

Lease Agreement Number: 110

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

This Lease Agreement is between:

Lessor:

Bailey Nurseries, Inc.
9855 N.W. Pike Road
Yamhill, OR 97148-8299
(503) 662-3244-Phone
(503) 662-3778-Fax

The water rights to be leased are located in Yamhill 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 / Permit No. 57609 / 13735, 57610 / 14888
- 1.4 **Subject Water Rights.** Lessor proposes to lease the rights in Certificate / Permit No: listed in 1.3, above.

The rights are further described as follows:

Certificate / Permit No. 57609 / 13735

Source: North Yamhill River, a tributary of Yamhill River

Priority date: May 16, 1939

Type of use: Irrigation

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

T 3 S, R 4 W, Section 33, NE $\frac{1}{4}$, NW $\frac{1}{4}$ (3.2 acres)

T 3 S, R 4 W, Section 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$ (2.8 acres)

T 3 S, R 4 W, Section 33, SW $\frac{1}{4}$ NW $\frac{1}{4}$ (5.5 acres)

All as Projected Within DLC 66

Section 33

T 3 S, R 4 W, W. M.

Number of Acres: 11.5

Rate: 0.14 cfs

Duty: 28.75 acre-feet (2.5 acre-feet per acre)

Season of use: April 1st to September 30th

Points of diversion (POD): SW $\frac{1}{4}$ NW $\frac{1}{4}$, as projected within DLC 66, Section 33,

T 3 S, R 4 W, W.M.: 1360 feet south and 710 feet east from NW corner Section 33

Conditions or other limitations, if any: None

Certificate / Permit No. 57610 / 14888

Source: North Yamhill River, a tributary of Yamhill River

Priority date: April 25, 1941

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

T 3 S, R 4 W, Section 33, SW $\frac{1}{4}$ NW $\frac{1}{4}$ (7.3 acres)

T 3 S, R 4 W, Section 33, SE $\frac{1}{4}$ NW $\frac{1}{4}$ (14.9 acres)

T 3 S, R 4 W, Section 33, NE $\frac{1}{4}$ SW $\frac{1}{4}$ (1.2 acres)

T 3 S, R 4 W, Section 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$ (0.1 acres)

All as Projected Within DLC 66

Section 33

T 3 S., R 4 W, W. M.

Number of Acres: 23.5

Rate: 0.294 cfs

Duty: 58.75 acre-feet (2.5 acre-feet per acre)

Season of use: April 1st to September 30th

Point of Diversion (POD): SW $\frac{1}{4}$ NW $\frac{1}{4}$, as projected within DLC 66, Section 33,

T 3 S, R 4 W, W.M.: 1360 feet south and 710 feet east from NW corner Section 33

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:
Certificate / Permit No: 57609 / 13735
North Yamhill River, tributary to the Yamhill River, in the Willamette Basin
Location: (POD) Rm 7.0 to RM 1.3 (Hwy 99 W Bridge)
Priority date: May 16, 1939
Use: Described in Section 2.1, above
Number of Acres: 11.5 acres
Total volume: 28.75 acre-feet
Rate in cfs: 0.14 cfs
Period of use: April 1 to 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 21 until September 30, or until such time that the total duty for the irrigation season is met. The instream use period has been diminished to 102 days to insure the duty limitation is not exceeded during the period of use described above.
- Certificate / Permit No: 57610 / 14888
North Yamhill River, tributary to the Yamhill River, in the Willamette Basin
Location: (POD) Rm 7.0 to RM 1.3 (Hwy 99 W Bridge)
Priority date: April 25, 1941
Use: Described in Section 2.1, above
Number of Acres: 23.5 acres
Total volume: 58.75 acre-feet
Rate in cfs: 0.294 cfs
Period of use: April 1 to 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 21 until September 30, or until such time that the total duty for the irrigation season is met. The instream use period has been diminished to 102 days 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 April 1, 2000 (not before execution by the parties) and continue through September 30th, 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.

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.** If the contract of sale is revoked and the seller repossesses the property, then this lease agreement is terminated.

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: Lessor will abide by all terms and

conditions of Limited License # 427. Lessor will not use PODS pertinent to Certificates / Permits 57609 / 13735, 57610 / 14888

Watermaster:

District: 16

Bill Ferber
158 12th St., NE
Salem, OR 97301-4172
(503) 378-8455 ext. 375 - Phone
(503) 378-6203- Fax

Date:

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: _____ Date: _____

Lessor: _____ Date: _____

Lessee: Ed Holman (for Oregon Water Trust) Date: 9/25/2000

So ordered by Trustee: _____ Date: _____

Director, Oregon Water Resources Department

Effective Date of Lease Agreement:

Exhibits:

- Exhibit A: Proof of property ownership (Contract of Sale)
- 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
- Exhibit F: OWRD Order approving limited license #427