



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

Complete Part 1 through 4 and include the required attachments Fill in or check boxes as indicated. (N/A= Not Applicable)	OWRD # _____
	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

\$520.00 for a lease involving **four or more landowners or four or more water rights**

\$350.00 for all other leases

Check enclosed or

Fee Charged to customer account _____ (account name)

Yes

Part 2 – Completed Instream Lease Application Map Checklist.

Yes

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

Yes

Part 4 – Completed Instream Lease Provisions and Signatures

Yes

How many water rights are leased? _____ List them here: 19911, 48420
 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.

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Part 2 of 4 – Instream Lease Application Map Checklist

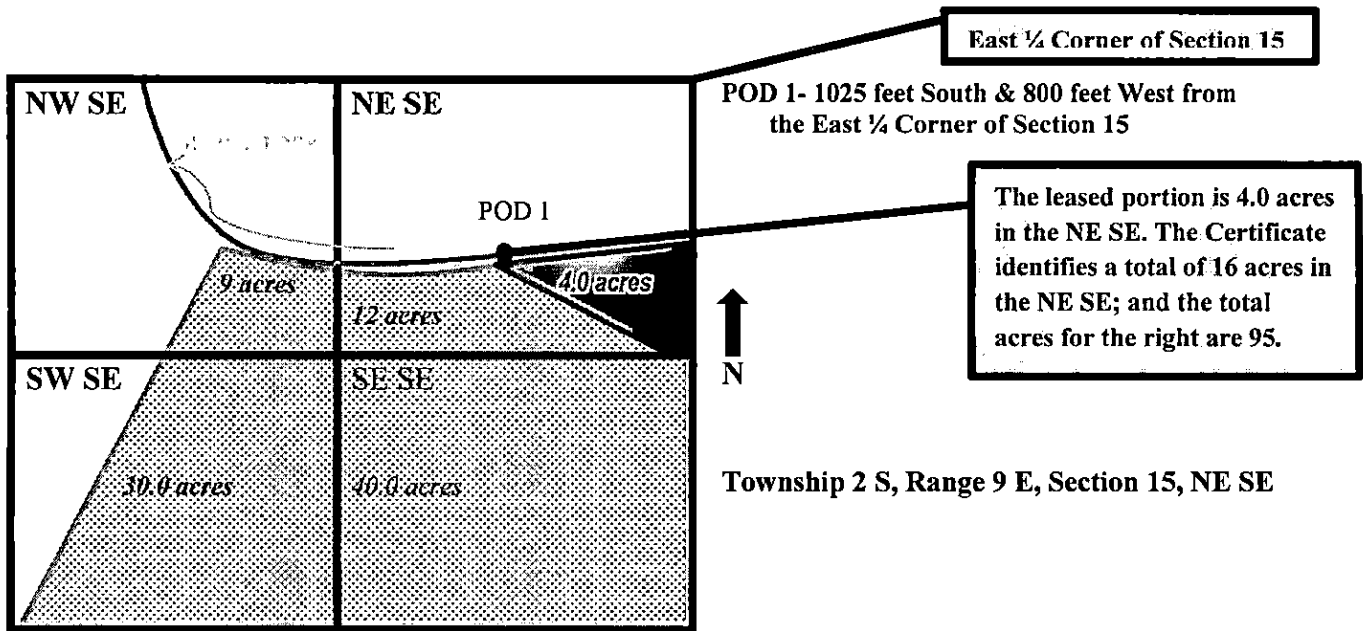
A Map is generally required for each water right not leased in its entirety

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 hachured 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

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

Water Right Information

Water right # 19911 48420

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.

If only leasing a portion of the right - complete Table 1 as indicated **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)
EXAMPLE										
12/2/1901	3	2-S	9-E	15	NE SE	100	47	4.0	IR	IL-1100
5/23/50		4-S	4-W	34	-	200		7.5	IR	
2/21/74		4-S	4-W	27	-	100		13.8	IR	
		-	-	-	-					
		-	-	-	-					
		-	-	-	-					

19911
48420

Total Acres: 21.3

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)
			7.4		0.094	2.5'
			13.8		0.17	2.5'

Total af from storage, if applicable: _____ AF or N/A

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Any additional information about the right: _____

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Table 3

Point of Diversion (POD) description: 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")
POD 1	-	-	34	-		
POD 2	-	-	27	-		

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Please check this box if you don't know the location of the POD(s) and want the Department to identify the location of the POD(s) for the purpose of the instream lease.

