



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: partially leased in 2007: L-859
Lease Application Number (assigned by WRD): IL-1081/MP-138

Mitigation
Lease

This Lease is between:

Lessor #1:

Name Grass Butte, LLC
Mailing address 1111 Main Street, Suite 700
City, State, Zip Code Vancouver, WA 98660
Telephone number 541-389-2837 - John Short (agent)
Email address johnshort@usa.com

Lessor #2, 3, etc.

Low Line Ditch Co.
13223 NW O'Neil Hwy } N/A
Redmond, OR 97756

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

Lessee (if different than Oregon Water Resources Department):

Name Deschutes River Conservancy Mitigation Bank
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 14 E, Section 20, 21 & 29 and Tax Lot number 200. 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 Low Line Ditch Co, the irrigation district which conveys water to the subject water rights. ← N/A
 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. 83857 primary was 81601 CN (1327 Primary not being leased, primary and supplemental not leased), 83651 (86137 not leased, 83850 supplemental) and 83732 (83850 supplemental) - - Supplemental 83850 (prev. 80795) transferring to other lands in T-10734.

- 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.: 83857 (was 81601 CN)

Priority date: 64 ac 1892, 0.5 ac 1898, 2.5 ac 1904/1910 Type of use: IRR

Legal Season of Use: per Crooked River Decree Feb 1 - Dec 1

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 ¼ ¼ 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 14 E, Section, ¼ ¼ - acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 14 E, Sect 20, SWSW, 10.0 ac, taxlot 200 (prev L-859), 1892

T 14 S, R 14 E, Sect 29, NWNW, 38.0 ac, taxlot 200 (prev L-859), 1892

T 14 S, R 14 E, Sect 29, SWNW, 3.0 ac, taxlot 200 (prev L-859), 1892

T 14 S, R 14 E, Sect 29, SENW, 8.0 ac, taxlot 200 (prev L-859), 1892

T 14 S, R 14 E, Sect 29, NENW, 5.0 ac, taxlot 200 (prev L-859), 1892

T 14 S, R 14 E, Sect 29, NENE, 0.5 ac, taxlot 200, 1898

T 14 S, R 14 E, Sect 21, SESW, 2.5 ac, taxlot 200, 1904/1910

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

Number of acres being leased, if for irrigation: 64 ac 1892, 0.5 ac 1898, 2.5 ac 1904/1910 = 67 acres total

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

Maximum rate associated with the right to be leased (cfs): 0.80 cfs 1892, .006 cfs 1898, .031 cfs of 1904/1910 = cfs 0.837 cfs total

(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): 257 ac-ft of 1892, 2 ac-ft of 1898, 10 ac-ft of 1904/1910 = 269 ac-ft total

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

Conditions or other limitations, if any: Lease to be terminated prior to or coinciding with with the final order of instream transfer T-10730.

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).

~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:

Crooked River

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):

from POD 1: T 15 S, R 16 E, WM; sect 8, NWSW, 1920 feet North & 340 feet East from the SW corner of Section 8

from POD 6: a pump at T 14 S, R 14 E, WM; NENW, 1085 feet South & 970 feet West from the N ¼ corner of Section 29 to Lake Billy Chinook.

From POD 2: described as "Low Line Ditch" to Lake Billy Chinook

From POD 7: a pump 325 feet North and 120 feet West from the Southeast Corner of Section 20 to Lake Billy Chinook

Only Direct Diversion 6 is used to serve the acres for POD 1 & POD 6. In previous correspondence with OWRD this was explained (2007 lease 859), Peoples Irrigation Ditch abandoned the lower 5 miles or so of their ditch. Landowners are responsible for their own diversions below Elliot Lane and the Peoples Irrigation does not service these acres or assess these acres (see attached letter from Peoples ID), John Short and Martha Pagel have worked to clarify the correct diversion for these acres.

