

District 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

This Application to be used for water rights in the name of or conveyed by an Irrigation District (or similar organization) Complete Parts 1 through 4 and any required attachments	OWRD #	IL-211D/MP-333
	District #	TSID2-25

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

Fee in the amount of:

<input checked="" type="checkbox"/> \$610.00 for a lease involving four or more landowners or four or more water rights	Or <input type="checkbox"/> \$410.00 for all other leases
<input type="checkbox"/> Check enclosed or <input checked="" type="checkbox"/> Fee Charged to customer account <u>Deschutes River Conservancy (Account name)</u>	

☐ Yes ☒ N/A **Pooled Lease**—a lease with more than one Lessor (Landowner/water right interest holder)

☒ **Part 1 – Completed Minimum Requirements Checklist**

☒ **Part 2 – Completed District and Other Party Signature Page**

☒ **Part 3 – Completed Place of Use and Lessor Signature Page**
(Include a separate Part 3 for each Lessor.)

☒ **Part 4 – Completed Water Right and Instream Use Information**
(Include a separate Part 4 for each Water Right.)

☒ **How many Water Rights are included in the lease application? 4** (# of rights)

List each water right to be leased instream here: 95971 (supersedes 74135)

☐ 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: _____)?

Required Attachments:

☒ Yes ☐ N/A Instream lease application map(s). More than one QQ and property may be included on each map. A map is **not** required if an entire right is being leased or if the right is for use of municipal or quasi-municipal water use. The map should include the following:

- A north arrow and map scale (no smaller than 1" = 1320').
- Label township, range, section and quarter-quarter (QQ).
- If an irrigation right, the numbers of acres to be leased in each quarter-quarter identify and hachure/shade to differentiate between the acreage being leased and any remaining. If the place of use has more than one priority date, source stream, and/or point of diversion you **must identify each with separate hachuring or shading** and label.
- Tax lot lines and numbers must be included on the map and should clearly identify the property(s) involved.

☐ Yes ☒ N/A **If the Lessor(s) is not** the deeded land owner, include one of the following:

- A notarized statement from the land owner 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.

☐ Yes ☒ N/A If the right has **not** been used in the last five years; provide supporting documentation indicating why a right (or portion thereof) is **not** subject to forfeiture.

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Appendix A

Part 2 of 4 – District and other party Signature

Term of the Lease: The lease is requested to begin in: month <u>June</u> year <u>2025</u> and end: month <u>September</u> year <u>2025</u> .	
Public use: Check the public use(s) this lease will serve (as defined by ORS 537.332): <input checked="" type="checkbox"/> Conservation, maintenance and enhancement of aquatic, fish and wildlife, fish and wildlife habitat and any other ecological values. <input type="checkbox"/> Recreation <input checked="" type="checkbox"/> Pollution abatement <input type="checkbox"/> Navigation	Termination provision (for multiyear leases): The parties to the lease request (choose one): <input 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. <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. <input type="checkbox"/> 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 and 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 than described above, please check this box. <input type="checkbox"/> And attach an explanation of your intent.	
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.	
Validity of the rights to be leased: <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 <input type="checkbox"/> The water right(s) have not been used for the last five years according to the terms and conditions of the rights. However, the water right(s) is not subject to forfeiture under ORS 540.610(2). Documentation describing why the water right is not subject to forfeiture has been provided.	

SIGNATURES

The undersigned declare that the information contained in this application is true and accurate.

 Signature of Co-Lessor Date: _____

Printed name (and title): Emilia Ellington, Financial-Administrative Manager

Business/Organization name: Three Sisters Irrigation District

Mailing Address (with state and zip): P.O. Box 2230, Sisters, OR 97759

Phone number (include area code): 541-549-8815 **E-mail address: office@tsidweb.org

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Emilia Ellington
 Signature of Co-Lessor Date: 4.08.2025

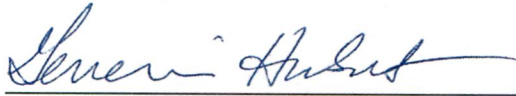
Printed name (and title): _____

Business/organization name: _____

Mailing Address (with state and zip): _____

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

See next page for additional signatures.



Date: 04/15/2025

Signature of Lessee

Printed name (and title): Genevieve Hubert, Senior Program Manager

Business/organization name: Deschutes River Conservancy

Mailing Address (with state and zip): 700 NW Hill St., Ste 1, Bend, OR 97702

Phone number (include area code): 541-382-4077 **E-mail address: gen@deschutesriver.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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Landowner	Acres	Certificate	Priority	Prior Lease No.
John Schaad - IR	148	95971 (74135)	1895	IL-2040
John Schaad - Pond	0.5	95971 (74135)	1895	IL-2040
Karan Swaner	63	95971 (74135)	1895	IL-2040
Ted & Keri Eady	73.74	95971 (74135)	1895	IL-2040
Tumalo Farms I, LLC - K. Olsen	9.15	95971 (74135)	1895	IL-1760
294.39				

Certificate	Priority	Use	Acres	Instream Rate	Instream Ac-Ft	Instream Dates
95971 (74135)	1895	IR	293.89	4.116	881.67	6/15 through 9/30
95971 (74135)	1895	Pond	0.50	0.007	1.50	6/15 through 9/30
Totals:			294.39	4.123	883.17	

293.89 acres IR – instream for mitigation project, protected to Lake Billy Chinook

0.5 acres Pond – instream (NOT mitigation) to Lake Billy Chinook

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Part 3 of 4 – Place of Use – Lessor Information and Signatures

Complete Table 1 Identify water right(s) proposed to be leased instream
Provide a separate Part 3 for each Lessor (water right interest holder/landowner)

Table 1

Irrigation District or other Water Purveyor Name: Three Sisters Irrigation District

Specify Water Right, Priority Date, point of diversion(s) (POD), place of use, tax lot, gov't lot/DLC, acres to be leased, original use type, certificate page number, and any previous lease.

