



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

# Application for Instream Lease

February 13, 2012

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](http://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-1199

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

This Lease is between:

**Lessor #1:**

Name Terry Holtzapple  
Mailing address 4600 NE McKay Creek Rd  
City, State, Zip Code Prineville, OR 97754  
Telephone number 541-447-8144  
E-mail address\*\* tholtzap@blm.gov

Lessor #2, 3, etc. (provide same information as identified above)

**Lessee (if different than Oregon Water Resources Department):**

Name Deschutes River Conservancy  
Mailing address 700 NW Hill Street  
City, State, Zip Code Bend, OR 97701  
Telephone number 541-382-4077 ext 16  
E-mail address\*\* gen@deschutesriver.org

\*\*BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.

**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 13 S, Range 16 E, Section 22 and Tax Lot number 100 & 400. 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(s). 67122 primary (67151 supplemental)

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program.  Yes  No or other Federal program: \_\_\_\_\_

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.: 67122

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

Legal Season of Use: None listed on Cert., Season per Crooked River Decree Feb 1 - Dec 1

Is the entire water right certificate being leased?  Yes  No

If no, list below 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.

	T	R	Sec	Dir	Lot	Acres	Type of Use	Page #	Priority Date	Previous Lease #
*(Identify pertinent page numbers of certificate, if certificate is greater than 10 pages; identify priority date, if there is more than one on the certificate. If any portion of the right proposed to be leased was leased previously, the previous lease number may be identified. Identification of a previous lease is optional.)										
1.	13	16	22	NENE	100	9.2	IRR		5/23/1977	IL-N/A
2.	13	16	22	SENE	400	3.3	IRR		5/23/1977	IL-N/A
3.										IL-
4.										IL-
5.										IL-

(Attached maps must identify the water right holder, township, range, section, 1/4 1/4, tax lot number, map orientation, and scale.)

Total number of acres being leased, if for irrigation (or other acre equivalent uses): 12.5 ac

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

Maximum rate associated with the right to be leased (cfs): 0.25/ac maximum (1/40) = 0.313

(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): 4 ac-ft/ac = 50 ac-ft

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

Conditions or other limitations, if any: \_\_\_\_\_

1.6 Validity of rights to be leased as described in Section 1.5 of this form and on any Additional Water Right Form. 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 of the water right described in Section 1.5.**

The instream use to be created is described as follows:

In the McKay Creek  
Tributary to Crooked River in the Deschutes Basin.

Instream volume in acre-feet (may be up to the same as the duty identified in Sec 1.5): 49.59  
Instream rate in cfs (may be up to the same as the rate identified in Sec 1.5): 0.313 cfs

(If not certain of the instream rate or volume, please contact the Department for more information on how to fill out this section of the application).

- Instream use protected at the point of diversion (POD).
- Or within a proposed reach.

Describe the proposed reach (an instream reach generally begins at the POD and generally ends at the mouth of the source creek/river). If possible list the reach by river mile): From POD NENE, Section 22, T13S, R16E, W.M.: 1090 feet south and 290 feet west from the NE corner of section 22 to Lake Billy Chinook.

Please check this box if you are not sure of the proposed reach and want water to be protected within a reach below the POD, if possible.  
(If no reach is identified or the above box is not checked, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD.)

If the POD is not described on the Certificate or if there is more than one POD listed on the certificate, then the specific POD must be described: \_\_\_\_\_

**Conditions to prevent injury, if any (use this section to indicate a more restrictive period of use than allowed by the water right):**

- None
- The instream flow will be allocated on a daily average basis up to the described rate from 5/1 through 7/20.
- Other (describe): \_\_\_\_\_

(Note: The Department may identify additional conditions to prevent injury and/or enlargement.)

