



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

# Application for Water Right Instream Transfer

## Part 1 of 5 – Minimum Requirements Checklist

**This transfer application will be returned if Parts 1 through 5 and all required attachments are not completed and included.**  
 For questions, please call (503) 986-0900, and ask for Transfer Section.

### FOR ALL INSTREAM TRANSFER APPLICATIONS

Check all items included with this application. (N/A = Not Applicable)

- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed Map Checklist.
- Part 3 – Completed Instream Transfer Application – Applicant Information and Signature.
- Part 4 – Completed Instream Transfer Application – Water Right Information. Please include a separate Part 4 for each water right. List all water right certificates to be transferred here: 45105
- Part 5 – Completed Instream Transfer Application - Proposed Instream Use Information.

**Attachments:**

- Completed Instream Transfer Application Map.
- Completed Evidence of Use Affidavit and supporting documentation.
- Fees – Amount enclosed: \$ 450 or \$800 (2 uses?) *Please deduct from the Freshwater Trust's account.*  
 See <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml#fees> or call (503) 986-0883.  
 Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.
- N/A Affidavit(s) of Consent.
- N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application.

(For Staff Use Only)

**WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):**

<input type="checkbox"/> Application fee not enclosed/insufficient	<input type="checkbox"/> Map not included or incomplete
<input type="checkbox"/> Land Use Form not enclosed or incomplete	<input type="checkbox"/> Land use notice not included or incomplete
<input type="checkbox"/> Additional signature(s) required	<input type="checkbox"/> Part _____ is incomplete

Other/Explanation \_\_\_\_\_

Staff: \_\_\_\_\_ 503-986-0 \_\_\_\_\_ Date: **RECEIVED BY OWR**

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**Part 2 of 5 – Map Checklist**

**Your transfer application will be returned if any of the map requirements listed below are not met.**

**Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.**

- N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see [http://apps.wrd.state.or.us/apps/wr/cwre\\_license\\_view/](http://apps.wrd.state.or.us/apps/wr/cwre_license_view/).
- OR**
- N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department’s Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- Permanent quality printed with dark ink on good quality paper.
- The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- A north arrow, a legend, and scale.
- The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

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**Part 3 of 5 – Applicant Information and Signature**

<b>Type of Instream Transfer</b>	
<input type="checkbox"/> <b>Permanent Instream Transfer</b>	<b>or</b>
<input checked="" type="checkbox"/> <b>Time-Limited Instream Transfer</b>	

**Applicant Information**

APPLICANT/BUSINESS NAME <b>Tony and Andrea Malmberg</b>		PHONE NO. <b>(541) 663-6630</b>	ADDITIONAL CONTACT NO.
ADDRESS <b>1782 S. Main Street</b>			FAX NO.
CITY <b>Union</b>	STATE <b>OR</b>	ZIP <b>97883</b>	E-MAIL <b>tony@lifeenergy.us</b>

**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

APPLICANT/BUSINESS NAME <b>The Freshwater Trust</b>		PHONE NO. <b>(503) 222-9091 x 16</b>	ADDITIONAL CONTACT NO.
ADDRESS <b>65 SW Yamhill Street, Suite 200</b>			FAX NO.
CITY <b>Portland</b>	STATE <b>OR</b>	ZIP <b>97204</b>	E-MAIL <b>david@thefreshwatertrust.org</b>

**\*\* 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.**

Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located?  Yes  No *If NO, include signatures of all landowners (and mailing and/or e-mail address if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) has been conveyed.*

**Check one box**

- By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following paper: \_\_\_\_\_.

**I (we) affirm that the information contained in this application is true and accurate.**



*[Signature]*  
Applicant Signature

Tony Malmberg  
Print Name (and Title if applicable)

5/1/13  
Date

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Applicant Signature

Print Name (and Title if applicable)

Date

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In your own words tell us what change(s) you want made and the reason for the change(s) **SALEM; OR**

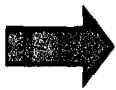
**Check the following boxes that apply:**

Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

Check here if water for any of the rights is supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME <b>Union County Planning Department</b>	ADDRESS <b>1001 Fourth Street, Suite C</b>	
CITY <b>La Grande</b>	STATE <b>OR</b>	ZIP <b>97850</b>

ENTITY NAME <b>City of Union City Hall</b>	ADDRESS <b>P.O. Box 529</b>	
CITY <b>Union</b>	STATE <b>OR</b>	ZIP <b>97883</b>

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

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**Part 4 of 5 – Water Right Information**

Please use a separate Part 4 for each water right being changed. See instructions at [http://www.wrd.state.or.us/OWRD/PUBS/docs/Hints\\_Forms\\_MS\\_Word.doc](http://www.wrd.state.or.us/OWRD/PUBS/docs/Hints_Forms_MS_Word.doc).

