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WATER RESOURCES DEPT.  
SALEM, OREGON

Lease Agreement Number (assigned by WRD): 309

**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:**

(Name) Bear Creek Orchards, Incorporated, A Delaware Company  
(Mailing address) PO Box 9000  
(City, State, Zip Code) Medford, Oregon 97501  
(Telephone number) (541) 864-3536

**Lessor #2, 3, etc.**

\_\_\_\_\_

The water right to be leased is located in Jackson County

**Lessee (if different than Oregon Water Resources Department):**

(Name) Oregon Water Trust  
(Mailing address) 522 SW Fifth Avenue, Suite 825  
(City, State, Zip Code) Portland, Oregon 97204  
(Telephone number) (503) 525-0141

**Trustee:**

Oregon Water Resources Department  
158 12<sup>th</sup> Street NE  
Salem OR 97301  
(503) 378-8455

~I~

- 1.1 Lessor #1 is the owner, or authorized agent for owner property located at: Township 36S, Range 2W, Section 11 and 12 and Tax Lot number 200. If the water right appurtenant to these lands is also appurtenant to lands owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.
- 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.

Certificate No. irrigation rights 65148, 5324, 1420 and temperature control rights C 42816, 42818, 65102

**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.: 65148

Priority date: September 22, 1888 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April 1 through October 31

Is the entire water right certificate being leased?:  Yes  No

If no, list the acres to be leased by legal description of township, range, section, and ¼ ¼ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 36 S, R 2 W, Section 11, SE¼ NE¼ - 22.20 acres to be leased  
Enter additional places of use here, using format above:

- 36 S, 2 W, Sect 11, SE 1/4 of NE 1/4 - 0.8 acres to be leased
- 36 S, 2 W, Sect 11, SE 1/4 of NE 1/4 and NE 1/4 of SE 1/4 - 35.4
- 36 S, 2 W, Sect 11, SE 1/4 of SE 1/4 - 13.7
- 36 S, 2 W, Sect 12, NW 1/4 of NE 1/4 - 16.0
- 36 S, 2 W, Sect 12, SW 1/4 of NE 1/4 - 19.4
- 36 S, 2 W, Sect 12, NW 1/4 of SE 1/4 - 2.0
- 36 S, 2 W, Sect 12, SW 1/4 of NW 1/4 - 18.0
- 36 S, 2 W, Sect 12, SE 1/4 of NW 1/4 - 23.2
- 36 S, 2 W, Sect 12, within that part of DLC 37 - 99.7
- 36 S, 2 W, Sect 12, within that part of DLC 38 - 27.1

Page \_\_\_\_ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 277.5

Acre-feet of storage, if applicable: \_\_\_\_\_

Rate associated with leased rights (cfs): 3.47

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 1,249

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: N/A

If you need to enter another leased right, please use last page.

**1.5 Validity of Rights.** Lessor(s) attests (mark one) that:

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- 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).

~II~

**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:

Rogue River/Creek

Tributary to Pacific Ocean in the Rogue Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): The point of diversion is located as follows: Lot 7 (NE 1/4 NW 1/4), Section 6, T 36 S, R 1 W, W.M.; Table Rock Ditch - 33 feet South and 1987 feet East from the NW corner of Section 6. The proposed instream reach is from the POD, at approximately river mile 134, to the Gold Ray Dam at approximately river mile 126.

Total volume in acre-feet: 1,249

Rate in cfs: 3.47 Allowed period of use: May 1 through October 31

**Conditions to prevent injury, if any:**

- None
- The instream flow will be allocated on a daily average basis up to the described rate from May 1 through October 31.
- Other (describe): \_\_\_\_\_

If you need to enter more instream uses, please use last page.

**2.3 Term of lease.** This lease shall terminate on October 31, 2002.

**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 Termination provision.**

For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised, with 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.

~III~

**3.1 Accuracy.** 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. 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: Ron Johnson for Bear Creek Orchards, Inc. Date: 5.21.02

For additional Lessors, type in space for signature and date \_\_\_\_\_ Date: \_\_\_\_\_

Lessee: Andrew P. King Date: 6-20-02

**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.

So ordered by Trustee: [Signature] Date: 7/24/2002

Effective date is \_\_\_\_\_ (if later than the date of the Trustee's signature).

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Other Attachments As Needed:

- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
- Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
- Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.5 is checked)
- Attachment 4: Split Season Instream Use Form

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Additional Information

Section 1.4, (Standard Leasing Form) cont.

**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.: 5324

Priority date: June 13, 1922 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April 1 through October 31

Is the entire water right certificate being leased?:  Yes  No

If no, list the acres to be leased by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T \_\_, R \_\_, Section \_\_, \_\_1/4 \_\_1/4 - \_\_\_\_\_ acres to be leased

Enter additional places of use here, using format above:

Page \_\_\_\_\_ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 27

Acre-feet of storage, if applicable: \_\_\_\_\_

Rate associated with leased rights (cfs): 0.34

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 144 based on rate and season of use

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: N/A

Section 2.2, cont.

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

Rogue River River/Creek

Tributary to Pacific Ocean in the Rogue Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): The point of diversion is not described on the certificate. Reportedly, the water reaches the land by way of the Table Rock Ditch, which has its diversion point in the NE 1/4 of the NW 1/4 of Section 6, T 36 S, R 1 W, W. M. The proposed instream reach is from the POD, at approximately river mile 134, to Gold Ray Dam at approximately river mile 126.

Total volume in acre-feet: 144

Rate in cfs: 0.34 Allowed period of use: May 1 through October 31

**Conditions to prevent injury, if any:**

None

The instream flow will be allocated on a daily average basis up to the described rate from May 1 until October 31, 2002.

Other (describe): \_\_\_\_\_

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Additional Information

Section 1.4, (Standard Leasing Form) cont.

**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.: 14209

Priority date: November 23, 1938 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April through October 31

Is the entire water right certificate being leased?:  Yes  No

If no, list the acres to be leased by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T 36 S, R 2 W, Section 12, SW 1/4 NE 1/4 - 13.30 acres to be leased

Enter additional places of use here, using format above:

T 36 S, R 2 W, Section 12, NW 1/4 SE 1/4 - 2.7 acres

Page \_\_\_\_\_ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 16

Acre-feet of storage, if applicable: \_\_\_\_\_

Rate associated with leased rights (cfs): 0.20

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 72

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: N/A

Section 2.2, cont.

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

Rogue River River/Creek

Tributary to Pacific Ocean in the Rogue Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): The point of diversion is located in the Lot 7 (NE1/4 NW1/4), Section 6, Township 36 South, Range 1 West, W.M. The proposed reach of instream use is from the POD, at approximately river mile 134, to Gold Ray Dam at approximately river mile 126.

Total volume in acre-feet: 72

Rate in cfs: 0.20 Allowed period of use: May 1 through October 31

**Conditions to prevent injury, if any:**

None

The instream flow will be allocated on a daily average basis up to the described rate from May 1 until October 31.

Other (describe): \_\_\_\_\_

*certificat indicate to "April 2 to October 31" BR*