



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): IL-827

This Lease is between:

**Lessor #1:**

Name Frank Brian  
Mailing address 21255 Young  
City, State, Zip Code Bend, OR 97701  
Telephone number 541-389-4120  
Email address \_\_\_\_\_

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

Swalley Irrigation District  
64672 Cook Ave, Ste 1  
Bend, OR 97701                      541-388-0658  
kathy@swalley.com

**Lessor 3:**

Central Oregon Irrigation District  
1055 SW Lake Court  
Redmond, OR 97756                      541-504-7576    lauraw@coid.org

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

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

Name \_\_\_\_\_  
Mailing address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Email address \_\_\_\_\_

**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**

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Application for Short-Term Instream Lease / 1

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1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 16 S, Range 12 E, Section 14 and Tax Lot number 700. 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. 74145

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.: 74145

Priority date: Sept 1, 1899 Type of use: IRR

Legal Season of Use: April 1 - November 1

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

Place of use: T 16 S, R 12 E, Section 14, NE $\frac{1}{4}$  NW $\frac{1}{4}$  - 14.00 acres to be leased

Enter additional places of use here, using format above:

\_\_\_\_\_

Page 5 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 14.0

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

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

Season 1: 0.169 cfs

Season 2: 0.226 cfs

Season 3: 0.384 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): 134.12 af-ft

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

Conditions or other limitations, if any: \_\_\_\_\_

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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:

Deschutes River  
Tributary to Columbia in the Columbia 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): Swalley Main Canal: SESE, SEct 29, T17S, R12E, W.M.; 985 feet N and 617 feet W from the E 1/4 corner of Sect 29 to Lake Billy Chinook  
Maximum volume in acre-feet: 72.65 ac-ft

Rate in cfs: \_\_\_\_\_

Season 1: 0.096 cfs

Season 2: 0.129 cfs

Season 3: 0.219 cfs

(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 \_\_\_\_\_ through \_\_\_\_\_.
- Other (describe): \_\_\_\_\_

If you need to enter more instream uses, please use the additional water **RECEIVED**

**2.3 Term of lease.** This lease shall terminate on November 1, 2007.

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- 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:

- \$200 for an application with four or more landowners or four or more water rights

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\$100 for all other applications.

Lessor #1: Frank Brian Date: 4-10-07  
Frank Brian

For additional Lessors, type in space for signature and date  
Lessor #2: Kathy Ferguson Date: 4-10-07  
Swalley Irrigation District

Lessor 3#: No Signature Req - OWRD to Cc COID since COID delivers Mr. Brian's water  
Central Oregon Irrigation District

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

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).

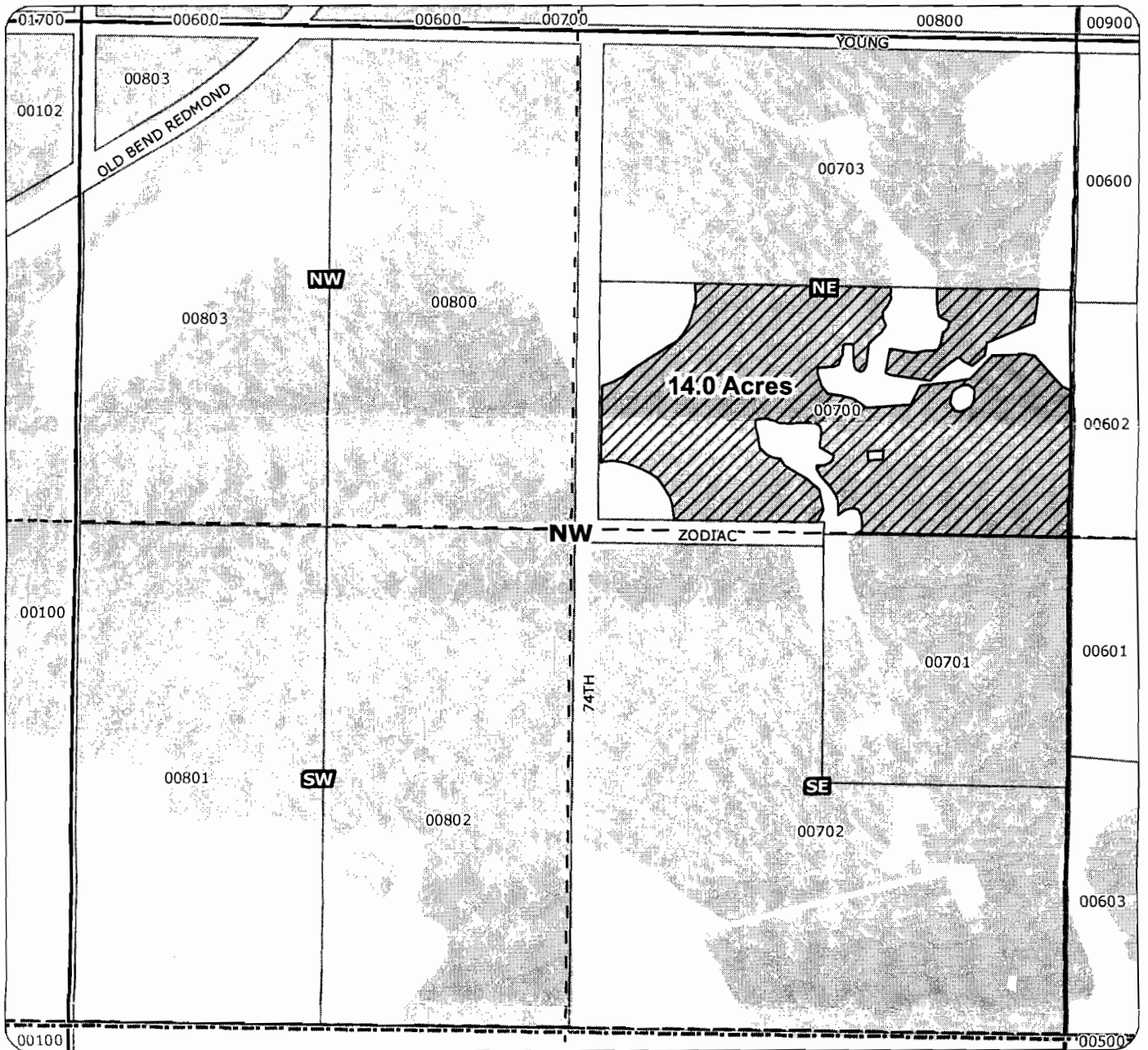
Attachment 4: Split Season Instream Use Form

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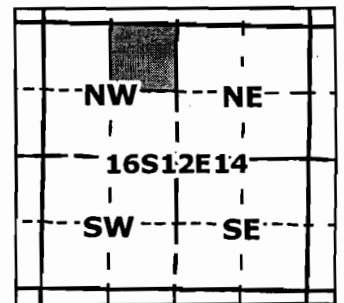
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# 2007 Swalley Irrigation District Instream Lease Map



## Application for Instream Lease

for  
 Frank Brian taxlot 700  
 14.0 Acres in  
 161214NENW



 Proposed Lease of Irrigation Rights

 Water Rights



**Geo-Spatial Solutions, Inc.**  
[www.geospatialsolutions.com](http://www.geospatialsolutions.com)

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1 inch equals 400 feet

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