Maximum volume in acre-feet: 1892 POD 1: 202 ac-ft, POD 6: 54 ac-ft = total 256 ac-ft
1898 POD 7: 2.0 af-ft
1904/1910 POD 2: 10.0 ac-ft
Total 268 ac-ft

Rate in cfs: 1892 POD 1: 0.633 cfs, POD 6: 0.167 cfs = total 0.8 cfs
1898 POD 7: 0.006 cfs
1904/1910 POD 2: 0.031 cfs
Total 0.837 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 6 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 November 30, 2014 or prior to or coinciding with the final order for instream transfer T-10730.
- 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: 6-7-2010
Grass Butte, LLC By: Gregory W. Daniels, Manager

For additional Lessors, type in space for signature and date

Lessor #2: N/A Date: _____
Low Line Ditch Co.

Lessee:  Date: 6/8/2010
Deschutes River Conservancy Mitigation Bank

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

Additional Attachments: Water Conveyance Agreements (quitclaims) and Warranty Deeds



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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.: 83651 (86137 not leased, 83850 supplemental)

Priority date: 1903 Type of use: IRR

Legal Season of Use (if not listed on the certificate): Crooked River Decree Feb 1- Dec 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 $\frac{1}{4}$ $\frac{1}{4}$, 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 14 E, Section 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$ - 25.00 acres to be leased

Enter additional places of use here, using format above:

T 14 S, R 14 E, Sect. 28, NENW, 20.0 acres - all 45 acres in taxlot 200

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

Number of acres, if for irrigation: 45

Acre-feet of storage, if applicable: N/A

Rate associated with leased rights (cfs): .0125 cfs/ac, 0.563 cfs

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

Duty associated with leased rights (AF): 4 af/ac, 180 af

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

Conditions or other limitations, if any: Transfers Associated with C83651: T9829 (correcting), T10730 (IS in progress), T10731 (POD). This lease to terminate on or before T10730 final order.

~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:

Crooked River

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): T 14 S, R 14 E, WM; Sect 24, SESW to Lake Billy Chinook... a POD transfer was submitted for the remaining rights on this Certificate

Maximum volume in acre-feet: 180

Rate in cfs: 0.563

(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 6 through Oct 15.
- Other (describe): _____



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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.: C83732 (83850 primary not leased, 83850 supplemental)

Priority date: 1892 Type of use: IRR

Legal Season of Use (if not listed on the certificate): Crooked River Decree, Feb 1 - Dec 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 $\frac{1}{4}$ $\frac{1}{4}$, 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 14 E, Section 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 11.00 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, if for irrigation: 11.0

Acre-feet of storage, if applicable: N/A

Rate associated with leased rights (cfs): .0125 cfs/ac, 0.138 cfs

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

Duty associated with leased rights (AF): 4 af/ac, 44 af

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

Conditions or other limitations, if any: C83732 is associated with the following transfers: T7248, T10730 (IS). This lease is to cancel prior to or with the final order of T10730.

~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:

Crooked River

Tributary to Deschutes 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):

SESW, Sect 20, T 14 S, R 14 E, WM; 1896 feet South and 1717 feet East from the West 1/4 corner of Section 20 to Lake Billy Chinook

Maximum volume in acre-feet: 44

Rate in cfs: 0.138

(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 6 through Oct 15.
- Other (describe): _____

