



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-1218-MP-170

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

This Lease is between:

Lessor #1:

Name Edward & Doris Elkins
Mailing address 63613 OB Riley Rd
City, State, Zip Code Bend, OR 97701
Telephone number 541-389-9662
E-mail address** thumper@empnet.com

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

Swalley Irrigation District
64672 Cook Ave
Bend, OR 97701

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy Mitigation Bank
Mailing address 700 NW Hill St
City, State, Zip Code Bend, OR 97701
Telephone number 541-382-4077
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 17 S, Range 12 E, Section 7 & 18 and Tax Lot number multiple. 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 Swalley Irrigation District, 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). 74145

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.: 74145

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

Legal Season of Use: April 1 - November 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	Sect	1/4 1/4	Tax 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.	See	Exh 5-E	place of use	table	attached	137.45	IRR	15, 21, 22	9/1/1899	IL-630
2.										IL-
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): 137.45 ac
 Acre-feet of storage, if applicable: _____

Maximum rate associated with the right to be leased (cfs): _____

Season 1: 1.050 cfs / Season 2: 1.405 cfs / Season 3: 2.647 cfs

(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): 909.09 af

(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 Deschutes River
Tributary to Columbia River in the Columbia Basin.

Instream volume in acre-feet (may be up to the same as the duty identified in Sec 1.5): 749.56

Instream rate in cfs (may be up to the same as the rate identified in Sec 1.5):

Season 1: 0.944 cfs / Season 2: 1.264 cfs / Season 3: 2.342 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 the POD at Swalley Main Canal, T17S, R12E, WM Section 29, SENE, 985 feet N and 617 feet W from the E 1/4 corner of section 29 to the mouth of the Deschutes River at RM 0.
↳ 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 April 1 through October 25.
 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, 2012.

- 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: Edward & Doris Elkins Date: 18 March 12
Edward and Doris Elkins

For additional lessors, type in space for signature and date

Lessor #2: Suzanne Britton Date: 3-18-2012
Swalley Irrigation District

Lessee: Genevieve Husek Date: 3/27/2012
Deschutes River Conservancy Mitigation Bank.

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

EXHIBIT 5-E, Place of Use Table

Edward & Doris Elkins / SID Instream Lease: 137.45 acres instream

Source: Deschutes River

Certificate	Township	Range	Section	QQ	Taxlot	Acres	Type of Use	Cert. Pg	Priority	Prev Ls #
74145	17 S	12 E	7	NESW	503	0.50	IRR	15	9/1/1899	L-630
74145	17 S	12 E	7	NWSE	500	3.30	IRR	15	9/1/1899	L-630
74145	17 S	12 E	7	SESW	601	26.50	IRR	15	9/1/1899	L-630
74145	17 S	12 E	7	SWSE	601	7.80	IRR	15	9/1/1899	L-630
74145	17 S	12 E	7	SESE	602	0.10	IRR	15	9/1/1899	L-630
74145	17 S	12 E	7	SWSE	602	9.45	IRR	15	9/1/1899	L-630
74145	17 S	12 E	18	NWNE	105	3.20	IRR	21	9/1/1899	L-630
74145	17 S	12 E	18	SENE	110*	6.60	IRR	21	9/1/1899	L-630
74145	17 S	12 E	18	SWNE	105	8.00	IRR	21	9/1/1899	L-630
74145	17 S	12 E	18	NENW	105	3.50	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	SESW	105	2.40	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	NESE	105	1.20	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	NESE	110*	24.40	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	NWSE	105	18.00	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	SESE	105	11.20	IRR	22	9/1/1899	L-630
74145	17 S	12 E	18	SWSE	105**	11.30	IRR	22	9/1/1899	L-630
						Total Leased Acres	137.45**			