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

Instream Use Information

Table 4

Instream Use Created by the Lease						
River/ Stream Name: <u>Sloan Hill</u> tributary to <u>Agua Fria</u>					River Basin: _____	
<p>Instream Portion: 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.</p> <p>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.</p>						
Priority date	POD #	Use	Acreage	Proposed Instream Period	Total instream rate (cfs)	Total instream volume (af)
		<u>IR</u>	<u>7.4</u>			
		<u>IR</u>	<u>13.8</u>			
<p>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.</p>						
<p>OR <input checked="" 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.</p>						
Instream Reach						
<p>Proposed Instream Reach:</p> <p><input 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 _____</p>				<p>Or Proposed Instream Point:</p> <p><input type="checkbox"/> Instream use protected at the POD</p>		
<p>OR <input checked="" 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.)</p>						
Additional Instream Information						
<p><input type="checkbox"/> Yes <input type="checkbox"/> N/A Conditions to avoid enlargement or injury to other water rights, if any, or other limitations: list here _____</p> <p>Note: The Department may identify additional conditions to prevent injury and/or enlargement.</p>						
<p>Any additional information about the proposed instream use: _____</p>						

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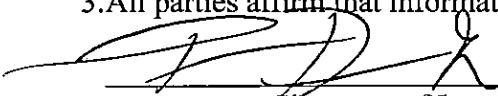
Part 4 of 4 – Lease Provisions and Party Signatures

<p>Term of the Lease (may be from 1 year up to 5 years): The lease is requested to begin in: month <u>JAN</u> year <u>2018</u> and end: month <u>Dec</u> year <u>2022</u></p> <p>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.</p>	
<p>Public use: Check the public use(s) this lease will serve (as defined by ORS 537.332):</p> <p><input checked="" type="checkbox"/> Conservation, maintenance and enhancement of aquatic, fish and wildlife, fish and wildlife habitat and any other ecological values.</p> <p><input type="checkbox"/> Recreation</p> <p><input type="checkbox"/> Pollution abatement</p> <p><input type="checkbox"/> Navigation</p>	<p>Termination provision (for multiyear leases): The parties to the lease request (choose one):</p> <p><input checked="" type="checkbox"/> 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.</p> <p><input type="checkbox"/> b. The option of terminating the lease prior to expiration of the full term, with consent by all parties to the lease.</p> <p><input type="checkbox"/> c. The parties would not like to include a Termination Provision.</p> <p>(See instructions for limitations to this provision)</p>
<p>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.</p> <p>If you would like this lease to relate to other instream water rights differently, please check this box. <input type="checkbox"/> And attach an explanation of your intent.</p>	
<p>Validity of the Right(s) to be leased (check the appropriate box):</p> <p><input checked="" type="checkbox"/> 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</p> <p><input type="checkbox"/> 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.</p>	

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: 12-27-18

Printed name (and title): Peter DeHaan Jr. Business name, if applicable: _____

Mailing Address (with state and zip): _____

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

See next page for additional signatures.

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Jennifer DeHaan
Signature of Co-Lessor

Date: 12.27.18

Printed name (and title): Jennifer DeHaan

Business/organization name: _____

Mailing Address (with state and zip): 7140 SE Booth Bend Rd.

Phone number (include area code): 503 437 0215 **E-mail address: pdehaan@hotmail.com

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

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. Conservator'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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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 1/80th 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	
Limitations of Certificate		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

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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 or to maximize the instream benefits.

Application Instructions: Part 4 of 4

Parties to the Lease:

Lessor: This is generally the landowner(s) and is referred to as the water right holder. 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.

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Instream Lease Application Information and Instructions

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.

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.

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

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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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To Whom It May Concern:

My name is Angel Guerrero. I am the owner of Guerrero Christmas Trees.