Grass Butte, LLC Instream Lease

| T | R | Sect | QQ | taxlot | Acres Leased IS | Leased Cert | Priority | Acres Remain | Cert | Acres Remain | Cert | Total Ac in QQ | Assoc Transfers | Status | Past Lease | Other Notes | Sup Ac | Sup Ac Off Supplemental |
|----------------------------------|------|---------|-----|--------|-----------------|-------------|-----------|--------------|--------------|--------------|-------|----------------|-----------------|---------|------------|-------------|--------------|-------------------------|
| 14 S | 14 E | 21 SESW | 200 | 200 | 2.50 | 83857 | 1904/1910 | 37.50 | 83857 | 5.00 | 1327 | 45.00 | T-10760 IS | pending | | C-81601 CN | 6.40 | 83850 |
| 14 S | 14 E | 20 SWSW | 200 | 200 | 10.00 | 83857 | 1892 | 0.00 | N/A | 4.00 | 83850 | 14.00 | T-10760 IS | pending | L-859 | C-81601 CN | 7.20 | 7.20 83850 |
| 14 S | 14 E | 29 NWNW | 200 | 200 | 38.00 | 83857 | 1892 | 0.00 | N/A | 0.00 | 83850 | 38.00 | T-10760 IS | pending | L-859 | C-81601 CN | 32.40 | 32.40 83850 |
| 14 S | 14 E | 29 NENW | 200 | 200 | 5.00 | 83857 | 1892 | 0.00 | N/A | 26.40 | 83850 | 31.40 | T-10760 IS | pending | L-859 | C-81601 CN | 3.70 | 3.70 83850 |
| 14 S | 14 E | 29 SWNW | 200 | 200 | 3.00 | 83857 | 1892 | 0.00 | N/A | 1.60 | 83850 | 4.60 | T-10760 IS | pending | L-859 | C-81601 CN | 3.00 | 3.00 83850 |
| 14 S | 14 E | 29 SENW | 200 | 200 | 8.00 | 83857 | 1892 | 0.00 | N/A | 0.00 | 83850 | 8.00 | T-10760 IS | pending | L-859 | C-81601 CN | 3.30 | 3.30 83850 |
| 14 S | 14 E | 29 NENE | 200 | 200 | 0.50 | 83857 | 1898 | 0.00 | N/A | 0.00 | 83850 | 0.50 | T-10760 IS | pending | | C-81601 CN | 0.00 | N/A |
| | | | | | | | | | <u>37.00</u> | | | | | | | | <u>56.00</u> | |
| 14 S | 14 E | 28 NENW | 200 | 200 | 20.00 | 83651 | 1903 | 7.90 | 83651 | 7.10 | 86137 | 35.00 | T-10760 IS | pending | | | 24.30 | 12.60 83850 |
| 14 S | 14 E | 28 NWNE | 200 | 200 | 25.00 | 83651 | 1903 | 0.00 | N/A | 0.00 | N/A | 25.00 | T-10760 IS | pending | | | 23.20 | 23.20 83850 |
| | | | | | | | | | <u>7.10</u> | | | | | | | | <u>47.50</u> | |
| 14 S | 14 E | 20 SWSW | 200 | 200 | 11.00 | 83732 | 1892 | 0.00 | N/A | 4.00 | 83850 | 15.00 | T-10760 IS | pending | | | 7.20 | 83850 |
| | | | | | | | | | <u>4.00</u> | | | | | | | | <u>7.20</u> | |
| 110.70 Total Supplemental | | | | | | | | | | | | | | | | | | |
| 85.40 Sup Ac. off T-10734 | | | | | | | | | | | | | | | | | | |

