



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

# Application for Instream Lease

## Part 1 of 4 – Minimum Requirements Checklist

|                                                                                                                                            |                       |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>Complete Part 1 through 4 and include the required attachments</b><br><b>Fill in or check boxes as indicated. (N/A= Not Applicable)</b> | OWRD # <u>14-1567</u> |
|                                                                                                                                            | Fee- _____            |

*Pursuant to ORS 537.348(2) and OAR 690-077*

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

☒ Yes

**Part 1 – Completed Minimum Requirements Checklist and Application Fee**

**Fees**

☐ \$450.00 for a lease involving **four or more landowners or four or more water rights**

☒ \$300.00 for all other leases

☒ Check enclosed or

☐ Fee Charged to customer account \_\_\_\_\_ (account name)

☒ Yes

**Part 2 – Completed Instream Lease Application Map Checklist.**

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☒ Yes

**Part 3 – Completed Water Right and Instream Use Information**  
Include a separate **Part 3** for **each water right**

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☒ Yes

**Part 4 – Completed Instream Lease Provisions and Signatures**

SALEM, OR

☒ Yes

**How many water rights are leased? 1 List them here: Permit 34781**

Include a separate **Part 3** for each **water right**.

☐ Yes ☒ N/A

**Other Water Rights**, if any, appurtenant to the lands involved in the lease application and not proposed to be leased instream?

**List those other water rights here:** \_\_\_\_\_

☐ Yes ☒ No

**Conservation Reserve Enhancement Program (CREP).** Are some or all of the lands to be leased part of CREP or another Federal program (list here: \_\_\_\_\_)?

### Attachments:

☐ Yes ☒ N/A **Map:** Instream Lease map requirements (see Part 2 of this application)

☐ Yes ☒ N/A **Tax Lot Map:** If a portion of the water right *not included in the lease* is appurtenant to lands owned by others, a tax lot map must be included with the lease application. The tax lot map should clearly show the property involved in the lease.

☐ Yes ☒ N/A Supporting documentation describing why a right (or portion thereof) is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years. This information only needs to be provided if the checkbox has been checked to identify that the water right has not been used in the last five years and is not subject to forfeiture (See Part 4 of 4).

☒ Yes ☐ N/A If the Lessor (water right holder) is not the deeded landowner - provide one of the following.

- A notarized statement from the landowner consenting to the lease and a copy of the recorded deed; or.
- A water right conveyance agreement and a copy of the recorded deed for the landowner at the time the water right was conveyed; or
- Other documentation which provides authority to pursue the lease absent consent of the landowner.

## Part 2 of 4 – Instream Lease Application Map Checklist

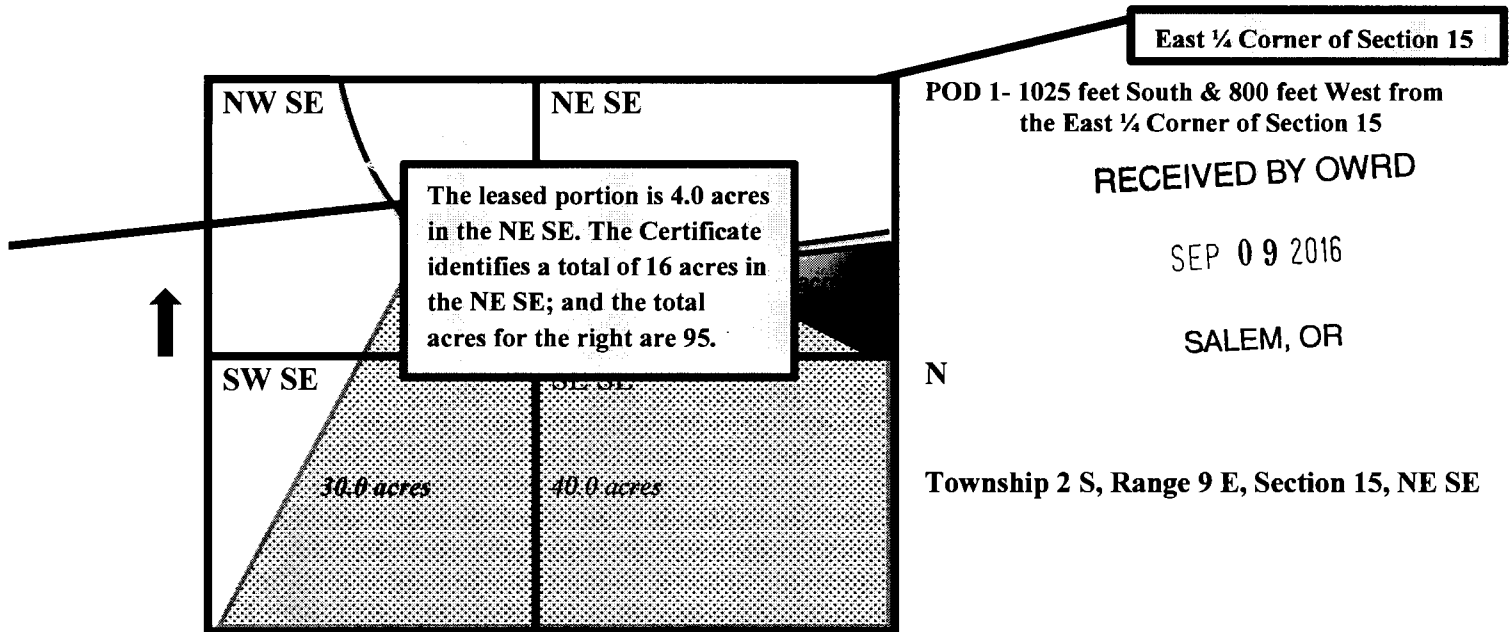
**A Map is generally required for each water right not leased in its entirety**

The application map (if required) should include all the items listed below and match the existing water right(s) of record. Check all boxes that apply.

