



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

OWRD

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 # 11-1791
Fee-

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

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

[X] 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
[X] Check enclosed or
Fee Charged to customer account (account name)

[X] Yes Part 2 - Completed Instream Lease Application Map Checklist.

[X] Yes Part 3 - Completed Water Right and Instream Use Information
Include a separate Part 3 for each water right

[X] Yes Part 4 - Completed Instream Lease Provisions and Signatures

[ ] Yes How many water rights are leased? 1 List them here: Certificate 94544
Include a separate Part 3 for each water right.

[ ] Yes [X] 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 [X] 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 [X] N/A Map: Instream Lease map requirements (see Part 2 of this application)

[ ] Yes [X] 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.

A map is not required, but a map of the springs area identifying the tax
lot number of the property containing the authorized POD is included.

[ ] Yes [X] 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).

Certificate 94544 authorizes the use of water from Oliver Spring for
Municipal Use for the City of Newberg. Under ORS 540.610(2)(a),
Certificate 94544 is not subject to forfeiture for non-use.

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.

**The City of Newberg is a “municipality” as defined in ORS 540.510(3)(b). Chehalem Springs Water Association is a “municipality” as defined in ORS 540.510(3)(b) per the definition of “water supplier” in ORS 448.115(12). The property on which the spring is located is owned by the City of Newberg and leased to the Chehalem Springs Water Association. Chehalem Springs Water Association is qualified to supply water for quasi-municipal use because Chehalem Springs Water Association is organized as a corporation and owns the water service system for the spring.**

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Part 2 of 4 – Instream Lease Application Map Checklist

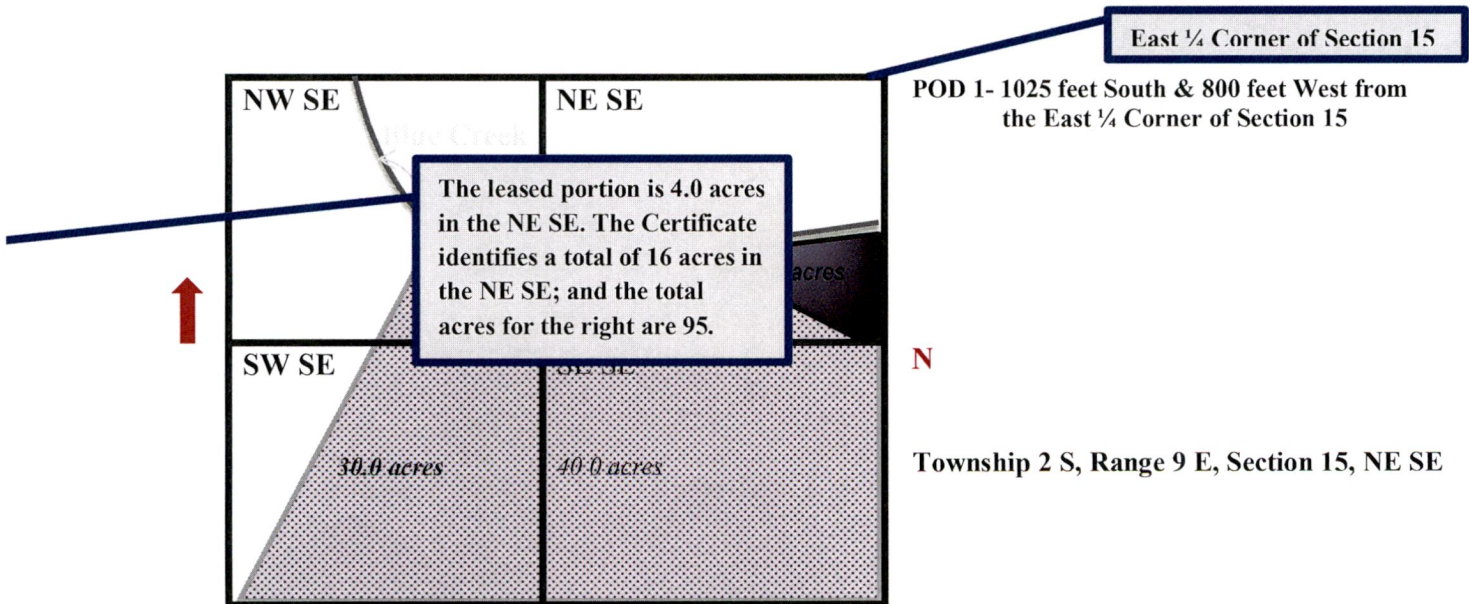
A Map is generally required for each water right not leased in its entirety

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 # 94544

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.

Table with 11 columns: Priority Date, POD #, Twp, Rng, Sec, Q-Q, Tax Lot, Gov't Lot/DLC, Acres, USE, Previous Lease # (if any). Includes an example row with values: 12/2/1901, 3, 2-S, 9-E, 15, NE SE, 100, 47, 4.0, IR, IL-1100.

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

Table 2

Table with 7 columns: Priority Date, POD #, Use, Total Acres, Other Information (such as conditions/limitations on the right), Total Rate (cfs), Total Volume (af). Includes a section for 'Total af from storage, if applicable' and 'Any additional information about the right'.

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.

Table with 7 columns: POD #, Twp, Rng, Sec, Q-Q, DLC/ Gov't lot, Measured Distances, latitude/longitude coordinates, or river mile (if unknown you may indicate "unknown"). Includes a row with values: 1, 3-S, 2-W, 5, NE-SE, 1,540 feet North and 530 feet West from the SE corner of Section 5.

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.

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

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**Instream Use Information**

**Table 4**

<b>Instream Use Created by the Lease</b>						
<b>River/ Stream Name:</b> <u>Oliver Spring</u> , tributary to <u>Hess Creek</u> >					<b>River Basin:</b> Willamette	
<u>Willamette River</u>						
<p><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.</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	Acre	Proposed Instream Period	Total instream rate (cfs)	Total instream volume (af)
1894	1	MU	N/A	1/1 through 12/31	Entire rate of Certificate 94544	
<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><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.</p>						
<b>Instream Reach</b>						
<p><b>Proposed Instream Reach:</b>  <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>the Mouth of Hess Creek</u></p>				<p><b>Or Proposed Instream Point:</b>  <input type="checkbox"/> Instream use protected at the POD</p>		
<p><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.)</p>						
<b>Additional Instream Information</b>						
<p><input checked="" 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 <u>The amount protected instream shall not exceed the amount available at Oliver Spring. The use of water included in this lease shall be subordinate to the water use authorized under transfer T-12830.</u></p> <p>Note: The Department may identify additional conditions to prevent injury and/or enlargement.</p>						
<p><b>Any additional information about the proposed instream use:</b> _____</p>						

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

<p><b>Term of the Lease (may be from 1 year up to 5 years):</b>                  The lease is requested to begin in: <b>month</b> <u>January</u> <b>year</b> <u>2020</u> and end: <b>month</b> <u>December</u> <b>year</b> <u>2024</u>                  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><b>Public use:</b> 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><b>Termination provision (for multiyear leases):</b>  <b>The parties to the lease request (choose one):</b></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><b>Additive/Replacing Relationship to other instream water rights:</b> 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><b>Validity of the Right(s) to be leased (check the appropriate box):</b></p> <p><input 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 checked="" 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. <b><u>Certificate 94544 authorizes the use of water from Oliver Spring for Municipal Use for the City of Newberg. Under ORS 540.610(2)(a), Certificate 94544 is not subject to forfeiture for non-use. See attachments for copy of Certificate 94544.</u></b></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.

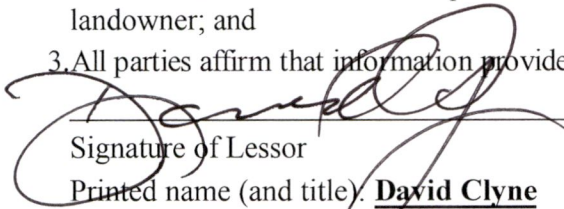
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**The undersigned declare:**

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  
 Printed name (and title): **David Clyne**

Date: 12/9/19

Business name, if applicable: **City of Newberg**

Mailing Address (with state and zip): **414 E First St. Newberg, Oregon, 97132**

Phone number (include area code): **503-537-1207** \*\*E-mail address: [david.clyne@newbergoregon.gov](mailto:david.clyne@newbergoregon.gov)

  
 Signature of Co-Lessor

Date: 3/4/2020

Printed name (and title): **Alan Akins, President**

Business/organization name: **Chehalem Springs Water Association**

Mailing Address (with state and zip): **P.O. Box 444, Newberg, Oregon, 97132**

Phone number (include area code): \*\*E-mail address: [alanoftheberg@gmail.com](mailto:alanoftheberg@gmail.com)  
[chehalemwaters@gmail.com](mailto:chehalemwaters@gmail.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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**Attachment A**  
**Certificate 94544**

Application for Instream Lease - Certificate 94544

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STATE OF OREGON  
COUNTY OF YAMHILL  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

CITY OF NEWBERG  
NEWBERG, OR

confirms the right to use the waters of SPRING called OLIVER SPRING, for the purposed of MUNICIPAL USE.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Yamhill County. The decree is of record at Salem, in the Order Record of the Water Resources Director in Volume 8, at Page 369. The date of priority is 1894.

The amount of water to which such right is entitled is limited, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed that said City of Newberg is entitled to the exclusive use of the waters of said spring.

A description of the lands irrigated under such right, and to which water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

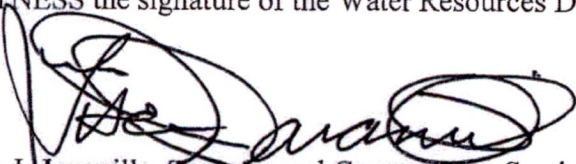
MUNICIPAL USE
WITHIN AND IN THE VICINITY OF THE CITY OF NEWBERG, OREGON

This certificate describes that portion of water right Certificate 6829, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered SEP 17 2019, approving Transfer Application T-12830.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in said decree.