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 November 1, 2016

**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;
    - 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: Terry Holtzapfel Date: 9 March 2012  
Terry Holtzapfel

For additional Lessors, type in space for signature and date

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 Lessee: Minerva Hubert Date: 3/14/2012  
Deschutes River Conservancy

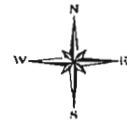
Other Attachments as Needed:

- 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

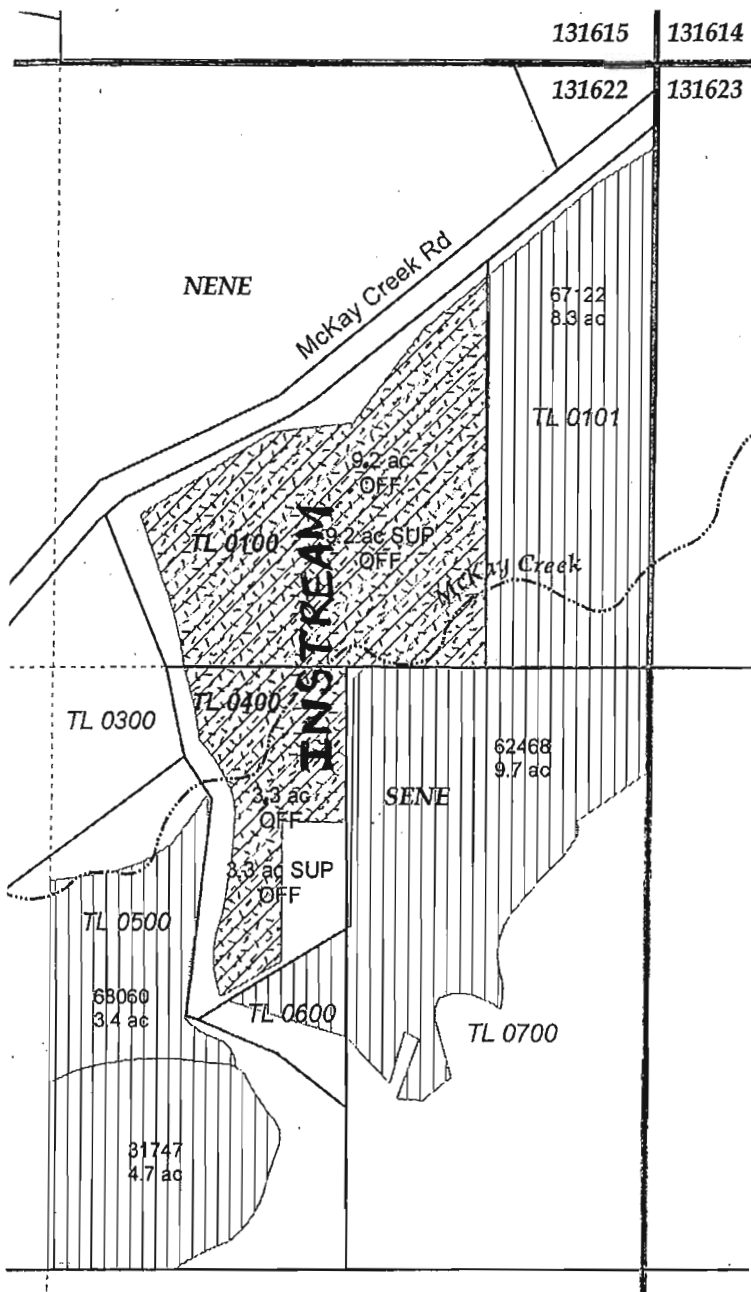
# CROOK COUNTY SEC 22 T13S R16E

NE of the NE & SE of the NE (HOLTZAPPLE PROPERTY)

SCALE: 1" = 400'



0 400



- Off lands (12.5 ac primary & supplemental)
- 67122 (12.5 ac), 1977 Primary **INSTREAM**
- 67121 (12.5 ac), 1977 Supplemental
- Subject to Neill, Miller, and Khorenian transfers
- Taxlot
- Stream
- PLSS Section
- PLSS 1/4 1/4 Section

Source:  
Crook County GIS PLSS and taxlot data.  
OWRD Water Rights Information System.  
McKay Creek digitized from 2005 NAIP 0.6 m  
aerial photo.



**DESCHUTES RIVER  
CONSERVANCY**

## APPLICATION FOR 5-YEAR INSTREAM LEASE Deschutes River Conservancy

Taxlot #: 0100, 0400

Date: 10/15/10

**12.5 acres**

transfer\_holtzaple\_2010.mxd, D. Quinlan