



State of Oregon
Water Resources Department
 725 Summer Street NE, Suite "A"
 Salem, Oregon 97301-1271
 (503) 986-0900

Application for Short-Term Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/publication/reports/index.shtml.

Pursuant to ORS 537.348(2) and OAR 690-077-0077

Optional Identification by Lessor/Lessee: Bear Creek Leasing 2006
 Lease Agreement Number (assigned by WRD): L-786

This Lease Agreement is between:

Lessor #1:

(Name) David Culbertson
 (Mailing address) 657 S. Stage Road
 (City, State, Zip Code) Medford, Oregon 97501
 (Telephone number) (541) 941-9559
 (Email address) _____

Lessor #2, 3, etc.

#2 Talent Irrigation District

#3 United States Bureau of Reclamation

The water right to be leased is located in Jackson County.

Lessee (if different than Oregon Water Resources Department):

(Name) Oregon Water Trust
 (Mailing address) 522 SW Fifth Ave., Suite 825
 (City, State, Zip Code) Portland, OR 97204
 (Telephone number) (503) 525-0141
 (Email address) steve@owt.org

Trustee:

Oregon Water Resources Department
 725 Summer Street N.E., Suite "A"
 Salem, OR 97301-1271
 (503) 986-0900

~I~ Ownership and Water Right Information

- 1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 38
 S, Range 1 W, Section 6 and Tax Lot number
1700. If the water right appurtenant to these lands is also appurtenant to lands
 owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.
- 1.2 Lessor #2 is the (Check one):
 Not applicable

Official representative of Talent Irrigation District, the irrigation district which conveys water to the subject water rights.

Another party with an interest in the subject water rights representing United States Bureau of Reclamation.

- 1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. 79212 and Supplemental under Permit 25915

- 1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

- 1.5 **Subject water rights.** Lessor proposes to lease the water rights listed in 1.3.

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

Certificate No.: 79212

Priority date: May 23, 1915 Type of use: Primary and Supplemental Irrigation and for Domestic use for the City of Ashland

Legal Season of Use: April 1 through October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 38 S, R 1 W, Section 6, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 21.80 acres to be leased
Enter additional places of use here, using format above:

Page 6 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 21.80

Acre-feet of storage, if applicable: na

Maximum rate associated with subject water rights (cfs): 0.27 (1/80th cfs per acre)
(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with subject water rights (ac-ft): 98.1 (4.5 ac-ft per acre)
(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: The right is limited to not more than the amount specified for each source, and not to exceed 87 CFS at one time, and further, the diversions from Bear Creek, including Ashland Creek and Neil Creek shall not exceed 55 CFS at one time.

The amount of water used for irrigation together with the amount secured under any other prior right existing for the same lands, is limited to a diversion of ONE-Eighth of one cubic foot per second (or its equivalent) for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

If you need to enter another leased right, please use the additional water rights form.

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1.6 **Validity of rights.** Lessor(s) 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 as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)()(include necessary supporting documentation as Attachment 3).

~II~ Instream Water Right Information

2.1 **Public use.** This lease will increase streamflows which will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

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

Emigrant Creek and Bear Creek
Tributary to Rogue River in the Rogue Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): The point of diversion for the primary right is the toe of Emigrant Dam being within the SE SE of Section 20, Township 39 South, Range 2 East, W.M. The instream right will be protected in Emigrant Creek from the toe of Emigrant Dam downstream approximately 3.5 miles to the point where Walker Creek and Emigrant Creek join to form Bear Creek. The instream right will then be protected in Bear Creek from stream mile 27 to the mouth of Bear Creek at the Rogue River. The Talent Irrigation District will deliver water to satisfy the instream right at the upper end of the reach. The Talent Irrigation District is not responsible for protecting the instream water right through the reach. The total protected stream reach is approximately 30.5 miles. At such time that the District is supplying water for irrigation from supplemental sources under Permit 25915, the instream right will also be supplied by supplemental sources. Use of the primary water right to satisfy the instream right will be at an instream rate of 1/100th cfs per acre. Maximum volume in acre-feet: 57.77 (2.65 ac-ft per acre)
Rate in cfs: 0.218 (1/100th cfs per acre)
(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from June 20 through October 31.
- Other (describe): The instream right protected under this lease shall be satisfied based on the same percentage diversion and delivery rate that Talent Irrigation District is providing to irrigation rights within the District. The instream rate proposed is estimated based upon a 1/100th cfs per acre rate. In case of shortage of supply where the general allotment on the District has been reduced, the District may deliver less

than 2.65 acre feet per acre in accordance with District policy governing temporary instream leases. In the event the District stops delivery of irrigation water prior to October 31, the delivery for instream use shall also stop. Reporting to the watermaster shall be consistent with any required reporting of other District operations.

