



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: _____
Lease Application Number (assigned by WRD): IL-1026

This Lease is between:

Lessor #1:

Name U.S. Department of the Interior, Fish & Wildlife Service
Contact: Dar Crammond, Water Resources Branch Chief
Mailing address 911 NE 11th Avenue
City, State, Zip Code Portland, OR 97232
Telephone number 503-231-2098
Email address dar_crammond@fws.gov

Lessor #2, 3, etc.

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

Lessee (Oregon Water Resources Department):

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 28S, Range 14W, Section 8 and Tax Lot number 600,
Township 28S, Range 14W, Section 16 and Tax Lot number 600, and
Township 28S, Range 14W, Section 17 and Tax Lot number 100.

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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. 56084

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.: 56084

Priority date: 7/20/1976 Type of use: Irrigation

Legal Season of Use: 3/1 - 10/31

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 ____, R ____, Section __, 1/4 1/4 - _____ acres to be leased

Enter additional places of use here, using format above:

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

Number of acres being leased, if for irrigation: 186

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

Maximum rate associated with the right to be leased (cfs): 2.33

(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): 465

(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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If you need to enter another leased right, please use the additional water rights form. SALEM, OREGON

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)(c) (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:

Fahy's Creek

Tributary to Coquille River in the South Coast 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):

NW 1/4 NE 1/4, Section 17, T28S, R14W, WM; 10 feet East from N 1/4 corner Section 17.

Maximum volume in acre-feet: 465

Rate in cfs: 0.957 (= 465 af / 245 days / 1.9835)

(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.

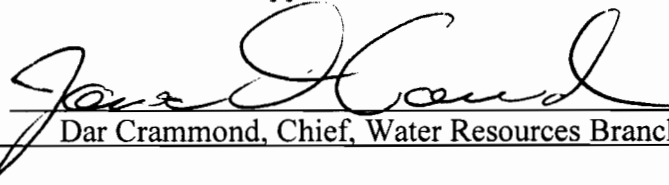
2.3 **Term of lease.** This lease shall terminate on 12/31/2015.

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:
- \$400 for an application with four or more landowners or four or more water rights.
 - \$250 for all other applications.

Lessor #1:  Date: 11/5/2009

 Dar Crammond, Chief, Water Resources Branch, USFWS

For additional Lessors, type in space for signature and date

Lessee: _____ Date: _____

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STATE OF OREGON

COUNTY OF COOS

CERTIFICATE OF WATER RIGHT

This is to certify, That DAVID R. PHILPOTT

of Route 2, Box 2090, Bandon, State of OR 97411, has made
proof to the satisfaction of the Water Resources Director, of a right to the use of the waters of
Fahy's Creek

a tributary of Coquille River for the purpose of
irrigation of 186.0 acres

under Permit No. 40928 and that said right to the use of said waters has been perfected in
accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from
July 20, 1976
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
2.33 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 NW 1/4 NE 1/4, Section 17, T28S, R14W, WM; 10
feet East from N 1/4 corner Section 17.

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-eightieth 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 2.5 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:

18.7 acres SW 1/4 SE 1/4	38.6 acres NE 1/4 NE 1/4
8.9 acres SE 1/4 SE 1/4	39.1 acres NW 1/4 NE 1/4
Section 8	38.3 acres SW 1/4 NE 1/4
	31.6 acres SE 1/4 NE 1/4
8.0 acres NW 1/4 NW 1/4	2.8 acres NW 1/4 SE 1/4
Section 16	Section 17

Township 28 South, Range 14 West, WM

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use
herein described and is subject to minimum flows established by the Water Resources Commission with an
effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed

this date. April 24, 1987

/s/ William H. Young

Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 51, page 56084

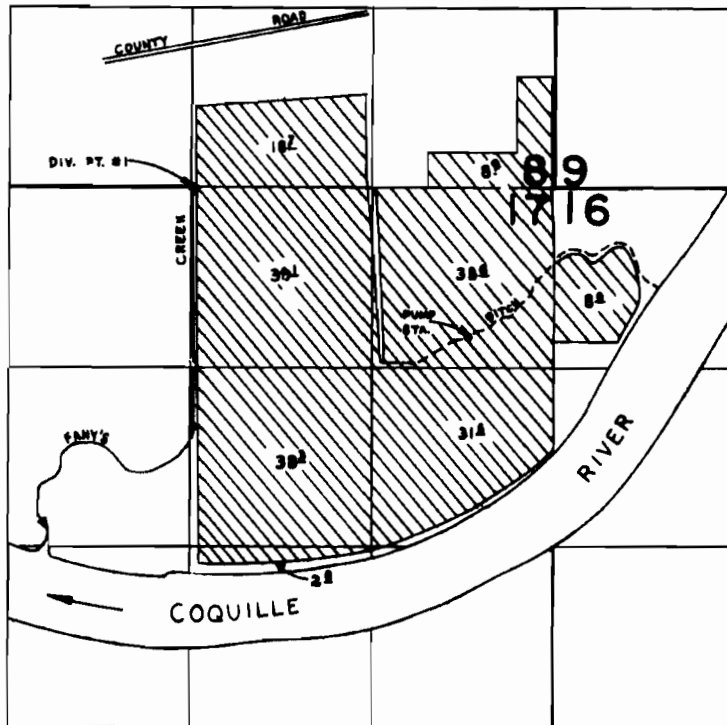
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T. 28 S., R. 14 W., W.M.



DIV. PT. #1 LOCATED 16' E. FROM N. 1/4 CORNER SECTION 17
 DIV. PT. #2 LOCATED 15' N. & 25' E. FROM N. 1/16 CORNER SECTION 17
 PUMP STA. LOCATED 1,050' S. & 630' W. FROM N.E. CORNER SECTION 17

SCALE: 4" = 1 mile

FINAL PROOF SURVEY UNDER

Application No. 54542, Permit No. 40928.....
 IN NAME OF

.....DAVID R. PHILPOTT.....

Surveyed NOV...1... 1983., by L....CASHION....

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