If not enough room below, you may add rows (see instructions) or create a spreadsheet/table (matching Table 1) and attach.

Any attached table should include reference to the Lessor.

Water Right #	Priority Date	POD #	Twp	Rng	Sec	Q-Q	Tax Lot	Gov't Lot/DLC #	Acres	Use	Page #	Previous Lease #
95971	1895	Main Canal	15 S	11 E	07	nw se	600		30.5	IR	13	2040
95971	1895	Main	15 S	11 E	07	ne se	600		38.5	IR	13	2040
95971	1895	Main	15 s	11 e	07	sw se	600		40	IR	13	2040
95971	1895	Main	15 s	11 e	07	se se	600		39	IR	13	2040
95971	1895	Main	15 s	11 e	07	ne se	600		0.5	Pond	17	2040

Any additional information about the right: 148 acres lease IR, 0.5 acre lease pond. Pond not for mitigation. 95971 supersedes 74135

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.

The undersigned declare:

1. I/We agree during the term of this lease to suspend use of water allowed under the water right(s) involved in the lease as well as and any other appurtenant primary or supplemental water right(s); and
2. I/We certify are the lessor(s) (water right interest holder) of the water right(s) in Table 1. If not the deeded land owner, I/we have obtained consent from the deeded land owner and/or have provided documentation of authorization to pursue the instream lease; and
3. I/We affirm that the information in this application is true and accurate.

John S. Schaad
 Signature of Lessor

Date: 3/10/2025

Printed name (and title): John Schaad Business name, if applicable: _____

Mailing Address (with state and zip): 1170 McLean Blvd., Eugene, OR 97405

Phone number (include area code): 541-344-5217 **E-mail address: jgschaad@gmail.com

