

**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-43, and Associated Transfers,	)	WATER and APPROVAL OF A
Deschutes County	)	CHANGE IN PLACE OF USE and
	)	CHANGE IN POINT OF DIVERSION
	)	and PARTIAL CANCELLATION OF
	)	CERTIFICATE 74145

**Authority**

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.

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right certificate is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicants**

DESCHUTES RIVER RANCH GROUP, LLC  
GARY BLAKE, MANAGING MEMBER  
20210 SWALLEY ROAD  
BEND OREGON 97701

SWALLEY IRRIGATION DISTRICT  
PO BOX 5126  
BEND OREGON 97708-5126

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

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.

## Findings of Fact

### Background

1. On March 20, 2006, Deschutes River Ranch Group, LLC filed an allocation of conserved water application. On June 22, 2007, Swalley Irrigation District indicated they would be a co-applicant on the allocation of conserved water application. The Department assigned the application number CW-43.
2. On December 26, 2006, Deschutes River Ranch Group, LLC filed a transfer application associated with CW-43. The transfer application requests to change the place of use (POU) under the water right approved under Transfer T-8099. The Department did not assign this application a unique transfer number.
3. On December 26, 2006, Swalley Irrigation District filed a transfer application associated with CW-43. The transfer application requests to change the point of diversion (POD) and POU under Certificate 74145. The Department did not assign this application a unique transfer number.
4. ORS 537.470(5) authorizes the Department to process the transfers described in Findings of Fact #2 and #3 as part of an allocation of conserved water application.

### Transfers

5. On March 7, 2007, proof to the satisfaction of the Director was made on Transfer T-8099, and Certificate 83243 was issued describing the right.
6. The portion of the first right to be transferred (filed by Deschutes River Ranch Group, LLC) is as follows:
  - Certificate:** 83243 in the name of DESCHUTES RIVER RANCH GROUP, LLC  
(CONFIRMED BY THE DESCHUTES RIVER DECREE)
  - Use:** IRRIGATION of 0.45 ACRES
  - Priority Date:** Spring of 1885
  - Rate:** 0.006 CUBIC FOOT PER SECOND (cfs) from APRIL 1 TO MAY 23 and from  
AUGUST 20 TO NOVEMBER 1, and  
0.011 cfs per acre from MAY 23 TO AUGUST 20  
Rate is based on water being available at the Original POD (POD 1)
  - Limit/Duty:** 1/80 cfs per acre from APRIL 1 TO MAY 23 and from  
AUGUST 20 TO NOVEMBER 1, and  
1/40 cfs per acre from MAY 23 TO AUGUST 20, not to exceed 4.0 acre-feet  
per acre per irrigation season of each year
  - Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	17	SE SW	POD 1 (Original POD): 84 FEET NORTH AND 847 FEET WEST FROM THE S¼ CORNER OF SECTION 17
16 S	12 E	WM	17	SW SE	POD 2: 1053 FEET NORTH AND 396 FEET EAST FROM THE S¼ CORNER OF SECTION 17
16 S	12 E	WM	17	SE SE	POD 3: 637 FEET NORTH AND 1340 FEET EAST FROM THE S¼ CORNER OF SECTION 17

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	17	SW SE	0.03
16 S	12 E	WM	17	SE SE	0.01
16 S	12 E	WM	20	NE NE	0.18
17 S	12 E	WM	20	NW NE	0.23

7. The portion of the second right to be transferred (filed by Swalley Irrigation District) is as follows:

**Certificate:** 74145 (CONFIRMED BY THE DESCHUTES RIVER DECREE)

**Use:** IRRIGATION of 11.29 ACRES

**Priority Date:** September 1, 1899

**Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**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 AND 617 FEET WEST FROM THE E¼ 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:**

IRRIGATION						Additional Information: Tax Lot Number Listed on Application†
Twp	Rng	Mer	Sec	Q-Q	Acres	
16 S	12 E	WM	20	NE NE	0.10	2500
16 S	12 E	WM	20	NW NE	0.27	101
16 S	12 E	WM	20	NW NE	0.18	102
16 S	12 E	WM	20	NW NE	0.67	103
16 S	12 E	WM	20	NW NE	0.41	104
16 S	12 E	WM	20	NE SE	1.00	1300
17 S	12 E	WM	16	NE SE	0.76	400
17 S	12 E	WM	16	NW SE	0.90	400
17 S	12 E	WM	16	NW SE	2.00	700
17 S	12 E	WM	20	NW NE	2.00	1600
17 S	12 E	WM	21	NE NW	2.60	400
17 S	12 E	WM	21	SE NW	0.40	400

† May be a different tax lot than what is described on the water right certificate.

