

Lease Agreement Number: 255

**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 #1:**

James Cowan  
16881 Varco Road  
Bend , OR 97701  
(541)318-7136

The water right to be leased is located in Deschutes County

**Lessee:**

State of Oregon

**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 (Exhibit A), of property highlighted in Exhibit B.
- 1.2 Lessor #2 N/A
- 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 No. 74524  
Certificate No. 74525

Permit No. Decreed Water Right  
Permit No. 12458

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

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

Certificate No.: 74524

Priority date: 1886, 1891 & 1897 Type of use: Irrigation, stock, storage & domestic use

Place of use:

1886 Priority  
NE 1/4 SE 1/4 30.9 acres  
SE 1/4 SE 1/4 17.9 acres  
Section 2  
Township 15 South, Range 10 East, W.M.

1891 Priority  
Lot 1 SE 1/4 NE 1/4 3.3 acres  
NE 1/4 SE 1/4 8.5 acres  
Township 15 South, Range 10 East, W.M.

(If original use is irrigation, include map of irrigated lands in Exhibit D.)

Number of acres, if for irrigation: 60.6 acres

Acre feet of storage: N/A

Rate: 1.21 cfs Duty: 151.5 AF (2.5 AF/Ac), being 122.0 AF with priority date of 1886 and 29.5 AF with priority date in 1891

Season of Use: Not Fixed by Squaw Creek Decree, therefore, March 1 through October 31 shall be used per OAR 690-250-070 (1)

Point(s) of Diversion (POD): Three Creek Ditch - SE 1/4 NE 1/4, Section 17, T.16S., R.10 E.

Conditions or other limitations, if any: No special conditions; subject to decree.

Certificate No.: 74525

Priority date: 3/8/23 for Snow Creek & 9/12/36 for Big Three Creek Reservoir

Type of use: Supplemental Irrigation

Place of use:

Lot 1 SE 1/4 NE 1/4 3.3 acres  
NE 1/4 SE 1/4 39.4 acres  
SE 1/4 SE 1/4 17.9 acres  
Section 2

## Township 15 South, Range 10 East, W.M.

(If original use is irrigation, include map of irrigated lands in Exhibit D.)

Number of acres, if for irrigation: 60.6 acres

Acre feet of storage: 784.0 Acre-Feet out of a total 1400.0 Acre-Feet

Rate: 0.757 cfs (1/80 cfs/acre) Duty: 151.5 AF (2.5 af/acre)

Season of Use: No irrigation season identified in certificate and not fixed by Squaw Creek Decree, therefore, March 1 through October 31 shall be used per OAR 690-250-070 (1)

Point(s) of Diversion (POD):

Three Creek - NW 1/4 SE 1/4, Section 36, T16S, R9E

Snow Creek - NE 1/4 SW 1/4, Section 9, T17S, R9E (No longer used)

Big Three Creek Lake Reservoir - SW1/4, Section 14, T17S, R9E

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  
(As to Certificate No. 74524 and the live flow portion of Certificate No. 74525, based on information provided by former Region Manager Bob Main.)
- that the water right is not subject to forfeiture under ORS 540.610 (k)  
  
(As to the storage portion of Certificate No. 74525, and as further described in letter from Martha O. Pagel to Laura Snedaker, WRD, dated October 9, 2001.).

**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 690-077-0077.

**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.

~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 (Select one):

- A specific use or need identified by DEQ, Parks or ODFW and further described in Exhibit E.

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

Certificate No.: 74524

Three Creek

Tributary to Squaw Creek in the Deschutes Basin.

Reach: Three Creeks Lake to SW 1/4 NE 1/4, Section 17, Township 16 South, Range 10 East

Priority date: 1886 & 1891

Use: Described in Section 2.1, above

Total volume: 151.5 AF, being 122.0 AF with priority date of 1886 and 29.5 AF with priority date in 1891

Rate in cfs: 1.21 cfs

Period of use: March 1 through October 31

Conditions to prevent injury, if any: The instream flow will be allocated on a daily average basis up to the described rate from August 30 through October 31, or until such time that the total duty for the irrigation season is met. The instream use period has been diminished to 63 days to insure the duty limitation is not exceeded during the period of use described above.

Certificate No.: 74525

Three Creek & Big Three Creek Lake Reservoir

Tributary to Squaw Creek in the Deschutes Basin.

Reach: Three Creeks Lake to SW 1/4 NE 1/4, Section 17, Township 16 South, Range 10 East

Priority date: March 8, 1923 for Three Creek and September 12, 1936 for Big Three Creek Lake Reservoir

Use: Described in Section 2.1, above

Total volume: 151.5 AF

Rate in cfs: 0.757 cfs & 784.0 AF of stored water

Period of use: March 1 through October 31

Conditions to prevent injury, if any: Supplemental rights will only be served when primary rights are deficient so as not to exceed the seasonal duty with both rights.

The instream flow will be allocated on a daily average basis up to the described rate from July 23 through October 31, or until such time that the total duty for the irrigation season

is met. The instream use period has been diminished to 101 days to insure the duty limitation is not exceeded during the period of use described above.

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

#### Optional Provisions

- 2.6** Additional monitoring. Lessor/Lessee intends to manage and participate in the protection of the instream use by: (Describe plans) -- None
- 2.7 Modification or termination provisions:** The Lessor shall have the option of terminating the lease for the 2002 irrigation season with written notice 30 days prior to March 1, 2002.

~III~

- 3 Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:
- 3.1** Lessor #1 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: (Describe, if any)

Watermaster: *[Signature]* District 11  
 (Address & telephone) 1340 NW Wall ST  
Suite 100  
Bead, OR 97701  
 Date: 10-24-01

~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 #1: James Cowan by *[Signature]*  
 Date: 10-29-01

So ordered by Trustee: *[Signature]*  
 Date: 10/31/2001

Exhibits:

- Exhibit A: Copy of Property Deed/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

Other Exhibits As Needed:

- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use
- Exhibit F, etc: Information related to Optional Provisions, such as Additional Monitoring or Modifications or Termination of lease