* Parts of taxlot 105 have since changed to taxlot 110

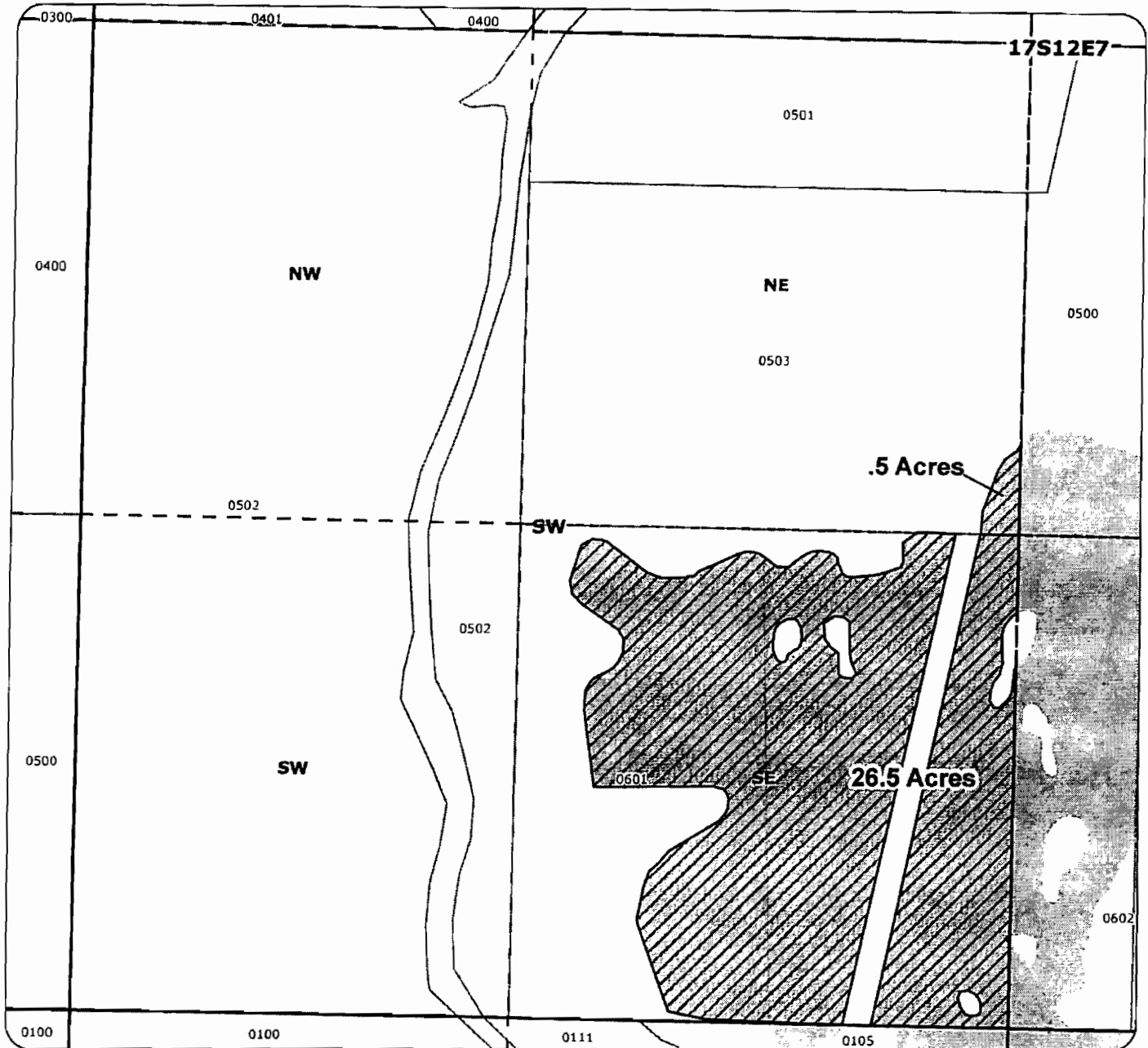
** Part of T17S, R12E, Section 18, SWSE, taxlot 105 has been sold. Previously 23.6 acres were leased in this QQ/taxlot 12.3 acres of this QQ/taxlot were sold to Bend Parks and could be leased separately. This leaves 11.30 acres for Ed Elkins to lease. This is also the reason why this instream lease is 12.3 acres less than the original lease L-630.

2005 lease	149.75 acres	L-630
2006 lease	149.75 acres	L-630
2007 lease	149.75 acres	L-630
2008 lease	149.75 acres	L-630


← Previously Leased Instream

Another lease associated with this landowner is L-813. Different acres in the same area. Landowner also retains ac. to use.

