



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

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): _____

This Lease is between:

Lessor #2: Irrigation District or Other Water Purveyor

Name Arnold Irrigation District
Mailing address 19604 Buck Canyon Rd
City, State, Zip Code Bend, OR 97702
Telephone number 541-382-7664
Email address aidist@bendbroadband.com

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

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy
Mailing address 700 NW Hill St
City, State, Zip Code Bend, OR 97701
Telephone number 541-382-4077
Email address _____

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 Arnold 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. 74197

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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.: 74197

Priority date: February 1, 1905 - April 1905 Type of use: IRRIG

Legal Season of Use: April 1 - October 31

If an irrigation right, total number of acres to be leased: 6.20

Total acre-feet of storage to be leased, if applicable: _____

Maximum rate associated with subject water rights (cfs) being leased: 95.60

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

Season 1 (cfs) <u>0.122 *</u>	Time period: <u>April 1 - May 1</u>	<u>0.035 cfs</u>	<u>0.086 cfs</u>
Season 2 (cfs) <u>0.159 *</u>	Time period: <u>May 1 - May 15</u>	<u>0.035 cfs</u>	<u>0.124 cfs</u>
Season 3 (cfs) <u>0.212 *</u>	Time period: <u>May 15 - Sept 15</u>	<u>0.035 cfs</u>	<u>0.177 cfs</u>

Maximum duty associated with subject water rights (ac-ft): 15.42 95.60

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:

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 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): Canal diversion river mile 174.5 to Lake Billy Chinook river mile 120 and to the mouth of the Deschutes at river mile 0

Maximum volume in acre-feet: February 1905 - 5.25, April 1905 - 21.32 (total 26.57)

Rate in cfs: Season 1 - February 1, 1905 - 0.012, April 25, 1905 - 0.030

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

Rate in cfs: Season 2 - February 1, 1905 - 0.012, April 25, 1905 - 0.043

Rate in cfs: Season 3 - February 1, 1905 - 0.012, April 25, 1905 - 0.062

(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 1 through October 31.

Other (describe): _____

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- 2.3 **Term of lease.** This lease shall terminate on October 31, 2013.
- 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.

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Pooled Lease Form / 3

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SALEM, OR

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: Shawn Gerdes Date: 4/2/09
Shawn Gerdes, Manager, Arnold Irrigation District

Lessee: Menener Hebert Date: 4/3/09
Deschutes River Conservancy

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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**This table will calculate flow rate factors and duty for Arnold Irrigation District
Instream Leases**

Enter Total Number of Acres to be Leased Instream Here	→	6.200
--	---	--------------

Information highlighted with pink font is to be entered on to the Instream Lease Application Form

For Primary Water Right - Certificate 74197

Rate (CFS) associated with leased rights for Section 1.5 of the Lease Application Form			
The rate and duty identified in this section includes the 65% transmission loss.			
Enter Rates by Priority Date on Lease Form	Full Rate	February 1, 1905	April 25, 1905
Season 1	0.122	0.035	0.086
Season 2	0.169	0.035	0.124
Season 3*	0.212	0.035	0.177
* The rate identified for Season 3 has been proportioned such that the max rate allowed by the right (150.0 CFS) will not be exceeded if all acres were being irrigated.			
Duty (AF) associated with leased right for Section 1.5 of the Lease Application Form			
Duty (decree) AF/Acre =	18.42		
	95.60		

Rate (CFS) leased instream for Section 2.2 of the Lease Application Form			
The rate and duty identified in this section does not include the 65% transmission loss.			
Enter Rates by Priority Date on Lease Form	Full Rate	February 1, 1905	April 25, 1905
Season 1	0.043	0.012	0.030
Season 2	0.056	0.012	0.043
Season 3	0.074	0.012	0.062
Volume (AF) leased instream for Section 2.2 of the Lease Application Form			
	# days	AF/Season	Duty (decree) AF/Acre = 5.40
Season 1	61	5.15	Total = 33.46
Season 2	30	3.31	Feb. 1905 portion = 5.25
Season 3	123	18.11	April 1905 portion = 21.32
		26.57	
Additional Conditions to Prevent Injury for Section 2.2 of the Lease Application Form			
Water protected instream:	April 1 through October 31		

For Supplemental Water Right from Crane Prairie Reservoir - Certificate 76714

Duty Associated with Leased Right for Section 1.5 of the Additional Water Right Form	
	95.60

