



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

# Application for Instream Lease Pooled Lease Form

Jan 2007

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](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).

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

Optional Identification by Lessor/Lessee: Mitigation Project  
Lease Application Number (assigned by WRD): IL-932 / MP-122

This Lease is between:

**Lessor #2: Irrigation District or Other Water Purveyor**

Name Three Sisters Irrigation District  
Mailing address P.O. Box 2230  
City, State, Zip Code Sisters, OR 97759  
Telephone number 541-549-8815  
Email address 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 - Deschutes Water Exchange  
Mailing address P.O. Box 1560  
City, State, Zip Code Bend, OR 97709  
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**

- 1.2 Lessor #2 is the (Check one):  
 Official representative of Three Sisters 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 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. 74135

- 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.: 74135

Priority date: 1895 Type of use: Irrigation

Legal Season of Use: N/A

If an irrigation right, total number of acres to be leased: 1895 - 65.0 ac

Total acre-feet of storage to be leased, if applicable: N/A

Maximum rate associated with subject water rights (cfs) being leased:  
1895 - 1.3 cfs

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

Season 1 (cfs) N/A Time period: \_\_\_\_\_

Season 2 (cfs) \_\_\_\_\_ Time period: \_\_\_\_\_

Season 3 (cfs) \_\_\_\_\_ Time period: \_\_\_\_\_

Maximum duty associated with subject water rights (ac-ft): N/A

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

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 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:

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 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): From POD at RM 23.5 of Whychus Cr to RM 0

Maximum volume in acre-feet: 1895 - 239.8 af

Rate in cfs: 1895 - 1.3 cfs

(If more than one rate, describe the rate associated within each time period or instream reach.)

Rate in cfs: \_\_\_\_\_

Rate in 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 July 1, 2008 through October 1, 2008.

Other (describe): \_\_\_\_\_

- 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) 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 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 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 #2: *Three Sisters Irrigation District* Date: 6/12/08

Lessee: *Genevieve Hubert* Date: 6/12/08  
Deschutes River Conservancy - Deschutes Water Exchange

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: Pooled Lease Water Right Holder Form



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# Application for Instream Lease

## Attachment 5: Pooled Water Right Holder Form

A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrds.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrds.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-932 / MP-122

This Lease is with:

**Lessor #1 (Water Right Holder):**

Name Karan Swaner  
Mailing address Unit 3470 Box 531  
City, State, Zip Code APO AA 3404-0531  
Telephone number 541-548-5634  
Email address \_\_\_\_\_

If additional water right holders, enter water right holder information below

Lessor # 2:  
Three Sisters Irrigation District Irrigation District  
P.O. Box 2230  
Sisters, OR 97759      541-549-8815      tsid@uci.net

Note: The section numbering associated with this form corresponds to that found on the "Standard Instream Lease Application" form. The "Pooled Lease" form and "Pooled Water Right Holder" form(s) are used to provide the same information as the "Standard Instream Lease Application" form. Consequently, the numbering on this form is not always sequential.

### ~I~ Water Right Holder and Water Right Information

1.1 Lessor #1 is the water right holder, or authorized agent for property described in Section 1.5. 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.

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. 74135

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

1.5 Water Right(s) Proposed to be Leased Instream. Water right holder proposes to lease the

	T	R	Sec	1/4	Tax Lot	Acres	Type of Use	Certificate #	Pages of	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.	15	11	04	NW NE	101	25	IRR	74135	9	1895
2.	15	11	04	SW NE	101	40	IRR	74135	9	1895
3.										
4.										
5.										

Total number of acres, if for irrigation, by certificate and priority date: 65 ac IRR 1895

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

If you need to enter another leased right, please use the Additional Water Right Form for Pooled Water Right Holder.

**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)( ) (include necessary supporting documentation as Attachment 3).

**~II~ Instream Water Right Information**

- 2.3 Term of lease.** This lease shall terminate on October 1, 2008. (If there is a conflict between the Pooled Lease Form and this form, the Pooled Lease Form will be the official term of the lease.)

**~III~ Other Information**

- 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 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 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.