8. The rate and duty associated with this right are:

	Rate/Duty Associated with 11.29 Canal Acres
<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.108 cfs
<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	0.149 cfs
<b>Season 3 Rate:</b> May 15 - Sept. 14	0.272 cfs
<b>Duty</b>	88.22 AF

The determination of the rate and duty is more fully described in Finding of Fact #31. In Finding of Fact #31 the rate and duty were determined for 40.16 before project acres involved in the allocation of conserved water project. The above listed rate and duty is proportionate (11.29:40.16) to that rate and duty.

9. The transfer application associated with Certificate 83243 proposes to change the POU to:

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	17	SE SE	0.45

10. The transfer application associated with Certificate 74145 proposes to change the POD to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	17	SW SE	DIRECT RIVER POD #2: 1053 FEET NORTH AND 396 FEET EAST FROM THE SW CORNER OF THE SW¼ SE¼ OF SECTION 17

11. The transfer application associated with Certificate 74145 proposes to change the POU to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	WM	20	NW NE	100	0.20
16 S	12 E	WM	20	NW NE	103	0.29
16 S	12 E	WM	20	NW NE	104	0.84
16 S	12 E	WM	20	NE NW	104	0.29
16 S	12 E	WM	20	NE NW	100	2.09
17 S	12 E	WM	17	SE SE	2700	0.22
17 S	12 E	WM	17	SW SE	2700	3.56
17 S	12 E	WM	17	NW SE	2700	3.80

12. Notice of the application for transfer was published by the Department on March 28, 2006, and in The Bulletin on June 17, 24, and July 1, 2006, as part of the allocation of conserved water notice. No comments were filed in response to the notice.

13. On January 17, 2007, the Department requested clarification of the acreage involved in the transfer, including a map showing the existing POD, and an original map showing the “from” lands. On February 12, and June 27 and 28, 2007, Newton Consultants Inc. supplied new maps and tables on behalf of the applicant. On June 29, 2007, Deschutes River Ranch Group, LLC provided additional information regarding authorization to act on behalf of a landowner.

**Transfer Review Criteria [OAR 690-380-4010(2)]**

- 14. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right, Certificate 80885, were present within the five-year period prior to submittal of the transfer application.
- 16. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right, Certificate 74135, were present within the five-year period prior to submittal of the transfer application.
- 17. The proposed changes would not result in enlargement of the rights.
- 18. The proposed changes would not result in injury to other water rights.
- 19. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion, associated with Certificate 74145, to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

**Partial Cancellation Of Water Rights**

20. Upon review of the proposed transfer of primary irrigation right under Certificate 83243 described in Finding of Fact #6, the Department discovered that there are layered irrigation water rights from the same source (Deschutes River). The layered rights are Certificate 83243 (priority date of Spring 1885) and Certificate 74145 (priority date of September 1, 1899) in the amount of 0.03 acres located in:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	20	NE NE	0.03

21. On April 20, 2007, the Deschutes River Ranch Group, LLC and Swalley Irrigation District submitted affidavits to cancel the 0.03 acres of irrigation right under Certificate 74145 described in Finding of Fact #23.

22. The rate and duty associated with the water right being cancelled is:

	Rate/Duty Associated with 0.03 Canal Acres
<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.000 cfs

	<b>Rate/Duty Associated with 0.03 Canal Acres</b>
<b>Season 2 Rate:</b> May 1 – 14 & Sept. 15 - 30	0.000 cfs
<b>Season 3 Rate:</b> May 15 - Sept. 14	0.001 cfs
<b>Duty</b>	0.23 AF

