



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

# Application for Instream Lease

## Part 1 of 4 – Minimum Requirements Checklist

<b>Complete Part 1 through 4 and include the required attachments</b> <b>Fill in or check boxes as indicated. (N/A= Not Applicable)</b>	OWRD # <u>SL 59</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 <b>four or more landowners or four or more water rights</b>	<input checked="" type="checkbox"/> \$350.00 for all other leases
	<input type="checkbox"/> Check enclosed <u>or</u> <input checked="" type="checkbox"/> Fee Charged to customer account <u>Trout Unlimited</u> (account name)	

Yes **Part 2 – Completed Instream Lease Application Map Checklist.** Received by OWRD

Yes **Part 3 – Completed Water Right and Instream Use Information**  
 Include a separate **Part 3** for **each water right** MAY 21 2021

Yes **Part 4 – Completed Instream Lease Provisions and Signatures** Salem, OR

Yes **How many water rights are leased? 1 List them here: 3162**  
 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: 95647, 94160**

Yes  No **Conservation Reserve Enhancement Program (CREP).** Are some or all of the lands to be leased part of CREP or another Federal program (list here: \_\_\_\_\_)?

**Attachments:**

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

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

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

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

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

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

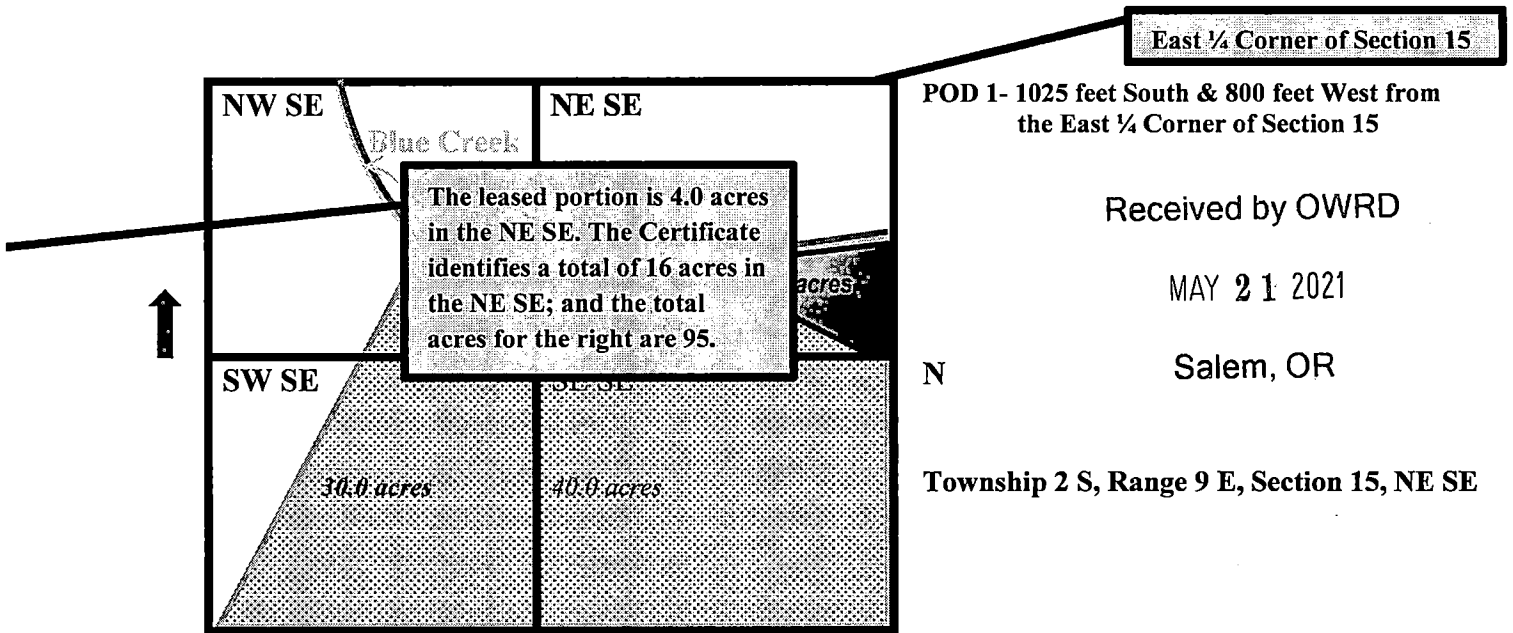
**A Map is generally required for each water right not leased in its entirety**

