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WATER RESOURCES DEPT.
SALEM, OREGON

Lease Agreement No.: 9618-01

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

This Lease Agreement is between:

Lessor:

John Houser
800 Prospect St., #1
El Paso, TX 79902

The water rights to be leased are located in Umatilla County

Lessee:

Oregon Water Trust
111 SW Front Avenue
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 *Exhibit A* 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 highlighted in *Exhibit B*. Those rights are listed below as follows:

Certificate Nos.: 2553 and 434
- 1.4 **Subject Water Rights.** Lessor proposes to lease the eligible portion of the water right described under C-2553 above.

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The eligible portion of the right to be leased is further described as follows:

Water Right Identification No.: 2553

Source: East Birch Creek, tributary to Birch Creek, and Johnson Creek, tributary to East Birch Creek, both in the Umatilla Basin

Priority date: 1885 and 1897

Type of use: Irrigation

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

T 2S, R 32E, S 11, SW $\frac{1}{4}$ SE $\frac{1}{4}$ -13 acres (1897)

T 2S, R 32E, S 11, SE $\frac{1}{4}$ SE $\frac{1}{4}$ -15 acres (1897)

T 2S, R 32E, S 12, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -15 acres (1897)

T 2S, R 32E, S 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$ -10 acres (1885)

Number of acres, if for irrigation: 53 acres; 43 acres (1897) and 10 acres (1885)

Rate: 0.66 cfs

Duty: A quantity of water limited to 238.5 acre feet during the irrigation season.

Season of use: March 1-November 1

Point(s) of Diversion (POD): N. 53°50' W 1676 ft. from E. Cor. to Secs. 12-13 T. 2 S., R. 32 E. W.M. being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 12, T. 2 S., R. 32 E.

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attests that the subject water right is legally valid by having been beneficially used according to the terms of the right within the last five years immediately preceding the 1996 irrigation year and, if the right is for irrigation, on all lands indicated in *Exhibit D* that are under lessor's ownership.
- 1.6 **Lease.** Lessor agrees to lease the water right 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 right and under any water right that is supplemental to the subject water right.
- 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.

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

East Birch Creek, tributary to Birch Creek in the Umatilla Basin

Location: From the P.O.D. described in 1.4 (near RM 9) to the mouth of East Birch Creek at Pilot Rock

Priority dates: 1885 and 1897

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water limited to 238.5 acre feet during the irrigation season.

Rate: 0.66 cfs (Total)

0.12 cfs (1885)

0.54 cfs (1897)

Period of use: March 1-November 1

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 0.56 cfs. The instream flow will be allocated on a daily average basis up to this rate from April 1 until November 1, or until such time that the total duty for the irrigation season is met. A priority date of 1885 is assigned to 0.11 cfs and a priority date of 1897 is assigned to 0.45 cfs.

- 2.3 **Term of lease.** This Lease shall commence on March 1, 1996 (not before execution by the parties) and continue through November 1, 1996.
- 2.4 **Compensation.** Lessor has agreed to lease the water right 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

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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 right 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 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: Lessee agrees not to install or operate the pump at POD described at point in section 1.4.

Watermaster:
 Tony Justus
 Field Services and Enforcement
 3920 Westgate
 Pendleton, Oregon 97801
 (541) 278-5456
 (541) 278-0287-Fax

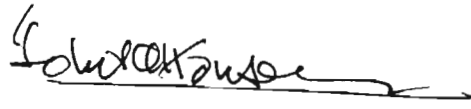
District: 5



Date: 6-11-96

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:  Date: 7/5/96

Lessee:  Date: 6/7/96

So ordered by Trustee:  Date: 8/7/96
 Director, Oregon Water Resources Department

Effective Date of Lease Agreement: 8/7/96

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Exhibits:

- 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