



State of Oregon
 Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900

IL-892

January 2007

Application for Instream Lease

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

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

Optional Identification by Lessor/Lessee: _____
 Lease Application Number (assigned by WRD): IL-892

This Lease is between:

Lessor #1:

Name Mill Creek Land, LLC (Mark Copeland)
 Mailing address 7900 NE Mill Creek Rd
 City, State, Zip Code Prineville, OR 97754
 Telephone number 541-447-7363
 Email address analysisllc@aol.com

Lessor #2, 3, etc.

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

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy
 Mailing address 700 NW Hill Street
 City, State, Zip Code Bend, OR 97701
 Telephone number 541-382-4077
 Email address gen@deschutesriver.org

Trustee:

Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-1266
 (503) 986-0900

~I~ Water Right Holder and Water Right Information

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 14 S, Range 17 E, Section 26 and Tax Lot number 2602. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

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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 water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No. 83656, additional primary water rights 83657, 83658

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

1.5 **Water Rights Proposed to be Leased Instream.**

The first right to be leased identified in Section 1.3 is further described as follows:

Certificate No.: 83656

Priority date: 1868 Type of use: Irrigation

Legal Season of Use: none specified

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 17 E, Section 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$ - 15.10 acres to be leased

Enter additional places of use here, using format above:

T 14 S, R17 E, Sect 26, SW 1/4 NW 1/4, 37.20 acres

SE 1/4 NW 1/4, 0.4 acres

NW 1/4 SW 1/4, 7.3 acres

Total acres to be leased: 60 acres

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

Number of acres being leased, if for irrigation: 60

Acre-feet of storage, if applicable: _____

Maximum rate associated with the right to be leased (cfs): 0.0125 cfs/ ac, 0.75 cfs

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

Maximum duty associated with the right to be leased (ac-ft): 4.0 acre-feet per acre, 240 AF

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

● Conditions or other limitations, if any: see Attachment 5

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 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 water right certificate, however the water right is not subject to

forfeiture under ORS 540.610(2)(c) (include necessary supporting documentation as Attachment 3).

~II~ Instream Water Right Information

2.1 **Public use.** This lease will increase streamflows that 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:

Mill Creek

Tributary to Ochoco Creek in the Crooked 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): SE 1/4 SE 1/4, Sect 22, Township 14 S, Range 17 E, WM; 1122 Feet N and 346 feet W from the NW corner, Sect 26 to Ochoco Creek confluence with the Crooked River

• Maximum volume in acre-feet: 239.50 acre feet

Rate in cfs: 0.75 cfs

(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 April 15 through September 22. *John, HH*
- 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 November 1, 2012.

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 thereafter priority date for 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

Application for Short-Term Instream Lease / 3

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3.1 **Accuracy.** The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The 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.** Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.

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 a new injury review shall be required, and a prior 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 water right holder 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.

3.5 **Termination provision.**

- For multiyear leases, the Lessor(s) shall have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:
 - Written notice to the Department with original signatures;
 - Consent by all parties to the lease; and/or
 - Written notice to the Watermaster's office.
- For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.

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.** Pursuant to ORS 536.050, 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: Mill Creek Land, LLC
by Mark G. Copeland Date: 3/6/08
Mark Copeland

For additional Lessors, type in space for signature and date

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Lessee:

Genevieve Hubert
Deschutes River Conservancy

Date:

7 March 2008

Other Attachments as Needed:

Attachment 1: Tax Lot Map. (See instructions.)

Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)

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: Landowner conditions

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Additional Water Right Form Standard Application for Instream Lease

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

~I~ Water Right Holder and Water Right Information

Section 1.5 continued from Standard Application for 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.: 83657

Priority date: 1868 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): none specified

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 $\frac{1}{4}$ $\frac{1}{4}$, 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 14 S, R 17 E, Section 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$ - 5.00 acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 17 E, Sect 26, SWNE, 7.3 acres

T 14 S, R 17 E, Sect 26, NENW, 1.8 acres

T 14 S, R 17 E, Sect 26, NWNW, 5.2 acres

T 14 S, R 17 E, Sect 26, SWNW, 1.3 acres

T 14 S, R 17 E, Sect 26, SENW, 13.9 acres

T 14 S, R 17 E, Sect 26, NESW, 9.7 acres

T 14 S, R 17 E, Sect 26, NWSW, 22.7 acres

T 14 S, R 17 E, Sect 26, SWSW, 17.7 acres

T 14 S, R 17 E, Sect 26, SESW, 24.3 acres

T 14 S, R 17 E, Sect 26, SWSE, 4.1 acres

Total: 113 acres

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

Number of acres, if for irrigation: 113.0 acres

Acre-feet of storage, if applicable: _____

Rate associated with leased rights (cfs): 0.0125 cfs/ac, 1.42 cfs

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

Duty associated with leased rights (AF): 4.0 acre-feet/acre, 452 acre-feet

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

Conditions or other limitations, if any: see Attachment 5

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~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:

Mill Creek

Tributary to Ochoco Creek in the Crooked 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): SE 1/4 SE 1/4, Sect 22, T 14 S, R 17 E, WM; 1122 feet N, and 346 feet W from the NW corner, Sect 26 to Ochoco Creek Confluence with the Crooked River

Maximum volume in acre-feet: 451.07 acre-feet

Rate in cfs: 1.42 cfs

(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

May April 15 through September 22 *Oct 8* *JMR, JH*

Other (describe): _____

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~I~ Water Right Holder and Water Right Information

Section 1.5 continued from Standard Application for 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.: 83658

Priority date: 1880 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): none specified

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 14 S, R 17 E, Section 26, SW 1/4 SW 1/4 - 13.50 acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 17 E, Sect 35, NWNW 1.3 acres

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

Number of acres, if for irrigation: 14.8

Acre-feet of storage, if applicable:

Rate associated with leased rights (cfs): .0125 cfs/acre, 0.185 cfs

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

Duty associated with leased rights (AF): 4.0 acre-feet/acre, 59.2 acre feet

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

Conditions or other limitations, if any: see Attachment 5

~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:

Ochoco Creek

Tributary to Crooked 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): SE 1/4 NW 1/4, Sect 35, T 14 S, R 17 E, WM: 2018 feet S and 2605 feet E from the NW corner, Sect 35 to Ochoco Creek confluence with the Crooked River.

Maximum volume in acre-feet: 59.08 acre feet

Rate in cfs: 0.185 cfs

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

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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 15 through September 22 Oct. 8 *MSK*
- Other (describe): _____

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