

Lease Agreement Number \_\_\_\_\_

**OREGON WATER RESOURCES DEPARTMENT**

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

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OCT 28 1999

WATER RESOURCES DEPT.  
SALEM, OREGON

This Lease Agreement is between:

**Lessor #1:**  
Snake River Correctional Institution  
State of Oregon Department of Corrections  
Gary Behnke  
Ontario, Oregon 97914

The water right to be leased is located in Malheur County.

**Lessee/ Trustee:**  
Oregon Water Resources Department  
158 12th Street. NE  
Salem OR 97310  
(503) 378-8455

~I~

- 1.1 Lessor #1 is the owner, or authorized agent for owner (Exhibit A), of property highlighted in Exhibit B.
- 1.2 Not applicable. There is not a Lessor #2.
- 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. 75566 | Permit No.31231 |
|-----------------------|-----------------|
- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of the water right listed in 1.3, above.

The right to be leased are further described as follows:

Certificate / Permit No.: 75566/ 31231  
Priority date: June 27, 1966  
Type of use: Irrigation  
Place of use: 28.5 acres in the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , 38.7 acres in the NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , 39.1 acres in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , 29.7 acres in the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , 39.0 acres in the NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , 37.2 acres in the

NW¼ NW¼, 38.6 acres in the SW¼ NW¼, 40.0 acres in the SE¼ NW¼, 37.7 acres in the NW¼ SE¼, Section 22, 38.6 acres in the NE¼ NW¼, 36.3 acres in the NW¼ NW¼, 32.5 acres in the SW¼ NW¼, 40.0 acres in the SE¼ NW¼, 39.0 acres in the NE¼ SE¼, 39.5 acres in the NW¼ SE¼, Section 23, Township 17 South, Range 46 East, W.M.

Map of irrigated land included in Exhibit D.

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Number of acres for irrigation: 554.4 acres out of the original 3029.0 acres

Rate: 61.91 cubic feet per second (11.33 cfs of which is to be leased)

Duty: 4.0 acre feet (A total of 2217.6 acre feet to be leased)

Season of Use: March 1<sup>st</sup> to October 31<sup>st</sup>

Point of Diversion (POD): Lot 1 (NE¼ NW¼), Section 21, Township 17 South, Range 47 East, WM; 350 feet South and 1980 feet East from NW corner, Section 21.

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**Conditions or other limitations, if any: *no other conditions or limitations.***

- 1.5 **Validity of Rights.** Lessor #1 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.

~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:

- 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:

Snake River

Location: Lot 1 (NE¼ NW¼), Section 21, Township 17 South, Range 47 East, WM; 350 feet South and 1980 feet East from NW corner, Section 21 at the Point of Diversion listed under 1.4.

Priority date: June 27, 1966

Use: Described in Section 2.1, above

Total volume: 4.0 acre feet

Rate in cfs: 11.33 cfs

Period of use: March 1- October 31

*Conditions to prevent or mitigate injury, if any: the irrigation system has limited capacity to prevent leased water right from being used on non-leased lands and remove the irrigation system to prevent leased water right from being used on leased lands.*

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2.3 **Term of lease.** This lease shall commence on Oct. 31, 1999

(not before execution by the parties) and continue through October 31, 2001.

2.4 **Compensation.** The Lessor has agreed to lease subject water right for the sum of \$0.00, 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: *by monitoring the river with recorder equipment.*

2.7 **Modification or termination provisions.** *The leaser has the right to termination the provisions of the lease with 30 days notice to Oregon Department of fish and Wildlife and Oregon Water Resources Department.*

~III.~

3 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:

- 3.1 Lessor #1 is 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:

Watermaster: \_\_\_\_\_ District \_\_\_\_\_  
 (Address & telephone) \_\_\_\_\_  
 \_\_\_\_\_  
 Date: \_\_\_\_\_

~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 #1: *Gary Behnke* Date: 10/10/99  
GARY BEHNKE Date: \_\_\_\_\_

So ordered by Lessee/ Trustee:  
 \_\_\_\_\_ Date: \_\_\_\_\_

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

Other Exhibits As Needed:

- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use
- Exhibit F, etc: Information related to Optional Provisions, such as Additional Monitoring or Modifications or Termination of lease

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