



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-16

This Lease is between:

**Lessor #1:**

Name Gordon and Julie Larson  
Mailing address 24335 Hwy. 395 South  
City, State, Zip Code Canyon City, OR 97820  
Telephone number 541-575-3515  
Email address berrycreekranch@centurytel.net

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

N/A

The water right to be leased is located in Grant 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 tony@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 14 S, Range 31 E, Section 36 and Tax Lot number 5306, 5311, 5312, 5315, 5316. 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 Nos. 25341

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.: 25341

Priority date: 7/3/1883 Type of use: Irrigation, Domestic, and Stock

Legal Season of Use: 4/1 - 9/30

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 14S, R 31E, Section 36, SW¼ NW¼ - 23.3 acres to be leased

Enter additional places of use here, using format above:

T-14S, R-31E, S36, NW ¼ SW ¼ - 18.8 acres to be leased.

T-14S, R-31E, S36, SW ¼ SW ¼ - 5.7 acres to be leased.

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

Number of acres being leased, if for irrigation: 47.8

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

Maximum rate associated with the right to be leased (cfs): 1.195

(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): 191.2

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

Conditions or other limitations, if any: Decree limitations on John Day River- 1/40 April 1- May 30; 1/80 June 1- Sept. 30. A quantity of water limited to one acre foot per acre during any calendar month prior to June 1<sup>st</sup>, and not to exceed during the irrigation season, four acre feet per acre. (John Day River Decree, Paragraph 106, Pages 79-80.)

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:

Berry Creek  
Tributary to Canyon Creek in the John Day 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 POD at 44.31610489 degrees latitude, -118.95109558 degrees longitude, to the mouth of Canyon Creek (RM 8+). The Datum is WGS 84. This is the highest of 3 diversions on Berry Creek.

Head South of Canyon City on Hwy. # 395 , turn left at mm #8c, 6.2 miles south of the Water Master office, follow two track road 0.3 miles and 1<sup>st</sup> POD is on left. Travel on up the hill for 0.3 miles and turn right through green gate. Travel up Berry Creek and the 2<sup>nd</sup> POD will be across Berry Creek on the right. Continue traveling up Berry Creek and see 3<sup>rd</sup> POD on right, next to road.

Maximum volume in acre-feet: 107.66

Rate in cfs: .5975

(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 7/1 through 9/30.
- Other (See 2.4): The Water Master will determine the duty available for protection after consumptive use and transmission losses are accounted.

If you need to enter more instream uses, please use the additional water rights form.

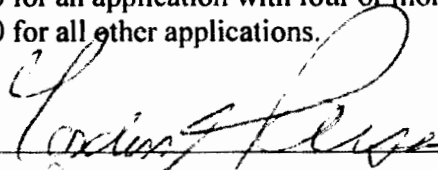
**2.3 Term of lease.** This lease shall terminate on 10/1/2014.

**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).

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.  
Following shut-off, lessee desires trustee to shape the remaining duty to provide the maximum cfs to Sept. 30, of each year.

**~III~ Other Information**

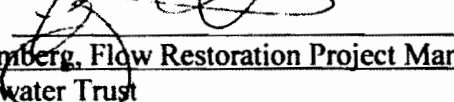
- 3.1 Accuracy.** The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified 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.**  
 This lease can also be cancelled by agreement of all parties, i.e. lessor, lessee and trustee.
- 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:   
Gordon Larson

