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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

Received by OWRD
May 28, 2025
Salem, OR

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 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.

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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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AKT

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

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 (DRC), Alex Ehrens (DRC), or Russell Rhoden on behalf of Ochoco Irrigation District, via e-mail at:

gen@deschutesriver.org or alex@deschutesriver.org
russell@ochocoid.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

Received by OWRD
May 28, 2025
Salem, OR

CTWS Low-Risk Transfer Checklist Requirements

Patron Name/Applicant Name :

Meets Requirements:

Transfer Type:

Does Not Meet Requirements:

Transfer #:

Review Date:

Checklist Completed By:

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:
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			
No Potential for Measurable Impact to Whychus Creek			
No Potential for Measurable Impact to Deschutes River			

Summary of Transfer:

Received by OWRD
May 28, 2025
Salem, OR

2025

Deschutes River Conservancy – Ochoco Irrigation District Lease Survey

Must be completed, signed and returned with instream lease forms.

H.R. 2640, the “Crooked River Collaborative Water Security and Jobs Act of 2014” was enacted on December 18, 2014. Among other changes, this Act allows Ochoco Irrigation District (OID) more flexibility in how it participates in the instream leasing program, such as leasing for multiple years or for groundwater mitigation. This survey is to help the Deschutes River Conservancy (DRC) and OID understand how the landowner/lessor would like to participate in the instream lease program.

Landowner / Lessor:

Ochoco Irrigation District
1001 N Deer Street
Prineville, OR 97754

Received by OWRD
May 28, 2025
Salem, OR

Acres to Lease: 96.6 acres

Number of tax lots: 1 tax lot

Map cost estimate: \$0.00

Potential map charge to lessor - lessor may be invoiced by Ochoco Irrigation District: \$0

Lease payment through District to landowner or quitclaim lessor (\$45 per acre): \$45 x 96.6 ac = \$4,347.00
\$45 per acre is the average water year (2025) price for instream leasing in Ochoco Irrigation District for leases of 5 acres or more. The price is \$60 per acre in dry or drought years. District quitclaim and public entities will be paid per acre based on available funding from mitigation and the HCP fund. Ochoco Irrigation District Landowners can lease the same duty as the District allows for on-farm use. If the duty for on-farm is reduced due to lack of supply, the lease duty is reduced proportionally. DRC pays for acres (leases 5 acres or more) approved with final order by the state. If fewer acres/ acre-feet are approved, payment will be adjusted. **Water must be allowed to be leased to create mitigation credit (more details below) to receive payment. DRC pays for map and state fee costs when lease is returned to DRC by annual deadline (no later than May 23, 2025).**

Water leased instream might create groundwater mitigation credits under OAR Chapter 690; Division 515 for the DRC mitigation bank. These credits may be used by a small farmer or local business who is required to mitigate for their groundwater use. Leasing to create mitigation protects water instream, **is counted as a beneficial use of your water right** and does not affect ownership or future use of your water. _____ **YES**, I understand that the lease of my water might be used to create mitigation credits.

Instream leases can be for a duration of 1 to 5 years, with an opportunity for the landowner or OID to cancel your lease before March 1st of each year. OID might allow certain lessors to sign up to lease instream for multiple years. Would you be interested in leasing your water instream for:

X **1 year (2025)**

***Ochoco ID is currently allowing lease for one year at a time.**

Lessor Signature(s):



Date:

5/19/2025

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 -2123/MP-338
	District #	

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

Fee in the amount of:

<input type="checkbox"/> \$610.00 for a lease involving four or more landowners or four or more water rights	Or <input checked="" type="checkbox"/> \$410.00 for all other leases
<input type="checkbox"/> Check enclosed <u>or</u> <input checked="" type="checkbox"/> Fee Charged to customer account <u>Deschutes River Conservancy</u> (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: 82247

☐ 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.

MITIGATION PROJECT

Received by OWRD
May 28, 2025
Salem, OR

Part 2 of 4 – District and other party Signature

Term of the Lease: The lease is requested to begin in: <u>month April year 2025</u> and end: <u>month October year 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 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 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: 5/19/2025

Printed name (and title): Bruce Scanlon, District Manager

Business/Organization name: Ochoco Irrigation District

Mailing Address (with state and zip): 1001 NW Deer Street, Prineville, OR 97754

Phone number (include area code): 541-447-6449 **E-mail address: windyoid@bendbroadband.com

Signature of Co-Lessor

Date: _____

Printed name (and title): _____

Business/organization name: US Bureau of Reclamation

Mailing Address (with state and zip): 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706-1234

Phone number (include area code): _____ **E-mail address: Weidinger, David M <dweidinger@usbr.gov>

See next page for additional signatures.