This should be a simple map. (See example below). A copy of a final proof survey map with the portion to be leased shaded or hachured in will also suffice.

- ☒ ☐ N/A A map is required for each water right not leased in its entirety. More than one QQ and property may be included on each map. A map is not required, if leasing the entire right or if the right to be leased is for municipal or quasi-municipal water use.
- ☐ The map should be of sufficient quality to be reproducible. Please do not use highlighters to mark items on the map as highlighters do not always copy.
- ☐ A North arrow and map scale (no smaller than 1" = 1320').
- ☐ Township, Range, Section, quarter quarter (QQ), and a clearly labeled survey corner.
- ☐ For irrigation or other similar use, the number of acres to be leased in each quarter-quarter clearly labeled and hatchured to differentiate between the acres being leased and any remaining. If the place of use is broken down by more than one priority date, or source stream, and/or point of diversion you must identify each with separate hachuring and clearly label.
- ☐ If available, identify the existing point(s) of diversion.

### **EXAMPLE MAP** (the darker shaded portion representing the portion leased instream)



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## Part 3 of 4 – Water Right and Instream Use Information

SALEM, OR

Use a separate Part 3 for each water right to be leased instream

## Water Right Information

Water right # 34781

Table 1

Water Right Information: Provide a description of the originating water right to be leased. Also include your tax lot number(s). Fill in all applicable information. For example, if your water right has multiple points of diversion (POD) but they're not numbered, you do not need to include a number. If not enough room below, you may add additional rows (see instructions) or attach spreadsheet (matching Table 1). Please clearly label any attachments.

| <input type="checkbox"/> If only leasing a portion of the right - complete Table 1 as indicated |       |     |     |     | <input checked="" type="checkbox"/> Entirety - If the entire water right is to be leased, skip to Table 3. |         |               |       |     |                           |
|-------------------------------------------------------------------------------------------------|-------|-----|-----|-----|------------------------------------------------------------------------------------------------------------|---------|---------------|-------|-----|---------------------------|
| Priority Date                                                                                   | POD # | Twp | Rng | Sec | Q-Q                                                                                                        | Tax Lot | Gov't Lot/DLC | Acres | USE | Previous Lease # (if any) |
| 12/2/1901                                                                                       | 3     | 2-S | 9-E | 15  | NE SE                                                                                                      | 100     | 47            | 4.0   | IR  | IC-1100                   |
|                                                                                                 |       | -   | -   |     | -                                                                                                          |         |               |       |     |                           |
|                                                                                                 |       | -   | -   |     | -                                                                                                          |         |               |       |     |                           |
|                                                                                                 |       | -   | -   |     | -                                                                                                          |         |               |       |     |                           |
|                                                                                                 |       | -   | -   |     | -                                                                                                          |         |               |       |     |                           |
|                                                                                                 |       | -   | -   |     | -                                                                                                          |         |               |       |     |                           |

Total Acres: \_\_\_\_\_

Table 2

| To illustrate the totals for the water right proposed to be leased instream                                                                                                                                                                                                                                               |       |     |             |                                                                 |                  |                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-----|-------------|-----------------------------------------------------------------|------------------|-------------------|
| Total rate and volume by priority date, POD, use and acreage as appropriate considering the right to be leased. If not enough room below, you may add additional rows (see instructions) or attach spreadsheet (matching Table 2). Please clearly label any attachments. (cfs = cubic feet per second and af = acre-feet) |       |     |             |                                                                 |                  |                   |
| Priority Date                                                                                                                                                                                                                                                                                                             | POD # | Use | Total Acres | Other Information (such as conditions/limitations on the right) | Total Rate (cfs) | Total Volume (af) |
|                                                                                                                                                                                                                                                                                                                           |       |     |             |                                                                 |                  |                   |
|                                                                                                                                                                                                                                                                                                                           |       |     |             |                                                                 |                  |                   |
| Total af from storage, if applicable: _____ AF or <input type="checkbox"/> N/A                                                                                                                                                                                                                                            |       |     |             |                                                                 |                  |                   |
| Any additional information about the right: _____                                                                                                                                                                                                                                                                         |       |     |             |                                                                 |                  |                   |

Table 3

| <b>Point of Diversion (POD) description:</b> 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(s) involved in the lease must be described. If not enough room below, you may add additional rows (see instructions) or attach spreadsheet (matching Table 3). Please clearly label any attachments. |     |     |     |       |                |                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|-------|----------------|-----------------------------------------------------------------------------------------------------------|
| POD #                                                                                                                                                                                                                                                                                                                                                                              | Twp | Rng | Sec | Q-Q   | DLC/ Gov't lot | Measured Distances, latitude/longitude coordinates, or river mile (if unknown you may indicate "unknown") |
|                                                                                                                                                                                                                                                                                                                                                                                    | 2-S | 7-W | 7   | SE-NW |                | Only 1 POD used. Entire right is proposed for instream lease                                              |
|                                                                                                                                                                                                                                                                                                                                                                                    | -   | -   |     | -     |                |                                                                                                           |

☐ Please check this box if you don't know the location of the POD(s) and want the Department to identify the

