

Lease Agreement Number (assigned by WRD): L-350

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

**Short-Term Water Right Lease Agreement  
Pursuant to ORS 537.348(2) and OAR 690-077-0077  
for  
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

(Name) Stephen Hess  
(Mailing address) P.O. Box 111  
(City, State, Zip Code) Bratty Oregon 97621  
(Telephone number) (541) 533-2225

If additional landowners, enter landowner information below

N/A

The water right to be leased is located in Klamath County

**Lessee (if different than Oregon Water Resources Department):**

(Name) \_\_\_\_\_  
(Mailing address) \_\_\_\_\_  
(City, State, Zip Code) \_\_\_\_\_  
(Telephone number) (\_\_\_\_) \_\_\_\_\_

**Trustee:**

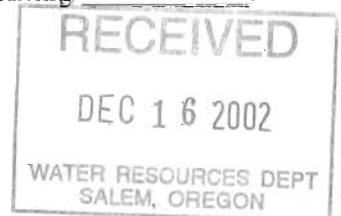
Oregon Water Resources Department  
158 12<sup>th</sup> Street NE  
Salem OR 97301  
(503) 378-8455

~I~

1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 36, Range 11, Section 12 and Tax Lot number 1500. If the water right appurtenant to these lands is also appurtenant to lands owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.

1.2 Lessor #2 is the (Check one):

- Not applicable
- Official representative of \_\_\_\_\_, the irrigation district which conveys water to the subject water rights.
- Another party with an interest in the subject water rights representing \_\_\_\_\_.



1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. 38089

Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program.

- Yes
- No

1.4 **Subject Water Rights.** Lessor proposes to lease the water rights listed in 1.3. The right(s) to be leased are further described as follows:

Certificate No.: 38089  
Priority date: 11/9/62 Type of use: Irrigation  
Legal Season of Use (if not listed on the certificate): year-round

Is the entire water right certificate being leased?

- Yes
- No

If no, list the acres to be leased by legal description of township, range, section, and ¼ ¼ which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T 36, R 11, Section 12, E ¼ S ¼ - 139.7 acres to be leased  
Enter additional places of use here, using format above:

Page \_\_\_\_\_ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 139.7

Acre-feet of storage, if applicable: N/A

Rate associated with leased rights (cfs): 1.75 ( $139.7 \div 256.7 \times 3.21 = 1.75$ )  
(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 419.1  
(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: None

If you need to enter another leased right, please use the additional water rights form.

1.5 **Validity of Rights.** Lessor(s) attests (mark one) 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 as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)(\_\_\_\_)(include necessary supporting documentation as Attachment 3).

~II~

2.1 **Public Use.** This lease will increase streamflows which will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

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

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

(Stream name) Whiskey Creek  
Tributary to Sprague River in the Klamath Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be protected at the point of diversion Lot 10 (SW 1/4 NE 1/4) Section 13, T36S, R. 11E, W. 4M, 180 FT. West and 1790 FT. South from corner NE 1/4 NE 1/4  
Total volume in acre-feet: 419.1  
Rate in cfs: 1.75

Section 13  
amended by applicant  
1-13-03 to protect  
waters to mouth of  
Whiskey Cr.  
- amended to May ->  
August by applicant  
1-13-03

**Conditions to prevent injury, if any:**

- None
- The instream flow will be allocated on a daily average basis up to the described rate from April 1 through October 31
- Other (describe): \_\_\_\_\_

If you need to enter more instream uses, please use the additional water rights form.

2.3 **Term of lease.** This lease shall terminate on Oct 31, 2007.

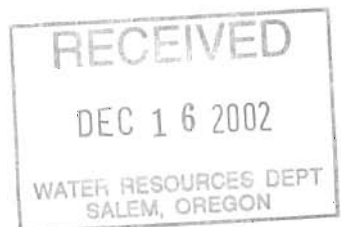
2.4 **Compensation.** The Lessor has agreed to lease subject water right for the sum of \$1.00, or other valuable considerations and for the benefit of the state of Oregon.

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.

2.6 **Termination provision.**

- For multiyear leases, lessor shall have the option of terminating the lease each year, prior to the lease being exercised, with 30 day written notice to the Department.
- For multiyear leases, lessor shall not have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.

~III~



- 3.1 **Accuracy.** 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. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.
- 3.2 **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 690-077-0077.
- 3.3 **Precedent.** If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077- 0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.
- 3.4 **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. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.

Lessor #1: Stephen Hess Date: 12/12/02

If additional landowners, include signature and date.

Lessee: \_\_\_\_\_ Date: \_\_\_\_\_

- 3.5 Allocation of water to the 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. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

Other Attachments As Needed:

- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
- Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
- Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.5 is checked)
- Attachment 4: Split Season Instream Use Form