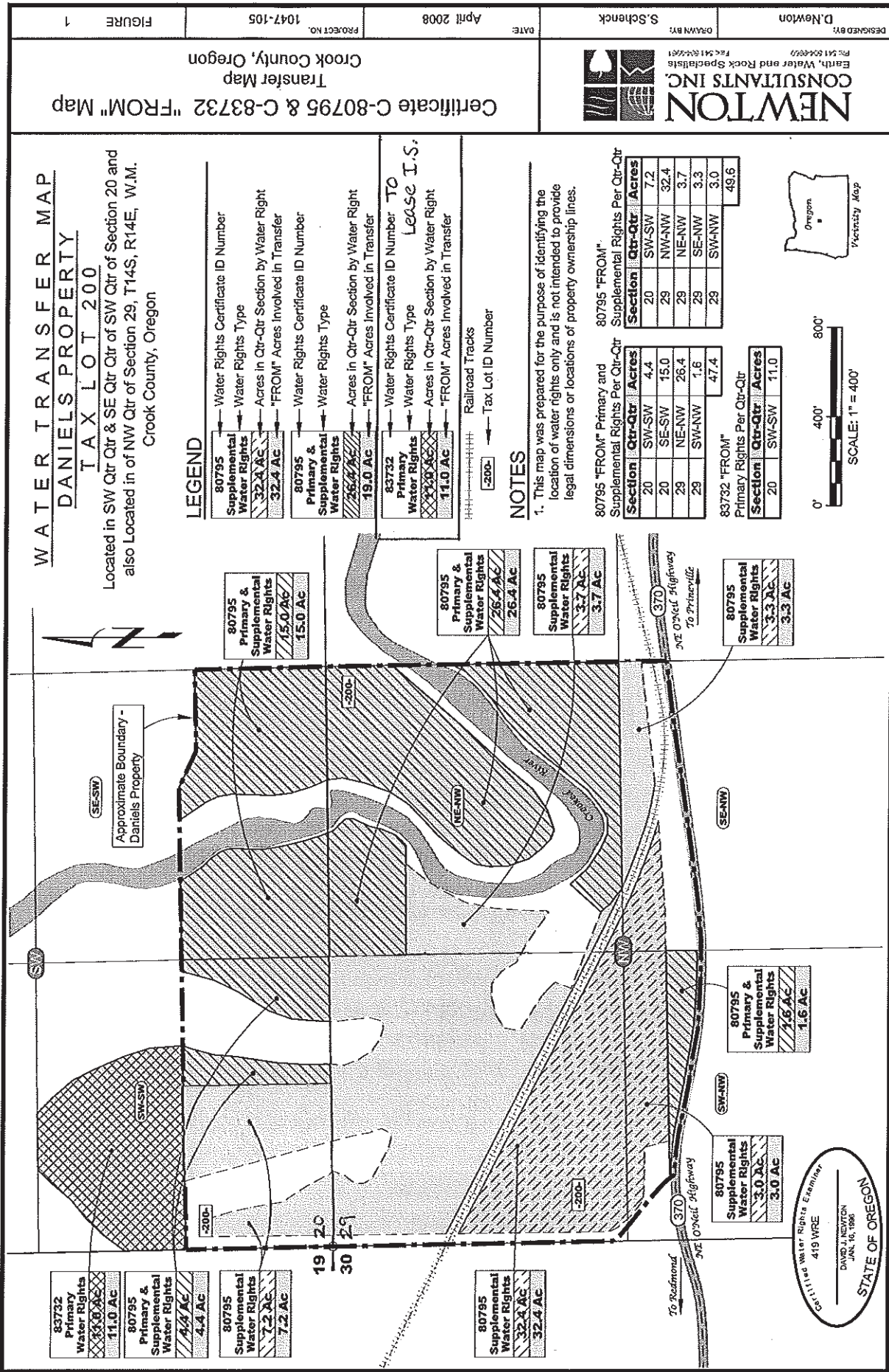
48.10 Ac. Remaining in QQ's

123.00 Total Ac. Instream

Water leased from C-83857 is in Instream Transfer process T-10730
 C-83850 supplemental transferring in T10734
 C-83850, C-1327 and C-86137 primary not leased

C-83732

T 14 S, R 14 E, sect 20, SWSW - 11.0 Ac. Leased Instream

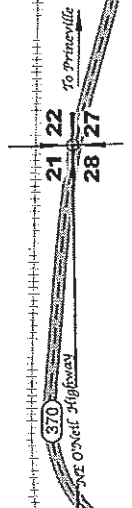
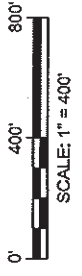
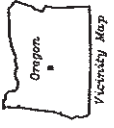


C-83857(81601 CN) T14S, R14E, Sect. 21 SESW - 2.5 ac Leased Instream
 C-83651 T14S, R14E, Sect 28 NENW - 20.0 ac Leased Instream
 NWNE - 25.0 ac Leased Instream

WATER TRANSFER MAP

MILES PROPERTY TAX LOT 200

Located in SE Qtr of SW Qtr of Section 21 and also
 Located in NE Qtr of NW Qtr and also
 the NW Qtr of NE Qtr of Section 28, T14S, R14E, W.M.
 Crook County, Oregon



