



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](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: \_\_\_\_\_  
Lease Application Number (assigned by WRD): \_\_\_\_\_

This Lease is between:

**Lessor #1:**

Name James and Valerie Root  
Mailing address PO Box 430  
City, State, Zip Code Medford, OR 97501  
Telephone number (541) 772-4400  
Email address jim@jimrootcompany.com

**Lessor #2, 3, etc.**

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

**Lessee (if different than Oregon Water Resources Department):**

Name Klamath Basin Rangeland Trust  
Mailing address 700 Main St #201A  
City, State, Zip Code Klamath Falls, OR 97601  
Telephone number (541) 273-2189  
Email address speterson@kbrt.org

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WATER RESOURCES DEPT  
SALEM, OREGON

**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

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 34 S, Range 7 E, Section 24,25; and T34S R7E Sections 19,30 and Tax Lot number \_\_\_\_\_. 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 \_\_\_\_\_, 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. NA

- 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.: 35561

Priority date: October 20, 1960 Type of use: Irrigation

Legal Season of Use: 1/1 - 12/31

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 34 S, R 7v E, Section 24, SW 1/4 NE 1/4 - 0.50 acres to be leased

Enter additional places of use here, using format above:

T34S R7.5E

Section 24

SE NE 20.0 ac

NE SE 39.7 ac

NW SE 8.3 ac

SW SE 3.9 ac

SE SE 38.6 ac

Section 25

NE NE 39.4 ac

NW NE 9.0 ac

SE NE 29.0 ac

NE SE 16.6 ac

SE SE 5.2 ac

T34S R7E

Section 19

SW SW 24.2 ac

Section 30

NE NW 2.5 ac

NW NW 31.8 ac

SW NW 37.5 ac

SE NW 10.7 ac

NW SW 28.1 ac

SW SW 33.0 ac

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

Number of acres being leased, if for irrigation: 378

Acre-feet of storage, if applicable: \_\_\_\_\_

Maximum rate associated with the right to be leased (cfs): 7.96 for full right as listed on certificate - 7.56 for area to be leased

(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): 5 acft / ac

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

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

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**

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**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:

Crooked Creek

Tributary to Wood River in the Klamath 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): The POD is Lot 4 (SW1/4SW1/4), Section 18, T34S R7E, W.M. Spring located 1100 feet north and 815 feet east from the SE corner of Section 18.

The instream use created is:

Agency Creek from the POD to the confluence with Crooked Creek

Crooked Creek from where Agency Creek enters to the confluence with Wood River

Maximum volume in acre-feet: 1890

Rate in cfs: 2.6

(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 December 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.

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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.

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: James & Valerie Root Date: 6/22/09  
Jim Root for James & Valerie Root

For additional Lessors, type in space for signature and date

Lessee: Shannon Peterson for KBPT Date: 6/23/09  
Shannon Peterson for the Klamath Basin Rangeland Trust

- 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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STATE OF OREGON  
 COUNTY OF KLAMATH  
**CERTIFICATE OF WATER RIGHT**

**This Is To Certify, That** U. S. NATIONAL BANK OF PORTLAND  
 Trust Department, Klamath Falls Branch, Trustees for non-withdrawing mem-  
 of P. O. Box 1161, Klamath Falls, State of Oregon bers of the Klamath Indian Tribe  
 to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of , has made proof  
 Agency Spring for the purpose of  
 a tributary of Crooked Creek (Wood River)  
 irrigation of 398.2 acres of the State Engineer, and that said right to the use of said waters  
 under Permit No. 27036 has been perfected in accordance with the laws of Oregon; that the priority of the right hereby  
 confirmed dates from **October 20, 1960**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed **7.96 cubic feet per second**

or its equivalent in case of rotation, measured at the point of diversion from the stream.  
 The point of diversion is located in the Lot 4 (SW $\frac{1}{4}$  SW $\frac{1}{4}$ ), Section 18, T. 34 S., R. 7 E., W. M. Spring located 1100 feet North and 815 feet East from the SW Corner, Section 18.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to **one-fiftieth** of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season of each year;

and shall

conform to such reasonable rotation system as may be ordered by the proper state officer.  
 A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

0.5 acre	SW $\frac{1}{4}$ NE $\frac{1}{4}$
20.0 acres	SE $\frac{1}{4}$ NE $\frac{1}{4}$
39.7 acres	NE $\frac{1}{4}$ SE $\frac{1}{4}$
8.3 acres	NW $\frac{1}{4}$ SE $\frac{1}{4}$
3.9 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$
38.6 acres	SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 24	
25.5 acres	Lot 12 (NE $\frac{1}{4}$ NE $\frac{1}{4}$ )
13.9 acres	Lot 13 (NE $\frac{1}{4}$ NE $\frac{1}{4}$ )
9.0 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$
10.3 acres	Lot 14 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ )
18.7 acres	Lot 15 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ )
4.0 acres	Lot 16 (NE $\frac{1}{4}$ SE $\frac{1}{4}$ )
12.6 acres	Lot 17 (NE $\frac{1}{4}$ SE $\frac{1}{4}$ )
5.2 acres	SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 25	

