

**Short-Term Water Right Lease Agreement
for
Lease of Existing Water Rights for Instream Use**

LA #119

This Lease Agreement is between:

Lessor:

Miller Wheat & Cattle, Ltd.
66200 Starveout Creek Road
Dufur, OR 97021
(541) 467-2388

The water rights to be leased are located in Wasco 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) 378-3739-Phone
(503) 378-8130-Fax

I.

- 1.1 Lessors are the owners of the properties (*Exhibit A*) 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 properties in *Exhibit B*. These rights are set out in the following Oregon Water Resources Department Water Rights Certificates, listed below as follows:

Certificate Nos.: 44663, 44664, 64319, and a portion of 75474.
- 1.4 **Subject Water Rights.** Lessors propose to lease all of the water rights listed in 1.3, above.

The rights to be leased are further described as follows:

A portion of Water Right Identification No.: 75474

Source: Eightmile Creek, tributary of Fifteenmile Creek

Priority date: May 3, 1909

Type of use: Irrigation

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

T 1 S, R 12 E, W.M., Section ~~35~~^{25 BR see cont attached}, SE ¼ SE ¼ (10 acres)

T 1 S, R 12 E, W.M., Section ~~35~~, SW ¼, SE ¼ (5 acres)

Number of acres, if for irrigation: 15 acres

Rate: 0.187 cfs

Duty: None

Season of use: Irrigation season of each year

Point(s) of Diversion (POD): Wolf Run Ditch

Conditions or other limitations, if any: None

Water Right Identification No.: 44663

Source: Eightmile Creek, tributary of Fifteenmile Creek

Priority date: April 25, 1968

Type of use: Irrigation

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

T 1 S, R 12 E, W.M., Section 30, NW ¼ SW ¼ (0.4 acres)

T 1 S, R 12 E, W.M., Section 30, SW ¼ SW ¼ (40.4 acres)

Number of acres, if for irrigation: 40.8 acres

Rate: 0.51 cfs

Duty: 122.4 acre feet (3 af/acre)

Season of use: Irrigation season of each year

Point(s) of Diversion (POD): NW ¼ SW ¼, Section 3, T 2 S, R 11 E, W.M.,

Reservoir—SE ¼ SE ¼ Section 25, T 1 S, R 12 E, W.M., creek—1400 feet North and 650 feet East from the SW Corner, Section 8, T 2 S, R 11 E, W.M.; reservoir—800 feet North and 280 feet West from the SE Corner, Section 25, T 1 S, R 12 E, W.M.

Conditions or other limitations, if any: None

Water Right Identification No.: 44664

Source: Eightmile Creek through the Wolf Run Ditch, tributary of Fifteenmile Creek

Priority date: April 25, 1968

Type of use: Storage for irrigation

Location of reservoir: (map of irrigated lands and the reservoir is in *Exhibit D*)

T 1 S, R 12 E, W.M., Section 25, SE ¼ SE ¼

Rate: Not applicable

Duty: 3.4 acre feet

Season of use: Irrigation season of each year

Point(s) of Diversion (POD): Eightmile Creek—1400 feet North and 650 feet East from the SW Corner, Section 8, T 2 S, R 11 E, W.M.; reservoir—800 feet North and 280 feet

West from the SE Corner, Section 25, T 1 S, R 12 E, W.M.
Conditions or other limitations, if any: None

Water Right Identification No.: 64319

Source: Eightmile Creek, tributary of Fifteenmile Creek

Priority date: May 24, 1973

Type of use: Irrigation

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

T 1 S, R 12 E, W.M., Section 25, SW ¼ SE ¼ (7.3 acres)

T 1 S, R 12 E, W.M., Section 25, SE ¼ SE ¼ (13.9 acres and stock)

T 1 S, R 13 E, W.M., Section 21, SE ¼ SW ¼ (stock)

T 1 S, R 13 E, W.M., Section 22, SW ¼ SE ¼ (stock)

T 1 S, R 13 E, W.M., Section 23, SE ¼ NW ¼ (stock)

T 1 S, R 13 E, W.M., Section 29, SW ¼ NE ¼ (stock)

T 1 S, R 13 E, W.M., Section 29, SE ¼ NW ¼ (stock)

