



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: Mitigation Project
Lease Application Number (assigned by WRD): IL-1164

This Lease is between:

Lessor #1:

Name EEL, LLC (signing partner, Floyd Leithauser)
Mailing address P.O. Box 157
City, State, Zip Code Sisters, OR 97759
Telephone number 541-595-1414
Email address _____

Lessor #2, 3, etc.

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

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy ~~Mitigation Bank~~
Mailing address 700 NW Hill Street
City, State, Zip Code Bend, OR 97701
Telephone number 541-382-4077
Email address gen@deschutesriver.org

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 15 S, Range 10 E, Section 4 and Tax Lot number 1202 & 1203. 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.

- 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. 67284 & 36137

- 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.: 67284

Priority date: 1883 Type of use: IRR

Legal Season of Use: N/A

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 ¼ ¼ 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 15 S, R 10 E, Section 04, NW¼ SE¼ - 12.0 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: 12.0

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

Maximum rate associated with the right to be leased (cfs): 0.24 (0.020/ac)

(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): N/A

(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).

~II~ Instream Water Right Information

2.1 **Public use.** This lease will increase streamflows that 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:

Whychus Creek

Tributary to Deschutes River in the Deschutes 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): SE ¼ NW ¼, section 9, T 15 S, R 10 E, W.M.; Buchanan Ditch – 2050 Feet South and 1250 Feet West from the N ¼ corner of Section 9 to the mouth of Whychus Creek and to Lake Billy Chinook.

Maximum volume in acre-feet: 89.50 AF

Rate in cfs: 0.24 cfs

(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 April 1 through October 31.
- Other (describe): Diversion records show that an amount in excess of the paper water right was historically diverted on the Buchanan Ditch in the past. Most users on the Buchanan Ditch irrigated with flood irrigation.

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 11/01/2015.

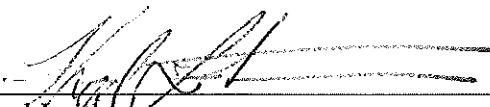
2.4 **Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the 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) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The 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.** 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:
- \$400 for an application with four or more landowners or four or more water rights.
 - \$250 for all other applications.

Lessor #1: 
EEL, LLC - Floyd Lelthäuser

Date: 4/12/11

For additional Lessors, type in space for signature and date

Lessee: 
Deschutes River Conservancy ~~Mitigation Bank~~

Date: 4/12/2011



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Additional Water Right Form Standard Application for Instream Lease

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~I~ Water Right Holder and Water Right Information

Section 1.5 continued from Standard Application for 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.: 36137

Priority date: 1883 Type of use: IRR

Legal Season of Use (if not listed on the certificate): _____

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 1/4 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 15 S, R 10 E, Section 4, NW 1/4 SE 1/4 - 21.33 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, if for irrigation: 21.33

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

Rate associated with leased rights (cfs): 0.43 (0.020 cfs/acre)

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

Duty associated with leased rights (AF): N/A

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

Conditions or other limitations, if any: _____

~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:

Whychus Creek

Tributary to Deschutes River in the Deschutes 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):

SE 1/4 NW 1/4, section 9, T 15 S, R 10 E, W.M.; Buchanan Ditch – 2050 Feet South and 1250 Feet West from the N 1/4 corner of Section 9 to the mouth of Whychus Creek and to Lake Billy Chinook.

Maximum volume in acre-feet: 158.85 ac-ft

Rate in cfs: 0.43 cfs

(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
April 1 through October 31.

