



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

Mitigation Credit
 Application for Short-Term
Instream Lease
 Project

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

Optional Identification by Lessor/Lessee: _____
 Lease Agreement Number (assigned by WRD): L-562 (MP-23)

This Lease Agreement is between:

Lessor #1:

(Name) Swalley Irrigation District
 (Mailing address) 64672 Cook Avenue, Suite 1
 (City, State, Zip Code) Bend, OR 97701
 (Telephone number) 541-388-0658

Lessor #2, 3, etc.

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

Lessee (if different than Oregon Water Resources Department):

(Name) Deschutes Water Exchange
 (Mailing address) 700 NW Hill Street
 (City, State, Zip Code) Bend, OR 97701
 (Telephone number) 541-382-4077

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 N, Range W, Section and Tax Lot number see attached Exhibit 1. 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. 74145

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.: 74145

Priority date: September 1, 1899 Type of use: Irrigation

Legal Season of Use: April 1 - November 1

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 ___, R ___, Section __, ___ 1/4 ___ 1/4 - 49.86 acres to be leased

Enter additional places of use here, using format above:

see attached spreadsheet (Exhibit 1)

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

Number of acres being leased, if for irrigation: 49.86 acres

Acre-feet of storage, if applicable: none

Maximum rate associated with subject water rights (cfs):

IRR Season 1: 0.60 Season 2: 0.80 Season 3: 1.49

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

Maximum duty associated with subject water rights (ac-ft): 477.7

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

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

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- 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 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): Swalley Main Canal to Lake Billy Chinook

Maximum volume in acre-feet: 275.99

Rate in cfs: Season 1: 0.34 Season 2: 0.46 Season 3: 0.85

(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): _____

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, 2008.

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 (April), 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: Jan Lee Date: 4-22-04

Jan Lee, Manager

Swalley Irrigation District

For additional Lessors, type in space for signature and date

Lessee: Bruce Aylward Date: 4-22-04

Bruce Aylward, DWE

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

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Swalley Irrigation District

EXHIBIT 1

Date: 03/16/04

Certificate #: 74145 (old 29054) Priority: 08/01/1899

**District Instream Lease - 5 Yr / 1 Yr Opt Out
Totat Lease Period: 2004 - 2008**

In order by Legal Description.....

| LEGAL DESCRIPTION T: S, R: E, W.M. | NAME | TAX LOT DESCRIPTION | Pg # | ACRES | TYPE USE | RECORDING Volume - Page - Date | NOTES |
|---------------------------------------|-------------------------------------|------------------------|---------|-------|-------------|-----------------------------------|-------|
| 16-12-29-NE/SW-03700 | Federspiel, Ronald & Sandra | 161229C003700 | 10 | 0.50 | IR | 2001-50620 10/15/2001 | |
| 17-12-09-NE/SE-06800 | Vision Properties | 171209D006800 | 18 | 7.00 | IR | 2004-08907 02/23/2004 | |
| 17-12-09-NW/SE-00100 | Vision Properties | 171209D000100 | 18 | 3.00 | IR | 2004-08907 02/23/2004 | |
| 17-12-09-SE/NE-00100 | Vision Properties | 171209A000100 | 17 | 0.70 | IR | 2004-08907 02/23/2004 | |
| 17-12-09-SE/SW-00400 | Bass Lake Investors Limited | 171209D000400 | 18 | 4.70 | IR | 2000-42190 10/18/2000 | |
| 17-12-09-SW/SE-02800 | Vision Properties | 171209DC02800 | 18 | 0.50 | IR | 2004-08907 02/23/2004 | |
| 17-12-16-NE/NE-00100 | Logsdon, Gary & Patricia | 171216AB00100 | ? 19 | 0.30 | IR | 2003-78495 11/12/2003 | |
| 17-12-16-NE/SE-02300 | ReMarkable Properties Inc. | 171216DO02300 | 20 | 5.00 | IR | 408-1674 05/07/1996 | |
| 17-12-16-NW/NE-00100 | Logsdon, Gary & Patricia | 171216AB00100 | ? 19 | 0.70 | IR | 2003-78495 11/12/2003 | |
| 17-12-16-SE/NE-01700 | Barton, John | 171216AD01700 | 19 | 6.50 | IR | 2002-53272 09/27/2002 | |
| 17-12-16-SW/NE-03300 | Tangle Creek Partners LLC | 171216A003300 | 19 | 0.75 | IR | 2004-14035 03/15/2004 | |
| 17-12-20-NE/NW-04800 | Sanderson Co. Inc. | 171220BA04800 | 22 | 0.66 | IR | 2003-64622 09/18/2003 | |
| 17-12-20-NE/NW-04900 | Dolezal, L & Lane, R. / Riverstone | 171220BA04900 | 22 | 0.60 | IR | 2003-64624 09/18/2003 | |
| 17-12-20-SE/NW-04900 | Dolezal, L & Lane, R. / Riverstone | 171220BA04900 | 22 | 0.40 | IR | 2003-64624 09/18/2003 | |
| 17-12-21-NE/NW-00800 | Parkhurst LLC/Golden Crest Develop. | 171221B000800 | 23 | 1.50 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-NE/NW-00900 | Parkhurst LLC/Golden Crest Develop. | 171221B000900 | 23 | 4.89 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-NE/NW-01000 | Parkhurst LLC/Golden Crest Develop. | 171221B001000 | 23 | 2.00 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-NE/NW-01100 | Parkhurst LLC/Golden Crest Develop. | 171221B001100 | 23 | 3.00 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-NW/NW-00900 | Parkhurst LLC/Golden Crest Develop. | 171221B000900 | 23 | 1.19 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-SE/NW-00800 | Parkhurst LLC/Golden Crest Develop. | 171221B000800 | 23 | 0.50 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-SE/NW-00900 | Parkhurst LLC/Golden Crest Develop. | 171221B000900 | 23 | 0.22 | IR | 2004-14035 03/15/2004 | |
| 17-12-21-SW/NW-00900 | Parkhurst LLC/Golden Crest Develop. | 171221B000900 | 23 | 0.20 | IR | 2004-14035 03/15/2004 | |
| 17-12-22-NW/SE-01600 | Stonebrook Association Inc. | 171222DB01600 | 23 | 4.05 | IR | 2002-09308 02/15/2002 | |
| 17-12-22-NW/SW-00400 | Imwalle, Paul & Cathy J. | 1712220000400 | 23 | 1.00 | IR | 2003-64623 09/18/2003 | |

49.86 Grand Total

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