

Lease Agreement Number 9822.02

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WATER RESOURCES DEPT.
SALEM, OREGON

**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:

Lessors:

Terry S. Brooks
4025 SE Arnold Lane
McMinnville, OR 97128
(503) 472-3391

Steven D. Langer
4025 SE Arnold Lane
McMinnville, OR 97128
(503) 472-3391

The water right to be leased is located in YAMHILL County

Lessee:

Oregon Water Trust
111 SW Front Avenue
Suite 404
Portland, OR 97204
(503) 226-9055

Trustee:

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

~I~

- 1.1 Lessors are the owner of property highlighted in Exhibit B.
- 1.2 Not Applicable. There are no other lessors.
- 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 No 15702 and Certificate No. 28151

1.4 **Subject Water Rights.** Lessors propose to lease all of Certificate No. 15702 listed in 1.3, above.

The portion of the right to be leased are further described as follows:

Certificate No: 15702

Priority date: December 23, 1938 Type of use: Irrigation

Place of use: T 4S, R 4W, S 11, SE1/4 SE1/4 2.3 acres
T 4S, R 4W, S 12, SW1/4 SW1/4 0.2 acre
T 4S, R 4W, S 12, SW1/4 SW1/4 1.7 acres
T 4S, R 4W, S 13, NW1/4 NW1/4 1.1 acres
T 4S, R 4W, S 13, NW1/4 NW1/4 10.0 acres
T 4S, R 4W, S 14, NE1/4 NE1/4 22.4 acres

(If original use is irrigation, include map of irrigated lands in Exhibit D.)

Number of acres, if for irrigation: 37.7 acres

Rate: 0.472 cfs. The rate has been diminished to 0.390 cfs so the duty limitation is not exceeded.

Duty: 2 ½ acre feet per acre

Season of Use: April 1 through September 30

Point of Diversion (POD): NE1/4 NE1/4, as projected on DLC 50, Section 14, Township 4 South, Range 4 West, W.M., at approximately river mile 10.70.

Conditions or other limitations, if any: The rate of water withdrawn from the point of diversion described above will be diminished by 0.082 cfs.

Certificate No: 28151

Priority date: December March 7, 1958 Type of use: Irrigation

Place of use: T 4S, R 4W, S 13, NW1/4 NW1/4 9.0 acres
T 4S, R 4W, S 13, NW /4 NW1/4 1.5 acres
T 4S, R 4W, S 13, Lot 1 (NW1/4 NW1/4) 2.4 acres
T 4S, R 4W, S 13, NW1/4 NW1/4 2.2 acres
T 4S, R 4W, S 13, Lot 1 SW /4 NW1/4 0.5 acre
T 4S, R 4W, S 13, SW1/4 NW1/4 0.6 acre
T 4S, R 4W, S 13, SW1/4 NW1/4 2.5 acres
T 4S, R 4W, S 14, NE /4 NE /4 6.3 acres

(If original use is irrigation, include map of irrigated lands in Exhibit D.)

Number of acres, if for irrigation: 25.0 acres

Rate: 0.31 cfs. The rate has been diminished to 0.25 cfs so the duty limitation is not exceeded.

Duty: 2 ½ acre feet per acre

Season of Use: April 1 through September 30

Point of Diversion (POD): NE1/4 NE1/4, as projected on DLC 50, Section 14, Township 4 South, Range 4 West, W.M., at approximately river mile 10.75.

Conditions or other limitations, if any: The rate of water withdrawn from the point of diversion described above will be diminished by 0.06 cfs.

1.5 **Validity of Rights.** Lessors 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.

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2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is (Select one):

- Mitigation of a deficiency in the water supply for an existing instream water right or minimum streamflow located _____.
- Mitigation of a deficiency in water supply identified in an application for an instream water right or *Diack* flow located _____.
- A specific use or need identified by DEQ, Parks or ODFW and further described in *Exhibit E*.
- 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:

No. 15702
Yamhill River
Tributary to Willamette River in the Willamette Basin.
Location: The point of diversion (near river mile 10.70) described in Section 1.4 above to the mouth of Hawn Creek at river mile 9.0.
Priority date: December 23, 1938
Use: Described in Section 2.1, above
Total volume: 94.25 acre feet
Rate in cfs: 0.390 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 described rate from June 1 until September 30, or until such time that the total duty for the irrigation season is met. Rate has been diminished to insure the duty limitation is not exceeded during the period of use described above.

No. 28151

Yamhill River

Tributary to Willamette River in the Willamette Basin.

Location: The point of diversion (near river mile 10.75) described in Section 1.4 above to the mouth of Hawn Creek at river mile 9.0.

Priority date: March 7, 1958

Use: Described in Section 2.1, above

Total volume: 62.5 acre feet

Rate in cfs: 0.25 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 described rate from June 1 until September 30, or until such time that the total duty for the irrigation season is met. Rate has been diminished 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 June 1, 1998 (not before execution by the parties) and continue through September 30, 1999.

2.4 **Compensation.** The Lessors have agreed to lease subject water right for the sum of \$1.00, 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.** Lessors/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 Lessors are 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: *William E. Fisher*
 Oregon Water Resources Department
 158 12th Street NE
 Salem, Oregon 97310
 (503) 378-8455 Phone
 (503) 378-6203 Fax

District 16

Date: *May 28, 1998*

~IV~

The Undersigned Lessors, 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 #1: *Terry S. Burt*

Date: *5/25/98*

#2: *Steve A. Linger*

Date: *5/25/98*

Lessee: *Andrew Puskas*

Date: *May 21, 1998*

So ordered by Trustee: *William E. Fisher*
 Deputy Director, Oreg. Water Resources Dept.

Date: *June 23/1998*

Exhibits:

- Exhibit A: Copy of Property Deed/Power of Attorney Documentation (if needed)
 Exhibit B: Tax Lot Map of Lessor's property
 Exhibit C: Copies of certificates, permits and decreed rights to be leased