

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 Id Lease Appl	lentification by Lessor/Lessee:	- -					
The water i	right to be leased is located in Grant County.						
This Lease	is between:						
Lessor #1: Name Dennis Moss Mailing address 42226 Cupper Creek Road City, State, Zip Code Kimberly, OR 97820 Telephone number E-mail address** 1947drm@gmail.com							
Lessor #2,	3, etc. (provide same information as identified above)						
Mailing add City, State, Telephone I E-mail addr **BY PROVIDING	lifferent than Oregon Water Resources Department): lress Zip Code number ress** Gan e-mail address, consent is given to receive all correspondence from the complex of the final order documents will also be mailed.	THE DEPARTMENT					
Trustee: Oregon Wa		RECEIVED BY OWRD					
Salem, OR 97301-1266 JUL 0 9 2012 (503) 986-0900							
	I Water Dight Holder and Water Dight Inform	SALEM, OR					
	~I~ Water Right Holder and Water Right Inform	nation					
1.1	Lessor #1 is the water right holder, or authorized agent for wat property located at: Township 9 S, Range 27 E and Tax Lot number 1511 appurtenant to these lands is also appurtenant to lands owned lincluded in this application, then Attachment 1 (tax lot map), respectively.	If the water right by others who are not					

1.2	⊠ Not a ☐ Office the subje	ect water ri	entative of ghts.			e irrigation dis				
1.3	For the v Indicate	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.						nds.		
	Certifica	te No(s). <u>6</u>	0524, and	82397						
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	The first Certificat (If you	te No.: <u>605</u> need to ente	leased ide 24 er another le	entified in S	Section please u	1.3 is further of the see the additional see the additional see the additional see the			:	
	Is the ent If ra	no, list be inge, section	ight certifi low the acon, and 1/4 !	cate being res of the s	leased? subject vill be dr	er 30th Yes N water right by ied up as part will not recei	legal deso	-	-	
	T R	Sect	1/4 1/4	Tax Lot	Acres	Type of Use	*Page#	*Priority Date	*Previous Lease #	
		the certificat	e. If any por	rtion of the r	ight propo	reater than 10 pa osed to be leased n of a previous le	was leased	y priority dat previously, t	e, if there is	
1.									IL-	
2.						RECEIV	ED BY	OWRD -	IL-	
3.							0 9 201	<u> </u>	IL-	
4.					_		_		IL-	
5.							LEM, O		IL-	
LAttached	Total nun Acre-feet Maximum (Use ac Maximum acre irriga (Use ac	nber of acr of storage n rate asso dditional line n duty asso ated during dditional line	es being le , if applica ciated with es if there is a pociated with the irrigal es if there is a	eased, if for able:	or irrigation to be lead to be lead to be lead to be lead to of each	ection, ¼ ¼, tax ion (or other a used (cfs): ON ociated with the ased (ac-ft): 5 ociated with the	cre equiv E-FORT] water right .0 acre-fe	alent uses) ETH of on of the per acre	: 9.1 Acres	
1.6	Validity of Additional the w	Water Ri vater has be	be leased a ght Form een used o	as describ . Lessor(s ver the pas	attests st five ye	ection 1.5 of the (mark one) the ears according water right or	at:			
	· · · · · · · · · · · · · · · · · · ·				-	e years accord ever the wate	_			

