

Application for Instream Lease

Part 1 of 4 – Minimum Requirements Checklist



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.oregon.gov/OWRD

Complete Part 1 through 4 and include the required attachments Fill in or check boxes as indicated. (N/A= Not Applicable)	OWRD # <u>IL-1923</u>
	Fee- _____

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

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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"/> \$610.00 for a lease involving four or more landowners or four or more water rights | <input checked="" type="checkbox"/> \$410.00 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.**
 - 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:** Certificate 86767
 Include a separate **Part 3** for each **water right**.

Yes N/A **Other Water Rights**, if any, appurtenant to the lands involved in the lease application and not proposed to be leased instream?
List those other water rights here: _____

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

Attachments:

- Yes N/A **Map:** Instream Lease map requirements (see Part 2 of this application)
- Yes N/A **Tax Lot Map:** If a portion of the water right *not included in the lease* is appurtenant to lands owned by others, a tax lot map must be included with the lease application. The tax lot map should clearly show the property involved in the lease.
- Yes N/A Supporting documentation describing why a right (or portion thereof) is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years. This information only needs to be provided if the checkbox has been checked to identify that the water right has not been used in the last five years and is not subject to forfeiture (See Part 4 of 4).
- Yes N/A If the Lessor (water right holder) is not the deeded landowner - provide one of the following.
 - A notarized statement from the landowner consenting to the lease and a copy of the recorded deed; or.
 - A water right conveyance agreement and a copy of the recorded deed for the landowner at the time the water right was conveyed; or
 - Other documentation which provides authority to pursue the lease absent consent of the landowner.

Part 2 of 4 – Instream Lease Application Map Checklist

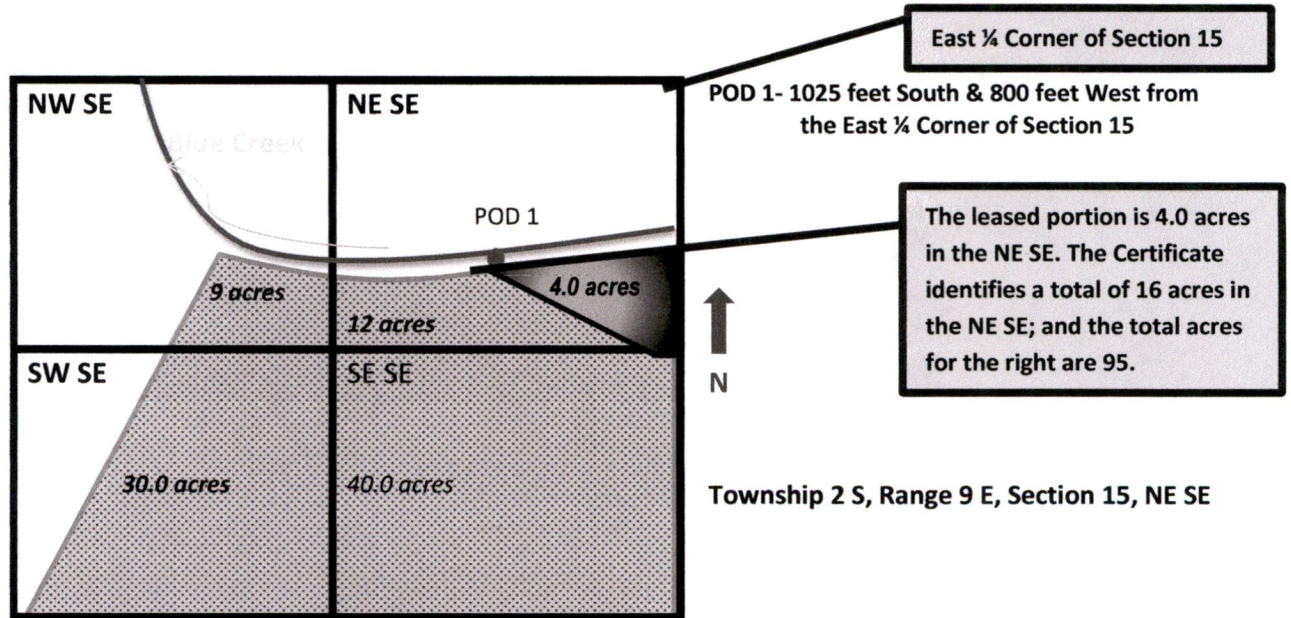
A Map is generally required for each water right not leased in its entirety