**Allocation of Conserved Water**

23. The application requests an allocation of conserved water under Certificate 83243 in the name of DESCHUTES RIVER RANCH, LLC and SWALLEY IRRIGATION DISTRICT under Certificate 74145 in the name of SWALLEY IRRIGATION DISTRICT.
24. SWALLEY IRRIGATION DISTRICT has an allocation of conserved water policy pursuant to OAR 690-018-0025.
25. 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.
26. A diversion structure and ditch or a pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
27. The first right involved in the allocation of conserved water is as follows:
- Certificate:** 83243 in the name of DESCHUTES RIVER RANCH GROUP, LLC  
(CONFIRMED BY THE DESCHUTES RIVER DECREE)
- Use:** IRRIGATION of 56.87 ACRES (the Dust Abatement and Ranch Operations Use is not included in the allocation of conserved water application)
- Priority Date:** Spring of 1885
- Rate:** 0.71 CUBIC FOOT PER SECOND from APRIL 1 TO MAY 23 and from AUGUST 20 TO NOVEMBER 1, and 1.42 cfs per acre from MAY 23 TO AUGUST 20  
Rate is based on water being available at the Original Point of Diversion (POD) being POD 1
- Limit/Duty:** 1/80 cfs per acre from APRIL 1 TO MAY 23 and from AUGUST 20 TO NOVEMBER 1, and 1/40 cfs per acre from MAY 23 TO AUGUST 20, not to exceed 4.0 acre-feet per acre per year
- Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	17	SE SW	POD 1 (Original POD): 84 FEET NORTH AND 847 FEET WEST FROM THE S¼ CORNER OF SECTION 17
16 S	12 E	WM	17	SW SE	POD 2: 1053 FEET NORTH AND 396 FEET EAST FROM THE S¼ CORNER OF SECTION 17
16 S	12 E	WM	17	SE SE	POD 3: 637 FEET NORTH AND 1340 FEET EAST FROM THE S¼ CORNER OF SECTION 17

**Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Comments
16 S	12 E	WM	17	SE SW	2.56	
16 S	12 E	WM	17	SW SE	22.53	Reflects 0.03 acres of "FROM" lands removed by transfer
16 S	12 E	WM	17	SE SE	11.81	Reflects 0.01 acres of "FROM" lands removed by transfer and 0.45 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NE NE	0.00	Reflects 0.18 acres of "FROM" lands removed by transfer
16 S	12 E	WM	20	NW NE	18.45	Reflects 0.23 acres of "FROM" lands removed by transfer
16 S	12 E	WM	20	NE NW	1.52	

28. The second right involved in the allocation of conserved water is as follows:

**Certificate:** 74145

**Use:** IRRIGATION of 40.16 ACRES

**Priority Date:** September 1, 1899

**Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**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 AND 617 FEET WEST FROM E¼ 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

**Place of Use:**

<b>IRRIGATION</b>						<b>Additional Information:</b>	
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>	<b>Tax Lot Number Listed on Application†</b>	<b>Comments</b>
16 S	12 E	WM	20	NE NE	11.05	2500	
16 S	12 E	WM	20	NE NE	4.29	2501	
16 S	12 E	WM	20	NE NE	0.10	*	
16 S	12 E	WM	20	NW NE	0.50	100	Reflects 0.20 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NW NE	1.68	101	Reflects 0.27 acres of "FROM" lands removed by transfer
16 S	12 E	WM	20	NW NE	3.01	102	Reflects 0.18 acres of "FROM" lands removed by transfer
16 S	12 E	WM	20	NW NE	0.76	*	
16 S	12 E	WM	20	NW NE	4.58	103	Reflects 0.67 acres of "FROM" lands removed by transfer and 0.31 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NW NE	3.83	104	Reflects 0.41 acres of "FROM" lands removed by transfer and 0.84 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NE NW	2.09	100	Reflects 2.09 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NE NW	0.69	104	Reflects 0.29 acres of "TO" lands added by transfer
16 S	12 E	WM	20	NE SE	0.00	1300	Reflects 1.00 acres of "FROM" lands removed by transfer
17 S	12 E	WM	21	NE NW	0.00	400	Reflects 2.60 acres of "FROM" lands removed by transfer
17 S	12 E	WM	21	SE NW	0.00	400	Reflects 0.40 acres of "FROM" lands removed by transfer
17 S	12 E	WM	16	NE SE	0.00	400	Reflects 0.76 acres of "FROM" lands removed by transfer
17 S	12 E	WM	16	NW SE	0.00	400	Reflects 0.90 acres of "FROM" lands removed by transfer
17 S	12 E	WM	16	NW SE	0.00	700	Reflects 2.00 acres of "FROM" lands removed by transfer
17 S	12 E	WM	16	NW NE	0.00	1600	Reflects 2.00 acres of "FROM" lands removed by transfer
17 S	12 E	WM	17	SE SE	0.22	2700	Reflects 0.22 acres of "TO" lands added by transfer
17 S	12 E	WM	17	SW SE	3.56	2700	Reflects 3.56 acres of "TO" lands added by transfer
17 S	12 E	WM	17	NW SE	3.80	2700	Reflects 3.80 acres of "TO" lands added by transfer
<b>TOTAL</b>					<b>40.16</b>		

† May be a different tax lot than what is described on the water right certificate.

