

Lease Agreement Number: 254

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:

Bill Atherton
1670 Fircrest Court
Lake Oswego, OR 97034
(503) 636-6365

The water rights to be leased are located in Jefferson 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:

Certificate Nos. 49780 and 61134.
- 1.4 **Subject Water Rights.** Lessor proposes to lease the water rights listed in 1.3, above.

Correction and addendum to Instream Lease between Bill Atherton and Oregon Water Trust for Water Rights to Trout Creek, tributary to Deschutes River, Jefferson County, Oregon

Based on review of the final proof survey and decree maps for the two water rights to be leased instream pursuant to this lease, it has come to the parties' attention that a portion of the water right acres appear to overlap. In order to avoid the potential for injury, the parties have agreed voluntarily to reduce the amount of acreage to be leased pursuant to Water Right Certificate 61134 by 6.1 acres, with corresponding reductions in rate and duty. *As set out below, the relevant provisions of the proposed Instream Lease between Bill Atherton and Oregon Water Trust for Water Rights to Trout Creek, tributary to Deschutes River, located in Jefferson County, Oregon, are hereby modified to delete the struckout language and to include the language set out in boldface type.* All remaining provisions of the lease shall remain in full force and effect.

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

Water Right Certificate No.: 61134

Source: Trout Creek, a tributary of the Deschutes River

Priority date: October 31, 1974

Type of use: Irrigation

~~Place of Use: (map of irrigated lands is in Exhibit D)~~

~~T 9 S, R 14 E, W.M., Section 9, SW ¼ NW ¼ - 2.0 acres~~

~~T 9 S, R 14 E, W.M., Section 9, NE ¼ SW ¼ - 0.2 acres~~

~~T 9 S, R 14 E, W.M., Section 9, NW ¼ SW ¼ - 8.8 acres~~

~~Number of acres, if for irrigation: 11.0 acres~~

~~Rate: .28 cfs~~

~~Duty: 66.0 acre-feet (6 ac ft/ac)~~

Place of Use: (map of irrigated lands is in Exhibit D)

T 9 S, R 14 E, W.M., Section 9, SW ¼ NW ¼ - 0 acres

T 9 S, R 14 E, W.M., Section 9, NE ¼ SW ¼ - 0.2 acres

T 9 S, R 14 E, W.M., Section 9, NW ¼ SW ¼ - 4.7 acres

Number of acres, if for irrigation: 4.9 acres

Rate: .115 cfs

Duty: 29.4 acre-feet (6 ac-ft/ac)

Season of use: April 1 to October 31

Point(s) of Diversion (POD):

NW ¼ SW ¼, Section 9 T 9 S, R 14 E, W.M.; 2600 feet North and 925 feet East from SW Corner Section 9.

Conditions or other limitations, if any: None

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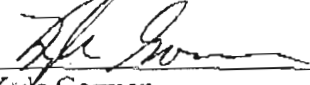
WATER RESOURCES DEPT.
SALEM, OREGON

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

A Portion of Certificate No.: 61134
 Trout Creek, a tributary of the Deschutes River, in the Deschutes Basin.
 Location: POD to mouth of Trout Creek
 Priority date: October 31, 1974
 Use: Instream (described in Section 2.1, above)
~~Rate: .28 cfs~~
~~Total Volume: 66.0 ac-ft~~
Rate: 0.115 cfs
Total Volume: 29.4 ac-ft
 Season of use: April 1 to October 31
 Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate from July 5 to October 31, or until such time that the total duty for the irrigation season is met.


The purpose of this addendum is specific to this lease, and it is the landowner's express intent that it not be construed in any manner or by any agency or forum to represent the landowner's position vis-à-vis the applicability, location and validity of the water rights described herein. The map attached hereto is incorporated by reference in its entirety.

Watermaster:


 Kyle Gorman
 1340 NW Wall St., Ste. 100
 Bend, OR 97701

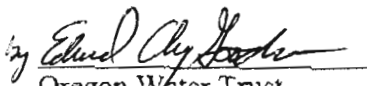
9-4-01
 Date

Lessor:


 Bill Atherton
 1670 Fircrest Court
 Lake Oswego, OR 97034

9-14-01
 Date

Lessee:


 Oregon Water Trust
 111 SW Naito Parkway, Suite 404
 Portland, OR 97204

09-04-01
 Date

The rights to be leased are further described as follows:

Water Right Certificate No.: 49780

Source: Trout Creek, a tributary of the Deschutes River

Priority date: 1904

Type of use: irrigation and stock use

Place of use: (map of irrigated lands is in *Exhibit D*)

T 9 S, R 14 E, W.M., Section 9, SW ¼ NW ¼ - 4.6 acres

T 9 S, R 14 E, W.M., Section 9, NW ¼ SW ¼ - 4.1 acres

Number of acres, if for irrigation: 8.7 acres

Rate: .22 cfs

Duty: 52.2 acre-feet (6.0 ac-ft/ac)

Season of use: April 1 to October 31

Point(s) of Diversion (POD):

NW ¼ SW ¼, Section 9, T 9 S, R 14 E, W.M.; 2540 feet North and 860 feet East from SW Corner, Section 9.

Conditions or other limitations, if any: None

Water Right Certificate No.: 61134

Source: Trout Creek, a tributary of the Deschutes River

Priority date: October 31, 1974

Type of use: Irrigation

Place of Use: (map of irrigated lands is in *Exhibit D*)

T 9 S, R 14 E, W.M., Section 9, SW ¼ NW ¼ - 2.0 acres

T 9 S, R 14 E, W.M., Section 9, NE ¼ SW ¼ - 0.2 acres

T 9 S, R 14 E, W.M., Section 9, NW ¼ SW ¼ - 8.8 acres

Number of acres, if for irrigation: 11.0 acres

Rate: .28 cfs

Duty: 66.0 acre-feet (6 ac-ft/ac)

Season of use: April 1 to October 31

Point(s) of Diversion (POD):

NW ¼ SW ¼, Section 9 T 9 S, R 14 E, W.M.; 2600 feet North and 925 feet East from SW Corner Section 9.

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.

~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:

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. 49780

Trout Creek, a tributary of the Deschutes River, in the Deschutes Basin.

Location: P.O.D. to mouth of Trout Creek

Priority date: 1904

Use: Instream (described in Section 2.1, above)

Rate: 0.22 cfs

Total volume: 52.2 ac-ft

Period of use: April 1 to October 31

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate from July 4 to October 31, or until such time that the total duty for the irrigation season is met.

A Portion of Certificate No.: 61134

Trout Creek, a tributary of the Deschutes River, in the Deschutes Basin.

Location: POD to mouth of Trout Creek

Priority date: October 31, 1974

Use: Instream (described in Section 2.1, above)

Rate: .28 cfs

Total Volume: 66.0 ac-ft

Season of use: April 1 to October 31

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the described rate from July 5 to October 31, or until such time that the total duty for the irrigation season is met.

- 2.3 **Term of lease.** This Lease shall commence on April 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 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

~III~

- 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: Kyle Gorman

District: 11



Kyle Gorman

Kyle Gorman
1340 NW Wall St., Ste. 100
Bend, OR 97701
(541) 388-6669 – Phone
(541) 388-5101 – Fax

Date: 6-11-01

~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: Bill Coston Date: July 5, 2001

Lessee: Rebecca L. Petty (Oregon Water Trust) Date: 7/9/01

So ordered by Trustee: John J. [Signature] Date: October 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