LEGEND

| Transaction to Mitigation Credits | |
|-----------------------------------|---|
| 80795 | Water Rights Certificate ID Number |
| Supplemental Irr | Water Rights Type |
| 23.2 AC | Acres in Qtr-Qtr Section by Water Right |
| 23.2 AC | "FROM" Acres Involved in Transfer |
| 83651 | Water Rights Certificate ID Number |
| Primary Irr | Water Rights Type |
| 52.8 AC | Acres in Qtr-Qtr Section by Water Right |
| 45.0 AC | "FROM" Acres Involved in Transfer |
| 81601 | Water Rights Certificate ID Number |
| Primary Irr | Water Rights Type |
| 20.0 AC | Acres in Qtr-Qtr Section by Water Right |
| 2.5 AC | "FROM" Acres Involved in Transfer |

To Lease IS.
NEW \$3357

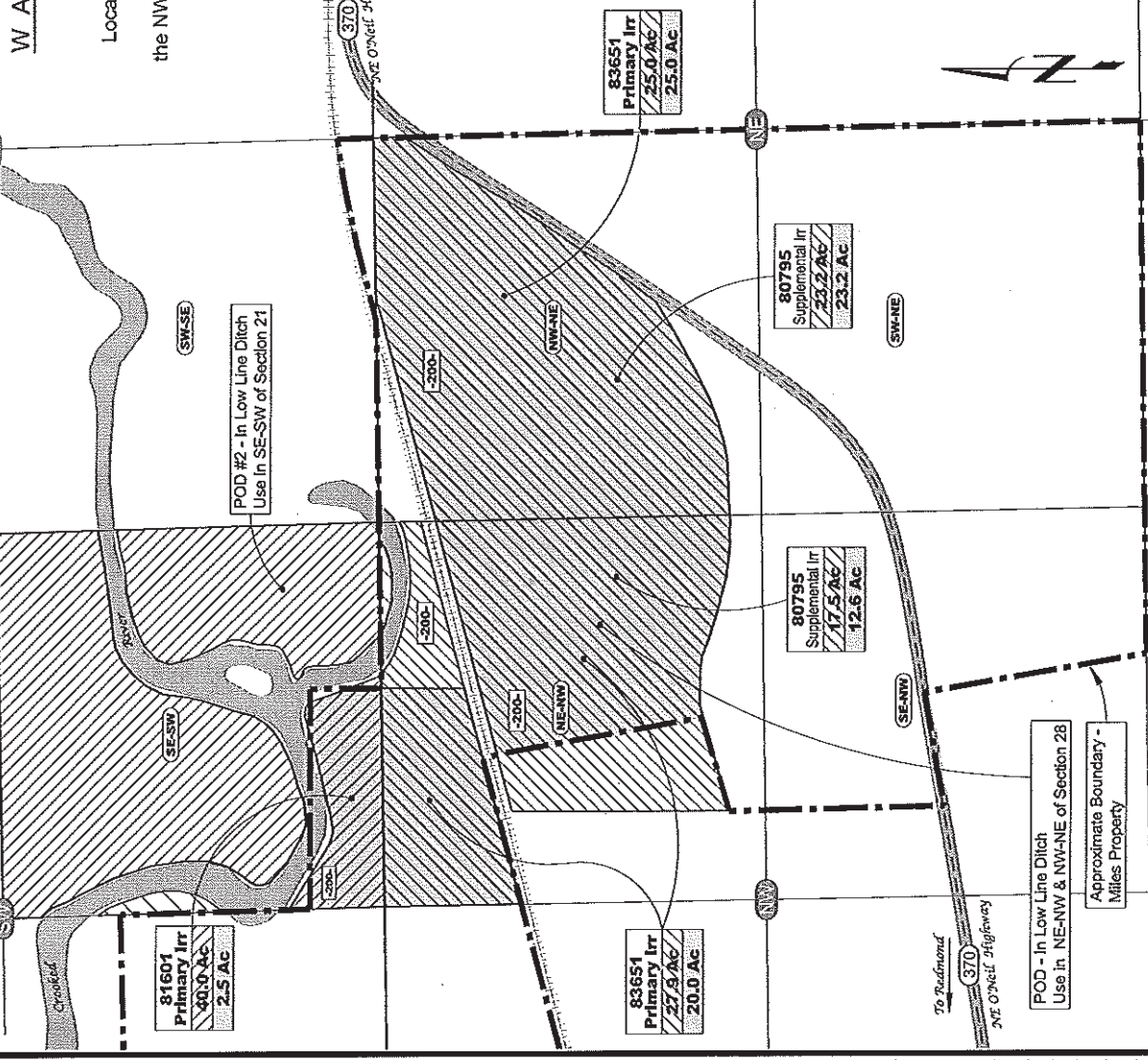
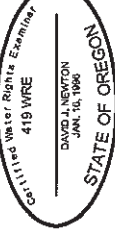
----- Railroad Tracks
 - - - - - Tax Lot ID Number

