Application for

District Instream Lease

Part 1 of 4 – Minimum Requirements Checklist

OREGON WATER RESOURCES DEPARTMENT

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-2114
	District #	_____

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

Fee in the amount of:

☐ $610.00 for a lease involving **four or more landowners or four or more water rights**	Or ☒ $410.00 for all other leases
☒ Check enclosed or ☐ Fee Charged to customer account _____ ***(Account name)***	

☐ 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?** 1 (# of rights)
List each water right to be leased instream here:95488

☒ 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: 72279, primary adjacent acres, 72281 supplemental

☐ 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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Part 2 of 4 – District and other party Signature

Term of the Lease:
The lease is requested to begin in: **month** April **year** 2025 and end: **month** October **year** 2025.

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 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.
☐ 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:

- ☒ 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 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.

Josh Bailey Date: 3/14/25
Signature of Co-Lessor

Printed name (and title): Josh Bailey, General Manager
Business/Organization name: North Unit Irrigation District
Mailing Address (with state and zip): 2024 NW Beech St., Madras, OR 97741
Phone number (include area code): 541-475-3625 **E-mail address: Jturek@northunitid.com

Lisa Clark Digitally signed by Lisa Clark Date: 2025.03.18 16:07:30 -07'00' Date: _____
Signature of Co-Lessor

Printed name (and title): Lisa Clark, BLM, Field Manager Deschutes Field Office
Business/organization name: Bureau of Land Management, Prineville District
Mailing Address (with state and zip): 3050 NE 3rd St., Prineville, OR 97754
Phone number (include area code): 5414166700**E-mail address: lmclark@blm.gov

See next page for additional signatures.

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Genevieve Hubert Date: 03/13/2025

Signature of Lessee

Printed name (and title): Genevieve Hubert, Senior Program Manager Business/organization name: Deschutes River Conservancy

Mailing Address (with state and zip): 805 SW Industrial Way, Ste 5, 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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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: North Unit 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 #
95488	9/18/1968		12	S	12	E	27	NE	NE	100		0.3	IR	12	
95488	9/18/1968		12	S	12	E	27	SE	NE	100		0.6	IR	12	
95488	9/18/1968		12	S	12	E	27	SW	NE	100		1.8	IR	12	

Any additional information about the right: 2.7 acres total in lease. Supplemental irrigation right is not leased

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.

_____ Date: 4/25/25
Signature of Lessor

Printed name (and title): Lisa Clark, Field Manager
Business name, if applicable: Bureau of Land Management
Mailing Address (with state and zip): 3050 NE 3rd Street, Prineville, OR 97754
Phone number (include area code): 541-416-6700 **E-mail address: ____

_____ Date: ____
Signature of Lessor

Printed name (and title): ____ Business name, if applicable: ____
Mailing Address (with state and zip): ____
Phone number (include area code): ____ **E-mail address: ____

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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 # 95488**

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	Acres	Other Information (such as conditions/limitations on the right)	Rate (cfs)	Volume (af)
09/18/1968	2	IR	2.7	Max Rate (0.026 cfs/ac) & Total Max Volume (4.0 AF/Ac)	0.071	10.8

Total af from storage, if applicable: _____ AF or ☒ 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: POD 2

Table 3

Instream Use created by the lease	**River Basin:** Deschutes	**River/Stream Name:** Crooked River, tributary to Deschutes River
Proposed Instream Reach: ☒ A reach typically begins at the POD and ends at the mouth of the source stream: From the POD 2 to Lake Billy Chinook		**Or Proposed Instream Point:** ☐ Instream use protected at the POD

OR ☐ 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	Acres	Proposed Instream Period	Instream Rate (cfs)	Total instream volume (af)
09/18/1968	2	IR	2.7	April 15-Oct 15 Rate, Max volume (1.0 AF/Ac)	.0074	2.7

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OR ☐ 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.

☒ Yes ☐ N/A **Conditions to avoid enlargement or injury to other water rights, if any, or other limitations:** list here Instream flow allocated on daily average basis up to the described rate from April 15 - October 15

Note: The Department may identify additional conditions to prevent injury and/or enlargement.