**Part 3 of 4 cont. – Water Right and Instream Use Information**

**Instream Use Information**

**Table 4**

| <b>Instream Use Created by the Lease</b>                                                                                                                                                                                                                                                                                                                                                                                                      |       |     |      |                                                                                                  |                           |                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-----|------|--------------------------------------------------------------------------------------------------|---------------------------|----------------------------|
| <b>River/ Stream Name:</b> <u>EFSF Trask, tributary to South Fork Trask</u>                                                                                                                                                                                                                                                                                                                                                                   |       |     |      | <b>River Basin:</b> <u>Trask</u>                                                                 |                           |                            |
| <b>Instream Portion:</b> Use Table 4 to illustrate the instream rate, volume and instream period by priority date, POD (if more than one), Use (if more than one), and acreage as appropriate considering the right to be leased.<br>If not enough room below, you may add additional rows (see instructions) or attach a spreadsheet (matching the below portion of Table 4). Please clearly label any attachments.                          |       |     |      |                                                                                                  |                           |                            |
| Priority date                                                                                                                                                                                                                                                                                                                                                                                                                                 | POD # | Use | Acre | Proposed Instream Period                                                                         | Total instream rate (cfs) | Total instream volume (af) |
| 11/24/1969                                                                                                                                                                                                                                                                                                                                                                                                                                    |       |     |      | Year round                                                                                       | 29.75                     |                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                               |       |     |      |                                                                                                  |                           |                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                               |       |     |      |                                                                                                  |                           |                            |
| Note: If not certain of the instream rate, volume and/or instream period, see the instructions and/or contact Department Staff for assistance. The instream rate and volume may be up to the maximum rate and duty/volume allowed by the right, as described in Table 2 or on your Certificate if leasing the entire right. The proposed instream period may be no longer than the irrigation season or the authorized period of allowed use. |       |     |      |                                                                                                  |                           |                            |
| <b>OR</b> <input type="checkbox"/> Please check this box if you are not sure of the proposed rate, volume and instream period. As part of its review process, the Department will identify the appropriate instream rate, volume and period considering the water right(s) being leased and instream benefits.                                                                                                                                |       |     |      |                                                                                                  |                           |                            |
| <b>Instream Reach</b>                                                                                                                                                                                                                                                                                                                                                                                                                         |       |     |      |                                                                                                  |                           |                            |
| <b>Proposed Instream Reach:</b><br><input checked="" type="checkbox"/> A reach typically begins at the point of diversion (POD) and ends at the mouth of the source stream: From the POD to <u>South Fork Trask</u>                                                                                                                                                                                                                           |       |     |      | <b>Or Proposed Instream Point:</b><br><input type="checkbox"/> Instream use protected at the POD |                           |                            |
| <b>OR</b> <input type="checkbox"/> 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 or the above box is not checked, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD.)                                                                                         |       |     |      |                                                                                                  |                           |                            |
| <b>Additional Instream Information</b>                                                                                                                                                                                                                                                                                                                                                                                                        |       |     |      |                                                                                                  |                           |                            |
| <input type="checkbox"/> Yes <input type="checkbox"/> N/A <b>Conditions to avoid enlargement or injury to other water rights, if any, or other limitations:</b> list here _____                                                                                                                                                                                                                                                               |       |     |      |                                                                                                  |                           |                            |
| Note: The Department may identify additional conditions to prevent injury and/or enlargement.                                                                                                                                                                                                                                                                                                                                                 |       |     |      |                                                                                                  |                           |                            |
| <b>Any additional information about the proposed instream use:</b> _____                                                                                                                                                                                                                                                                                                                                                                      |       |     |      |                                                                                                  |                           |                            |

## Part 4 of 4 – Lease Provisions and Party Signatures

**Term of the Lease (may be from 1 year up to 5 years):**

The lease is requested to begin in: **month** January **year** 2019 and end: **month** December **year** 2023

Note: The begin month is generally the first month of the irrigation season and the end month is the last month in the irrigation season. If not an irrigation right, this would be the first and last month of your authorized period of allowed use.

**Public use:** Check the public use(s) this lease will serve (as defined by ORS 537.332):

☒ Conservation, maintenance and enhancement of aquatic, fish and wildlife, fish and wildlife habitat and any other ecological values.

☐ Recreation

☐ Pollution abatement

☐ Navigation

**Termination provision (for multiyear leases):****The parties to the lease request (choose one):**

☒ a. The option of terminating the lease prior to expiration of the full term with written notice to the Department by the Lessor(s) and/or Lessee.

☐ b. The option of terminating the lease prior to expiration of the full term, with consent by all parties to the lease.

☐ c. The parties would not like to include a Termination Provision.

(See instructions for limitations to this provision)

**Additive/Replacing Relationship to other instream water rights:** Instream leases are generally additive to other existing instream water rights created as a result of instream leases, transfers and/or allocations of conserved water. Since instream leases are also generally senior to other instream rights created through a state agency process or conversion of minimum flows, they generally replace a portion of these junior instream rights.

If you would like this lease to relate to other instream water rights differently, please check this box. ☐  
And attach an explanation of your intent.

**Validity of the Right(s) to be leased (check the appropriate box):**

☒ The water right(s) to be leased have been used under the terms and conditions of the right(s) during the last five years or have been leased instream; or

☐ The water right(s) have not been used for the last five years according to the terms and conditions of the right(s). However, the water right(s) is not subject to forfeiture under ORS 540.610(2). Documentation describing why the water right(s) is not subject to forfeiture is provided.

**Precedent:** If a right which has been leased is later proposed to be leased again or later transferred or become part of an allocation of conserved water project, a new injury review shall be required. An instream lease shall not set a precedent on a future transaction.

**The undersigned declare:**

1. The Lessor(s) agree during the term of this lease, to suspend use of water allowed under the subject water right(s) and under any appurtenant primary or supplemental water right(s) not involved in the lease application; and
2. The Lessor(s) certify that I/we are the water right holder(s) of the right(s) described in this instream lease application. If not the deeded landowner, I/we have provided documentation with the lease application that I/we have authorization to pursue the lease application and/or have obtained consent from the deeded landowner; and
3. All parties affirm that information provided in this lease application is true and accurate.



