

Lease Agreement Number 94

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WATER RESOURCES DEPT.
SALEM, OREGON

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

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

This Lease Agreement is between:

Lessor:

William E. Miller and Central Oregon Pumice Company
110 NE Greenwood Ave
Bend, OR 97701
(541) 382-2022

The water right to be leased is located in Deschutes County

Lessee:

Oregon Water Trust
111 SW Naito Parkway, Suite 404
Portland, OR 97204
(503) 226-9055

Trustee:

Oregon Water Resources Department
158 12th Street. NE
Salem OR 97310
(503)378-8455

~I~

- 1.1 Lessor is the owner (Exhibit A) of the Water Rights attached to property highlighted in Exhibit B.
- 1.3 Exhibit C contains copies of all certificated, decreed or permitted rights attached to the property in Exhibit B. Those rights are listed below as follows:

Permit No. R-6892, R-6893, 42781, and 42782
- 1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The right to be leased is further described as follows:

Permit No's.: R-6892 and R-6893 with secondary rights 42781 and 42782

Priority date: February 12, 1973 and September 19, 1974

Type of use: Irrigation

Storage to be leased: 33.7 Acre-feet

Rate: 0.25 cfs for 68 days or an amount under a mutual agreement among all parties.

Season of Use: April 15 through October 15

Point of Diversion (POD): 1,014 feet North and 174 feet East of the south 1/4 corner of section 34, Township 17 south, Range 11 East.

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 right or permit. If the right is for irrigation, beneficial must have occurred in the last five years on all lands indicated in Exhibit D.
- 1.6 **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 690-77-077.
- 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 right that is 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 (Select one):
- Mitigation of a deficiency in the water supply for an existing instream water right or minimum streamflow located_____.
 - Mitigation of a deficiency in water supply identified in an application for an instream water right or *Diack* flow located_____.
 - A specific use or need identified by DEQ, Parks or ODFW and further described in *Exhibit E*.
 - Provided by evidence contained in Exhibit E, such as a signed statement by Lessee, or other party, explaining how the lease would benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public uses.

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

Tumalo Creek a Tributary to the Deschutes River in the Deschutes Basin.

Location: From the center north 1/16 corner of section 34, Township 17 South, Range 11 East to mouth.

Priority date: February 12, 1973 and September 19, 1974

Use: Described in Section 2.1, above

Total volume: 33.7 Acre-feet

Rate in cfs: 0.25

Period of use: April 15 to October 15

Conditions to prevent or mitigate injury, if any:

2.3 **Term of lease.** This Lease shall commence on April 15, 1999.

(not before execution by the parties) and continue through October 15, 2000 .

2.4 **Compensation.** The Lessor has agreed to lease subject water right for 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). No party is required to continuously measure the flow of the waterway described in Section 2.2.

Optional Provisions

2.6 **Additional monitoring.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: conferring with the Watermaster.

2.7 **Modification or termination provisions.** The lease can be terminated at any time via a 30-day written notice by any party.

~III.~

3 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:

3.1 Lessor #1 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 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: Shall not be subject to new appropriation under a water right or Limited license.

Watermaster: Fyle B. Son District 11
1340 NW Wall ST
Suite 100
Bend, OR 97701

Date: 5-14-99

~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: William E. Miller Date: 5/18/99



Lessee: _____ Date: _____

So ordered by Trustee: _____ Date: _____