NOTES

1. This map was prepared for the purpose of identifying the location of water rights only and is not intended to provide legal dimensions or locations of property ownership lines.

| 80795 "FROM" | | 83651 "FROM" | |
|--------------|---------------|--------------|---------------|
| Section | Qtr-Qtr Acres | Section | Qtr-Qtr Acres |
| 28 | 12.6 | 28 | 20.0 |
| 28 | 17.5 | 28 | 25.0 |
| 28 | 23.2 | 28 | 25.0 |
| | 35.8 | | 45.0 |

| 81601 "FROM" | |
|--------------|---------------|
| Section | Qtr-Qtr Acres |
| 21 | 2.5 |



December 30, 2003

John Short
Bend, Oregon

John Short and To Whom it May Concern:

In regard to the property described as 14-14-29, approximately 105 acre water right.

People's Irrigation Company has no liens or encumbrances on this tract of property as of December, 2003. No water deliveries have been or can be made by People's Irrigation Company under the present system. The present system of People's Irrigation Company terminates its deliveries at Elliott Lane and has for recent history.

Although the district's certificate lists some lands downstream of Elliott Lane, those lands with direct river diversions downstream of Elliott Lane are not assessed by People's Irrigation Company and are no longer part of People's Irrigation Company. People's Irrigation Company does not object to any temporary or permanent instream or other water right transfers on any lands with direct river diversions downstream of Elliott Lane.

Jack W. Riley



President, People's Irrigation Company

12-30-03

Grass Butte, LLC

Water Conveyance Agreements, Deeds & other Documents

| <u>Conveyance:</u> | <u>Deed Record</u> | <u>Deed Filing Date</u> |
|---|--------------------|-------------------------|
| <i>Map/taxlot # - 141421, 47.5 acres</i> | | |
| Dallon Miles to Emmett Ranch, LLC (water) | 2008-226054 | 1/03/2008 |
| Emmett Ranch, LLC to The Daniels Group, LLC (water) | 2008-226055 | 1/03/2008 |
| Dallon Miles Warranty Deed | 2007-218184 | 1/22/2007 |
| <i>Map/taxlot # - 141420 – 11 acres</i> | | |
| Butler Ranch Inc to the Daniels Group (water) | 2008-226612 | 2/11/2008 |
| Butler Ranch Inc / Butler Ranch Inc (boundary adj) | 2008-226611 | 2/11/2008 |
| Butler Ranch Inc – Boundry Line Adjustment | 2007-225548 | 12/05/2007 |

Amerititle Partition Plat Report

The Daniels Group & Butler Ranch Inc (Tracts I & II) Report date: 09/17/2007

Business Name change Daniels Group, LLC to Grass Butte LLC

Gregory Daniels is the Manager for Grass Butte, LLC and the Daniels Group, LLC
State Treasury Business Entity Info Included

Transfers associated with Grass Butte, LLC leased water

T-10730 – permanent instream transfer for mitigation (all acres in this lease are in T-10730)
T-10734 – permanent transfer of supplemental water rights to other lands