

Lease Agreement Number: 238

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:

Robert W. Brown
P.O. Box 965
Glendale, OR 97442
(541) 832-2371

The water rights to be leased are located in Douglas 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 97301-4172
(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. 29602 and 9181.

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

The rights to be leased are further described as follows:

Water Right Certificate No.: 29602

Source: Windy Creek, a tributary of Cow Creek

Priority date: January 29, 1960

Type of use: Irrigation

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

T 32 S, R 6 W, Section 33, NE ¼ NE ¼ - 11.4 acres

Number of acres, if for irrigation: 11.4 acres

Rate: 0.16 cfs

Duty: 39.9 acre-ft.

Season of use: April 1 to October 1

Point(s) of Diversion (POD): NE ¼ NE ¼, Section 33, T. 32 S., R. 6 W., W.M.

Conditions or other limitations, if any: None

Water Right Certificate No.: 9181

Source: Windy Creek, a tributary of Cow Creek

Priority date: April 25, 1924

Type of use: Irrigation

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

T 32 S, R 6 W, Section 33, NE ¼ NE ¼ - 1.0 acre

Number of acres, if for irrigation: 1.0 acre

Rate: 0.013 cfs

Duty: Not Applicable

Season of use: April 1 to October 1

Point(s) of Diversion (POD): NE ¼ NE ¼ of Section 33, T 32 S., R 6 W, W.M.

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 agrees 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.

- 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. 29602

Windy Creek, tributary of Cow Creek in the Umpqua Basin.

Location: POD to the mouth of Windy Creek

Priority date: January 29, 1960

Use: Described in Section 2.1, above

Total volume: 39.9 acre-ft.

Rate: 0.16 cfs

Period of use: April 1 to October 1

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 May 29 to October 1, or until such time that the total duty for the irrigation season is met. The instream use period has been diminished to 126 days to insure the duty limitation is not exceeded during the period of use described above.

Certificate No. 9181

Windy Creek, tributary of Cow Creek in the Umpqua Basin.

Location: POD to the mouth of Windy Creek

Priority date: April 25, 1924

Use: Described in Section 2.1, above

Total volume: Not Applicable

Rate: 0.013 cfs

Period of use: April 1 to October 1

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 May 20 to October 1.

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

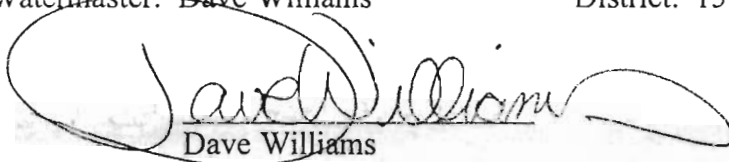
- 2.6 **Additional monitoring.** Lessee intends to manage and participate in the protection of the instream use by: possibly collecting information for calculating stream discharge.
- 2.7 **Modification or termination provisions.** None

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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: Dave Williams

District: 15


Dave Williams

Dave Williams
Douglas County Courthouse, Room 306
Roseburg, OR 97470
(541) 440-4255 - Phone
(541) 440-6264 - Fax

Date: 7-21-2001

~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: R. W. Brown Date: Sept 6, 2001

Lessee: Edward W. Loh (The Oregon Water Trust) Date: Sept. 10, 2001

So ordered by Trustee: [Signature] Date: September 14, 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