Signature of Lessor

Date: 9-2-16

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Printed name (and title): Alan Ritchey, Fish Screens and Passage Program Manager

SALEM, OR

Business name, if applicable: Oregon Department of Fish and Wildlife

Mailing Address (with state and zip): 4034 Fairview Industrial Dr SE, Salem, OR 97302

Phone number (include area code): 503-947-6229 \*\*E-mail address: Alan.D.Ritchey@state.or.us

**See next page for additional signatures.**

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\_\_\_\_\_  
Signature of Co-Lessor

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

Printed name (and title): \_\_\_\_\_

Business/organization name: \_\_\_\_\_

Mailing Address (with state and zip): \_\_\_\_\_

Phone number (include area code): \_\_\_\_\_ \*\*E-mail address: \_\_\_\_\_

\_\_\_\_\_  
Signature of Lessee

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

Printed name (and title): \_\_\_\_\_

Business/organization name: \_\_\_\_\_

Mailing Address (with state and zip): \_\_\_\_\_

Phone number (include area code): \_\_\_\_\_ \*\*E-mail address: \_\_\_\_\_

**\*\* 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 TO THE LESSOR.**

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# Instream Lease Application Information and Instructions

## Helpful Links

If you are unsure or need assistance with your Application  
Contact us at 503-986-0900 or the Watermaster for your District

|                                  |                                                                                                                                                       |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Watermasters in Oregon           | <a href="http://www.oregon.gov/owrd/docs/watermasterchart.pdf">http://www.oregon.gov/owrd/docs/watermasterchart.pdf</a>                               |
| Instream Leasing Forms           | <a href="http://www.oregon.gov/owrd/pages/pubs/forms.aspx#instream">http://www.oregon.gov/owrd/pages/pubs/forms.aspx#instream</a>                     |
| Fee Schedule                     | <a href="http://www.oregon.gov/owrd/pages/pubs/forms.aspx#fees">http://www.oregon.gov/owrd/pages/pubs/forms.aspx#fees</a>                             |
| Water Rights Information Query   | <a href="http://apps.wrd.state.or.us/apps/wr/wrinfo/">http://apps.wrd.state.or.us/apps/wr/wrinfo/</a>                                                 |
| Additional Water Rights Research | <a href="http://www.oregon.gov/owrd/Pages/wr/property_wr_info.aspx">http://www.oregon.gov/owrd/Pages/wr/property_wr_info.aspx</a>                     |
| Water Rights Public Notice       | <a href="http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/?notice_id=21">http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/?notice_id=21</a> |
| OAR: Chapter 690 Division 77     | <a href="http://www.oregon.gov/owrd/law/docs/law/oar_690_077.pdf">http://www.oregon.gov/owrd/law/docs/law/oar_690_077.pdf</a>                         |

## Application Instructions: Part 1 of 4

**Eligible Water Rights:** Surface or Storage water rights subject to Instream Lease include:

1. Certificated rights.
2. Adjudicated rights evidenced by a court decree.
3. Permits or transferred rights upon which satisfactory proof has been made.
4. Conserver's portion of conserved water allocation under ORS 537.445 to 537.500.
5. Secondary water rights for the use of stored water.
6. A Determined Claim in the Upper Klamath Basin determined and established in an order of determination certified by the Water Resources Director under ORS 539.130.

Only valid rights are eligible to be leased to instream use.

- A water right that has not been used for five or more years may no longer be valid under Oregon law. Municipal water rights are the exception.
- If the Department reasonably suspects the right may no longer be valid, it may require an affidavit attesting to the use, along with supporting documentation, and/or deny the lease as incomplete.
- If a water right hasn't been used for five or more years, you may also be able to demonstrate that it's not subject to forfeiture if you qualify for one of the provisions under ORS 540.610(2).

**Deadline for submission:** All Instream Lease Applications have deadlines for submittal. A water right with a seasonal use (such as irrigation) must be submitted prior to July 1; a water right with a year round use (such as industrial use) must be received prior to October 1.

**Fee:** Include the appropriate fee by check or money order made out to the Oregon Water Resources Department. You may also designate an appropriate customer account, if you have one, from which the fee should be deducted. Generally, the Lessee may have an account already set up with the Department. Applications received without the proper fee will be returned.

**Other Water Rights:** It is important to provide an inventory of *all of the water rights appurtenant* to the same lands identified in the lease application. This includes other primary and supplemental rights, even if the rights are still in permit status, and are not included in the lease application. Water rights information can be found via the link above for Water Rights Information Query or the Additional Water Rights Research links above.

**Conservation Reserve Enhancement Program (CREP):** Indicate if some or all of the lands involved in the lease application are enrolled in the CREP program (or other similar Federal Program). The Department will send a copy of the order approving the lease to the Farm Services Administration

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## Instream Lease Application Information and Instructions

and other associated parties. If lands involved in the lease are enrolled in another Federal Program, please provide the name of that program in the space provided in Part 1 of 4.

### **Application Instructions: Part 2 of 4**

Please provide a detailed application map as described in Part 2 of 4. If you're leasing an entire right or if the use of water is for municipal or quasi-municipal water use, a map is not required.

### **Application Instructions: Part 3 of 4**

#### **Water Rights Information (Table 1):**

Provide a complete description for each water right, or portion thereof, proposed to be leased instream. Please indicate in Table 1 whether the entire right is involved in the lease or only a portion of the right. Then fill out the rest of the Water Right Information as described in Section 3 of 4.

The priority date, type of use, and other information describing the right will be found on your certificate, which can be viewed online (see the link above for Water Rights Information Query).

For example, the priority date is usually located within the first paragraph or two on your Certificate. In the space provided in the lease application to identify the priority date, please include the day, month, if applicable, and year.