Date: 05/20/25

Signature of Lessee

Printed name (and title): Gen 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**

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: Ochoco 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 #
82247	4/8/1914	2	14	S	15	E	26	SW	NE	601		21.9	IR	8	2052
82247	4/8/1914	2	14	S	15	E	26	NW	SE	601		23.2	IR	9	2052
82247	4/8/1914	2	14	S	15	E	26	NE	SE	601		30.7	IR	9	2052
82247	4/8/1914	2 & 32	14	S	15	E	26	NE	SE	601		0.8	IR	9	2052
82247	4/8/1914	2	14	S	15	E	26	SW	SE	601		3.3	IR	9	2052
82247	4/8/1914	2	14	S	15	E	26	SE	SE	601		4.1	IR	9	2052
82247	4/8/1914	2 & 32	14	S	15	E	26	SE	SE	601		12.6	IR	9	2052

Any additional information about the right: 96.6 total acres leased instream . 13.4 ac POD 2 & 32, 83.2 ac POD 2. T-12813 and T14532 permanently remove acres. Temp transfer also removes 2.5 acres in 2025. Leased in IL-1810 & IL-2052. Quitclaim previously 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.


 Signature of Lessor

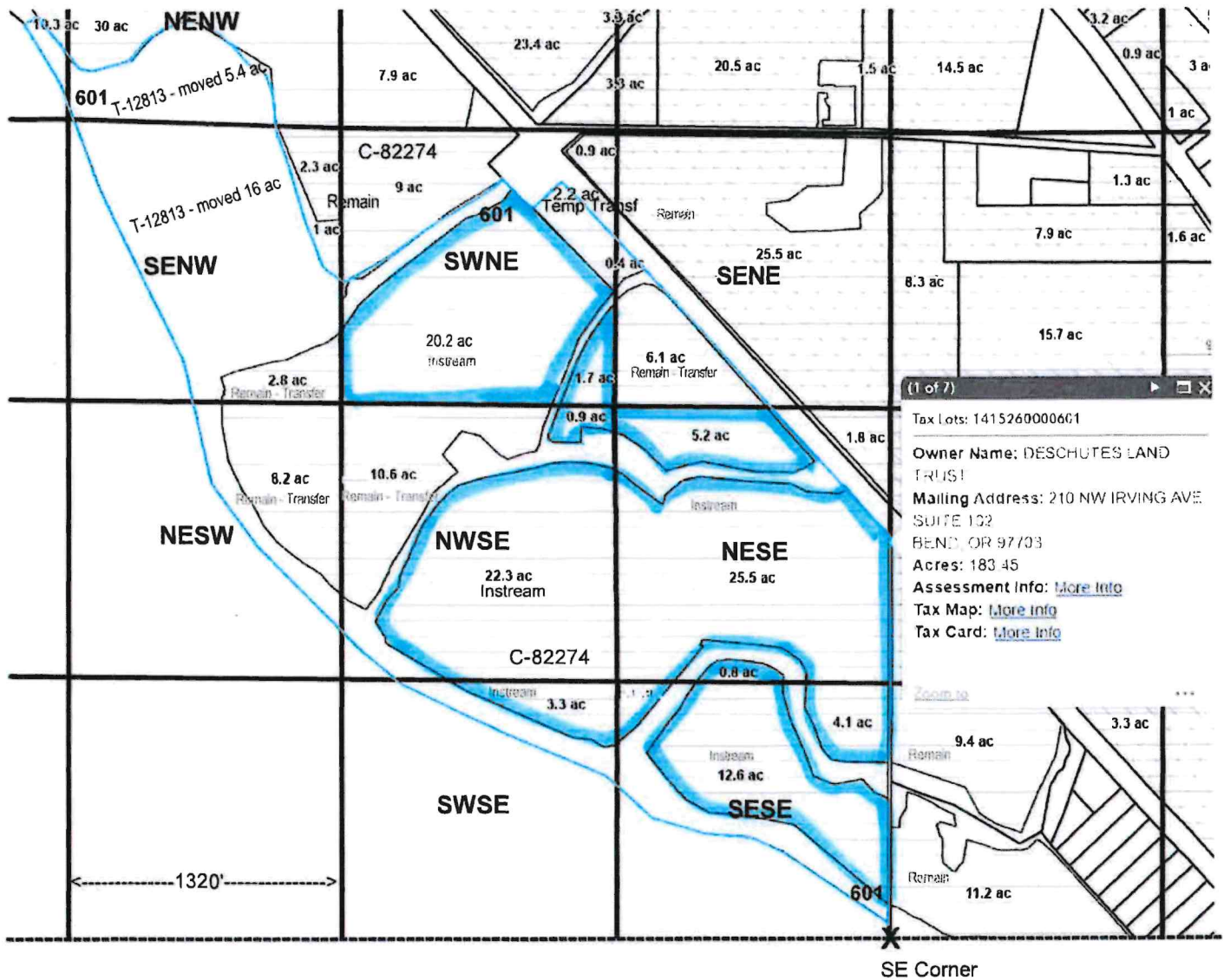
Date: 5/19/2025

Printed name (and title): Bruce Scanlon (District Manager) Business name, if applicable: Ochoco Irrigation District
 Mailing Address (with state and zip): 1001 N Deer Street, Prineville, OR 97754
 Phone number (include area code): 541-447-6449 **E-mail address: windyoid@bendbroadband.com

Deschutes Land Trust QC to OI

T 14 S, R 15 E, Section 26

Tax Lot 601
Crook County



C-82247

SENW - 2.8 ac T-14532 (3.3 ac remain) - T-12813 moved 16 ac
 SWNE - 21.9 ac instream (9 ac remain) & (2.2 ac remain/Temp Transfer)
 SENE - 6.5 ac remain/transfer/temp trsfr
 NESW - 8.2 ac T-14532
 NWSE - 23.2 ac instream, 10.6 ac trsfr / T-14532
 NESE - 31.5 ac instream
 SWSE - 3.3 ac instream
 SESE - 16.7 ac instream

tax lot 601 boundary



96.6 acres - Total Instream Lease

