

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 #

1L-2115/MP-336

Fee-

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

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

MITIGATION PROJECT

☒ Yes

Part 1 – Completed Minimum Requirements Checklist and Application Fee

Fees

☐ \$610.00 for a lease involving **four or more landowners or four or more water rights**

☒ \$410.00 for all other leases

☐ Check enclosed or

☒ Fee Charged to customer account Deschutes River Conservancy (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**

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☒ Yes

Part 4 – Completed Instream Lease Provisions and Signatures

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☒ Yes

How many water rights are leased? 1 List them here: 95746

Salem, OR

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.

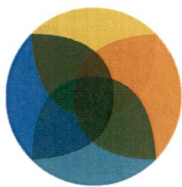
- A notarized statement from the landowner consenting to the lease and a copy of the recorded deed; or.
- A water right conveyance agreement and a copy of the recorded deed for the landowner at the time the water right was conveyed; or
- Other documentation which provides authority to pursue the lease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

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Appendix A



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BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

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

May 6, 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: Wanek Ranch, LLC Instream Lease Application and Mitigation Project

Dear Ms. Hubert:

We represent the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). Deschutes River Conservancy ("DRC") has provided the Tribe with certain information concerning the instream lease application and mitigation project on behalf of Wanek Ranch, LLC, identified in Appendix A, hereto (the "Application").

The Tribe has reviewed the information about the Application 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 Application 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 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.

Please let us know if you have any questions.

Sincerely,

Alison K. Toivola
of BEST BEST & KRIEGER LLP

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Genevieve Hubert
May 6, 2025
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AKT

cc: Robert A. Brunoe
Austin Smith, Jr.
Brad Houslet
Josh Newton
Jeremy Giffin, Oregon Water Resources Department
Oregon Water Resources Department (wrd_dl_transfer_district@water.oregon.gov)

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Part 2 of 4 – Instream Lease Application Map Checklist

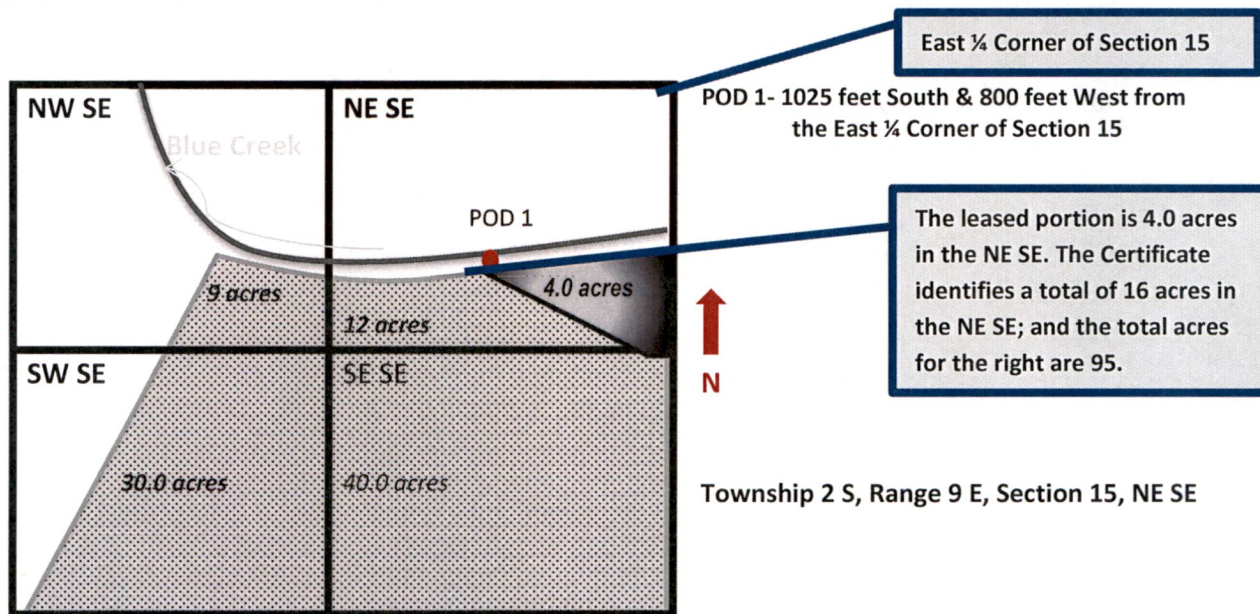
A Map is generally required for each water right not leased in its entirety

