

Lease Agreement Number 9826.01

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

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

This Lease Agreement is between:

Lessor:

Holiday Tree Farms, Inc.
Dave Schudel, President
800 NW Cornell Ave.
Corvallis, Oregon 97330

The water right to be leased is located in Polk County

Lessee / Trustee:

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

~I~

- 1.1 Lessor is the owner of property (*Exhibit A*) highlighted in *Exhibit B*.
- 1.2 Not Applicable. There are no other lessors.
- 1.3 Exhibit C contains copies of the certificated rights attached to the property in Exhibit B. Those rights are listed below as follows:

Certificate Nos. 40596, 40597 and 44996.
- 1.4 **Subject Water Rights.** Lessor proposes to lease all of Certificate 40596 and Certificate 40597 and a portion of Certificate 44996 listed in 1.3, above.

The rights to be leased are further described as follows:

Certificate No. 40596
Source: An unnamed drainageway, tributary of Luckiamute River
Priority Date: October 30, 1969

Type of Use: Storage

Place of Use: T 9S, R 4W, S 20, SE/14 NE1/4

As Projected within Vanderpool DLC 63

Acre feet of storage: 9.0 acre-feet

Duty: Not to exceed 9.0 acre-feet of water

Season of Use: November 1 through June 30 (fill season for the Luckiamute Subbasin)

Point of Diversion: None

Conditions or other limitations, if any: None

Certificate No.: 40597

Source: Reservoir constructed under Application No. R-46516, Permit No. R-5560

Priority date: October 30, 1969

Type of use: Irrigation

Place of use: Primary

T 9S, R 4W, S 20, NE 1/4 NE1/4 21.6 acres

T 9S, R 4W, S 20, SE1/4 NE1/4 29.5 acres

T 9S, R 4W, S 20, NE1/4 SE1/4 15.1 acres

All as Projected Within Vanderpool DLC 63

T 9S, R 4W, S 21, NW1/4 NW1/4 20.4 acres

T 9S, R 4W, S21, SW1/4 NW1/4 11.0 acres

Both as Projected within Vanderpool DLC 63

Number of acres: 97.6 acres (primary)

Acre feet of storage: 9.0 acre feet (primary)

Rate: 0.372 cfs (primary).

Duty: 244.0 acre feet

Season of Use: April 1 through September 30

Point of Diversion (POD): SE 1/4 NE1/4, Section 20, T 9S, R 5W, W.M.

Conditions or other limitations, if any: None

A portion of Certificate No. 44996

Source: Luckiamute River, tributary of Willamette River

Priority Date: June 11, 1971

Type of Use: Irrigation

Place of Use: Primary

T 9S, R 4W, S 16, SW1/4 SW1/4 30.1 acres

T 9S, R 4W, S 16, SE1/4 SW1/4 3.6 acres

Both as Projected within Vanderpool DLC 63

T 9S, R 4W, S 17, SE1/4 SE1/4 26.5 acres

As Projected within Vanderpool DLC 63

T 9S, R 4W, S 20, NE1/4 NE1/4 18.4 acres

T 9S, R 4W, S 20 SE1/4 NE1/4 5.9 acres

T 9S, R 4W, S 20 NE1/4 SE1/4 6.1 acres

All as Projected within Vanderpool DLC 63

T 9S, R 4W, S 21 NE1/4 NW1/4 4.7 acres

T 9S, R 4W, S 21 NW1/4 NW1/4 19.6 acres
T 9S, R 4W, S 21 SW1/4 NW1/4 12.0 acres
T 9S, R 4W, S 21 SE1/4 NW1/4 3.0 acres
T 9S, R 4W, S 21 NW1/4 SW1/4 3.0 acres
All as Projected within Vanderpool DLC 63

Supplemental
T 9S, R 4W, S 20 NE1/4 NE1/4 21.6 acres
T 9S, R 4W, S 20 SE1/4 NE1/4 29.5 acres
T 9S, R 4W, S 20 NE1/4 SE1/4 15.1 acres
All as Projected within Vanderpool DLC 63
T 9S, R 4W, S 21 NW1/4 NW1/4 20.4 acres
T 9S, R 4W, S 21 SW1/4 SW1/4 11.0 acres
Both as Projected within Vanderpool DLC 63