(Note: Descriptions of supplemental rights are required only when these rights are also proposed to be leased.)

**Application Calculations:** It can sometimes be difficult to determine the rate and volume associated with the right to be leased instream, particularly when only leasing a portion of the right. Please do not hesitate to contact the Department or your local Watermaster if you need assistance.

#### **Things to Note (for Table 2):**

- ❖ **Acre-feet of storage:** This is the quantity of water released from a reservoir to deliver water to the place of use associated with your water right. If a reservoir is not involved, indicate N/A.
- ❖ **Maximum total rate:** The maximum rate is associated with the right to be leased and should be identified as the total rate of use. For example, for an irrigation right, if 40 acres are being leased instream and the rate per acre limit is described as 1/80 cfs/acre, then the rate would be 0.5 cfs (40 acres \* 1/80 cfs/acre). Or if you have an irrigation right where a rate limit per acre is not specified on your certificate, the maximum total rate may be proportioned. For example, an irrigation right for 40 acres that allows the maximum diversion of 1.0 cfs, and you are proposing to lease 10.0 acres. The proportional rate would be 0.25 cfs ((1.0 cfs / 40 ac)\*10 ac = 0.25 cfs).
- ❖ **Maximum total volume:** The maximum volume is generally associated with duty of the right to be leased and should be identified as the total volume that may be used over the irrigation season or period of allowed use. For example, if 40 acres are being leased instream and there is a 4.0 acre-feet per acre duty, the maximum duty would be 160 ac-ft (40 acres \* 4.0 ac-ft/ac). If no duty is listed on the certificate or in the decree, then "N/A" should be indicated in the Total Volume column in Table 2.

**Basic Calculator (Table 2) (will only work when filling out the application online):** If you're still not certain how to fill out Table 2, we have also provided a basic calculator that may be used to calculate certain information associated with your water right. This calculator only works if you're filling out the application online. If you've downloaded the form to your computer, the calculator will not work. Also, this calculator may not work for every water right.

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## Instream Lease Application Information and Instructions

To start, your right should be an irrigation or other similar acreage based right and include a rate per acre and duty per acre limitation. If you have that basic information on your certificate, the below calculator may work for you.

Fill in the numbers in the green shaded boxes with information from your Certificate, specifically the rate per acre (this will be identified as something similar to 1/80<sup>th</sup> cubic foot per second per acre), and the duty per acre (this will be identified as something similar to 2.5 acre-feet per acre). The formulated boxes will auto-fill the max CFS and total acre feet needed for the rate and volume pieces of Table 2. If your water right is broken down by more than one priority date or point of diversion, for example, you will need to use this table to calculate the maximum rate and volume associated with the acreage for each point of diversion and/or priority date.

You can then take the information provided in the calculator below and use it to fill in Table 2 in Section 3 of 4 of this application.

| Certificate Information                    |      | Lease Information       |      |
|--------------------------------------------|------|-------------------------|------|
| <b>Limitations of Certificate</b>          |      | Total # of Acres Leased | 1    |
| <i>shall be limited to (example: 1/80)</i> | 1/80 | Max CFS                 | 0.01 |
| <i>acre feet per acre (example 2.5)</i>    | 2.5  | Total acre feet         | 2.50 |

**Instream Use Information (Table 4):** This section is best completed in close consultation with the local Watermaster, who will be responsible for making a number of recommendations relating to the reach, amount, timing and duration of the instream use.

A water right used at its maximum rate for the entire season will frequently exceed the total allowable volume (based on the duty). For the instream use, it's allowable to reduce the instream rate and/or reduce the number of days that water may be protected instream within the irrigation season to prevent enlargement or injury to other water rights. Consultation with the Department's local Watermaster (see link above to locate your local Watermaster) can help you determine the appropriate instream rate, volume, timing and location of a proposed instream use.

Also, the Department, as part of its evaluation process, will determine whether any changes are needed to the proposed instream use to prevent injury and/or enlargement. **RECEIVED BY OWRD**

### Application Instructions: Part 4 of 4

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#### Parties to the Lease:

- Lessor:** This is generally the landowner(s) and is referred to as the water right holder. **SALEM, OR** All water right holders must sign the lease application. The lessor may also be someone that holds interest in the water right or another party that has been granted authorization by the landowner to leases the water right. If the Lessor is not the deeded landowner, additional information must be provided as specified in the application checklist (Minimum Requirements Checklist Part 1 of 4).
- Lessee:** Individuals or organizations, which may provide compensation to the Lessor for the leasing of the subject water right instream. The Lessee has the same standing as the Lessor for all purposes regarding management and enforcement of the instream water right.
- Co-Lessors:** Irrigation districts or other water purveyors must be a party to the lease to which the subject Lands are attached or fall within the boundaries of an Irrigation District, as defined in ORS Chapters 545, 547, 552, 553, or 554, and should be listed as Co-Lessor.

## Instream Lease Application Information and Instructions

RECEIVED BY OWRD If the source of water for the subject lands is stored water, then the owner/operator of the reservoir must also be party to the lease as Co-lessor.

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**Please note:** If the water right is in the name of an irrigation district (or other similar organization) or if water is conveyed to the subject lands by an irrigation district, this lease application form may not be used. The District Lease Application Form must be used.

**Trustee:** The Trustee is the Oregon Water Resources Department. If a person leases a right to the State without third party involvement, the Department will also be considered the Lessee.

**Valid Signatures:** All parties must sign the application. For example, if a husband and wife both appear on a deed, both must sign. If there is insufficient space for all parties to sign the lease application, please follow instructions below to unlock the form and add additional signature space for the lessor, co-lessor, and/or lessee as needed. Or you may also attach an additional signature page.

