

Lease Agreement Number 272

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:

Clinton H, Maureen C., Skye H. and Penny Krebs:
69956 Highway 74
Ione, OR 97843
Phone (541) 422-7548

The water right to be leased is located in Gilliam County

Lessee:

State of Oregon

Trustee:

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

~I~

- 1.1 Lessors are the owners, or authorized agent for owner of property located at: Township 3 North, Range 22 East, Sections 26, 27, 35, and 36 and Tax Lot 700.
- 1.2 Lessor 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.

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Certificate No. 140, 141, 171, 253, and 2380

- 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.: 140

Source: Willow Creek

Priority date: 1892 and 1907

Type of use: irrigation

Legal Season of Use: all year

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

Place of use:

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 6.5 acres

NW $\frac{1}{4}$ SE $\frac{1}{4}$ 5.0 acres

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 9.0 acres

Section 35

Township 3 North, Range 22 East, W.M.

Number of acres, 20.5 acres (20.5 acres leased)

Rate: 0.17 cubic feet per second with 1892 and 0.18 cubic feet per second with 1907

Duty: n/a

Point(s) of Diversion (POD): Farnhurst Ditch NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6, Township 2 North, Range 22 East, W.M.

Certificate No.: 141

Source: Willow Creek

Priority date: 1901

Type of use: irrigation

Legal Season of Use: all year

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

Place of use:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.0 acres

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 7.0 acres

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 29.0 acres

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 7.0 acres

Section 26

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 16.5 acres

Section 36

Township 3 North, Range 22 East, W.M.

Number of acres, 66.5 acres (66.5 acres leased)

Rate: 1.11 cubic feet per second

Duty: n/a

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Point(s) of Diversion (POD): Farnhurst Ditch NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6, Township 2 North, Range 22 East, W.M.

Certificate No.: 171

Source: Willow Creek

Priority date: 1901

Type of use: irrigation

Legal Season of Use: all year

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

Place of use:

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 9.0 acres

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 10.0 acres

Section 35

Township 3 North, Range 22 East, W.M.

Number of acres, 19.0 acres (19.0 acres leased)

Rate: 0.32 cubic feet per second

Duty: n/a

Point(s) of Diversion (POD): Farnhurst Ditch NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6, Township 2 North, Range 22 East, W.M.

Certificate No.: 253

Source: Eight Mile Creek , tributary to Willow Creek

Priority date: 1908

Type of use: irrigation

Legal Season of Use: all year

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

Place of use:

18.0 acres

NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 26

N $\frac{1}{2}$ SE $\frac{1}{4}$

Section 27

Township 3 North, Range 22 East, W.M.

Number of acres, 18.0 acres (18.0 acres leased)

Rate: 0.30 cubic feet per second

Duty: n/a

Point(s) of Diversion (POD): Farnhurst Ditch NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6, Township 2 North, Range 22 East, W.M.

Conditions or other limitations, if any: None

Certificate No.: 2380

Source: Willow Creek

Priority date: March 13, 1915

Type of use: irrigation

Legal Season of Use:

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

Place of use:

NW¹/₄ NE¹/₄ 1.40 acres

NE¹/₄ NW¹/₄ 3.79 acres

SE¹/₄ NW¹/₄ 15.99 acres

SW¹/₄ NE¹/₄ 7.03 acres

Section 35

Township 3 North, Range 22 East, W.M.

Number of acres, 28.21 acres (28.21 acres leased)

Rate: 0.36 cubic feet per second

Duty: n/a

Point(s) of Diversion (POD): NE¹/₄ SE¹/₄, Section 35 Township 3 North, Range 22 East, W.M.

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 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 4).

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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 140

Willow Creek, tributary Columbia River in the Umatilla Basin

Location: NW¹/₄ SW¹/₄, Section 6, Township 2 North, Range 22 East, W.M. to the mouth of Willow Creek

Priority date: 1892 and 1907

Use: Described in Section 2.1, above

Season of Use: March 1st to October 31st

Rate in cfs: 0.17 cfs with 1892 and 0.18 cfs with 1907

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate through the irrigation season.

Since the water is being protected past the POD, it is necessary to account for return flows which would otherwise be available to downstream water right holders and to also account for channel loss.

Flows are reduced to 0.24 cfs at the lower end of the reach for priority dates of 1892 and 1907

Certificate 141

Willow Creek, tributary Columbia River in the Umatilla Basin

Location: NW¼ SW¼, Section 6, Township 2 North, Range 22 East, W.M. to the mouth

Priority date: 1901

Use: Described in Section 2.1, above

Season of Use: March 1st to October 31st

Rate in cfs: 1.11 cfs

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate through the irrigation season.

Since the water is being protected past the POD, it is necessary to account for return flows which would otherwise be available to downstream water right holders and to also account for channel loss.

Flows are reduced to 0.75 cfs at the lower end of the reach.

Certificate 171

Willow Creek, tributary Columbia River in the Umatilla Basin

Location: NW¼ SW¼, Section 6, Township 2 North, Range 22 East, W.M. to the mouth

Priority date: 1901

Use: Described in Section 2.1, above

Season of Use: March 1st to October 31st

Rate in cfs: 0.32 cfs

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate through the irrigation season.

Since the water is being protected past the POD, it is necessary to account for return flows which would otherwise be available to downstream water right holders and to also account for channel loss.

Flows are reduced to 0.22 cfs at the lower end of the reach

Certificate 253

Willow Creek, tributary Columbia River in the Umatilla Basin

Location: NW¼ SW¼, Section 6, Township 2 North, Range 22 East, W.M. to the mouth

Priority date: 1908

Use: Described in Section 2.1, above

Season of Use: March 1st to October 31st

Rate in cfs: 0.3 cfs

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate through the irrigation season.

Since the water is being protected past the POD, it is necessary to account for return flows which would otherwise be available to downstream water right holders and to also account for channel loss.

Flows are reduced to 0.20 cfs at the lower end of the reach

Certificate 2380

Willow Creek, tributary Columbia River in the Umatilla Basin

Location: NE¼ SE¼, Section 35 Township 3 North, Range 22 East, W.M.
to the mouth

Priority date: March 13, 1915

Use: Described in Section 2.1, above

Season of Use: March 1st to October 31st

Rate in cfs: 0.36 cfs

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate through the irrigation season.

Since the water is being protected past the POD, it is necessary to account for return flows which would otherwise be available to downstream water right holders and to also account for channel loss.

Flows are reduced to 0.24 cfs at the lower end of the reach

- 2.3 **Term of lease.** This Lease shall terminate on October 31, 2006.
- 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 provisions.

XX 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.

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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. Lessor is currently entitled to appropriate water under the water rights described in Section 1.4.

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 690-077-0077 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: *Werner A. Krebs* Date: *1-15-02*
Sun Krebs Ranches

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Lessor #2: _____ Date:

Lessor #3: _____ Date:

Lessor #4: _____ Date:

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:  _____ Date: 2/27/2002

Effective date is _____ (if different than the date of the Trustee's signature).

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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