



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: _____
Lease Agreement Number (assigned by WRD): L-699

This Lease Agreement is between:

Lessor #1:

(Name) K, S, & D Lands, LLC Stephen K. Barker, Managing Partner
(Mailing address) P.O. Box 601
(City, State, Zip Code) Ontario, OR 97914
(Telephone number) (541)889-7261
(Email address) None

Lessor #2, 3, etc.

N/A

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

Lessee (if different than Oregon Water Resources Department):

(Name) Not Applicable
(Mailing address) _____
(City, State, Zip Code) _____
(Telephone number) _____
(Email address) _____

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**WATER RESOURCES DEPT
SALEM OREGON**

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 19
S, Range 47 E, Section 4, 9, 16 and Tax Lot number
300, 3700 & 4100. 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. 48391, 19752 & 21836

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.: 48391

Priority date: August 18, 1947 Type of use: Irrigation

Legal Season of Use: Irrigation Season- March 1 to October 31

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 1/4 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 19 S, R 47 E, Section 4, SE1/4 SW1/4 - 22.00 acres to be leased

Enter additional places of use here, using format above:

None

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

Number of acres being leased, if for irrigation: 22.0

Acre-feet of storage, if applicable: N/A

Maximum rate associated with subject water rights (cfs): 0.55

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

Maximum duty associated with subject water rights (ac-ft): 77.0

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

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Conditions or other limitations, if any: None

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:

Snake River

Tributary to Columbia River in the Snake River 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): Lot 3 (SW1/4NE1/4) Section 16; 2290' S. & 3280' E. from the NW Corner Section 16

Maximum volume in acre-feet: 77.0

Rate in cfs: 0.55 *Spa*

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

↑
not listed
or cont

Conditions to prevent injury, if any:

None

The instream flow will be allocated on a daily average basis up to the described rate from May through October.

Other (describe): _____

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 5 years from date of approval.

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-

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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: Stephen K Barber Date: 3/20/06

For additional Lessors, type in space for signature and date

N/A

Lessee: _____ Date: _____

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

Attachment 5: Additional Water Right Form- for Certificates 19752 & 21836

REMARKS : Questions relating to this application may also be directed to our agent for this application, Steven P. Applegate Consulting, Telephone # (503)362-4040. This lease is offered to protect the existing rights underlying two proposed reservoir sites- see Applications R-86560 & R-86561. This lease shall not be in effect until such time as permits are issued in approval of said applications.

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Additional Water Right Form Standard Application for Short-Term Instream Lease

Nov 2004

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.

~I~ Ownership and Water Right Information

Section 1.5 continued from Standard Application for Short-Term Instream Lease.

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.: 19752 & 21836 (deficiency in rate water right)

Priority date: January 3, 1938 & October 12, 1953

Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): Irrigation Season- March 1 to October 31

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and 1/4 1/4, which will be dried up as part of this lease. Include a map (Attachment 3) showing the lands that will not receive water.

Place of use: T 19 S, R 47 E, Section 9, SE 1/4 SW 1/4 - 7.50 acres to be leased

Enter additional places of use here, using format above:

NW1/4SE1/4 - 5.2 acres; SW1/4SE1/4 - 15.8 acres; Section 16, NW1/4NE1/4 - 2.7 acres;

NE1/4NW1/4 - 7.2 acres

Page 0 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 0.64 38.4 ac BK

Acre-feet of storage, if applicable: N/A

Rate associated with leased rights (cfs): 0.64 (C.19752) & 0.07 (C.21836)

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

Duty associated with leased rights (AF): 172.8

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

Conditions or other limitations, if any: None- Certificate 21836 is for additional rate for same acreage as Certificate 19752 to allow closer to full rate of 1/40th per acre.

Field Code Changed

Field Code Changed

~II~ Instream Water Right Information

Section 2.2 continued from Standard Application for Short-Term Instream Lease.

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

Snake River
 Tributary to Columbia River in the Upper Columbia River Basin.

Field Code Changed

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease may be processed to be protected at the point of diversion): Lot 2 (SW1/4NE1/4) Section 16, T.19 S., R.47 E., W.M.