If you need to enter more instream uses, please use the additional water rights form.

2.3 Term of lease. This lease shall terminate on October 31, 2006.

2.4 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). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

3.1 Accuracy. 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. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

3.2 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.

3.3 Precedent. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077- 0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.

3.4 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. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.

3.5 Termination provision.

- For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised (____), with 30 day written notice to the Department.
- For multiyear leases, lessor *shall not* have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.

3.5 Modification to prevent injury. Allocation of water to the 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. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

- 3.7 Fees. Effective October 1, 2003, pursuant to ORS 536.050 (1)(v) (2003 SB 820), the following fee is included:
- \$200 for an application with four or more landowners or four or more water rights.
 - \$100 for all other applications.

Lessor #1: David Culbertson Date: 6-19-06
David Culbertson

For additional Lessors, type in space for signature and date

Lessor #2: Talent Irrigation District Date: 6-26-06

Lessor #3: See Letter from US BOR Date: _____
United States Bureau of Reclamation

Lessee: Oregon Water Trust Date: 6-7-06

- Other Attachments as Needed:
- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
 - Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
 - Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked)
 - Attachment 4: Split Season Instream Use Form

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Additional Water Right Form Standard Application for Short-Term Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/publication/reports/index.shtml.

~I~ Ownership and Water Right Information

Section 1.5 continued from Standard Application for Short-Term Instream Lease.

Subject Water Rights. Lessor proposes to lease the water rights listed in 1.3.

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

Certificate No.: Permit 25915, supplemental to Certificate 79212. This additional water right form describes the same 21.80 acres of rights as on the attached instream lease application.

Priority date: June 8, 1953, for Soda Creek and Little Beaver Creek and September 6, 1915, for all other streams

Type of use: irrigation and supplemental irrigation

Legal Season of Use (if not listed on the certificate): April 1 through October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$, which will be dried up as part of this lease. Include a map (Attachment 3) showing the lands that will not receive water.

Place of use: T 38 S, R 1 W, Section 6, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 21.80 acres to be leased

Enter additional places of use here, using format above:

Page ht5 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 21.80

Acre-feet of storage, if applicable: na

Rate associated with leased rights (cfs): 0.545 (1/40th cfs per acre)

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 98.1 (4.5 ac-ft per acre)

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: Delivery of water under this supplemental right must be consistent with TID regulations and policy governing instream leases.

~II~ Instream Water Right Information

Section 2.2 continued from Standard Application for Short-Term Instream Lease.

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

Emigrant Creek and Bear Creek

Tributary to Rogue River in the Rogue Basin.

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Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease may be processed to be protected at the point of diversion): The point of diversion for the supplemental right is the toe of Emigrant Dam being within the SE SE of Section 20, Township 39 South, Range 2 East, W.M. The instream right will be protected in Emigrant Creek from the toe of Emigrant Dam downstream approximately 3.5 miles to the point where Walker Creek and Emigrant Creek join to form Bear Creek. The instream right will then be protected in Bear Creek from stream mile 27 to to the mouth of Bear Creek at the Rogue River. The Talent Irrigation District will deliver water to satisfy the instream right at the upper end of the reach. The Talent Irrigation District is not responsible for protecting the instream

water right through the reach. Total protected stream reach is approximately 30.5 miles. The instream right will be supplied water under Permit 25915 when the primary right sources are insufficient and the District is supplying water for irrigation under the supplemental right. Use of the supplemental water right to satisfy the instream right will be at a rate of 1/100th cfs per acre.

Total volume in acre-feet: 57.77 (2.65 ac-ft per acre)

Rate in cfs: 0.218

Conditions to prevent injury, if any:

None

The instream flow will be allocated on a daily average basis up to the described rate from June 20 through October 31.

Other (describe): The same conditions to prevent injury shall apply to the supplemental as are described for the primary right 79212.

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David Hill
6-27-06