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

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

- N/A** A map is required for each water right not leased in its entirety. More than one QQ and property may be included on each map. A map is not required, if leasing the entire right or if the right to be leased is for municipal or quasi-municipal water use.
- The map should be of sufficient quality to be reproducible. Please do not use highlighters to mark items on the map as highlighters do not always copy.
- A North arrow and map scale (no smaller than 1" = 1320').
- Township, Range, Section, quarter quarter (QQ), and a clearly labeled survey corner.
- For irrigation or other similar use, the number of acres to be leased in each quarter-quarter clearly labeled and 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 # 86767

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
1872	1	36 - S	1-W	3	NENE				Power	IL-1608
		-	-		-					RECEIVED
		-	-		-					MAY 09 2022
		-	-		-					

Total Acres: N/A

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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)
1872	1	Power	N/A		16cfs	3396

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

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.

POD #	Twp	Rng	Sec	Q-Q	DLC/ Gov't lot	Measured Distances, latitude/longitude coordinates, or river mile (if unknown you may indicate "unknown")
	-	-		-		
	-	-		-		

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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Instream Use Information

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Table 4

Instream Use Created by the Lease						
River/ Stream Name: <u>Little Butte Creek, tributary to Rogue River</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)
1872	1	Power	N/A	June 15 to October 1	16cfs	3396
<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 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 checked="" 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: <u>This is the remainder of C86767 not proposed for instream transfer.</u></p>						

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 June year 2022 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

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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.

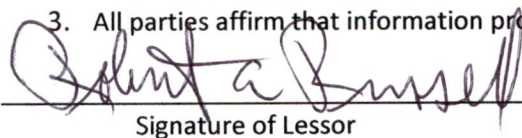
Validity of the Right(s) to be leased (check the appropriate box):

- 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: 5/6/2022

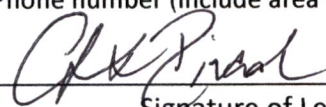
Printed name (and title): Robert Russell Business name, if applicable: _____

Mailing Address (with state and zip): P.O. Box 1, Eagle Point, OR 97524

Phone number (include area code): (503) 880-2147 **E-mail address: rrussell1950@aol.com

See next page for additional signatures.

_____ Date: _____
Signature of Co-Lessor
Printed name (and title): _____ Business name, if applicable: _____
Mailing Address (with state and zip): _____
Phone number (include area code): _____ **E-mail address: _____

 _____ Date: 5-2-2022
Signature of Lessee
Printed name (and title): Chrysten Rivard, OR Director Business name, if applicable: Trout Unlimited
Mailing Address (with state and zip): 633 Iowa St., Ashland, OR 97520
Phone number (include area code): 541-973-4431 **E-mail address: chrysten.rivard@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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Jackson County Official Records **2021-018428**
R-N
Cnt=1 SHINGLJS **04/23/2021 02:46:55 PM**
\$30.00 \$10.00 \$13.00 \$11.00 \$11.00 **Total:\$139.00**
\$60.00 \$4.00



01958465202100184280060068

I, Christine Walker, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Christine Walker - County Clerk

RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY ERRORS IN THIS COVER SHEET DOES NOT AFFECT THE TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

RECORDING REQUESTED BY AND RETURN TO:

Chrysten Lambert
Oregon Director
Trout Unlimited
633 Iowa St.
Ashland, OR 97502

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1. Title of Document: Water Right Ownership Acknowledgement

2. Grantor:

Butte Creek Mill Foundation, an Oregon Nonprofit Corporation

3. Grantee:

Bob Russell (a.k.a. Robert E Russell)

AFTER RECORDING RETURN TO:

Robert E. Russell
P.O. Box 1
Eagle Point, OR 97524

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The Butte Creek Mill Foundation hereby acknowledges and affirms that in July 2017 when ownership of the Butte Creek Mill was transferred from Bob Russell to the Butte Creek Mill Foundation it was intended that the deed state that the water rights by certificate 86767 remained in the sole ownership of Bob Russell.