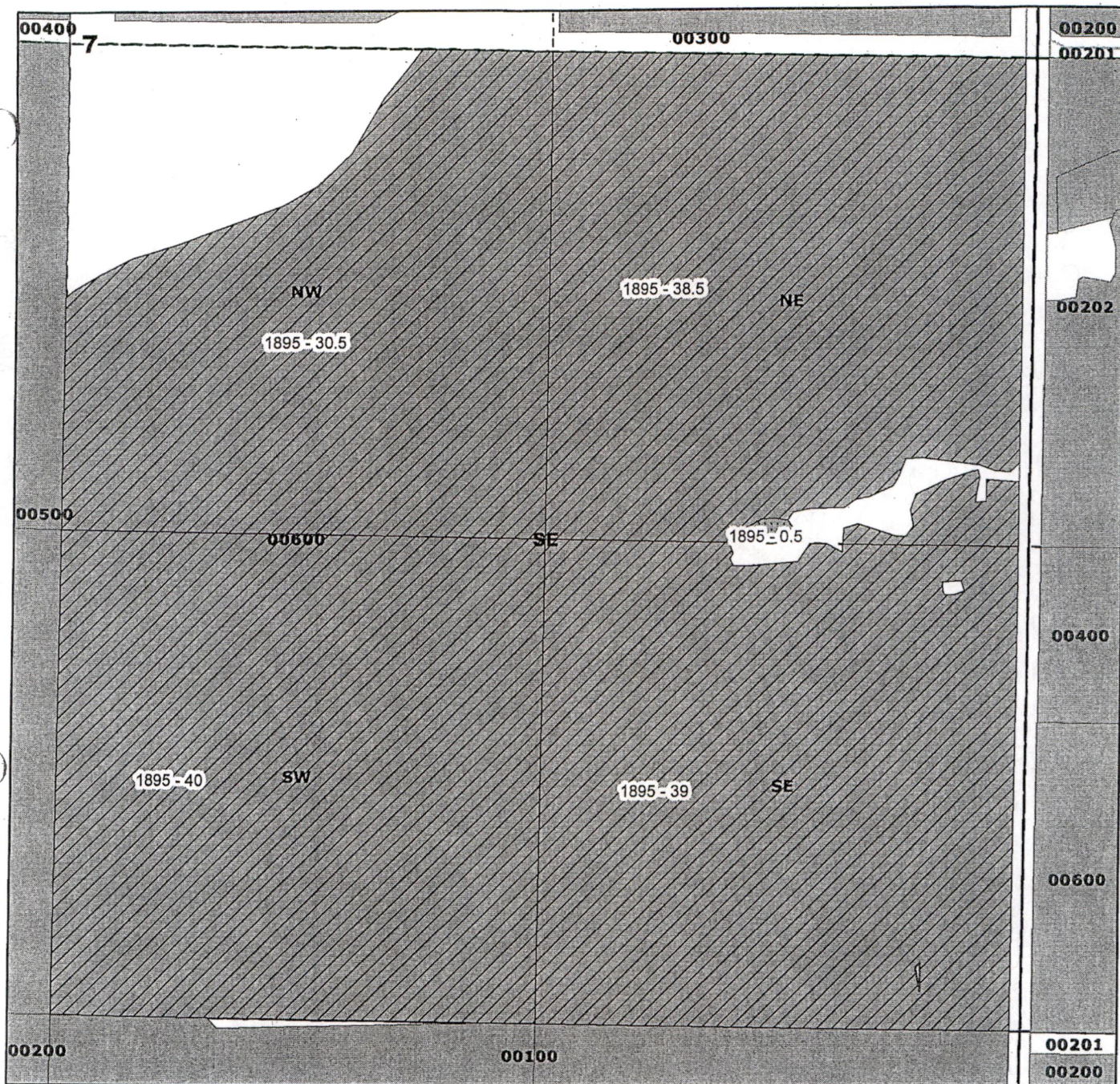
John S. Schaad
 Signature of Lessor

Date: 3/10/2025


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Legend

 Leased Instream - Pond Maintenance

 Leased Instream - Irrigation

Water Rights


Priority_Date


 1887

 1895

 1903

 1904

 Quarter Quarters

 Taxlots

John Schaad
148 acres irr instream - 1895 0.5 acre pond
instream -1895
95 971 supersedes Certificate 74135

T15S R11E Sect 07
Tax Lot 600
NESE
38.5 acres instream - 1895
0.5 acres instream - 1895 (pond maintenance)
NWSE
30.5 acres instream -1895
SWSE
40 acres instream -1895
SESE
39 acres instream - 1895
Deschutes County

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0 125 250 500 750 1,000 Feet

Three Sisters Irrigation District

Part 3 of 4 – Place of Use – Lessor Information and Signatures

Complete Table 1 Identify water right(s) proposed to be leased instream
Provide a separate Part 3 for each Lessor (water right interest holder/landowner)

Table 1

Irrigation District or other Water Purveyor Name: Three Sisters Irrigation District

Specify Water Right, Priority Date, point of diversion(s) (POD), place of use, tax lot, gov't lot/DLC, acres to be leased, original use type, certificate page number, and any previous lease.

If not enough room below, you may add rows (see instructions) or create a spreadsheet/table (matching Table 1) and attach.

Any attached table should include reference to the Lessor.

Water Right #	Priority Date	POD #	Twp	Rng	Sec	Q-Q	Tax Lot	Gov't Lot/DLC #	Acres	Use	Page #	Previous Lease #
95971 (74135)	1895	Main	15 S	11 E	04	nw ne	101		24.3	IR	11	IL-2040
95971 (74135)	1895	Main	15 S	11 E	04	sw ne	101		38.7	IR	11	IL-2040

Any additional information about the right: 63 acres - lease for mitigation credit (1.3 ac in SWNE & 1.7 ac in NWNE are or will be in transfer process. Certificate 95971 supersedes 74135.

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.

The undersigned declare:

1. I/We agree during the term of this lease to suspend use of water allowed under the water right(s) involved in the lease as well as and any other appurtenant primary or supplemental water right(s); and
2. I/We certify are the lessor(s) (water right interest holder) of the water right(s) in Table 1. If not the deeded land owner, I/we have obtained consent from the deeded land owner and/or have provided documentation of authorization to pursue the instream lease; and
3. I/We affirm that the information in this application is true and accurate.

Karan Swane

Signature of Lessor

Date: 3/10/2025

Printed name (and title): Karan Swane Business name, if applicable: _____

Mailing Address (with state and zip): 18130 Highway 126, Sisters, OR 97759

Phone number (include area code): 541-548-8854 **E-mail address: karanswane@yahoo.com

