



State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900

Application for Instream Lease

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

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

Optional Identification by Lessor/Lessee: _____
Lease Application Number (assigned by WRD): IL-1025

This Lease is between:

Lessor #1:

Name Shenk Dairy - Wesley Shenk @ Ronald D Shenk
Mailing address 9075 FORT HILL Rd,
City, State, Zip Code Williamina, OR 97396
Telephone number 503-876-6652, H - 503-949-3611-C
Email address Wesnshton@Embarq.mail.com

Lessor #2, 3, etc.

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

Lessee (if different than Oregon Water Resources Department):

Name _____
Mailing address _____
City, State, Zip Code _____
Telephone number _____
Email address _____

Trustee:

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266
(503) 986-0900

~I~ Water Right Holder and Water Right Information

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 6 S. 8, Range 7 W, Section 16 and Tax Lot number 801. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

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- 1.2 Lessor #2 is the (Check one):
 Not applicable
 Official representative of _____, the irrigation district which conveys water to the subject water rights.
 Another party with an interest in the subject water rights representing _____.

- 1.3 For the water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No. 62271

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

1.5 Water Rights Proposed to be Leased Instream.

The first right to be leased identified in Section 1.3 is further described as follows:

Certificate No.: 62271

Priority date: 3-3-78 Type of use: _____ - CROP IRRIGATION

Legal Season of Use: IRRIGATION SEASON - SUMMER

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 1/4 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 __, R __, Section __, 1/4 1/4 - _____ acres to be leased
 Enter additional places of use here, using format above:

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

Number of acres being leased, if for irrigation: 100

Acre-feet of storage, if applicable: N/A

Maximum rate associated with the right to be leased (cfs): 0.8 cfsTH
 (Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with the right to be leased (ac-ft): 2.5 ac-ft
 (Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: _____

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

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 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 water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)(_) (include necessary supporting documentation as Attachment 3).

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3.2 Lease. Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.

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 a new injury review shall be required, and a prior 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 water right holder 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.

3.5 Termination provision.

For multiyear leases, the Lessor(s) shall have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:

- Written notice to the Department with original signatures;
- Consent by all parties to the lease; and/or
- Written notice to the Watermaster's office.

For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.

3.6 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. Pursuant to ORS 536.050, 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: Shenk Dairy - Wesley V. Shenk
~~Wesley V. Shenk~~ Ronald D. Shenk Date: 6-11-09
Wesley V. Shenk

For additional Lessors, type in space for signature and date

Lessee: _____ Date: _____

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Subject: FW: WRP - awater rights question

From: Ryland Moore <moore@waterexchange.com>

Date: Thu, 4 Jun 2009 12:54:48 -0600

To: "wesnsharon@embarqmail.com" <wesnsharon@embarqmail.com>

Wes,

See the message below from Bill White, head of the WRP Program in the NRCS Oregon office. You will see the question I posed to him regarding water rights being protected through enrollment in the WRP Program. The head general counsel office replied to his question and has come back that the enrollment in the WRP Program does not protect the water right and that the water right needs to be enrolled in the instream leasing program through the Oregon Department of Water Resources. I also spoke with the watermaster and head of the region in which you live, and they both said the same thing about the WRP Program and the need to place the water right instream to protect the validity of the water right and not lose the water right through the five-year forfeiture statute. I am not an attorney, so take this information I am giving you as passing it along for your own information. I have also attached the application for placing a water right in the State's instream leasing program and attached a copy of your water right certificate. I hope everything works out for you.

Let me know if you have any questions and I can try to point you in the right direction.

Regards,
Ryland

WestWater Research, LLC
LEADERS IN WATER MARKETING

Ryland Moore | Transaction Manager | moore@waterexchange.com
805 Broadway St., Suite 415, Vancouver WA 98660
tel: 360.695.5233 fax: 360.695.6105 cell: 360.903.7306
www.waterexchange.com

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-----Original Message-----

From: White, Bill - Portland, OR [<mailto:Bill.White@or.usda.gov>]
Sent: Thursday, June 04, 2009 11:33 AM
To: Ryland Moore
Subject: WRP - awater rights question

Question: By enrolling in WRP what is the legal status of the water right, i.e., is the water right protected? What if it is not leased instream? A person called after someone at ODWR told them that it was not protected.

I do not believe that the water right is specified in the warranty easement deed.

Answer: OGC replied

Without further facts, as a general rule nonuse for 5 years makes the

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water right subject to forfeiture. ORS 540.610 provides some instances where this presumption of forfeiture can be rebutted, including that the land was enrolled in the CRP program (16 USC 3831-3836 and 3841-3845) ORS 540.610(2)(c), or is withdrawn under 7 USC 1801-1814, 1821-1824, 1831-1837. I looked quickly and it does not appear that the WRP is covered in these statutes.

If the landowner wants to protect the water right, the easiest thing to do is to lease it to an instream program, but that is their decision. They can also try to change the beneficial use through the OWRD process, but that may cause some problems if they have not used the water for 5 years.

