

**SHORT TERM WATER RIGHT LEASE AGREEMENT FOR A LEASE OF  
EXISTING WATER RIGHTS FOR INSTREAM USE**

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JUN 20 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

April, 1996

This Lease Agreement is between:

Lessors:

#1 Jack F. Duncan  
#2 Janet H. Duncan  
Route 1, Box 293A  
Rupert, ID 83350  
208-436-2265

#3 John D. Hansen  
#4 L. Patricia Hansen  
Route 3, Box 130  
Rupert, ID 83350  
208-532-4286

Lessee:

U.S. Department of Energy  
Bonneville Power Administration  
905 N.E. 11th Avenue  
Portland, OR 97232  
Contact: Dan Daley  
503-230-3066

Trustee:

Oregon Department of Water Resources.  
158 12th Street, NE  
Salem, OR 97310  
503-378-3739

~I.~

1.1-2 Lessors #1, #2, #3, and #4 are owners of property shown in *Exhibit B* (Skyline Farms property map) having water rights that are to be leased.

1.3 *Exhibit C* contains copies of all certificated rights attached to the property in *Exhibit B*. Those rights are listed below in Table 1.3.

**Table 1.3**

Source	Certificate	Permit
Malheur	#40570	#30621
Snake	#40571	#31231
Snake	#40572	#33944
Malheur	#40574	#33946

1.4 **Subject Water Rights.** Lessors propose to lease a portion of the water rights listed in 1.3, above. The rights to be leased are further described in the attached *Exhibit D*.

1.5 **Validity of Rights.** Lessors attest 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 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. Applicant Remark:** The instream flow enhancement resulting from this Lease Agreement is intended to benefit salmon populations by augmenting flows from the point(s) of diversion to the mouth of the Columbia River. However, applicants are aware that the State of Oregon cannot protect instream flows leased from lands in Oregon from downstream appropriation in Idaho or Washington. Applicants recognize the need for protection of instream

flows such as those leased by this agreement in all three states through an interstate compact or other feasible measures and agreements among the states. Accordingly, in recognition of such limitations and for the purposes of this pilot lease agreement, applicants request below (in Section 2.2) that the Trustee protect the leased instream flows in the Snake River only in its reaches above the Washington-Oregon border.

**2.2 Instream use created by lease.** The instream use to be created is described as follows: (see information in Table 2.2):

- (1)
  - Snake River,
  - Tributary to the Columbia River in the Columbia Basin
  - Location: From the point of diversion on the Snake River to the Oregon-Washington border on the Snake River.
  - Point of diversion on the Snake River: Lot 1 (NE1/4 NW1/4), Section 21, T. 17S., R. 47 E., W. M., 350 feet South and 1980 feet East from NW Corner, Section 21.
  - Rate: 26.3 cfs
  - Period of Use: June 1, 1996 to October 31, 1996
  - Dates of Priority:
    - 13.2 cfs: 6/27/66
    - 13.1 cfs: 10/25/68
  
- (2)
  - Malheur River,
  - Tributary to the Snake River in the Columbia Basin
  - Location: From the point of diversion on the Malheur River to the point of diversion on the Snake River described in 2.2 (1) above (Lot 1 (NE1/4 NW1/4), Section 21, T. 17S., R. 47 E., W. M., 350 feet South and 1980 feet East from NW Corner, Section 21)
  - Point of diversion on the Malheur River: NE1/4 NE1/4, Section 10, T. 18 S., R. 46 E., W.M., 510 feet South and 600 feet West from NE Corner, Section 10, T. 18 S., R. 46 E., W. M.
  - Rate: 25.53 cfs
  - Period of Use: June 1, 1996 to October 31, 1996.

• Dates of Priority:

- ♦ 16.7 cfs: 10/8/65
- ♦ 8.83 cfs: 10/25/68

Table 2-2

Certificate	Permit	Water Source	Land @ Water Right (A)	Leased Water Righted Land (A)	Rate (cfs)	Duty (AF/A)	Priority Date
#40570	#30621	Malheur	3300.1	1687.8	16.7	3.0	10/8/65
#40571	#31231	Snake	3669.7	1001.8	13.2	4.0	6/27/66
#40572	#33944	Snake	1045.2	991.7	13.1	4.0	10/25/68
#40574	#33946	Malheur	1119.4	892.1	8.8	3.0	10/25/68
<b>Total Lands with Leased Water Rights (Net):</b>				<b>4573.4</b>			

TOTAL

2.3 **Term of lease.** This Lease shall commence on June 1, 1996 (not before execution by all parties) and shall continue thereafter through October 31, 1996.

2.4 **Compensation.** The general nature of the lease compensation is an annual payment.

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.

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~III~

3. Watermaster review. By signature below, the watermaster for the district where subject water rights are located verifies that:

3.1 Lessors are currently entitled to appropriate water under 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: (Describe, if any)

Watermaster: [Signature] FOR Lesley POWERS

District: \_\_\_\_\_

Address & telephone: \_\_\_\_\_

Date: \_\_\_\_\_

~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 #1: [Signature] Janet Duncan Date: 4-15-96

Lessor #2: [Signature] Janet Duncan Date: 4-15-96

Lessor #3: [Signature] Patricia Hansen Date: 4-16-96

Lessor #4: [Signature] Patricia Hansen Date: 4-16-96

Lessee: Robert J. Easterlin Date: 4/18/96

So ordered by Trustee: \_\_\_\_\_  
Director, Oregon Water Resources Department

DATE: \_\_\_\_\_  
**SIGN HERE**

Effective Date of Lease Agreement: \_\_\_\_\_