**Term of the lease:** The term of the instream lease can be no less than one calendar year and no more than five calendar years. However, there is no limit on the number of times that you may renew your lease if the terms have not changed. (See link to Instream Lease Renewal Form above, which also contains additional information on whether a lease may be renewed)

Generally, the first day of the term of the instream lease is the first day the water can be legally used through the last day the water can be legally used (e.g. the irrigation season). For water rights with year-around season of use the term of the lease would run from January 1 through December 31 and through the last year of term of the instream lease.

**Termination provision:** For multiyear leases, this provision gives the Lessor(s) and any Lessee an opportunity to request or prohibit an Instream Lease to terminate prior to the scheduled termination date. Unless otherwise specified, the Lessee, if there is one, has the same standing as the Lessor for management of the instream lease.

For instream leases submitted as Mitigation Projects in the Deschutes Groundwater Study Area, termination will be required by all parties to the lease and must be submitted to both the Salem and Bend OWRD offices.

Requests to terminate a lease, may be submitted by e-mail from the appropriate parties identified in the Final Order approving the lease application.

**Public Use to be served by the lease:** Each lease must provide a public benefit. Please check one or more boxes to identify the public use(s) to be served by the new instream use.

### Additive/Replacing Nature of Instream Water Rights:

- Water rights that are leased instream generally have senior priority dates. Instream rights created by an instream lease are then additive to other instream rights with senior priority dates created as a result of instream lease, transfer and/or allocation of conserved water.
- If there is an existing junior instream right created as a result of a state agency application process or conversation of minimum flows, the instream right created as a result of a lease will generally replace a portion of that existing right with an earlier (senior) priority date.

## Instream Lease Application Information and Instructions

- However, applicants may request a different relationship to other instream rights than described above. For example, under certain conditions, if the priority date of the instream right to be created by the lease is junior to an existing instream right (created as a result of a state agency application process or minimum flow conversion), the new instream use could be additive to those existing instream rights. In this example, the applicant may need to submit additional information (such as a letter from ODFW, DEQ, or OPRD) describing the instream benefits of making the rights additive.

**Validity of the Rights:** The lease applicant must identify whether the right(s) involved in the lease application have been used beneficially in the last five years or are not subject to forfeiture under ORS 540.610(2).

### Other General Information:

**Watermaster:** ORS 540.045(1) – The role of the Watermaster is to regulate the distribution of water among water users from any natural surface or groundwater supply in accordance with the users' existing water rights of record. For an instream lease, the role of the Watermaster generally includes:

- The Watermaster may make a number of recommendations relating to the reach, amount, timing, and duration of the instream use.
- Review factors such as losses, return flow, and consumptive use in determining whether the proposed location of the new use will be allowed.
- Recommend to the Director if and how far the Department can protect the new instream use past the original point of diversion. (In some instances, the new use may need to be broken into reaches of decreasing amounts. The reach below the original point of diversion would be managed like the shepherding of stored water.)
- Identify any conditions to be placed on the new use, which are necessary to prevent or mitigate injury to existing rights.

### Abbreviated Process Steps- OARS 690-077-0077

1. Upon receipt of the application: Department staff will assign a number to identify the lease application.
2. The Application will be noticed in the Department's Weekly Notice; initiating a 21-day comment period. Public comments may be submitted within the 21-day comment period addressing any injury or enlargement concerns.
3. Field staff (generally the Watermaster) is requested to produce a written assessment of whether the application meets the requirements to suspend the original use and avoid injury or enlargement.
4. A caseworker is assigned the application for review.
5. If the Watermaster review indicates that the lease will not result in injury and/or enlargement and no comments are received, the Director may presume that the lease may be approved. However, if the Watermaster review, public comments, or other information indicate that the lease will result in injury and/or enlargement, the Department may modify the lease to prevent the injury and/or enlargement or deny the lease.

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6. A final order is completed, signed, and a copy sent to the Lessor and co-lessor and Lessee, if applicable.

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## Instream Lease Application Information and Instructions

### Farm Deferral Tax Status

Counties make the determination of whether a property qualifies for the farm use assessment without consideration of whether the lands have an associated water right which is leased instream. If you have questions regarding the farm use assessment you should contact your local county assessor. You should contact your County for any weed ordinance and management requirements.

### Editing the Application Form

To add additional lines to tables within the forms or to copy and paste additional Part 3 pages, please **save the application form to your computer**. Unlock the document by using one of the following instructions for your Microsoft Word software version:

#### Microsoft Word 2003

Unlock the document by one of the following:

- Using the **Tools** menu => click **Unprotect Document**;

OR

- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

To relock the document to enable the checkboxes to work, you will need to:

- Using the **Tools** menu => click **Protect Document**;

OR

- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

#### Microsoft Word 2007

- Unlock the document by clicking the **Review** tab, then click **Protect Document**, then click **Stop Protect**
- To relock the document, click **Editing Restrictions**, then click **Allow Only This Type of Editing**, select **Filling In Forms** from the drop-down menu, then check **Yes, Start Enforcing Protection**.

#### Microsoft Word 2010

- Unlock the document by clicking the **Review** tab, toggle the **Restrict Editing** icon at the upper right, then click **Stop Protect** at the bottom right. Then uncheck the "Allow only this type of editing in the document: **Filling in forms**" in the "Editing restrictions" section on the right-hand list of options.
- To relock the document, check the **Editing Restrictions/Allow Only This Type of Editing/Filling In Forms** box from the drop-down menu, then check **Yes, Start Enforcing Protection**. You do not need to assign a password for the editing restrictions.

