

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

This Lease Agreement is between:

Lessor:

RPB, LLC.
c/o David C. Bany
19790 Derby Street
West Linn, OR 97068
(503) 557-0207-Phone

The water rights to be leased are located in Grant 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 97310
(503) 378-3739-Phone
(503) 378-8130-Fax

I.

- 1.1 Lessor is the owner of property highlighted in *Exhibit B*.
- 1.2 Section 1.2 is not applicable.
- 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 Nos.: 25382, 33055 and 33056
- 1.4 **Subject Water Rights.** Lessor proposes to lease the portions of the water rights listed in 1.3, above that are under their ownership.

The rights to be leased are further described as follows:

Water Right Identification No.: 25382

Source: Hawkins Creek, tributary to the Middle Fork John Day River

Priority date: 1900

Type of use: Irrigation

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

T 9S, R 32E, S 34, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -0.3 acres

T 9S, R 32E, S 34, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -13.8 acres

T 9S, R 32E, S 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$ -20 acres

Number of acres, if for irrigation: 34.1 acres

Rate: 0.85 cfs (April 1-May 31), 0.43 cfs (June 1-Sept. 30)

Duty: A quantity of water limited to 34.1 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 136.4 acre feet.

Season of use: April 1-September 30

Point(s) of Diversion (POD):

Original POD: 414' N and 667' E from W $\frac{1}{4}$ corner, section 34

New POD: 942' E and 655' N from W $\frac{1}{4}$ corner, section 34

Conditions or other limitations, if any: No headgates exist. If required to prevent diversion of water, the watermaster requires that the ditches be physically and substantially dammed completely off prior to lease approval. This includes removing the intakes of the two existing black plastic pipes that also appear to divert water.

Water Right Identification No.: 33055

Source: Middle Fork John Day River, tributary to the North Fork John Day River

Priority date: February 27, 1958

Type of use: Irrigation and supplemental irrigation

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

Primary:

T 9S, R 32E, S 27, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -10 acres

T 9S, R 32E, S 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$ -3.6 acres

T 9S, R 32E, S 34, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -6.8 acres

T 9S, R 32E, S 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -10.8 acres

T 9S, R 32E, S 34, NE $\frac{1}{4}$ SW $\frac{1}{4}$ -1.6 acres (under different ownership, not being considered under this lease)

Supplemental:

T 9S, R 32E, S 34, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -0.3 acres

T 9S, R 32E, S 34, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -0.2 acres

T 9S, R 32E, S 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$ -17.4 acres

T 9S, R 32E, S 34, NE $\frac{1}{4}$ SW $\frac{1}{4}$ -1.7 acres (under different ownership, not being considered under this lease)

Number of acres, if for irrigation: Primary-31.2 & Supplemental-17.9

During the time periods all primary rights underlying the supplemental portion of

C-33055 are met, the prorated rates and duties for only the primary portion of C-33055 can be utilized.

Rate: 0.44 cfs

Duty: A quantity of water not to exceed 156 acre feet during the irrigation season.

During the time periods all primary rights underlying the supplemental portion of C-33055 are not met, the prorated rates and duties for both the primary and supplemental portions of C-33055 can be utilized.

Rate: 0.69 cfs

Duty: Primary equals a quantity of water not to exceed 156 acre feet during the irrigation season and supplemental equals a quantity of water not to exceed 89.5 acre feet, minus the amount of acre feet already received under the underlying primary portion of C-25382, during the irrigation season.

Season of use: April 1-September 30

Point(s) of Diversion (POD): 290' S. 580' E.; 800' S. & 760' E.; 3890' S. & 2780' E.; from NW cor., Sec. 34, being within NW $\frac{1}{4}$ SE $\frac{1}{4}$ & NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 34 T. 9S., R. 32 E., W.M., county of Grant

Conditions or other limitations, if any: No headgates exist. The watermaster requires that no diversion dams or other diversion facilities be installed during the period of the lease.

Water Right Identification No.: 33056

Source: Big Creek, tributary to the Middle Fork John Day River

Priority date: April 11, 1958

Type of use: Irrigation

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

T 9S, R 32E, S 21, NE $\frac{1}{4}$ SW $\frac{1}{4}$ -2.3 acres

T 9S, R 32E, S 21, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -1.6 acres

T 9S, R 32E, S 21, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -8 acres

T 9S, R 32E, S 21, SE $\frac{1}{4}$ SW $\frac{1}{4}$ -7.1 acres (under different ownership, not being considered under this lease)

T 9S, R 32E, S 28, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -6.2 acres

Number of acres, if for irrigation: 18.1

Rate: 0.23 cfs

Duty: A quantity of water not to exceed 72.4 acre feet during the irrigation season.

Season of use: April 1-September 30

Point(s) of Diversion (POD): 450' W. & 1400' N.; 60' W. & 2040' N., both from S $\frac{1}{4}$ cor., 21, being within NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 21, T. 9S., R. 32 E., W.M., county of Grant

Conditions or other limitations, if any: No headgates exist. The watermaster requires that no diversion dams or other diversion facility be installed during the period of the lease from the lower diversion. The upper diversion, which irrigates other lands also, must not divert water to the lessor's lands during the period of the lease.

