

Lease Agreement Number: 193

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

This Lease Agreement is between:

Lessor:

Norma Anspach
Clarence Anspach
Rt. 4, Box 192
Milton-Freewater, OR 97862

The water rights to be leased are located in Umatilla County.

Lessee:

Oregon Water Trust
111 SW Naito Parkway
Suite 404
Portland, OR 97204
(503) 226-9055-Phone
(503) 226-3480-Fax

Trustee

Oregon Water Resources Department
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739-Phone
(503) 378-8130-Fax

I.

- 1.1 Lessors are the owners of the properties (*Exhibit A*) 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 properties in *Exhibit B*. These rights are listed below as follows:

A portion of Certificate Nos.: 13130, 13311, and 12775.

1.4 **Subject Water Rights.** Lessors propose to lease a portion of the water rights listed in 1.3, above.

The portion of the rights to be leased are further described as follows:

Water Right Certificate No.: 13130

Source: Ford Branch Walla Walla River

Priority date: 1881

Type of use: Irrigation

Place of use:

T 6 N, R 35 E, W.M., Section 35, NW ¼ SE ¼ (9.0 acres)

Number of acres, if for irrigation: 9.0 acres (None of the 9.0 acres associated with this water right certificate will be irrigated during the term of this lease)

Rate: 0.33 cfs

Duty: Not Applicable

Season of use: March 1 to November 30

Point(s) of Diversion (POD): Preston Ditch Diversion No. 58, T 6 N, R 35 E, W.M., Section 35, NW ¼ SE ¼

Conditions or other limitations, if any: *The watermaster has determined that structures on this property cover ground that involve part of the water right. The Walla Walla Irrigation District Manager has determined that the structures cover less than 1% of the property with water rights. This determination is represented on the maps attached as Exhibit F. Thus, the acreage under this water right to be leased will be reduced by 1% from that represented on the water right, with the rate to be decreased accordingly. Thus, the acreage available for leasing instream is 8.91 acres, and the rate is .327 cfs.*

Water Right Certificate No.: 13311

Source: East Fork Ford Branch Walla Walla River

Priority date:

1887 (6.0 acres) (4.5 of which are to be leased)

1894 (3.5 acres) (2.7 of which are to be leased)

Type of use: Irrigation

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

T 6 N, R 35 E, W.M., Section 35, SE ¼ NE ¼ NW ¼ (9.5 acres)(7.2 of which are to be leased)

Number of acres, if for irrigation: 9.5 acres (7.2 of which are to be leased) (None of the 9.5 acres associated with this water right certificate will be irrigated during the term of this lease)

Rate:

1887: 0.23 cfs (0.17 of which are to be leased)

1894: 0.13 cfs (0.10 of which are to be leased)

Duty: Not Applicable

Season of use: March 1 to November 30

Point(s) of Diversion (POD): Lateral Ditch Diversion No. 66, T 6 N, R 35 E, W.M., Section 35, NE ¼ SE ¼ NW ¼

Conditions or other limitations, if any: *The reduction in acres set out above reflects the watermaster's determination that there are roads and structures on approximately 2.3 acres of the lands to which this water right is appurtenant. The watermaster has determined that those acres are not available to be leased instream because the water right cannot have been used on those acres for irrigation for more than five years. The location of those structures and roads are set out on the aerial map provided by NRCS that is attached as Exhibit F.*

Water Right Certificate No.: 12775

Source: East Ford Branch of Little Walla Walla River

Priority date: 1908

Type of use: Irrigation

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

T 6 N, R 35 E, W.M., Section 35, SW ¼ NE ¼ (2.0 acres)

Number of acres, if for irrigation: 2.0 (1.8 acres of which are to be leased)

Rate: 0.067 cfs

Duty: Not Applicable

Season of use: March 1 to November 30

Point(s) of Diversion (POD): Ditch Diversion No. 62, T 6 N, R 35 E, W.M., Section 35, SE ¼ NW ¼

Conditions or other limitations, if any: *The NRCS aerial photograph for this property indicates that the irrigated portion of the property contains only 1.8 acres. See Exhibit F.*

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.** 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, Lessor 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. Any use of the remaining water right will invalidate the lease for the remainder of the year.

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:

provided by evidence contained in Exhibit E, such as a signed statement by lessee, or other party, explaining how the lease will benefit recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement, navigation or other public use.