#### Other Alternatives:

- Photocopy pages or tables in Part 3 and attach photocopied pages to document in the appropriate location, and manually amend page numbers as necessary (e.g. Page 5 6 of 9 10).
- You may refer to additional attachments that you may include, such as separately produced tables or spreadsheets to convey large numbers of rows of place of use listings, owner/property parcels, etc. If attaching separately produced tables, make sure the table(s) match the ones in the application form and are clearly labeled with the table number and water right number. You may contact the Department at 503-986-0900 and ask for Staff if you have question.

Once the application has been unlocked, you may:

- add additional rows to tables using the Table tools, and
- select and copy the pages of Part 3 and paste as many additional sets of Part 3 pages as needed at the end of the application.

After editing, re-lock the document to enable checkboxes to work.

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SALEM, OR



629: Form 3-1-4-101  
revised 2/02

Permit No. 314.291322

County Tillamook

## SPECIAL USE PERMIT

### STATE OF OREGON - BOARD OF FORESTRY

The State of Oregon, acting by and through the Board of Forestry on behalf of the Oregon Department of Forestry ("Forestry") hereby grants a special use permit (a "Permit") to the individual or group designated below (the "Permittee") for the location and purposes listed below and subject to the conditions hereinafter stated:

Permittee: Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Dr. SE  
Salem, OR 97302  
Phone: 503-947-6000

Location ("Permit Area"): Portions of Section 7, T2S, R7W, W.M., as shown on the attached Exhibit "A".

Purposes ("Permitted Uses"): To use the existing East Fork Trask Hatchery rearing pond.

This Permit is subject to the conditions listed below and any violation of such conditions will be grounds for revoking the Permit. Unless revoked, the Permit shall terminate on April 1, 2026 or upon such date as the purposes or activities described above are fulfilled or completed, whichever occurs first. The exercise of any of the privileges granted in this Permit constitutes acceptance of all conditions of the Permit.

Sec. 1. Permittee shall undertake no construction, reconstruction, alteration or improvements within the Permit Area (individually an "Improvement") without first obtaining the written approval of Forestry. All Improvements shall be undertaken only in accordance with the specifications and standards approved by Forestry. All Improvements shall become the property of Forestry upon the termination or revocation of this Permit.

Sec. 2. Permittee may remove or destroy forest products from the Permit Area only after receiving prior written approval and designation by Forestry. Permittee shall pay \$NA for all merchantable timber sold under separate timber sale contract No. NA, and \$NA for other forest values destroyed.

Sec. 3. Reference to Permittee herein shall include contractors, officers, employees and agents of Permittee. Permittee acknowledges and agrees that Forestry may act by and through its designated and authorized representatives, including employees of the Department of Forestry and other agencies of the State. In exercising the privileges granted by this Permit, Permittee shall comply with all laws of the State of Oregon, including all lawful regulations issued thereunder.

Sec. 4. Permittee shall exercise diligence in protecting the Permit Area from damage and, promptly upon presentment of invoice from Forestry, shall reimburse Forestry for any damage to the Permit Area resulting from negligence or violation of any condition of this Permit by Permittee. Permittee shall reimburse Forestry for all damage caused by Permittee's use of roads under this Permit; provided however, that when Permittee and other authorized parties jointly use such roads, then each party shall be responsible for a proportionate part of the entire maintenance, which proportion shall be determined in the sole discretion of Forestry.

Sec. 5. Permittee is self-insured for its tort liabilities, including personal injury and property damage. Permittee agrees to be responsible for damage or third party liability which may arise from activities listed and conducted at Permit Area subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300 and the Oregon Constitution Article XI, Section 7.

Sec. 6. Permittee shall provide a bond in the amount of \$NA issued by a company licensed to act as a surety in the State of Oregon. The bond required by this section, if any, shall be in favor of the State of Oregon, and shall guarantee the full and faithful performance of the terms and conditions of this Permit by Permittee.

Sec. 7. The required payment, bond and insurance shall be submitted to Forestry within N/A days of the date of issuance of the Permit. Permittee shall not exercise any of the Permitted Uses until the bond and insurance have been accepted in writing by Forestry.

Sec. 8. This Permit is nontransferable and nonexclusive; it is subject to all valid claims. Forestry reserves the right to use the Permit Area or adjacent State lands for purposes not inconsistent with the Permitted Uses and to authorize others to use the Permit Area and/or adjacent State lands at any and all times. Permittee's use of the Permit Area shall not unreasonably interfere with the use of the Permit Area and adjacent State land by other authorized users.

Sec. 9. Forestry makes no representation or warranty regarding the present or future condition of the Permit Area or any other State land. Permittee assumes all risks in connection with use of the Permit.

Sec. 10. Permittee shall not use, store or bring onto the Permit Area any hazardous materials or substances, as defined under federal or state law or regulation.

Sec. 11. Permittee shall immediately suspend all operations upon notice by Forestry. This Permit may be terminated at the discretion of Forestry at any time for public safety or other reasons or for failure of Permittee to comply with the terms and conditions of the Permit.

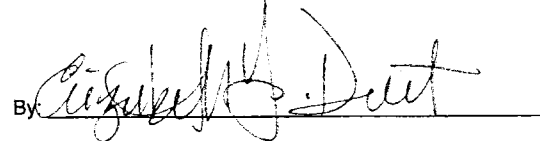
Sec. 12. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution Article XI, Section 7, Permittee agrees to be responsible for damage or third party liability which may arise from its use of the Permit Area, to the extent liability arises out of the negligence of the Permittee, its officers, divisions, agents and employees. Permittee shall not be required to indemnify or defend Forestry for liability arising out of the negligent acts of Forestry, its officers, contractors, employees or agents.

Sec. 13. Failure of Forestry to enforce any provision of this Permit shall not constitute a waiver or relinquishment by Forestry of the right to require Permittee's performance in the future, nor of the right to enforce any other provision of this Permit.