Volume (AF) leased instream for Section 2.2 of the Additional Water Right Form	
	19.09

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Water Resources Department
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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.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): _____

This Lease is with:

Lessor #1 (Water Right Holder):

Name Kevin Baney
Mailing address 475 NE Bellevue Dr. Ste. #210
City, State, Zip Code Bend, OR 97701
Telephone number 541-382-7664 (Curt Baney, Jr.)
Email address _____

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

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. 74197

- 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 water rights shown on the map attached as Exhibit 5-B and described as follows:
[This information may be included on Exhibit 5-A, or an additional map may be attached. Crosshatch the area of water rights being leased. Attached map(s) must identify water right holder, township, range, section and ¼ ¼, tax lot number, map orientation and scale.]

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Pooled Water Right Holder Form / 1

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T	R	Sect	1/4	Tax Lot	Acres	Type of Use	Certificate #	Page(s) #	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.	18	12	08	SW NW	500 (2201)	2.00	IRRIG	74197	8	2/5/1905- 4/25/1905
2.	18	12	08	SE NE	700	1.70	IRRIG	74197	8	2/5/1905- 4/25/1905
3.	18	12	25	NE NE	108	2.50	IRRIG	74197	18	2/5/1905- 4/25/1905
4.										
5.										

Total number of acres, if for irrigation, by certificate and priority date: 6.20

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 31, 2013. (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

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Pooled Water Right Holder Form / 2

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required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.

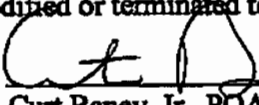
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3.6 Modification to prevent injury. Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

Lessor #1: _____



Curt Baney, Jr., POA / Kevin Baney

Date: _____

4/2/2009

For additional Lessors, type in space for signature and date

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

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SALEM, OREGON

Pooled Water Right Holder Form / 3

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES
PROBATE DEPARTMENT

IN THE MATTER OF THE ESTATE OF) LETTERS TESTAMENTARY
)
KEVIN M. BANEY,) Case No. 08PB0023MS
)
Deceased.)

THIS CERTIFIES that the will of KEVIN M. BANEY, deceased, has been proved and that CURTIS A. BANEY, has been and is at the date hereof the duly appointed, qualified and acting Personal Representative of the will and estate of the decedent,

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of Deschutes, in which proceedings for administration upon the said estate are pending, do hereby subscribe my name and affix the seal of said court this 27 day of February, 2008.



(SEAL)

ERNEST J. MAZOROL III
TRIAL COURT ADMINISTRATOR

By

Maldene J. Shaw
Probate Commissioner/Deputy Clerk

STATE OF OREGON,)
)
County of Deschutes)

I, Maldene J. Shaw Clerk of the Circuit Court of the State of Oregon for Deschutes County hereby do certify that the foregoing copy of Letters Testamentary has been by me compared with the original, that it is a correct transcript therefrom and of the whole of such original Letters Testamentary as the same appear on file and of record in my office and in my custody and that said letters are still in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 23rd day of July, 2008.

