

Lease Agreement Number: _____

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

REVISED

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

This Lease Agreement is between:

Lessor #1:

(Name) Butler Ranch, Inc
(Mailing address) Route 1 Box 35-A
(City, State, Zip Code) Terrebonne, OR 97760
(Telephone number) (541) 548-6070

Lessor #2, 3, etc.:

The water right to be leased is located in Crook County

Lessee:

(Name, address and telephone number)

Deschutes Resources Conservancy
PO Box 1560
Bend, OR 97707-1560
(541) 322-0134

Trustee:

Oregon Water Resources Department
158 12th Street NE
Salem OR 97301
(503)378-8455

~I~

- 1.1 Lessor #1 is the owner, or authorized agent for owner (Exhibit A), of property highlighted in Exhibit B.
- 1.2 Lessor #2 is the (Check one) [If Agreement includes multiple lessors, complete same for each additional party.]:
 - Official representative of _____, the irrigation district which conveys water to the subject water rights.

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- Owner, or authorized agent for owner, of the storage facility which is the source of the subject water rights.
- Another party with an interest in the subject water rights representing _____.

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 No. <u>75633 Primary</u>	Permit No. <u>25991</u>
<u>22454 Primary and Supplemental</u>	<u>17167</u>
<u>2734 Primary</u>	<u>823</u>

The Lessee requests that the primary water right be leased instream with the use of the supplemental right only in the event that the primary right is not available at its full rate and duty so as to avoid enlargement of the water right.

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

The right(s) to be leased are further described as follows:

Certificate No.: 75633 Direct diversion from the Crooked River
 Priority date: April 8, 1914 Type of use: Irrigation
 Place of use: See highlighted lands on Exhibit D

NE1/4 SW1/4	34.3 acres
NW1/4 SW1/4	1.0 acres
SW1/4 SW1/4	3.0 acres
SE1/4 SW1/4	16.1 acres
NE1/4 SE1/4	38.3 acres
NW1/4 SE1/4	40.9 acres
SW1/4 SE1/4	0.6 acres
SE1/4 SE1/4	0.2 acres

SECTION 15

Township 14 South, Range 14 East

(If original use is irrigation, include map of irrigated lands in Exhibit D.)

Number of acres, if for irrigation: 134.4

Acre feet of storage: NA

Rate: 1/40th cfs per acre Duty: 4.0 acre-feet per acre

Season of Use: February 1 through November 1

Point(s) of Diversion (POD): NE1/4 NE1/4, Section 22, T. 14 S., R. 14 E. m 1300 feet South from the NE corner of Section 22

Conditions or other limitations, if any: None

Certificate No.: 22454 Direct Diversion from the Crooked River
 Priority date: July 23, 1946 Type of use: Irrigation and Supplemental
 Place of use: See highlighted lands on Exhibit D

SW1/4 SW1/4 5.2 acres
 SE1/4 SW1/4 19.6 acres
 NE1/4 SE1/4 2.2 acres
 NW1/4 SE1/4 0.8 acres
 SW1/4 SE1/4 39.4 acres
 SE1/4 SE1/4 39.8 acres

SECTION 15

Township 14 South, Range 14 East

NE1/4 NE1/4 16.4 acres
 NW1/4 NE1/4 16.0 acres
 NE1/4 NW1/4 40.0 acres
 NW1/4 NW1/4 31.6 acres

SECTION 22

Township 14 South, Range 14 East

Number of acres, if for irrigation: 211 acres
 Acre feet of storage: NA
 Rate: 1/40th cfs per acre Duty: 4.0 acre-feet per acre
 Season of Use: February 1 through November 1
 Point(s) of Diversion (POD): 1250ft. S. and 25ft. W. from the NE corner of Sec. 22, being within NE1/4, NE 1/4 of Sec. 22, T. 14 S., R. 14 E.
 Conditions or other limitations, if any: None

Certificate No.: 2734 Direct Diversion from the Crooked River
 Priority date: August 24, 1911 Type of use: Irrigation
 Place of use: See highlighted lands on Exhibit D

NE1/4 NE1/4 38.0 acres
 NE1/4 NW1/4 39.0 acres
 NW1/4 NE1/4 40.0 acres
 NW1/4 NW1/4 29.5 acres

SECTION 22

Township 14 South, Range 14 East

Number of acres, if for irrigation: 145.6 acres
 Acre feet of storage: NA
 Rate: 1/80th of a cfs per acre Duty: 4.0 acre-feet per acre
 Season of Use: February 1 through November 1
 Point(s) of Diversion (POD): 5ft. W. of a point 1290ft. S. of the NE corner of Sec. 22 (approx.) being within the NE1/4, NE1/4 of Sec. 22, T. 14 S., R. 14 E.
 Conditions or other limitations, if any: None

1.5 Validity of Rights. Lessor #1 attests (mark one) that:

- the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or
- that the water right is not subject to forfeiture under ORS 540.610.