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

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

- N/A A map is required for each water right not leased in its entirety. More than one QQ and property may be included on each map. A map is not required, if leasing the entire right or if the right to be leased is for municipal or quasi-municipal water use.
- The map should be of sufficient quality to be reproducible. Please do not use highlighters to mark items on the map as highlighters do not always copy.
- A North arrow and map scale (no smaller than 1" = 1320').
- Township, Range, Section, quarter quarter (QQ), and a clearly labeled survey corner.
- For irrigation or other similar use, the number of acres to be leased in each quarter-quarter clearly labeled and 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)



## 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 # 3162**

**Table 1**

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

<input type="checkbox"/> <b>If only leasing a portion of the right -</b> complete Table 1 as indicated	<input checked="" type="checkbox"/> <b>Entirety -</b> If the entire water right is to be leased, skip to Table 3.
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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
		-	-		-					
		-	-		-					Received by OWRD
		-	-		-					MAY 21 2021
		-	-		-					

**Total Acres: 103.5**

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**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)
12/31/1883		IR	103.5	8.1-9.30	0.8554	103.5
Total af from storage, if applicable: _____ AF or <input checked="" type="checkbox"/> N/A						
Any additional information about the right: _____						

**Table 3**

<b>Point of Diversion (POD) description:</b> If the POD is not described on the certificate or if there is more than one POD listed on the certificate, then <b>the specific POD(s)</b> 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	Measured Distances, latitude/longitude coordinates, or river mile (if unknown you may indicate "unknown")
Fitzpatrick	1-N	43-E	28	SE-NW		Not given
<input type="checkbox"/> 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**

<b>Instream Use Created by the Lease</b>						
<b>River/ Stream Name:</b> <u>Lostine River</u> , tributary to <u>Wallowa River</u>					<b>River Basin:</b> <u>Grande Ronde Basin</u>	
<b>Instream Portion:</b> Use Table 4 to illustrate the instream rate, volume and instream period by priority date, POD (if more than one), Use (if more than one), and acreage as appropriate considering the right to be leased. If not enough room below, you may add additional rows (see instructions) or attach a spreadsheet (matching the below portion of Table 4). Please clearly label any attachments.						
Priority date	POD #	Use	Acres	Proposed Instream Period	Total instream rate (cfs)	Total instream volume (af)
12/31/1883	Fitzpatrick	IR	103.5	8.1-9.30	0.8554	103.5
<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>						
<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>Confluence with the Grande Ronde River</u>				<b>Or Proposed Instream Point:</b> <input type="checkbox"/> Instream use protected at the POD		
<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>						
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A <b>Conditions to avoid enlargement or injury to other water rights, if any, or other limitations:</b> list here _____ Note: The Department may identify additional conditions to prevent injury and/or enlargement.						
<b>Any additional information about the proposed instream use:</b> _____						

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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 August year 2021 and end: month October year 2021

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

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Termination provision (for multiyear leases):

The parties to the lease request (choose one):

- a. The option of terminating the lease prior to expiration of the full term with written notice to the Department by the Lessor(s) and/or Lessee.
- b. The option of terminating the lease prior to expiration of the full term, with consent by all parties to the lease.
- c. The parties would not like to include a Termination Provision.