2012 Swalley Irrigation District Instream Lease Map

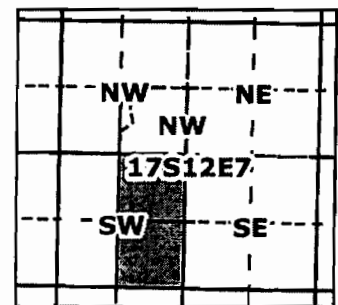


Application for 1-year Instream Lease Primary: Certificate 74145

 Proposed Lease of Irrigation Rights

 Certificate 74145

For:
Edward & Dorris Elkins
Taxlot 503 - .5 Acres
in 17S12E7NESW
Taxlot 601 - 26.5 Acres
in 17S12E7SESW
Total Lease of 27 Acres



1 inch = 400 feet

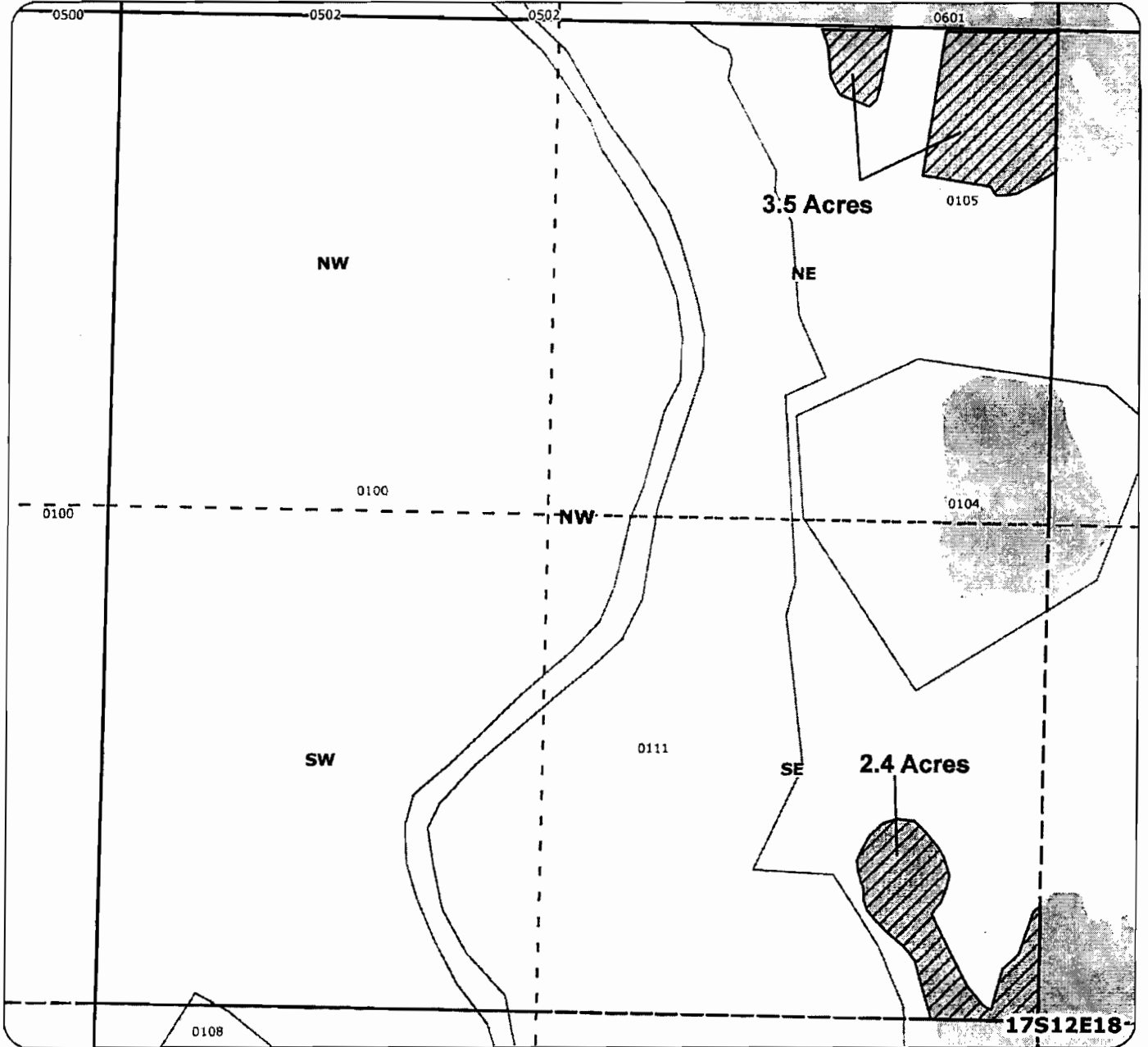


Geo-Spatial Solutions, Inc.



