

Lease Agreement Number: 139

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

This Lease Agreement is between:

Lessor:

T & C Rentals, L.L.C.
1606 Mountain Road
Ogden, UT 84404
(800) 283-9663

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) 378-2496-Fax

I.

- 1.1 Lessor is the owner (*Exhibit A*) of property highlighted in *Exhibit B*. The contract of sale is attached.
- 1.2 Section 1.2 is not applicable.
- 1.3 *Exhibit C* contains a copy of the certificated rights attached to the property in *Exhibit B*. The rights are listed below as follows:
Certificate Nos. 5682, 4860, 38189
- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of the rights in Certificate Nos. 5682, 4860, 38189, listed in 1.3, above.

The rights are further described as follows:

Water Right Identification No.: 5682

Source: Eightmile Creek

Priority date: 1892, 1901, 1895

Type of use: Irrigation

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

T 1 S, R 13 E, Section 19, SW $\frac{1}{4}$ SE $\frac{1}{4}$ - 8.1 acres (1892)

T 1 S, R 13 E, Section 19, SE $\frac{1}{4}$ SE $\frac{1}{4}$ - 0.9 acres (1892)

T 1 S, R 13 E, Section 19, SW $\frac{1}{4}$ SE $\frac{1}{4}$ - 0.9 acres (1901) (0.4 acres to be leased)

T 1 S, R 13 E, Section 19, SE $\frac{1}{4}$ SE $\frac{1}{4}$ - 6.5 acres (1901) (3.3 acres to be leased)

T 1 S, R 13 E, Section 20, NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 1.6 acres (1895) (1.3 acres to be leased)

T 1 S, R 13 E, Section 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 3.3 acres (1895) (2.1 acres to be leased)

Total acres - 21.3 (of which 7.1 acres is to be leased)

Rate: 0.27 cfs (0.09 cfs of which is to be leased)

Duty: 63.9 acre feet (of which 21.3 acre feet are to be leased)

Season of use: April 1 to October 31

Point of Diversion (POD):

T 1 S, R 13 E, Section 19, SW $\frac{1}{4}$ SE $\frac{1}{4}$

Conditions or other limitations, if any: None

Water Right Identification No.: 4860

Source: Eightmile Creek

Priority date: November 25, 1919

Type of use: Irrigation

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

T 1 S, R 13 E, Section 19, SE $\frac{1}{4}$ SE $\frac{1}{4}$ - 4.8 acres (0.3 acres to be leased)

Total acres - 4.8 (of which 0.3 acres is to be leased)

Rate: 0.06 cfs (of which 0.004 cfs is to be leased)

Duty: 14.4 acre feet (of which 0.9 acre feet are to be leased)

Season of use: April 1 to October 31

Point of Diversion (POD):

2568 ft. W and 231 ft. N of the corner common to Sections 19, 20, 29, 30, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of T 1 S, R 13 E, Section 19

Conditions or other limitations, if any: None

Water Right Identification No.: 38189

Source: Eightmile Creek

Priority date: March 28, 1968

Type of use: Irrigation

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

T 1 S, R 13 E, Section 19, SW $\frac{1}{4}$ SE $\frac{1}{4}$ - 0.8 acres

T 1 S, R 13 E, Section 19, SE $\frac{1}{4}$ SE $\frac{1}{4}$ - 7.7 acres (1.6 acres to be leased)

T 1 S, R 13 E, Section 20, NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 1.0 acres

T 1 S, R 13 E, Section 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 16.7 acres (4.1 acres to be leased)

T 1 S, R 13 E, Section 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$ - 0.5 acres (0.5 acres to be leased)

T 1 S, R 13 E, Section 30, NE $\frac{1}{4}$ NE $\frac{1}{4}$ - 2.0 acres

T 1 S, R 13 E, Section 30, NW ¼ NE ¼ - 8.4 acres (0.6 acres to be leased)
T 1 S, R 13 E, Section 30, NE ¼ NW ¼ - 9.5 acres (0.1 acres to be leased)
Total acres - 46.6 (of which 6.9 acres is to be leased)
Rate: 0.58 cfs (of which 0.09 cfs is to be leased)
Duty: 139.8 acre feet (of which 20.7 acres feet are to be leased)
Season of use: April 1 to October 31
Point of Diversion (POD):
1920 ft. N and 3300 ft. E; 1270 ft. N and 1890 ft. E; both from the SW corner,
Section 30, NE ¼ NW ¼, being within the SE ¼ SE ¼ of T 1 S, R 13 E, Section 19,
NW ¼ NE ¼ of T 1 S, R 13 E, Section 30
Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attests that the water rights to be leased are legally valid by having been beneficially used according to the terms of the right or permit. If the right is for irrigation, beneficial use must have occurred in the last five years on all lands indicated in *Exhibit D*.
- 1.6 **Lease.** All lessors agree to lease the subject 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 690-77-0077.
- 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 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. 5682

Eightmile Creek

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

Priority dates: ~~1892~~, 1901, 1895

Use: Described in Section 2.1, above

Total volume: 21.3 acre feet

Rate in cfs: 0.09 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 July 5 to October 31, or until such time that the total duty for the irrigation season is met.

A portion of Certificate No. 4860

Eightmile Creek

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

Priority date: November 25, 1919

Use: Described in Section 2.1, above

Total volume: 0.9 acre feet

Rate in cfs: 0.004 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 July 11 to October 31, or until such time that the total duty for the irrigation season is met.

A portion of Certificate No. 38189

Eightmile Creek

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

Priority date: March 28, 1968

Use: Described in Section 2.1, above

Total volume: 20.7 acre feet

Rate in cfs: 0.09 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 July 9 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} ~~March~~ 1, 2000 (not before execution by the parties) and continue through October 31, 2000.
- 2.4 **Compensation.** Lessor has agreed to lease the subject water rights 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, 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.

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 in place so that WRD staff may regulate use of water under the subject rights to ensure water is not diverted or applied on lands to which the 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

Field Operations, WRD
421 E. 7th Street, Courthouse Annex B, Room 218
The Dalles, OR 97058
(541) 298-4110 - Phone
(541) 298-2459 - Fax

Date: 6/12/00

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: *Todd W. Davis*

Date: 06-16-00

Lessee: *Edna J. Cook*

Date: 06-09-00

So ordered by Trustee: *Alan J. Cook*

Date: 7/20/2000

~~10~~ Director, Oregon Water Resources Department

Effective Date of Lease Agreement:

Exhibits:

- Exhibit A: Proof of property ownership
- Exhibit B: Tax lot map of Lessor's property
- Exhibit C: Copy of the certificates, permits, and decreed rights to be leased
- Exhibit D: Detailed map illustrating lands under subject right and to be leased
- Exhibit E: Identification of public use to be served by instream use