

May 1 through May 14 & September 15 through September 30, herein described as Season 2

May 15 through September 14, herein described as Season 3

Maximum Quantity (Rate) that can be applied to an acre:

Season 1 – limited to 1/83rd cubic foot per second (cfs) per acre

Season 2 – limited to 1/62nd cfs per acre

Season 3 – limited to 1/33.45th cfs per acre

Maximum Duty that can be applied to an acre: Not to exceed 9.58 acre-feet (AF) per acre per year on lands served by the canal. Lands served by the District’s direct river diversions are limited to 5.46 AF per acre. The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct river diversions, are not allowed the 43% transmission loss.

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #3 (Swalley Main Canal): 985 FEET NORTH AND 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	POD #15 (Additional District Diversion): 2170 FEET NORTH AND 1350 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use (POU):

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
17 S	12 E	WM	20	NE NE	4.5	400
17 S	12 E	WM	17	SE SE	5.5	604

- Since Certificate 74145 was issued, the amount of water that may be diverted under this certificate has been affected (reduced) by allocation of conserved water projects, instream transfers, and other transfer actions. Certificate 74145 is also a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #3), the total rate and duty for the water right would be exceeded.

The table provided below shows the starting point for the rate and duty presently available under Certificate 74145 after accounting for transactions that have affected this certificate. This start point was originally described in detail in Special Order Volume 75, Page 40, which approved Allocation of Conserved Water CW-54 and its first increment. Since this transfer application was received and the start point was described in the Preliminary Determination issued by the Department on July 30, 2009, additional transactions have affected Certificate 74145, being Special Order Volume 78, Page 693, approving the second increment under CW-54, and Special Order Volume 78, Page 1005, approving Transfer T-10669. The start point for this water right now is:

	<i>Initial Rate</i>
Season 1	34.542 cfs
Season 2	46.191 cfs

Season 3	87.037 cfs
Duty	29,845.95 AF

*This includes the inchoate rate and duty associated with T-9308 and T-10669, and any other transfers completed pursuant to ORS 540.580. Additionally, if any order is approved affecting Certificate 74145 prior to the order for T-10713 being approved, then the starting point for T-10713 will change.

The table below then shows the rate and duty associated with the 10.0 acres proposed to be transferred. This was determined by subtracting the existing direct diversion rates from the approximate starting rate and duty for this water right, identified in the table above, and then by determining the maximum rate that could be applied simultaneously to all canal diversion acres. This is the amount that Certificate 74145 will be reduced by as a result of this transfer.

	Approximate Before T-10713 Rate/Duty	Direct Diversion Rate/Duty*	Total Canal Diversion Rate/Duty	Canal Rate 1/X cfs/ac and Duty (if exercised simultaneously)	Rate/Duty Associated with 10.0 Canal Acres, including loss
Season 1 Rate (cfs)	34.542 cfs	0.723	33.819	1/130.86 cfs/ac	0.076
Season 2 Rate (cfs)	46.191 cfs	0.968	45.223	1/97.86 cfs/ac	0.102
Season 3 Rate (cfs)	87.037 cfs	1.795	85.242	1/51.92 cfs/ac	0.193
Duty	29,845.95 AF	575.056 AF	31,352.76 AF	6.61 AF/ac	66.14 AF

*The amounts shown in the table above for direct diversion also account for an error made in Special Order Volume 73, Page 382, approving instream transfer T-10356, which did not account for the rate and duty associated with the transfer of 21 acres of irrigation to instream use under T-8519.