(See instructions for limitations to this provision)

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

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

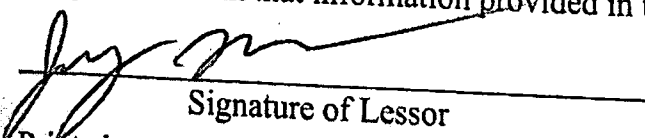
Validity of the Right(s) to be leased (check the appropriate box):

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

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

The undersigned declare:

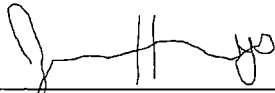
1. The Lessor(s) agree during the term of this lease, to suspend use of water allowed under the subject water right(s) and under any appurtenant primary or supplemental water right(s) not involved in the lease application; and
2. The Lessor(s) certify that I/we are the water right holder(s) of the right(s)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

  
Signature of Lessor

Date: 5/18/2021

Printed name (and title): Jeremy McCulloch Business name, if applicable: Rocking M Cattle Company  
Mailing Address (with state and zip): 70208 Warnock Rd. Wallowa, Oregon 97885  
Phone number (include area code): 541.805.9985 \*\*E-mail address: Jeremy.mcculloch1@gmail.com

See next page for additional signatures.



Signature of Lessee

Date: 5/18/21

Printed name (and title): Jessica Humphreys, NE Oregon Flow Restoration Project Manager

Business/organization name: Trout Unlimited

Mailing Address (with state and zip): 401 NE 1<sup>st</sup> Street Enterprise, Oregon 97828

Phone number (include area code): 541.913.3750 \*\*E-mail address: Jessica.humphreys@tu.org

**\*\* 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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Salem, OR



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

# Application for Split Season Instream Lease

*A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrd.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).*

**Attachment 4 (Standard Leasing Form).  
 Attachment 5-D (Pooled Leasing Form).**

**The standard instream water right form or for pooled leases, the appropriate pooled lease forms, pursuant to ORS 537.348(2) and OAR 690-077 must also be filled out before a Split Season Use Instream Lease Application can be processed.**

*Note: Split season use lease applications must be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose. (OAR 690-077-0079)*

**1. Existing and Instream Use Periods**

For the water right being leased instream, as described in Section 1.5, include monthly or partial season rate or duty limitations, if appropriate.

This section replaces the "Total volume, Rate in cfs, and Allowed period of use" portions of Section 2.2 on the standard or pooled instream leasing forms.

**Water Right 3162jj**

The water right will be used for its existing purpose from 5.1 to 7.31.

The water right will be used for instream use period is from 8.1 to 9.30.

	Rate (cfs)		Conversion Factor 1 cfs = 1.983471 ac-ft/day		Number of days	=	Duty (ac-ft)
<b>Existing Use</b>	2.5523	*	1.983471	*	92.00	=	465.75
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Instream Use</b>	0.8554	*	1.983471	*	61	=	103.5
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
<b>Total</b>	n/a		n/a		n/a		<b>569.25</b>

**2. Measurement and Reporting**

The water right lessor or lessee shall contact the watermaster to determine the necessary measurement and reporting requirements associated with leasing a water right.

The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Director, or provide for third party measurement and reporting to the satisfaction of the Director. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

- (a) Location(s) and type(s) of measuring device(s): See Attached Letter
- (b) Frequency of measurement: See Attached Letter
- (c) Parties responsible for the respective measurements: See Attached Letter

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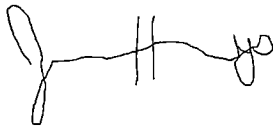
May 19th, 2021

**To:** Oregon Water Resources Department  
**Re:** Measurement and Reporting for Split Season Lease

For water right 3162 the duty is 1.5 acre-foot per acre for every 30-day period from May 1-July 31, and 1 acre-foot per acre for all of August 1- September 31. Because the instream period for the proposed split season lease begins on August 1 and ends on September 30, and because the irrigation duty limitation for August 1 - September 31 is independent of irrigation duty usage from May 1- July 31, the water master is not requiring measuring devices to monitor duty usage from May 1- July 31 for these water rights. Compliance with the terms of the split season lease and confirmation that no irrigation water is being applied to acres involved in the proposed split season lease from August 1- September 31 will be confirmed by regular site visits by the water master and Trout Unlimited staff.

Please let me know if you have any questions.

Best,



Jessica Humphreys  
Trout Unlimited, NE Oregon Flow Restoration Project Manager  
[jessica.humphreys@tu.org](mailto:jessica.humphreys@tu.org)  
541.913.3750

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