**CERTIFICATE # 45105**

**Name on Certificate:** Union Orchard Company

**Date(s) of Priority:** 1874

**Source(s) of Water to be Affected by the Transfer:** Catherine Creek, tributary of Grande Ronde River

**Description of Water Delivery System**

System capacity: \_\_\_\_\_ cubic feet per second (cfs) OR  
 \_\_\_\_\_ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. Water is diverted from Catherine Creek through the Prescott Ditch, where it is conveyed to the place of use and withdrawn XXXXX.

**Other Water Rights**

Are there other water right certificates, water use permits or ground water registrations associated with the “from” lands?  Yes  No

If YES, list the certificate, water use permit, or ground water registration numbers: \_\_\_\_\_.



Pursuant to ORS 540.510, any “layered” water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

**Table 1. Location of Authorized Point(s) of Diversion (POD)**

(Note: If the POD name is not specified on the certificate, assign it a name or number here. Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp	Rng	Sec	¼ ¼	Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
POD 1-- Prescott Ditch		4 S	40 E	19	NE NE		850 feet South and 2870 feet West from the N1/4 corner, Section 20

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**Will the proposed instream transfer affect the entire water right?**

Yes Then Table 2 on Page 6 does not need to be completed.

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No Then complete all of Table 2 to describe the portion of the water right to be changed.

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Please use additional pages of Table 2 as needed

**Table 2. Description of Change to Water Right Certificate # 45105**

List only the part of the right that will be changed. For the acreage in each quarter-quarter, list the change proposed. If more than one change, specify the acreage associated with each change. If more than one POD, specify the acreage associated with each POD.

Twp	Rng	Sec	¼ ¼	Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date (if not the same for all acres or type of use)	POD(s) (name or number from Table 1)
4	S	40	E 19 S W SW	600		10.0	Irrigation		POD 1
4	S	40	E 30 N W NW	200		19.2	Irrigation		POD 1
<b>TOTAL ACRES</b>						<b>29.2</b>			

Additional remarks: \_\_\_\_\_.

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**Part 5 of 5 – Proposed Instream Use Information**

**Identify the Public Use for which the instream right is requested (check at least one box):**

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- Recreation
- Navigation
- Pollution Abatement

**Instream use proposed to be created by the instream transfer:**

Originating Water Right Number (as identified in Part 4)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
45105	1874	Catherine Creek	June 19 through October 30	.33	87.6
<b>TOTAL VOLUME</b>					<b>87.6</b>

**\*Tip:** To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

**\*\*Tip:** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Additional Information: The desired rate and duty reflect the determination previously made by this Department pursuant to IL-1153.

**Identify the location of the proposed instream water right.**

- Water is requested to be protected at a point.  
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1):  
\_\_\_\_\_
- Water is requested to be protected within a reach:  
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach): **From listed POD (850 FT S & 2870 FT W FM N1/4 COR, S20 in T 4 S, R 40 E, Section 19) at approximately RM 18 to the mouth of Catherine Creek.**

**Recommendations for conditions on the instream use to avoid taking away or impairing existing water rights.**

- None
- Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow,



measuring locations and the strategy for monitoring the instream flow or lake levels): **To avoid injury, applicant requests that the instream rate protected be half of the maximum allowable rate. Therefore, the applicant requests that instream flow be allocated on a daily average basis of 0.33 CFS from June 19 through October 30. Because return flows from this portion of Lessor's property accrue to Pyles Creek, the applicant requests that no conditions be placed on the instream flow in Catherine Creek above the mouth of Pyles Creek. The instream right may be reduced downstream of the POD to account for channel losses if the watermaster determines this is necessary.**

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**Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof:**

No  Yes (identify other instream water rights): \_\_\_\_\_.

Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

Yes  No. If no, please explain your intent below:

\_\_\_\_\_.

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

**Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?**

No; **OR**  
 Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); **OR**

Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:

- The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, **and**
- For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; **or**
- The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

**For a Time Limited Instream Transfer, please answer the following:**

The time-limited instream transfer is for a specific number of years:

**2019** Begin Year to **2033** End Year

Time-limited instream transfer is to terminate based upon other conditions:

Conditions: \_\_\_\_\_.

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