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Lease Agreement No.: 23

JUN 11 1996

WATER RESOURCES DEPT.
SALEM, OREGON

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

This Lease Agreement is between:

Lessor:

Jim and Mike Murtha
Box 383
Wasco, OR 97065
(541) 565-3432-Phone

The water right to be leased is located in Gilliam 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*. (Deed does not cover all of C-25615. BLM owns 4.6 acres in section 8.)
- 1.2 Section 1.2 is not applicable .
- 1.3 *Exhibit C* contains a copy of the certificated right attached to the property in *Exhibit B*. The right is listed below as follows:

Certificate No. 25615

- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of the water right listed in

1.3, above.

The right to be leased is further described as follows:

Water Right Identification No.: 25615

Source: Hay Creek

Priority date: 1880

Type of use: Irrigation and Stock

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

T 1S, R 20E, S 6, SW $\frac{1}{4}$ SE $\frac{1}{4}$, 1 acre

T 1S, R 20E, S 7, NE $\frac{1}{4}$ NE $\frac{1}{4}$, 10.2 acres

T 1S, R 20E, S 7, NW $\frac{1}{4}$ NE $\frac{1}{4}$, 19.2 acres

T 1S, R 20E, S 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, 1.8 acres

T 1S, R 20E, S 7, NE $\frac{1}{4}$ NW $\frac{1}{4}$, .2 acre

T 1S, R 20E, S 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$, 7 acres

T 1S, R 20E, S 8, SW $\frac{1}{4}$ NE $\frac{1}{4}$, 8.6 acres

T 1S, R 20E, S 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$, 7 acres

T 1S, R 20E, S 8, SE $\frac{1}{4}$ NW $\frac{1}{4}$, 4.8 acres

T 1S, R 20E, S 8, NE $\frac{1}{4}$ SE $\frac{1}{4}$, 2.4 acres

Number of acres, if for irrigation: 62.2 acres

Acre-feet of storage: None

Rate: 1.56 cfs (April 1-May 31), 0.78 cfs (June 1-Sept. 30)

Duty: A quantity of water limited to 62.2 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 248.8 acre feet.

Season of use: April 1-September 30

Point of Diversion (POD): SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 9; NW $\frac{1}{4}$ NW $\frac{1}{4}$ section 8; T. 1S, R. 20E, W.M.

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attests that the subject water right is legally valid by having been beneficially used according to the terms of the right within the last five years and, if the right is for irrigation, on all lands indicated in *Exhibit D.*
- 1.6 **Lease.** Lessor agrees to lease the water right 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 right and under any water right that is supplemental to the subject water right.

- 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:

No. 25615

Hay Creek, tributary to the John Day River in the Columbia Basin

Location: From existing top POD near RM 2.5 to the mouth of Hay Creek

Priority date: 1880

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water limited to 62.2 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 248.8 acre feet.

Rate: 1.56 cfs (April 1-May 31), 0.78 cfs (June 1-Sept. 30)

Period of use: April 1-September 30

Conditions to prevent or mitigate injury, if any: The rate of the water right has been adjusted as follows to meet seasonal duty restrictions:

The rate of the instream water right is 1.56 cfs from May 13-May 31 and 0.78 cfs from June 1 to September 30. The instream flow will be allocated on a daily average basis up to these rates from the date of execution until September 30, or until such time that the total duty for the irrigation season is met.

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

- 2.4 **Compensation.** Lessor has agreed to lease the water right herein to the Oregon Water Trust in exchange for cash for hay.

- 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 right is located verifies that:
- 3.1 Lessor is currently entitled to appropriate water under the water right described in Section 1.4.
- 3.2 No diversion structure is in place in the stream. Therefore, WRD staff may regulate use of water under the subject right to ensure water is not diverted or applied on lands to which subject right is 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 K. Rise* District: 4
Kelly Rise
Field Services and Enforcement
P.O. Box 261
Grant County Courthouse
Canyon City, Oregon 97820
(541) 575-0119-Phone
(541) 575-2248-Fax

Date: *5/24/96*

IV.

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.

Lessor:

Date:

June 5-1996
Mike Mott
Jim Martha

Lessee: *Andrew Purkey*

Date: *April 22, 1996*

So ordered by Trustee: *Marshall Pfeiffer*
Director, Oregon Water Resources Department

Date: *7/16/96*

Effective Date of Lease Agreement:

Exhibits:

- Exhibit A: Proof of property ownership (copy of property deed)
- Exhibit B: Map of Lessor's property
- Exhibit C: Copies of all certificates, permits and decreed rights attached to property shown in Exhibit B
- Exhibit D: Detailed map illustrating lands irrigated by subject right
- Exhibit E: Identification of public use to be served by instream use