- The portion of the water right that may be transferred to instream use is the full rate and duty that can be applied to each acre (see Finding of Fact #3) less the canal transmission losses, being:

	Transferable Rate/Duty Per Canal Acre	Transferable Rate/Duty Associated with 10.0 Canal Acres
Season 1 Rate	1cfs to 83.0 ac less 43%	0.069 cfs
Season 2 Rate	1cfs to 62.0 ac less 43%	0.092 cfs
Season 3 Rate	1cfs to 33.45 ac less 43%	0.170 cfs
Duty	9.58 AF/ac less 43% (or 5.46 AF/ac)	54.61 AF

- The applicant is not the owner of the lands to which the water right described in Finding of Fact #3 is appurtenant. However, water right conveyance agreements have been completed and interest in the water right has been conveyed from each landowner, described in the table below, to SID. The portion of this right to be transferred was appurtenant to lands owned by the identified landowners at the time interest in the water right was conveyed through a Quit Claim Deed.

Grantor (landowner)	Water Right Interest Holder	Twp	Rng	Sec	Q-Q	Tax Lot at time of Conveyance
EMP Milan Villas, LLC	SID	17 S	12 E	20	NE NE	400
Halfway Properties, LLC	SID	17 S	12 E	17	SE SE	604

7. Application T-10713 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
8. Application T-10713 proposes to change the place of use of the right to create two instream reaches: Reach #1 being from North Canal Dam (SID Main Canal as described in Finding of Fact #3) to Lake Billy Chinook, at approximately river mile (RM) 120, and Reach #2 being from Lake Billy Chinook (~ RM 120) to the mouth of the Deschutes River (RM 0).
9. The applicant proposes the quantities of water to be transferred instream to be protected as follows:

Reach #1

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	Season 1 (ending on October 26)	0.069 cfs	54.61 AF
		Season 2	0.092 cfs	
		Season 3	0.156 cfs	

Reach #2

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	April 1 through October 26	0.044 cfs	18.0 AF

10. There are several existing instream water rights located within the same instream reaches proposed by the applicant. There are two existing instream water rights established through the state agency application process below Lake Billy Chinook and one pending application within the same reach above Lake Billy Chinook. The state agency established instream water rights are junior in priority date to the water right proposed for transfer. The remaining instream water rights were established through the instream transfer and allocation of conserved water process.
11. The applicant proposes to replace a portion of the existing instream water rights established pursuant to ORS 537.341 (minimum perennial streamflow) or 537.346 (state agency application) with a more senior priority date and be in addition to instream water rights established pursuant to ORS 537.348 (instream transfer) or 537.470 (allocation of conserved water).
12. The applicant has provided notification of the proposed action to the Cities of Bend and Maupin, Deschutes, Jefferson, and Wasco Counties, and the Confederated Tribes of the

Warms Springs Reservation. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-10713.

13. Notice of the application for transfer was published on October 7, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
14. On January 15, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10713 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of February 13, 2009, for the applicants to respond and provide additional information necessary to complete and clarify the application. The additional information requested by the Department was received on March 16 and 30, 2009, and on July 27, 2009. On March 16, 2009, the applicants concurred with the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
15. On July 30, 2009, the Department issued a preliminary determination proposing to approve Transfer Application T-10713 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on August 11, 2009, and in the Bend Bulletin on August 14, 21, and 28, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. The notice in the Bend Bulletin was republished on September 17, 2009, to include the last date of publication, which was not included in the original notices published in the Bend Bulletin. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
16. Following issuance of the Preliminary Determination, the Department identified that additional transactions have affected the start point for Certificate 74145. The changes to the start point are incorporated into Finding of Fact #4.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

17. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10713.
19. The applicant proposed an instream rate (0.156 cfs) for Season 3 that was less than the full rate allowed under Certificate 74145. The rate allowable for Season 3 is 0.170 cfs.
20. At the full rate and duty that may be transferred to instream use (see Finding of Fact #5), water may be protected instream for a period of 208 days. The instream period requested by the applicant, April 1 through October 26, (see Finding of Fact #9) is 209 days.

21. Due to the proximity of the subject place of use to the Deschutes River, the Department has determined that return flows from the existing use would re enter the Deschutes River near the confluence with Tumalo Creek. Therefore, to prevent injury or enlargement of the right, modification of the proposed reaches (as described in Finding of Fact #8) is necessary to account for return flows at a different location than originally identified in the application for Reach #2. Water may be protected instream as follows:

Reach #1: From the Swalley Main Canal (POD #3) to the confluence with Tumalo Creek on the Deschutes River.

