

Lease Agreement Number 190

**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:

Confederated Tribes of Warm Springs
42003 Hwy 218
Fossil, OR 97830
Phone (541) 763-4020
Fax

The water rights to be leased are located in Wheeler County

Lessee:

Oregon Water Trust
111 SW Naito Parkway
Suite 404
Portland, OR 97204

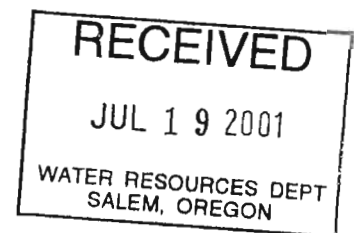
Trustee:

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

~I~

- 1.1 Lessor is the owner, or authorized agent for owner (Exhibit A), 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:

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 No. 25332, 25333, 25334, 25335, 25365, 25167, 25462, & 25523

- 1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The right(s) to be leased are further described as follows:

Certificate No.: 25332

Source: Pine Creek

Priority date: 1870

Type of use: irrigation, domestic and stock

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

12.5 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 33

10.0 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 34

Township 7 South, Range 19 East, W.M.

10.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 3

Township 8 South, Range 19 East, W.M.

Number of acres, 32.5 acres

Rate: 0.80 cubic foot per second from April 1 - June 1, and 0.40 cubic foot per second from June 1 to Sept. 30.

Duty: 130.0 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Frickey Ditches as shown on the adjudication maps

Conditions or other limitations, if any: None

Certificate No.: 25333

Source: Pine Creek

Priority date: 1872

Type of use: irrigation, domestic and stock

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

1.6 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$

2.0 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$

Section 3

Township 8 South, Range 20 East, W.M.

Number of acres, 3.6 acres

Rate: 0.09 cubic foot per second from April 1 - June 1, and 0.045 cubic foot per second from June 1 to Sept. 30.

Duty: 14.4 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Titus Ditch as shown on the adjudication map

Conditions or other limitations, if any: None

Certificate No.: 25334

Source: Pine Creek

Priority date: 1874

Type of use: irrigation, domestic, and stock

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

3.0 acres in the SE¹/₄ SE¹/₄

Section 31

0.2 acre in the SW¹/₄ SW¹/₄

Section 32

Township 7 South, Range 20 East, W.M.

6.5 acres in the NW¹/₄ NE¹/₄

0.5 acre in the SW¹/₄ NE¹/₄

3.5 acres in the NE¹/₄ NW¹/₄

3.2 acres in the NW¹/₄ NW¹/₄

Section 5

2.3 acres in the NE¹/₄ NE¹/₄

Section 6

Township 8 South, Range 20 East, W.M.

Number of acres, 19.2 acres

Rate: 0.48 cubic foot per second from April 1 - June 1, and 0.24 cubic foot per second from June 1 to Sept. 30.

Duty: 76.8 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Dams and ditches as shown on the adjudication maps

Conditions or other limitations, if any: None

Certificate No.: 25335

Source: Pine Creek

Priority date: 1874

Type of use: irrigation, domestic, and stock

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

4.5 acres in the SW¹/₄ SW¹/₄

1.7 acres in the SE¹/₄ NW¹/₄

Section 4

1.3 acres in the SE¹/₄ NE¹/₄

Section 5
Township 8 South, Range 20 East, W.M.

Number of acres, 7.5 acres

Rate: 0.187 cubic foot per second from April 1 - June 1, and 0.09 cubic foot per second from June 1 to Sept. 30.

Duty: 30.0 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Titus or Caven Ditches as shown on the adjudication maps

Conditions or other limitations, if any: None

Certificate No.: 25365

Source: Pine Creek

Priority date: 1870

Type of use: irrigation

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

0.8 acre in the NW¹/₄ SW¹/₄ (Lot 3)

20.3 acres in the SW¹/₄ SW¹/₄ (Lot 4)

0.1 acre in the SE¹/₄ SW¹/₄

Section 31

Township 7 South, Range 20 East, W.M.

5.5 acres in the NE¹/₄ SW¹/₄

0.3 acre in the NW¹/₄ SW¹/₄

1.5 acres in the SW¹/₄ SW¹/₄

8.0 acres in the SE¹/₄ SW¹/₄

7.4 acres in the NE¹/₄ SE¹/₄

21.0 acres in the NW¹/₄ SE¹/₄

1.2 acres in the SW¹/₄ SE¹/₄

7.5 acres in the SE¹/₄ SE¹/₄

Section 36

Township 7 South, Range 19 East, W.M.

