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WATER RESOURCES DEPT.
SALEM, OREGON

Lease Agreement Number 171

**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:

Miriam J. St. Clair
P. O. Box 757
Cannon Beach, OR 97110
(541) 477-3828

The water right to be leased is located in Grant County.

Lessee:

Oregon Water Resources Department
158 12th Street, NE
Salem, OR 97310
(503)378-8455

Trustee:

Oregon Water Resources Department
158 12th Street, NE
Salem, OR 97310
(503)378-8455

~I~

- 1.1 Lessor is the owner (Exhibit A) of the 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:

C-57114
C-56576
C-25929

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C-25928

C-25931

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

The rights to be leased are described as follows:

Certificate: C-57114

Priority date: January 15, 1964 Type of use: Irrigation

Place of use:

SW $\frac{1}{4}$ SE $\frac{1}{4}$: 3.2 acres (1 acre to be leased)

Section 30

T17S R28E W.M.

Number of acres, if for irrigation: 3.2 acres (1 acre to be leased)

Rate: 0.08 cfs (0.025 cfs to be leased).

Duty: 12.8 acft (4.0 acft to be leased) (4 acft per acre)

Season of Use: April 1 through September 30

Point of Diversion (POD): 1070 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Section 29 being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 T-17S R-28E W.M.

Certificate: C-56576

Priority date: September 21, 1983 Type of use: Irrigation

Place of use:

NW $\frac{1}{4}$ SE $\frac{1}{4}$: 0.8 acre (0.8 acre to be leased)

SW $\frac{1}{4}$ SE $\frac{1}{4}$: 2.8 acres (0 acre to be leased)

SE $\frac{1}{4}$ SE $\frac{1}{4}$: 6.1 acres (1.9 acres to be leased)

Section 30

T17S R28E W.M.

Number of acres, if for irrigation: 9.7 acres (2.7 acres to be leased).

Rate: 0.24 cfs (0.07 cfs to be leased).

Duty: 38.8 acft (10.8 acft to be leased) (4 acft per acre)

Season of Use: April 1 through September 30

Point of Diversion (POD): 1070 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Section 29 being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 T-17S R-28E W.M.

Certificate: C-25929 (Tract No. 1)

Priority date: 1886 Type of use: Irrigation

Place of use:

SW $\frac{1}{4}$ SW $\frac{1}{4}$: 2.3 acres (0.3 acre to be leased)

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Section 28

NE $\frac{1}{4}$ SW $\frac{1}{4}$: 1 acre (0.2 acre to be leased)
NE $\frac{1}{4}$ SE $\frac{1}{4}$: 1.2 acres (0 acre to be leased)
NW $\frac{1}{4}$ SE $\frac{1}{4}$: 7.6 acres (0 acre to be leased)
SW $\frac{1}{4}$ SE $\frac{1}{4}$: 5.5 acres (1.4 acres to be leased)
SE $\frac{1}{4}$ SE $\frac{1}{4}$: 12.8 acres (5.0 acres to be leased)

Section 29

T17S R28E W.M.

Number of acres, if for irrigation: 30.4 acres (6.9 acres to be leased).

Rate: 0.76 cfs (0.17 cfs to be leased) April 1 through May 31 and 0.38 cfs (0.086 cfs to be leased) June 1 through September 30.

Duty: 30.4 acft (6.9 acft to be leased) per month through May 31 not to exceed 121.6 acft (27.6 acft to be leased) throughout the season of use.

Season of Use: April 1 through September 30.

Point of Diversion (POD): 638 feet North and 396 feet East from the SW $\frac{1}{4}$ Corner of Section 28 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28 T-17S R-28E W.M.

Certificate: C-25929 (Tract No. 2)

Priority date: 1893 Type of use: Irrigation

Place of use:

NE $\frac{1}{4}$ NE $\frac{1}{4}$: .3 acres (0 acre to be leased)
NW $\frac{1}{4}$ NE $\frac{1}{4}$: 2.3 acres (0 acre to be leased)
SW $\frac{1}{4}$ NE $\frac{1}{4}$: 12.8 acres (0 acre to be leased)
NE $\frac{1}{4}$ SW $\frac{1}{4}$: 6.1 acres (0 acre to be leased)
SE $\frac{1}{4}$ SW $\frac{1}{4}$: 2.7 acres (0 acre to be leased)
NW $\frac{1}{4}$ SE $\frac{1}{4}$: 3.8 acres (0 acre to be leased)

Section 21

NE $\frac{1}{4}$ NW $\frac{1}{4}$: 5 acres (0 acre to be leased)
SW $\frac{1}{4}$ NW $\frac{1}{4}$: 3 acres (0 acre to be leased)
SE $\frac{1}{4}$ NW $\frac{1}{4}$: 2.8 acres (0 acre to be leased)
NW $\frac{1}{4}$ SW $\frac{1}{4}$: 7.8 acres (0 acre to be leased)

Section 28

T17S R28E W.M.