In 2012 and 2013, I was asked by Linda Koenig to assist her in irrigating her farm ground off Booth Bend Road in McMinnville, Oregon. I had the equipment necessary for such irrigation and agreed to provide the service to her, using her water rights, for such irrigation on her property. I used my equipment to irrigate the property, which irrigation equipment was movable and I took it with me when I was done. I was paid for these services, and I made certain that her farmland was properly irrigated in 2012 and 2013. I did not use any equipment of Linda Koenig to irrigate the property.

I make these statements base on my own knowledge as I made certain that the irrigation of Linda Koenig's property was completed in 2012 and 2013.



Angel Guerrero

Date: 8-27-17

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APN: 175777

Trust Deed - continued

File No.: 1031-2527715 (LZ)
Date: 09/28/2015



THIS SPACE RESERVED FOR RECORDER'S USE

After recording return to:
Linda M. Koenig
7144 SE Booth Bend Road
McMinnville, OR 97128

File No.: 1031-2527715 (LZ)
Date: September 28, 2015

Map/Tax Lot # **R4434 00200**
Tax Account # **175777**

TRUST DEED

(Assignment Restricted)

THIS DEED OF TRUST, made this **Twenty-eighth day of September, 2015**, between **Peter DeHaan and Jennifer DeHaan, as tenants by the entirety**, as GRANTOR, and **First American Title Company**, as TRUSTEE, and **Linda M. Koenig**, as BENEFICIARY.

WITNESSETH: Grantor irrevocably conveys to Trustee in trust, with power of sale, certain real property in **Yamhill County, Oregon**, described as:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Together with all tenements, hereditaments and appurtenances, including easements, and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues, and profits thereof, together with all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of **Four Hundred Thousand dollars (\$400,000.00)**, with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable on or before April 1, 2023; however, if despite Grantor's good faith and diligent efforts Grantors are not able to refinance the balance of the promissory note secured by this Trust Deed with a financial institution such as a bank with a branch in the mid Willamette Valley or an agricultural lender such as Farm Credit Services or other traditional agricultural lender, Grantor shall notify Beneficiary and have a right to extend the balloon payment date until such financing is available. During the extension period, Grantor shall, at reasonable intervals, continue to make efforts to refinance the balance of the

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purchase price and will continue to make the regularly scheduled monthly payments on the same dates and in the same amounts specified in the Promissory Note.

In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the Grantor without first having obtained the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. Notwithstanding the foregoing, Grantor may assign and transfer all of Grantor's interest in the Property to a company or entity in which Grantor holds a majority ownership; however, such an assignment will not release Grantor from its obligations.

Grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement therein without consent from the Beneficiary, and such consent will not be unreasonably withheld if the demolition or improvement increases or will increase the overall value of the property; not to commit or permit any waste of said property.

2. To complete or restore promptly and in good and workmanlike manner any building or improvement, which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore, unless Beneficiary has consented to allow demolition or removal without replacement as provided in Paragraph 1.

3. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said property against loss or damage by fire and other hazards as the Beneficiary may require, in an amount not less than replacement value, written by companies acceptable to the Beneficiary, with loss payable to Beneficiary to the extent of amounts owed by Grantor to Beneficiary; proof of insurance shall be delivered to the Beneficiary as soon as issued. Proceeds for claims will be held in an account requiring both Grantor and Beneficiary's signatures to make sure the repairs/replacements are made. Grantor will also maintain liability coverage in the amount of \$1,000,000.00 with Beneficiary named as an additional insured.

4. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.

5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipt of payment to Beneficiary. Grantor may use the Property as collateral without Beneficiary's consent; however, if Grantor borrows money secured by the Property and the total securities encumbering the Property will exceed 90 percent of the Property's real market value, Grantor will first obtain Beneficiary's consent, which will not be unreasonably withheld. The requirement to obtain Beneficiary's consent does not apply in the event Grantor's loan is secured by other property in addition to the Property encumbered by this Trust Deed.