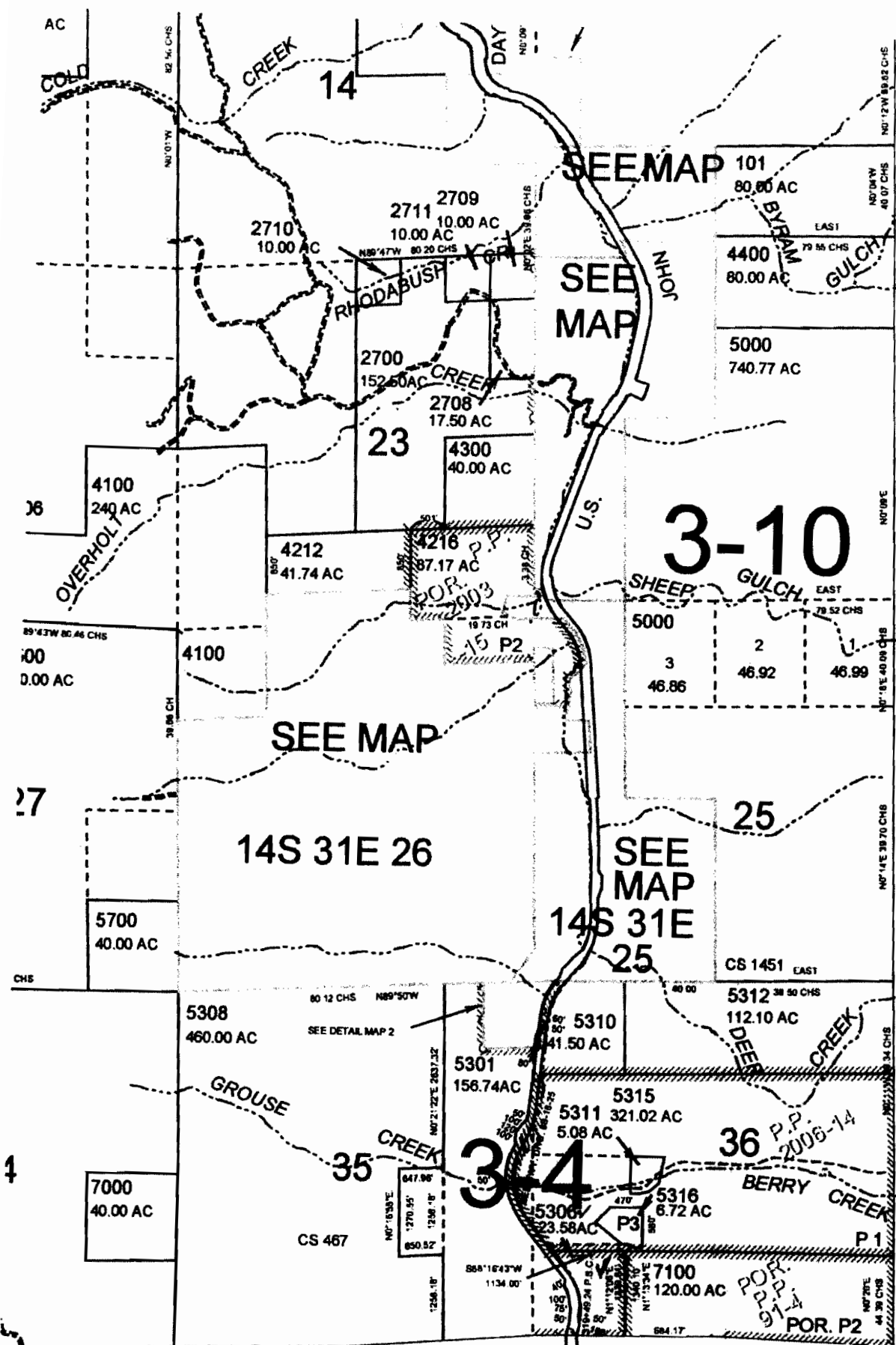
Date: 4/9/12

  
Julie Larson

Date: 4/9/12

Lessee:   
Tony Malmberg, Flow Restoration Project Manager  
The Freshwater Trust

Date: 4/10/12



- 5400
- 6100
- 6200
- 6300
- 6400
- 6600
- 6700
- 6800

SEE MAP 14S 32E

*See Map of Record  
Instrument #  
980111*

*Larson*

*WR 25341*

	Acres
5300 -	23.58
5311 -	5.08
5312 -	11.00
5315 -	321.02
5314 -	6.72
	516.40
GE Lot 5310	5.80
GE N -	24.00
GE Lower -	6.00
GE S -	10.00

Revised: MRT  
03/27/2009

**CANYON CITY  
14S31E**

**THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSES ONLY**

EXHIBIT "A"

