



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](http://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: \_\_\_\_\_  
Lease Agreement Number (assigned by WRD): \_\_\_\_\_

This Lease Agreement is between:

### Lessor #1:

(Name) Marc and Pamela Thalacker  
(Mailing address) 70625 Lower Bridge Way  
(City, State, Zip Code) Terrebonne, OR 97760  
(Telephone number) 541-923-6227  
(Email address) \_\_\_\_\_

### Lessor #2, 3, etc.

Three Sisters Irrigation District  
P.O. Box 2230  
Sisters, OR 97759  
541-549-8815 tsid@uci.net

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

### Lessee (if different than Oregon Water Resources Department):

(Name) Deschutes River Conservancy  
(Mailing address) 700 NW Hill St  
(City, State, Zip Code) Bend, OR 97701  
(Telephone number) 541-382-4077, ext 16  
(Email address) gen@deschutesrc.org

### Trustee:

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

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## ~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 12 E, Section 07, 17, 18 and Tax Lot number  
1401. 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 Three Sisters Irrigation Dist, 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. 74135

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.: 74135

Priority date: 1895 and 1904 Type of use: IRR

Legal Season of Use: N/A

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 12 E, Section \_\_,  $\frac{1}{4}$   $\frac{1}{4}$  - 180.0 acres to be leased

Enter additional places of use here, using format above:

See attachment 1

Page 6 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 178.5 (1895 priority), 1.5 (1904 priority)

Acre-feet of storage, if applicable: \_\_\_\_\_

Maximum rate associated with subject water rights (cfs): 3.57 cfs (1895), 0.03 cfs (1904)

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

Maximum duty associated with subject water rights (ac-ft): 552.32 af (1895), 4.64 af (1904)

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

Conditions or other limitations, if any: \_\_\_\_\_

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:

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- 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:

Whychus Creek

Tributary to Deschutes River 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): \_\_\_\_\_

Maximum volume in acre-feet: 552.32 af (1895), 4.64 af (1904)

Rate in cfs: 3.57 cfs (1895), 0.03 cfs (1904)

(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 July 16, 2006 through October 1, 2006.
- Other (describe): measurement/monitoring per split season lease application

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 November 1, 2006.

**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. **RECEIVED**

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- 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: \_\_\_\_\_ Date: \_\_\_\_\_  
Marc & Pamela Thalacker

For additional Lessors, type in space for signature and date

Lessor #2: \_\_\_\_\_ Date: \_\_\_\_\_  
Three Sisters Irrigation District

Lessee: \_\_\_\_\_ Date: \_\_\_\_\_  
Deschutes River Conservancy

*See attached signature sheet. Lease was originally part of pooled lease and later separated as split-season lease w/out mitigation.*

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

*HH  
DEC  
7/17/06*

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**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 provided by the Irrigation District, Other Water Purveyor or Lessee (if different than Department). The lessor must contact the Irrigation District, Other Water Purveyor, or Lessee (if different than Department) to indicate their interest in terminating the lease agreement.
  - 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.

Lessor #1: *Marcel Thelach* Date: 5/13/06

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For additional Lessors, type in space for signature and date

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Lessee: *Kenneth Gilbert* Date: 6/22/06

*Deschutes River Conservancy*

Other Attachments As Needed:

- Exhibit 5-A: Tax Lot Map of Landowner's Property
  - Exhibit 5-B: Detailed map illustrating lands under subject rights to be leased [Exhibits 5-A and 5-B may be combined into a single map]
  - Exhibit 5-C: 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 of this form is checked)
  - Exhibit 5-D: Split Season Instream Use Form
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Application for
Split Season
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.

Attachment 4 (Standard Leasing Form).
Attachment 5-D (Pooled Leasing Form).

The standard instream water right form pursuant to ORS 537.348(2) and OAR 690-077-0077
must also be filled out before a Split Season Use Instream Lease Application can be
processed.

Note: The terms of all split season use leases are limited to one year, with renewability.
Split season use lease applications must be submitted to the Department two weeks prior to water being
used either for the existing purpose or for the proposed instream purpose. (OAR 690-077-0079)

1. Existing and Instream Use Periods

For the water right being leased instream, as described in Section 1.4, include monthly or
partial season rate or duty limitations, if appropriate.
This section replaces the "Total volume, Rate in cfs, and Allowed period of use" portions of Section 2.2 on
the standard instream leasing form.

