.4 **Compensation.** Lessor has agreed to lease the water rights 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.

III.

- 3 **Watermaster review.** By signature below, the watermaster for the district where the subject water rights are 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 in place so that WRD staff may regulate use of water under the subject rights to ensure water is not diverted.
- 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: None

Watermaster: Larry Toll

District: 3


Larry Toll

5/11/2001
Date

Larry Toll
421 E. 7th St.
Courthouse Annex B, Room 218
The Dalles, OR 97058
(541) 298-4110

IV.

The Undersigned Lessor, 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: John C. Fulton Date: 5-12-01

Lessor #2: Ruth C. Fulton Date: 5-12-01

Lessor #3: Emma Stueck Date: 5-31-01

Lessor #4: _____ Date: _____

Lessee: Edna Hudson (for Oregon Water Trust) Date: 05/08/01

So ordered by Trustee: [Signature] Date: JUL 19 2001

⁶⁰⁴ Director, Oregon Water Resources Department

- Exhibits:
- Exhibit A: Proof of property ownership (copy of property deed)
 - Exhibit B: Map of Lessor's property
 - Exhibit C: Copies of all certificates, permits and decreed rights attached to property shown in Exhibit B
 - Exhibit D: Detailed map illustrating lands irrigated by subject rights
 - Exhibit E: Identification of public use to be served by instream use