



State of Oregon
Water Resources Department
725 Summer Street NE, Suite "A"
Salem, Oregon 97301-1271
(503) 986-0900

Application for Short-Term Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/publication/reports/index.shtml.

Pursuant to ORS 537.348(2) and OAR 690-077-0077

Optional Identification by Lessor/Lessee: Mitigation Project
Lease Agreement Number (assigned by WRD): L-660 / MP - 51

This Lease Agreement is between:

RECEIVED

Lessor #1:

(Name) Black Butte Ranch Association
(Mailing address) PO Box 8000
(City, State, Zip Code) Black Butte Ranch, OR 97759
(Telephone number) 541-595-1253
(Email address) www.blackbutteranch.com

MAY 25 2005

WATER RESOURCES DEPT
SALEM OREGON

Lessor #2, 3, etc.

The water right to be leased is located in Deschutes County.

Lessee (if different than Oregon Water Resources Department):

(Name) DWE Groundwater Mitigation Bank
(Mailing address) 700 NW Hill. St.
(City, State, Zip Code) Bend, OR 97701
(Telephone number) 541-382-4077
(Email address) zach@deschutesrc.org

Trustee:

Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301-1271
(503) 986-0900

~I~ Ownership and Water Right Information

1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 14
S, Range 9 E, Section 10 and Tax Lot number
0099. If the water right appurtenant to these lands is also appurtenant to lands
owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.

1.2 Lessor #2 is the (Check one):
 Not applicable
 Official representative of _____, the irrigation district which conveys water to
the subject water rights.
 Another party with an interest in the subject water rights representing _____.

- 1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. 51564

- 1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

- 1.5 **Subject water rights.** Lessor proposes to lease the water rights listed in 1.3. The right(s) to be leased are further described as follows:

Certificate No.: 51564

Priority date: 1886 Type of use: IRR

Legal Season of Use: NA

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 14 S, R 9 E, Section 10, SW $\frac{1}{4}$ NW $\frac{1}{4}$ - 39.70 acres to be leased
Enter additional places of use here, using format above:

Page 2 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 39.7

Acre-feet of storage, if applicable: NA

Maximum rate associated with subject water rights (cfs): 0.79

(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with subject water rights (ac-ft): 334.74

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: _____

RECEIVED

MAY 25 2005

WATER RESOURCES DEPT
SALEM, OREGON

If you need to enter another leased right, please use the additional water rights form.

- 1.6 **Validity of rights.** Lessor(s) attests (mark one) that:

- the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)()(include necessary supporting documentation as Attachment 3).

~II~ Instream Water Right Information

- 2.1 **Public use.** This lease will increase streamflows which will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

2.2 Instream use created by lease. The instream use to be created is described as follows:

Indian Ford Creek
Tributary to Squaw Creek in the Deschutes Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): POD at Township 14S, Range 9E, Section 9, NW1/4 SE1/4 to the mouth of Indian Ford Creek

Maximum volume in acre-feet: 334.74

Rate in cfs: 0.79

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
 The instream flow will be allocated on a daily average basis up to the described rate from _____ through _____.
 Other (describe): _____

RECEIVED

MAY 15 2005

WATER RESOURCES DEPT
SALEM, OREGON

If you need to enter more instream uses, please use the additional water rights form.

2.3 Term of lease. This lease shall terminate on October 31, 2005.

2.4 Flow protection. The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

- 3.1 Accuracy.** The Undersigned Lessor/s, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.
- 3.2 Lease.** All Lessors agree to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077-0077.
- 3.3 Precedent.** If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077- 0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.

3.4 **Suspension of original use.** During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.

3.5 **Termination provision.**
 For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised (____), with 30 day written notice to the Department.
 For multiyear leases, lessor *shall not* have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.

3.6 **Modification to prevent injury.** Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

3.7 **Fees.** Effective October 1, 2003, pursuant to ORS 536.050 (1)(v) (2003 SB 820), the following fee is included:
 \$200 for an application with four or more landowners or four or more water rights.
 \$100 for all other applications.

Lessor #1: *J. H. Hardy, Gen. Mgr.* Date: *4/23/05*
Black Butte Ranch Association