Reach #2: From the confluence with Tumalo Creek to the mouth of the Deschutes River.

22. Based upon Findings of Fact #19 through #21, on March 16, 2009, the applicant agreed to modify the quantities to be transferred and protected instream as follows:

Reach #1: Swalley Main Canal POD #3 (as described in Finding of Fact #3) to the confluence with Tumalo Creek on the Deschutes River.

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	Season 1 (ending on October 25)	0.069 CFS	54.47 AF
		Season 2	0.092 CFS	
		Season 3	0.170 CFS	

Reach #2: From the confluence with Tumalo Creek to the mouth of the Deschutes River (RM 0).

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	April 1 through Oct. 25	0.044 cfs	18.0 AF

23. The proposed change, as modified, would not result in enlargement of the right.
24. The proposed change, as modified, would not result in injury to other water rights.
25. The amount and timing of the proposed instream flow of the proposed instream flow is allowable within the limits and use of the original water right.
26. The protection of flows within the proposed reaches is appropriate, considering:
- The instream water right begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion;
 - There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river within the proposed reach and have been accounted for in Reach #2 (see Findings of Fact #20 and #21).

27. Within the reach proposed by the applicant, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat, and recreation is a matter of statutory policy. Within the reach proposed by the applicant, there are several existing instream water rights, which include the use of water for fish habitat, aquatic life, recreation, aesthetics, and pollution abatement. There are two instream water rights (Certificates 73188 and 73237) established through the state agency application process below Lake Billy Chinook, with 1989 and 1991 priority dates respectively, and one pending state agency instream water right application above Lake Billy Chinook, which will have a priority date of September 24, 1990, if approved. The remaining instream water rights were established under the instream transfer and allocation of conserved water application processes and are senior in priority date to the other existing instream rights.
28. In addition to flows for the designated Scenic Waterway and the existing and pending instream water right applications, which are at times not met during the requested periods for instream protection, portions of this segment of the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams for temperature, dissolved oxygen and pH above Lake Billy Chinook and for nutrients, sedimentation and temperature below Lake Billy Chinook at the lower end of the river.
29. By adding to other water rights leased or transferred instream at the same location, or created through the conserved water statutes, the instream right will provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
30. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
31. During the period April 1 through October 25 any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
32. The total monthly quantities of water to be protected under the existing and proposed instream rights within the reaches will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-10713 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-10713 are approved.
2. Water right Certificate 74145 is modified. A new certificate confirming the instream water right shall be issued. The Department shall issue a new water right certificate to supersede Certificate 74145 on a determination that it is necessary to produce a certificate to confirm that portion of the right not involved in this transfer. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 74145 by the quantities associated with the irrigation of 10.0 acres as measured at the Swalley Main Canal diversion (POD #3), being:

	Rate/Duty Associated with 10 Acres (from Canal Diversion), including loss
Season 1 Rate	0.076 cfs
Season 2 Rate	0.102 cfs
Season 3 Rate	0.193 cfs
Duty	66.14 AF

3. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River as follows:

Reach 1: From Swalley Main Canal POD #3 (as described in Finding of Fact #3) to the confluence with Tumalo Creek

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	Season 1 (modified to end October 25)	0.069 CFS	54.47 AF
		Season 2	0.092 CFS	
		Season 3	0.170 CFS	

Reach 2: From the confluence with Tumalo Creek on the Deschutes River to the mouth of the Deschutes River

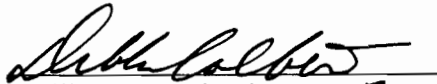
Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	April 1 through October 25	0.044 CFS	18.0 AF

4. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior

appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

6. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 74145 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this 23rd day of October, 2009.


Phillip C. Ward, Director *PCW*

OCT 27 2009

Mailing Date _____