Sec. 14. This Permit includes special conditions. The special conditions (if any) incorporated in this Permit are attached hereto as Exhibit "B".

Issued this 23<sup>rd</sup> day of June, 2016.

The STATE of OREGON, acting by and through the Board of Forestry on behalf of the Oregon Department of Forestry

By: 

As: State Forests Division Chief, Oregon Dept. of Forestry  
Title

Attachments: Exhibit A (Map of Permit Area)  
Exhibit B (Special Conditions)

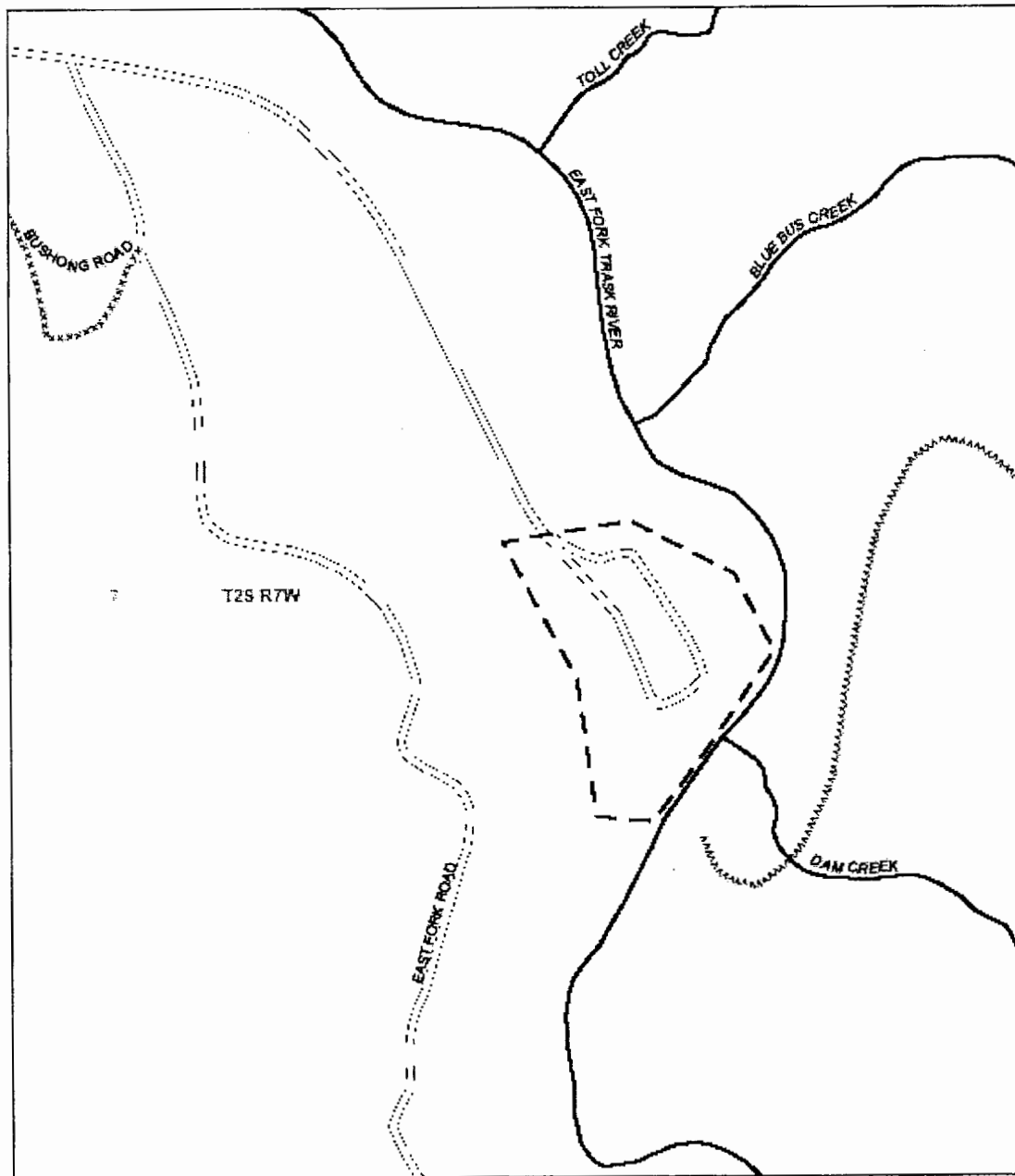
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EXHIBIT "A"

Map of Permit Area  
Special Use Permit No. 314.291322



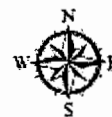
East Fork of the South Fork Trask Rearing Pond Site

SUP 314.291322 Exhibit A

--- Permit location

Watershed District 035  
08/22/2016  
This product is for informational use and  
may not have been prepared or suitable for  
legal, engineering, or surveying purposes. Use

100 50 0 100 200  
Feet



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SALEM, OR

**EXHIBIT "B"**

**Special Conditions  
Special Use Permit No. 314.291322**

Sec 15. Permittee is responsible for any maintenance and improvements needed at the facility for rearing pond operations, along with any additional utility costs from the rearing pond operation.

Sec. 16. Subject to the right of Forestry to revise any term or condition of the Permit as a condition of renewal and provided that the Permit has not been terminated, Permittee has the option to extend the term of this Permit for an additional period of five (5) years.

Sec. 17. Upon completion of the Permitted Uses by Permittee or expiration of the Permit, Permittee shall remove the pond which includes the following requirements:

- a. Removal of liner, fill pipes and gates for draining water;
- b. Reshape pond area to smooth out ground surface and allow water to drain and not pool;
- c. Reseed area with grass seed.

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SALEM, OR