

# Instream Lease Renewal Application (Standard or District)



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

Complete the questions below and include any required attachments  
Fill in or check boxes as indicated. (N/A= Not Applicable)

Instream Lease IL- 1837  
Renewal Fee included ☒

The undersigned hereby request Instream Lease Number IL-1837 be renewed.

Fees: ☒ \$150.00 for an instream lease renewal application  
☐ Check enclosed or ☒ Fee Charged to customer account Deschutes River Cons (Account name)

## Term of the Lease:

The lease is requested to begin in month November year 2025 and end month March year 2030

## Validity of the Right(s)

(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.
- ☐ If the water right(s) have not been used for the last five years, right(s). Documentation describing why the water right(s) is not subject to forfeiture is provided. ORS 540.610(2).

## Termination provision (for multiyear leases):

The parties to the lease request:

- ☒ 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)

☐ 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: \_\_\_\_\_)?

## 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 holders of the water right(s) involved in this Instream Lease. If not the deeded land owner, I/we have provided documentation demonstrating authorization to pursue the lease application and/or consent from the deeded landowner; and
3. All parties affirm that information provided in this lease application is true and accurate. Circumstances have not changed and all matters involved with or affected by the original instream lease remain as they were when the lease was previously approved. We also acknowledge that the terms and conditions of the original lease, referenced herein, are incorporated by reference in their entirety.

Josh Bailey  
Signature of Lessor

Date: 5/6/25

Printed name (and title): Josh Bailey, General Manager  
Irrigation District

Business name, if applicable: North Unit

Mailing Address (with state and zip): 2024 NW Beech St., Madras, OR 97741

Phone number (include area code): 541-475-3625 \*\*E-mail address: iturek@northunitid.com

See next page for additional signatures.

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\_\_\_\_\_  
Signature of Co-Lessor Date: \_\_\_\_\_

Printed name (and title): \_\_\_\_\_

District/organization name: \_\_\_\_\_

Mailing Address (with state and zip): \_\_\_\_\_

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


\_\_\_\_\_  
Signature of Co-Lessor Date: \_\_\_\_\_

Printed name (and title): \_\_\_\_\_

Business/organization name: \_\_\_\_\_

Mailing Address (with state and zip): \_\_\_\_\_

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



Date: 05/06/2025

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, Suite 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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## 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](mailto:jturek@northunitid.com)

[gen@deschutesriver.org](mailto: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](mailto:Alison.Toivola@bbklaw.com)

[Josh.Newton@bbklaw.com](mailto:Josh.Newton@bbklaw.com)

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## CTWS Low-Risk Transfer Checklist Requirements

Patron Name/Applicant Name : North Unit ID

Transfer Type: 5 yr winter lease renewal

Transfer #: Instream Lease IL-1837

Review Date: 5/6/2025

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	<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: NUID Main (Deschutes)
NOT a Multi-Step Transfer	<input type="checkbox"/>	<input type="checkbox"/>	
NOT a Mitigation Credit	<input checked="" type="checkbox"/>	<input 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"/>	
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"/>	
No Potential for Measurable Impact to Deschutes River	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Winter lease Fall 2025-Spring 2030

### Summary of Transfer:

This project is associated with an NUID conserved water project CW-102, completed 5 years ago. The final order condition for the project was that the state's portion of the conserved water is to be leased instream in perpetuity (Upper Deschutes, Wickiup releases) until such time that it can be permanently transferred instream. Copy of original state IL-1837 final order is attached for reference.

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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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**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<sup>1</sup> 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

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<sup>1</sup> 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  
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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.

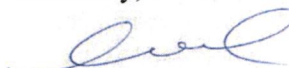
The Tribe has identified the applicable low-risk factors and believes that those factors are adequately represented in the "CTWS Low-Risk Transfer Checklist Requirements" document attached hereto as Exhibit A. In close coordination with COID, the Tribe has approved the attached checklist for use in the 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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