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

Certificate No. 13130

Walla Walla River, in the Umatilla Basin

Location: Headgate of the Little Walla Walla River to the Lower End of the Nursery Bridge Diversion Dam Fish Ladder

Priority date: 1881

Use: Instream (described in Section 2.1, above)

Rate: 0.327 cfs

Total volume: Not Applicable

Period of use: March 1 to November 30

Conditions to prevent or mitigate injury, if any:

Original POD	Lower End Nursery Bridge Diversion Dam Fish Ladder	Delivery Loss
0.327 cfs	0.257 cfs	10% per mile

Water right has been reduced by 1% to account for structures on the acres covered by the water right. See Section 1.4, above.

Certificate No. 13311

Walla Walla River, in the Umatilla Basin

Location: Headgate of the Little Walla Walla River to the Lower End of the Nursery Bridge Diversion Dam Fish Ladder

Priority date:

1887

1894

Use: Instream (described in Section 2.1, above)

Rate:

1887: 0.17 cfs

1894: 0.10 cfs

Total volume: Not Applicable

Period of use: March 1 to November 30

Conditions to prevent or mitigate injury, if any:

Original POD	Lower End of Nursery Bridge Diversion Dam Fish Ladder	Delivery Loss
0.17 cfs	0.14cfs	10% per mile

0.10 cfs	0.08 cfs	10% per mile
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A Portion of Certificate No.: 12775
Walla Walla River, in the Umatilla Basin
Location: Headgate of the Little Walla Walla River to the Lower End of the Nursery
Bridge Diversion Dam Fish Ladder
Priority date: 1908
Use: Instream (described in Section 2.1, above)

Rate: 0.067 cfs

Total Volume: Not Applicable

Season of use: March 1 to November 30

Conditions to prevent or mitigate injury, if any:

Original POD	Nursery Bridge	Delivery Loss
0.067 cfs	0.048 cfs	10% per mile

Water right acreage has been reduced to 1.8 acres. See Section 1.4, above.

- 2.3 **Term of lease.** This Lease shall commence on March 1, 2001 (not before execution by the parties) and continue through November 30, 2001.
- 2.4 **Compensation.** Lessor has agreed to lease the water right 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.** If through monitoring, the actual loss rate is determined to be different than the 10% per mile listed in Section 2.2, then a finding indicating this change shall be made, and the actual loss rate shall be adjusted appropriately.
- 2.7 **Modification or termination provisions.** None

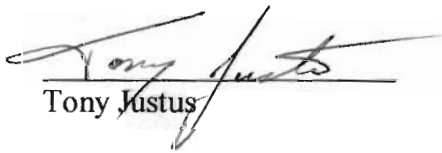
III.

- 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 In this case, the PODs are used by multiple water right holders. Consequently, installing a locking headgate is not currently a viable option. Instead, the Watermaster will periodically check to see that the ditch has not been used to apply water to the leased lands.
- 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
- 3.5 **This Lease shall set no precedent.** If any of the water rights which have been leased pursuant to this Lease is later proposed to be transferred to an instream use under ORS 537.348(1) and OAR 690-077-0070 or OAR 690-077-0075, a new injury review shall be required, and this short term Lease shall not set a precedent for the amount of water that may be transferred instream under this water right.

Watermaster: Tony Justus

District: 5



Tony Justus

Tony Justus
Oregon Water Resources Department
116 SE Dorian
Pendleton, OR 97801
(541) 278-5456-Phone
(541) 278-0287-Fax

Date: October 31, 2001

IV.

Verification: By their signatures below, the Undersigned Lessor/s, Lessee and Trustee hereby 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.

Lessor: *Norma Anspach*

Date:

Lessor:

Date:

Lessee: *Edward City Gravel for Oregon Water Trust*

Date: *10/24/01*

So ordered by Trustee: *[Signature]*

Date: *11/21/2001*

Exhibits:

- Exhibit A: Proof of property ownership
- Exhibit B: Map of Lessor's properties
- Exhibit C: Copies of certificates, permits and decreed rights to be leased
- Exhibit D: Detailed map illustrating lands irrigated by subject rights
- Exhibit E: Identification of public use to be served by instream use
- Exhibit F: Additional Maps of lands subject to lease (NRCS and Walla Walla Irrigation District)