

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Proposed Allocation of) **FINAL ORDER APPROVING**
Conserved Water Application) **ALLOCATION OF CONSERVED**
CW-40, Deschutes County) **WATER**

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Applicant

SWALLEY IRRIGATION DISTRICT
64672 COOK AVENUE, SUITE 1
BEND OR 97701

Findings of Fact

1. On December 19, 2005, Swalley Irrigation District filed an allocation of conserved water application. The Department assigned the application number CW-40.
2. The application requests an allocation of conserved water under certificate 74145 in the name of Swalley Irrigation District.
3. The applicant has an allocation of conserved water policy pursuant to OAR 690-018-0025.
4. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
5. A diversion structure and ditch or a pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
6. The right involved in the allocation of conserved water is as follows:

Certificate 74145:

Source: DESCHUTES RIVER

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Priority Date: September 1, 1899
 Type of Use: DOMESTIC, IRRIGATION, LIVESTOCK,
 MANUFACTURING USES, NURSERY USES, POLLUTION ABATEMENT,
 POND MAINTENANCE, RECREATION
 Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #3, SWALLEY MAIN CANAL: 985 FEET NORTH & 617 FEET WEST FROM E1/4 CORNER, 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

7. The rate and duty associated with Certificate 74145 depends on whether the right is served by the main canal or a direct diversion right. There are a total of 4,561.105 acres listed on the certificate, of which 4,442.795 may be served by the canal, and 118.31 acres that are restricted to being served by direct diversions. The rights served by the canal are entitled to the following rates:

Season 1: April 1 - 30 & Oct. 1 - 31	1 cfs to 83.0 acres
Season 2: May 1 - 14 & Sept. 15 - 30	1 cfs to 62.0 acres
Season 3: May 15 - Sept. 14	1 cfs to 33.45 acres

The above rates include a 43% transmission loss allowed by the Court to compensate for seepage from the canal. This transmission loss is not allowed on direct diversion rates. The total use is limited to 125.0 cfs measured at the points of diversion from the source.

The per acre duty associated with acreage served by the canal shall not exceed 9.58 acre feet for each acre irrigated during the irrigation season as measured at the diversion from the source. For acreage served by direct diversions, the per acre duty is limited to 5.46 acre feet.

The total duty associated with Certificate 74145 is described in the allocation of conserved water application as 52,965 AF. The actual duty is closer to 42,667.27 AF, as shown in the table below.

Certificate 74145 has been modified (reduced) by allocation of conserved water project CW-13 (Special Order Volume 61, Page 630, and instream water right Certificate 81553), T-8519, which transferred 21.0 acres of direct diversion right to an instream water right (Certificate 76687), and T-8154, which did not prove up on 1 acre of canal diversion. This 1.0 acre will be removed from the water right. The rates and duties associated with these modifications have been subtracted from the initial rate/duty shown in the table below. Additionally, T-9308, which is still in an inchoate state, includes 2.0 acres of canal diversion. The rate and duty for these 2.0 acres is included in the initial rate/duty show in the table below.

Consequently, the starting point for the before project rate and duty associated with Certificate 74145 are:

	Initial Rate / Duty*	CW-13 Rate / Duty	T-8519 Rate / Duty	T-8154 Rate / Duty	Before Conserved Water Project CW-40 Rate/ Duty*
Season 1 Rate	54.340 cfs	(0.310 cfs)	(0.144) cfs	(0.012) cfs	53.874 cfs
Season 2 Rate	72.746 cfs	(0.420 cfs)	(0.193) cfs	(0.016) cfs	72.117 cfs
Season 3 Rate	125.000 cfs	(0.770 cfs)	(0.358) cfs	(0.028) cfs	123.844 cfs
Duty	4,3207.95 AF	(417.00 AF)	(114.66) AF	(9.02) AF	42,667.27 AF

*Includes the inchoate rate and duty associated with T-9308, and any other transfers completed pursuant to ORS 540.580. Additionally, the rate and duty may have been further modified by other orders of the Department.