- 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 690-077-0077.
- 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.

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- 2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is (Select one):

- Mitigation of a deficiency in the water supply for existing instream water right or minimum streamflow located in the Crooked River as described in Instream Water Right Application 70345.
- Mitigation of a deficiency in water supply identified in an application for an instream water right or needed in the State Scenic Waterway flow located
- A specific use or need identified by DEQ, Parks or ODFW and further described in Exhibit E.
- Provided by evidence contained in Exhibit E, such as a signed statement by Lessee, or other party, explaining how the lease would benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public uses.

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

- 2.2 Crooked River Tributary to Crooked River in the Deschutes Basin. The reach of stream to benefit from this instream use will be from the Butler point of diversion at river mile 35, to Lake Billy Chinook, river mile 6.0 (NWNE, SECTION 33, T12S, R12E).

Due to the overlapping nature of these water rights, the total duty for all rights as determined by the Watermaster will be 1,407.2 acre-feet.

Certificate No.: 75633

Priority date: April 8, 1914

Use: Described in Section 2.1, above

Mitigation of a deficiency in the water supply for Instream Water Right Application 70345 for resident fish rearing.

Total volume: 537.6 acre-feet

Rate in cfs: 3.55 cfs

Period of use: Instream use shall commence on September 15, 2001 and continue through November 1, 2001. Due to the fact that the lease cannot be approved any sooner than September 15, 2001, the instream lease will not exceed the maximum allowable duty.
 Conditions to prevent injury, if any: None

Certificate No.: 22454

Priority date: July 23, 1946

Use: Described in Section 2.1, above

Mitigation of a deficiency in the water supply for Instream Water Right Application 70345 for resident fish rearing.

Total volume: 844 acre-feet

Rate in cfs: 3.87

Period of use: Instream use shall commence on September 15, 2001 and continue through November 1, 2001. Due to the fact that the lease cannot be approved any sooner than September 15, 2001, the instream lease will not exceed the maximum allowable duty.
 Conditions to prevent injury, if any: Supplemental rights will only be served when primary rights are deficient so as not to exceed the seasonal duty with both rights.

Certificate No.: 2734

Priority date: August 24, 1911

Use: Described in Section 2.1, above

Mitigation of a deficiency in the water supply for Instream Water Right Application 70345 for resident fish rearing.

Total volume: 586 acre-feet

Rate in cfs: 1.38 cfs

Period of use: Instream use shall commence on September 15, 2001 and continue through November 1, 2001. Due to the fact that the lease cannot be approved any sooner than September 15, 2001, the instream lease will not exceed the maximum allowable duty.
 Conditions to prevent injury, if any: None

- 2.3 Term of lease.** This Lease shall commence on September 15, 2001 (not before execution by the parties) and continue through November 1, 2001.
- 2.4 Compensation.** The Lessor has agreed to lease subject water right for the sum of \$1.00, or other valuable considerations and for the benefit 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.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: (Describe plans)
- 2.7 **Modification or termination provisions.** (Describe any such provisions)

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- 3 **Watermaster review.** By signature below, the watermaster for the district where the subject water right is located verifies that:
 - 3.1 Lessor #1 is currently entitled to appropriate water under the 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: In reviewing these water rights, it is apparent that some of the water rights overlap each other. I have taken the OID final proof survey map from the 1980's and have determined the extent of the irrigation on this property. I have assigned the appropriate number of acres by forty and assumed the extent of the irrigation will receive 1/40 cfs per acre. I have structured the lease in a way to maximize the acres with the oldest priority date hence maximizing flow with the oldest priority date.

Watermaster: [Signature] District 11
(Address & telephone) _____

Date: 8-10-01

~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 #1: [Signature] for Butler Ranch, Inc Date: 8/13
David Butler, President

Lessee: [Signature] Date: 8/13

So ordered by Trustee: _____ Date: _____

Exhibits:

- Exhibit A: Copy of Property Deed/Power of Attorney Documentation (if needed)
- Exhibit B: Tax Lot Map of Lessor's property
- Exhibit C: Copies of certificates, permits and decreed rights to be leased

Other Exhibits As Needed:

- Exhibit D: Detailed map illustrating lands under subject rights to be leased
- Exhibit E: Identification of public use to be served by instream use
- Exhibit F, etc: Information related to Optional Provisions, such as Additional Monitoring or Modifications or Termination of lease