\*Water rights acres are in common roadway areas, not tax lots.



29. 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:

<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	1 cfs to 83.0 acres
<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	1 cfs to 62.0 acres
<b>Season 3 Rate:</b> 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 described on the certificate 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.

Certificate 74145 has been modified (reduced) by allocation of conserved water projects CW-13 (Special Order Volume 61, Page 630), CW-40 (Special Order Volume 70, Page 143), CW-41 (Special Order Volume 71, Page 202), CW-47 (project approved, but not yet finalized, Special Order Volume 71, Page 221) and transfers T-8519 which transferred 21.0 acres of direct diversion right to instream right (Certificate 76687), T-8154 (a place of use transfer, Special Order Volume 53, Page 1445), which did not prove up on 1.0 acre of canal diversion, which will be removed from the water right, and T-9308 (a place of use transfer approved by Special Order Volume 65, Page 472) also modified Certificate 74145 and includes 2.0 acres of inchoate canal diversion. The rates and duties associated with these modifications has been reduced from the initial rate/duty shown in the table below. Additionally, The rate and duty for these 2.0 acres is included in the initial rate/duty shown in the table below.

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

	<b>Initial Rate / Duty</b>	<b>CW-13 Rate / Duty</b>	<b>T-8519 Rate / Duty</b>	<b>T-8154 Rate / Duty</b>	<b>CW-40 Rate / Duty</b>	<b>CW-41 Rate / Duty</b>	<b>CW-47 Rate/ Duty (Project not finalized)</b>	<b>Approximate Before CW-43 Rate/Duty*</b>
<b>Season 1 Rate (cfs)</b>	54.340	(0.310)	(0.144)	(0.012)	(1.480)	(4.400)	(4.67)	43.324
<b>Season 2 Rate (cfs)</b>	72.746	(0.420)	(0.193)	(0.016)	(1.480)	(4.400)	(6.67)	59.567
<b>Season 3 Rate (cfs)</b>	125.000	(0.770)	(0.358)	(0.028)	(1.480)	(4.400)	(9.00)	108.964
<b>Duty (AF)</b>	4,3207.95	(417.00)	(114.66)	(9.02)	(627.10)	(1,864.37)	(3,157.62)	37,018.18

\*This 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.

The before project rate and duty associated with the 40.16 acres was reduced by the 0.03 acre cancellation which is part of CW-43. The project rate and duty was then determined by subtracting the existing direct diversion rates from the certificate, and the determining the maximum rate that could be applied simultaneously to all canal diversion acres.

	<b>Approximate Before CW-43 Rate/Duty</b>	<b>Reduction of 0.03 acres under CW-43</b>	<b>Direct Diversion Rate/Duty</b>	<b>Total Canal Diversion Rate/Duty</b>	<b>Canal Rate 1/X cfs/ac and Duty (if exercised simultaneously)</b>	<b>Rate/Duty Associated with 40.16 Canal Acres</b>
<b>Season 1 Rate (cfs)</b>	43.324	(0.000)	(0.812)	42.512	104.508	0.384
<b>Season 2 Rate (cfs)</b>	59.567	(0.000)	(1.088)	58.479	75.972	0.529
<b>Season 3 Rate (cfs)</b>	108.964	(0.001)	(2.016)	106.947	41.542	0.967
<b>Duty</b>	37,018.18 AF	(0.23) AF	(219.27) AF	36,798.68AF	7.81 AF/ac	313.85 AF

This is different than the amounts listed on the allocation of conserved water application:

<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.484 cfs
<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	0.648 cfs
<b>Season 3 Rate:</b> May 15 - Sept. 14	1.201 cfs
<b>Duty</b>	384.73 AF

30. The conservation project involves a change in POD eliminating delivery via the Frakes Lateral and going to a direct diversion, thereby eliminating 2,320 feet of open lateral and 3,480 feet of open canal for 40.16 acres from Certificate 74145. Additionally, the project involves eliminating one of the Deschutes River Ranch pump sites and consolidating into one point of diversion. The project also involves the installation of a more efficient, pressurized system for

97.03 acres. The new system will allow a reduction in duty of Certificates 83243 and 74145 to 3.15 AF/ac.