Number of acres, if for irrigation: 46.6 acres (0 acre to be leased).

Rate: 1.17 cfs (0 cfs to be leased) April 1 through May 31 and 0.58 cfs (0 cfs to be leased) June 1 through September 30.

Duty: 46.6 acft (0 acft to be leased) per month through May 31 not to exceed 186.4 acft (0 acft to be leased) throughout the season of use.

Season of Use: April 1 through September 30.

Point of Diversions (PODs): 600 feet South and 1650 feet West from the NE $\frac{1}{4}$ Corner of Section 21 being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21 T-17S R-28E W.M, 660 feet North and 2970 feet West from SE $\frac{1}{4}$ Corner of Section 21 being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section

21 T-17S, R-28E W. M. and 1584 feet South and 3102 feet West from the SE $\frac{1}{4}$ Corner of Section 21 being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28 T-17S, R-28E W.M.

Certificate: C-25928

Priority date: 1885 Type of use: Irrigation

Place of use:

SW $\frac{1}{4}$ SW $\frac{1}{4}$: 5 acres (0.6 acre to be leased)

Section 29

NE $\frac{1}{4}$ SE $\frac{1}{4}$: 11.8 acres (1.6 acres to be leased)

NW $\frac{1}{4}$ SE $\frac{1}{4}$: 5.6 acres (0.9 acre to be leased)

SE $\frac{1}{4}$ SE $\frac{1}{4}$: 2.3 acres (0.2 acre to be leased)

Section 30

T17S R28E W.M.

Number of acres, if for irrigation: 24.7 acres (3.3 acres to be leased).

Rate: 0.62 cfs (0.08 cfs to be leased) April 1 through May 31 and 0.31 cfs (0.04 cfs to be leased) June 1 through September 30.

Duty: 24.7 acft (3.3 acft to be leased) per month through May 31 not to exceed 98.8 acft (13.2 acft to be leased) throughout the season of use.

Season of Use: April 1 through September 30.

Point of Diversion (POD): 22 feet North and 242 feet East from the W $\frac{1}{4}$ Corner of Section 29 being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29 T-17S R-28E W.M.

Certificate: C-25931(Tract #1): Lands South of the South Fork John Day River

Priority date: 1893 Type of use: Irrigation,

Place of use:

NE $\frac{1}{4}$ SW $\frac{1}{4}$: 9.5 acres (0 acre to be leased)

NW $\frac{1}{4}$ SW $\frac{1}{4}$: 17 acres (0 acre to be leased)

SW $\frac{1}{4}$ SW $\frac{1}{4}$: 11.5 acres (2.9 acre to be leased)

SE $\frac{1}{4}$ SW $\frac{1}{4}$: 6.6 acres (2.0 acre to be leased)

Section 29

NE $\frac{1}{4}$ SE $\frac{1}{4}$: 1.5 acres (0.4 acre to be leased)

SE $\frac{1}{4}$ SE $\frac{1}{4}$: 10.5 acres (1.1 acres to be leased)

Section 30

T17S R28E W.M.

Number of acres, if for irrigation: 56.6 acres (6.4 acres to be leased)

Rate: 1.42 cfs (0.16 cfs to be leased) April 1 through May 31 and 0.71 cfs (0.08 cfs to be leased) June 1 through September 30

Duty: 56.6 acft (6.4 acft to be leased) per month through May 31 not to exceed 226.4 acft (25.6 acft to be leased) throughout the season of use.

Season of Use: April 1 through September 30.

Point of Diversion (POD): 1070 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of

Section 29 being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29 T-17S R-28E W.M.

Certificate No: C-25931(Tract #1): Lands north of the South Fork John Day River

Priority date: 1893 Type of use: Irrigation

Place of use:

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NE $\frac{1}{4}$ SW $\frac{1}{4}$: 9.5 acres (1.9 to be leased)

NW $\frac{1}{4}$ SW $\frac{1}{4}$: 17 acres (2.1 acres to be leased)

SW $\frac{1}{4}$ SW $\frac{1}{4}$: 11.5 acres (0 acre to be leased)

SE $\frac{1}{4}$ SW $\frac{1}{4}$: 6.6 acres (0 acre to be leased)

Section 29

NE $\frac{1}{4}$ SE $\frac{1}{4}$: 1.5 acres (0 acre to be leased)

SE $\frac{1}{4}$ SE $\frac{1}{4}$: 10.5 acres (0 acre to be leased)

Section 30

T17S R28E W.M.

Number of acres, if for irrigation: 56.6 acres (4 acres to be leased).

Rate: 1.42 cfs (0.1 cfs to be leased) April 1 through May 31 and 0.71 cfs (0.05 cfs to be leased) June 1 through September 30

Duty: 56.6 acft (4 acft to be leased) per month through May 31 not to exceed 226.4 acft (16 acft to be leased) throughout the season of use

Season of Use: April 1 through September 30.

Point of Diversion (POD): 110 feet North and 726 feet East from the SW $\frac{1}{4}$ Corner of Section 28 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28 T-17S R-28E W.M.