980111-2

LEGAL DESCRIPTION

Township 14 South, Range 31 East, Willamette Meridian, Grant County, Oregon:  
 Section 36: A tract of land situated in the N1/2N1/2 more particularly described as follows:  
 Beginning at the Northeast corner of said Sec. 36;  
 thence S. 00°04'36" E., along the East line of said Sec. 36, a distance of 1318.62 feet to the North 1/16 corner of said Sec. 36;  
 thence N. 89°58'32" W., along the South line of the N1/2NE1/4 of said Sec. 36, a distance of 2584.75 feet to the center North 1/16 corner of said Sec. 36; ← ?  
 thence N. 89°58'32" W., along the South line of the N1/2NW1/4 of said Sec. 36, a distance of 1059.32 feet to a 5/8" x 30" iron pin;  
 thence N. 00°21'06" W., on a line parallel to the center line of said Sec. 36, a distance of 1321.32 feet to a 5/8" x 10" iron pin, situated on the North line of said Sec. 36;  
 thence S. 89°56'00" E., along the North line of said Sec. 36, a distance of 1059.32 feet to the North 1/4 corner of said Sec. 36;  
 thence S. 89°56'00" E., along the North line of said Sec. 36, a distance of 2591.09 feet to the point of beginning.  
 All according to Map of Survey No. 609 as filed in the Office of the Grant County Surveyor.  
 (Tax Acct. 3-4 3-8 & 3-10 14-31 5312; 02089, 02424, 00218)

ALSO: In Twp 14 S., R. 31 E., W.M.:  
 Section 35: All that portion of the SE1/4NE1/4, E1/2SE1/4 lying East of the John Day-Burns Highway right of way as said right of way is described in Deed to the State of Oregon, by and through its State Highway Commission, dated Sept. 7, 1961, recorded Sept. 12, 1961 in Deed Book 85, page 527.  
 Section 36: S1/2NE1/4; N1/2SE1/4; SE1/4NW1/4; NE1/4SW1/4; and all that portion of the SW1/4NW1/4 and N1/2SW1/4 lying East of the John Day-Burns Highway right of way as said right of way is described in Deed to the State of Oregon, by and through its State Highway Commission, dated Sept. 7, 1961, recorded Sept. 12, 1961 in Deed Book 85, page 527.  
 SAVE & EXCEPT a tract of land in the SW1/4 described as follows:  
 Beginning at the Southeast corner of the SW1/4SW1/4; thence N. 01°12'06" E. 1339.81 feet; thence S. 88°16'43" W. 1134.00 feet to the East right of way line of U.S. Highway 395; thence Southerly, along the East right of way line of said Highway, to the South boundary of said Sec. 36; thence S. 89°41'46" E., along the South boundary of said Sec. 36, 684.17 feet to the point of beginning. All according to Map of Survey No. 245 as filed in the Office of the Grant County Surveyor.  
 (Tax Acct. 3-4 3-8 & 3-10 14-31 5311; 02088, 02423, 00217)

ALSO: In Twp. 14 S., R. 31 E., W.M.:  
 Section 36: A tract of land in the SW1/4 described as follows:  
 Beginning at the Southeast corner of the SW1/4SW1/4;  
 thence N. 01°12'06" E. 1335.81 feet;  
 thence S. 88°16'43" W. 1134.00 feet to the East right of way line of U.S. Highway 395;  
 thence Southerly, along the East right of way line of said Highway, to the South boundary of said Sec. 36;  
 thence S. 89°41'46" E., along the South boundary of said Sec. 36, 684.17 feet to the point of beginning.  
 All according to Map of Survey No. 245 as filed in the Office of the Grant County Surveyor.  
 (Tax Acct. 3-4 & 3-8 14-31 5306; 02085 & 02420)