541-213-6406

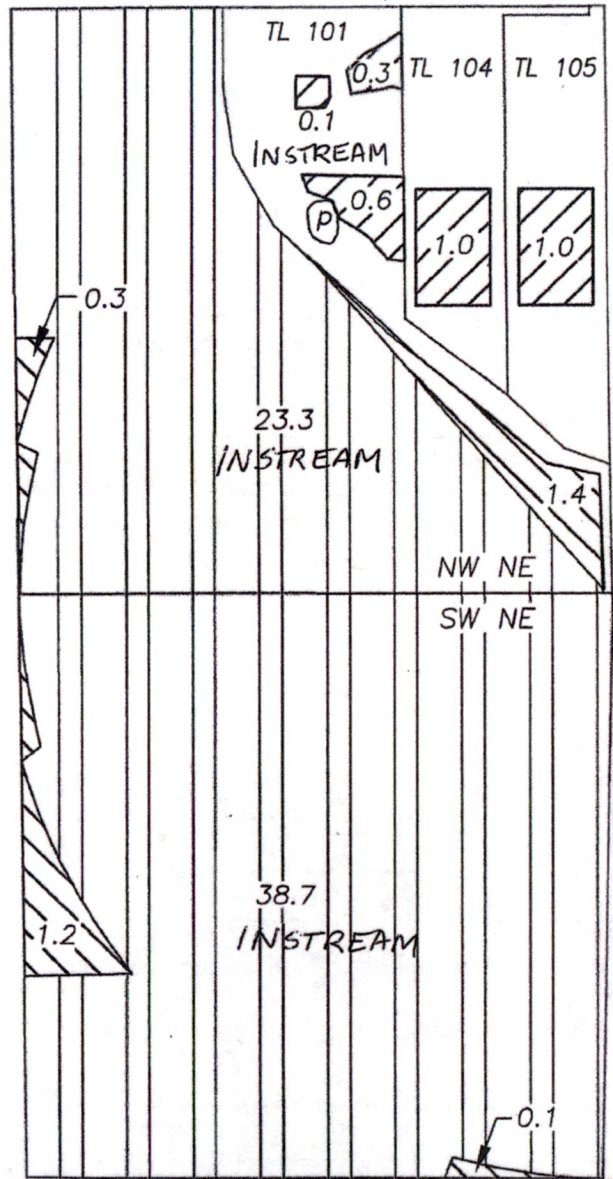
69203 Sabrina Court
Sisters 97759

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Tax Map 15-11-04



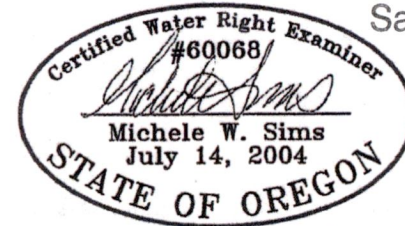
Application Map Water Rights Transfer Three Sisters Irrigation District

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3/15/2019

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Renewal date: 6/30/2020

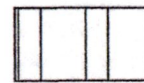
CERTIFICATE 95971 SUPERSEDES 74135



Water off: Certificate 74135 priority date 1895
Permit G11378 and S29312

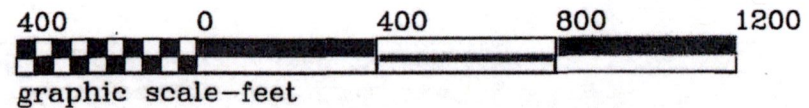


Water on: Certificate 74135 priority date 1895
Permit G11378 and S29312



Water to remain { 23.3 AC NWNE } LEASE
 { 38.7 AC SWNE } INSTREAM
 63 AC total

This map is for the purpose of identifying the location of the water right. It is not intended to provide legal dimensions or locations of property ownership lines.



Section 16
T13S R9E, W.M. Deschutes Co. OR

Michele W. Sims, Consultant, LLC 14865 Checkrein Sisters, OR 97759 541-408-4777

Part 3 of 4 – Place of Use – Lessor Information and Signatures

**Complete Table 1 Identify water right(s) proposed to be leased instream
Provide a separate Part 3 for each Lessor (water right interest holder/landowner)**

Table 1

Irrigation District or other Water Purveyor Name: Three Sisters Irrigation District

Specify Water Right, Priority Date, point of diversion(s) (POD), place of use, tax lot, gov't lot/DLC, acres to be leased, original use type, certificate page number, and any previous lease.

If not enough room below, you may add rows (see instructions) or create a spreadsheet/table (matching Table 1) and attach.

Any attached table should include reference to the Lessor.

Water Right #	Priority Date	POD #	Twp	Rng	Sec	Q-Q	Tax Lot	Gov't Lot/DLC #	Acres	Use	Page #	Previous Lease #
95971	1895	Main	15 S	11 E	04	NE SE	100		2.9	IR	11	IL-2040
95971	1895	Main	15 S	11 E	04	NE SE	100		1.0	IR	11	IL-2040
95971	1895	Main	15 S	11 E	04	NE SE	100		10.09	IR	11	IL-2040
95971	1895	Main	15 S	11 E	04	NW SE	100		30.25	IR	11	IL-2040
95971	1895	Main	15 S	11 E	04	SW SE	100		28.9	IR	11	IL-2040
95971	1895	Main	15 S	11 E	04	SE SE	100		0.6	IR	11	IL-2040

Any additional information about the right: Certificate 95971 supersedes 74135, 73.74 ac lease instream, 41.66 ac remain

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.

The undersigned declare:

1. I/We agree during the term of this lease to suspend use of water allowed under the water right(s) involved in the lease as well as and any other appurtenant primary or supplemental water right(s); and
2. I/We certify are the lessor(s) (water right interest holder) of the water right(s) in Table 1. If not the deeded land owner, I/we have obtained consent from the deeded land owner and/or have provided documentation of authorization to pursue the instream lease; and
3. I/We affirm that the information in this application is true and accurate.