6. Should the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations of Grantor, described in paragraphs 7 and 8 of this Trust Deed section, shall be added to and become a part of the debt secured by this Trust Deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property herein before described, as well as the Grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described and all such payments shall be immediately due and payable if Grantor fails to pay the obligation, or provide proof of compliance, within ten days after written notice from

Beneficiary, and the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed. No written notice will be required if Beneficiary has given written notice of a default for non-payment in the preceding six months.

7. To pay all costs, fees and expenses of this trust including the cost of title search, as well as the other costs and expenses of the Trustee incurred in connection with or in enforcing this obligation together with trustees' and attorneys' fees actually incurred.

8. To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including evidence of title and the Beneficiary's or Trustee's attorneys' fees. The amount of attorneys' fees mentioned in this paragraph 7 above in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's attorneys' fees on such appeal.

9. There are a substantial number of metal livestock panels and stall fronts located on the Property. All such items are included in the sale; except Beneficiary will retain ownership of four stall fronts and 40 panels which she plans to use to create stalls in the Small Barn on the east side of the Property. Grantor and Beneficiary agree that the remaining stall fronts will be left in place in the big barn until September 30, 2016. Grantor will store or otherwise use the other metal panels on the Property, which may include storage or use outside, also until September 30, 2016. Seller will retain a security interest in such stall fronts and the panels until September 30, 2016. After this date, if Grantor is not in default, Grantor will own the stall fronts and panels free and clear of Beneficiary's encumbrances.

10. Beneficiary has warranted and represented to Grantor that 21.3 acres of valid water rights have been beneficially used in the past to maintain the rights and the rights are appurtenant to the Property. Grantor agrees to beneficially use the existing water rights to maintain their validity during the term of this Trust Deed. Beneficiary will cooperate in updating records concerning water rights after Closing to update ownership of the Property to which water rights are appurtenant.

The parties mutually agree:

1. In the event that any portion of the property is taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorneys' fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, be applied upon the indebtedness secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon Beneficiary's request.

2. Upon any default by Grantor hereunder, Beneficiary may, after written notice to Grantor giving 30 days to cure the alleged default or provide evidence of no default, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name, sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees upon any indebtedness secured hereby, in such order as Beneficiary may determine.

3. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice.

4. Upon default by Grantor in payment of any indebtedness secured hereby, on the terms detailed in the Promissory Note secured by this Trust Deed, or in Grantor's performance of any agreement contained

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hereunder and after written notice to Grantor giving 30 days to cure the alleged default or provide evidence of no default, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. No such notice will be required if Beneficiary has given notice of an identical default in the preceding six months. In such event Beneficiary, at its election, may proceed to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the said described real property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.752 to 86.809.

5. The Grantor and those persons authorized by ORS 86.778 may cure any default(s) 5 days before the date the Trustee has designated for sale. Any cure of default(s) shall require payment of or tendering performance and the payment of all costs and expenses actually incurred in enforcing the obligations of this Trust Deed, including, but not limited to, trustees' and attorneys' fees as authorized by law.

In the absence of any such cure, the Trustee will enforce the obligations of this Trust Deed in accordance with paragraph 4 herein and as authorized and required by applicable law.

6. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interest may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to his successor in interest entitled to such surplus.

7. Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor trustee appointed hereunder. Upon such an appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

8. All of the rights and obligations of Grantor and Beneficiary as detailed in this Trust Deed are subject to an Agreement Affecting Real Property memorialized by Memorandum recorded in Closing. The Agreement Affecting Real Property shall control the obligations and rights of Grantor and Beneficiary, and in the event any term or obligation of the Agreement Affecting Real Property conflicts with this Trust Deed, the Agreement Affecting Real Property will control.

The Grantor covenants to and agrees with the Beneficiary and the Beneficiary's successors in interest that the Grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto, except as may be set forth in any addendum or exhibit attached hereto, and that the Grantor will warrant and forever defend the same against all persons whomsoever.

This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires the singular number includes the plural.

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Trust Deed - continued

File No.: 1031-2527715 (LZ)
Date: 09/28/2015

IN WITNESS WHEREOF, the Grantor has hereunto set his hand the day and year first above written.