31. Pursuant to OAR 690-018-0050, notice of the application was published by the Department on March 28, 2006, and in The Bulletin on June 17, 24, and July 1, 2006. No comments were filed in response to the notice.
32. On April 27, 2007, the Department mailed a copy of the draft Proposed Final Order proposing to approve Allocation of Conserved Water Application CW-43 to the applicants and their agents (the Deschutes River Conservancy and Newton Consultants, Inc).
33. On July 5, 2007, the Department issued a Proposed Final Order proposing to approve Allocation of Conserved Water Application CW-43 and mailed a copy to the applicants and their agents.
34. On August 15, 2007, an error in the Proposed Final Order was identified by the Deschutes River Conservancy.
35. On August 30, 2007, a red-lined correction to the Proposed Final Order was e-mailed to the applicants and their agents.
36. Pursuant to ORS 537.485, the applicant's request that the priority dates of the conserved water be the same as the originating rights.
37. The proposed allocation of conserved water project will result in a reduced diversion for the uses allowed under the original water rights.
38. The proposed allocation of conserved water will not harm existing rights.
39. The application includes land use information forms completed and signed by Deschutes County planning officials demonstrating that the application is compatible with the local comprehensive land use plan.
40. 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.
41. After the allocation of conserved water, the water right held by the applicant will allow use of the following approximate quantities of water:

Certificate	Priority Date	Season	Before Project Maximum	Conserved Water (Based on Reach 3 for Certificate 83243 and Reach 2 for Certificate 74145)	After Project Maximum
83243	Spring 1885	<b>Season 1 Rate (cfs):</b> Apr. 1 – May 22 & Aug. 20 – Oct. 31	0.71	(0.15)	0.56
		<b>Season 2 Rate (cfs):</b> May 23 – Aug. 19	1.42	(0.30)	1.12
		<b>Duty (AF)</b>	227.48	(48.34)	179.14
74145	Sept. 1, 1899	<b>Season 1 Rate (cfs):</b> April 1 - 30 & Oct. 1 - 31	43.324	(0.209)	43.155
		<b>Season 2 Rate (cfs):</b> May 1 – 14 & Sept. 15 - 30	59.567	(0.294)	59.273
		<b>Season 3 Rate (cfs):</b> May 15 - Sept. 14	108.964	(0.532)	108.432
		<b>Duty (AF)</b>	37,017.95*	(172.57)	36,845.38

\* reflects reduction of the 0.03 acres that were cancelled as part of CW-43.

42. 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 the Deschutes River to provide for the conservation, maintenance and enhancement of aquatic and fish life and fish habitat and other ecological values.
43. 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.
44. The amounts of water to be allocated to the state for an instream water right are:

Certificate	Priority Date	Rate / Duty	Instream Water Right from Conserved Water Project		
			Reach 1	Reach 2	Reach 3
83243	Spring 1885	<b>Rate (cfs):</b> April 1 - October 31	NA	NA	0.113*
		<b>Duty (AF)</b>	NA	NA	47.96
74145	September 1, 1899	<b>Season 1 Rate (cfs):</b> April 1 - 30 & Oct. 1 - 31	0.384	0.209	NA
		<b>Season 2 Rate (cfs):</b> May 1 – 14 & Sept. 15 - 30	0.529	0.294	NA
		<b>Season 3 Rate (cfs):</b> May 15 - Sept. 14	0.967	0.532	NA
		<b>Duty (AF)</b>	313.85	172.57	NA

\* Reflects a decrease from the rate shown in Finding of Fact # 44, so that the duty conserved (48.34 AF) is not exceeded.

Reach 1: From Swalley Main Canal (RM 165) (POD #3 as described in Finding of Fact #7) to the Deschutes River Ranch Direct Diversion POD #2 (as described in Finding of Fact #6).

Reach 2: From Deschutes River Ranch Direct Diversion POD #2 (as described in Finding of Fact #6) to Lake Billy Chinook (RM 120).

Reach 3: From Deschutes River Ranch Direct Diversion POD #1 (as described in Finding of Fact #6) to Lake Billy Chinook (RM 120).

