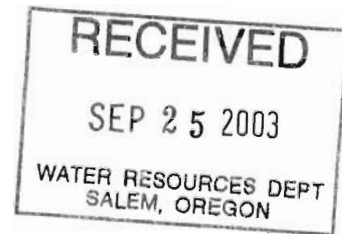


Lease Agreement Number (assigned by WRD): L-476

**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:

Lessor #1:(Name) Central Oregon Fabricators, Inc.

(Mailing address) _____

(City, State, Zip Code) _____

(Telephone number) _____

*Jack Rhoden
P.O. Box 460
Prineville, OR 97754
(541) 447-7868*

Lessor#2, 3, etc.

*Ken Fauchner is Ranch Manager
8541-462-3531*

The water right to be leased is located in Wheeler County*ER***Lessee (if different than Oregon Water Resources Department):**(Name) Not Applicable

(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 10 S, Range 22 E, Section 25 and 36 and Tax Lot number 500. 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):

☒

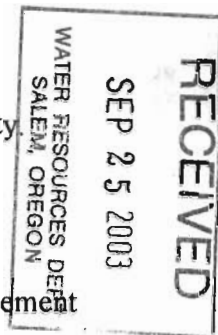
Not applicable

☐

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. 25795, 25799, 25479 BR

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.: 25795

Priority date: 1883 Type of use: Irrigation

Legal Season of Use: April 1st to September 30th

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 2) showing the lands which will not receive water.

Place of use: T __, R __, Section __, $\frac{1}{4}$ $\frac{1}{4}$ - ____ 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: 75.3 acres

Acre-feet of storage, if applicable: 301.2 ac-ft

Total rate associated with leased rights (cfs): April 1 - June 1: 1.88 cfs June 1 - September 30: 0.94 cfs

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

Total duty associated with leased rights (AF): BR

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

Conditions or other limitations, if any: one acre-foot per calendar month to June 1st and four acre-feet per acre during season

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:

Springs and Red Mud Creek

Tributary to Shoofly Creek in the John Day 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): NE¹/₄ SW¹/₄, Section 36, Township 10 South, Range 23 East, W.M. to NE¹/₄ NW¹/₄, Section 24, Township 10 south, Range 23 East, W.M.

Total volume in acre-feet: 301.2 acre-feet

Rate in cfs: Rate in cfs: April 1 - June 1: 1.88 cfs June 1 - September 30: 0.94 cfs

(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): The instream flow will be allocated on a daily average basis of 1.26 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.94 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

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 September 30, 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). 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.

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.



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.: 25797

Priority date: 1887 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April 1st to September 30th

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 N, R W, Section , $\frac{1}{4}$ $\frac{1}{4}$ - 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: 27.1 acres

Acre-feet of storage, if applicable:

Rate associated with leased rights (cfs): April 1 - June 1: 0.68 cfs June 1 - September 30: 0.34 cfs
(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 108.4 AF
(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: one acre-foot per calendar month to June 1st and four acre-feet per acre during season

Section 2.2, cont.

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

Springs and Shoofly Creek

Tributary to John Day River in the John Day 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): SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, Township 10 South, Range 22 East, W.M. to SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 24, Township 10 South, Range 22 East, W.M.

Total volume in acre-feet: 108.4 ac-ft

Rate in cfs: April 1 - June 1: 0.68 cfs June 1 - September 30: 0.34 cfs

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): The instream flow will be allocated on a daily average basis of 0.45 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate



Additional Information

of 0.34 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.



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.: 25479

Priority date: 1892 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April 1st to September 30th

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 N, R W, Section , $\frac{1}{4}$ $\frac{1}{4}$ - 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: 14.3 acres

Acre-feet of storage, if applicable:

Rate associated with leased rights (cfs): April 1 - June 1: 0.36 cfs June 1 - September 30: 0.18 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: one acre-foot per calendar month to June 1st and four acre-feet per acre during season

Section 2.2, cont.

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

Spring in NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 19, Township 10 South, Range 23 East, W.M. and Trent Creek

Tributary to Shoofly Creek in the John Day 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): SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 19, Township 10 South, Range 23 East, W.M. to SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 24, Township 10 South, Range 22 East, W.M.

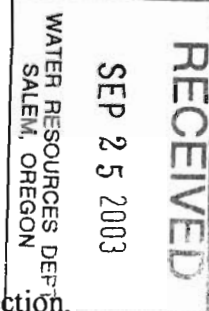
Total volume in acre-feet: 57.2 ac-ft

Rate in cfs: April 1 - June 1: 0.36 cfs June 1 - September 30: 0.18 cf

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 .



Additional Information

- ☒ Other (describe): The instream flow will be allocated on a daily average basis of 0.24 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.18 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

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WATER RESOURCES DEPT
SALEM, OREGON

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.: 25319

Priority date: 1887 Type of use: Irrigation and domestic

Legal Season of Use (if not listed on the certificate): April 1st to September 30th

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 10 S, R 22 E., Section 32, NW¼ NW¼ - 5.20 acres to be leased

Enter additional places of use here, using format above:

SW¼ NW¼ - 10.0 acres to be leased, SE¼ NW¼ - 6.8 acres to be leased, NE¼ SW¼ - 7.4 acres to be leased, NW¼ SE¼ - 3.0 acres to be leased, SW¼ SE¼ - 6.2 acres to be leased

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

Number of acres, if for irrigation: 38.6 acres *38.6 BK*

Acre-feet of storage, if applicable:

Rate associated with leased rights (cfs): April 1 - June 1: 0.96 cfs June 1 - September 30: 0.48 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: one acre-foot per calendar month to June 1st and four acre-feet per acre during season

Section 2.2, cont.

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

Spring in NW¼ NW¼, Section 32, Township 10 South, Range 22 East, W.M. and Grid
Creek

Tributary to Shoofly Creek in the John Day 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): SE¼ SE¼, Section 32, Township 10 South, Range 22 East, W.M. to mouth.

Total volume in acre-feet: 154.4 ac-ft

Rate in cfs: April 1 - June 1: 0.96 cfs June 1 - September 30: 0.48 cf

Conditions to prevent injury, if any:

☐ None

Additional Information

- ☐ The instream flow will be allocated on a daily average basis up to the described rate from ____ through ____.
- ☒ Other (describe): The instream flow will be allocated on a daily average basis of 0.64 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.48 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

~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:

Jack Rhoden

Date: *9-23-03*

For additional Lessors, type in space for 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