Peter DeHaan

Jennifer DeHaan

STATE OF Oregon)
)ss.
County of Yamhill)

This instrument was acknowledged before me on this _____ day of _____, 20____
by **Peter DeHaan and Jennifer DeHaan.**

Notary Public for Oregon

My commission expires:

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REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)

TO: , Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed, the estate now held by you under the same.

Mail Reconveyance to:

Dated: _____

By _____

By _____

By _____

Beneficiary

**Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee before cancellation before reconveyance is made.**

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EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Yamhill; State of Oregon, described as follows:

A tract of land in Section 34, Township 4 South, Range 4 West of the Willamette Meridian in Yamhill County, Oregon, more particularly described as being a part of the Richard Booth Donation Land Claim and described as beginning at iron pipe set in the center of the county road at a point 10.04 chains East and 25 chains South of the Southwest corner of the I.M. Johns Donation Land Claim; thence South 9.80 chains to iron pipe; thence South 89°41' East 3.63 chains to a stake; thence South 5 chains to center of Yamhill River; thence down the center of said river South 33°09' East 12.05 chains to angle in river; thence South 76°54' East 5.38 chains to point in river at the Southwest corner of that tract conveyed to Sol J. Yutzy, et ux., by deed recorded August 28, 1954 in Book 174, Page 315, Deed Records; thence North leaving river 26.12 chains to iron pipe set in the center of the county road; thence West along the center of said county road 15.46 chains to the place of beginning.

EXCEPTING THEREFROM, that tract of land conveyed to Roger Winegar and Lisa Winegar, recorded July 26, 2001, Instrument No. 200112829, Yamhill County, Oregon.

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MEMORANDUM OF AGREEMENT AFFECTING REAL PROPERTY

Peter DeHaan and Jennifer DeHaan, Owner

to

Linda Koenig

SEND TAX STATEMENTS TO:

No change

AFTER RECORDING RETURN TO:

Tankersley, Wright & Strunk, LLC

PO Box 625

McMinnville, OR 97128

MEMORANDUM OF AGREEMENT AFFECTING REAL PROPERTY

This Memorandum of Agreement Affecting Real Property by and between Peter DeHaan and Jennifer DeHaan, individually ("Owner") and Linda Koenig, individually ("Linda") affects the use of a portion of the property described in Exhibit "A." Linda will have the right to live in the portion of the house she occupies on the date of this Memorandum (the East side) and exclusive use of the small barn on the East side of the Property described in Exhibit A, together with the right to reasonable access (approved by Owner) across the Property to the residence and small barn, as detailed in the Agreement Affecting Real Property and until March 31, 2023. After March 31, 2023, Linda's interest in the Property described in Exhibit A will only apply to the one-acre area shown on the map attached as Exhibit B, as detailed in the Agreement Affecting Real Property. If Linda's rights under the agreement are extended beyond March 31, 2023, Owner and Linda will cooperate in recording a revision to this Memorandum.

The term of the Agreement Affecting Real Property is the lifetime of Linda Koenig, whose present address is 7144 SE Booth Bend Road, McMinnville, OR 97128, which is also the address of the property shown on Exhibit B. The terms of the Agreement allow Owner to buy out Linda's rights for an amount calculated by the Agreement after March 31, 2023. All of Linda's rights will terminate upon her death, if not sooner. Linda's rights may not be transferred to any person or entity.

The terms and conditions of the agreement are fully set forth in the Agreement Affecting Real Property. The terms of the agreement may be adjusted or otherwise modified. Modifications must be in writing, signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day of _____, 2015.

Peter DeHaan

Jennifer DeHaan

Linda Koenig

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STATE OF OREGON)
) ss.
County of Yamhill)

Salem, OR

On _____, 2015, personally appeared Peter DeHaan and Jennifer DeHaan, who acknowledged that the foregoing instrument was their voluntary act and deed.

NOTARY PUBLIC FOR OREGON

STATE OF OREGON)
) ss.
County of Yamhill)

On _____, 2015, personally appeared Linda Koenig, who acknowledged that the foregoing instrument was her voluntary act and deed.

