

September 1, 2009



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: previously leased L-997  
Lease Application Number (assigned by WRD): IL-1076

This Lease is between:

**Lessor #1:**

Name Mill Creek Land, LLC (Mark Copeland)  
Mailing address 7900 NE Mill Creek Rd  
City, State, Zip Code Prineville, OR 97754  
Telephone number 541-447-7363  
Email address analysisllc@aol.com

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

The water right to be leased is located in Crook 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 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

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 14 S, Range 17 E, Section 26 and Tax Lot number 2602. 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 I (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. 83656, additional primary water rights 83657, 83658 (not leased)

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.: 83656

Priority date: 1868, to be leased as subordinate to all other surface water rights on Mill Creek.

Type of use: Irrigation

Legal Season of Use: none specified

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 14 S, R 17 E, Section 26, NW 1/4 NW 1/4 - 15.1 acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 17 E, Sect 26, SW 1/4 NW 1/4, 17.20 acres

Total acres to be leased: 32.3 acres

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

Number of acres being leased, if for irrigation: 32.3

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

Maximum rate associated with the right to be leased (cfs): 0.0125 cfs/ac, 0.404 cfs

(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): 4.0 acre-feet per acre, 129.2

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

Conditions or other limitations, if any: To be leased as subordinate to all other surface water rights on Mill Creek.

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

### ~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:

Mill Creek

Tributary to Ochoco Creek in the Crooked River 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): SE 1/4 SE 1/4, Sect 22, Township 14 S, Range 17 E, WM: 1122 Feet N and 346 feet W from the NW corner, Sect 26 to the mouth of Mill Creek at RM 0.

Maximum volume in acre-feet: 129 acre feet

Rate in cfs: 0.404 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 May 1 through October 8.
- 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 November 1, 2010.

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: Mill Creek Land, LLC Date: 5/15/10  
Mark Copeland Self Master

For additional Lessors, type in space for signature and date

Lessee: Genevieve Hubert Date: May 18, 2010  
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



Jan 2007



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

## Additional Water Right Form Standard Application for Instream Lease

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### ~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.: 83657

Priority date: 1868 Type of use: Irrigation

Legal Season of Use (if not listed on the certificate): none specified

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  $\frac{1}{4}$   $\frac{1}{4}$ , 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 14 S, R 17 E, Section 26,  $\frac{1}{4}$   $\frac{1}{4}$  - \_\_\_\_\_ acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 17 E, Sect 26, SWNE, 1.7 acres

T 14 S, R 17 E, Sect 26, NWNW, 5.2 acres

T 14 S, R 17 E, Sect 26, SENW, 11.5 acres

T 14 S, R 17 E, Sect 26, NBSW, 9.7 acres

T 14 S, R 17 E, Sect 26, NWSW, 19.4 acres

T 14 S, R 17 E, Sect 26, SWSW, 17.7 acres

T 14 S, R 17 E, Sect 26, SESW, 24.3 acres

T 14 S, R 17 E, Sect 26, SWSE, 4.1 acres

Total : 93.6 acres

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

Number of acres, if for irrigation: 93.6 acres

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

Rate associated with leased rights (cfs): 0.0125 cfs/ac, 1.170 cfs

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

Duty associated with leased rights (AF): 4.0 acre-feet/acre, 374 acre-feet

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

Conditions or other limitations, if any: To be leased as subordinate to all Mill Creek surface water rights.

### ~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:

Mill Creek

Tributary to Ochoco Creek in the Crooked River 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): SE 1/4 SE 1/4, Sect 22, T 14 S, R 17 E, WM; 1122 feet N, and 346 feet W from the NW corner, Sect 26 to the mouth of Mill Creek.

Maximum volume in acre-feet: 374 acre-feet

Rate in cfs: 1.170 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 May 1 through October 8.
- Other (describe): \_\_\_\_\_