Theodor Eady Date: 3-15-21
Signature of Lessor

Printed name (and title): Theodor Eady Business name, if applicable: _____

Mailing Address (with state and zip): 68795 Quail Tree Dr, Sisters, OR 97759

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

541-425-1446

541-390-1509

Tel @ gold Beach water th. com

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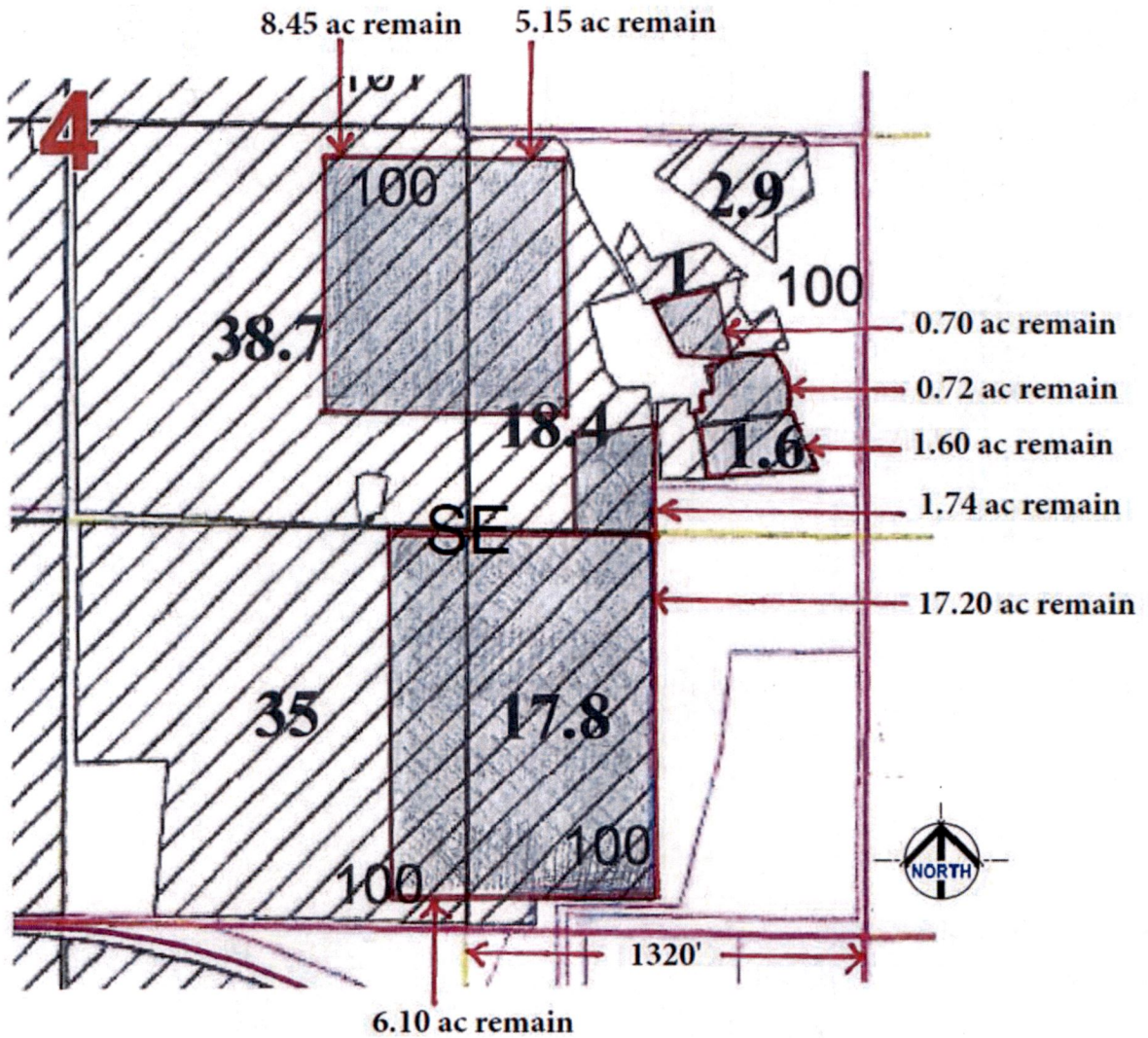
Salem, OR

7/14/2021

T 15 S, R 11 E, Section 04

SE Quarter, Tax Lot 100

Temporary Instream Lease 2024



Qtr-Qtr	Certif. Ac	Ac Remain	Ac Ls Instream
NESE	1.60	1.60	0.00
NESE	2.90	0.00	2.90
NESE	1.00	0.00	1.00
NESE	18.40	8.31	10.09
NWSE	38.70	8.45	30.25
SWSE	35.00	6.10	28.90
SESE	17.80	17.20	0.60
Totals	115.40	41.66	73.74

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Part 3 of 4 – Place of Use – Lessor Information and Signatures

Complete Table 1 Identify water right(s) proposed to be leased instream
Provide a separate Part 3 for each Lessor (water right interest holder/landowner)

Table 1

Irrigation District or other Water Purveyor Name: Three Sisters Irrigation District

Specify Water Right, Priority Date, point of diversion(s) (POD), place of use, tax lot, gov't lot/DLC, acres to be leased, original use type, certificate page number, and any previous lease.

If not enough room below, you may add rows (see instructions) or create a spreadsheet/table (matching Table 1) and attach.

Any attached table should include reference to the Lessor.


Water Right #	Priority Date	POD #	Twp	Rng	Sec	Q-Q	Tax Lot	Gov't Lot/DLC #	Acres	Use	Page #	Previous Lease #
95971	1895	Main	15	S	11	E	8	NE NW 201	8.60	IR	14	IL-1760
95972	1895	Main	15	S	11	E	8	NE NW 201 (202)	0.55	IR	14	IL-1760

Any additional information about the right: Water leased in IL-1760 and irrigation used after lease, TL 202 is now part of TL 201

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.

The undersigned declare:

1. I/We agree during the term of this lease to suspend use of water allowed under the water right(s) involved in the lease as well as and any other appurtenant primary or supplemental water right(s); and
2. I/We certify are the lessor(s) (water right interest holder) of the water right(s) in Table 1. If not the deeded land owner, I/we have obtained consent from the deeded land owner and/or have provided documentation of authorization to pursue the instream lease; and
3. I/We affirm that the information in this application is true and accurate.


