



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

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: Previously leased L-513, 5 yrs
Lease Application Number (assigned by WRD): IL-993

This Lease is between:

Lessor #1:

Name Bend Metro Park & Recreation District
Mailing address 200 Pacific Park Lane
City, State, Zip Code Bend, OR 97701
Telephone number (541) 389-7275
Email address _____

Lessor #2, 3, etc.

Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701
(541)382-3053

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 Street
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

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SALEM, OREGON

~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 16 S, Range 11 E, Section 21 and Tax Lot number 600. 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.

- 1.2 Lessor #2 is the (Check one):
 Not applicable
 Official representative of Tumalo Irrigation District, 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. Primary 74146, 74147, Supp. 74147, 74148, 74149, 76520

- 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.: 74146

Priority date: 9/1/1900 Type of use: Irrigation

Legal Season of Use: April 1-Oct 15, 2009

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 16 S, R 11 E, Section 21, NE $\frac{1}{4}$ SE $\frac{1}{4}$ - 6.70 acres to be leased

Enter additional places of use here, using format above:

T16S,R11E,Section 21,SE1/4SE1/4 - 4.70 acres to be leased

T16S,R11E,Section 21,SE1/4SW1/4-28.20 acres to be leased

T16S,R11E,Section 21,SW1/4SE1/4 -18.10 acres to be leased

Page 5 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 57.70

Acre-feet of storage, if applicable: _____

Maximum rate associated with the right to be leased (cfs): .824

(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): 103.86

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

Conditions or other limitations, if any: N/A

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

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~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:

Tumalo 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 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): Tumalo Creek at the Tumalo Feed Canal measured by Guage#14073520 to the mouth and thence to the mouth of the eschutes @RM 0

Maximum volume in acre-feet: 103.86

Rate in cfs: .285

(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 October 15.
- 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, 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 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: *David J. Johnston* Date: 4.16.09
Bend Metro Park & Recreation District

For additional Lessors, type in space for signature and date
Tumalo Irrigation District

Lessee: *Edmund H. DePamphilis* Date: 4-17-09

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Lessee: Genevieve Hubert Date: 4/16/09
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

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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.: 74147

Priority date: 10/29/1913 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): April 1 to November 1

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 16 S, R 11 E, Section 21, NE 1/4 SW 1/4 - 10.40 acres to be leased

Enter additional places of use here, using format above:

T16,R11,Section 21,NW1/4SE1/4-15.0 acres to be leased

T16,R11,Section 21,SW1/4SE1/4-21.90 acres to be leased

Page 3 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 47.30

Acre-feet of storage, if applicable: n/a

Rate associated with leased rights (cfs): Season I 0.591, Season II 0.788, Season III 1.46

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

Duty associated with leased rights (AF): 468.74

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

Conditions or other limitations, if any: N/A

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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:

Tumalo 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 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):

Tumalo Creek at the Tumalo Feed Canal (RM 2.5) as measured by Guage#14073520 to the mouth and thence to mouth of the Deschutes @RM 0

Maximum volume in acre-feet: 0.788

Rate in cfs: Season I 0.591, Season II 0.788, Season III 1.46

(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 26, 2009.
- Other (describe): _____

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

Primary Irrigation

TID CERT 74146 (assuming can divert full rate and duty allowed by certificate)

Source = Tumalo Creek

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

Enter Total Number of Acres to be Leased Instream Here by Priority		acres instream
August 5, 1900	0.00	
September, 1900	57.70	
April 28, 1905		
May 27, 1907	0.00	
June 1, 1907	0.00	
total acres	57.70	

Rate (CFS) associated with leased rights for Section 1.5 of the Lease Application Form			
Enter Rates and Rate/acre (CFS)	Max Rate (CFS)	Duty/acre (AF)	Max Duty (AF)
August 5, 1900	0.0143	1.8	0.00
September, 1900	0.0143	1.8	103.86
April 28, 1905	0.0140	1.8	0.00
May 27, 1907	0.0143	1.8	0.00
June 1, 1907	0.0143	1.8	0.00
Totals	0.824		103.86