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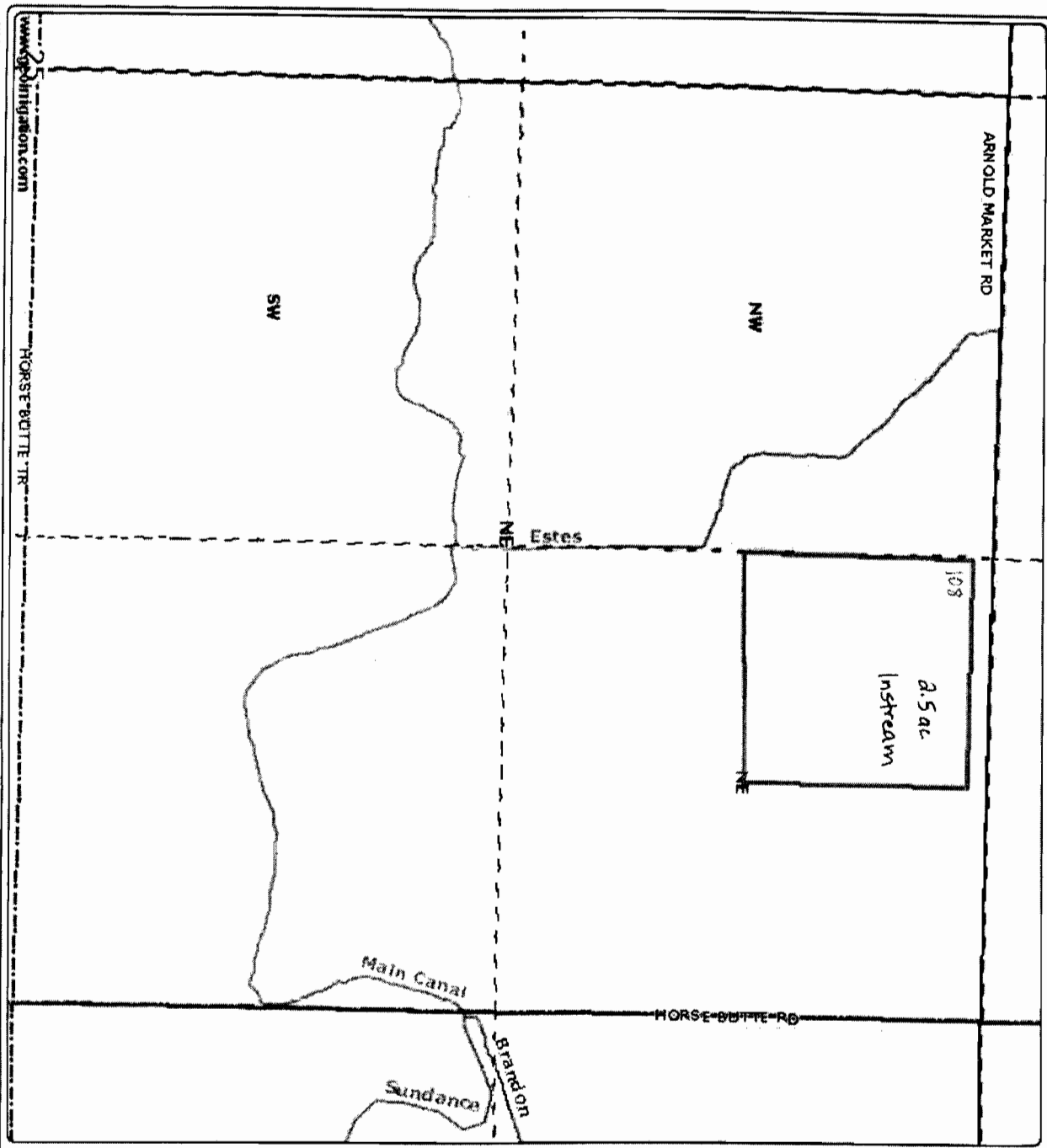
WATER RESOURCES DEPT
SALEM, OREGON

ERNEST J. MAZOROL III
TRIAL COURT ADMINISTRATOR

By

Maldene J. Shaw
Probate Commissioner/Deputy Clerk

Arnold Irrigation District



www.southdakota.com

HORSE BUTTE TR

NE

HORSE BUTTE RD

Brandon

Sundance

Main Canal

Estes

NW

SW

NE

SE

108

a.5 ac.
Instream

Kevin Baney - 2.50 ac. -

1812250000108

18-12-25-NENE-00108

- District Boundary
- County Boundary
- Road Labels
- Township Range
- Sections
- Section Labels
- Quarters
- Quarter Labels
- Quarter Quarters
- Quarter Quarter Labels
- Tarders
- Canal All
- Canal Filled
- Canal Open
- POU Distnd Primary Fall
- Rivers

All WR in
taxlot 108
being leased.