 Signature of Lessor

Date: 3/31/2025

Printed name (and title): Kris Olsen, Manager-Owner Business name, if applicable: Tumalo Farms LLC

Mailing Address (with state and zip): 1244 NW Archie Briggs Rd, Bend, OR 97703

Phone number (include area code): _____ **E-mail address: kris@bendbroadband.com

 Signature of Lessor

Date: _____

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

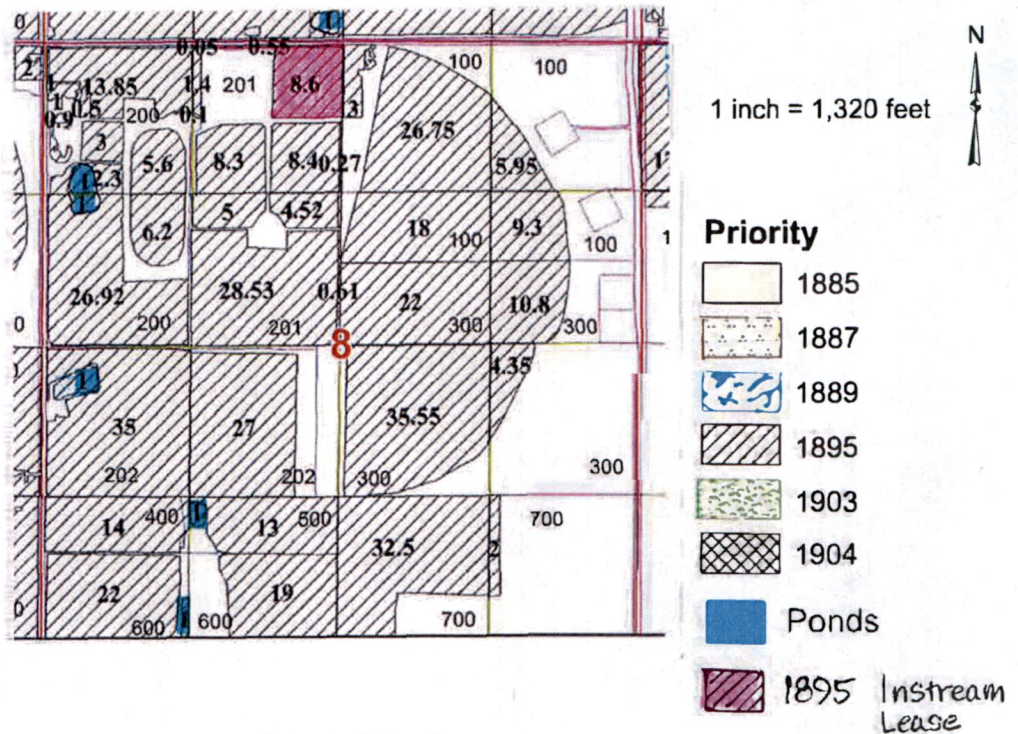
Mailing Address (with state and zip): _____

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Three Sisters Irrigation District
Township 15 South, Range 11 East, W.M.



Primary Irrigation
Certificate 95971

Tumalo Farms I LLC - Instream Lease
Section 8, Tax Lot 201*

0.55 Ac NENW
8.60 Ac NENW
9.15 Ac Total

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*0.55 Ac NENW previously identified as TL 202, now part of TL 201

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Part 4 of 4 – Water Right and Instream Use Information

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Use a separate Part 4 for each water right to be leased instream

Table 2

Use Table 2 to illustrate the totals for the water right proposed to be leased instream (based on Part 3 of 4)					Water Right # <u>95971</u>	
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 rows (see instructions) or create a spreadsheet (matching Table 2 and clearly labeled) and attach. (cfs = cubic feet per second and af = acre-feet)						
Priority Date	POD #	Use	Acre	Other Information (such as conditions/limitations on the right)	Rate (cfs)	Volume (af)
1895	Main	IR	293.89	Max rate of 0.0154 cfs/acre, no max acre-feet	4.116	N/A
1895	Main	Pond	0.5	Max rate of 0.0154 cfs/ac, no max AF	0.007	N/A
Total af from storage, if applicable: _____ AF or <input checked="" type="checkbox"/> N/A						
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 must be described:						

Table 3

Instream Use created by the lease		River Basin: <u>Deschutes</u>		River/Stream Name: <u>Whychus Creek, tributary to Deschutes River</u>		
Proposed Instream Reach: <input checked="" type="checkbox"/> A reach typically begins at the POD and ends at the mouth of the source stream: From the POD <u>TSID Main</u> to <u>Lake Billy Chinook</u>				Or Proposed Instream Point: <input type="checkbox"/> Instream use protected at the POD		
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 water right, the lease may be processed to be protected at the POD.)						
Instream Portion: May not exceed the maximum rate/volume for the right (identified in Table 2) Use the table 3 to illustrate the instream rate, volume and instream period by priority date, POD, Use and acreage, as appropriate. If not enough room below, you may add rows (see instructions) or create a spreadsheet (clearly labeled and matching the below portion of Table 3) and attach.						
Priority date	POD #	Use	Acre	Proposed Instream Period	Instream Rate (cfs)	Total instream volume (af)
1895	Main	IR	293.89	0.0154/ac, Instream 6/15 through 9/30 for MITIGATION (to Madras	4.116	881.67
1895	Main	Pond	0.5	0.0154/Ac Instream 6/15 through 9/30 NOT MP, to Mouth of Deschutes	0.007	1.5
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.						
<input checked="" 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 <u>1895 IR is protected for Mitigation Project, 3.0 AF/ acre</u> Note: The Department may identify additional conditions to prevent injury and/or enlargement.						
Any additional information about the proposed instream use: <u>1895 instream for mitigation (293.89 acres IR, 1895 priority), pond instream but NOT for mitigation</u>						



BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Alison K. Toivola
Partner
(541) 318-9836
alison.toivola@bbklaw.com

January 31, 2025

VIA E-MAIL ONLY:

JEREMY.T.GIFFIN@WATER.OREGON.GOV
ANN.L.REECE@WATER.OREGON.GOV
SARAH.A.HENDERSON@WATER.OREGON.GOV

Jeremy Giffin
Watermaster - District 11
Oregon Water Resources Department
231 SW Scalehouse Loop, Suite 103
Bend, OR 97702

Ann Reece
Sarah A. Henderson
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

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APR 15 2025

Salem, OR

Re: 2025 Water Rights Transfer Applications in the Deschutes Basin

Dear Mr. Giffin, Ms. Reece, and Ms. Henderson:

We represent the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). We write to provide the Department of Water Resources ("Department") with an update on the process for administering water rights transfer applications for the 2025 calendar year.

As you know, the Tribe, the State of Oregon, and the United States are all parties to the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997, as amended ("Settlement Agreement"). The Settlement Agreement requires the three sovereign parties "to meet and describe in the memorandum of understanding the process for determining injury to the Tribal Reserved Water Right." Agmt. at Art. IX, § A. The ability to determine such an injury is a prerequisite to administering water rights transfers¹ in the Deschutes Basin, as "[n]o transfer of a State water right in the Deschutes Basin shall be made *unless the State finds that no injury to the Tribal Reserved Water Right shall result.*" Agmt. at Art. V, § (B) (emphasis added). The Tribe emphasizes that the contractual obligation to make a finding of no injury resides with the State, not the Tribe.

The parties to the Settlement Agreement have not yet developed the process for determining injury to the Tribal Reserved Water Right. In the absence of the injury determination process required by the Settlement Agreement, the Tribe reviewed numerous water rights transfer applications in 2024. During this process, the Tribe expended substantial resources to review certain information concerning water rights transfer applications in the Deschutes Basin. In particular, the Tribe has received and reviewed hundreds of

¹ A "Transfer" means any change in the nature of use, place of use, or point of diversion of a water right." Agmt. at Art. III, § 25.

Jeremy Giffin
Ann Reece
Sarah A. Henderson
January 31, 2025
Page 2

applications from various irrigation districts, including the Central Oregon Irrigation District ("COID"); the Deschutes River Conservancy ("DRC"); the Department of Water Resources ("Department"); and numerous other applicants and entities.

The Tribe's review of the 2024 applications was both time- and resource-intensive. It was also informative. The Tribe has considered the information learned, and has now identified certain categories of applications that present, respectively, a low-risk, medium-risk, and high-risk of injury to Tribal Reserved Water Rights as defined in the Settlement Agreement. Certain factors have been identified as presenting a low risk of injury to the Tribal Reserved Water Right. The Tribe believes that those factors indicating a low risk of injury to the Tribal Reserved Water Right can be used in the upcoming 2025 calendar year to simplify, and expedite, the process for administering said applications.

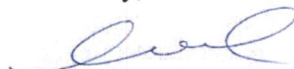
The Tribe has identified the applicable low-risk factors and believes that those factors are adequately represented in the "CTWS Low-Risk Transfer Checklist Requirements" document attached hereto as Exhibit A. In close coordination with COID, the Tribe has approved the attached checklist for use in the upcoming 2025 calendar year as a way to facilitate and expedite the processing of water rights transfer applications within the Deschutes Basin. The Tribe agrees that all transfer applications that fully satisfy this checklist may be processed by the Department without prior Tribal review. Accordingly, the Tribe does not object to the Department processing any applications that are submitted to the Department with a completed and signed checklist. The Department should process such applications in accordance with applicable law, and the Department's customary practice.

The Tribe expressly reserves, and does not waive, all rights, claims, and defenses that it may possess in connection with such applications, including, but not limited to, whether such applications violate the Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat. 963 ("1855 Treaty"), or the Settlement Agreement. To be clear, this letter, and the use of the enclosed checklist, does not remove or absolve the State of Oregon from fulfilling its obligations under the 1855 Treaty and the Settlement Agreement. It is the Tribe's position that the Settlement Agreement requires that the Department affirmatively confirm that each and every water rights transfer application will not injure the Tribal Reserved Water Right or any undetermined vested water right claimed by the Tribe or the United States acting as trustee for the Tribe, including, but not limited to, instream flows necessary to maintain harvestable populations of treaty-protected fish in the Deschutes Basin. The checklist is not a replacement for that affirmative obligation and finding.

We would be happy to meet with the Department to discuss the checklist and proposed process moving forward.

Please let us know if you have any questions.

Sincerely,



Alison K. Toivola
of BEST BEST & KRIEGER LLP

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APR 15 2025

Salem, OR

Jeremy Giffin
Ann Reece
Sarah A. Henderson
January 31, 2025
Page 3

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cc: Robert A. Brunoe
Austin Smith, Jr.
Brad Houslet
Josh Newton, Esq.
David Filippi, Esq.
Jessi Talbott
Mikaela Watson

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Exhibit A

INSTRUCTIONS:

This checklist is intended to facilitate the Department of Water Resources' ("Department") processing of water rights transfer applications within the Deschutes Basin for the 2025 calendar year. The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe") has reviewed this checklist. The Tribe does not object to the Department's processing of any water rights transfer applications that meets a "Yes" of all applicable checklist items, and therefore satisfies the "Meets Requirements" category at the top of this checklist. When the checklist is so satisfied, the Department may process the application in accordance with applicable law, and the Department's customary practice.