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Rate (CFS) leased instream for Section 2.2 of the Lease Application Form

Enter Instream Rates and Volumes by Priority Date on Lease Form	Instream Rate (CFS) over full Irrigation Season	Instream Volume (AF)	Period Instream
August 5, 1900	0.000	0.00	April 15 - Oct 15
September, 1900	0.285	103.86	April 15 - Oct 15
April 28, 1905	0.000	0.00	April 15 - Oct 15
May 27, 1907	0.000	0.00	April 15 - Oct 15
June 1, 1907	0.000	0.00	April 15 - Oct 15
Totals	0.285	103.86	

OR

Optional for alternative instream periods including the full irrigation season (for Section 2.2)

Enter Proposed begin and end dates (must fall within Irrigation Season)					
begin date		Number of Days			
end date		1	Days		
Rate (CFS) leased instream for Section 2.2 of the Lease Application Form					
Enter Instream Rates and Volumes by Priority Date on Lease Form	# Day's Instream	Instream Rate (CFS) over full Irrigation Season	Instream Volume (AF)		
August 5, 1900	1	0.000	0.00		
September, 1900	1	52.455	103.86		
April 28, 1905	1	0.000	0.00		
May 27, 1907	1	0.000	0.00		
June 1, 1907	1	0.000	0.00		
Totals		52.455	103.86		

*Resulting rates may not exceed the max rate identified for Section 1.5 of the Lease Application

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

Primary Irrigation (See Below Dark Green Line for Supplemental Irrigation Calculator)

TID CERT 74147 (assuming can divert full rate and duty allowed by certificate)

Priority Date = October 29, 1913

Source = Tumalo Creek, Crater Creek, Little Creek and Three Spring Branches

Enter Total Number of Acres to be Leased Instream Here	47,300
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Rate (CFS) associated with leased rights for Section 1.5 of the Lease Application Form				
Enter Rates and Duty on Lease Form by Season	Rate/acre (CFS)	Max Rate (CFS)	Duty/acre (AF)	Max Duty (AF)
Season 1	0.013	0.591	9.91	468.74
Season 2	0.017	0.788		
Season 3	0.031	1.460		

Rate (CFS) based Instream for Section 2.2 of the Lease Application Form				
Enter Instream Rates and Volumes by Season on Lease Form	Instream Rate (CFS) over full Irrigation Season	Days instream	Instream Volume (AF)	
Season 1	0.591	56	65.67	
Season 2	0.788	30	46.91	
Season 3	1.460	123	356.16	
Totals		Total Instream Vol.	468.74	
Additional Conditions to Prevent Injury for Section 2.2 of the Lease Application Form				
Water protected instream:	April 1 through October 26			

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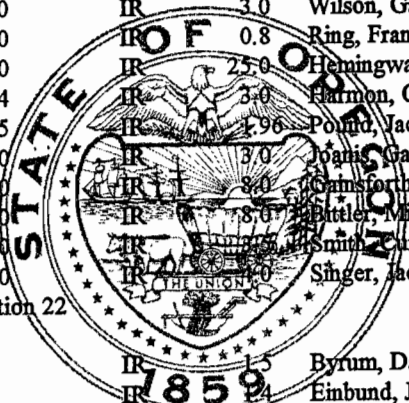
SE¼ NE¼	500	IR	5.8	Goldy, Daniel
NE¼ SW¼	600	IR	0.5	Bend Metro Parks
SW¼ SW¼	1000	IR	6.0	Hickok/Wallace
- SE¼ SW¼	600	IR	28.2 31.7	Bend Metro Parks
- NE¼ SE¼	600	IR	6.7	Bend Metro Parks
- SW¼ SE¼	600	IR	18.1	Bend Metro Parks
- SE¼ SE¼	600	POND	2.0	Bend Metro Parks
- SE¼ SE¼	600	IR	4.7	Bend Metro Parks
SE¼ SE¼	700	IR	1.0	Denall, Thomas & Linda
SE¼ SE¼	800	IR	1.0	Denall, Thomas & Linda
SE¼ SE¼	900	IR	0.1	Denall, Thomas & Linda