Number of acres, 73.6 acres

Rate: 1.84 cubic feet per second from April 1 - June 1, and 0.92 cubic foot per second from June 1 to Sept. 30.

Duty: 294.4 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Huntley Ditch as shown on the adjudication maps

Conditions or other limitations, if any: None

Certificate No.: 25167

Source: Pine Creek and spring in Lot 4 (NW3 NW3) Sec. 1 Township 8 South, Range 20 East, W.M. and Lone Pine Creek

Priority date: March 1881

Type of use: irrigation

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

2.3 acres in the Lot 3 (NE3 NW3)

1.0 acre in the Lot 4 (NW3 NW3)

Section 1

7.3 acres in the Lot 1 (NE3 NE3)

3.7 acres in the Lot 2 (NW3 NE3)

Section 2

Township 8 South, Range 20 East, W.M.

Number of acres, 14.3 acres

Rate: 0.357 cubic foot per second from April 1 - June 1, and 0.178 cubic foot per second from June 1 to Sept. 30.

Duty: 57.2 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): John F. Jordan Ditch as shown on the adjudication map

Conditions or other limitations, if any: None

Certificate No.: 25462

Source: Pine Creek

Priority date: 1871

Type of use: irrigation

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

0.2 acre in the NE3 SE3

7.0 acres in the NW3 SE3

13.0 acres in the SW3 SE3

2.1 acres in the SE3 SE3

Section 35

Township 7 South, Range 19 East, W.M.

Number of acres, 22.3 acres

Rate: 0.557 cubic foot per second from April 1 - June 1, and 0.278 cubic foot per second from June 1 to Sept. 30.

Duty: 89.2 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): dam and ditches as shown on the adjudication map

Conditions or other limitations, if any: None

Certificate No.: 25523

Source: Pine Creek

Priority date: 1880

Type of use: irrigation

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

13.9 acres in the NE¹/₄ NE¹/₄

Section 4

Township 8 South, Range 19 East, W.M.

Number of acres, 13.9 acres

Rate: 0.34 cubic foot per second from April 1 - June 1, and 0.17 cubic foot per second from June 1 to Sept. 30.

Duty: 55.6 ac-ft: 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.

Season of Use: April 1st - September 30th

Point(s) of Diversion (POD): Clarno Ditch as shown on the adjudication map

Conditions or other limitations, if any: None

1.5 **Validity of Rights.** Lessor #1 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
- that the water right is not subject to forfeiture under ORS 540.610.

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.

1.8 **Water use reporting.** The Trustee agrees to fulfill legal obligations related to water use reporting.

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2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is: provided by evidence contained in Exhibit E, such as a signed statement by Oregon Department of Fish and Wildlife, 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:

Certificate 25332

Pine Creek, tributary John Day River in the John Day Basin

Location: Frickey Ditch (approximately RM ½ mile; SW¼ SW¼, Section 34, Township 7 South, Range 19 East, W.M.) to the mouth

Priority date: 1870

Use: Described in Section 2.1, above

Total volume: 130.0 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.53 cfs

June 1 - September 30: 0.41 cfs

Original POD	Mouth	Delivery loss
RM ½	mouth	per mile
0.53 cfs	0.50 cfs	+4%/mile
0.7125 cfs	0.65 cfs	+5%/mile

0.41 cfs 13x

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.53 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.41 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25333

Pine Creek, tributary John Day River in the John Day Basin

Location: Titus Ditch (approximately RM 7½ miles; SE¼ NE¼, Section 3, Township 8 South, Range 20 East, W.M.) to the mouth

Priority date: 1870

Use: Described in Section 2.1, above

Total volume: 14.4 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.059 cfs

June 1 - September 30: 0.045 cfs

Original POD	Mouth	Delivery loss
RM 7½	mouth	per mile
0.059 cfs	0.00 cfs	14%/mile
0.045 cfs	0.000 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.059 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.045 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25334

Pine Creek, tributary John Day River in the John Day Basin

Location: dams and ditches (approximately RM 5½ miles; SE¼ NE¼, Section 5, Township 8 South, Range 20 East, W.M.) to the mouth.