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 hatchured 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 hatchuring 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 # **95746**

Table 1

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

<input checked="" type="checkbox"/> If only leasing a portion of the right - complete Table 1 as indicated						<input type="checkbox"/> 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
1897		22-S	10-E	22	SE-NE	101		12.3	IR	2044+
1897		22-S	10-E	22	NE-SE	101		17.8	IR	2044+
1897		22-S	10-E	22	SW-SE	109		0.8	IR	1742+
1897		22-S	10-E	22	SW-SE	101		1.9	IR	1742+
1897		22-S	10-E	22	SE-SE	109		0.3	IR	1742+
1897		22-S	10-E	22	SE-SE	101		15.3	IR	1742/2044+
1897		22-S	10-E	23	NW-SW	2400		1.0	IR	2044
1897		22-S	10-E	27	NE-NE	102		5.1	IR	1742+
1897		22-S	10-E	27	NE-NE	103		2.7	IR	1742+
1897		22-S	10-E	27	NW-NE	102		6.2	IR	1742+
1897		22-S	10-E	27	NW-NE	103		5.8	IR	1742+
1897		22-S	10-E	27	SW-NE	103		4.0	IR	1742+
1897		22-S	10-E	27	SW-NE	104		18.9	IR	1742+
1897		22-S	10-E	27	SW-NE	108		6.3	IR	1742+
1897		22-S	10-E	27	SE-NE	103		1.2	IR	1742+
1897		22-S	10-E	27	SE-NE	104		1.5	IR	1742+
1897		22-S	10-E	27	NW-SE	108		9.5	IR	1742+
1897		22-S	10-E	27	NW-SE	105		7.1	IR	1742+
1902		22-S	10-E	22	SW-NE	101		37.3	IR	2044+
1902		22-S	10-E	22	SE-NE	101		1.0	IR	2044
1902		22-S	10-E	22	NW-SE	101		35.5	IR	2044
1902		22-S	10-E	22	SW-SE	101		26.6	IR	2044
		-	-		-					

Total Acres: IR-1897 - 117.7 ac, 1902 - 100.4 ac (218.1 acres total). Most water was previously leased in IL-1742 and IL-2044, the + next to the lease number indicates some water included in this lease was not previously leased because it was sub-irrigated by a ditch. That ditch is now dry and the area is not sub-irrigated (as of 2024, photos available). Transfer T-14309 / MP-311 affects the rest of the landowner's acres not being leased in this lease.

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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)
1897		IR	117.7	MAX 4 AF/Ac, 1/40 th cfs per ac	2.943	470.8
1897		IR		1/80 th cfs per ac	1.471	
4/30/1902		IR	100.4	MAX 4 AF/Ac, 1/40 th cfs per ac	2.51	401.6
4/30/1902		IR		1/80 th cfs per ac	1.255	
Total af from storage, if applicable: ____ AF or <input checked="" type="checkbox"/> N/A						
Any additional information about the right: Max rate: 4/1-5/23 & 8/20-11/1 = 1/80 th cfs per ac, 5/23-8/20 = 1/40 th per ac						

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")
	25-S	9-E	34	SW-SW		550 Feet N and 1150 Feet E from the SW corner of Section 34
	-	-		-		
<input type="checkbox"/> Please check this box if you don't know the location of the POD(s) and want the Department to identify the location of the POD(s) for the purpose of the instream lease.						