forfeiture under ORS 540.610(2)(_)(include necessary supporting documentat	tion 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, w and wildlife habitat 	ildlife, and fish
	 ☐ Pollution abatement ☐ Recreation and scenic attraction 	RECEIVED BY OWRD
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:	JUL 0 9 2012
	In the North Fork John Day River in the John Day	SALEM, OR Basin.
acre-	Instream volume in acre-feet (may be up to the same as the duty identified in	_
	Instream rate in cfs (may be up to the same as the rate identified in Sec 1.5): .	23 cfs
	(If not certain of the instream rate or volume, please contact the Department for on how to fill out this section of the application).	more information
	☐ 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 PC ends at the mouth of the source creek/river). If possible list the reach by r	•
	Please check this box if you are not sure of the proposed reach and was protected within a reach below the POD, if possible.	ant water to be
	(If no reach is identified or the above box is not checked, and there is only one P certificate, the lease may be processed to be protected at the POD.)	OD listed on the
	If the POD is not described on the Certificate or if there is more than one PO certificate, then the specific POD must be described:	D listed on the
	Conditions to prevent injury, if any (use this section to indicate a more reperiod of use than allowed by the water right): None	estrictive
	The instream flow will be allocated on a daily average basis up to the de from through Other (describe):	
	(Note: The Department may identify additional conditions to prevent injury and/or	
	If you need to enter more instream uses, please use the additional water right	s form.
2.3	Term of lease. This lease shall terminate on <u>June 15, 2017</u> .	
2.4	Flow protection. The Trustee will regulate use of water from the source, sub appropriation and the agency enforcement guidance, to assure the water is de point of diversion, and through the reach past junior downstream users, so lor sufficient to meet the demand under priority date of the new instream use (see	livered to the ng as flow is

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 then 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.

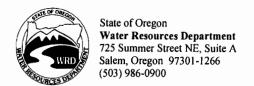
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 Fees. Pursuant to ORS 536.050, the following fee is included: \$400 for an application with four or more landowners or four or more water rights. \$250 for all other applications. 					
Lessor #1:	Date:				
Dennis Moss					
For additional Lessors, type in space for signature	e and date				
					
Lessee:	Date:				
Other Attachments as Needed: Attachment 1: Tax Lot Map. (See instructions.)					
Attachment 2: Detailed map illustrating lands und of a right is being leased instream.	der subject rights to be leased; required if only part (See instructions.)				
even though the right has not been	ing why a right is valid and not subject to forfeiture exercised for five or more consecutive years				
(required if the second box in Sect Attachment 4: Split Season Instream Use Form	ion 1.6 is checked).				

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Additional Water Right Form Standard 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.

~I~ Water Right Holder and Water Right Information RECEIVED BY OWRD

The next right to be leased is further described as follows:										
	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.				,						IL-
2.		_								IL-
3.										IL-
4.					-					IL-
5.										IL-
6.										IL-
7.										IL-
8.										IL-
9.										IL-
10.										IL-
[Attached maps must identify the water right holder, township, range, section, ¼ ¼, tax lot number, map orientation, and scale.] Number of acres, if for irrigation (or other acre equivalent use): 7.9 Acres Acre-feet of storage, if applicable: Maximum Rate associated with leased rights (cfs): ONE_FORTIETH (Use additional lines if there is more than one rate associated with the water right.) Maximum Duty associated with leased rights (AF): not to exceed 4.0 acre-feet per acre for each acre										
irrigated during the irrigation season o feach year. (Use additional lines if there is more than one duty associated with the water right.)										

Conditions or other limitations, if any: With any deficiency in the available supply from Cupper Creek to be made up by appropriation from the North Fork John Day River, a tributary of the John Day River.

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~II~ Instream Water Right Information

Section 2.2 continued from Standard Application for Short-Term Instream Lease. 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 Cupper Creek and North Fork John Day River Tributary to John Day River in the John Day Basin. Maximum instream volume in acre-feet (may be same as duty identified in Sec 1.5): 4.0 acre-feet Maximum instream rate in cfs (may be same as rate identified in Sec 1.5): .2 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 at the point of diversion (POD). Or within a proposed reach. Describe the proposed reach (an instream reach generally begins at the POD. If possible, list the reach by river mile): ______ 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, 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 Non ☐ The instream flow will be allocated on a daily average basis up to the described rate from _____ through _____. Other (describe): (Note: The Department may identify additional conditions to prevent injury and/or enlargement.)

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STATE OF OREGON
Country of Graph as a certification of the country of Graph and the country of G

The property is free from encumbrances, except (if none, so state): See attached Exhibit "B"

The true consideration for this conveyance is \$125,000.00. (Here, comply with the requirements of OR8 93.030.)

