

Lease Agreement Number: 256

**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:

Burns-Paiute Tribe
HC – 71 100 PaSigo St.
Burns, OR 97720
(541) 573-1375

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 97301
(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:

A portion of Certificate Nos. 2339, 2347, and 10862.

1.4 Subject Water Rights. Lessor proposes to lease a portion of the water rights listed in 1.3, above.

The portion of the rights to be leased are further described as follows:

Water Right Certificate No.: 2339

Source: Lake Creek, tributary of Middle Fork of Malheur River.

Priority date: March 30, 1917

Type of use: Irrigation and Domestic

Place of use:

- T 16 S, R 33 ½ E, W.M., Section 21, SW ¼ NE ¼ - 10.0 acres
- T 16 S, R 33 ½ E, W.M., Section 21, NW ¼ SE ¼ - 30.0 acres
- T 16 S, R 33 ½ E, W.M., Section 21, SW ¼ SE ¼ - 30.0 acres
- T 16 S, R 33 ½ E, W.M., Section 27, SW ¼ NW ¼ - 25.0 acres
- T 16 S, R 33 ½ E, W.M., Section 28, NE ¼ NE ¼ - 30.0 acres
- T 16 S, R 33 ½ E, W.M., Section 28, NW ¼ NE ¼ - 40.0 acres
- T 16 S, R 33 ½ E, W.M., Section 28, SW ¼ NE ¼ - 10.0 acres
- T 16 S, R 33 ½ E, W.M., Section 28, SE ¼ NE ¼ - 20.0 acres

Number of acres, if for irrigation: 195.0 acres

Rate: 2.73 cfs

Duty: Not Applicable

Season of use: March 1 to October 31

Point(s) of Diversion (POD): 2708 ft. E. and 1375 ft. S. from the N.W. Cor. Of Sec. 21, Tp. 16 S., R 33½ E.W.M., to the headgate, being within the SW ¼ NE ¼ of said Sec. 21, Grant County.

Conditions or other limitations, if any: None

Water Right Certificate No.: 2347

Source: Lake Creek, a tributary of Middle Fork of Malheur River.

Priority date: January 21, 1918

Type of use: Irrigation

Place of use:

- T 16 S, R 33 ½ E, W.M., Section 21, SE ¼ SE ¼ - 20.0 acres
- T 16 S, R 33 ½ E, W.M., Section 28, NE ¼ NE ¼ - 10.0 acres
- T 16 S, R 33 ½ E, W.M., Section 27, NW ¼ NW ¼ - 35.0 acres
- T 16 S, R 33 ½ E, W.M., Section 27, SW ¼ NW ¼ - 15.0 acres

Number of acres, if for irrigation: 80.0 acres

Rate: 1.0 cfs

Duty: Not Applicable

Season of use: March 1 to October 31

Point(s) of Diversion (POD): S. 1800 ft. thence W. 1120 ft. from the SE. corner of Sec. 16, T. 16 S., R. 33½ E., W.M., being within the SE ¼ NE ¼ of Sec. 21, T. & R. as above stated.

Conditions or other limitations, if any: None

Water Right Certificate No.: 10862

Source: Big Creek and waste water from Lake Creek Ranger Station Ditch and Lake Creek, tributary of Malheur River.

Priority date: August 19, 1929

Type of use: Irrigation

Place of use:

T 16 S, R 33 ½ E, W.M., Section 27, SW ¼ NE ¼ - 40.0 acres (0 of which are to be leased)

T 16 S, R 33 ½ E, W.M., Section 27, SE ¼ NW ¼ - 40.0 acres (0 of which are to be leased)

T 16 S, R 33 ½ E, W.M., Section 27, NE ¼ SW ¼ - 40.0 acres

T 16 S, R 33 ½ E, W.M., Section 27, NW ¼ SE ¼ - 40.0 acres

Number of acres, if for irrigation: 160.0 acres (80 of which are to be leased)

Rate: 2.0 cfs (1.0 of which are to be leased)

Duty: Not Applicable

Season of use: March 1 to October 31

Point(s) of Diversion (POD): 600 ft. N. of S¼ Cor. Of Sec. 2, T. 16 S., R. 33½ E.W.M for Big Cr. Diversion; 1320 ft. N. and 1760 ft. E. of SW Cor. Of Sec. 22, T. 16 S., R. 33½ E.W.M. for Lake Cr. Diversion, being within the SE ¼ SW ¼ of said §. 2 & SE SW of said Sec. 2

Conditions or other limitations, if any: None

1.5 Validity of Rights. Lessor 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. Lessor 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.

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.

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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 Lessee, or other party, 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 No. 2339

Lake Creek, tributary of Middle Fork of Malheur River in the Malheur Basin

Location: POD to mouth of Lake Creek

Priority date: March 30, 1917

Use: Described in Section 2.1, above

Total volume: Not Applicable

Rate: 2.73 cfs

Period of use: March 1 to October 31

Conditions to prevent or mitigate injury, if any: None

Certificate No. 2347

Lake Creek, tributary of Middle Fork of Malheur River in the Malheur Basin

Location: POD to mouth of Lake Creek

Priority date: January 21, 1918

Use: Described in Section 2.1, above

Total volume: Not Applicable

Rate: 1.00 cfs

Period of use: March 1 to October 31

Conditions to prevent or mitigate injury, if any: None

Certificate No. 10862

Big Creek and waste water from Lake Creek Ranger Station Ditch and Lake Creek, tributary of Malheur River in the Malheur Basin

Location: POD to mouth of Lake Creek

Priority date: March 30, 1917

Use: Described in Section 2.1, above

Total volume: Not Applicable

Rate: 1.0 cfs

Period of use: March 1 to October 31

Conditions to prevent or mitigate injury, if any: None

2.3 Term of lease. This Lease shall commence on March 1, 2001 (not before execution by the parties) and continue through October 31, 2001.

2.4 Compensation. The Lessor has agreed to lease subject water right for cash, 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.

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

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- 3.0 **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: None

Watermaster: Mitch Lewis

District: 10



Mitch Lewis

Mitch Lewis
450 N. Buena Vista
Burns, OR 97720
(541) 573-2591 – Phone
(541) 573-8311 – Fax

Date: July 18, 2001

~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: 8/29/01
TRIBAL CHAIRMAN

Lessee:  Date: 9/4/01

So ordered by Trustee:  Date: 10/23/2001

Exhibits:

- Exhibit A: Proof of property ownership
- 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