Part 3 of 4 cont. – Water Right and Instream Use Information

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Instream Use Information

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Table 4

Instream Use Created by the Lease						Salem, OR
River/ Stream Name: <u>Little Deschutes</u> , tributary to <u>Deschutes</u>				River Basin: <u>Deschutes</u>		
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.						
If not enough room below, you may add additional rows (see instructions) or attach a spreadsheet (matching the below portion of Table 4). Please clearly label any attachments.						
Priority date	POD #	Use	Acres	Proposed Instream Period	Total instream rate (cfs)	Total instream volume (af)
1897		IR	117.7	4/1-5/23	0.600	61.88
1897		IR		5/23-8/20	1.831	323.22
1897		IR		8/20-10/31	0.600	85.69
1902		IR	100.4	4/1-5/23	0.450	46.41
1902		IR		5/23-8/20	1.648	290.92
1902		IR		8/20-10/31	0.450	64.26
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						

<p>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>	
<p>Instream Reach</p>	
<p>Proposed Instream Reach:</p> <p><input checked="" type="checkbox"/> A reach typically begins at the point of diversion (POD) and ends at the mouth of the source stream: From the POD to <u>Lake Billy Chinook</u></p>	<p>Or Proposed Instream Point:</p> <p><input 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>	
<p>Additional Instream Information</p>	
<p><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>rates adjusted to not exceed duty limit</u></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>Leased as a Mitigation Project</u></p>	

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Part 4 of 4 – Lease Provisions and Party Signatures

Term of the Lease (may be from 1 year up to 5 years): The lease is requested to begin in: <u>month April year 2025</u> and end: <u>month Oct year 2025</u> 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): <input checked="" type="checkbox"/> Conservation, maintenance and enhancement of aquatic, fish and wildlife, fish and wildlife habitat and any other ecological values. <input checked="" 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, 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. <input type="checkbox"/> And attach an explanation of your intent.	
Validity of the Right(s) to be leased (check the appropriate box): <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 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.

Wendy W. Potok
 Signature of Lessor

Date: 4-10-25

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 MAY 06 2025

Printed name (and title): Wendy Potok

Business name, if applicable: Wanek Ranch, LLC

Salem, OR

Mailing Address (with state and zip): P.O. Box 1098, La Pine, OR 97739

Phone number (include area code): 541-536-6055 **E-mail address: artla@yahoo.com

See next page for additional signatures.

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: 04/11/2025

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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Wanek Ranches Lease Calculations

Max Rate/Duty		Max 4 AF/Ac			
Priority	Acres	Rate/Ac	Rate/Ac	Rate	AF
1897	117.7	1/40th	0.025	2.943	
	117.7	1/80th	0.0125	1.471	470.8
1902	100.4	1/40th	0.025	2.510	
	100.4	1/80th	0.0125	1.255	401.6

Instream					(1.983471)
Priority	Dates		Days	Rate	AF
1897	1-Apr	23-May	52	0.600	61.8843
	23-May	20-Aug	89	1.831	323.2245
	20-Aug	31-Oct	72	0.600	85.68595
					470.7947
1902	1-Apr	23-May	52	0.450	46.41322
	23-May	20-Aug	89	1.648	290.9197
	20-Aug	31-Oct	72	0.450	64.26446
					401.5973

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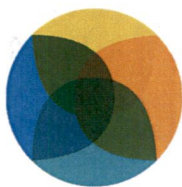
Salem, OR