Deed initially recorded as document no. 2017-029865

There was a subsequent re-recording of the deed and filing of a document to remedy this oversight, but that document was not notarized by both parties.

Re-recorded as document no. 2019-014885 to clarify that Grantor expressly reserved all water rights associated with the property, including but not limited to those rights stated on certificate no. 86767.

Now therefore the Butte Creek Mill Foundation hereby affirms, acknowledges and quit claims to Bob Russell all ownership, interest and claim to water right by water right certificate 86767 as the same now exists and is pertinent to the property of the Butte Creek Mill as described Jackson County, Oregon tax lot 361W03AA4501.

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Signatures of the pertinent persons and statement this document was authorized by the Butte Creek Mill Foundation.

Dated: April 22, 2021 Robert Eric Russell
Robert Eric Russell, aka Robert E. Russell

STATE OF OREGON)
) ss
County of Jackson)

On the ~~22nd~~ ^{22nd} day of April, 2021, personally appeared before me **Robert Eric Russell, aka Robert E. Russell**, and acknowledged the foregoing instrument to be his voluntary act and deed.



Catherine Diane Wallace

Notary Public for Oregon
My Commission expires: April 23, 2021

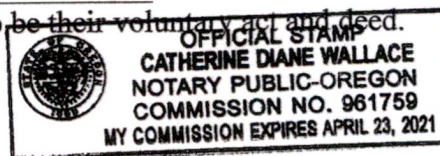
Dated: Jay O'Neil 22 April 2021
BUTTE CREEK MILL FOUNDATION

An Oregon Non-Profit Corporation

By: Jay O'Neil
Its: Board Chair Butte Creek Mill Foundation

STATE OF OREGON)
) ss
County of Jackson)

On the 22nd day of April, 2021, personally appeared before me Jay O'Neil III, as Board Chair of the Butte Creek Mill Foundation, and acknowledged the foregoing instrument to be their voluntary act and deed.



Catherine Diane Wallace

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Exhibit "A"

PARCEL I:

TRACT A:

COMMENCING AT THE SOUTHEAST CORNER OF THE W. TUCKER DONATION LAND CLAIM NO. 44 IN SECTION 3, TOWNSHIP 36 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON; THENCE SOUTH 71° 06' WEST, 1684.2 FEET; THENCE NORTH 47° 12' WEST, 6.68 FEET TO A POINT ON A CURVE, FROM WHICH ITS RADIUS POINT BEARS SOUTH 41° 23' 36" EAST, 1170.0 FEET; THENCE ALONG SAID CURVE 179.89 FEET (LONG CHORD BEARS SOUTH 44° 12' 07" WEST, 179.71 FEET) TO THE POINT OF TANGENCY; THENCE SOUTH 39° 47' 50" WEST, 69.88 FEET TO A 5/8" IRON PIN, BEING THE POINT OF BEGINNING; THENCE SOUTH 39° 47' 50" WEST ALONG THE SOUTHERLY LINE OF ROYAL AVENUE TO A POINT SITUATED NORTH 47° 04' WEST 156.86 FEET, MORE OR LESS, FROM THE CENTER OF LITTLE BUTTE CREEK AND SOUTHWESTERLY 26.48' FEET FROM THE SOUTHEASTERLY CORNER OF THE TRACT DESCRIBED IN TRACT B OF DOCUMENT NO. 2005-032760, OFFICIAL RECORDS OF JACKSON COUNTY, OREGON; THENCE SOUTH 47° 04' EAST 156.86 FEET TO THE CENTER LINE OF LITTLE BUTTE CREEK; THENCE NORTHEASTERLY 26.48 FEET, MORE OR LESS, ALONG SAID CREEK TO THE SOUTHEASTERLY CORNER OF SAID TRACT; THENCE NORTH 47° 04' WEST 179.73 FEET, MORE OR LESS, ALONG THE NORTH EASTERLY BOUNDARY LINE THEREOF TO THE POINT OF BEGINNING.