Water rights transfer applications that meet all of the checklist criteria appear to present a low risk of injury to the Tribal Reserved Water Right as defined in the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997, as amended. The Tribe does not waive its right to dispute or challenge any transfer application, whether or not they satisfy this checklist, on the basis that the transfer injures the Tribal Reserved Water Right or other federally-reserved water right held by the Tribe. The Tribe expressly reserves, and does not waive, all rights, claims, and defenses that it may possess in connection with the application, including, but not limited to, whether the application violates the Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat. 963, or the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997, as amended.

The Tribe further reserves the right to conduct additional analysis on any transfer that is submitted to the Department with a completed checklist. The Tribe reserves the right to consider, among other things, the risk of localized impacts, cumulative impacts, water quality, return flows, groundwater recharge, Habitat Conservation Plan flow augmentation agreements, water bank transactions, and additional analyses received from the Tribe's staff, Department, applicant, or third party.

A "temporary instream lease" is any instream lease lasting five (5) years or less.

This checklist applies to surface water transfers only. This checklist does not apply to groundwater transfers.

If you have any questions about this checklist, please contact:

Gen Hubert, Deschutes River Conservancy or Emilia Ellington, Three Sisters Irrigation District (TSID), on behalf of TSID-Landowners, via e-mail at:
office@tsidweb.org
gen@deschutesriver.org

Alison K. Toivola or Josh Newton of Best Best & Krieger, LLP, on behalf of the Tribe, via e-mail at:
Alison.Toivola@bbklaw.com
Josh.Newton@bbklaw.com

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APR 15 2025

1 of 2

Salem, OR

CTWS Low-Risk Transfer Checklist Requirements

Patron Name/Applicant Name : Three Sisters I.D. - Sisters

Meets Requirements: ☐

Transfer Type: Instream Lease for mitigation ⁺

Does Not Meet Requirements: ☒

Transfer #: TSID -Pooled 2025-02

Review Date:

Checklist Completed By: G Hubert

Water Right Transfer - Check Applicable Transfer Type

Own Lands Transfer ☐

Water Right Sale ☐

	YES	NO	Comments:
Transfer Within Same District Boundary	<input type="checkbox"/>	<input type="checkbox"/>	
On/Off Lands Balance	<input type="checkbox"/>	<input type="checkbox"/>	
On/Off Lands Within Five (5) Miles	<input type="checkbox"/>	<input type="checkbox"/>	
No Increase in Diversion Amount	<input type="checkbox"/>	<input type="checkbox"/>	
No Change in Type of use	<input type="checkbox"/>	<input type="checkbox"/>	
No Change in Point of Diversion or Appropriation	<input type="checkbox"/>	<input type="checkbox"/>	
On/Off Lands Served by Same Canal	<input type="checkbox"/>	<input type="checkbox"/>	Identify Canal: TSID Main Canal
NOT a Multi-Step Transfer	<input type="checkbox"/>	<input type="checkbox"/>	
NOT a Mitigation Credit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Temporary Instream Lease	YES	NO	Comments:
Decrease in Diversion - Increased River Flows	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Transfer of Surface Water ONLY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	instream lease for mitigation
No Potential for Measurable Impact to Crooked River	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
No Potential for Measurable Impact to Whychus Creek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	instream lease for mitigation
No Potential for Measurable Impact to Deschutes River	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Summary of Transfer:

This is an instream lease (1-year) for mitigation credit. Temporary mitigation is provided at 2:1 ratio with an additional ac instream for each ac of mitigation used. This lease is 294.39 ac lease. Water is protected 6/15-9/30 with 1895 priority. Protected from TSID's diversion to Lake Billy Chinook. Most ac previously leased in IL-2040, 2024.

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APR 15 2025

Salem, OR



Alison K. Toivola
Partner
(541) 318-9836
alison.toivola@bbklaw.com

April 15, 2025

VIA E-MAIL ONLY: GEN@DESCHUTESRIVER.ORG

Genevieve Hubert
Senior Program Manager
Deschutes River Conservancy
700 NW Hill St., Suite 1
Bend, OR 97703

Re: Three Sisters Irrigation District Instream Lease Applications

Dear Ms. Hubert:

We represent the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). Deschutes River Conservancy ("DRC"), on behalf of the Three Sisters Irrigation District ("TSID"), has provided the Tribe with certain information concerning three proposed instream leases on behalf of TSID, identified in Appendix A, Appendix B, and Appendix C hereto (collectively, the "Leases").

The Tribe has reviewed the information about the Leases provided by DRC. The Tribe is relying in good faith upon the information provided by DRC. Based on that information, the Tribe does not object to the Department of Water Resources ("Department") processing the Leases in accordance with applicable law, and the Department's customary practice. The Tribe, however, expressly reserves, and does not waive, all rights, claims, and defenses that it may possess in connection with the Leases, including, but not limited to, whether the Leases violate the Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat. 963, or the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997, as amended.

Please let us know if you have any questions.

Sincerely,

Alison K. Toivola
of BEST BEST & KRIEGER LLP

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APR 15 2025

Salem, OR

Genevieve Hubert
April 15, 2025
Page 2

AKT

cc: Robert A. Brunoe
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Jeremy Giffin, Oregon Water Resources Department
Oregon Water Resources Department (wrd_dl_transfer_district@water.oregon.gov)

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