

Lease Agreement No.:

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

This Lease Agreement is between:

Lessor:

Martin Nye
3815 NW Creekside Drive
Vancouver, WA 98685
(360) 574-3550

The water rights to be leased are located in Jefferson 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.: 2225 and 2241

- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of the water right described under C-2225 and all of the water right described under C-2241.

The portion of C-2225 to be leased and C-2241 are further described as follows:

Water Right Identification No.: 2225

Source: Trout Creek, tributary to the Deschutes River

Priority date: 1884

Type of use: Irrigation domestic and stock

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

T. 10S, R. 17E, Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$ -9.25 acres

T. 10S, R. 17E, Sec. 33, SE $\frac{1}{4}$ NE $\frac{1}{4}$ -5 acres

T. 10S, R. 17E, Sec. 34, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -2.75 acres

T. 10S, R. 17E, Sec. 34, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -2.5 acres

T. 10S, R. 17E, Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -4 acres

Number of acres, if for irrigation: 23.5 acres

Rate: 0.59 cfs

Duty: A quantity of water limited to 141 acre feet during the irrigation season.

Season of use: All year

Point(s) of Diversion (POD): Company ditch number 1, NE NW sec 3, T11S, R17E

Conditions or other limitations, if any: None

Source: Beaver Creek, tributary to Trout Creek in the Deschutes Basin

Priority date: 1879

Type of use: Irrigation domestic and stock

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

T. 10S, R. 17E, Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -4 acres

T. 11S, R. 17E, Sec. 3, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -3 acres

T. 11S, R. 17E, Sec. 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$ -4.25 acres

Number of acres, if for irrigation: 11.25 acres

Rate: 0.28 cfs

Duty: A quantity of water limited to 67.5 acre feet during the irrigation season.

Season of use: All year

Point(s) of Diversion (POD): Company ditch number 2, SW NW sec 3, T11S, R17E

Conditions or other limitations, if any: None

Source: Gooseberry Creek, tributary to Trout Creek in the Deschutes Basin

Priority date: 1884

Type of use: Irrigation domestic and stock

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

T. 11S, R. 17E, Sec. 3, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -5 acres

Number of acres, if for irrigation: 5 acres

Rate: 0.13 cfs

Duty: A quantity of water limited to 30 acre feet during the irrigation season.

Season of use: All year

Point(s) of Diversion (POD): Company ditch number 3, NE NW sec 3, T11S, R17E

Conditions or other limitations, if any: None

Source: South Amity Creek, tributary to Trout Creek in the Deschutes Basin

Priority date: 1895

Type of use: Irrigation domestic and stock

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

T. 11S, R. 17E, Sec. 3, NW¼ NE¼ -0.5 acres

T. 11S, R. 17E, Sec. 3, SW¼ NE¼ -8.75 acres

T. 11S, R. 17E, Sec. 3, SE¼ NE¼ -24.75 acres

T. 11S, R. 17E, Sec. 3, SE¼ NW¼ -0.5 acres

T. 11S, R. 17E, Sec. 3, NE¼ SE¼ -12 acres

T. 11S, R. 17E, Sec. 3, NW¼ SE¼ -6 acres

Number of acres, if for irrigation: 52.5 acres

Rate: 1.3 cfs

Duty: A quantity of water limited to 315 acre feet during the irrigation season.

Season of use: All year

Point(s) of Diversion (POD): Company ditch number 4, NW SW sec 2, T11S, R17E

Conditions or other limitations, if any: None

Source: South Amity Creek, tributary to Trout Creek in the Deschutes Basin

Priority date: 1891

Type of use: Irrigation domestic and stock

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

T. 11S, R. 17E, Sec. 2, SW¼ SW¼ -0.5 acres

T. 11S, R. 17E, Sec. 3, NE¼ SE¼ -16 acres

Number of acres, if for irrigation: 16.5 acres

Rate: 0.41 cfs

Duty: A quantity of water limited to 99 acre feet during the irrigation season.