Part 4 of 4 – Water Right and Instream Use Information

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>82247</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	Acres	Other Information (such as conditions/limitations on the right)	Rate (cfs)	Volume (af)
4/8/1914	2	IR	83.2	Max Rate 0.025/ac, max 4 AF/ac - Total Volume	2.08	332.8
				District typically only delivers 3 AF / Ac		
4/18/1914	2&32	IR	13.4	Max Rate 0.025/ac , max 4 AF/ac - Total Volume	0.335	53.6
				District typically only delivers 3 AF/Ac		
Total af from storage, if applicable: _____ AF or <input 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>Deschutes River</u> , tributary to <u>Columbia 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>2 & 32</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	Acres	Proposed Instream Period	Instream Rate (cfs)	Total instream volume (af)
4/18/1914	2	IR	83.2	Max rate / Total Volume at 3 AF/Ac	0.684	249.6
4/18/2014	2&32	IR	13.4	Max rate / Total Volume at 3 AF/Ac	0.110	40.2
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>Instream flow allocated on daily average basis up to the described rate from April 15- October 15. Not to exceed the per acre cfs/duty allowed for OID patrons during the season.</u> Note: The Department may identify additional conditions to prevent injury and/or enlargement.						
Any additional information about the proposed instream use: <u>Leased instream as mitigation project</u>						

OID Certificate 82247

13.4 Ac

2 POD's

83.2 Ac

4 AF/Ac

0.025 rate limit

4/15/2025 10/1/2025 170

4/15/2025 10/15/2025 184

1 cfs, 24 hour period = 1.983741 AF

Instream

	rt/ac		AF/day	days	AF	Max 3AF/Ac	
13.4	0.008218	0.1101	0.21845194	184	40.20	3.00	40.2
83.2	0.008218	0.6837	1.35635831	184	249.57	3.00	249.6

	Max/Ac	Max	Max 4AF/Ac
13.4	0.025	0.335	53.6
83.2	0.025	2.08	332.8