



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): 2-574

This Lease Agreement is between:

**Lessor #1:**

(Name) Kurt Thomas  
 (Mailing address) 5800 Georgia Dr.  
 (City, State, Zip Code) Bakersfield, CA 93308  
 (Telephone number) (661) 861-6220

**Lessor #2, 3, etc.**

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

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

(Name) Klamath Basin Rangeland Trust  
 (Mailing address) 340 A Street, Ste. 201  
 (City, State, Zip Code) Ashland, OR 97520  
 (Telephone number) (541) 488-4822

**Trustee:**

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

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**~I~ Ownership and Water Right Information**

1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 34 S, Range 7. E, Section 11, 12, 13, 14, 23, 24, 25 and Tax Lot number \_\_\_\_\_. 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. 42935, 65386, 42934, 42936(supplemental).

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.: 42935

Priority date: September 20, 1960 for 6.03cfs, and October 20, 1960 for 0.30 cfs Type of use: Irrigation

Legal Season of Use: April 1 to October 1

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    S, R    E, Section   ,    1/4    1/4 -        acres to be leased

Enter additional places of use here, using format above:

See Attachment 1a for map of place of use and Attachment 2 for location description.

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

Number of acres being leased, if for irrigation: 316.2

Acre-feet of storage, if applicable: 0

Maximum rate associated with subject water rights (cfs): 6.33cfs Total.

September 20, 1960: 6.03cfs total with the diversion from Fort Creek not to exceed 4.82cfs and the diversion from Crooked Creek not to exceed 1.21cfs

October 20, 1960: 0.30cfs total with the diversion from Fort Creek not to exceed 0.24cfs and the diversion from Crooked Creek not to exceed 0.06cfs.

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

Maximum duty associated with subject water rights (ac-ft): 1581AF Total.

September 20, 1960: 1507AF total with the diversion from Fort Creek not to exceed 1204.6AF and the diversion from Crooked Creek not to exceed 302.4AF.

October 20, 1960: 74.98AF total with the diversion from Fort Creek not to exceed 59.98AF and the diversion from Crooked Creek not to exceed 15.0AF.

(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.

1.6 **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

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- 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:

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

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

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Fort Creek and Crooked Creek  
Tributary to Wood River in the Klamath 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): NW1/4NE1/4, NW1/4NW1/4 Section 26 T33S R7.5E; NW1/4SE1/4 Section 13 T34SR7.5E, Fort Creek - 960 feet south and 1050 feet east from the NW corner of Section 26; Crooked Creek - 1260 feet south and 270 feet east from the N 1/4 Corner, Section 26, T33S, R7.5E; 1510 feet North and 2210 Feet West from SE corner Section 13 T34S R7.5E.

Maximum volume in acre-feet: 1579.5AF total.

September 20, 1960: 1507AF total with the diversion from Fort Creek not to exceed 1202.1AF and the diversion from Crooked Creek not to exceed 302.4AF.

October 20, 1960: 74.98AF total with the diversion from Fort Creek not to exceed 59.98AF and the diversion from Crooked Creek not to exceed 15.0AF.

Rate in cfs: 6.32cfs total.

September 20, 1960: 6.02cfs total with the diversion from Fort Creek not to exceed 4.81cfs and the diversion from Crooked Creek not to exceed 1.21cfs

October 20, 1960: 0.30cfs total with the diversion from Fort Creek not to exceed 0.24cfs and the diversion from Crooked Creek not to exceed 0.06cfs.

(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 October 1, 2008.
- 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.
- 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 (April), 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.

Thomas Family Ltd. Partnership  
Lessor #1: By: [Signature] Date: 5/12/04  
KURT THOMAS

For additional Lessors, type in space for signature and date

Lessee: [Signature] Date: 5/20/2004  
Klamath Basin Rangeland Trust

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

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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.: 42936

Priority date: April 13, 1965 Type of use: Supplemental Irrigation

Legal Season of Use (if not listed on the certificate): April 1 to October 1

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    N, R    W,, Section   ,    ¼    ¼ -    acres to be leased

Enter additional places of use here, using format above:

See Attachment 1c for map of place of use and Attachment 2 for location description.

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

Number of acres, if for irrigation: 720.1

Acre-feet of storage, if applicable: 0

Rate associated with leased rights (cfs): 14.40cfs (supplemental to certificates 42934 and 42935)

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

Duty associated with leased rights (AF): 3600.5AF (supplemental to certificates 42934 and 42935)

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

Conditions or other limitations, if any: None.

## Section 2.2, cont.

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

Wood River

Tributary to Agency Lake 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 processed to be protected at the point of diversion): NW1/4 NE1/4, Section 26 T33S R7.5E, W.M., and NW1/4 SE1/4, Section 13 T34S R7.5E, W.M., 1260 feet south and 270 feet east from N1/4 Corner, Section 26 T33S R7.5E, W.M.; 1510 feet north and 2210 feet west from SE corner, Section 13, T34S, R7.5E, W.M. The water will be protected instream to the confluence with Agency Lake.

Total volume in acre-feet: 3598.8AF. This water will only be protected if sufficient water is not available under the primary rights (Certificates 42934 and 42935).

Rate in cfs: 14.04cfs from 5/28 up to 10/1. This water will only be protected if sufficient water is not available under the primary rights (Certificates 42934 and 42935).

Conditions to prevent injury, if any:

None

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### Additional Information

- 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.: 65386

Priority date: April 14, 1983 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April to October 1

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:

See Attachment 1d for map of place of use and Attachment 2 for location description.

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

Number of acres, if for irrigation: 34.1

Acre-feet of storage, if applicable: 0

Rate associated with leased rights (cfs): 0.68cfs

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

Duty associated with leased rights (AF): 170.5

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

Conditions or other limitations, if any: None.

## Section 2.2, cont.

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

Agency Spring

Tributary to Crooked Creek and Wood 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 processed to be protected at the point of diversion): Lot 4 (SW1/4 SW1/4), Section 18 T34S, R7E; 870 Feet north and 690 feet east from the SW corner of Section 18. Water is protected at the POD.

Total volume in acre-feet: 170.5

Rate in cfs: 0.68cfs from 5/28 up to 10/1

**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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