Scale 1" = 400'
Created: 3/19/2009

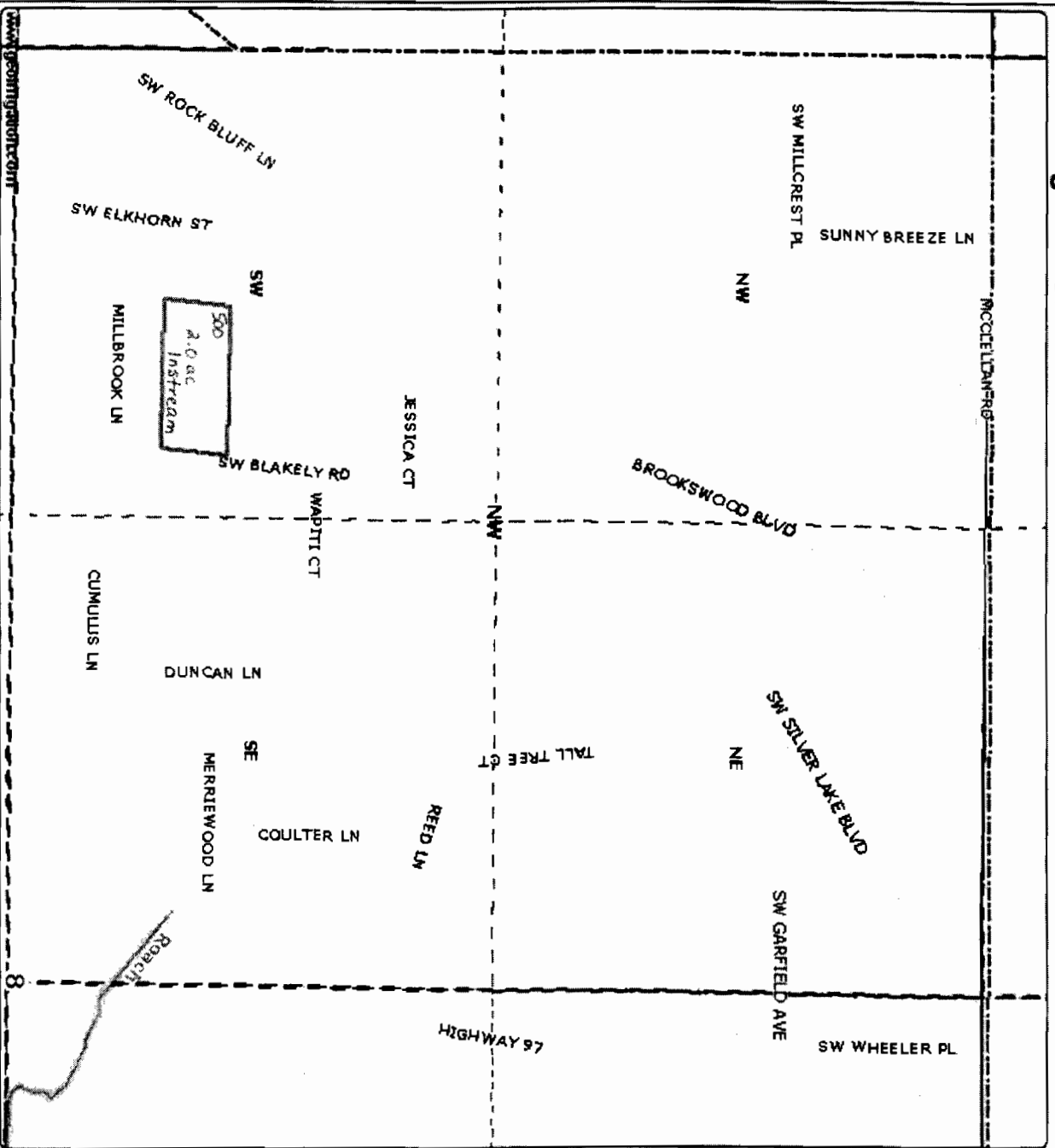
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Arnold Irrigation District



DISCLAIMER: This map is intended for display purposes only, and is not intended for any legal representations. There are no warranties, expressed or implied, that accompany this product.

Kevin Baney - June
Allwein - 2.00 ac.

181208BC00500 (prev 2201);
181208-SWNW-00500

- District Boundary
- County Boundary
- Road Labels
- Township Range
- Sections
- Section Labels
- Quarters
- Quarter Labels
- Quarter Quarters
- Quarter Quarter Labels
- Taxlots
- Canal Fill
- Canal Flood
- Canal Open
- PDU District Primary Fill
- Rivers

All wr in
taxlot being
500
leased.



