

Lease Agreement Number (assigned by WRD): L-415

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

**Short-Term Water Right Lease Agreement
Pursuant to ORS 537.348(2) and OAR 690-077-0077
For
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

Lessor #1:

James and Judith Knapp
P.O. Box 1270
Sisters, Oregon 97759

The water right to be leased is located in Deschutes County.

Lessee (if different than Oregon Water Resources Department):

Oregon Water Trust
Contact: Terry Anthony
522 SW Fifth Avenue, Suite 825
Portland, Oregon 97204
(503) 552-9022

Trustee:

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301
(503) 373-3739

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- 1.1 Lessor #1 is the owner or authorized agent for owner of property located at: Township 14S, Range 10E, Section 21, Township 14S, Range 10E, Section 28, and Tax Lot number 1410. See Exhibit A.
- 1.2 Lessor #2 is the (Check one):
- Not applicable
 - Official representative of _____, the irrigation district which conveys water to the subject water rights.
 - Another party with an interest in the subject water rights representing _____.

1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

79702, 79703, 79704

Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.4 **Subject Water Rights.** Lessor proposes to lease the water rights listed in 1.3. The right(s) to be leased are further described as follows:

Certificate No.: 79702

Priority date: 1882

Type of use: Irrigation

Legal Season of Use: Not fixed

Is the entire water right certificate being leased? Yes No

Place of use: T 14S, R 10E, Sec 21

Acres to be leased: 6.3 acres SE $\frac{1}{4}$ of SE $\frac{1}{4}$
9.7 acres SW $\frac{1}{4}$ of SE $\frac{1}{4}$

Place of use: T 14S, R 10E, Sec 28

Acres to be leased: 4.0 NW $\frac{1}{4}$ of NE $\frac{1}{4}$

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Number of acres being leased, if for irrigation: none *20 ac BR*

Acre-feet of storage, if applicable: N/a

Total rate associated with leased rights (cfs): 0.40

Total duty associated with leased rights (AF): 90

Conditions or other limitations, if any: none

Certificate No.: 79703

Priority date: 1905

Type of use: Irrigation

Legal Season of Use: Not fixed

Is the entire water right certificate being leased? Yes No

Place of use: T 14S, R 10E, Sec 21

Acres to be leased: 7.2 acres SW $\frac{1}{4}$ of NE $\frac{1}{4}$
6.1 acres SE $\frac{1}{4}$ of SE $\frac{1}{4}$

Place of use: T 14S, R 10E, Sec 28

Acres to be leased: 3.3 acres NE $\frac{1}{4}$ of NE $\frac{1}{4}$
1.4 acres SE $\frac{1}{4}$ of NE $\frac{1}{4}$
0.4 acres NW $\frac{1}{4}$ of NE $\frac{1}{4}$

Number of acres being leased, if for irrigation: none *18.4 ac*
Acre-feet of storage, if applicable: N/a
Total rate associated with leased rights (cfs): 0.37
Total duty associated with leased rights (AF): 83.8
Conditions or other limitations, if any: none

Certificate No.: 79704

Priority date: 1871 for Tract 1, 1903 for Tract 2

Type of use: Irrigation

Legal Season of Use: Not fixed

Is the entire water right certificate being leased? Yes No

Place of use: T 14S, R 10E, Sec 21

Acres to be leased: 30.8 acres NW ¼ of SE ¼
14.7 acres SW ¼ of SE ¼
1.2 acres NE ¼ of SE ¼
1.0 acre SE ¼ of SE ¼

Place of use: T 14S, R 10E, Sec 28

Acres to be leased: 18.3 acres NE ¼ of NE ¼

Number of acres being leased, if for irrigation: none *45.5 Tract 1*
20.5 Tract 2
Acre-feet of storage, if applicable: N/a
Total rate associated with leased rights (cfs): 0.91 for Tract 1
0.41 for Tract 2
Total duty associated with leased rights (AF): 204.75 for Tract 1
92.25 for Tract 2
Conditions or other limitations, if any: none

1.5 Validity of Rights. Lessor(s) 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 as an instream water right or
- The water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however, the water right is not subject to forfeiture under ORS 540.610(2)() (include necessary supporting documentation as Attachment 3).

