

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

LA #12

This Lease Agreement is between:

Lessor:

The Nature Conservancy

Oregon Field Office

821 SE 14th Street

Portland, OR 97214

(503) 230-0707, ext. 334-Phone (Russell Hoeflich is the contact at the Oregon Field Office)

The water rights to be leased are located in Grant County

Lessee:

Oregon Water Trust

111 SW Naito Parkway

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) 378-8130-Fax

I.

- 1.1 Lessor is the owner of property highlighted in *Exhibit B*.
- 1.2 Section 1.2 is not applicable.
- 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:

Certificate Nos.: 25662 and 25126
- 1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 25662

Source: Big Boulder Creek, Tributary to the Middle Fork John Day River

Priority date: 1907

Type of use: Irrigation

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

T 10S, R 33E, S 27, SW $\frac{1}{4}$ NE $\frac{1}{4}$ -15 acres

T 10S, R 33E, S 27, NE $\frac{1}{4}$ SE $\frac{1}{4}$ -15 acres

T 10S, R 33E, S 27, NW $\frac{1}{4}$ SE $\frac{1}{4}$ -2 acres

Number of acres, if for irrigation: 32 acres

Rate: 0.8 cfs (April 1-May 31), 0.4 cfs (June 1-Sept. 30)

Duty: A quantity of water limited to 32 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 128 acre feet.

Season of Use: April 1-September 30

Point(s) of Diversion (POD): See map in Attachment D

Conditions or other limitations, if any: None

Water Right Identification No.: 25126

Source: Middle Fork John Day River and Spring Tributary to the Middle Fork John Day River

Priority date: February 5, 1907

Type of use: Irrigation, Domestic and Stock

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

T 10S, R 33E, S 20, NE $\frac{1}{4}$ SE $\frac{1}{4}$ -14 acres

T 10S, R 33E, S 20, NW $\frac{1}{4}$ SE $\frac{1}{4}$ -22.8 acres

T 10S, R 33E, S 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$ -30 acres

T 10S, R 33E, S 21, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -28.6 acres

T 10S, R 33E, S 21, SE $\frac{1}{4}$ SW $\frac{1}{4}$ -6.4 acres

T 10S, R 33E, S 21, SE $\frac{1}{4}$ SE $\frac{1}{4}$ -7.8 acres

T 10S, R 33E, S 22, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -2.8 acres

T 10S, R 33E, S 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -7.6 acres

T 10S, R 33E, S 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ -7.4 acres

T 10S, R 33E, S 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$ -20.9 acres

T 10S, R 33E, S 28, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -22.2 acres

T 10S, R 33E, S 28, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -2.4 acres

Number of acres, if for irrigation: 172.9 acres

Rate: Middle Fork: 4.32 cfs

Spring: 4.32 cfs (April 1-May 31), 2.16 cfs (June 1-Sept. 30)

Duty: For the Middle Fork and Spring rights combined, a quantity of water not to exceed 172.9 acre feet during any calendar month and a total quantity during the irrigation season not to exceed 864.5 acre feet.

Season of Use: April 1-September 30

Point(s) of Diversion (POD): See map in Attachment D
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 rights within the last five years immediately preceding the 1999 irrigation year and, if the rights are for irrigation, on all lands indicated in *Exhibit D*.
- 1.6 **Lease.** Lessor agrees 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:

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. 25662

Big Boulder Creek

Tributary to Middle Fork John Day River in the Columbia Basin

Location: P.O.D. to Mouth of Big Boulder Creek

Priority date: 1907

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water limited to 32 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 128 acre feet.

Rate: 0.8 cfs (April 1-May 31) and 0.4 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 total rate of the instream water right is .26 cfs from April 1-May 31 and .4 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.

No. 25126

Middle Fork John Day River and Spring Tributary to Middle Fork John Day River
Tributary to North Fork John Day River in the Columbia Basin

Location: P.O.D. to RM 50 of the Middle Fork John Day River

Priority date of: February 5, 1907

Use: Described in Section 2.1, above

Total volume: A quantity of water not to exceed 172.9 acre feet during any calendar month and a total quantity during the irrigation season not to exceed 864.5 acre feet.

Rate in cfs: Middle Fork: 4.32 cfs

Spring: 4.32 cfs (April 1-May 31), 2.16 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 total rate of the instream water right is 1.51 cfs from April 1-May 31 and 2.82 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, 1999 (not before execution by the parties) and continue through September 30, 2000.
- 2.4 **Compensation.** Lessor has 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, 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 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: None

Watermaster: *Kelvin G. 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: *5/7/99*

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: *Russell H. Smith* Date: *4-14-99*

Lessee: *Andrew Parker* Date: *4-16-99*

So ordered by Trustee: *Rafael A. Suckley* Date: *7/6-99*

Director, Oregon Water Resources Department

Effective Date of Lease Agreement: *7/6-99*