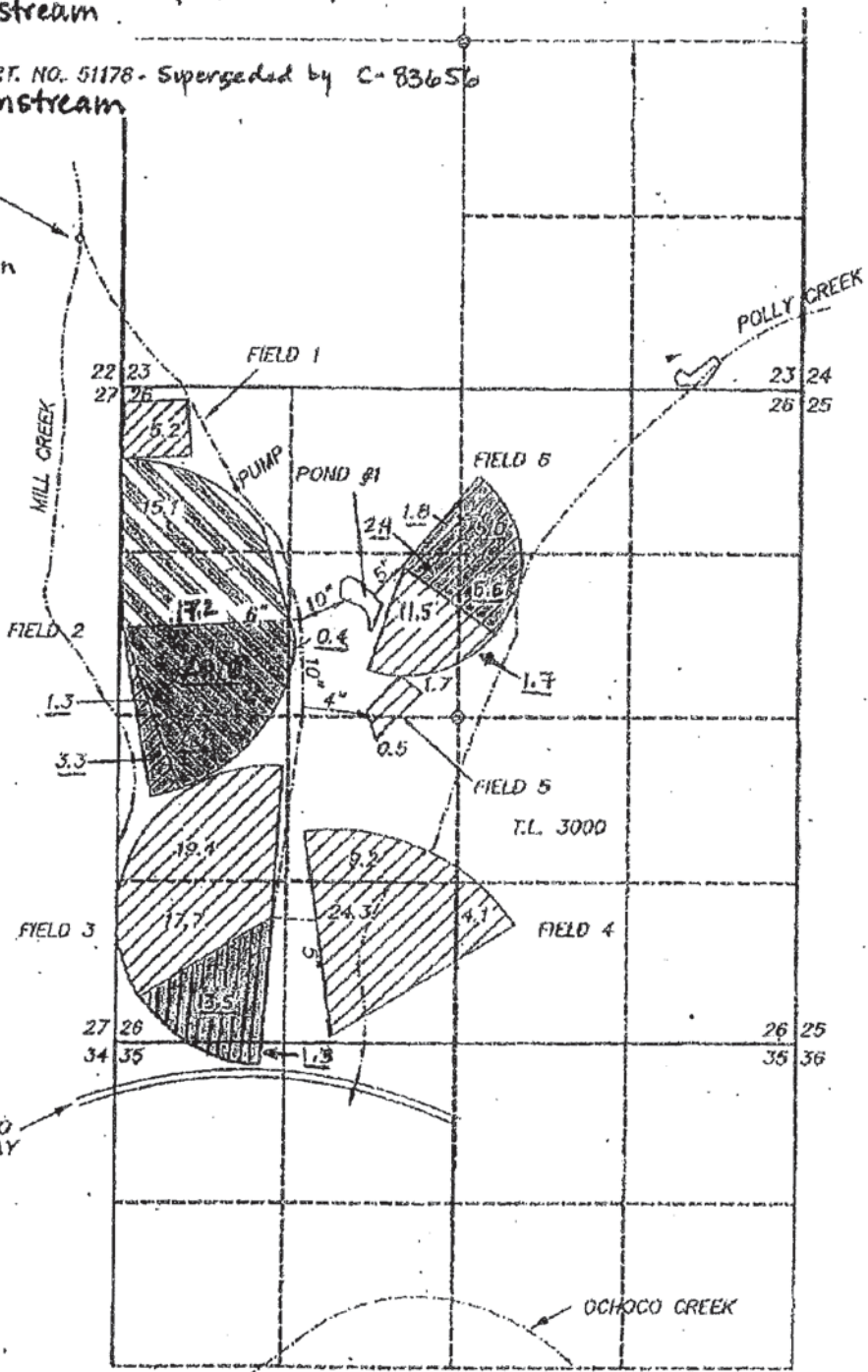




# Attachment 2.a.: Water rights to be leased instream

-  = MILL CREEK WATER RIGHT CERT. NO. 588 - Superseded by C-83657  
93.6 ACRES - leased instream
-  19.4 Acres Remaining
-  = MILL CREEK WATER RIGHT CERT. NO. 51178 - Superseded by C-83656  
32.3 ACRES - leased instream
-  27.7 Acres Remaining
-  14.8 ac C-83658 remain

T. 14 S., R. 17 E., Sect. 26  
 Tax lot 2602  
 125.9 acres  
 leased instream  
 61.9 acres remain



SCALE: 1" = 1320'

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THE  
OF  
ONE  
LOC

PREPARED BY  
 BAXTER LAND SURVEYING, INC.  
 20370 EMPIRE AVE. SUITE C3  
 BEND, ORE. 97701 (541) 382-1962

CLAIM OF E  
 MILL C

**EXHIBIT C**

**Deschutes River Conservancy  
2010 Instream Leasing Program**

**Policy Concerning Weeds & Instream Leases  
Information on Farm Deferral & Lease Payment**

The Deschutes River Conservancy is dedicated to restoring stream flow and improving water quality in the Deschutes Basin; land stewardship is a component of these goals.

**Weed Policy**

The DRC expects participants in the Leasing Program will continue to exercise agricultural best management practices on lands enrolled in the Program, particularly with respect to the control of noxious and/or nuisance weeds. Failure to control weeds on leased acres may result in exclusion from Program compensation.

*Information and Resources Attached*

**Farm Deferral Notice**

Instream leasing is a beneficial use that protects your water right from forfeiture and allows for compensation for this instream use, but please note that it does not automatically protect against loss of farm use special assessment. Exclusive Farm Use (EFU) zoned lands may still require at least minimal use with the intent to make a profit. It is the landowner's responsibility to know their tax assessment status and qualifying uses.

*Information and Resources Attached*

**Donated Leases:** The DRC does not pay a per acre or per acre-foot rate for Mill Creek leases.

I, Mill Creek Land, LLC understand the DRC weed policy and have  
*Print Name*  
been informed about farm deferral.

Signature: Mill Creek Land, LLC Date: 5/15/10  
*by J. Hubert A. Copeland*  
*Sole Member*

**This form must be signed and returned with state lease form.**