T-14309		Instream IL											
Township	Range	Section	Taxlot	Priority	Q	Q	From Acres	Acres to Remain	Total	Total by QQ/Priority	Prior Lease	Previously Sub-Irr Ac	
22.00S	10.00E	22	101	1897	SE	NE	16.5	12.3	28.8	28.8	2044	6.1	ditch
22.00S	10.00E	22	101	1897	NE	SE	20.9	17.8	38.7	38.7	2044	8.7	ditch/bulge
22.00S	10.00E	22	109	1897	SW	SE	1.0	0.8	1.8		1742	0.1	bulge
22.00S	10.00E	22	101	1897	SW	SE	1.4	1.9	3.3	5.1	1742	0.4	bulge
22.00S	10.00E	22	109	1897	SE	SE	0.6	0.3	0.9		1742	0.3	bulge
22.00S	10.00E	22	101	1897	SE	SE	5.0	15.3	20.3	21.2	1742/2044	15.3	bulge
22.00S	10.00E	23	2400	1897	NW	SW	0.0	1.0	1.0		2044	0	all leased
22.00S	10.00E	23	2401	1897	NW	SW	8.1	0.0	8.1	9.1	2044	0	all leased
22.00S	10.00E	23	2401	1897	SW	SW	4.8	0.0	4.8	4.8	2044	0	all leased
22.00S	10.00E	27	102	1897	NE	NE	3.8	5.1	8.9		1742	5.1	ditch
22.00S	10.00E	27	103	1897	NE	NE	3.6	2.7	6.3	15.2	1742	2.7	ditch
22.00S	10.00E	27	102	1897	NW	NE	15.6	6.2	21.8		1742	1.2	ditch
22.00S	10.00E	27	103	1897	NW	NE	9.2	5.8	15.0	36.8	1742	1	ditch
22.00S	10.00E	27	103	1897	SW	NE	4.2	4.0	8.2		1742	0.7	ditch
22.00S	10.00E	27	104	1897	SW	NE	4.4	18.9	23.3		1742	4.8	ditch
22.00S	10.00E	27	108	1897	SW	NE	1.8	6.3	8.1	39.6	1742	2.1	ditch
22.00S	10.00E	27	103	1897	SE	NE	3.0	1.2	4.2		1742	1.2	ditch
22.00S	10.00E	27	104	1897	SE	NE	7.4	1.5	8.9		1742	1.5	ditch
22.00S	10.00E	27	108	1897	SE	NE	3.9	0.0	3.9	17.0	1742	0	all leased
22.00S	10.00E	27	108	1897	NE	SE	5.4	0.0	5.4		1742	0	all leased
22.00S	10.00E	27	105	1897	NE	SE	0.3	0.0	0.3	5.7	1742	0	all leased
22.00S	10.00E	27	108	1897	NW	SE	6.4	9.5	15.9		1742	5.4	ditch
22.00S	10.00E	27	105	1897	NW	SE	11.2	7.1	18.3	34.2	1742	5.8	ditch
22.00S	10.00E	22	101	1902	SW	NE	0.1	37.3	37.4	37.4	2044	0	ditch/bulge
22.00S	10.00E	22	101	1902	SE	NE	0.0	1.0	1.0	1.0	2044	0	all leased
22.00S	10.00E	22	101	1902	NW	SE	3.8	35.5	39.3	39.3	2044	0	all leased
22.00S	10.00E	22	101	1902	SW	SE	7.6	26.6	34.2	34.2	2044	5.7	ditch/bulge
Total:							150.0	218.1	368.1	368.1		68.1	
								↓					
								1897	117.7				
								1902	100.4				

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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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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
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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.

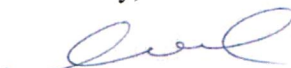
The Tribe has identified the applicable low-risk factors and believes that those factors are adequately represented in the "CTWS Low-Risk Transfer Checklist Requirements" document attached hereto as Exhibit A. In close coordination with COID, the Tribe has approved the attached checklist for use in the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

Jeremy Giffin
Ann Reece
Sarah A. Henderson
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AKT

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:

Genevieve Hubert, Deschutes River Conservancy, on behalf of Wanek Ranches, via e-mail at:
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 : Wanek Rnch Lease 25-01

Meets Requirements: ☐

Transfer Type: Instream lease for Mitigation

Does Not Meet Requirements: ☒

Transfer #:

Review Date:

Checklist Completed By: Gen 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: LaPine Coop Water Assn
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"/>	Lease includes mitigation project
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"/>	Lease includes mitigation project

Summary of Transfer:

This is a lease of water that was reviewed and leased for mitigation in 2024 under IL-1742 and IL-2044. Annual instream leases create temporary mitigation. Temporary mitigation must hold an additional acre instream for each acre of mitigation used (2:1). Canal diversion point is south of LaPine, about 4.5 mi. North of Gilchrist. Water is protected to Lake Billy Chinook.

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