T. 34 S., R. 7 $\frac{1}{2}$  E., W. M. East of Wood River

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4.4 acres Lot 2 (SW $\frac{1}{4}$  NW $\frac{1}{4}$ )  
12.8 acres Lot 3 (NW $\frac{1}{4}$  SW $\frac{1}{4}$ )  
24.2 acres Lot 4 (SW $\frac{1}{4}$  SW $\frac{1}{4}$ )  
Section 19

2.5 acres Lot 5 (NE $\frac{1}{4}$  NW $\frac{1}{4}$ )  
31.8 acres Lot 1 (NW $\frac{1}{4}$  NW $\frac{1}{4}$ )  
37.5 acres Lot 2 (SW $\frac{1}{4}$  NW $\frac{1}{4}$ )  
11.8 acres SE $\frac{1}{4}$  NW $\frac{1}{4}$   
28.1 acres Lot 3 (NW $\frac{1}{4}$  SW $\frac{1}{4}$ )  
33.0 acres Lot 4 (SW $\frac{1}{4}$  SW $\frac{1}{4}$ )  
1.9 acres SE $\frac{1}{4}$  SW $\frac{1}{4}$

Section 30

T. 34 S., R. 7 E., W. M.

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*The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.*

WITNESS the signature of the State Engineer, affixed

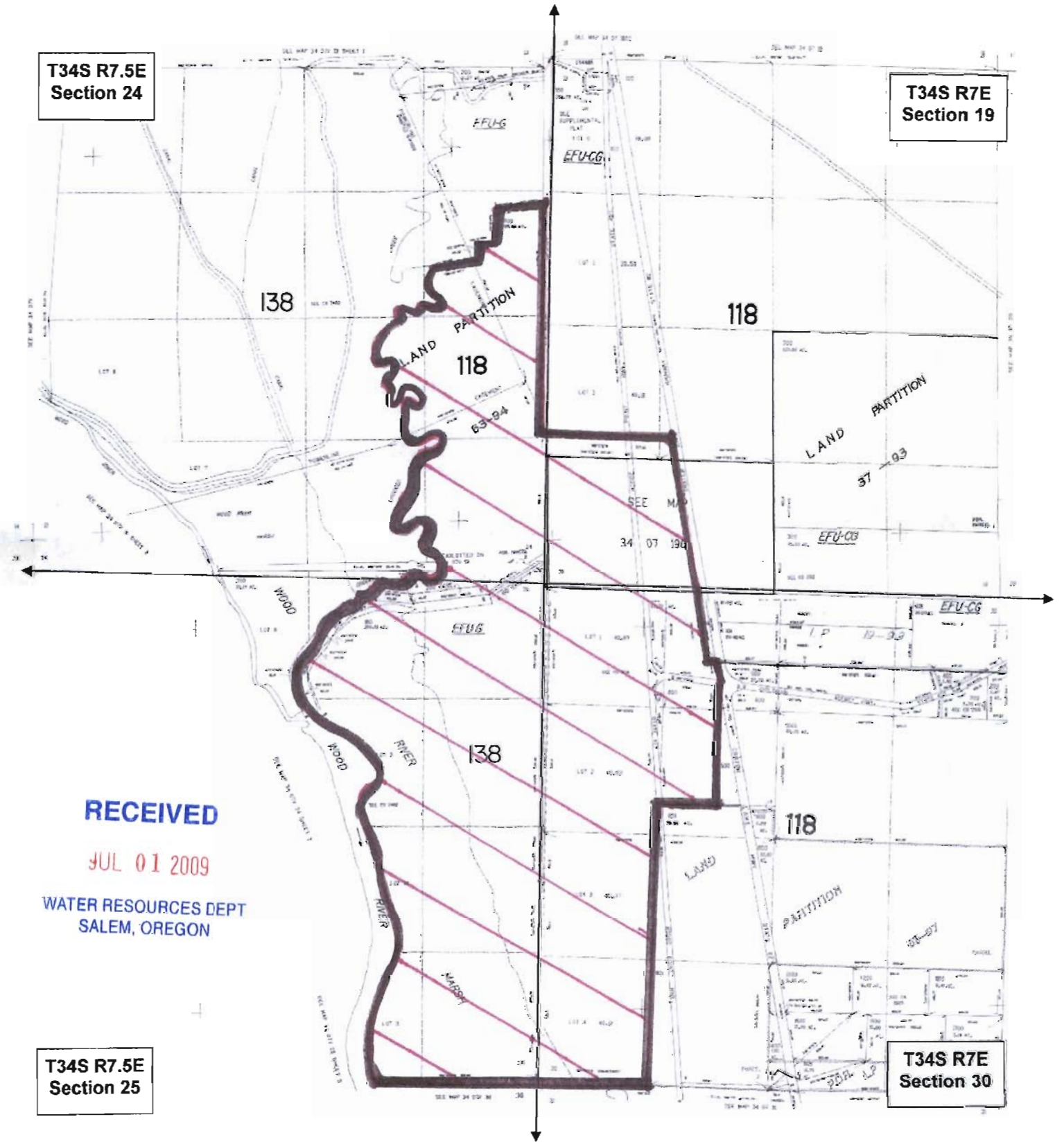
this 31 day of December, 1968

CHRIS L. WHEELER State Engineer

Instream Lease Application  
Certificate 35561  
James & Valerie Root

T34S R7.5E  
Section 24

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T34S R7.5E  
Section 25

T34S R7E  
Section 30

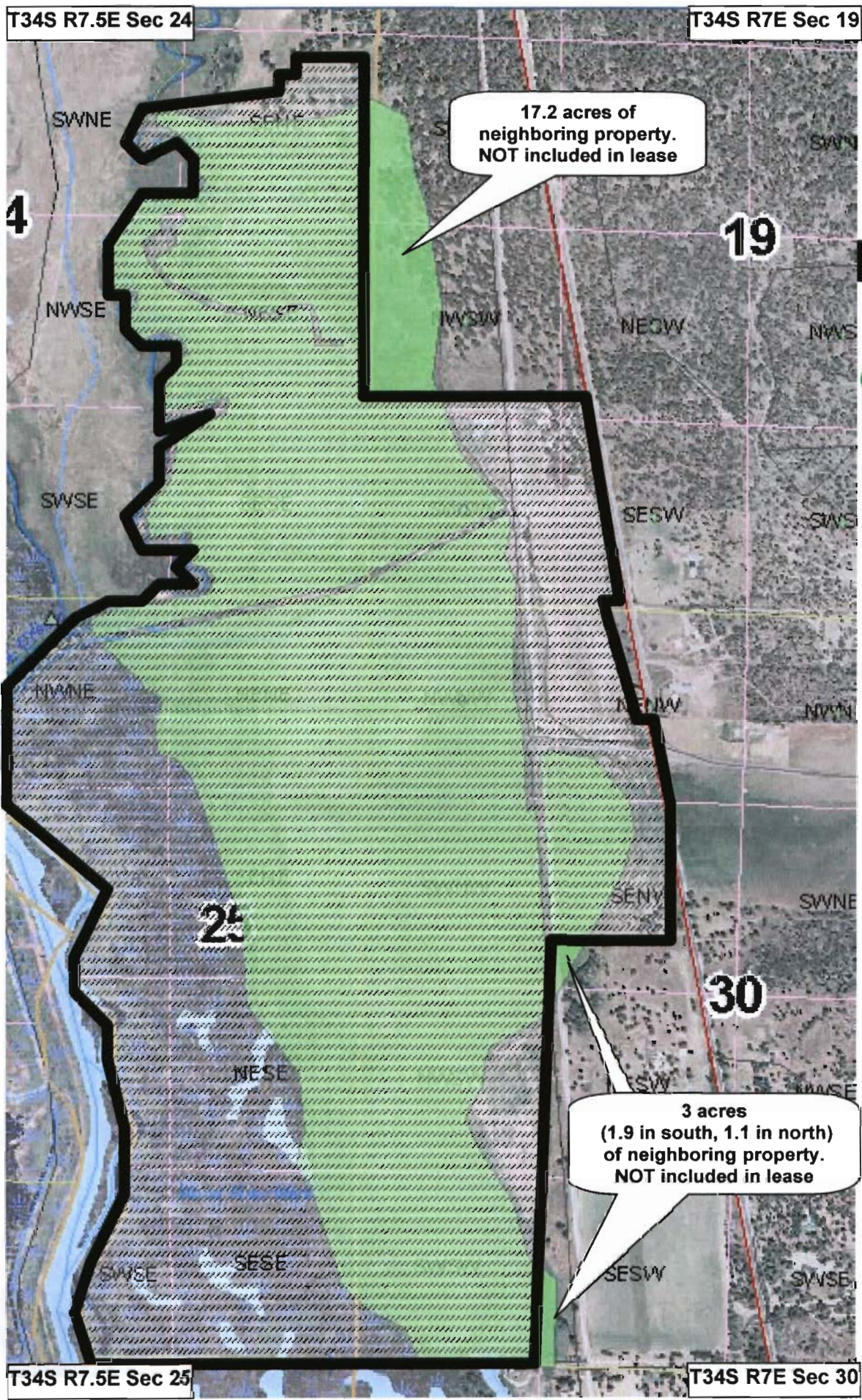


Certificate 35561



 Root Ownership  
All applicable  
rights from Cert  
35561 to be leased

 Place of use for  
Cert 35561



17.2 acres of  
neighboring property.  
NOT included in lease

3 acres  
(1.9 in south, 1.1 in north)  
of neighboring property.  
NOT included in lease

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