RECEIVED

For additional Lessors, type in space for signature and date

MAY 25 2005

Lessee: *[Signature]* Date: *3/23/05*
Deschutes River Conservancy

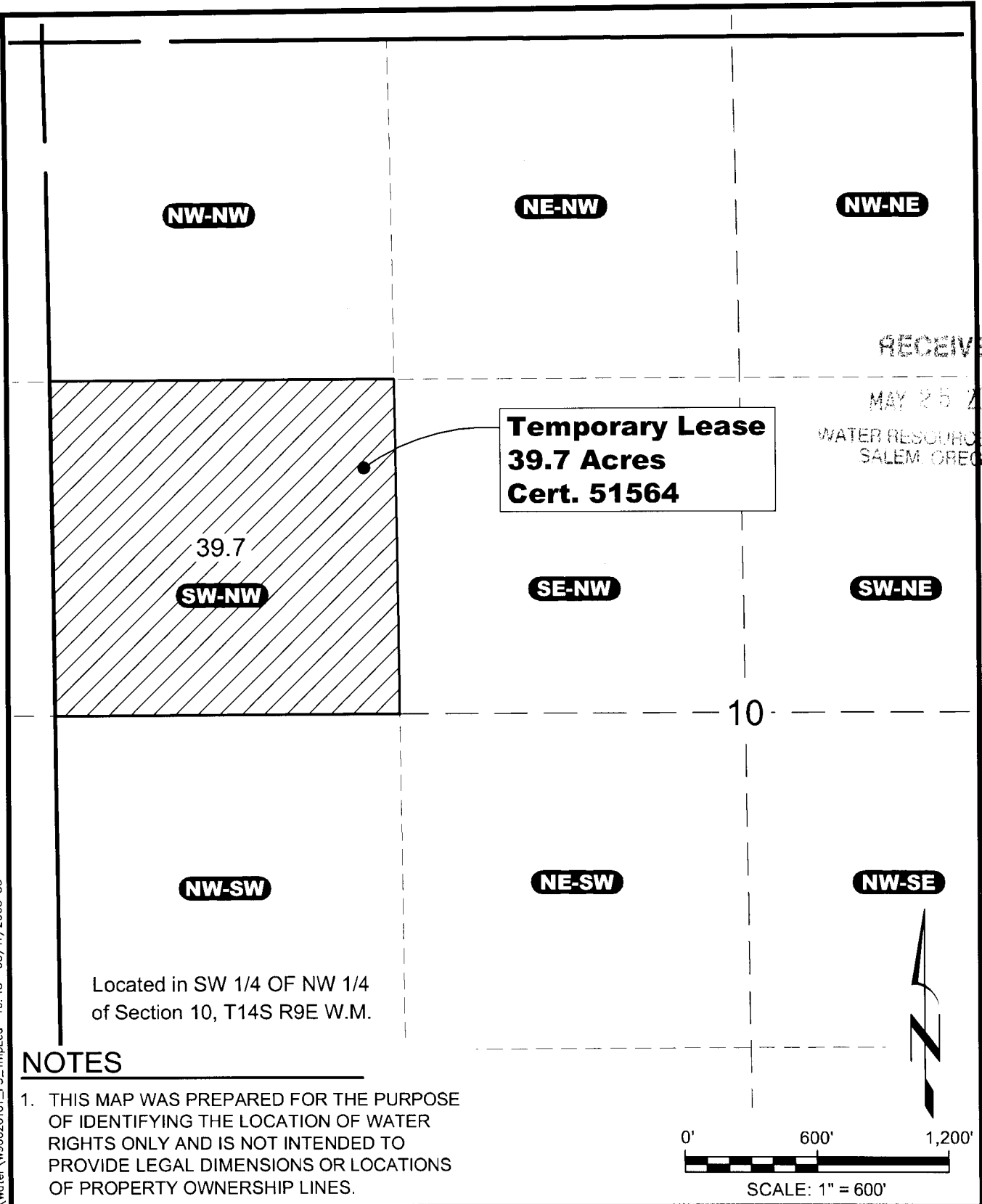
WATER RESOURCES DEPT
SALEM OREGON

Other Attachments as Needed:

- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
- Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
- Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked)
- Attachment 4: Split Season Instream Use Form

RECEIVED
APR 25 2005
WATER RESOURCES DEPT
SALEM OREGON

c:\0900\960\201-01\Cad\Water\W96020101_FS_TmpLea 10:48 05/11/2005 SS



Located in SW 1/4 OF NW 1/4 of Section 10, T14S R9E W.M.

NOTES

- 1. THIS MAP WAS PREPARED FOR THE PURPOSE OF IDENTIFYING THE LOCATION OF WATER RIGHTS ONLY AND IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATIONS OF PROPERTY OWNERSHIP LINES.

NEWTON
CONSULTANTS INC.
 Earth, Water and Rock Specialists
 PH: 503 742-1800 FAX: 503 713-1801

Temporary Lease Map
 Water Rights Map
 Black Butte Ranch, Oregon

| | | | | |
|-------------------------|------------------------|-------------------|---------------------------|-------------|
| DESIGNED BY: J.Polvi | DRAWN BY: S.Schenck | DATE: May 2005 | PROJECT NO. 960-201-01 | FIGURE 1 |
|-------------------------|------------------------|-------------------|---------------------------|-------------|