



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](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): SL-15 \_\_\_\_\_

This Lease is between:

**Lessor #1:**

Name Tony Malmberg  
Mailing address 1782 S. Main Street  
City, State, Zip Code Union, OR 97883  
Telephone number \_\_\_\_\_  
Email address \_\_\_\_\_

**Lessor #2, 3, etc.**

N/A

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

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

Name The Freshwater Trust  
Mailing address 65 SW Yamhill, Suite 200  
City, State, Zip Code Portland, OR 97204  
Telephone number 503-222-9091  
Email address david@thefreshwatertrust.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 4 S. Range 40 E, Section 19 and Tax Lot number 200. 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. 57428

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.: 57428

Priority date: 1874 Type of use: Irrigation

Legal Season of Use: When necessary

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 4 S, R 40 E, Section 19, SW¼ SW¼ - 20 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: 20

Acre-feet of storage, if applicable: \_\_\_\_\_

Maximum rate associated with the right to be leased (cfs): .5

(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): 30

(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:

Catherine Creek

Tributary to Grande Ronde River in the Grande Ronde 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): From the point of diversion (at NE ¼ NE ¼, Section 19, T4S, R40E, W.M.; 150 Feet South & 1730 Feet East from N ¼ Corner Section 19) to the mouth of Catherine Creek.

Maximum volume in acre-feet: 30

Rate in cfs: .50

(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 7/15 through 9/30.
- Other (describe): \_\_\_\_\_

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 10/1/2014.

**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: \_\_\_\_\_

Tony Malmberg

Date: \_\_\_\_\_

4/4/12

For additional Lessors, type in space for signature and date

\_\_\_\_\_

Lessee: \_\_\_\_\_

David Pilgr Joe Whitworth  
The Freshwater Trust, a nonprofit organization

Date: \_\_\_\_\_

4/4/2012

Other Attachments as Needed:

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

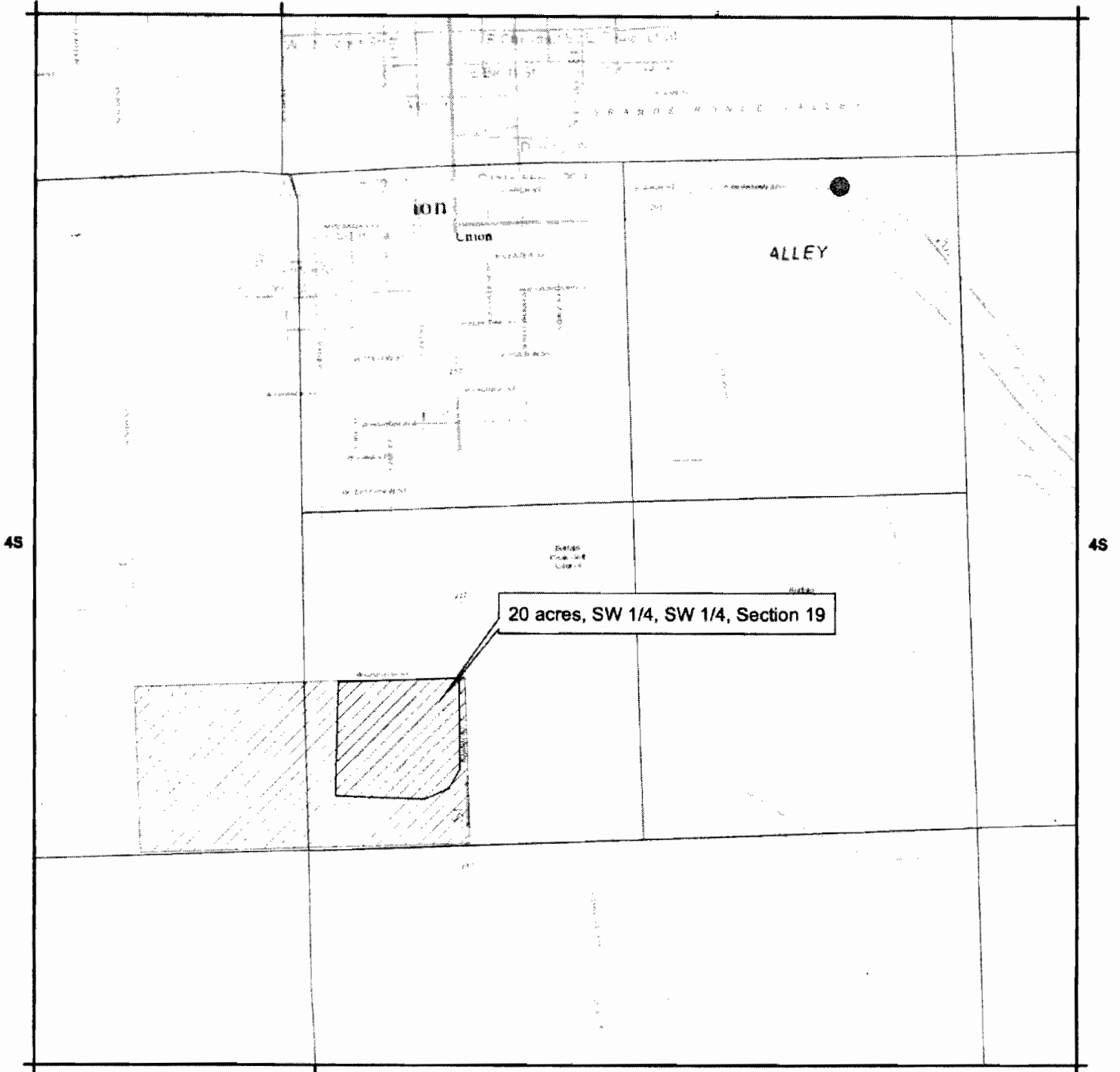
Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