8. The conservation project involves piping approximately 7,400 feet of the Deschutes Lateral, off the Main Canal with HDPE pipe. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
9. Public notice was published as required under OAR 690-018-0050. No comments were received.
10. Pursuant ORS 537.485, the applicant's request that the priority dates of the conserved water be the same as the originating rights.
11. The proposed allocation of conserved water project will result in a reduced diversion for the uses allowed under the original rights of 1.48 cfs and 627.1 AF under certificate 74145, with a priority date of September 1, 1899.
12. The proposed allocation of conserved water will not harm existing rights.
13. The application includes land use information forms completed and signed by Deschutes County demonstrating that the application is compatible with the local comprehensive land use plan.
14. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.
15. After the allocation of conserved water, the water right held by the applicant will allow use of the following quantities of water:

Certificate	Priority Date	Season	Before Project Maximum	Conserved Water	After Project Maximum
74145	Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	53.874 cfs	(1.480) cfs	52.394 cfs
		Season 2 Rate: May 1 - 14 & Sept. 15 - 30	72.117 cfs	(1.480) cfs	70.637 cfs
		Season 3 Rate: May 15 - Sept. 14	123.844cfs	(1.480) cfs	122.364 cfs
		Duty	42,667.27 AF	(627.10) AF	42,040.17 AF

16. In consultation with the Oregon Department of Fish and Wildlife, Department of Environmental Quality, and Oregon Parks and Recreation Department, the Department has determined that conserved water is needed to support instream uses in DESCHUTES RIVER to provide for the conservation, maintenance and enhancement of aquatic and fish life and fish habitat.

17. Pursuant to OAR 690-018-0012(1), the applicant's propose that 100 percent of the conserved water be allocated to the State for an instream water right.

18. The amounts of water to be allocated to the state for an instream water right are:

Certificate	Priority Date	Instream Water Right Rate (CFS)	Instream Water Right Duty (AF)
74145	September 1, 1899	1.48	627.1

19. The stream reach for state's instream water right is to be from the previously authorized point of diversion, being the Swalley Main Canal (RM 165) (POD #3, as described in Finding of Fact #7) to Lake Billy Chinook (RM 120). The instream use shall allow the use and protection of flows from April 1 through October 31.

20. The applicants have completed the project and request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.

21. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Conclusion of Law

The project described in the application CW-40 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018. Water will be conserved that can be allocated without harming other water rights.

Now, therefore, it is ORDERED:

The changes proposed in CW-40, as modified by the applicant, are approved.

1. Certificate 74145 shall be modified and a new superseding certificate shall be issued to Swalley Irrigation District for the remaining portion of Certificate 74145 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of certificate 74145 by 1.48 cfs (from April 1 through October 31) and 627.1 AF under the September 1, 1899 priority date. The associated priority date and rate of the remaining right shall be approximately:

Season	After Project Maximum	Maximum per acre
Season 1 Rate: April 1 - 30 & Oct. 1 - 31	52.394 cfs	1 cfs to 83.0 acres
Season 2 Rate: May 1 - 14 & Sept. 15 - 30	70.637 cfs	1 cfs to 62.0 acres
Season 3 Rate: May 15 - Sept. 14	122.364 cfs	1 cfs to 33.45 acres
Duty	42,040.17 AF	9.58 AF

The above rates include a 43% transmission loss allowed by the Court to compensate for seepage from the canal. The transmission loss is not allowed on direct diversion rates.

The per acre duty associated with acreage served by the canal shall not exceed 9.58 acre feet for each acre irrigated during the irrigation season as measured at the diversion from the source. For acreage served by direct diversions, the per acre duty is limited to 5.46 acre feet.

The place of use shall be those lands described under Certificate 74145, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River from the authorized point of diversion (RM 165) for certificate 74145 at

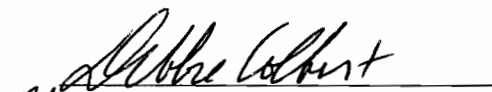
Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #3, SWALLEY MAIN CANAL: 985 FEET NORTH & 617 FEET WEST FROM E1/4 CORNER, SECTION 29

to Lake Billy Chinook (RM 120).

The instream water right shall be for a total of 1.48 cfs, with a SEPTEMBER 1, 1899 priority date and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new

instream water right. The rights shall allow for the use and protection of flows from April 1 through October 31.

Dated at Salem, Oregon this 12th day of September, 2006.



Phillip C. Ward

Director

Date of Mailing: SEP 14 2006