The water right will be used for its existing purpose from 10/2/2006 to 11/1/2006.
The water right will be used for instream use period is from 7/16/2006 to 10/1/2006.

Table with 6 columns: Rate (cfs), Conversion Factor, Number of days, and Duty (ac-ft). Rows include Existing Use, Instream Use, and Total.

2. Measurement and Reporting

The water right lessor or lessee shall contact the watermaster to determine the necessary
measurement and reporting requirements associated with leasing a water right.
The holders of the water rights shall measure and report the use of the existing water right
and instream water right to the satisfaction of the Director, or provide for third party
measurement and reporting to the satisfaction of the Director. Pursuant to ORS 537.332(3),
the Department holds instream water rights in trust for the benefit of the people of the State
of Oregon.

- (a) Location(s) and type(s) of measuring device(s): Three foot Ciopolletti wier that serves
only the Thalacker property & OWRD Instream Whychus Creek Gauging Station
(b) Frequency of measurement: Daily
(c) Parties responsible for the respective measurements: Three Sisters Irrigation District

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# Additional Water Right Form

## ~~For Pooled Landowner~~

# Instream Lease

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~I~

**Section 1.1 continued from Pooled Leasing Landowner Form.**

**Subject Water Rights.** Landowner proposes to lease the water rights shown on the map attached as Exhibit 5-B (this information may be included on Exhibit 5-A, or an additional map may be attached).  
 (Crosshatch the area of water rights being leased).

T	R	Sect	¼¼	Tax Lot	Acres	Type of Use	Certificate #	Page(s) #	Priority*	
*(Identify pertinent page number of certificate, if certificate is greater than 10 pages; identify priority date if there is more than one per certificate)										
1.	14	12	18	nwse	1401	15.0 -	IRR	74135	6	1895
2.	14	12	18	nwne	1401	5.5 -	IRR	74135	6	1895
3.	14	12	07	swse	1401	4.0 -	IRR	74135	6	1895
4.	14	12	07	sese	1401	11.5 -	IRR	74135	6	1895
5.	14	12	18	nene	1401	40.50 -	IRR	74135	6	1895
6.	14	12	18	swne	1401	37.0 -	IRR	74135	6	1895
7.	14	12	18	sene	1401	32.50 -	IRR	74135	6	1895
8.	14	12	17	swnw	1401	32.50 -	IRR	74135	6	1895
9.	14	12	18	nwse	1401	1.5 -	IRR	74135	6	1904
10.										