Dated: March 5th 2004.

This instrument will not allow use of the property described in this instrument in violation of Applicable Land use laws and requirations. Before signing on accepting this instrument the person accurring fee title to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in oras 30.33.

State of Oregon, County of Grant) ss.

I certify that on March 5th 2004 I know or have satisfactory evidence that David L. Lundy Jr. and Dorothy D. Lundy are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

Notary Public in and for the State of Oregon My commission expires: Nevember 20, 2007.

Output Reps.

Notary Public in and for the State of Oregon My commission expires: Nevember 20, 2007.

Output Reps.

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EXHIBIT "A"

Township 9 South, Range 27 East of the Willamatte Meridian, Grant County, Oregon:
Sections 5 and 8: PARCEL 1 OF LAND PARTITION PLAT NO. 99-12; as shown by the plat thereof on file and of record in the office of the clerk of said county and state on April 13, 1999. Said parcel is a re-plat of a portion of Parcel 1 of Land Partition Plat No. 99-01 which is a re-plat of a portion of Parcel 1 of Land Partition Plat No. 94-04, which was a re-plat of a portion of Parcel 2 of Land Partition Plat No. 93-3.

SAVE & EXCEPT that portion conveyed to Robert P. and Dorothy A. Hawthome by deed recorded July 13, 2000 in the records of Grant County, Oregon, as Instrument No. 201830 being described as follows:

All that portion of PARCEL 1 OF LAND PARTITION PLAT NO. 99-01, filed for record in the office of the clerk of said county and state on January 11, 1999, lying and being Southerly of the Southerly right of way line of County Road No. 2 and Northerly of the Southerly right of way line of the Kimberly-Long Creek Highway. Said parcel is a replat of a portion of Parcel 1 of Land Partition Plat No. 94-04, which was a replat of a portion of Parcel 2 of Land Partition Plat No. 93-3.

(Tax Acct. 8 9-27 1511; Ref. 39041)

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040630

EXHIBIT "B"

Rights of the public in and to any portion of the herein described premises lying within the boundaries of streets, roads or highways.

Any and all matters, including easements and assessments, if any, pertaining to irrigation ditches that may traverse the herein described property.

Provisions in Deed from Percy A. Cupper, etux, etal, to Morton C. Cupper, recorded August 29, 1924, in Book 35, page 436, regarding imigation rights.

Agreement, including the terms and provision thereof:

Between

: abandonment of certain portions of the old Kimberly-Long Creek Highway

State of Oregon, by and through its State Highway Commission

And

Grant County, Oregon

Recorded

: November 12, 1946

Book

: "F" of Leases and Agreements

Page

: 273

Easements, including the terms and provisions thereof:

right to bury and maintain underground telephone facilities, together with all

appurtenances thereto as more particularly described therein

Granted to

: Telephone Utilities of Eastern Oregon

Recorded

: May 5, 1986 : 133

Book

: 338, 339, 340, 341

Pages Affects

: that portion of subject premises as more particularly described therein

Right of Way Deed, including the terms and provisions thereof, to Grant County, Oregon, recorded December 22, 1992, as Inst. No. 922563.

Matters, including easements, as, disclosed, delineated, and set forth in Declarations and on the Plats for Land Partition Plat No's, 93-3, 94-4, 99-01 and 99-12 filed in the office of the Grant County Clerk on February 12, 1993, July 26, 1994, and January 11, 1999, April 13, 1999, respectively.

Agreement, including the terms and provision thereof:

Regarding

: Imigation Pump

Between

David L. Lundy, Jr. and Dorothy D. Lundy, husband and wife

And

Brad A. Smith and Julie M. Smith, husband and wife

Recorded

: December 18, 1997

Instr. No.