Priority date: 1874

Use: Described in Section 2.1, above

Total volume: 76.8 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.32 cfs
June 1 - September 30: 0.24 cfs

Original POD	Mouth	Delivery loss
RM 5½ miles	mouth	per mile
0.32 cfs	0.00 cfs	14%/mile
0.24 cfs	0.000 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.32 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.24 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25335

Pine Creek, tributary John Day River in the John Day Basin

Location: Titus or Caven Ditches (approximately 6¼ miles; SE¼ NW¼, Section 4, Township 8 South, Range 20 East, W.M.) to the mouth

Priority date: 1874

Use: Described in Section 2.1, above

Total volume: 30.0 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.123 cfs

June 1 - September 30: 0.093 cfs

Original POD	Mouth	Delivery loss
RM 6¼ miles	mouth	per mile
0.123 cfs	0.015 cfs	14%/mile
0.093 cfs	0.006 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.123 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.093 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25365

Pine Creek, tributary John Day River in the John Day Basin

Location: Huntley Ditch (approximately 4.0 miles; SE¼ SW¼, Section 31, Township 7 south, Range 20 East, W.M.) to the mouth

Priority date: 1870

Use: Described in Section 2.1, above

Total volume: 294.4 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 1.214 cfs

June 1 - September 30: 0.92 cfs

Original POD	Mouth	Delivery loss
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RM 4 miles	mouth	per mile
1.214 cfs	0.53 cfs	14%/mile
0.92 cfs	0.36 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 1.214 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.92 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25167

Pine Creek and spring in Lot 4 (NW¼ NW¼) Sec. 1, T8S, R20E, W.M. and Lone Pine Creek, tributary John Day River in the John Day Basin

Location: John F. Jordan Ditch (approximately 9 miles; NE¼ NW¼, Section 1, Township 8 South, Range 20 East, WM) to the mouth

Priority date: March 1881

Use: Described in Section 2.1, above

Total volume: 57.2 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.236 cfs
June 1 - September 30: 0.179 cfs

Original POD	Mouth	Delivery loss
RM 9 miles	mouth	per mile
0.236 cfs	0.00 cfs	14%/mile
0.179 cfs	0.000 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.236 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.179 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25462

Pine Creek, tributary John Day River in the John Day Basin

Location: dam and ditches (approximately RM 2½; NE¼SE¼, Section 35, Township 7 South, Range 19 East, WM) to the mouth

Priority date: 1871

Use: Described in Section 2.1, above

Total volume: 89.2 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.367 cfs
June 1 - September 30: 0.279 cfs

Original POD	Mouth	Delivery loss
RM 2½ mile	mouth	per mile
0.367 cfs	0.238 cfs	14%/mile
0.279 cfs	0.174 cfs	15%/mile

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.367 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.279 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

Certificate 25523

Pine Creek, tributary John Day River in the John Day Basin

Location: Clarno Ditch (approximately RM ¼; NE¼ NE¼, Section 4, Township 8 South, Range 19 East, WM) to the mouth

Priority date: 1880

Use: Described in Section 2.1, above

Total volume: 55.6 ac-ft; 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.

Season of Use: April 9th - September 30th

Rate in cfs: April 9 - May 31: 0.229 cfs
June 1 - September 30: 0.175 cfs

Original POD	Mouth
RM ¼ mile	mouth
0.229 cfs	0.229 cfs
0.175 cfs	0.175 cfs

Conditions to prevent or mitigate injury, if any:

The instream flow will be allocated on a daily average basis of 0.229 cfs from April 9 to May 31. The instream flow will be allocated on a daily average basis up to described rate of 0.175 cfs from June 1 to September 30, or until such time that the total duty for the irrigation season is met. The instream rate use period has been diminished to 145 days and the rate from April to May has been reduced so that the total duty and the monthly duty prior to June 1 is not exceeded.

- 2.3 **Term of lease.** This Lease shall commence on April 1, 2001 (not before execution by the parties) and continue through September 30, 2001.
- 2.4 **Compensation.** The Lessor has agreed to lease subject water right for the sum of \$1.00, or 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.
- 2.6 The actual loss rate is determined to be different than the 14 or 15% per mile listed in Section 2.2, then a finding indicating this change shall be made, and the actual loss rate shall be adjusted appropriately.

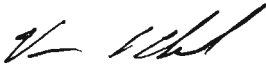
~III~

- 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/will be 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:

Watermaster: Vern Church District: 21

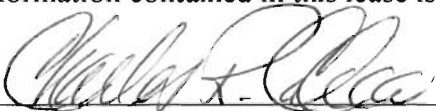


Vernon L. Church
P.O. Box 427
(541) 384-4207

Date: 7-2-01

~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: 7-10-01

LESSEE: Edward Clay Goodwin (for Oregon Water Trust) Date: 7-16-2001

So ordered by Trustee:  Date: 8-31-2001

Exhibits:

- Exhibit A: Proof of property ownership/Power of Attorney Documentation (if needed)
- Exhibit B: Tax Lot Map of Lessor's property
- Exhibit C: Copies of certificates, permits and decreed rights to be leased
- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use