Irrigation
T 9S, R 4W, S 21 SW1/4 NW1/4 17.0 acres
T 9S, R 4W, S 21 SE1/4 NW1/4 6.7 acres
T 9S, R 4W, S 21 NE1/4 SW1/4 8.2 acres
T 9S, R 4W, S 21 NW1/4 SW1/4 18.1 acres
All as Projected within Vanderpool DLC 63

Number of Acres: 132.9 acres primary, 97.6 acres supplemental and 50 acres for irrigation

Rate: 2.12 cfs being 1.00 cfs (primary), 0.74 cfs (supplemental) 0.38 cfs (irrigation). The rate has been diminished to 1.89 cfs being 0.90 cfs (primary) and 0.65 cfs (supplemental) so the duty limitation is not exceeded.

Duty: 332.25 acre feet (primary), 244.0 acre feet (supplemental) and 125.0 acre feet (irrigation)

Season of Use: April 1 through September 30

Point of Diversion (POD): NE1/4 SW1/4, as projected within Vanderpool DLC 63, Section 20 T9S, R4W, W.M., 10 feet North and 5680 feet West from the SE Corner, Vanderpool DLC 63, at approximately river mile 10.7.

Conditions or other limitations, if any: The rate of water withdrawn from the point of diversion described above will be diminished by 0.23 cfs.

- 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 identified 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/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. 40597

Reservoir constructed under Certificate No. 40596

Tributary to Luckiamute River in the Willamette Basin

Location: Point of diversion to mouth of unnamed drainageway

Priority Date: October 30, 1969

Use: Described in Section 2.1 above

Total Volume: 9.0 acre-feet

Rate: 0.372 cfs

Period of use: June 1 through June 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. The reservoir associated within this right will not be filled during the term of this lease agreement.

No. 44996

Luckiamute River

Tributary to the Willamette River in the Willamette Basin

Location: The point of diversion (near river mile 10.7) described in Section 1.4 above to an unnamed stream near river mile 9.3.

Priority Date: June 11, 1971

Use: Described in 2.1 above
Total Volume: 332.25 acre feet (primary), 244.0 acre feet (supplemental) and 125.0 acre feet (irrigation)
Number of Acres: 132.9 acres primary, 97.6 acres supplemental and 50 acres to be irrigated
Rate: The rate has been diminished to 1.89 cfs being 0.90 cfs (primary) and 0.65 cfs (supplemental) so the duty limitation is not exceeded.
Season of Use: April 1 through September 30
Point of Diversion (POD): NE1/4 SW1/4, as projected within Vanderpool DLC 63, Section 20 T9S, R4W, W.M., 10 feet North and 5680 feet West from the SE Corner, Vanderpool DLC 63, at approximately river mile 10.7.
Period of use: June 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, 1998.
- 2.4 **Compensation.** The Lessor has 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.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: None.
- 2.7 **Modification or termination provisions.** None.

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- 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 right(s) described in Section 1.4.

3.2 A suitable control 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(s) 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: The lessor agrees to install a instantaneous and totalizing flow meter at the point of diversion described above.

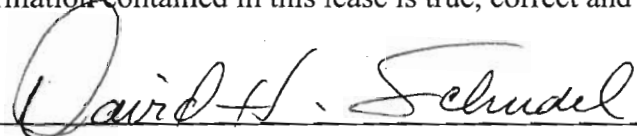
Watermaster:  for District 16

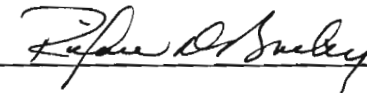
William Ferber
Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310
(503) 378-3739 - Phone
(503) 378-6203 - Fax

Date:

~IV~

The Undersigned Lessor, Lessee / Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete.

Lessor:  Date: 6/17/98

So ordered by Lessee / Trustee:  Date: 7-15-98

Director, Water Resources Department

Exhibits:

- Exhibit A: Copy of Property Deed / Landowner Authorization
- 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