



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 Pooled Lease Form

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

Optional Identification by Lessor/Lessee: _____
Lease Agreement Number (assigned by WRD): 6-561

This Lease Agreement is between:

Lessor #2: Irrigation District or Other Water Purveyor

(Name) Swalley Irrigation District
(Mailing address) 64672 Cook Avenue
(City, State, Zip Code) Bend, OR 97701
(Telephone number) 541-388-0658

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

Lessee (if different than Oregon Water Resources Department):

(Name) Deschutes Resources Conservancy
(Mailing address) PO Box 1560
(City, State, Zip Code) Bend, OR 97709
(Telephone number) 541-382-4077

Trustee:

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

~~I~~ Ownership and Water Right Information

1.2 Lessor #2 is the (Check one):

- Official representative of Swalley Irrigation District, the irrigation district, which conveys water to the subject water rights.
- Another party with an interest in the subject water rights representing _____.
- Not applicable.

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. 74145

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

RECEIVED

APR 28 2004

WATER RESOURCES DEPT
SALEM, OREGON

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.: 74145

Priority date: 8/1/1899 Type of use: Irrigation

Legal Season of Use: April 1- November 1

If an irrigation right, total number of acres to be leased: 11.6

Total acre-feet of storage to be leased, if applicable: none

Maximum rate associated with subject water rights (cfs) being leased: 0.35

If there is more than one rate associated with a water right, describe below:

Season 1 (cfs) .14 Time period: April 1- May 1, Oct 1 to Nov 1

Season 2 (cfs) .19 Time period: May 1 - May 15, Sep 15 to Oct 1

Season 3 (cfs) .35 Time period: May 15 - Sep 15

Maximum duty associated with subject water rights (ac-ft): 111.1

Conditions or other limitations, if any: none

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

~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:

Deschutes River

Tributary to Columbia in the Columbia 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 will 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): Swalley Main Canal to Lake Billy Chinook

Maximum volume in acre-feet: 64.21

Rate in cfs: Season 1: 0.08

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

Rate in cfs: Season 2: 0.11

Rate in cfs: Season 3: 0.20

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): _____

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

RECEIVED

APR 28 2004

WATER RESOURCES DEPT
SALEM, OREGON

- 2.3 **Term of lease.** This lease shall terminate on October 31, 2004.
- 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.

RECEIVED

APR 28 2004

WATER RESOURCES DEPT
SALEM, OREGON

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 #2: *[Signature]* Date: 4-22-04
Swalley Irrigation District

Lessee: *[Signature]* Date: 4-22-04
Deschutes Resources Conservancy

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 1.5 is checked)
- Attachment 4: Split Season Instream Use Form
- Attachment 5: Pooled Lease Landowner Form

RECEIVED
APR 28 2004
WATER RESOURCES DEPT
SALEM, OREGON