www.geospatialsolutions.com

Date Created: March 2012

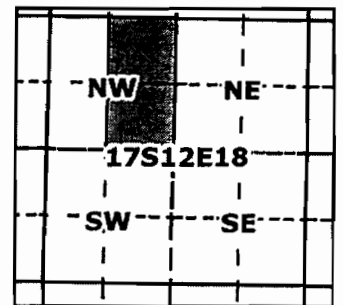
2012 Swalley Irrigation District Instream Lease Map



Application for 1-year Instream Lease Primary: Certificate 74145

-  Proposed Lease of Irrigation Rights
-  Certificate 74145

For:
Edward & Dorris Elkins
Taxlot 105 - 3.5 Acres
in 17S12E18NENW
Taxlot 105 - 2.4 Acres
in 17S12E18SE
Total Lease of 5.9 Acres



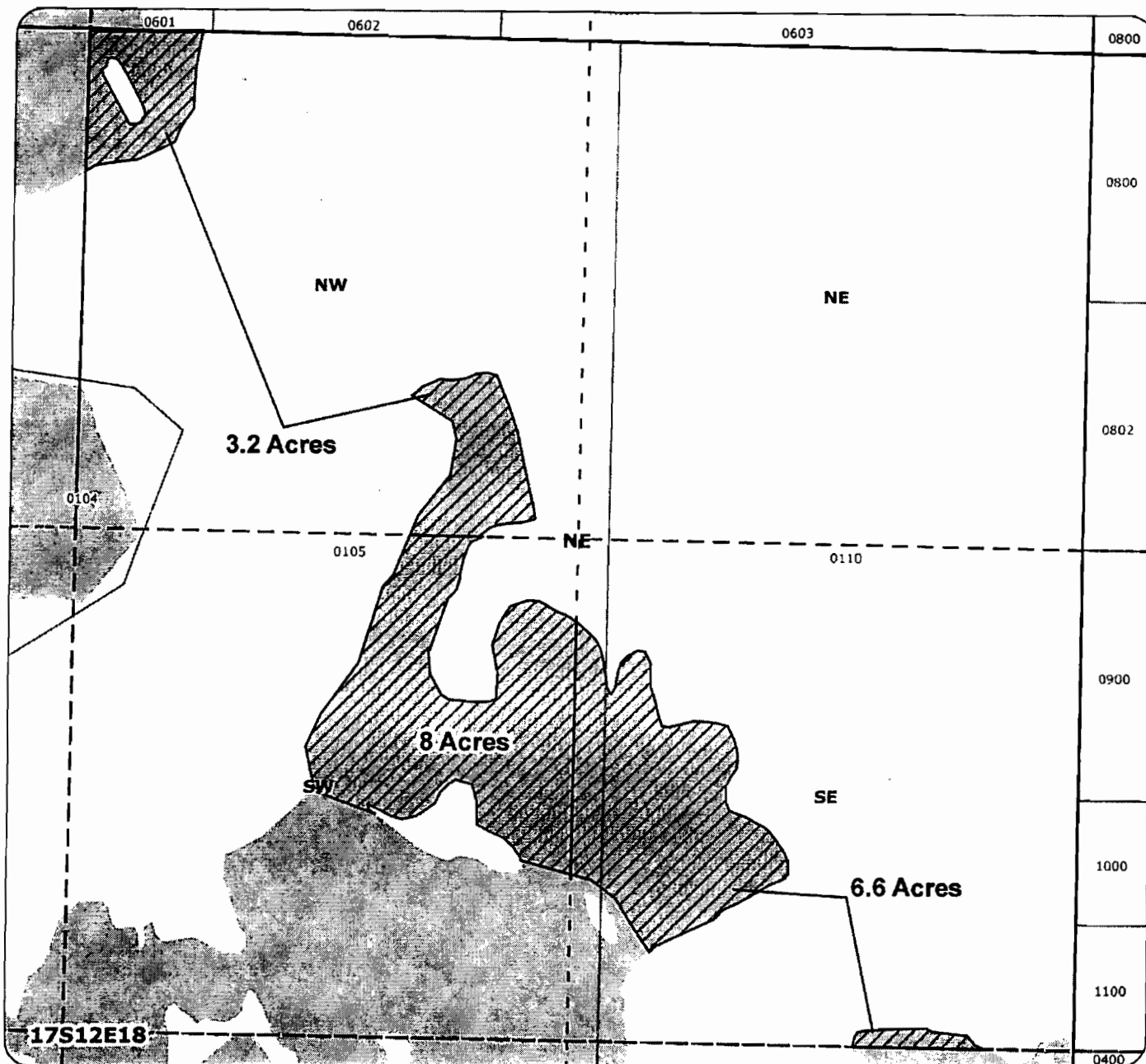
1 inch = 400 feet





Geo-Spatial Solutions, Inc.
www.geospatialsolutions.com

Date Created: March 2012

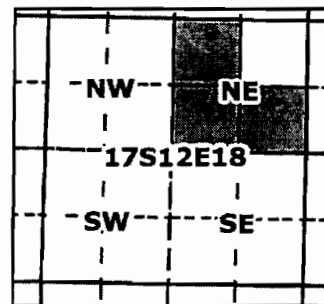
2012 Swalley Irrigation District Instream Lease Map



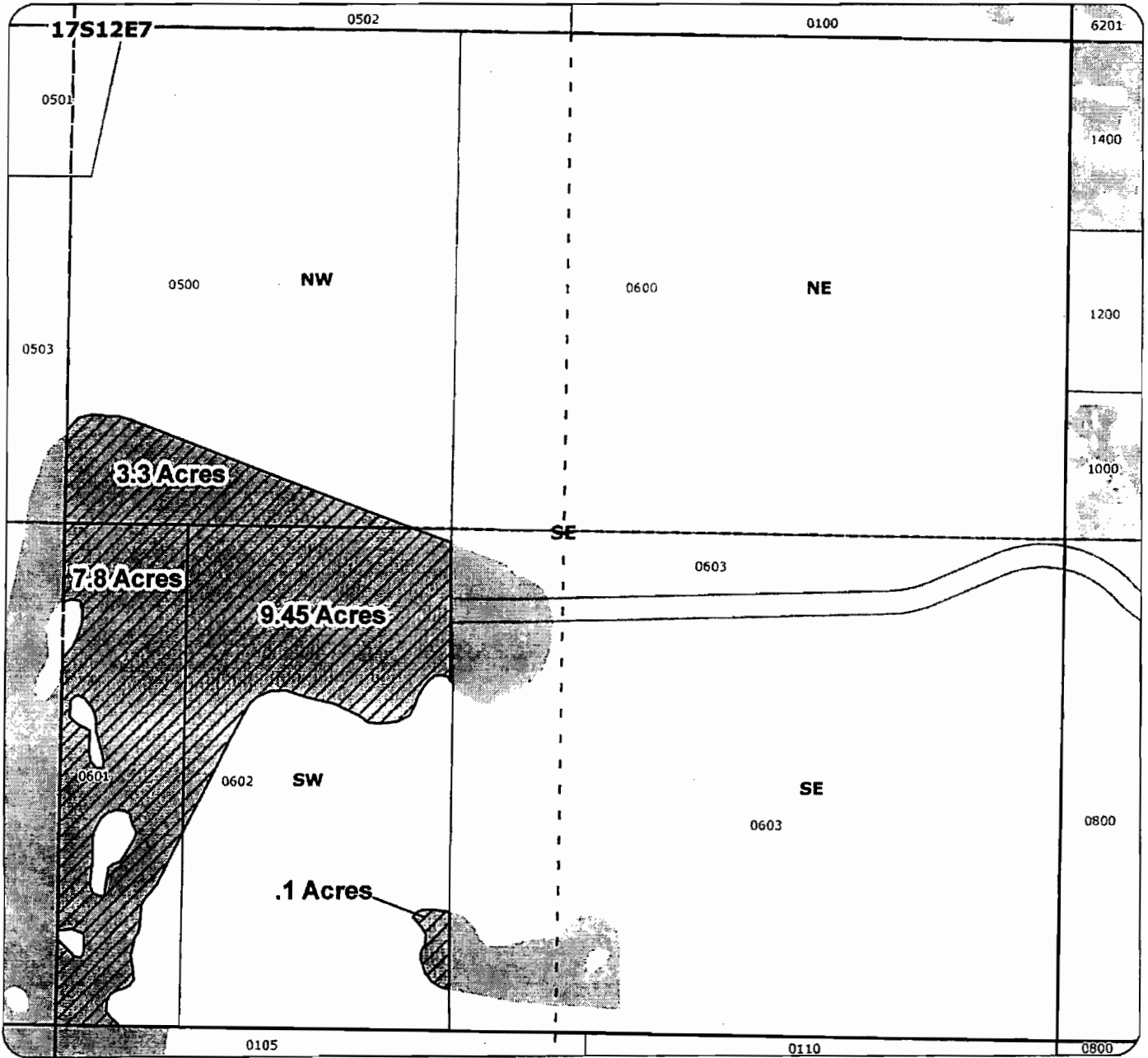
Application for 1-year Instream Lease Primary: Certificate 74145