: 972484

Agreement, including the terms and provision thereof: Regarding ... Well

Between

: David L. Lundy, Jr. and Dorothy D. Lundy, husband and wife

And

Brad A. Smith and Julie M. Smith, husband and wife

Recorded

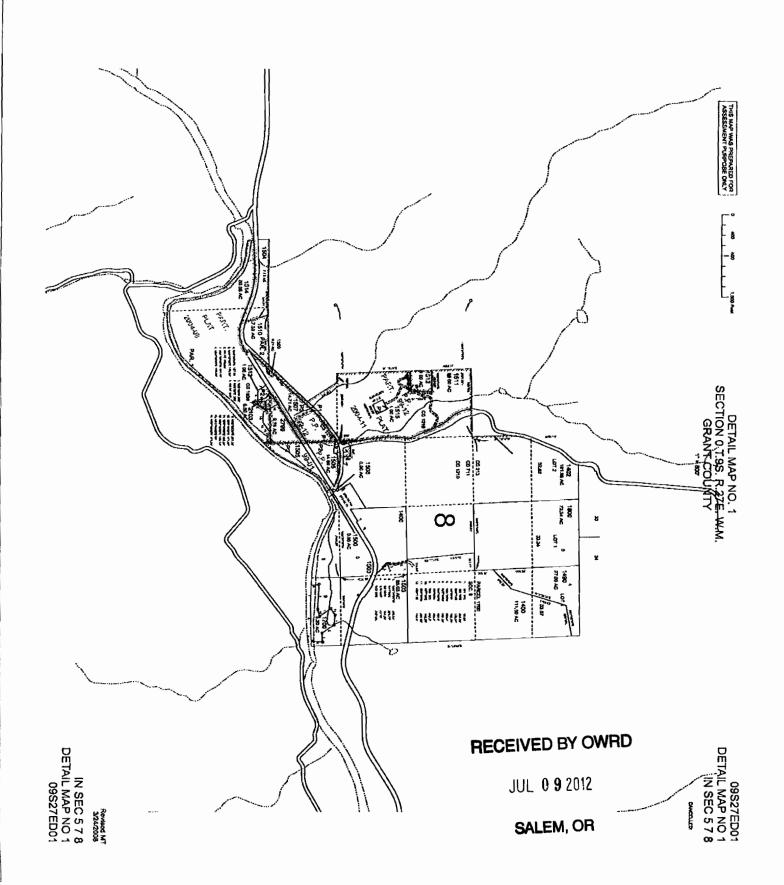
: December 18, 1997

instr. No.

972485

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This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate.

STATE OF OREGON

COUNTY OF GRANT

CERTIFICATE OF WATER RIGHT

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JUL 0 9 2012

THIS CERTIFICATE ISSUED TO

FRANK AND MANUEL SILVA HC #82 BOX 230 KIMBERLY, OREGON 97848 SALEM, OR

confirms the right to use the waters of CUPPER CREEK, a tributary of NORTH FORK JOHN DAY RIVER, with any deficiency in the available supply from CUPPER CREEK to be made up by appropriation from the NORTH FORK JOHN DAY RIVER, a tributary of the JOHN DAY RIVER, for IRRIGATION OF 7.9 ACRES.

This right was perfected under Permit 49482. The date of priority is APRIL 4, 1985 from CUPPER CREEK and JULY 13, 4985 from the NORTH FORK JOHN DAY. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.2 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion (POD) are located as follows:

POD 1 (CUPPER CREEK): NE 1/4 SW 1/4, SECTION 5, T 9 S, R 27 E, W.M.; 1750 FEET NORTH & 800 FEET WEST FROM THE S 1/4 CORNER, SECTION 5.

POD 2 (NORTH FORK JOHN DAY): NW 1/4 NE 1/4, SECTION 8, T 9 S, R 27 E, W.M.; 1000 FEET SOUTH & 120 FEET EAST FROM THE N 1/4 CORNER, SECTION 8.

