

Lease Agreement Number

9810.04 #01

**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 #1:**

Peter Dalke and Kathleen Casey Dalke  
2700 SW English Lane  
Portland, OR 97201  
(503) 226-4862-Phone

**RECEIVED**  
APR - 9 1998  
WATER RESOURCES DEPT.  
SALEM, OREGON

The water right to be leased is located in **Wasco** 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) 378-8455-Phone  
(503) 378-3180-Fax

**I.**

- 1.1 Lessors are the owners (*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 right attached to the property in *Exhibit B*.  
The right is listed below as follows:

Certificate No. 8161

- 1.4 **Subject Water Rights.** Lessors propose to lease all of the water right listed in 1.3, above.

The right to be leased is further described as follows:

Water Right Identification No.: 8161

Priority date: 1892 and 1898

Type of use: Irrigation

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

T 2N, R 12E, S 30, SW ¼, NW ¼

Number of acres, if for irrigation: 5 (3 with 1892 priority and 2 with 1898 priority)

Rate: 0.083 cfs

Duty: 15 acre-feet

Season of use: March 1 to October 1

Point of Diversion (POD): T 2N, R 12E, S 30, NW ¼, SW ¼

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessors attest 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.** Lessors agree 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. 8161

Mosier Creek, tributary to Columbia River in the Hood Basin

Location: Point at RM 4.7 (point of diversion)

Priority date: 1892 and 1898

Use: Described in Section 2.1, above

Total volume: 15 acre feet

Rate: .083 cfs

Period of use: March 1 to October 1

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 instream flow will be allocated beginning July 1 and continuing until October 1, or until such time that the total duty for the irrigation season is met.

- 2.3 **Term of lease.** This Lease shall commence on March 1, 1998 (not before the date of final execution by the parties) and continue through October 1, 1999.
- 2.4 **Compensation.** Lessors have agreed to lease the water right 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, 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 does not intend to manage and participate in the protection of the instream use.
- 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 Lessors are currently entitled to appropriate water under the water right 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: None

Watermaster:  
 Larry Toll  
 502 E. 5th Avenue  
 Courthouse Annex B  
 Room 212  
 The Dalles, OR 97058  
 (541) 298-4110

*Larry Toll*

District: 3

Date: 3/23/98

#### IV.

The Undersigned Lessors, 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 #1:	<i>John A. Dalbe</i>	Date:	<i>March 15, 1998</i>
Lessor #2:	<i>Kathleen Casey Dalbe</i>	Date:	<i>March 19, 1998</i>
Lessee:	<i>Andrew Penkey</i>	Date:	<i>March 30, 1998</i>
So ordered by Trustee:	<i>Martina Page</i>	Date:	<i>5/8/98</i>

Director, Oregon Water Resources Department

Effective Date of Lease Agreement:

Exhibits: A through D are on record with OWRD. E is attached.

Exhibit A: Proof of property ownership  
 Exhibit B: Map of Lessor's property  
 Exhibit C: Copy of certificate 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

WATER RIGHT LEASE AGREEMENT

**EXHIBIT E**

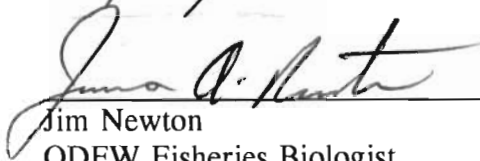
I believe that the water rights described as Certificate No. 8161 will provide for the conservation maintenance and enhancement of aquatic and fish life and fish habitat in Mosier Creek, tributary to the Columbia River, if temporarily converted to instream use during the 1998 and 1999 irrigation seasons. Specifically, the following benefit will likely be provided:

- spawning and rearing habitat for cutthroat trout and other resident fish populations in Mosier Creek will likely be improved as a result of the increased instream flow.

Dated:

3/23/98

Signed:

  
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Jim Newton  
ODFW Fisheries Biologist  
The Dalles, Oregon