Season of use: All year

Point(s) of Diversion (POD): Company ditch number 5, NW SW sec 2, T11S, R17E

Conditions or other limitations, if any: None

Source: Trout Creek, tributary to the Deschutes River

Priority date: 1884

Type of use: Irrigation domestic and stock

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

T. 11S, R. 17E, Sec. 2, SW¼ SW¼ -1 acre

T. 11S, R. 17E, Sec. 3, SW¼ NE¼ -4 acres

T. 11S, R. 17E, Sec. 3, NE¼ NW¼ -0.75 acres

T. 11S, R. 17E, Sec. 3, SE¼ NW¼ -1.5 acres

T. 11S, R. 17E, Sec. 3, NW¼ SE¼ -10 acres

T. 11S, R. 17E, Sec. 3, SE¼ SE¼ -1 acre

Number of acres, if for irrigation: 18.25 acres

Rate: 0.46 cfs

Duty: A quantity of water limited to 109.5 acre feet during the irrigation season.
Season of use: All year
Point(s) of Diversion (POD): Company ditch number 6, SE SE sec 3, T11S, R17E
Conditions or other limitations, if any: None

Source: Trout Creek, tributary to the Deschutes River
Priority date: 1879

Type of use: Irrigation domestic and stock
Place of use: (map of irrigated lands is in *Exhibit D.*)

T. 11S, R. 17E, Sec. 2, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -1 acre
T. 11S, R. 17E, Sec. 3, NE $\frac{1}{4}$ NW $\frac{1}{4}$ -2 acres
T. 11S, R. 17E, Sec. 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$ -28 acres
T. 11S, R. 17E, Sec. 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ -14.5 acres
T. 11S, R. 17E, Sec. 3, NW $\frac{1}{4}$ SE $\frac{1}{4}$ -6 acres
T. 11S, R. 17E, Sec. 3, SW $\frac{1}{4}$ SE $\frac{1}{4}$ -1.75 acre
T. 11S, R. 17E, Sec. 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$ -4.5 acre
Number of acres, if for irrigation: 57.75 acres

Rate: 1.44 cfs

Duty: A quantity of water limited to 346.5 acre feet during the irrigation season.
Season of use: All year

Point(s) of Diversion (POD): Company ditch number 7, NW NW sec 11, T11S, R17E

Conditions or other limitations, if any: None

Water Right Identification No.: 2241

Source: Trout Creek, tributary to the Deschutes River
Priority date: 1894

Type of use: Irrigation domestic and stock
Place of use: (map of irrigated lands is in *Exhibit D.*)

T. 11S, R. 17E, Sec. 11, SW $\frac{1}{4}$ NW $\frac{1}{4}$ -2.25 acres
T. 11S, R. 17E, Sec. 11, NW $\frac{1}{4}$ SW $\frac{1}{4}$ -1.25 acres
T. 11S, R. 17E, Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$ -1 acre
Number of acres, if for irrigation: 4.5 acres

Rate: 0.11

Duty: A quantity of water limited to 27 acre feet during the irrigation season.
Season of use: All year

Point(s) of Diversion (POD): James ditch, NE NE sec 15, T11S, R17E

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 immediately preceding the 1996 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:

Trout Creek, tributary to the Deschutes River

Location: From the upper P.O.D. described in 1.4 (near RM 40) to the mouth of Degner Canyon (near RM 25)

Priority dates: 1879, 1884, 1891, 1894, and 1895

Use: Instream (described in Section 2.1, above)

Total volume: A quantity of water limited to 1,135.5 acre feet during the irrigation season.

Rate: 4.73 cfs (Total)

1.73 cfs (1879)

1.17 cfs (1884)

0.41 cfs (1891)

0.11 cfs (1894)

1.31 cfs (1895)

Period of use: All year

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 4.73 cfs. The instream flow will be allocated on a daily average basis up to this rate from June 1 until September 30, or until such time that the total duty for the irrigation season is met.

- 2.3 **Term of lease.** This Lease shall commence on January 1, 1996 (not before execution by the parties) and continue through December 31, 1996.


- 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 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: None

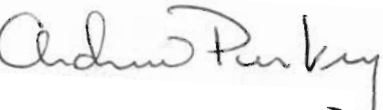
Watermaster:  District: 11
Kyle Gorman
Field Services and Enforcement
1340 NW Wall, Suite 100
Bend, Oregon 97701
(541) 388-6669
(541) 388-5101-Fax

Date: 7-12-96

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: 7-3-96

Lessee:  Date: 7-8-96

So ordered by Trustee:  Date: 8/13/96
Director, Oregon Water Resources Department

Effective Date of Lease Agreement: 8/13/96

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