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WATER RESOURCES DEPT
SALEM, OREGON



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-735

This Lease Agreement is between:

Lessor #1:

(Name) Steve Berrey

(Mailing address) 6305 SW ROSELAND SUITE D

(City, State, Zip Code) LAKE OSWEGO, ORE 97035

(Telephone number) 503 697 3310

Lessor #2, 3, etc.

The water right to be leased is located in Grant 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
N, Range W, Section 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. SEE MAP

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. 2200

- 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.: 2200

Priority date: July 5, 1911 Type of use: Irrigation

Legal Season of Use: April 1 through September 30

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 $\frac{1}{4}$ $\frac{1}{4}$ 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 8 S, R 28 E, Section 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 1.20 acres to be leased

Enter additional places of use here, using format above:

T 8 S, R 28 E, Section 33 SE $\frac{1}{4}$, SE $\frac{1}{4}$ - 1.9 Acres to be leased

T 8 S, R 28 E, Section 33 SW $\frac{1}{4}$, SE $\frac{1}{4}$ - 1.6 Acres to be leased

T 8 S, R 28 E, Section 33 NW $\frac{1}{4}$, SE $\frac{1}{4}$ - 5.9 Acres to be leased

T 8 S, R 28 E, Section 33 NE $\frac{1}{4}$, SW $\frac{1}{4}$ - 6.4 Acres to be leased

T 8 S, R 28 E, Section 33 NW $\frac{1}{4}$, SW $\frac{1}{4}$ - 2.9 Acres to be leased

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

Number of acres being leased, if for irrigation: 19.9

Acre-feet of storage, if applicable: NA

Maximum rate associated with subject water rights (cfs): 0.25

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

Maximum duty associated with subject water rights (ac-ft): 79.6 ac-ft

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

Conditions or other limitations, if any: No duty limitation is identified on this certificate, however, other water rights in the vicinity fall under the duty limitation set by the John Day Basin Decree which states: "A quantity of water limited to one acre foot per acre during any calendar month prior to June 1st, and not to exceed, during the irrigation season, four acre feet per acre." The limitation would therefore be 19.9 acre-feet prior to June 1st not to exceed 79.6 acre-feet for the season.

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

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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

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

Deer Creek

Tributary to North Fork John Day River in the John Day 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): The instream use will be protected from the POD to the mouth of Deer Creek

Maximum volume in acre-feet: 79.6

Rate in cfs: 0.25

(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 April 25 through September 30.
- ☒ Other (describe): Due to the short reach involved and since there appears to be no other diversions between the authorized POD and the mouth of Deer Creek, the instream rate will not be reduced due to return flow injury issues nor an evaporative loss factor applied.

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, 2019.

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

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- 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 (____), 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: _____

Stephen M. Bury

Date: 1-8-06

For additional Lessors, type in space for signature and date

Lessee: _____

Date: _____

Other Attachments as Needed: