



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 # <u>IL-1868</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	<input type="checkbox"/> \$520.00 for a lease involving four or more landowners or four or more water rights	<input checked="" type="checkbox"/> \$350.00 for all other leases
	<input checked="" type="checkbox"/> Check enclosed <u>or</u> <input type="checkbox"/> 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? 1 List them here: C-22998**
 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: C-45934 / R-1222

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

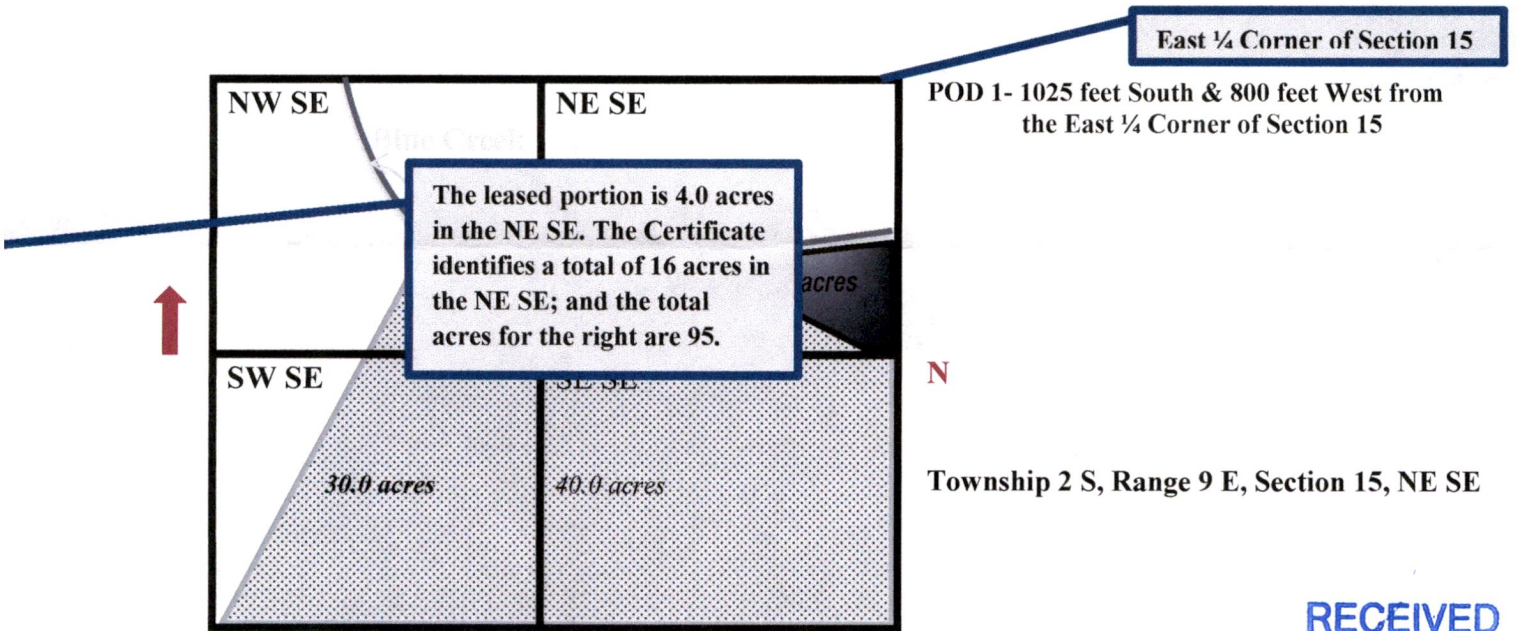
A Map is generally required for each water right not leased in its entirety

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

Water Right Information - Table 1

Water right # 22998

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
PORTION OF C-22998 INCLUDED IN LEASE										
6/13/1951		35-S	1-E	32	SW-SW	1500		4.0	IR	
6/13/1951		35-S	1-E	31	SE-SE	1500		1.8	IR	
					TOTAL INCLUDED			5.8		
PORTION OF C-22998 NOT INCLUDED IN LEASE										
6/13/1951		35-S	1-E	32	SW-SW	1301		4.2	IR	
					TOTAL C-22998			10.0		

Total Acres: 5.8 ACRES INCLUDED IN LEASE

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)
6/13/1951		IR	5.8	1/80 CFS/AC; 4.5 AF/AC TOTAL	0.07	26.1
				FROM C-22998 AND C-45934		

Total af from storage, if applicable: _____ AF or N/A; 3.2 AF MAX STORAGE USE PART OF 26.1 AF TOTAL

Any additional information about the right: **5.5 AF RIGHT UNDER C-45934 (R-1222) LAYERED WITH C-22998 NOT INCLUDED IN LEASE**

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")
	35-S	1-E	32	NE-SE	3742	30' S 550' W FROM EAST 1/4 CORNER OF SECTION 32

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

Instream Use Information

Table 4

Instream Use Created by the Lease						
River/ Stream Name: <u>KNUTZEN GULCH</u> , tributary to <u>LITTLE BUTTE CREEK</u>					River Basin: <u>ROGUE</u>	
<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	Acres	Proposed Instream Period	Total instream rate (cfs)	Total instream volume (af)
6/13/1951		IR	5.8	MAY 1 - OCT 1	0.07	21.2
<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 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 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>MOUTH OF LITTLE BUTTE CREEK</u></p>				<p>Or Proposed Instream Point:</p> <p><input type="checkbox"/> Instream use protected at the POD</p>		
<p>OR <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>						
Additional Instream Information						
<p><input type="checkbox"/> Yes <input checked="" 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

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

The lease is requested to begin in: month MAY year 2021 and end: month OCT year 2022

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.

USE OF C-22998 WATER RIGHT IN RECENT YEARS HAS BEEN PRECLUDED DUE TO ECONOMIC HARDSHIP IN APPLICATION OF WATER RIGHT CONSISTENT WITH THE TERMS OF THE CERTIFICATE.

PREVIOUS OWNER OF RIGHTS TRANSFERRED POD OF C-22998 IN EARLY-1980s (T-5161) TO ALLOW PUMPING FROM A DOWNSTREAM POD ON KNUTZEN GULCH. THE PREVIOUS OWNER SUBSEQUENTLY CANCELED T-5161 IN 1989 DUE TO DIFFICULTIES ENCOUNTERED WITH PUMPING TO IRRIGATION FROM NEW POD.

CURRENT OWNER WAS NOT AWARE OF T-5161 CANCELLATION AND IN RECENT YEARS TRIED TO OPERATE A PUMP FROM THE DIVERSION POINT ON LOWER KNUTZEN GULCH. UNSUCCESSFUL IN HIS ATTEMPTS AT THAT LOCATION, THE CURRENT OWNER INVESTIGATED RESUSCITATION OF THE TRAMMEL-BIEBERSTEDT DITCH FROM THE AUTHORIZED POD ON UPPER KNUTZEN GULCH TO HIS PROPERTY. THIS EFFORT WAS ABANDONED DUE TO THE EXPENSE OF CLEANING UP THE 5000+ FEET OF DITCH WITH ELEVATION DROP OF ~60 FEET AND THE NECESSITY OF SECURING EASEMENTS THROUGH TAX LOTS OF TWO NEIGHBORING LANDOWNERS TO FACILITATE USE OF THE DITCH.

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.

Bruce J. Joham
Signature of Lessor

Date: 4-26-21

Printed name (and title): BRUCE JOHAM Business name, if applicable: _____
 Mailing Address (with state and zip): 4025 BROWNSBORO HWY EAGLE POINT, OR 97524
 Phone number (include area code): 541.531.6947

Note – **I would like all documentation mailed to me at the address above but would also like you to email correspondence to my two agents:** Rick Parsons (rick.parsons@parsonswater.com) and Ashley Weakley (ashley.weakley@windermere.com)

B. Joham
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.**

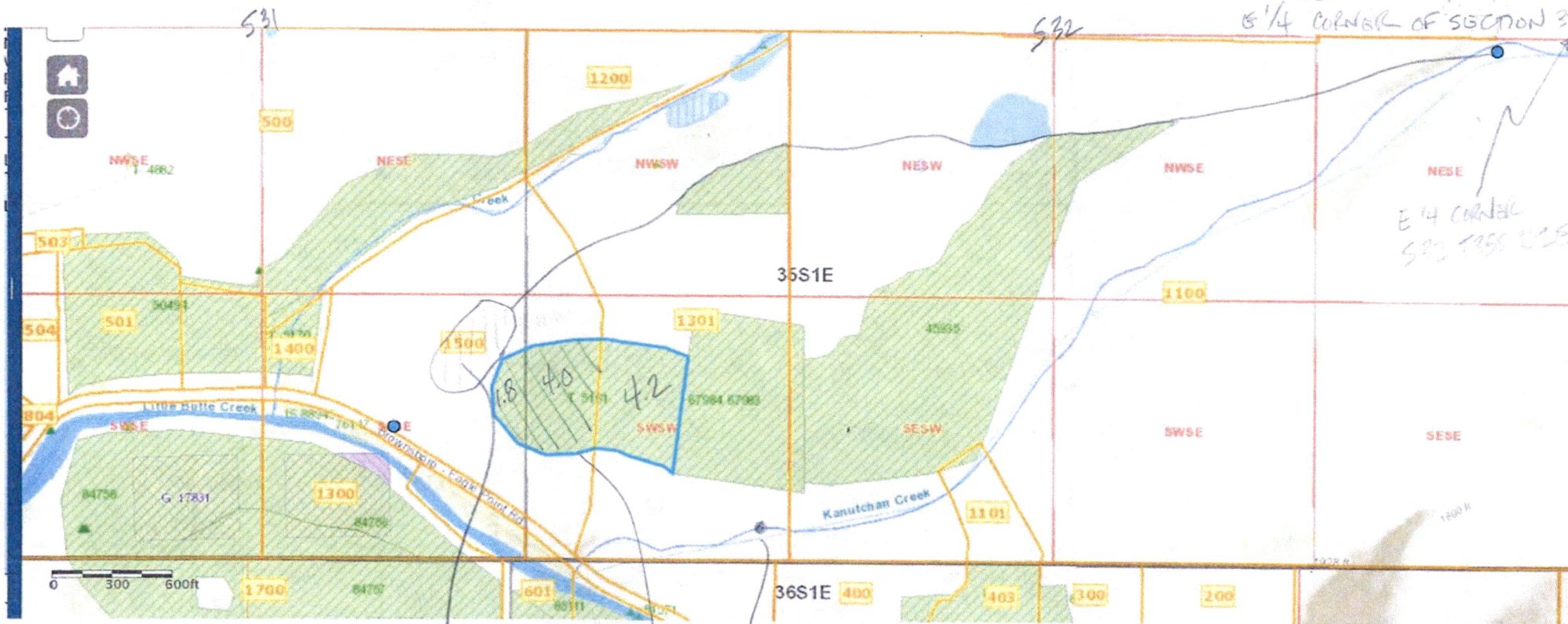
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C-22998 & C-45934 POD -
30' SOUTH & 550' WEST OF
E 1/4 CORNER OF SECTION 32

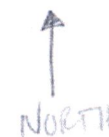


TOWNSHIP 35S
RANGE 1E

R-1222
BUBBERSTOOT
RESERVOIR

T-5161 POD (CANCELED)

1" = 730'

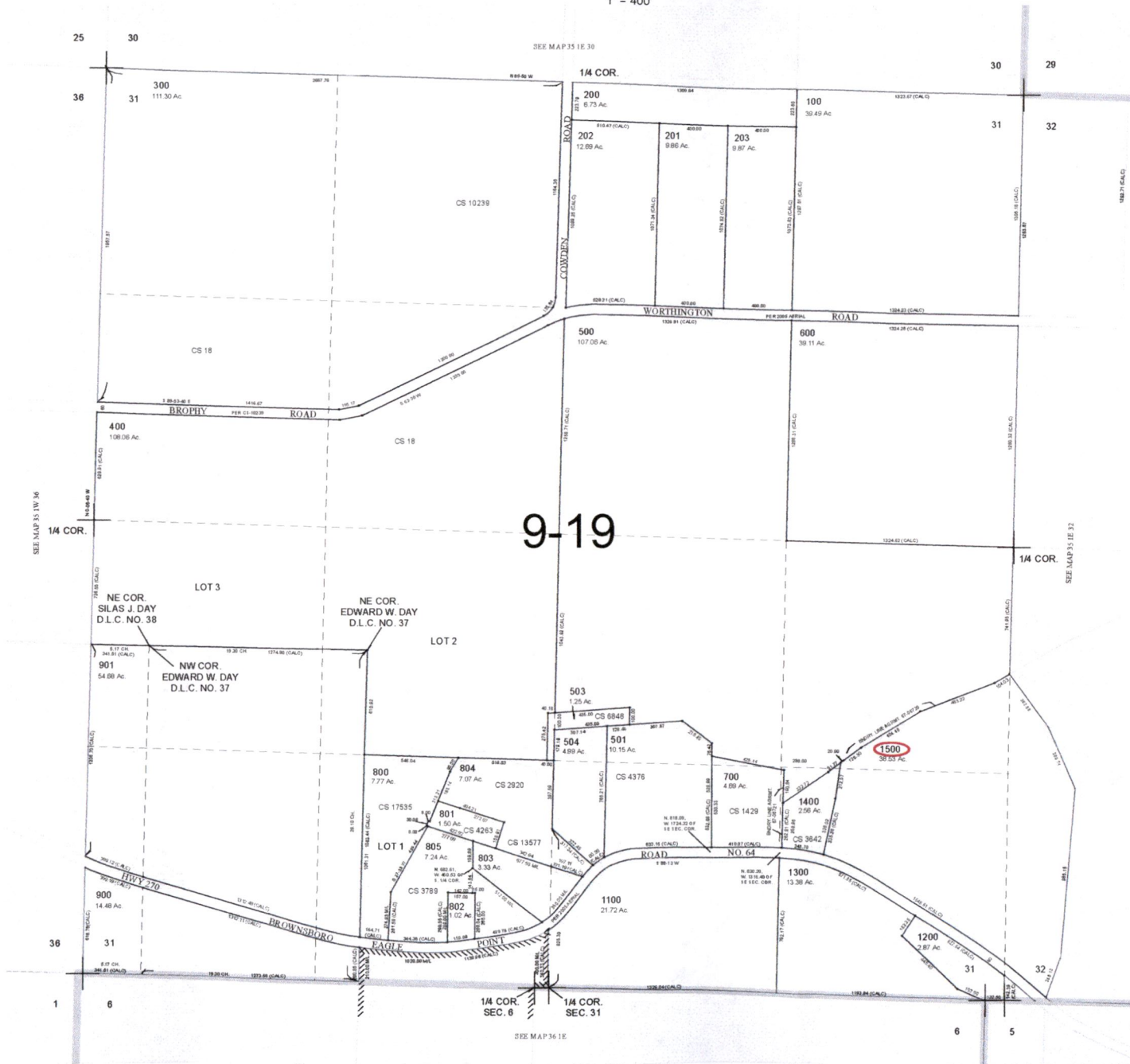


- 10 ACRES TOTAL UNDER C-2298 AND C-45934
- 5.8 ACRES WITHIN TAX LOT 1500 INCLUDED IN INSTREAM LEASE APPLICATION
- 4.2 ACRES WITHIN TAX LOT 1301 NOT INCLUDED IN INSTREAM LEASE APPLICATION
- C-45934 | R-1222 NOT INCLUDED IN LEASE APPLICATION BECAUSE VOLUMETRIC LIMIT OF LEASE MET WITH C-22998

FOR ASSESSMENT AND TAXATION ONLY

SECTION 31, T.35S., R.1E., W.M.
JACKSON COUNTY
1" = 400'

35 1E 31



CANCELLED TAX LOT NUMBERS:
1000 ADDED TO 361E
401
401 M1

9-19

GIS DATA
02/26/2015 10:56:40 AM : WrightJP

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35 1E 31

NEW MAP NOVEMBER 03, 2009
REV FEBRUARY 12, 2015

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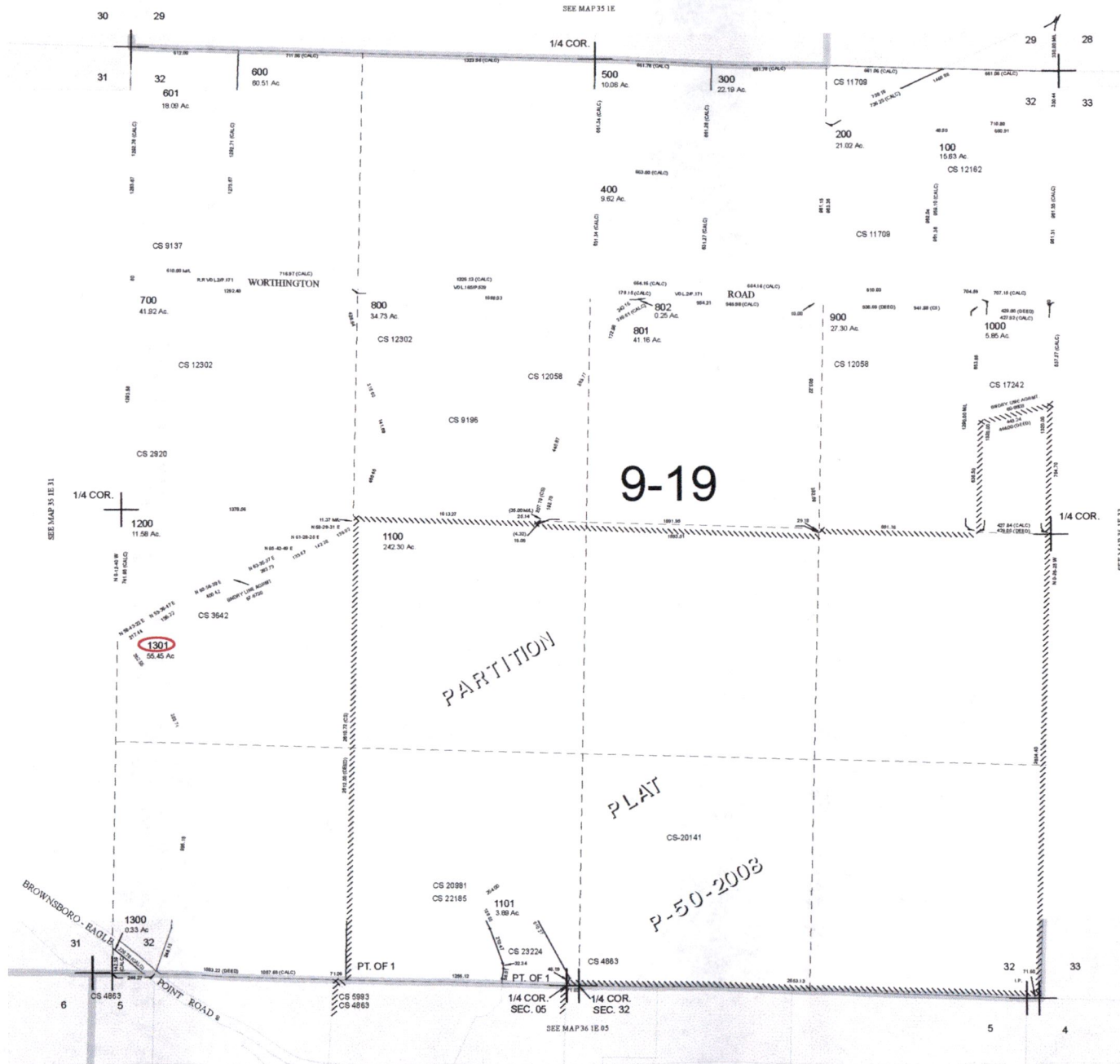
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FOR ASSESSMENT AND TAXATION ONLY

SECTION 32 T.35S. R.1E. W.M. JACKSON COUNTY 1" = 400'

35 1E 32



CANCELLED TAX LOT NUMBERS 1100

9-19

PARTITION

PLAT

P-50-2003

BROWNSBORO - EAGLE POINT ROAD

GIS DATA 12/16/2020 4:20:30 PM: thompasm

35 1E 32 NEW MAP November 5, 2009 REV November 3, 2017

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STATE OF OREGON
COUNTY OF JACKSON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That DONALD BIEBERSTEIT

of P. O. Box 6, Eagle Point, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Little Butte Creek and Knutzen Gulch and reservoir constructed under Application No. R-26036, Permit No. R-1222 a tributary of Rogue River for the purpose of irrigation under Permit No. 20560 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from June 13, 1951,

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.13 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 35 South, Range 1 East, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed $4\frac{1}{2}$ acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-1222,

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

- 8.2 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 32
Township 35 South, Range 1 East, W.M.
- 1.8 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 31
Township 35 South, Range 1 East, W.M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed

this 12th day of September, 1957.

LEWIS A. STANLEY

State Engineer

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STATE OF OREGON

COUNTY OF JACKSON

CERTIFICATE OF WATER RIGHT

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This Is to Certify, That DONALD BIEBERSTEDT

of P. O. Box 6, Eagle Point, State of Oregon, 97524, has made

proof to the satisfaction of the Water Resources Director, of a right to store the waters of Knutzen Gulch, tributary of Little Butte Creek appropriated under Permit No. 20560

irrigation for the purposes of

under Reservoir Permit No. R-1222, and that said right to store said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from June 13, 1951

that the amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 5.5 acre feet

The reservoir is located in

SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 31
T. 35 S., R. 1 E., W. M.Knutzen Gulch Diversion Point: NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, T. 35 S., R. 1 E., W. M.; 30 feet South and 550 feet West from the E $\frac{1}{4}$ Corner, Section 32

This certificate is issued to supersede certificate of water right recorded on page 22997, Volume 16, State Record of Water Right Certificates so as to correctly describe the location of the reservoir.

The issuance of this superseding certificate does not confirm the status of the water right in reference to ORS 540.610.

WITNESS the signature of the Water Resources Director, affixed

this date June 22, 1978



Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 38, page 45934