

Lease Agreement Number (assigned by WRD): 469

**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) <u>Hickey Ranches, Inc.</u>	<u>H & H Cattle Feeders, Inc.</u>
(Mailing address) <u>PO Box 67</u>	<u>PO Box 60</u>
(City, State, Zip Code) <u>Merrill Oregon 97633</u>	<u>Merrill Oregon 97633</u>
(Telephone number) <u>(541) 798-1615</u>	<u>(541) 798-5378</u>

If additional landowners, enter landowner information below

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 12th 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 36N, Range 11E, Section 11 and Tax Lot number 21208²¹¹³³. 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 H & H Cattle Feeders, Inc.

RECEIVED

NOV 06 2003

WATER RESOURCES DEPT
SALEM, OREGON

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. 8597, 42409

The water right from Whiskey Creek Diversion fluctuates seasonally and Supplemental is used on the same property to even the fluctuation.

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.: 8597

Priority date: 8-15-1921 Type of use: Irrigation & stock

Legal Season of Use (if not listed on the certificate): March 1 - Oct 31

Is the entire water right certificate being leased?

- Yes
- No *unadjudicated - no decree for that area*

If no, list the acres to be leased by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

See attached page (sec 1.4)

Place of use: T 36S R 11E, Section 11, 1/4 1/4 - 261 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: 261.5

Acre-feet of storage, if applicable: NA

Rate associated with leased rights (cfs): 3.27

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 784.5

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: _____

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).

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. *see attached page (2.2 A)*

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 We wish to protect the water that we are leasing from point of diversion to the mouth of whiskey creek

Total volume in acre-feet: 376.2

Rate in cfs: 2.5

see attached page (2.2 B)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from MAY 1 through JULY 15.
- 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, 2008.

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~

Additional Information

Section 1.4, (Standard Leasing Form) cont.

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.: 42409

Priority date: 12-12-69 Type of use: irrigation and stock

Legal Season of Use (if not listed on the certificate): 3-1 - 10-31

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 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

See attached page (1.4)

Place of use: T 36^S, R 11^E, Section , 1/4 1/4 - 142 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: 142

Acre-feet of storage, if applicable: NA

Rate associated with leased rights (cfs): 3.55

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 426 if water is not available from whiskey creek

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any:

Section 2.2, cont.

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

Sprague River
Tributary to Williamson in the K1 Basin.

See attached sheet (2.2C)

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 processed to be protected at the point of diversion):

Total volume in acre-feet: 115.9

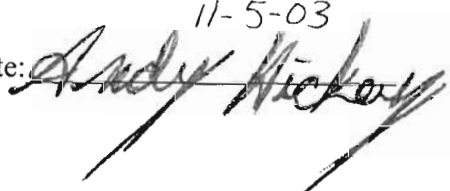
Rate in cfs: see attached sheet (2.2A)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from May through July 15
- Other (describe):

There will be no reach protected. It will only be protected at the point of diversion. The amount of water is such to supplement the 3.0 acre foot per acre from July 16 - Sept 30. We will be protecting 1.918 CFS per 24 hour from May 1 - July 15 out of the supplemental certificate we will be protecting.

- 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: Hickey Ranches, Inc. & H&H Cattle Feeders, Inc. Date: 11-5-03
by Andy Hickey 

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

Section

1.4

Primary

TWP 36S R. 11E Sec 11

SW $\frac{1}{4}$ NE $\frac{1}{4}$	16 AC -	Lot 15
SE $\frac{1}{4}$ NW $\frac{1}{4}$	25 AC -	Lots 11 & 14
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 AC -	Lots 19 & 22
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 AC -	Lots 27 & 30
NE $\frac{1}{4}$ SE $\frac{1}{4}$	32 AC -	Lots 17 & 24
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40 AC -	Lots 18 & 23
SW $\frac{1}{4}$ SE $\frac{1}{4}$	36.5 AC -	Lots 26 & 31
SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>32 AC -</u>	Lots 20 & 32
	261.5 AC	

Section

1.4

T36S R11E Sec 11

Supplemental from Sprague
additional information

NE $\frac{1}{4}$ SW $\frac{1}{4}$	9.3 acres	Lots 22+19
SE $\frac{1}{4}$ SW $\frac{1}{4}$	39 acres	Lots 27+30
NE $\frac{1}{4}$ SE $\frac{1}{4}$	16.7 acres	Lots 24+17
NW $\frac{1}{4}$ SE $\frac{1}{4}$	14.7 acres	Lots 23+18
SW $\frac{1}{4}$ SE $\frac{1}{4}$	33.5 acres	Lots 26+31
SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>28.8 acres</u>	Lots 25+32
	142 acres	

(2.2 A)

Whiskey Creek primary

May 1 - July 15
rate protected 2.5 cfs = 376.2 acre ft.

Sprague River suppl.

May 1 - July 15
rate protected .77 cfs = 115.9 acre ft.

Sprague River suppl.

July 16 - Sept 30
rate protected 1.918 cfs = 292.4 acre ft.

Total acre ft 984.5 acre ft.

(2.2 B)

primary

describe the point of diversion

S. 65 deg. 05' E. 1080' from the center of
Sec. 13, T. 36 S., R. 11 E. W.M. Being within
the Lot No. 18 (NW $\frac{1}{4}$ SE $\frac{1}{4}$) Sec. 13, T. 36 S., R. 11 E. W.M.

(2.2 C)

supplemental

describe the point of diversion

Lot 24 (5 $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) Section 11, T. 36 S., E. 11, E., W.M.,
1780 feet North and 60 feet West from SE corner, Section 11.