William B. White
Leader for Programs
NRCS Oregon
1201 Lloyd Bldg
1201 NE Lloyd Blvd., Portland, OR 97232
PH: 503-414-3085
Fax: 503-414-3103

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.339 / Virus Database: 270.12.53/2155 - Release Date: 06/04/09 17:55:00

Content-Description: StandardLeaseForm07.doc
StandardLeaseForm07.doc Content-Type: application/msword
Content-Encoding: base64

Content-Description: Certificate 62271_100acres.pdf
Certificate 62271_100acres.pdf Content-Type: application/pdf
Content-Encoding: base64

Content-Description: certificate 62271_map.pdf
certificate 62271_map.pdf Content-Type: application/pdf
Content-Encoding: base64

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Let me know if you have any questions and I can try to point you in the right direction.

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of the process employed by the Water Resources Commission to implement section 6 of this 2003 Act [540.585], including any recommendation for further legislation. The report shall be submitted to the Legislative Assembly no later than January 31, 2009. [2003 c.705 §11]

540.587 Report on implementation of temporary transfer provisions. The Water Resources Department shall submit a report, in the manner provided in ORS 192.245, that shall include a summary of the features of the process employed by the Water Resources Commission to implement ORS 540.585. The report shall be submitted no later than January 31 of each year to the Legislative Assembly or to an interim committee related to natural resources, as appropriate. [2003 c.705 §10]

Note: 540.587 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FORFEITURE OF WATER RIGHTS

540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the

property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(l) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use

the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

540.612 Exemption from forfeiture. If a district, as defined in ORS 540.505, petitions for a transfer as provided in ORS 540.574 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610 (1), the forfeiture provisions of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending approval of the district's petition. The time required for the processing of the petition, including any time required for hearings, appeals and completion of an authorized change, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610 (1). [1991 c.957 §11]

540.615 [1961 c.140 §1; 1987 c.339 §5; repealed by 1989 c.699 §4]

540.620 [Repealed by 1955 c.671 §1]

540.621 Cancellation of abandoned water right upon request of owner. Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [1955 c.670 §1; 1979 c.67 §5; 1985 c.673 §96]

540.630 [Repealed by 1955 c.671 §1]

540.631 Cancellation of forfeited water right; notice. Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2; 1985 c.673 §97; 1989 c.699 §2; 1991 c.249 §53]

540.640 [Repealed by 1955 c.671 §1]

540.641 Protest of cancellation; procedure. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The commission shall cause written notice of the

Other Attachments as Needed:

Attachment 1: Tax Lot Map. (See instructions.)

Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

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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FSD

Application for Short-Term Instream Lease / 5

**WATER RESOURCES DEPT
SALEM, OREGON**

November 9, 2009

To Whom it may concern:

In September of 2002, Shenk's Dairy, consisting of Ronald D. Shenk and Wesley V. Shenk, signed a warranty easement deed with United States of America, Wetlands Reserve Program, which was recorded in Polk County on April 10, 2003.

At some time during the wetlands restoration project we talked to different people involved with the Natural Resource Conservation Service in Marion County and we understood that the Shenk's Dairy water rights certificate # 62271 for this property would be protected. We called the NRCS office and talked to personnel there and asked if this water right was protected and we again understood that it was protected under this program.

Wesley V. Shenk
Ronald D. Shenk

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SALEM, OREGON

STATE OF OREGON
COUNTY OF POLK
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

SHENKS DAIRY
9075 FORT HILL ROAD
WILLAMINA, OREGON 97396

confirms the right to use the waters of SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER, for the purpose of IRRIGATING 100.0 ACRES.

The right has been perfected under Permit 42925. The date of priority is MARCH 3, 1978. The right is limited to not more than 0.8 CUBIC FOOT PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE 1/4 NE 1/4, AS PROJECTED WITHIN DLC 46, SECTION 16, T 6 S, R 7 W, W.M.; 120 FEET NORTH AND 700 FEET WEST FROM THE E 1/4 CORNER OF SECTION 16.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

SW 1/4 NE 1/4 14.4 ACRES
SE 1/4 NE 1/4 6.1 ACRES
NE 1/4 SW 1/4 1.6 ACRES
NE 1/4 SE 1/4 27.4 ACRES
NW 1/4 SE 1/4 37.1 ACRES
SW 1/4 SE 1/4 7.6 ACRES
SE 1/4 SE 1/4 5.8 ACRES

ALL AS PROJECTED WITHIN DLC 46
SECTION 16
TOWNSHIP 6 SOUTH, RANGE 7 WEST, W.M.

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The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The right is subject to minimum flows established by the Water Resources Commission with an effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed this date AUGUST 31, 1989.

/s/ WILLIAM H. YOUNG
Water Resources Director

Recorded in State Record of Water Right Certificates numbered 62271

57131.DM