S 16 NW 1/4  
 39.4  
 11.4  
 47.8

SW 1/4  
 23.3

NW 1/4 SW 1/4  
 18.8

SW 1/4 SW 1/4  
 5.7

CR 20341

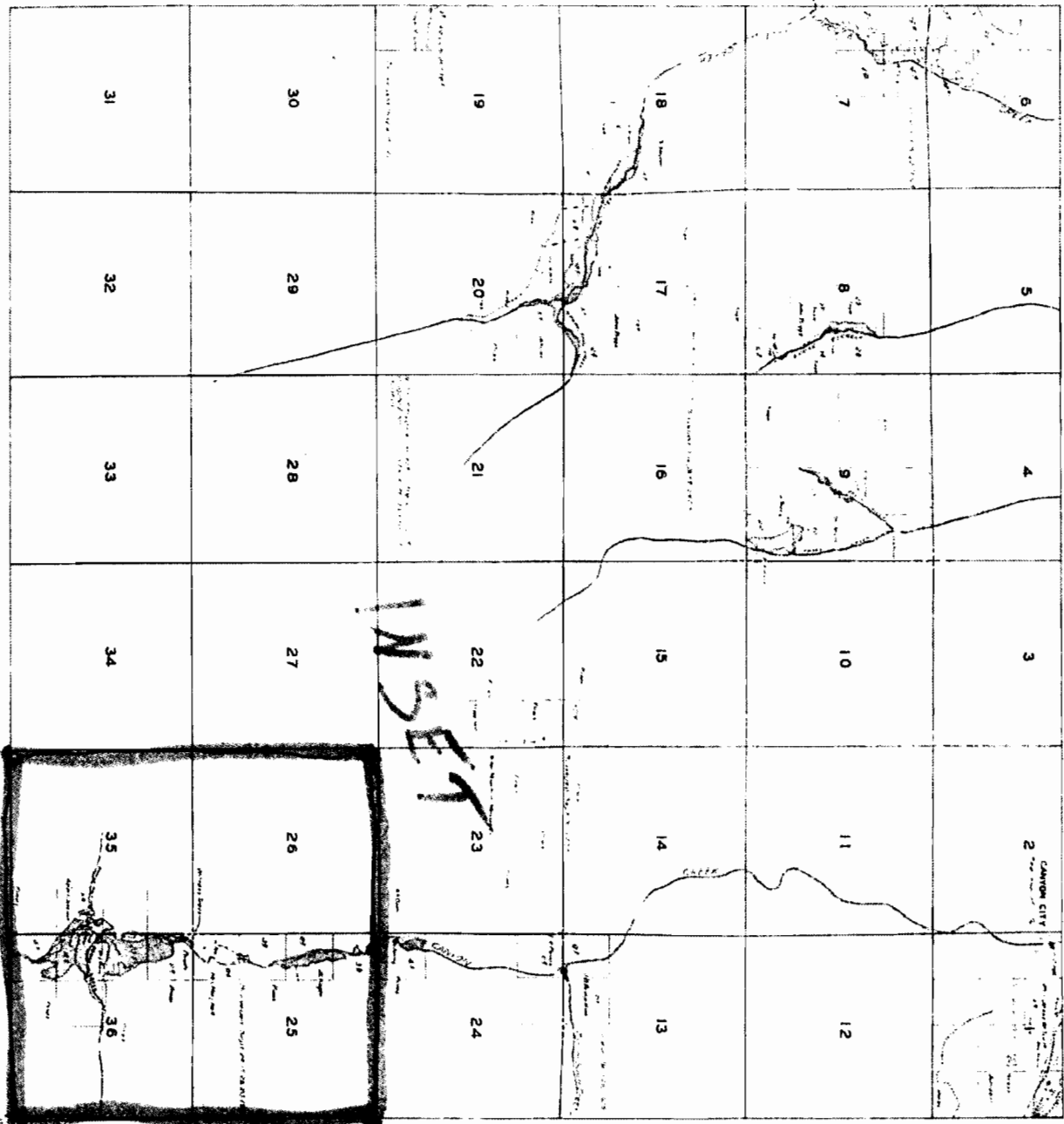
11764



INST# 980111 REF# FEE 42.50  
 FILED Jan-21 1998  
 RECORD OF D TIME 9:35A 3 PGS  
 KATHY MCKINNON BY Quest  
 COUNTY CLERK DEPUTY

TOWNSHIP 14 S. RANGE 31 E.