Certificate No: C-25931(Tract #2)

Priority date: 1896 Type of use: Irrigation

Place of use:

NE $\frac{1}{4}$ NW $\frac{1}{4}$: 9 acres (0 acre to be leased)

SE $\frac{1}{4}$ NW $\frac{1}{4}$: 5 acres (0 acre to be leased)

Section 10

T18S R28E W.M.

Number of acres, if for irrigation: 14 acres (0 acre to be leased).

Rate: 0.35 cfs (0 cfs to be leased) April 1 through May 31 and 0.18 cfs (0 cfs to be leased) June 1 through September 30

Duty: 14 acft (0 acft to be leased) per month through May 31 not to exceed 56 acft (0 acft to be leased) throughout the season of use

Season of Use: April 1 through September 30.

Point of Diversion (POD): Natural Overflow from the South Fork John Day River within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T-18S R-28E W.M.

- 1.5 **Validity of Rights.** Lessor attests that the subject water rights are legally valid by having been beneficially used according to the terms of the right or permit. If the right is for

irrigation, beneficial must have occurred in the last five years on all lands indicated in Exhibit D.

- 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 690-77-077.
- 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.
- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

South Fork John Day River (Certificate 57114)

Tributary to John Day River in the John Day River Basin.

Location: At the Point of Diversion (approximately river mile 44).

Priority date: January 15, 1964

Use: Described in Section 2.1, above

Total maximum volume: 4 acft.

Rate in cfs: 0.025 cfs.

Period of use: April 1 through September 30.

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the rate from July 13 through September 30, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 80 days to insure the duty limitation is not exceeded during the period of use described above.

South Fork John Day River (Certificate 56576)

Tributary to John Day River in the John Day River Basin.

Location: At the Point of Diversion (approximately river mile 45).

Priority date: September 21, 1983

Use: Described in Section 2.1, above

Total maximum volume: 10.8 acft.

Rate in cfs: 0.07 cfs.

Period of use: April 1 through September 30.

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the rate from July 13 through September 30, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 80 days to insure the duty limitation is not exceeded during the period of use described above.

Rosebud Creek (Certificate 25929)

Tributary to South Fork John Day River in the John Day River Basin.

Location: From the POD (approximately river mile 0.12) to the confluence with the South Fork John Day River.

Priority date: 1886

Use: Described in Section 2.1, above

Total maximum volume: 27.6 acft

Rate in cfs: 0.17 cfs April 1 through May 31 and 0.085 cfs June 1 through September 30

Period of use: April 1 through September 30.

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the rate from May 12 through September 30, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 142 days to insure the duty limitation is not exceeded during the period of use described above.

Poison Creek (Certificate 25928)

Tributary to South Fork John Day River in the John Day River Basin.

Location: From the POD (approximately river mile 0.25) to the confluence with the South Fork John Day River.

Priority date: 1885

Use: Described in Section 2.1, above

Total maximum volume: 13.2 acft

Rate in cfs: 0.08 cfs April 1 through May 31 and 0.04 cfs June 1 through September 30

Period of use: April 1 through September 30.

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the rate from May 12 through September 30, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 142 days to insure the duty limitation is not exceeded during the period of use described above.

South Fork John Day River (Certificate 25931)

Tributary to John Day River in the John Day River Basin.

Location: At the Point of Diversion (approximately river mile 45).

Priority date: 1893

Use: Described in Section 2.1, above

Total maximum volume: 41.6 acft.

Rate in cfs: 0.26 cfs April 1 through May 31 and 0.13 cfs June 1 through September 30.

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Period of use: April 1 through September 30.

Conditions to prevent or mitigate injury, if any: The instream flow will be allocated on a daily average basis up to the rate from May 12 through September 30, or until such time that the total duty for the irrigation season is met. Instream use period has been diminished to 142 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 April 1, 2001 (not before execution by the parties) and continue through September 30, 2002.
- 2.4 **Compensation.** The Lessor has agreed to lease subject water right for 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 intends to manage and participate in the protection of the instream use by controlling the method of water application to his property in such a manner which would not allow the leased portions of the subject lands to become irrigated.
- 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 The landowner agrees to take precautions which would not allow the lands enrolled in this leased agreement to become irrigated during the tenure of the lease.
- 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: Irrigated acres to be enrolled in this have been identified by staff based on information provided by the US Farm Service Agency, OWRD water right mapping and the water rights of record; staff have determined the quantity and location of leased acres to the best of their ability.

Watermaster: Kelvin G. Rivi District 4

(Address & telephone) Grant County Courthouse
201 S. Humbolt Street
Suite 180
Canyon City, OR 97820
(541) 575-0119

Date: 4/9/01

~IV~

The Undersigned Lessor, 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: Miriam J. St-Clair Date: 3/30/01

Lessee: _____ Date: _____

So ordered by Trustee: Thom J. Rivi Date: 4/26/2001

Exhibits:

- Exhibit A: Copy of Property Deed
- 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

