

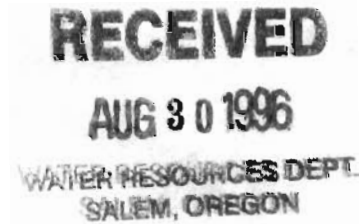
Lease Agreement No.: 33

**Short-Term Water Right Lease Agreement
for
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

Lessor:

Derby Smith Partners
15 SW Colorado Avenue
Bend, OR 97702
(541) 382-6691-Phone



The water right to be leased are located in Wheeler County.

Lessee:

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

Trustee

Oregon Water Resources Department
158 12th Street NE
Salem OR 97310
(503) 378-3739-Phone
(503) 378-2496-Fax

I.

- 1.1 Lessor is the owner (*Exhibit A*) of property highlighted in *Exhibit B*.
- 1.2 Section 1.2 is not applicable
- 1.3 *Exhibit C* contains a copy of the certificated rights that are attached to the property in *Exhibit B* and are to be leased. The rights are listed below as follows:

Certificate No. 67640 & 68636 and 67885 & 68638

- 1.4 **Subject Water Rights.** Lessor proposes to lease all of C-67640, C-68636 and C-68638, plus a portion of C-67885.

The rights to be leased are further described as follows:

Water Right Identification No.: C-67640 and C-68636

Source: John Day River

Priority date: 1900

Type of use: Irrigation

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

39 { -T 9S, R 19E, S 12, NE ¼ SW ¼-7.2 acres (C-67640)

-T 9S, R 19E, S 12, NW ¼ SW ¼-1.7 acres (C-67640)

-T 9S, R 19E, S 12, SW ¼ SW ¼-14.5 acres (C-67640)

-T 9S, R 19E, S 12, SE ¼ SW ¼-15.6 acres (C-67640)

T 9S, R 19E, S 13, NE ¼ NW ¼-10.6 acres (4.8 C-67640 & 5.8 C-68636)

T 9S, R 19E, S 13, NW ¼ NW ¼-7.1 acres (6.0 C-67640 & 1.1 C-68636)

T 9S, R 19E, S 13, SE ¼ NW ¼-0.3 acres (C-68636)

Number of acres, if for irrigation: 57 acres

Rate: 1.425 cfs

Duty: A quantity of water limited to 57 acre feet during any calendar month and not to exceed, during the irrigation season, 285 acre feet.

Season of use: April 1-September 30

Point of Diversion (POD):

T 9S, R 19E W.M., S 12, NW ¼ SW ¼; 1290 Feet North, & 1660 Feet West from the S ¼ Corner of Section 12

Conditions or other limitations, if any: None

Water Right Identification No.: C-67885 and C-68638

Source: John Day River

Priority date: February 23, 1983

Type of use: Irrigation

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

T 9S, R 19E, S 12, SW ¼ SW ¼-10.5 acres (10.3 C-67885 & 0.2 C-68638)

T 9S, R 19E, S 12, SE ¼ SW ¼-8.7 acres (C-67885)

T 9S, R 19E, S 13, NE ¼ NW ¼-1.1 acres (1.0 C-67885 & 0.1 C-68638)

T 9S, R 19E, S 13, NW ¼ NW ¼-4.9 acres (1.4 C-67885 & 3.5 C-68638)

Number of acres, if for irrigation: 25.2 acres

Rate: 0.62 cfs

Duty: A quantity of water not to exceed 126 acre feet during the irrigation season.

Season of use: April 1-September 30

Point of Diversion (POD):

T 9S, R 19E W.M., S 12, NW ¼ SW ¼; 1290 Feet North, & 1660 Feet West from the S ¼ Corner of Section 12

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attests that the subject water rights are legally valid by having been beneficially used according to the terms of the rights within the last five years immediately preceding the 1996 irrigation year and, if the rights are for irrigation, on all lands indicated in *Exhibit D*.
- 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 rights that are 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:

specific uses and needs identified in *Exhibit E* as signed off by ODFW.

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

67640 & 68636

John Day River, tributary to the Columbia River

Location: RM 126 to 20.9

Priority date: 1900

Use: Described in Section 2.1, above

Total volume: A quantity of water not to exceed 57 acre feet during any calendar month and a total quantity during the irrigation season not to exceed 285 acre feet.

Rate in cfs: 1.425 cfs

Period of use: April 1-September 30

Conditions to prevent or mitigate injury, if any:

The total allowable rate of the instream water right is 0.91 cfs in order that the monthly and seasonal duty limitations are not exceeded. The instream flow will be allocated on a daily average basis up to this rate from April 26 until September 30, or until such time that the total duty for the irrigation season is met.

67885 & 68638

John Day River, tributary to the Columbia River

Location: RM 126 to 20.9

Priority date: February 23, 1983

Use: Described in Section 2.1, above

Total volume: A total quantity of water not to exceed 126 acre feet during the irrigation season.

Rate in cfs: 0.62 cfs

Period of use: April 1-September 30

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily basis from June 21 until September 30 in order that the seasonal duty limitation is not exceeded. There are no other conditions on the instream right.

- 2.3 **Term of lease.** This Lease shall commence on April 1, 1996 (not before execution by the parties) and continue through September 30, 1996.
- 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.