Section 21

NE¼ NE¼	101	IR	3.0	Green, Leslie & Helen, Trustees
NW¼ NE¼	200	IR	3.6	Calkins, John & Rose
NW¼ NE¼	201	IR	4.3	Curl, James & Sheryl
NW¼ NE¼	202	IR	7.3	Spencer, Kevin & Linda
SW¼ NE¼	1000	IR	5.0	LaRusso, Thomas
SW¼ NE¼	900	IR	11.0	Andreson, Wilber & Andrea
NE¼ NW¼	400	IR	28.6	Hauxwell, Stanley & Jean
NW¼ NW¼	400	IR	10.2	Hauxwell, Stanley & Jean
NW¼ NW¼	401	IR	1.0	Hayes, Thomas Sr. & Lenore
NE¼ SW¼	2000	IR	30.6	Ruggieri, Thomas & Monica
NW¼ SW¼	2100	IR	15.0	Settergren, Elizabeth, Trustee
SW¼ SW¼	2200	IR	8.6	Thompson, Teresa Soriano
SW¼ SW¼	2200	POND	0.5	Thompson, Teresa Soriano
SW¼ SW¼	2300	IR	3.0	Chambers, Dwight & Mary Jo
SW¼ SW¼	2400	IR	3.0	McNeil, James & Rose
SW¼ SW¼	2401	IR	3.0	White, Roland H.
SE¼ SW¼	2501	IR	13.2	Sleepy Hollow Trust
SE¼ SW¼	2502	IR	7.0	Sleepy Hollow Trust
SE¼ SW¼	2503	IR	6.0	Kennedy, Robert & Charlotte
NE¼ SE¼	1101	IR	4.5	Meade, Robert & Jerry
NE¼ SE¼	1200	IR	1.0	Faller, David & Betty
NE¼ SE¼	1300	IR	2.5	Ebbs, Jon & Mary Ann
NE¼ SE¼	1400	IR	3.0	Wilson, Gary & Gail
NW¼ SE¼	1900	IR	0.8	Ring, Frank & Nancy
SW¼ SE¼	2500	IR	25.0	Hemingway, Collins & Wendy
SW¼ SE¼	2504	IR	3.0	Harmon, Chester & Jean
SW¼ SE¼	2505	IR	2.96	Poung, Jack & Linda
SE¼ SE¼	2600	IR	3.0	Joanis, Gary & Sharon
SE¼ SE¼	2700	IR	3.0	Gainsforth, Patricia
SE¼ SE¼	2800	IR	8.0	Bittler, Mickey L.
SE¼ SE¼	2900	IR	3.0	Smith, Curtis & Lorraine
SE¼ SE¼	3000	IR	3.0	Singer, Jack & Randi, Trustees

Section 22

SW¼ NE¼	509	IR	1.5	Byrum, David & Terry
SW¼ NE¼	519	IR	1.5	Einbund, James
NE¼ NW¼	200	IR	7.0	Coe, Edwin & Donna
NE¼ NW¼	700	IR	9.7	Muzzy, Robert & Ruby
SE¼ NW¼	200	IR	2.6	Coe, Edwin & Donna
NE¼ SW¼	519	IR	0.3	Einbund, James
NW¼ SW¼	502	IR	7.8	McCormick, William P.
NW¼ SW¼	516	IR	1.4	Hiatt, Melva Joan
SW¼ SW¼	502	IR	5.9	McCormick, William P.



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SW¼SE¼	1300	Day, Matt & Lesley	IR	2.50	2.60
SE¼SE¼	1100	Carver, Roy & Jean	IR	2.00	2.00
SE¼SE¼	1400	Day, Matt & Lesley	IR	2.40	4.00
SE¼SE¼	1400	Day, Matt & Lesley	PND	3.10	
SE¼SE¼	1401	Kirkhorn, Bruce	IR		4.94