Lessor #1: Karant Swayer Date: 6/6/08  
Karan Swayer

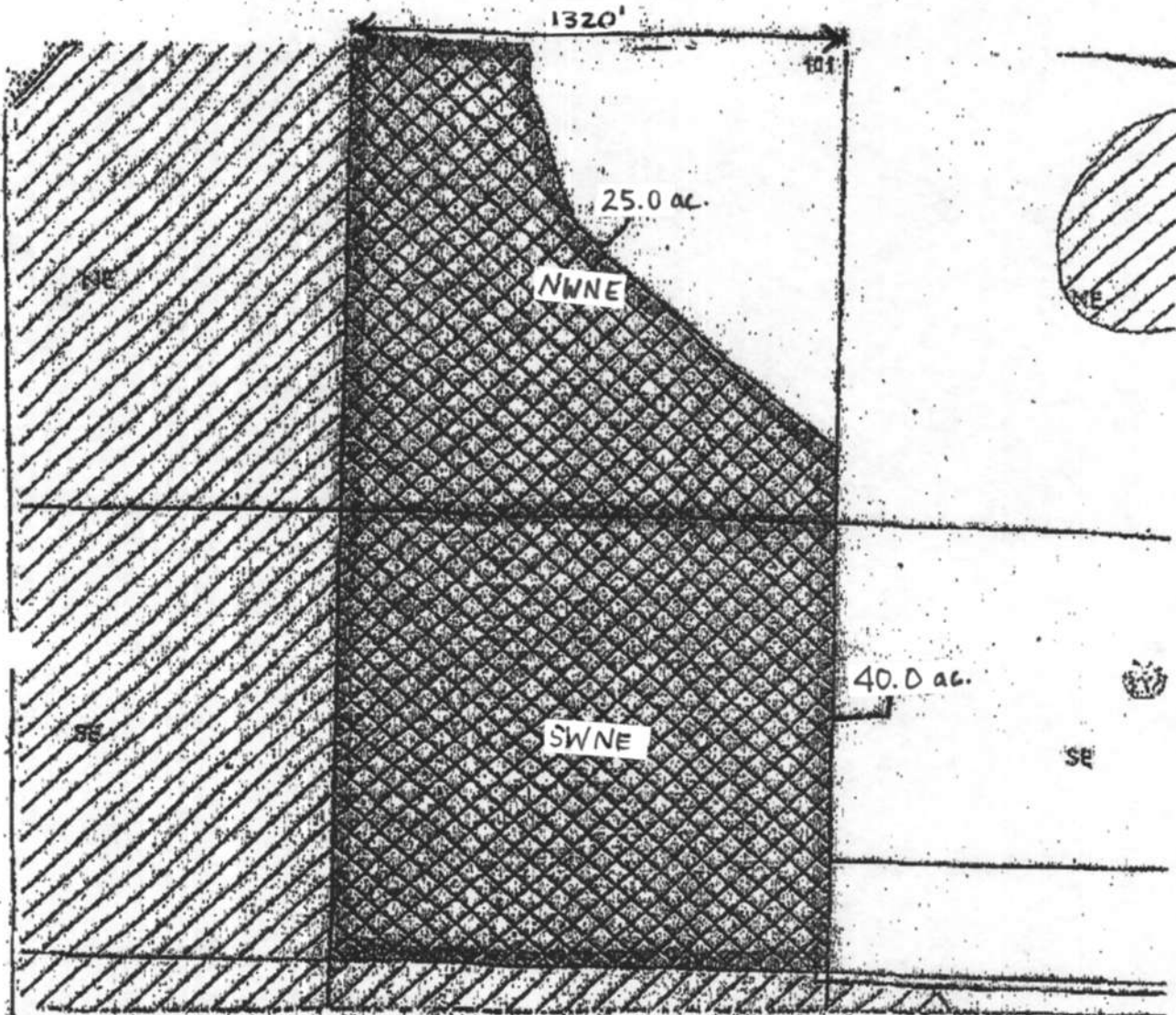
For additional Lessors, type in space for signature and date

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

**Other Attachments As Needed:**

- Exhibit 5-A: Tax Lot Map. (See instructions.)
- Exhibit 5-B: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. Exhibits 5-A and 5-B may be combined into a single map. (See instructions.)
- 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


T15 R11 sect 04



Property Owner: *Karen Swaner*

Legal Description(s): T15 R11 04 NWNE 00101, T15 R11 04 SWNE 00101

Total Acres: 65 ac. (1895)

 Denotes Piece of Land to be Leased

  
1/4 inch equals 400 feet

Signed:

*[Signature]*

Dated:

3/15/06

for Supervisory District



Lot	qQ	Tax lot	Acres	Type	Priority	Owner
4	NW¼ NW¼	1101	30.00	IRR	1895	Sharp, Clay
Section 3						
1	NE¼ NE¼	600	15.00	IRR	1895	Kendrick, Jerry & Jo
2	NW¼ NE¼	100	25.00	IRR	1895	Hermens, Marvin & Virginia
	SW¼ NE¼	100	40.00	IRR	1895	Hermens, Marvin & Virginia
3	NE¼ NW¼	201	39.50	IRR	1895	Keeton, Arland & Jean
4	NW¼ NW¼	200	11.00	IRR	1895	Johnson, Don
4	NW¼ NW¼	201	16.50	IRR	1895	Keeton, Arland & Jean
4	NW¼ NW¼	202	4.50	IRR	1895	Hufstader, Rick
	SW¼ NW¼	201	36.00	IRR	1895	Keeton, Arland & Jean
	SW¼ NW¼	201	3.00	POND	1895	Keeton, Arland & Jean
	SE¼ NW¼	201	40.50	IRR	1895	Keeton, Arland & Jean
	NE¼ SW¼	400	40.00	IRR	1895	Hahn, Frederick & Elaine
	NW¼ SW¼	301	37.50	IRR	1895	Keeton, Arland & Jean
	SW¼ SW¼	401	34.00	IRR	1895	Bauer, Kimerly
	SW¼ SW¼	401	1.00	POND	1895	Bauer, Kimerly
	SE¼ SW¼	402	40.00	IRR	1895	Brennan, Casey
	NE¼ SE¼	100	18.00	IRR	1895	Hermens, Marvin & Virginia
	NW¼ SE¼	100	40.00	IRR	1895	Hermens, Marvin & Virginia
	SW¼ SE¼	100	39.00	IRR	1895	Hermens, Marvin & Virginia
	SE¼ SE¼	100	25.00	IRR	1895	Hermens, Marvin & Virginia
Section 4						
1	NE¼ NE¼	102	9.00	IRR	1895	Graham, Bonnie
1	NE¼ NE¼	103	13.00	IRR	1895	Wilson, Burt & Jackie
1	NE¼ NE¼	104	7.50	IRR	1895	Rogers, John & Sharon
	SW¼ NE¼	100	4.50	IRR	1895	Simon, Cheryle
	SW¼ NE¼	105	19.00	IRR	1895	Murphy/Berge, Janice/Dick
	SE¼ NE¼	105	37.00	IRR	1895	Murphy/Berge, Janice/Dick
4	NW¼ NW¼	302	17.00	IRR	1895	Barclay, David
4	NW¼ NW¼	303	7.50	IRR	1895	Tewalt, Richard & Norma
4	NW¼ NW¼	305	8.50	IRR	1895	Tewalt, Richard & Norma
	SW¼ NW¼	301	16.00	IRR	1895	Pardo, Sharon
	SW¼ NW¼	304	17.50	IRR	1895	York, Ervin
	SW¼ NW¼	306	2.50	IRR	1895	York, Ervin
	SE¼ NW¼	101	1.00	IRR	1895	Simon, Cheryle
	NE¼ SW¼	400	36.00	IRR	1895	Redfield, Tygh
	NW¼ SW¼	400	36.00	IRR	1895	Redfield, Tygh
	SW¼ SW¼	400	36.00	IRR	1895	Redfield, Tygh
	SE¼ SW¼	400	38.00	IRR	1895	Redfield, Tygh
	SE¼ SW¼	400	1.00	POND	1895	Redfield, Tygh
	NE¼ SE¼	500	18.00	IRR	1889	Clemens, Cecile
	NE¼ SE¼	500	17.00	IRR	1895	Clemens, Cecile
	NW¼ SE¼	500	7.00	IRR	1889	Clemens, Cecile
	NW¼ SE¼	500	25.00	IRR	1895	Clemens, Cecile
	SW¼ SE¼	500	37.00	IRR	1895	Clemens, Cecile
	SE¼ SE¼	500	31.00	IRR	1895	Clemens, Cecile
Section 5						
1	NE¼ NE¼	100	37.00	IRR	1895	Salmon, Roy & Marcia
1	NE¼ NE¼	100	0.30	POND	1895	Salmon, Roy & Marcia
2	NW¼ NE¼	100	0.20	IRR	1895	Salmon, Roy & Marcia
	SW¼ NE¼	101	28.00	IRR	1889	Sokol, Dorro
	SE¼ NE¼	100	2.00	IRR	1895	Salmon, Roy & Marcia
	SE¼ NE¼	100	0.50	POND	1895	Salmon, Roy & Marcia
	SE¼ NE¼	101	12.00	IRR	1889	Sokol, Dorro
	SE¼ NE¼	101	20.00	IRR	1895	Sokol, Dorro
	SE¼ NE¼	101	5.50	IRR	1903	Sokol, Dorro
3	NE¼ NW¼	1000	5.00	IRR	1895	Carollo, Ed & Barbara
3	NE¼ NW¼	700	2.50	IRR	1895	Hurtley, David & Judy
3	NE¼ NW¼	800	2.00	IRR	1895	Hurtley, David & Judy