Optional Provisions

- 2.6 **Additional monitoring.** Lessee intends to manage and participate in the protection of the instream use by: possibly collecting information for calculating stream discharge.
- 2.7 **Modification or termination provisions.** None

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 or applied on lands to which subject rights are attached.
- 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: *Kelvin Rise* District: *4*
Kelly Rise
Field Operations, WRD
P.O. Box 261
Grant County Courthouse
Canyon City, OR 97820
(541) 575-0641-Phone
(541) 575-2248-Fax

Date: *8/28/96*

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: *Willb 2*

Date: *8/19/96*

Lessee: *Andrew Pinkney*

Date: *Aug 19, 1996*

So ordered by Trustee: *G. H. Hughes*
Director, Oregon Water Resources Department

Date: *Sept. 30, 1996*

Effective Date of Lease Agreement: *9-30-96*

Exhibits:

- Exhibit A: Proof of property ownership
Exhibit B: Map of Lessor's property
Exhibit C: Copies of the subject certificates 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

EXHIBIT A

CURRENT DEED TO PROPERTY

BARGAIN AND SALE DEED

THE OREGON BANK, Grantor, conveys to DERBY/SMITH PARTNERS, a New York General Partnership, Grantee, the property located in Wheeler County, Oregon and described with particularity in Exhibit A attached hereto.

The consideration for this conveyance ~~and for other property located in Jefferson County, Oregon being conveyed simultaneously~~ is \$397,650.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Dated this 6 day of July, 1988.

THE OREGON BANK

By [Signature]
Its Senior Vice President

STATE OF OREGON)
) ss.
County of Multnomah)

On this 6 day of July, 1988, before me personally appeared Darryl W. Sutherland who being duly sworn, stated that he is the S. Vice President of The Oregon Bank, an Oregon corporation, and acknowledged the foregoing instrument to be the voluntary act and deed of the corporation, executed by authority of its board of directors.

[Signature]
Notary Public for Oregon
My Commission Expires: 7/19/91

After recording return to:

William L. Smith
365 N.E. Greenwood
Bend, Oregon 97701

Until a change is requested,
all tax statements should be
sent to the following:

Derby/Smith Partners
c/o William L. Smith
365 N.E. Greenwood
Bend, Oregon 97701

IN WHEELER COUNTY, OREGON:

IN TOWNSHIP 8 SOUTH, RANGE 20 EAST OF THE WILLAMETTE
MERIDIAN:

- Section 26: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.
Section 28: Lot 4; SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Section 33: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; SE $\frac{1}{4}$.
Section 34: Lots 1, 2, 3, and 4; E $\frac{1}{2}$ W $\frac{1}{2}$; S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$.
Section 35: Lot 4; E $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; E $\frac{1}{2}$.

IN TOWNSHIP 9 SOUTH, RANGE 19 EAST OF THE WILLAMETTE
MERIDIAN:

- Section 12: That part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying West of the John Day River; that part of the SW $\frac{1}{4}$ lying East of the John Day River.
Section 13: That part lying East of the John Day River.
Section 24: Those parts of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying East of the John Day River.
Section 25: That part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ lying East of the John Day River.

IN TOWNSHIP 9 SOUTH, RANGE 20 EAST OF THE WILLAMETTE
MERIDIAN:

- Section 1: S $\frac{1}{2}$.
Section 2: All (fractional), EXCEPT Lot 4.
Section 3: All (fractional), EXCEPT the SE $\frac{1}{4}$ NE $\frac{1}{4}$.
Section 4: All (fractional).
Section 7: That part of the E $\frac{1}{2}$ W $\frac{1}{2}$ lying East of the John Day River; S $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$.
Section 10: All.
Section 11: All.
Section 12: All, EXCEPT the N $\frac{1}{2}$ NW $\frac{1}{4}$.
Section 13: S $\frac{1}{2}$ SW $\frac{1}{4}$.
Section 14: S $\frac{1}{2}$ S $\frac{1}{2}$.
Section 15: N $\frac{1}{2}$.
Section 16: All.
Section 17: All.
Section 19: All (fractional).
Section 23: NE $\frac{1}{4}$ NE $\frac{1}{4}$.
Section 24: N $\frac{1}{2}$; N $\frac{1}{2}$ SW $\frac{1}{4}$.
Section 29: All.
Section 30: Lots 3 and 4; E $\frac{1}{2}$ SW $\frac{1}{4}$.
Section 31: All (fractional).

IN TOWNSHIP 9 SOUTH, RANGE 21 EAST OF THE WILLAMETTE
MERIDIAN:

- Section 6: Lots 1, 2, 3, 4, 5, and 6; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$.
Section 7: Lots 1, 2, and 3; E $\frac{1}{2}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$.

IN TOWNSHIP 10 SOUTH, RANGE 20 EAST OF THE WILLAMETTE
MERIDIAN:

Section 6: All (fractional)

Section 7: All (fractional), EXCEPT Lot 4.

Section 18: Lots 1, 2, and 3.

TOGETHER WITH: The three mobile homes situated on the property;
all irrigation equipment now located on the above described property;
all BLM permits associated with the above described property; the
135-head U. S. Forest Service Trout Creek allotment; all State of
Oregon water permits; all easements appurtenant to the above described
property.

#

STATE OF OREGON } # 9305
County of Wheeler } ss.

I hereby certify that the within
instrument was received for record.

JUL 13 1988 3:53 pm
and assigned No. M-38-325

DEED

on the Microfilm Records of said

Witness My Hand and Seal of County

Affixed

Wheeler County Clerk

By Judy L. Patten
Deputy