



State of Oregon
Water Resources Department
 725 Summer Street NE, Suite "A"
 Salem, Oregon 97301-1271
 (503) 986-0900

Application for Short-Term Instream Lease

Pursuant to ORS 537.348(2) and OAR 690-077-0077

Optional Identification by Lessor/Lessee: _____
 Lease Agreement Number (assigned by WRD): L-481

This Lease Agreement is between:

Lessor #1:

(Name) Miller Tree Farm, LLC
 (Mailing address) 110 NE Greenwood Avenue
 (City, State, Zip Code) Bend, OR 97701
 (Telephone number) 541-382-2022

Lessor #2, 3, etc.

The water right to be leased is located in Deschutes County.

Lessee (if different than Oregon Water Resources Department):

(Name) Not Applicable
 (Mailing address) _____
 (City, State, Zip Code) _____
 (Telephone number) _____

Trustee:

Oregon Water Resources Department
 725 Summer Street N.E., Suite "A"
 Salem, OR 97301-1271
 (503) 986-0900

~I~ Ownership and Water Right Information

- 1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 17 S, Range 11 E, Section 35 and 36 and Tax Lot number 300. 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 _____.

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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. 76320 (Reference attached information sheets for certificates 76321, 76322, and 76323)

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.5 **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.: 76320

Priority date: 2-12-1973 Type of use: Storage of Water For Irrigation

Legal Season of Use: No season of use is specified on the certificate for storage

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right 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 2) showing the lands which will not receive water.

Place of use: T __, R __, Section __, 1/4 1/4 - ____ 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 being leased, if for irrigation: ____

1 Acre-feet of storage, if applicable: 31.0 Acre Feet

Maximum rate associated with subject water rights (cfs): ____

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

Maximum duty associated with subject water rights (ac-ft): ____

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

Conditions or other limitations, if any: The right to store and use water is restricted to beneficial use at the place of use described.

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

1.6 **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~ Instream Water Right Information

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

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- 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:

City of Bend Waste Water and Tumalo Creek
 Tributary to The Deschutes River in the Deschutes Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease will be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): From the POD, 1014 feet North and 174 feet East of the South 1/4 Corner of Section 34, T 17 S, R 11 E, to the mouth. *mouth of what?*

Maximum volume in acre-feet: 31.0 Acre Feet

Rate in cfs: 0.23 CFS for 68 days, starting June 1, 2004

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from _____ through _____.
- 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 August 7, 2009.

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). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

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.

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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.

3.5 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.

3.6 Modification to prevent injury. 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.

3.7 Fees. Effective October 1, 2003, pursuant to ORS 536.050 (1)(v) (2003 SB 820), the following fee is included:

\$200 for an application with four or more landowners or four or more water rights.

\$100 for all other applications.

Lessor #1: Constance M. Mandell, CO-MANAGER Date: 11/25/03

For additional Lessors, type in space for signature and date

Lessee: _____ Date: _____

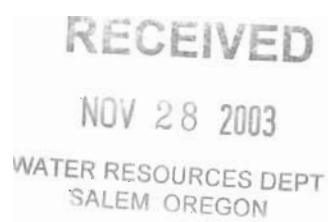
Other Attachments as Needed:

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



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.: 76321

Priority date: 2-12-1973 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): Irrigation Season

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.

Place of use: T 17 S, R 11 E., Section 35, SE1/4 NE1/4 - 0.10 acres to be leased

Enter additional places of use here, using format above:

T 17 S, R 11 E, Section 36 NE NW - 1.8 Acres

T 17 S, R 11 E, Section 36 NW NW - 15.1 Acres

T 17 S, R 11 E, Section 36 SW NW - 21.4 Acres

T 17 S, R 11 E, Section 36 SE NW - 3.6

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

Number of acres, if for irrigation: 42.0

Acre-feet of storage, if applicable: (Reference certificates 76320 & 76322)

Rate associated with leased rights (cfs): 1/70th CFS Per Acre is designated on the certificate.

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

Duty associated with leased rights (AF): 2.5 Ac-Ft Per Acre

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

Conditions or other limitations, if any: Use may be made only at times when sufficient water is available to satisfy all prior rights.

Section 2.2, cont.

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

City of Bend Waste Water and East Jones Pit Reservoir and Tumalo Creek

Tributary to Deschutes River in the Deschutes 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 processed to be protected at the point of diversion): From the POD, 1014 feet North and 174 feet East of the South 1/4 Corner of Section 34, T 17 S, R 11 E, to the mouth.

Total volume in acre-feet: NA

Rate in cfs: Not To Exceed 0.6 CFS (Reference Related Storage Rights For the Applicable Lease Rate)

Conditions to prevent injury, if any:

None

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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.: 76322

Priority date: 2-12-1973 Type of use: *Storage of Water For Irrigation*

Legal Season of Use (if not listed on the certificate): *Year Round Subject to Avail*

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.

Place of use: T S, R E., Section , 1/4 1/4 - 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:

Acre-feet of storage, if applicable: 2.7 Acre-Feet

Rate associated with leased rights (cfs):

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

Duty associated with leased rights (AF):

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

Conditions or other limitations, if any: The right to store and use the water is restricted to beneficial use at the place of use described.

Section 2.2, cont.

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

City of Bend Waste Water and

Tumalo Creek

Tributary to Deschutes River in the Deschutes 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 processed to be protected at the point of diversion): From the POD. 1014 feet North and 174 feet East of the South 1/4 Corner of Section 34, T 17 S, R 11 E, to the mouth.

Total volume in acre-feet: 2.7

Rate in cfs: .02 CFS for 68 days, starting June 1, 2004

Conditions to prevent injury, if any:

None

The instream flow will be allocated on a daily average basis up to the described rate from through .

Other (describe):

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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.: 76323

Priority date: 9-19-1974 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): Irrigation Season

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

Place of use: T 17 S, R 11 E,, Section 35, SE $\frac{1}{4}$ NE $\frac{1}{4}$ - 0.10 acres to be leased

Enter additional places of use here, using format above:

T 17 S, R 11 E, Section 36 NE NW - 1.8 Acres

T 17 S, R 11 E, Section 36 NW NW - 15.1 Acres

T 17 S, R 11 E, Section 36 SW NW - 21.4 Acres

T 17 S, R 11 E, Section 36 SE NW - 3.6

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

Number of acres, if for irrigation: 42.0

Acre-feet of storage, if applicable: Reference Certificates 76320 & 76322

Rate associated with leased rights (cfs): 1/70th CFS Per Acre is designated on the certificate.

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

Duty associated with leased rights (AF): 2.5 Ac-Ft Per Acre

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

Conditions or other limitations, if any: Use may be made only at times when sufficient water is available to satisfy all prior rights.

Section 2.2, cont.

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

City of Bend Waste Water, North Ridge Reservoir, and Tumalo Creek

Tributary to Deschutes River in the Deschutes 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 processed to be protected at the point of diversion): From the POD, 1014 feet North and 174 feet East of the South 1/4 Corner of Section 34, T 17 S, R 11 E, to the mouth.

Total volume in acre-feet: NA

Rate in cfs: Not To Exceed 0.6 CFS (Reference Related Storage Rights For the Applicable Lease Rate)

Conditions to prevent injury, if any:

None

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