ALSO, ALL THAT PORTION OF THE VACATED ROYAL AVENUE ADJACENT TO SAID PROPERTY AND INURING THEREUNTO BY LAW, VACATED BY JACKSON COUNTY, AND RECORDED NOVEMBER 19, 1974, AS NO. 74-15189, OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON.

TRACT B:

THAT TRACT OF LAND AS SURVEYED, BEING SITUATED IN SECTION 3, TOWNSHIP 36 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON, MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF BEGINNING, FROM WHICH THE SOUTHEAST CORNER OF THE W. TUCKER DONATION LAND CLAIM NO. 44 OF SAID TOWNSHIP AND RANGE, BEARS NORTH 71° 06' EAST, 1684.2 FEET; THENCE NORTH 47° 12' WEST, 6.68 FEET TO A POINT ON A CURVE FROM WHICH ITS RADIUS POINT BEARS SOUTHEASTERLY, 1170.0 FEET; THENCE ALONG SAID CURVE (LONG CHORD BEARS SOUTH 44° 12' 07" WEST, 179.71 FEET) A DISTANCE OF 179.89 FEET; THENCE SOUTH 39° 47' 50" WEST, 69.88 FEET; THENCE SOUTH 47° 04' EAST, 179.73 FEET, MORE OR LESS, TO THE CENTER OF LITTLE BUTTE CREEK; THENCE NORTH 22° 04' EAST ALONG THE CENTER OF LITTLE BUTTE CREEK, 267.14 FEET; THENCE NORTH 47° 12' WEST, 77.76 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

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PARCEL II:

FROM A 4" BRASS CAPPED MONUMENT SET FOR THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 45 IN TOWNSHIP 36 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON, RUN THENCE SOUTH ON THE DONATION LAND CLAIM LINE 166.32 FEET, BEING ALSO THE WESTERLY SOUTHWEST CORNER OF THE TRACT OF LAND DESCRIBED IN THE DEED RECORDS OF JACKSON COUNTY, OREGON, IN VOLUME 245, PAGE 601 AND RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID TRACT SOUTH 47° 00' EAST 430.32 FEET TO THE NORTHERLY LINE OF THE COUNTY ROAD; THENCE ALONG SAID ROAD LINE SOUTH 51° 30' WEST 94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID ROAD LINE SOUTH 51° 30' WEST 25 FEET TO THE NORTHEAST CORNER OF TRACT DESCRIBED IN SAID DEED OF RECORDS IN VOLUME 239, PAGE 82, THENCE ALONG THE NORTHEASTERLY LINE OF LAST-DESCRIBED TRACT NORTH 47° 00' WEST 35 FEET; THENCE NORTH 51° 30' EAST 25 FEET; THENCE SOUTH 47° 00' EAST 35 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

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Exhibit "B"

The following exceptions affect Parcel I:

Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Little Butte Creek.

Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Little Butte Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.

An easement reserved in a deed, including the terms and conditions thereof:

For: pipeline purposes, water ditch or mill race
Recording Information: July 05, 1912 as Volume 96, Page 450

An easement reserved in a deed, including the terms and conditions thereof:

For: pipeline and rights in connection therewith
Recording Information: March 21, 1918 as Volume 117, Page 123

An easement reserved in a deed, including the terms and conditions thereof:

For: Water ditch
Recording Information: March 21, 1918 as Volume 117, Page 123

Easement, including terms and provisions contained therein:

Recording Information: September 16, 1953 as Volume 385, Page 144
For: Right of way

Easement, including terms and provisions contained therein:

Recording Information: December 27, 1961 as Volume 518, Page 348
In Favor of: PacifiCorp, an Oregon corporation
For: transmission and distribution of electricity

Easement, including terms and provisions contained therein:

Recording Information: March 24, 1995 as Document No. 95-07806
For: City's water system

The following exceptions affect Parcel II:

The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.