126-2-3

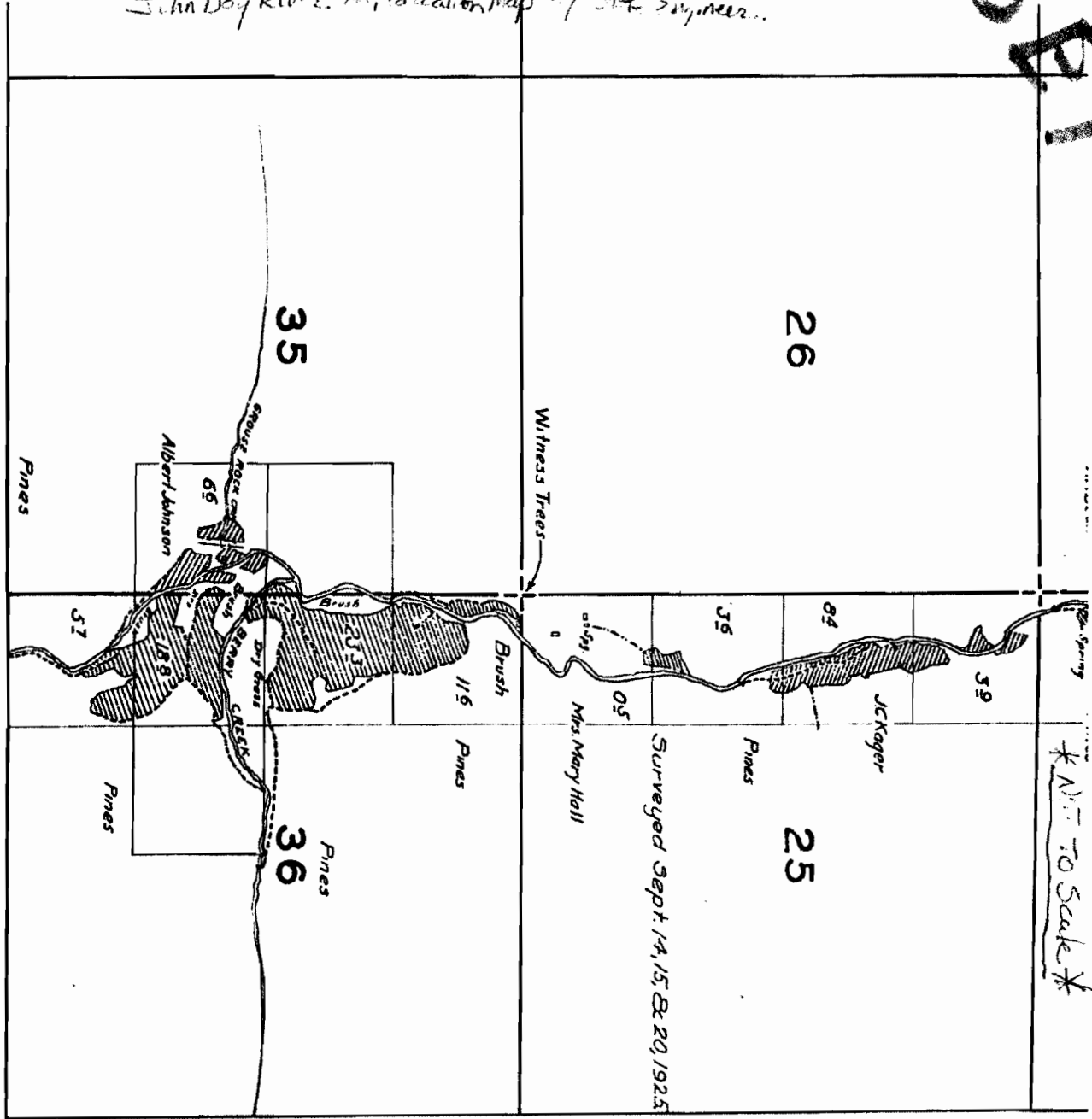


INSERT

THSR 31E W.M.

\* NOT TO SCALE \*

John Day River. Alluvial Map by St. Engineer...