Total volume in acre-feet: 172.8

Rate in cfs: 0.71

Conditions to prevent injury, if any:

None

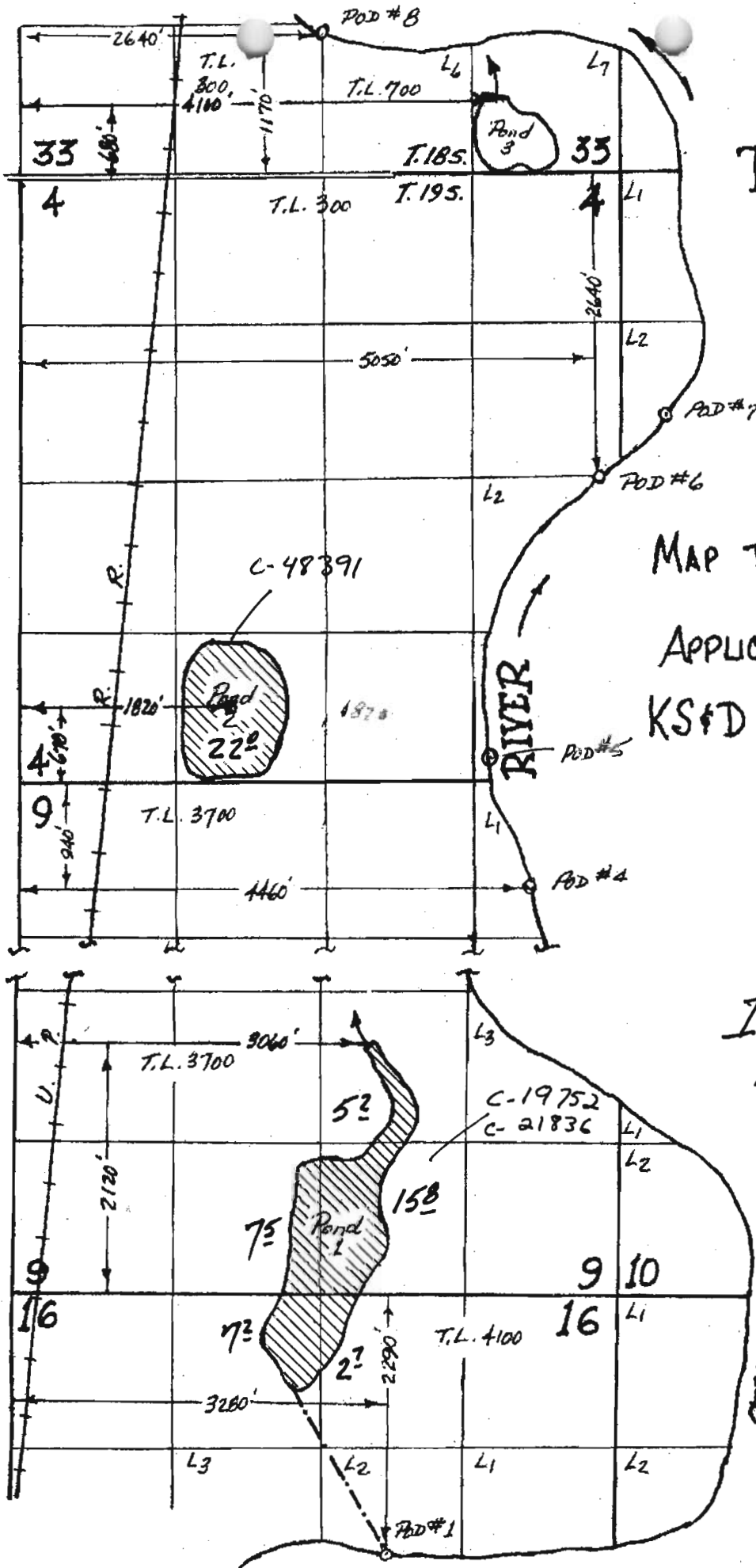
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- The instream flow will be allocated on a daily average basis up to the described rate
 May through October.
- Other (describe): _____

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T. 18 & 19 S.,
R. 47 E., W.M.

MAP TO ACCOMPANY
APPLICATIONS FOR
KS&D LANDS, L.L.C.

- Pond 1 - R-86560
- Pond 2 - R-86561
- Pond 3 - R-86562
- Secondary - 86563

INSTREAM LEASE
APPLICATION MAP

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N
Scale:
1" = 1320'

406 *AK*