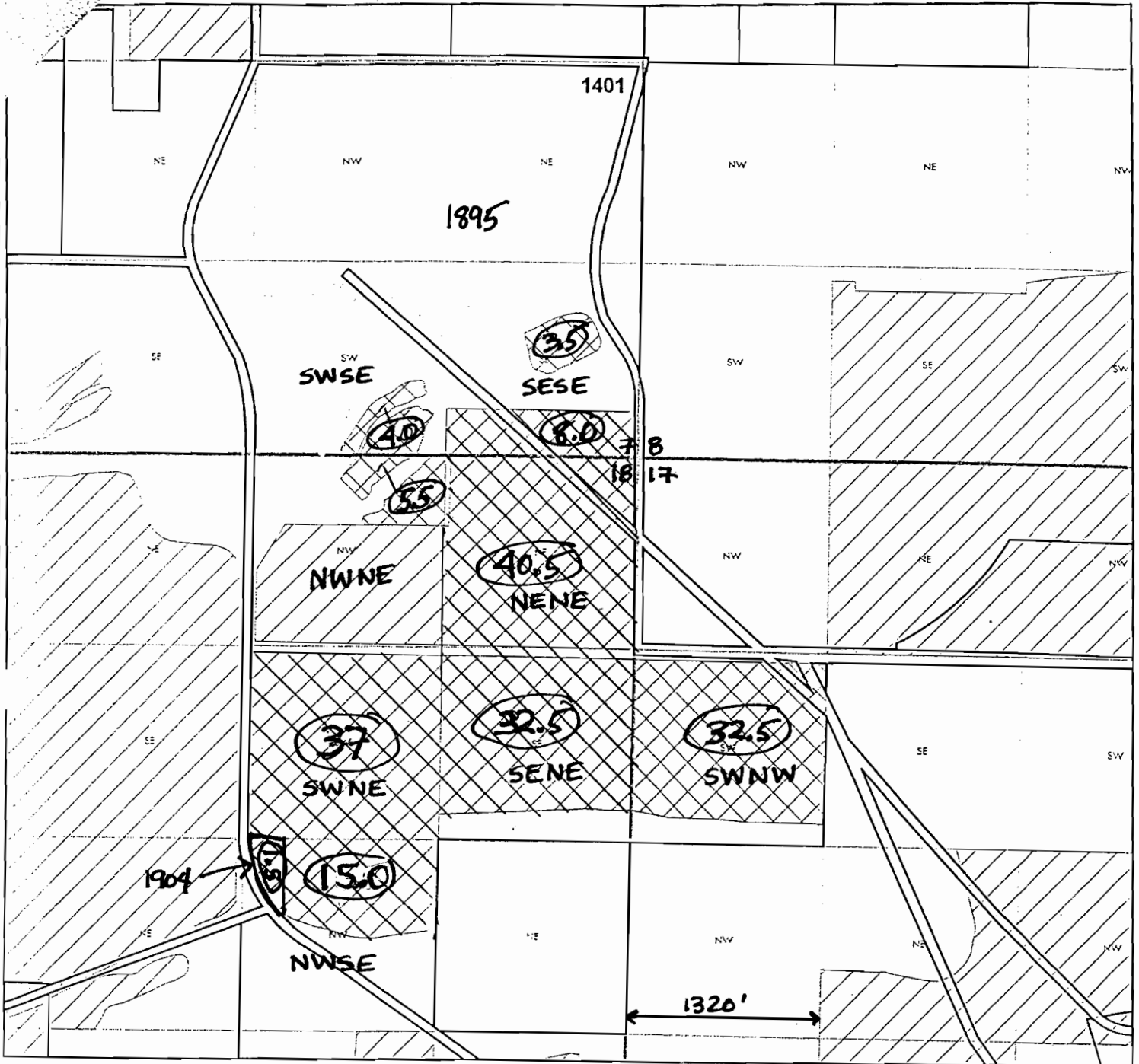
[Attached map(s) must identify property owner, Township, Range, Section and ¼¼, tax lot number, map orientation and scale.]

Total number of acres, if for irrigation, by certificate and priority date: 1895 priority - 178.5 ac, 1904 priority - 1.5 ac = total 180.0 ac

Acre-feet of storage, if applicable: \_\_\_\_\_

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# Lease Map for Squaw Creek Irrigation District



Property Owner: Thalacker, Marc and Pamela

Legal Description(s): 14-12-07-SW/SE-01401, 14-12-07-SE/SE-01401, **RECEIVED**  
 14-12-18-NW/NE-01401, 14-12-17-SW/NW-01401

Total Acres: 178.5 ac. (1895)

1.5 ac (1904)