T 1 S, R 13 E, W.M., Section 29, NW ¼ SW ¼ (2 acres)

T 1 S, R 13 E, W.M., Section 30, SE ¼ NE ¼ (0.1 acres)

T 1 S, R 13 E, W.M., Section 30, NE ¼ SE ¼ (2.3 acres and stock)

T 1 S, R 13 E, W.M., Section 30 NW ¼ SE ¼ (0.3 acres)

T 1 S, R 13 E, W.M., Section 30, NE ¼ SW ¼ (stock)

Number of acres, if for irrigation: 25.9 acres (none of the stock rights are to be leased)

Rate: 0.34 cfs (0.32 of which is to be leased, 0.02 to remain for stock)

Duty: 77.7 acre feet (3 af/acre)

Season of use: Irrigation season of each year

Point(s) of Diversion (POD): Reservoir--800 feet North and 280 feet west from SE corner Section 25, T 1 S, R 12 E, W.M., Eightmile Creek—1400 feet North and 650 feet East from the SW Corner, Section 8, T 2 S, R 11 E, W.M.

Conditions or other limitations, if any: None

- 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 rights within the last five years immediately preceding the 2000 irrigation year and, if the rights are for irrigation, on all lands indicated in *Exhibit D.*
- 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 690-77-077.
- 1.7 **Suspension of original use.** During the period of the lease, Lessor 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 will benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public use.

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

A portion of Certificate No. 75474
Eightmile Creek
Tributary to Fifteenmile Creek
Location: P.O.D. to mouth of Eightmile Creek
Priority date: May 3, 1909
Use: Instream (described in Section 2.1, above)
Total volume: Not applicable
Rate: 0.187 cfs
Period of use: April 1 to October 31
Conditions to prevent or mitigate injury, if any: None.

Certificate No. 44663
Eightmile Creek
Tributary to Fifteenmile Creek
Location: P.O.D. to mouth of Eightmile Creek
Priority date: April 25, 1968
Use: Instream (described in Section 2.1, above)
Total volume: 122.4 acre feet
Rate: 0.51 cfs
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 June 30 to October 31, or until such time that the total duty for the irrigation season is met.

Water Right Identification No.: 44664
Eightmile Creek
Tributary to Fifteenmile Creek
Location: POD to mouth of Eightmile Creek
Priority date: April 25, 1968
Use: Instream (described in Section 2.1, above)
Rate: Not applicable
Volume: 3.4 acre feet
Season of use: February 1 to May 1.
Conditions to prevent or mitigate injury, if any: None

Certificate No. 64319

Eightmile Creek

Tributary to Fifteenmile Creek

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

Priority date: May 24, 1973

Use: Instream (described in Section 2.1, above)

Total volume: 77.7 acre feet

Rate: 0.32 cfs

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 June 30 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, 2000 (not before execution by the parties) and continue through October 31, 2000.
- 2.4 **Compensation.** Lessor has agreed to lease the water right herein to the Oregon Water Trust for cash and other considerations and for the benefit of the people 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 to mouth of Eightmile Creek, 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 **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 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: 

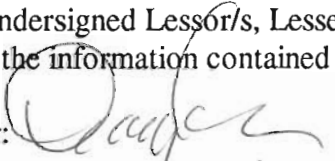
District: 3


Larry Toll
Oregon Water Resources Department
421 E. 7th St.
Courthouse Annex B, Room 218
The Dalles, OR 97058
(541) 298-4110-Phone
(541) 298-2459-Fax

Date: 3/6/2000

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:  FOR MILLER WRIGHT & CALTHER, LTD Date: 3/14/00

Lessee:  (FOR OREGON WATER TRUST) Date: 03/07/00

So ordered by Trustee:  Date: 4/11/2000

Director, Oregon Water Resources Department

Effective Date of Lease Agreement:

Exhibits:

- Exhibit A: Proof of property ownership (copies of Lessors' property deeds)
- Exhibit B: Map of Lessor's properties
- Exhibit C: Copies of all certificates, permits and decreed rights attached to property shown in Exhibit B
- Exhibit D: Detailed map illustrating lands irrigated by subject rights
- Exhibit E: Identification of public use to be served by instream use