NOTARY PUBLIC FOR OREGON

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APN: 175777

Statutory Warranty Deed
• continued

File No.: 1031-2527715 (LZ)

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Yamhill, State of Oregon, described as follows:

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EXHIBIT 11

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First American

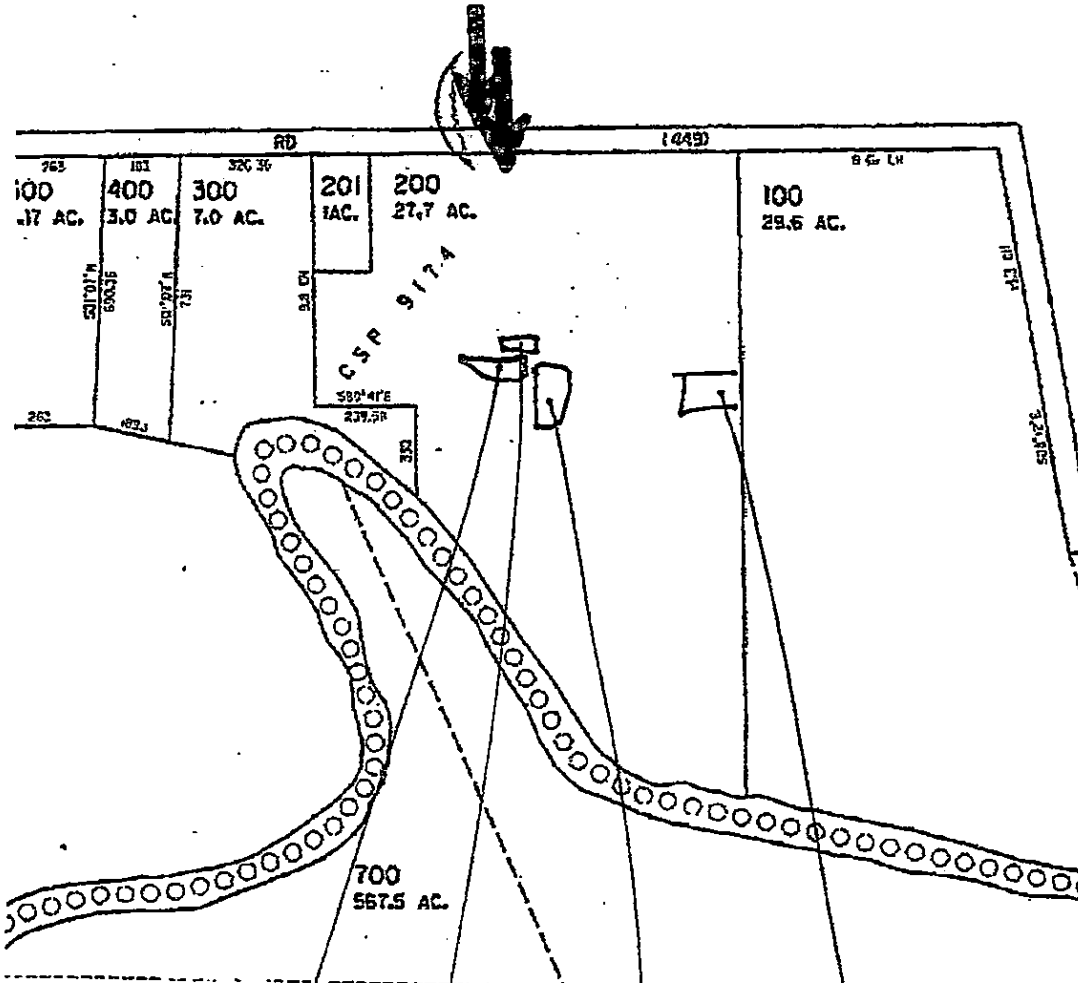


This map is furnished for illustration and to assist in property location. The company assumes no liability for any variation in dimensions by location ascertainable by actual survey

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Exercise Area

East Barn

Residence Yard / Garden

Proposed 1 Acre
(after March 31, 2023)

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EXHIBIT B
PAGE 1 OF 1 OWRD

Tax Information