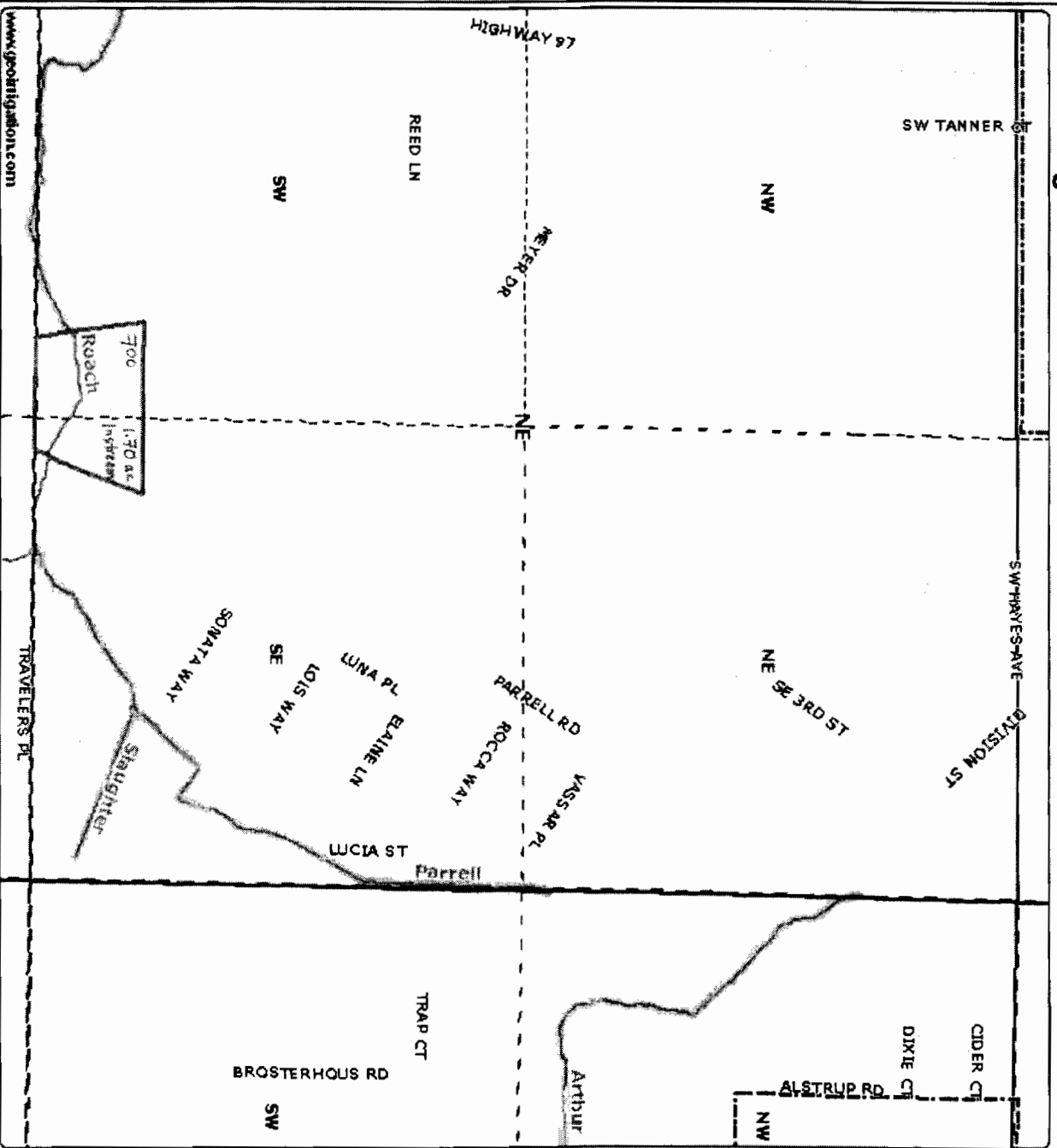
Scale 1" = 400'
Created: 3/19/2009

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WATER...
...SECTION

Arnold Irrigation District



www.geotitles.com

DISCLAIMER: This map is intended for general purposes only and is not intended for any legal representations. There are no warranties, expressed or implied, that accompany this product.

Kevin Baney - Dave Holt -

1.70 ac

181208ADD00700;
181208-SENE-00700

- District Boundary
- County Boundary
- Road Labels
- Township Range
- Sections
- Section Labels
- Quarters
- Quarter Labels
- Quarter Quarters
- Quarter Quarter Labels
- Tanks
- Canal All
- Canal Filled
- Canal Open
- POU District Primary Fill
- Rivers

All WR in
taxlot 700
being leased



Scale 1" = 400'
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