- 2.1 Public Use.** This lease will increase streamflows which will benefit:
- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
 - Pollution abatement
 - Recreation and scenic attraction

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

Certificate No.: 79702

Big Slough (aka Indian Ford Creek), a tributary of Squaw Creek

Location: POD to mouth

Priority date: 1882

Use: Irrigation

Total volume: 20 acres

Rate in cfs: 0.40

Period of use: April 1 to October 31

Conditions to prevent or mitigate injury, if any: The following represents voluntary limits proposed for the certificated water rights by the Oregon Water Trust (OWT). Whereas the decree does not specify a duty limitation, OWT proposes a duty of 4.5 acre-feet/acre, which it understands to be "usual and customary" in the area for the types of crops commonly grown. In accordance with this proposed duty, the instream flow will be 0.200 cfs from June 10 through June 30 (21 days), 0.400 cfs from July 1 through September 30 (92 days), and 0.200 cfs from October 1 through October 21 (21 days).

Certificate No.: 79703

Big Slough (aka Indian Ford Creek), a tributary of Squaw Creek

Location: POD to mouth

Priority date: 1905

Use: Irrigation

Total volume: 18.4 acres

Rate in cfs: 0.37

Period of use: April 1 to October 31

Conditions to prevent or mitigate injury, if any: The following represents voluntary limits proposed for the certificated water rights by the OWT. Whereas the decree does not specify a duty limitation, OWT proposes a duty of 4.5 acre-feet/acre, which it understands to be "usual and customary" in the area for the types of crops commonly grown. In accordance with this proposed duty, the instream flow will be 0.185 cfs from June 10 through June 30 (21 days), 0.370 cfs from July 1 through September 30 (92 days), and 0.185 cfs from October 1 through October 21 (21 days).

Certificate No.: 79704

Big Slough (aka Indian Ford Creek), a tributary of Squaw Creek

Location: POD to mouth

Priority date: 1871 for Tract 1, 1903 for Tract 2

Use: Irrigation

Total volume: 66.0 acres (45.5 acres for Tract 1 and 20.5 acres for Tract 2)

Rate in cfs: 1.32 (0.91 for Tract 1 and 0.41 for Tract 2)

Period of use: April 1 to October 31

Conditions to prevent or mitigate injury, if any: The following represents voluntary limits proposed for the certificated water rights by the OWT. Whereas the decree does not specify a duty limitation, OWT proposes a duty of 4.5 acre-feet/acre, which it understands to be "usual and customary" in the area for the types of crops commonly grown. In accordance with this proposed duty, the instream flow will be 0.455 cfs (1871) 0.205 cfs (1903) from June 10 through June 30 (21 days), 0.910 cfs (1871) 0.410 cfs (1903) from July 1 through September 30 (92 days), and 0.455 cfs (1871) 0.205 cfs (1903) from October 1 through October 21 (21 days).

2.3 Term of lease. This lease shall terminate on October 31, 2003.

2.4 Compensation. The Lessor has agreed to lease subject water right for the sum of \$1.00, 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 dates of the new instream use (see section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

2.6 Termination provision.

- For multiyear leases, lessor shall have the option of terminating the lease each year, prior to the lease being exercised, with 30 day written notice to the Department.
- For multiyear leases, lessor shall not have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.

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3.1 Accuracy. The Undersigned Lessor, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

3.2 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 690-077-0077.

3.3 Precedent. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.

3.4 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. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.

Lessor #1: *Judith Knapp* Date: *4/28/03*

Lessee: *[Signature]* for Oregon Water Trust Date: *4/23/03*

3.5 Allocation of water to the 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. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

Exhibits:

- Exhibit A: Tax lot map of Lessor's property
- Exhibit B: Detailed map illustrating lands under subject rights to be leased
- Exhibit C: Copy of certificates to be leased