Section 13

NE¼NE¼	100	Fidler, Terry & Mary	IR		0.50
NE¼NE¼	200	McCambridge, Mark & Elizabeth	IR		1.00
NE¼NE¼	300	Mandel, Paul & Ellen	IR		1.50
SE¼NE¼	101	Gardner, Robert & Joyce	IR	18.50	
NE¼NW¼	600	Christianson, Michael & Roberta	IR		9.00
SW¼NW¼	503	Mueller Trust, Kenneth & Norma	IR		20.00
SW¼NW¼	505	Mueller Trust, Kenneth & Norma	IR		16.00
SE¼NW¼	503	Mueller Trust, Kenneth & Norma	IR		8.80
SE¼NW¼	505	Mueller Trust, Kenneth & Norma	IR		5.00
NE¼SW¼	502	Eyer, Dale & Mary	IR	3.20	
NW¼SW¼	501	Eyer, James	IR		9.00
NW¼SW¼	504	Allen, Charlie & Wendy	IR		14.20
SW¼SW¼	1100	Tate, Elsie	IR	1.70	
SW¼SW¼	700	Muzzy, Robert & Ruby	IR	0.50	
SE¼SW¼	1100	Tate, Elsie	IR	6.00	
SE¼SW¼	700	Muzzy, Robert & Ruby	IR	0.60	

Section 14

SW¼NE¼	500	Eyer, Dale & Mary	IR	6.30	4.00
SE¼NE¼	600	Mueller Trust, Kenneth & Norma	IR		39.50
NE¼NW¼	1500	Walker, Donald & Marianne	IR	2.60	
NW¼NW¼	1600	Walker, Donald & Marianne	IR	7.21	
SW¼NW¼	1600	Walker, Donald & Marianne	IR	30.29	
SE¼NW¼	1400	Walker, Donald & Marianne	IR	2.20	7.93
SE¼NW¼	1600	Walker, Donald & Marianne	IR	19.50	
NE¼SW¼	1600	Walker, Donald & Marianne	IR		35.27
NW¼SW¼	1600	Walker, Donald & Marianne	IR		35.27
SW¼SW¼	1600	Walker, Donald & Marianne	IR		22.57
SE¼SW¼	1600	Walker, Donald & Marianne	IR		37.16
SW¼SE¼	1000	Jungers, Frank & Julia	IR		8.20
SW¼SE¼	900	Jungers, Frank & Julia	IR	10.57	2.17
SE¼SE¼	900	Jungers, Frank & Julia	IR	1.30	2.21

SE¼NE¼	500	Goody, David	IR		24.00
NE¼SW¼	600	Bend Metro Parks	IR	10.40	0.50
SW¼SW¼	1000	Hickok Walla	IR		6.00
SE¼SW¼	600	Bend Metro Parks	IR		31.70
NE¼SE¼	600	Bend Metro Parks	IR		6.70
NW¼SE¼	600	Bend Metro Parks	IR	15.00	
SW¼SE¼	600	Bend Metro Parks	IR	21.90	18.10
SE¼SE¼	600	Bend Metro Parks	IR		6.70
SE¼SE¼	700	Denall, Thomas & Linda	IR	1.00	1.00
SE¼SE¼	800	Denall, Thomas & Linda	IR		1.00
SE¼SE¼	900	Denall, Thomas & Linda	IR		0.10

Section 21

NE¼NE¼	101	Green, Leslie & Helen, Trustees	IR		7.50
NW¼NE¼	200	Calkins, John & Rose	IR		3.60
NW¼NE¼	201	Curl, James & Sheryl	IR		4.30
NW¼NE¼	202	Spencer, Kevin & Linda	IR		7.80
SW¼NE¼	1000	LaRusso, Thomas	IR		5.00

