

9805.03

RECEIVED

MAR -5 1998

WATER RESOURCES DEPT.
SALEM, OREGON

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

This Lease Agreement is between:

Lessor:

Mack Birkmaier
84263 Walker Lane
Joseph, OR 97846
(541) 432-1265-Phone & Fax

The water right to be leased is located in Wallowa 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) 378-2496-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 a copy of the certificated right attached to the property in *Exhibit B*. The right is listed below as follows:

Certificate No. 41278
- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of the water right listed in 1.3, above.

MAR - 5 1998

WATER RESOURCES DEPT.
SALEM, OREGON

The right, of which a portion is to be leased, is further described as follows:

Water Right Identification No.: 41278

Source: Chesnimnus, Crow, Elk and Joseph creeks

Priority date: December 6, 1967

Type of use: Irrigation

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

T 3N, R 45E, S 26, SW $\frac{1}{4}$, NE $\frac{1}{4}$, 1 acre (Chesnimnus)

T 3N, R 45E, S 26, SE $\frac{1}{4}$, NW $\frac{1}{4}$, 6.6 acres (Chesnimnus), 6.6 acres (Joseph)

T 3N, R 45E, S 26, NE $\frac{1}{4}$, SW $\frac{1}{4}$, 0.1 acre (Chesnimnus), 1.3 acres (Crow)

T 3N, R 45E, S 26, NW $\frac{1}{4}$, SE $\frac{1}{4}$, 6.2 acres (Chesnimnus), 9.9 acres (Crow)

T 3N, R 45E, S 26, SW $\frac{1}{4}$, SE $\frac{1}{4}$, 0.2 acre (Elk), 8.6 acres (Crow)

T 3N, R 45E, S 35, NW $\frac{1}{4}$, NE $\frac{1}{4}$, 13.2 acres (Elk), 0.8 acre (Crow)

T 3N, R 45E, S 35, SW $\frac{1}{4}$, NE $\frac{1}{4}$, 1.8 acres (Elk), 5.0 acres (Crow)

T 3N, R 45E, S 35, NE $\frac{1}{4}$, NW $\frac{1}{4}$, 2.2 acres (Elk, not proposed to be leased)

T 3N, R 45E, S 35, SE $\frac{1}{4}$, NW $\frac{1}{4}$, 0.6 acre (Elk), 2.4 acres (Crow)

T 3N, R 45E, S 35, NE $\frac{1}{4}$, SW $\frac{1}{4}$, 0.9 acre (Crow)

T 3N, R 45E, S 35, NW $\frac{1}{4}$, SE $\frac{1}{4}$, 2.1 acres (Crow)

Number of acres, if for irrigation: 69.5 acres (65.9 of which are to be leased)

Acre-feet of storage: None

Rate: 1.75 cfs (1.65 of which is to be leased)

Duty: 208.5 (197.7 of which is to be leased)

Season of use: March 1-October 31

Point of Diversion (POD): Joseph Cr. - SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Chesnimnus Cr. - NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, Crow Cr. - NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Elk Cr. - NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, T. 3 N., R. 45 E., W. M., Joseph Cr. - 3910 feet North and 3700 feet West, Chesnimnus Cr. - 2560 feet North and 2550 feet West, 1270 feet North and 370 feet West, Crow Cr. - 1800 feet North and 2430 feet West, 670 feet North and 2000 feet West, 50 feet North and 1910 feet West, 2420 feet South and 2620 feet West, 3220 feet South and 2450 feet West, Elk Cr. - 780 feet South and 2330 feet West, 1430 feet South and 3300 feet West, all from NE corner, Section 35.

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 and, if the right is for irrigation, on all lands indicated in *Exhibit D.*
- 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.

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

No. 41278

Chesnimnus, Crow, Elk and Joseph creeks, in the Grande Ronde Basin

Location: POD's to the mouth of each creek

Priority date: December 6, 1967

Use: Described in Section 2.1, above

Total volume: 197.7 acre feet

Rate: 0.81 cfs, being 0.2 cfs from Elk Creek, 0.18 cfs from Chesnimnus Creek, 0.35 cfs from Crow Creek, and 0.08 cfs from Joseph Creek

Period of use: June 1 - September 30

Conditions to prevent or mitigate injury, if any: The instream flow of 0.81 cfs will be allocated on a daily basis from June 1 through September 30 in order that the seasonal duty limitation is not exceeded. There are no other conditions on the instream use.

- 2.3 **Term of lease.** This Lease shall commence on March 1, 1998 (not before the date of final execution by the parties) and continue through October 31, 1999.
- 2.4 **Compensation.** Lessor has agreed to lease the water right herein to the Oregon Water Trust in exchange for an agreed monetary compensation.
- 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.** None

RECEIVED

MAR - 5 1998

WATER RESOURCES DEPT.
SALEM, OREGON

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 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: None

Watermaster: *Richard M. Lusk* District: *6*
Rick Lusk
Field Operations, WRD
10507 N. McAlister
La Grande, OR 97850
(541) 963-1031-Phone
(541) 963-9637-Fax

Date: *3-2-98*

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: *Mack Birkmeyer* Date: *2-23-98*

Lessee: *Arthur Perry* Date: *Feb 27, 1998*

So ordered by Trustee: *Marcia Page* Date: *4/24/98*

Director, Oregon Water Resources Department
Effective Date of Lease Agreement:

RECEIVED

MAR - 5 1998

WATER RESOURCES DEPT.
SALEM, OREGON

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

- Exhibit A: Proof of property ownership (copy of property deed)
- 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 map illustrating lands irrigated by subject right
- Exhibit E: Identification of public use to be served by instream use