

Lease Agreement No.: 9904.01 # 20

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

This Lease Agreement is between:

Lessor:

Jim Barrett
8436 East Evans Creek Road
Rogue River, OR 97537
(541) 582-1903-Phone

The water rights to be leased are located in Jackson County.

Lessee:

Oregon Water Trust
147 Central Avenue
Ashland, Oregon 97520
(541) 488-6906-Phone
(503) 226-3480-Fax

Trustee

Oregon Water Resources Department
158 12th Street NE
Salem OR 97310
(503) 378-3739-Phone
(503) 378-2496-Fax

I.

- 1.1 Lessor is the owner (*Exhibit A*) of property highlighted in *Exhibit B*.
- 1.2 Section 1.2 is not applicable .
- 1.3 *Exhibit C* contains copies of the certificated rights attached to the property in *Exhibit B*.
The rights are listed below as follows:

Certificate Nos. 54031, 51334 and 49045

1.4 **Subject Water Rights.** Lessor proposes to lease all of the water rights listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 54031

Source: Evans Creek

Priority date: 1902

Type of use: Irrigation

Place of use:

T 35S, R 4W, S 10, SW $\frac{1}{4}$, SE $\frac{1}{4}$

Number of acres, if for irrigation: 9.2 acres

Rate: 0.15 cfs

Duty: None

Season of use: April 1-October 31

Point of Diversion (POD):

SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, T35S, R4W, WM; 170 feet North and 1540 feet West from SE Corner, Section 10.

Conditions or other limitations, if any: None

Water Right Identification No.: 51334

Source: Evans Creek

Priority date: February 11, 1972

Type of use: Irrigation

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

T 35S, R 4W, S 10, SW $\frac{1}{4}$, SE $\frac{1}{4}$

Number of acres, if for irrigation: 0.6 acres

Rate: 0.008 cfs

Duty: 2.7 acre feet

Season of use: April 1-October 31

Point of Diversion (POD):

SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 10, T35S, R4W, WM; 170 feet North and 1100 feet East from S $\frac{1}{4}$ Corner, Section 10.

Conditions or other limitations, if any: None

Water Right Identification No.: 49045

Source: Evans Creek

Priority date: August 28, 1974

Type of use: Irrigation

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

T 35S, R 4W, S 10, SW $\frac{1}{4}$, SE $\frac{1}{4}$

Number of acres, if for irrigation: 6 acres

Rate: 0.08 cfs

Duty: 27 acre feet

Season of use: April 1-October 31

Point of Diversion (POD):

SW¼ SE¼, Section 10, T35S, R4W, WM; 170 feet North and 1100 feet East from S¼
Corner, Section 10.

Conditions or other limitations, if any: None

- 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 rights within the last five years and, if the rights are for irrigation, on all lands indicated 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 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 rights that are 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:

specific uses and needs identified in *Exhibit E* as signed off by ODFW.

- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

No. 54031

Evans Creek, tributary to Rogue River in the Rogue Basin

Location: Approximately RM 8 to the mouth of Evans Creek

Priority date: 1902

Use: Described in Section 2.1, above

Total volume: None

Rate: 0.15 cfs

Period of use: April 1-October 31

Conditions to prevent or mitigate injury, if any: None

No. 51334

Evans Creek, tributary to Rogue River in the Rogue Basin

Location: Approximately RM 8 to the mouth of Evans Creek

Priority date: February 11, 1972
Use: Described in Section 2.1, above
Total volume: 2.7 acre feet
Rate: 0.008 cfs

Period of use: April 1-October 31

Conditions to prevent or mitigate injury, if any: The rate of the water right has been adjusted as follows to meet seasonal duty restrictions:

The instream flow of 0.008 cfs will be allocated on a daily average basis beginning May 1 and continuing until October 17, or until such time that the total duty for the irrigation season is met.

No. 49045

Evans Creek, tributary to Rogue River in the Rogue Basin
Location: Approximately RM 8 to the mouth of Evans Creek
Priority date: August 28, 1974
Use: Described in Section 2.1, above
Total volume: 27 acre feet
Rate: 0.08 cfs

Period of use: April 1-October 31

Conditions to prevent or mitigate injury, if any: The rate of the water right has been adjusted as follows to meet seasonal duty restrictions:

The instream flow of 0.08 cfs will be allocated on a daily average basis beginning May 1 and continuing until October 17, or until such time that the total duty for the irrigation season is met.

Total: 0.238 cfs

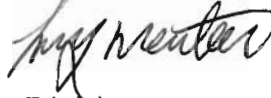
- 2.3 **Term of lease.** This Lease shall commence on April 1, 1999 (not before the date of final execution by the parties) and continue through October 31, 1999.
- 2.4 **Compensation.** Lessor has agreed to lease the water rights herein to the Oregon Water Trust for cash and other considerations and 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.** None

III.

- 3 **Watermaster review.** By signature below, the watermaster for the district where the subject water rights are 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 subject rights are 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: 13
Larry Mentee
Field Operations Division
10 South Oakdale
Medford, Oregon 97501
(541) 474-5385-Phone
(541) 474-5389-Fax

Date: 3-18-99

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: *James W. Bennett* Date: *2/2/99*

Lessee: *Kenny Kay* Date: *2/11/99*

So ordered by Trustee: *Ralph D. Bailey* Date: *6-1-99*
Director, Oregon Water Resources Department

Effective Date of Lease Agreement:

Exhibits: This application is a renewal, All exhibits are already on file

- Exhibit A: Proof of property ownership
- Exhibit B: Map of Lessor's property
- Exhibit C: Copy of certificate attached to property shown in Exhibit B
- Exhibit D: Detailed map illustrating lands irrigated by subject right
- Exhibit E: Identification of public use to be served by instream use

RECEIVED

MAY 21 1999

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT E

PUBLIC USE PROVIDED BY INSTREAM WATER RIGHT

I believe that the water rights described as Certificate Nos. 54031, 51334 and 49045 will provide for the conservation maintenance and enhancement of aquatic and fish life and fish habitat in Evans Creek, tributary to the Rogue River, if temporarily converted to instream use. Specifically, the following benefit will likely be provided:

· spawning and rearing habitat for anadromous and resident fish will likely be improved within the reach of the instream water right.

Dated: 5/18/99

Signed: Mike Evenson

Mike Evenson
ODFW Fisheries Biologist
Central Point, Oregon