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

# Instream Lease: Malmberg Split Season

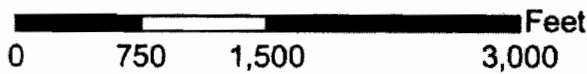
Date: 4/3/2012






20 acres, SW 1/4, SW 1/4, Section 19

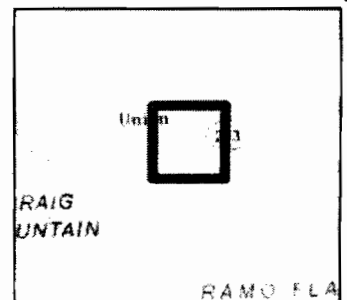
Projection: Lambert\_Conformal\_Conic  
Datum: D\_North\_American\_1983  
Linear Unit: Meter  
Tel. 222-9091 x28  
65 SW Yamhill St, Portland OR 97214  
thefreshwatertrust.org

1 inch equals 0.21 miles



-  Point of Diversion
-  Area to be leased
-  Place of Use

Note:  
This map showcases all water rights categorized by Oregon Water Resources Dept as: non-canceled, surface sourced, primary and irrigation use rights.



 map area enlarged



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# Application for Split Season 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](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).

**Attachment 4 (Standard Leasing Form).**  
**Attachment 5-D (Pooled Leasing Form).**

**The standard instream water right form or for pooled leases, the appropriate pooled lease forms, pursuant to ORS 537.348(2) and OAR 690-077 must also be filled out before a Split Season Use Instream Lease Application can be processed.**

*Note: Split season use lease applications must be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose. (OAR 690-077-0079)*

## 1. Existing and Instream Use Periods

For the water right being leased instream, as described in Section 1.5, include monthly or partial season rate or duty limitations, if appropriate.

This section replaces the "Total volume, Rate in cfs, and Allowed period of use" portions of Section 2.2 on the standard or pooled instream leasing forms.

The water right will be used for its existing purpose from 4/1 to 7/14.  
 The water right will be used for instream use period is from 7/15 to 9/30.

	Rate (cfs)		Conversion Factor 1 cfs = 1.983471 ac-ft/day		Number of days		Duty (ac-ft)
<b>Existing Use</b>	0.14	*	1.983471	*	105.00	=	29.15
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Instream Use</b>	0.19	*	1.983471	*	78	=	29.39
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Total</b>	n/a		n/a		n/a		59.09

## 2. Measurement and Reporting

The water right lessor or lessee shall contact the watermaster to determine the necessary measurement and reporting requirements associated with leasing a water right.

The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Director, or provide for third party measurement and reporting to the satisfaction of the Director. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

(a) Location(s) and type(s) of measuring device(s): 3-inch micrometer totalizer in the POD located NE ¼ NE ¼, Section 19, T4S, R40E, W.M.; 150 Feet South & 1730 Feet East from N ¼ Corner Section 19.

(b) Frequency of measurement: One pre-lease measurement, one following agreement, and monthly in the interim.

(c) Parties responsible for the respective measurements: Tony Malmberg, the landowner,  
will make the measurements, with any necessary support provided by TFT's monitoring staff.





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# Split Season Measurement and Reporting Form

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This form may be modified as necessary according to watermaster or other WRD field staff requirements.

Lease Number: \_\_\_\_\_

Lessor: \_\_\_\_\_

Measuring Device Type: \_\_\_\_\_

Identifying Number (e.g. serial number), if applicable: \_\_\_\_\_

Flow Measuring Rate: cfs; gpm; ac-ft/s [1 cfs = 448.8 gpm =  $2.3 \times 10^{-5}$  ac-ft/s = 1.983471 ac-ft day]

Volume: ac-ft; gal; cu-ft [1 ac-ft = 325,850 gal = 43,563 cu-ft]

Multiplier (x 0.1; x 0.01; x 0.001; other): \_\_\_\_\_

Date	Flow Measuring Rate	Conversion factor to rate in cfs	Rate in cfs	Readings Total	Conversion factor to duty in ac-ft	Total duty (ac-ft)

Remarks:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_