- 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 immediately preceding the 1999 irrigation year and, if the rights are for irrigation, on all lands indicated in *Exhibit D* that are under lessor's ownership.
- 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 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:

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. 25382

Hawkins Creek, tributary to the Middle Fork John Day River

Location: From the upstream P.O.D. described in 1.4 to the mouth of Hawkins Creek

Priority date: 1900

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water limited to 34.1 acre feet during any calendar month prior to June 1st, and not to exceed, during the irrigation season, 136.4 acre feet.

Rate: 0.85 cfs (April 1-May 31) and 0.43 cfs (June 1-Sept. 30)

Period of use: April 1-September 30

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 total rate of the instream water right is .27 cfs from April 1-May 31 and .43 cfs from June 1 to September 30. The instream flow will be allocated on a daily average basis up to these rates from the date of execution until September 30, or until such time that the total duty for the irrigation season is met.

No. 33055

Middle Fork John Day River, tributary to North Fork John Day River

Location: From the furthest upstream POD described in 1.4 (near RM 42) to the next downstream water right holder's POD (near RM 34).

Priority date: February 27, 1958

Use: Instream (described in Section 2.1, above)

Total volume: Primary equals a quantity of water not to exceed 156 acre feet during the irrigation season and supplemental equals a quantity of water not to exceed 89.5 acre feet, minus the amount of acre feet already received under the underlying primary portion of C-25382, during the irrigation season.

Primary rate: 0.44 cfs

Primary and supplemental rate: 0.69 cfs

Period of use: April 1-September 30

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

The instream flow for the primary portion of 0.44 cfs will be allocated on a daily basis from April 5 until September 30 to meet the primary duty limitation of 156 acre feet. If the supplemental portion is used, up to 0.69 cfs can be allocated on a daily basis until an additional 89.5 acre feet, minus the amount of acre feet already received under the underlying primary portion of C-25382, is met.

No. 33056

Big Creek, tributary to the Middle Fork John Day River

Location: From the upstream P.O.D. described in 1.4 to the mouth of Big Creek

Priority date: April 11, 1958

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water not to exceed 72.4 acre feet during the irrigation season.

Rate: 0.23 cfs

Period of use: April 1-September 30

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

The instream flow of 0.23 cfs will be allocated on a daily basis from April 25 until September 30 to insure that the seasonal duty limitation is not exceeded.

- 2.3 **Term of lease.** This Lease shall commence on April 1, 1999 (not before execution by the parties) and continue through September 30, 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 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 C-25382: No headgates exist. If required to prevent diversion of water, the watermaster requires that the ditches be physically and substantially dammed completely off prior to lease approval. This includes removing the intakes of the two existing black plastic pipes that also appear to divert water.
- C-33055: No headgates exist. The watermaster requires that no diversion dams or other diversion facilities be installed during the period of the lease.
- C-33056: No headgates exist. The watermaster requires that no diversion dams or other diversion facility be installed during the period of the lease from the lower diversion. The upper diversion, which irrigates other lands also, must not divert water to the lessor's lands during the period of the lease.
- 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: *Kelvin B. Rose* District: 4
Kelly Rise
Field/Technical Services Division
201 S. Humbolt St., Ste 180
Grant County Courthouse
Canyon City, Oregon 97820
(541) 575-0119-Phone
(541) 575-2248-Fax

Date: *5/7/99*

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: *David Bamy* Date: *4-1-99*
manager

Lessee: *Arthur Parker* Date: *4-5-99*

So ordered by Trustee: *Rafael D. Guley* Date: *7/6-99*
Director, Oregon Water Resources Department

Effective Date of Lease Agreement: *7/6-99*

Exhibits: A through D are on record with OWRD. E is attached.

- Exhibit A: Proof of property ownership
- Exhibit B: Map of Lessor's property
- Exhibit C: Copies of all certificates, permits and decreed rights attached to property shown in Exhibit B
- Exhibit D: Detailed maps illustrating lands irrigated by subject rights
- Exhibit E: Identification of public use to be served by instream use

EXHIBIT E

PUBLIC USE PROVIDED BY INSTREAM WATER RIGHT

I believe that the water rights described as Certificate Nos. 25382, 33055 and 33056 will provide for the conservation maintenance and enhancement of aquatic and fish life and fish habitat in Big and Hawkins creeks, tributaries to the Middle Fork John Day River, and the Middle Fork John Day River, if temporarily converted to instream use during the 1999 and 2000 irrigation seasons. Specifically, the following benefits will likely be provided:

- spawning and rearing habitat for summer steelhead and rearing habitat for spring chinook juveniles will likely be improved in the reaches of the instream water rights;
- migration for adult spring chinook to spawning areas could benefit;
- adult and juvenile spring chinook will benefit from the cold water influence of Big and Hawkins creeks; and
- adult and juvenile bull trout will likely benefit in the subject reach of Big Creek.

Dated: 3/30/99

Signed: Tim Unterwegner
Tim Unterwegner
ODFW Fisheries Biologist
John Day, Oregon