Any additional information about the proposed instream use: ____

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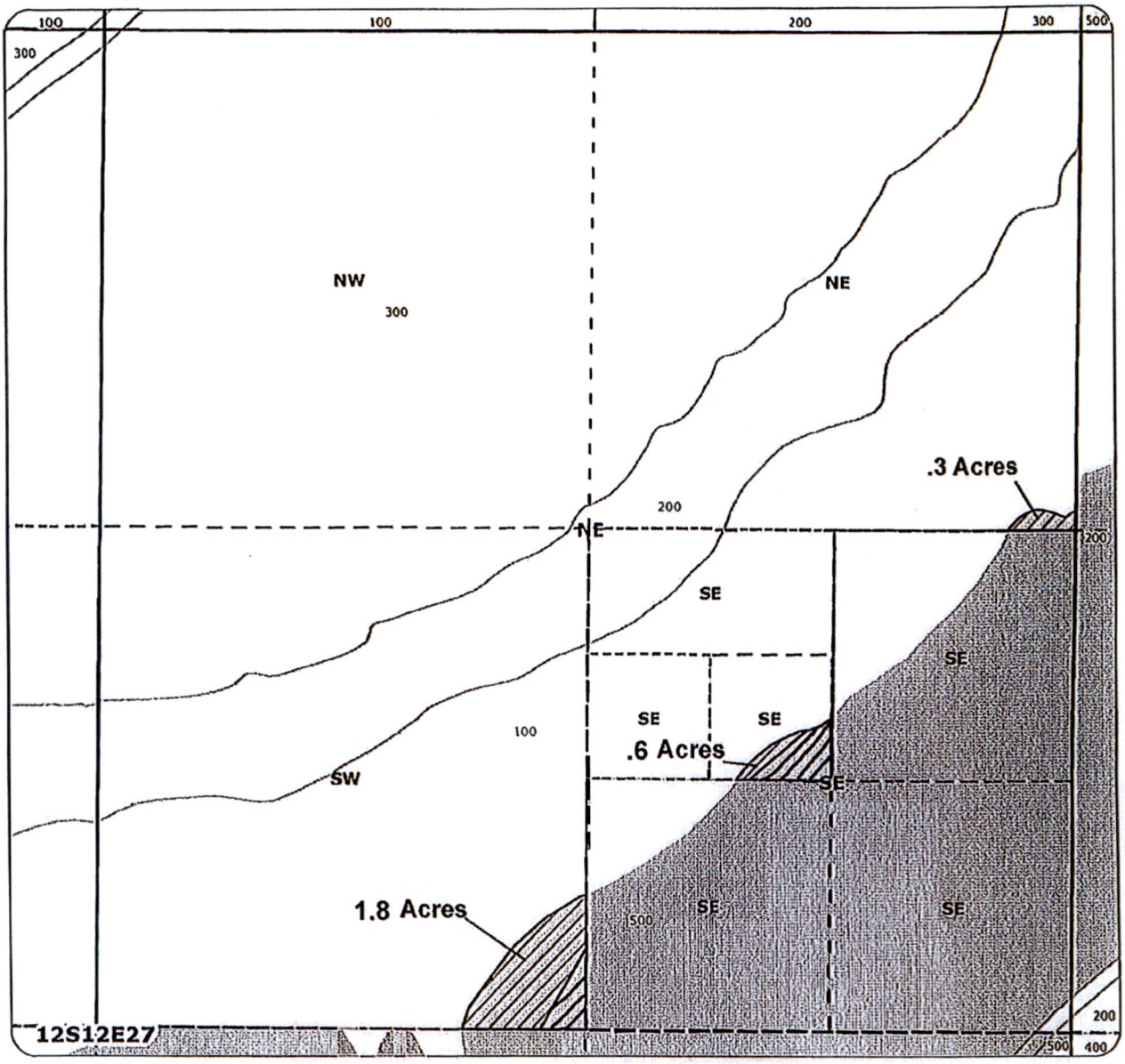
2025 North Unit Irrigation District Instream Lease Map



Application for 1-year Instream Lease
Primary: Certificate 95488

Proposed Lease of Irrigation Rights

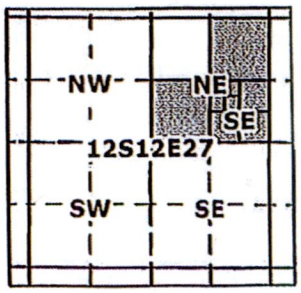
Certificate 72283

Certificate 72279

For: Bureau of Land Management
Taxlot 100 - .3 Acres
in 12S12E27NENE
Taxlot 100 - .6 Acres
in 12S12E27SENE
Taxlot 100 - 1.8 Acres
in 12S12E27SWNE

Total Lease of 2.7 Acres

Date Created: March 2025



N

1 inch = 400 feet

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BBK
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ATTORNEYS AT LAW

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January 31, 2025

VIA E-MAIL ONLY:
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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

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

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 transfers[1] 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.

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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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:

Julia Turek, on behalf of North Unit Irrigation District, or Gen Hubert at the Deschutes River Conservancy via e-mail at:
jturek@northunitid.com
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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CTWS Low-Risk Transfer Checklist Requirements

Patron Name/Applicant Name : North Unit ID, BLM
Transfer Type: 1 year Instream Lease
Transfer #:
Review Date: 4/28/2025

Meets Requirements: ✓
Does Not Meet Requirements: ☐

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	☐	☐	
On/Off Lands Balance	☐	☐	
On/Off Lands Within Five (5) Miles	☐	☐	
No Increase in Diversion Amount	☐	☐	
No Change in Type of use	☐	☐	
No Change in Point of Diversion or Appropriation	☐	☐	
On/Off Lands Served by Same Canal	✓	☐	**Identify Canal:** NUID Crooked (pumps)
NOT a Multi-Step Transfer	☐	☐	
NOT a Mitigation Credit	✓	☐	

Temporary Instream Lease	**YES**	**NO**	**Comments:**
Decrease in Diversion - Increased River Flows	✓	☐	
Transfer of Surface Water ONLY	✓	☐	
No Potential for Measurable Impact to Crooked River	✓	☐	Instream Lease Crooked River
No Potential for Measurable Impact to Whychus Creek	✓	☐	
No Potential for Measurable Impact to Deschutes River	✓	☐	

Summary of Transfer:

Instream lease of 2.7 acres of North Unit Irrigation District and Bureau of Land Management irrigation water. Lease is at the on-farm rate for NUID Crooked River water at 1 af/ac and is for one year only. No mitigation association with this lease. Water to be protected at the NUID pumps and through reach to Lake Billy Chinook.

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