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1 inch equals 1000 feet



Denotes Place of Use to be *Leased*

Signed: *Marc Thalacker*  
 for Squaw Creek Irrigation District

Dated: 5/26/06



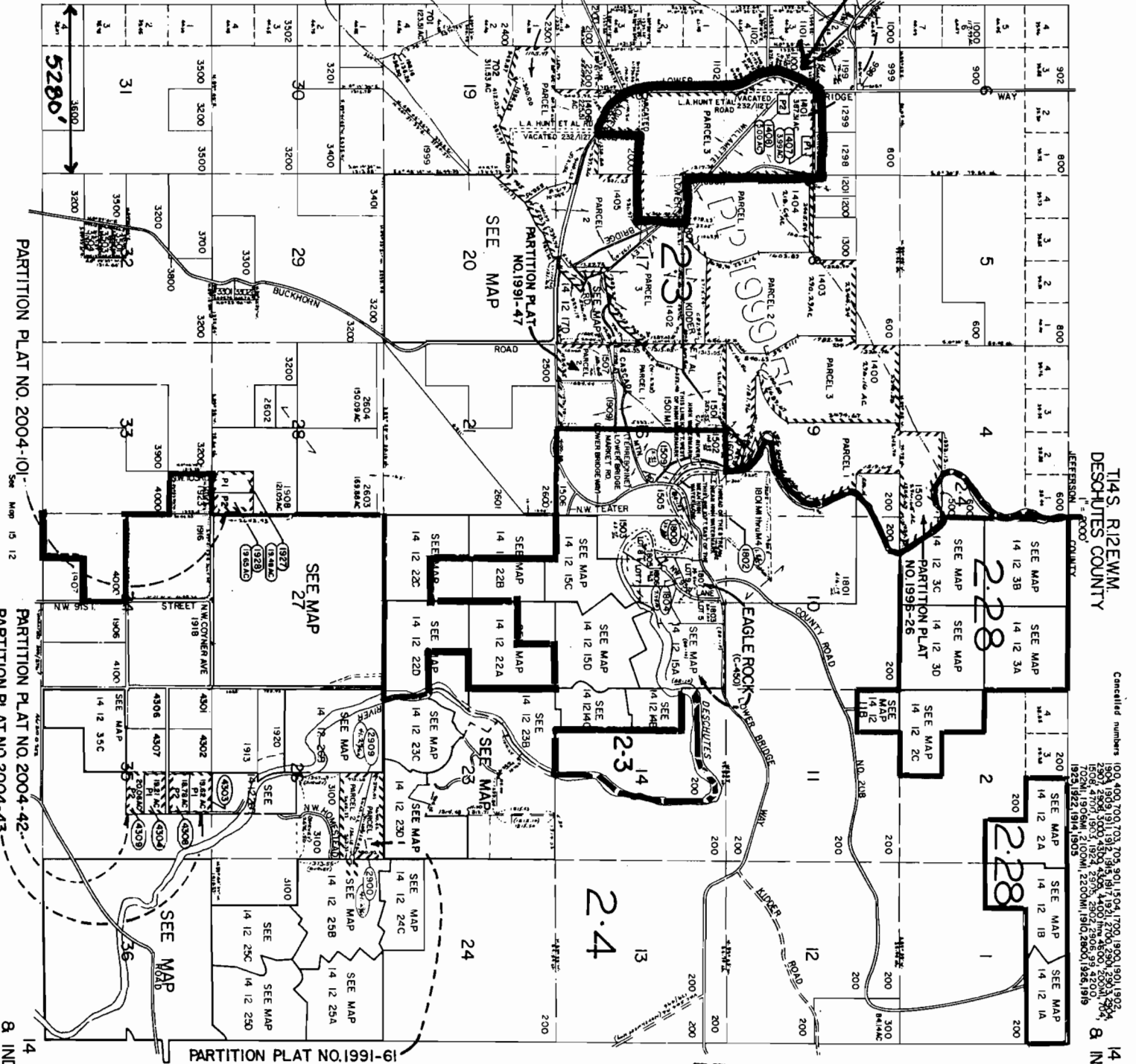
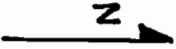
10-21-98  
 12-4-98  
 1-14-2000  
 1-11-00  
 1-13-00  
 3-30-02  
 7-28-02  
 4-16-04  
 6-7-04  
 11-23-04  
 1-20-05  
 1-27-06

**Marc Thalacker**  
 Tax Lot 1401  
 T145, R12E  
 Sect 5:

PARTITION PLAT NO.2004-23  
 PARTITION PLAT NO.1999-50

- 07 SWSE - 4.0 ac
- 07 SESE - 11.5 ac
- 17 SWNW - 32.5 ac
- 18 NENE - 40.5 ac
- 18 SWNE - 37.0 ac
- 18 SENE - 32.5 ac
- 18 NWSE - 1.5 ac
- 18 NWSE - 15.0 ac
- 18 NNWE - 5.5 ac

Total 180.0 ac  
 Leased



T14S, R12E W.M.  
 DESCHUTES COUNTY

Canceled numbers  
 100, 400, 700, 703, 705, 901, 1504, 1700, 1900, 1901, 1902,  
 1904, 1909, 1911, 1912, 1915, 1917, 1921, 2000, 2300, 2303, 2304,  
 1504, 1509, 1510, 1511, 1512, 2500, 2502, 2503, 2504, 2505,  
 1508, 1509, 1510, 1511, 1512, 2500, 2502, 2503, 2504, 2505,  
 1920, 1921, 1922, 1923, 1924, 1925

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TL 1401  
 38731 ac