-  Proposed Lease of Irrigation Rights
-  Certificate 74145



For:
 Edward & Dorris Elkins
 Taxlot 105 - 3.2 Acres
 in 17S12E18NWNE
 Taxlot 105 - 8 Acres
 in 17S12E18SWNE
 3111 Taxlot 105 - 6.6 Acres
 in 17S12E18SENE
Total Lease of 17.8 Acres



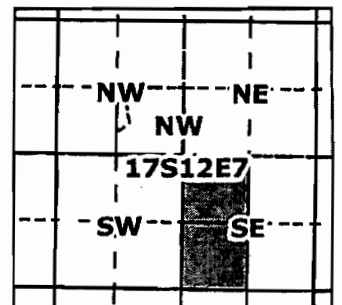
2012 Swalley Irrigation District Instream Lease Map



Application for 1-year Instream Lease Primary: Certificate 74145

-  Proposed Lease of Irrigation Rights
-  Certificate 74145

For:
 Edward & Dorris Elkins
 Taxlot 500 - 3.3 Acres
 in 17S12E7NWSE
 Taxlot 601 - 7.8 Acres
 in 17S12E7SWSE
 Total Lease of 20.65 Acres



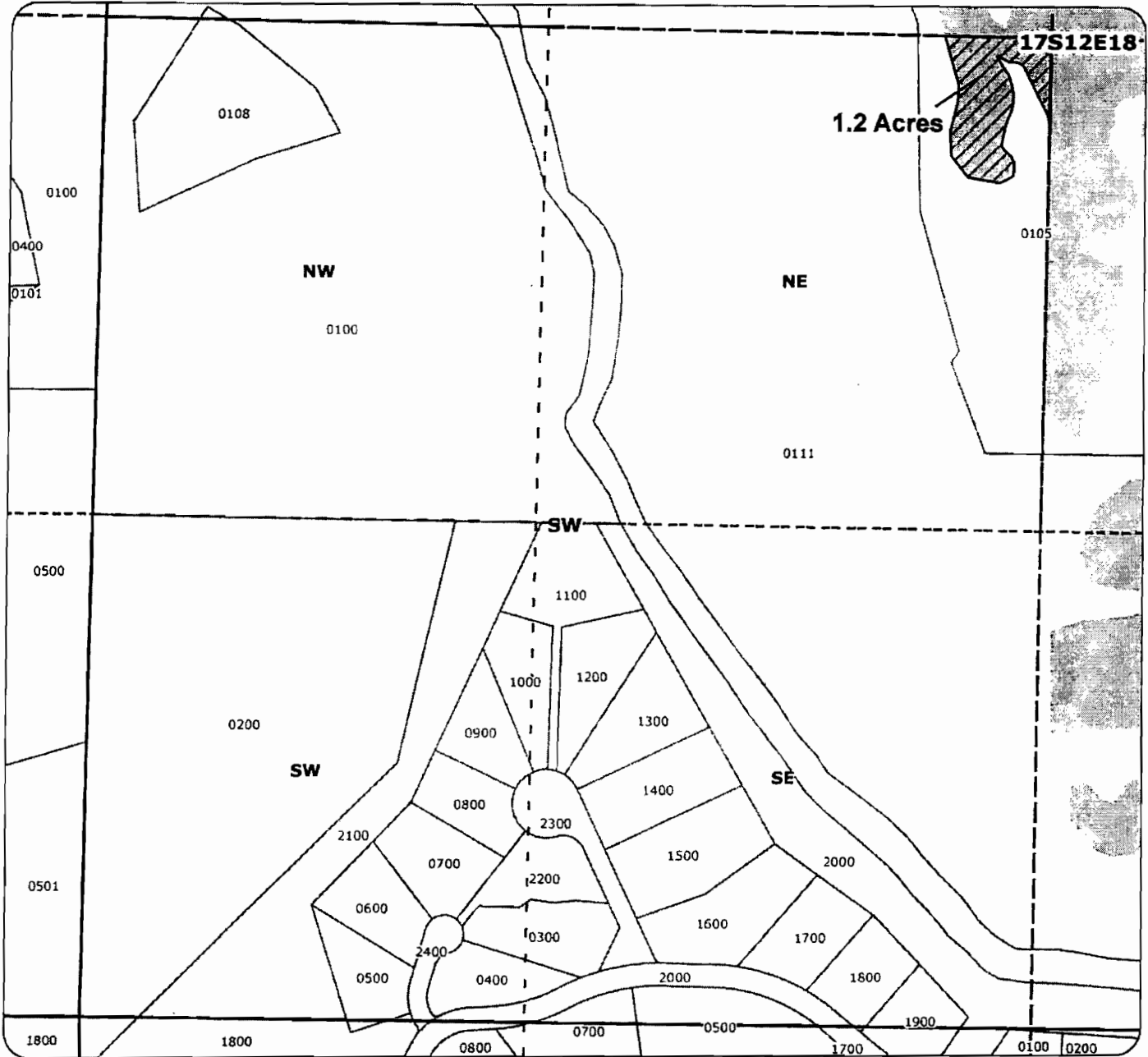

GSS
 Geo-Spatial Solutions, Inc.
www.geospatialolutions.com

Date Created: March 2012





1 inch = 400 feet

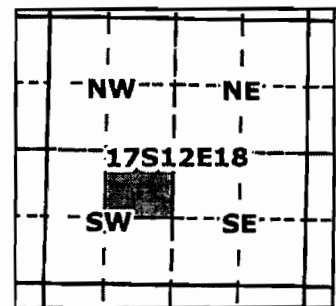
2012 Swalley Irrigation District Instream Lease Map



Application for 1-year Instream Lease Primary: Certificate 74145

-  Proposed Lease of Irrigation Rights
-  Certificate 74145



For:
Edward & Dorris Elkins
Taxlot 105 - 1.2 Acres
in 17S12E18NESW
Total Lease of 1.2 Acres



2012 Swalley Irrigation District Instream Lease Map

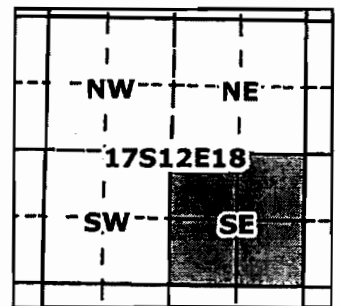


Application for 1-year Instream Lease Primary: Certificate 74145

-  Proposed Lease of Irrigation Rights
-  Certificate 74145

For:
 Edward & Dorris Elkins
 3111 Taxlot 105 - 18 Acres
 in 17S12E18NWSE
 3111 Taxlot 105 - 24.4 Acres
 in 17S12E18NESE
 3111 Taxlot 105 - 11.2 Acres
 in 17S12E18SESE
 3111 Taxlot 105 - 11.3 Acres
 in 17S12E18SWSE
 Total Lease of 64.9 Acres

Date Created: March 2012



1 inch = 400 feet

1.2 Lessor #2 is the (Check one):

- Not applicable
 Official representative of Swalley Irrigation District, 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). 74145

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.: 74145

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

Legal Season of Use: April 1 - November 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 $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

T	R	Sect	$\frac{1}{4}$ $\frac{1}{4}$	Tax 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.	See	Exh 5-E	place of use	table attached	137.45	IRR	15, 21, 22	9/1/1899	IL-630
2.									IL-
3.									IL-
4.									IL-
5.									IL-

[Attached maps must identify the water right holder, township, range, section, $\frac{1}{4}$ $\frac{1}{4}$, tax lot number, map orientation, and scale.]

Total number of acres being leased, if for irrigation (or other acre equivalent uses): 137.45 ac

Acre-feet of storage, if applicable: _____

Maximum rate associated with the right to be leased (cfs): _____

Season 1: 1.050 cfs / Season 2: 1.405 cfs / Season 3: 2.647 cfs

(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): 909.09 af

(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