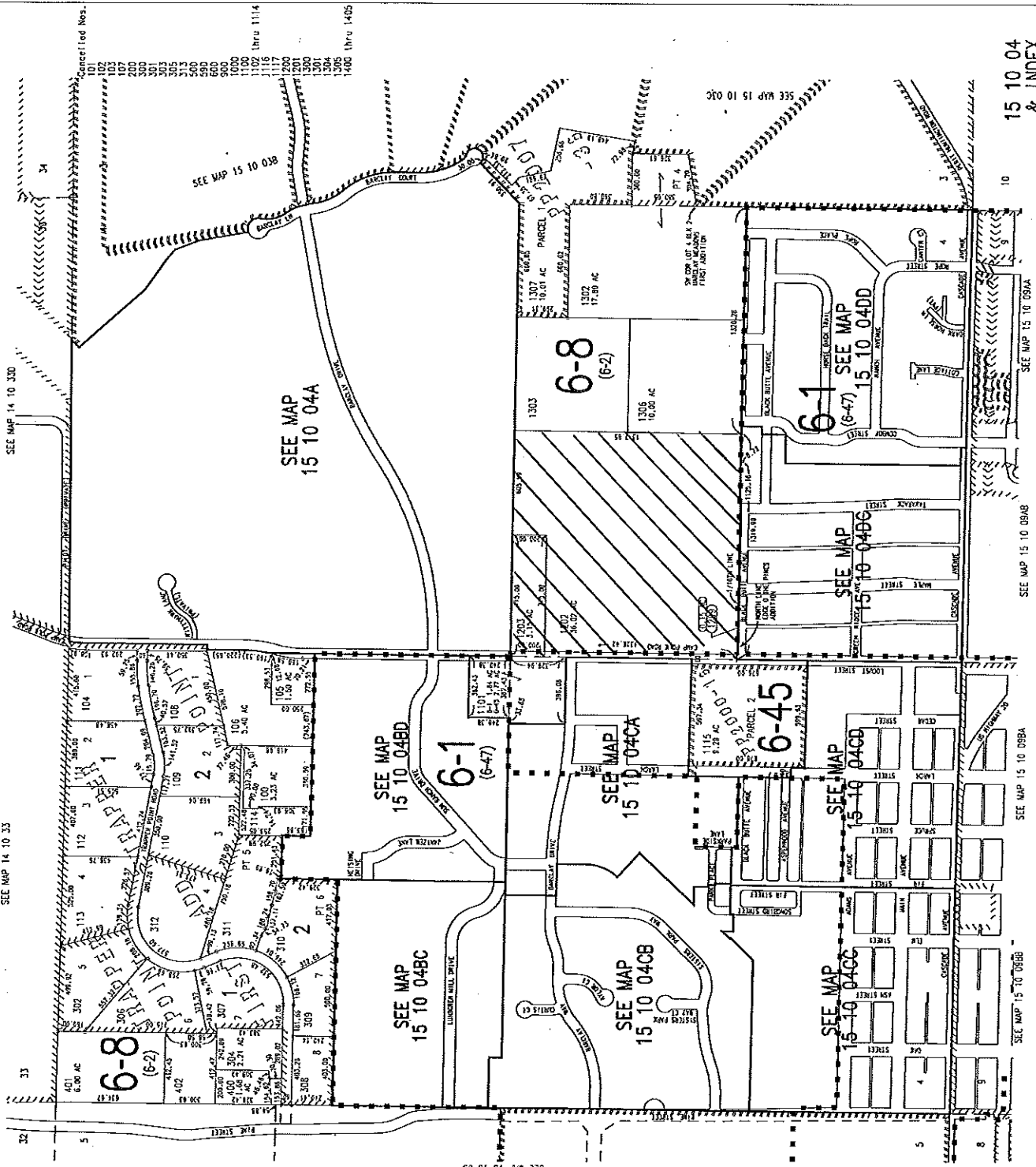
Other (describe): Diversion records show that an amount in excess of the paper water right was historically diverted on the Buchanan Ditch in the past. Most users on the Buchanan Ditch used flood irrigation.

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.
REVISED: 10/26/2006

SECTION 04 T. 15S. R. 10E. W.M.
DESCHUTES COUNTY

1" = 400'

15 10 04
& INDEX



15 10 04
& INDEX

C-67284 12.0 .020
C-36137 21.33 .020