Certificate Number 82397

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

A description of the place of use to which this right is appurtenant is as follows:

NE 1/4 SW 1/4 5.0 ACRES SE 1/4 SW 1/4 2.9 ACRES SECTION 5 TOWNSHIP 9 SOUTH, RANGE 27 EAST, W.M.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WITNESS the signature of the Water Resources Director, affixed OCT 2 7 2006

Phillip e. Ward, Director Water Resources Department

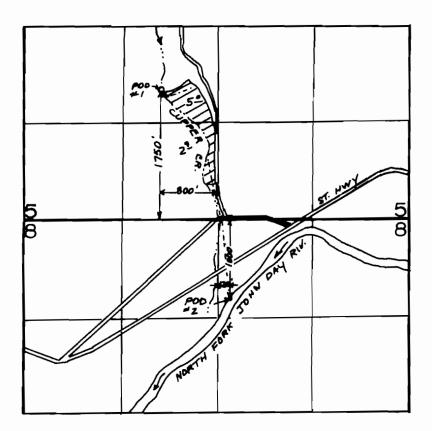
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SALEM, OR

Recorded in State Record of Water Right Certificates Number 82397.

Township 9 S., Range 27 E., W.M.



NAS

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1"= 1320'

JUL 0 9 2012

SALEM, OR

FINAL PROOF SURVEY

Application No.	68317	Perm	it No.	49482	<u></u>
SEPT.					

THIS CERTIFICATE ISSUED TO

FRANK AND MANUEL SILVA HC 82, BOX 230 KIMBERLY, OREGON 97848

confirms the right to use the waters of THE NORTH FORK JOHN DAY RIVER, a tributary of THE JOHN DAY RIVER, for the purpose of IRRIGATING 9.1 ACRES.

The right has been perfected under Permit 47318. The date of priority is DECEMBER 6, 1982. The right is limited to not more than 0.23 CUBIC FOOT PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

NW 1/4 NE 1/4, SECTION 8, T 9 S, R 27 E, W.M.; 1000 FEET SOUTH AND 120 FEET EAST FROM N 1/4 CORNER SECTION 8.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The right shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

SE 1/4 SW 1/4 6.4 ACRES SECTION 5

NE 1/4 NW 1/4 2.7 ACRES SECTION 8 TOWNSHIP 9 SOUTH, RANGE 27 EAST, W.M.

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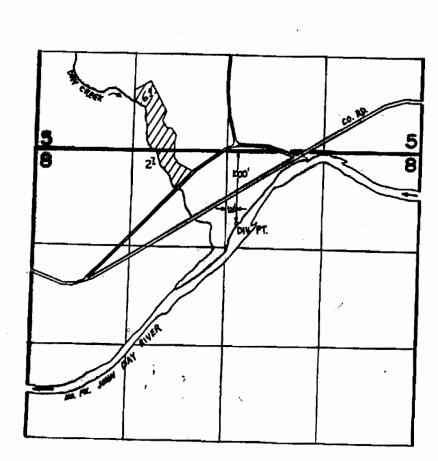
SALEM, OR

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The right is subject to minimum flows established by the Water Resources Commission with an effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed this date MARCH 23, 1989.

/8/ WILLIAM H. YOUNG
Water Resources Director

T. 9 S. R. 27 E. W.M.



Scale | "= 1320"

FINAL PROOF SURVEY

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JUL 0 9 2012

SALEM, OR

Application No. 64569... Permit No. 47318.......
IN NAME OF

FRANK & MANUEL SILVA

Surveyed March 18 1986, by V. Church

3.7 <u>Fees. Pursuant to ORS 536.050</u> , the following	•
	ore landowners or four or more water rights.
\$250 for all other applications.	
Lessor #1: Dennis Moss	Date: 7-12-2012
For additional Lessors, type in space for signature a	nd date
Lessee:	Date:
Other Attachments as Needed:	
Attachment 1: Tax Lot Map. (See instructions.)	
Attachment 2: Detailed map illustrating lands under of a right is being leased instream.	
• •	xercised for five or more consecutive years
(required if the second box in Section	1.6 is checked).
Attachment 4: Split Season Instream Use Form	

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