WITNESS the signature of the Water Resources Director, affixed SEP 17 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M. BYLER, DIRECTOR  
Oregon Water Resources Department

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**Attachment B**  
**Application Map**

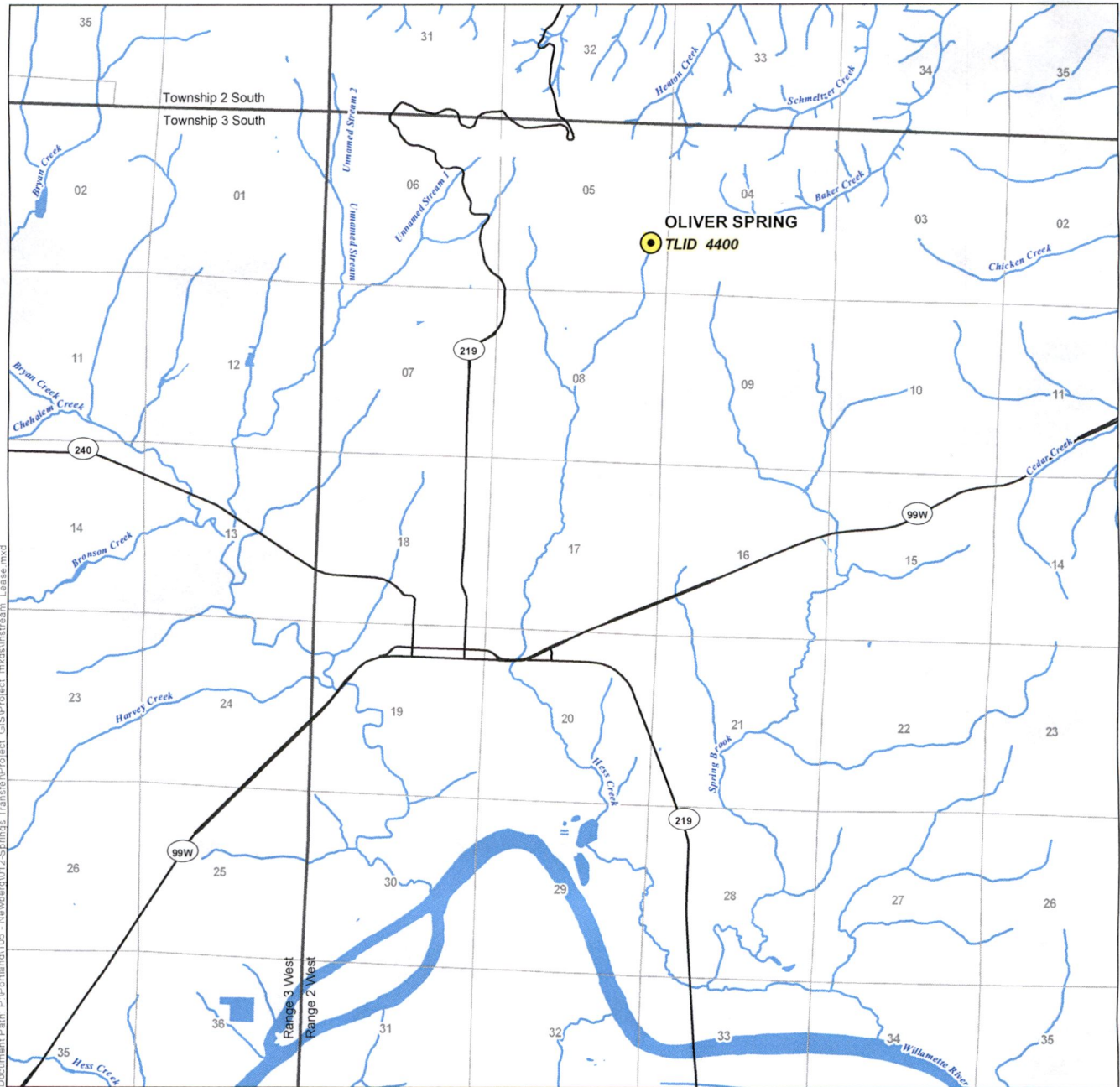
Application for Instream Lease - Certificate 94544

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# Instream Lease Oliver Springs

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Township 2/3 South, Range 2/3 West (W.M.)



### LEGEND

- Authorized Point of Diversion (POD)
- POD Tax Lot
- Major Road
- Watercourse
- Waterbody

### POD LOCATION DESCRIPTION

Oliver Spring Located 1,540 feet North and 530 feet West from the SE corner of Section 5, Township 3 South, Range 2 West (W.M.)

### DISCLAIMER

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

### MAP NOTES

Date: June 1, 2017

Data Sources: City of Newberg, ESRI, BLM, OWRD, USGS