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TUMALO IRRIGATION DISTRICT IN-STREAM LEASED WATER RIGHTS SURVEY

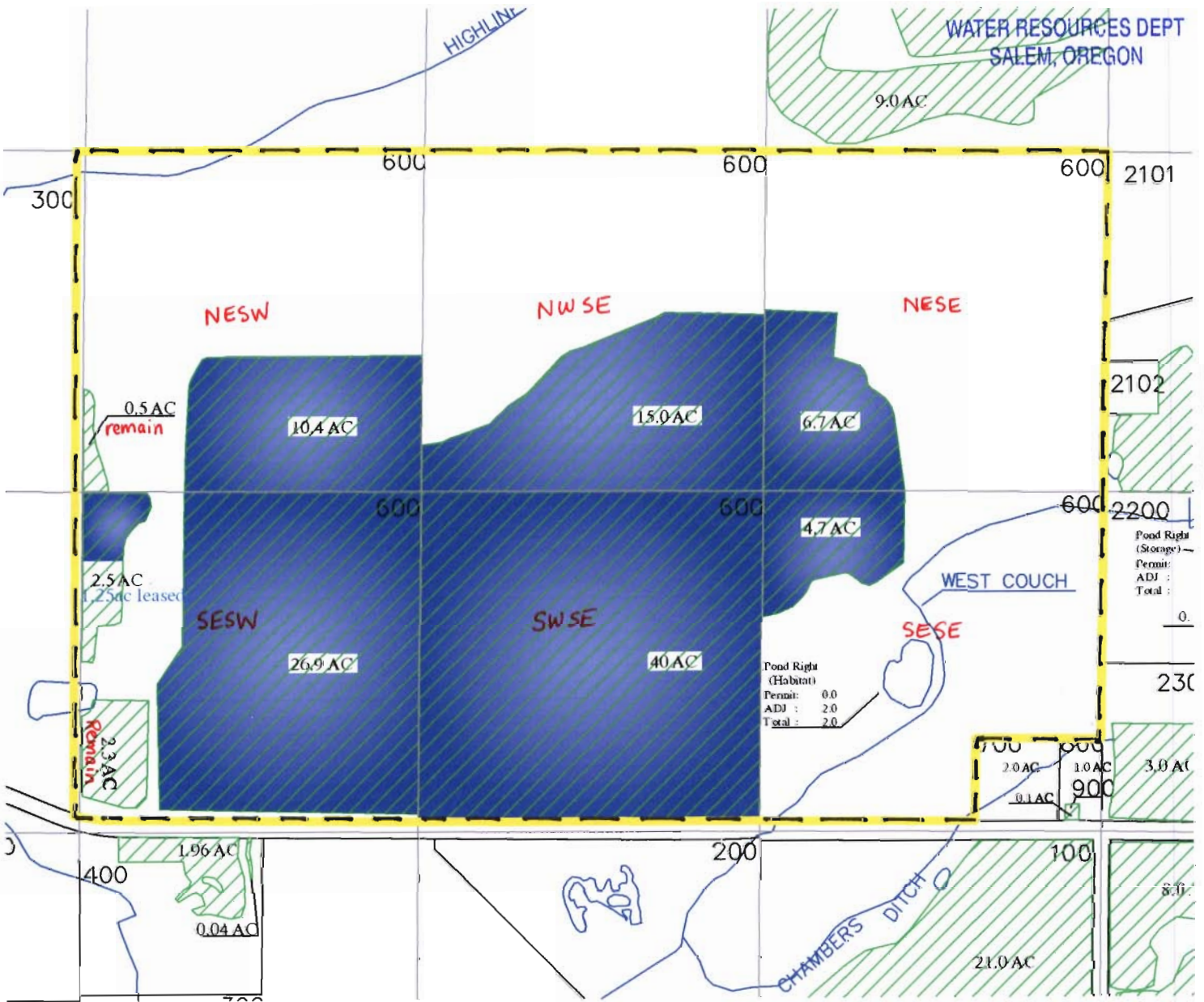
EXHIBIT B
Lease # _____

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FOR
Bend Metro Parks

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Pond Right
(Habitat)
Permit: 0.0
ADJ: 2.0
Total: 2.0

Pond Right
(Storage) -
Permit:
ADJ:
Total: 0.

-  Certificate #'s
74146, and 74147
-  Certificate #
76106
-  In-Stream Lease

INITIAL: _____

LOCATED IN THE SOUTH 1/2
OF SECTION 21, T. 16S., R.11E., W.M.
TAX LOTS # 600
DESCHUTES COUNTY, OREGON



SCALE: 1" = 600'

Prepared By: Tumalo Irrigation District, 64697 Cook Ave, Bend, Oregon 97701 541-382-3053