249

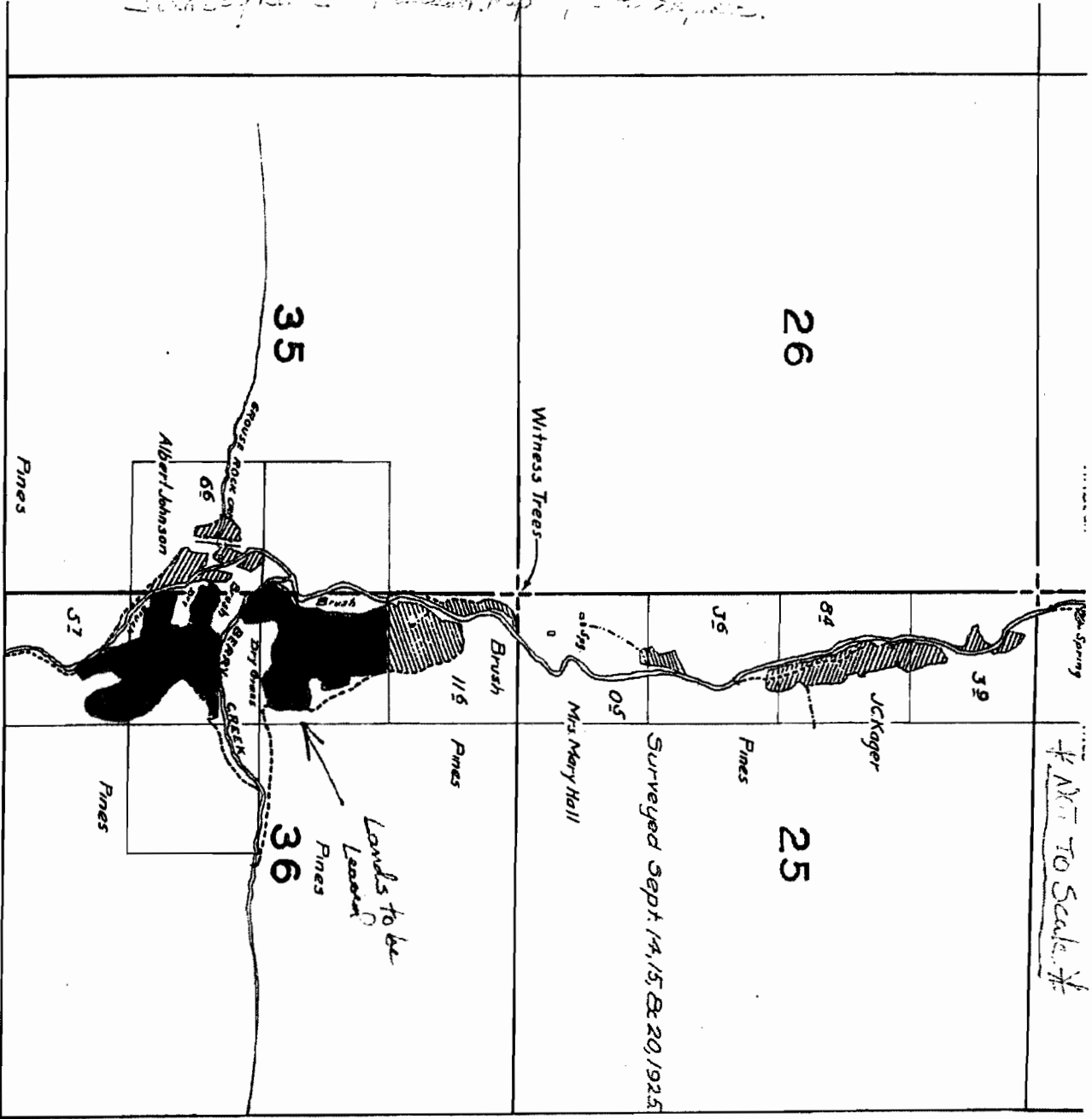
126



TIAS R 215 W 1/4

# NOT TO SCALE #

Henry River of Section 1, 24 S 36 N



Surveyed Sept 14, 15, & 20, 1925

2119

126



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

# 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 6/30.

The water right will be used for instream use period is from 7/1 to 9/30.

	Rate (cfs)		Conversion Factor 1 cfs = 1.983471 ac-ft/day		Number of days		Duty (ac-ft)
<b>Existing Use</b>	1.195	*	1.983471	*	34.70	=	82.24
use if needed	0.00	*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Instream Use</b>	0.59	*	1.983471	*	92	=	107.66
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Total</b>	n/a		n/a		n/a		190.81

**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): Each of 3 POD's will have a weir.

(b) Frequency of measurement: Each weir calibrated once and more if needed through the season. Flow will be documented each time the irrigation water is changed, turned on or tured off.

(c) Parties responsible for the respective measurements: The lessee will be responsible for calibrating the flow to the weir and the lessor will be responsible for taking measurements when irrigation water is changed. Results of weir/flume checks will be supplied to watermaster. Watermaster will be present for installations of any measuring devices installed, if possible. Type and plans for all measuring devices used or proposed on this lease will be approved by watermaster prior to installation and use.