45. The project has been completed, and the applicants request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.

46. 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-43 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.

The changes in the associated transfer applications involving Certificates 83243 and 74145 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled.

### Now, therefore, it is ORDERED:

1. The changes in Conserved Water Application CW-43, the associated transfers, and the partial cancellation of Certificate 74145 are approved.
2. Water Right Certificate 83243 is cancelled. A remaining right certificate will be issued describing the Dust Abatement and Ranch Operations portion of the right not affected by the transfer or the allocation of conserved water.
3. Approval of this allocation of conserved water and transfer results in an inchoate water right for:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	17	SE SE	0.45

The right is limited to:

	<b>Total Maximum</b>	<b>Per Acre Maximum</b>
<b>Season 1 Rate:</b> Apr. 1 – May 22 & Aug. 20 – Oct. 31	0.004 cfs	1 cfs to 101.6 acres
<b>Season 2 Rate:</b> May 23 – Aug. 19	0.009 cfs	1 cfs to 50.8 acres
<b>Duty</b>	1.42 AF	3.15 AF

All other conditions and limitations of the existing water right, Certificate 83243, shall be included in the superseding certificate.

4. An allocation of conserved water remaining right certificate will be issued describing that portion of Certificate 83243 involved in the allocation of conserved water and not involved in the transfer, being:

<b>IRRIGATION</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>
16 S	12 E	WM	17	SE SW	2.56
16 S	12 E	WM	17	SW SE	22.53
16 S	12 E	WM	17	SE SE	11.36
16 S	12 E	WM	20	NW NE	18.45
16 S	12 E	WM	20	NE NW	1.52

The right is limited to:

	<b>Total Maximum</b>	<b>Per Acre Maximum</b>
<b>Season 1 Rate:</b> Apr. 1 – May 22 & Aug. 20 – Oct. 31	0.556 cfs	1 cfs to 101.6 acres
<b>Season 2 Rate:</b> May 23 – Aug. 19	1.111 cfs	1 cfs to 50.8 acres
<b>Duty</b>	177.72 AF	3.15 AF

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

5. Water Right Certificate 74145 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.
6. The following portion of Certificate 74145 is cancelled:

<b>IRRIGATION</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>
16 S	12 E	WM	20	NE NE	0.03

The rate and duty being cancelled are described in Finding of Fact #25.

7. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 74145 by the following amounts:

<b>Certificate</b>	<b>Priority Date</b>	<b>Season</b>	<b>Conserved Water</b>
74145	Sept. 1, 1899	<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.209 cfs
		<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	0.294 cfs
		<b>Season 3 Rate:</b> May 15 - Sept. 14	0.532 cfs
		<b>Duty</b>	172.57 AF

The associated rate of the remaining right, based on the reduction from the allocation of conserved water and the partial cancellation shall be approximately:

<b>Season</b>	<b>After Project Maximum</b>	<b>Maximum per acre</b>
<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	43.155 cfs	1 cfs to 83.0 acres
<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	59.273 cfs	1 cfs to 62.0 acres
<b>Season 3 Rate:</b> May 15 - Sept. 14	108.431 cfs	1 cfs to 33.45 acres
<b>Duty</b>	36,845.38 AF	9.58 AF

The above rates include a 43% transmission loss allowed by the Deschutes County Circuit 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, unless indicated otherwise.

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.

8. Approval of this allocation of conserved water and transfer results in an inchoate water right for:

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	17	SW SE	DIRECT RIVER POD #2: 1053 FEET NORTH AND 396 FEET EAST FROM THE SW CORNER OF THE SW¼ SE¼ OF SECTION 17

**Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	WM	20	NW NE	100	0.18
16 S	12 E	WM	20	NW NE	103	0.40
16 S	12 E	WM	20	NW NE	104	0.69
16 S	12 E	WM	20	NE NW	104	0.35
16 S	12 E	WM	20	NE NW	100	2.09
17 S	12 E	WM	17	SE SE	2700	0.22
17 S	12 E	WM	16	SW SE	2700	3.56
17 S	12 E	WM	16	NW SE	2700	3.80
TOTAL						11.29

The right is limited to:

Season	Total Maximum	Per Acre Maximum
<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.049 cfs	1 cfs to 229.5 acres
<b>Season 2 Rate:</b> May 1 – 14 & Sept. 15 - 30	0.066 cfs	1 cfs to 170.9 acres
<b>Season 3 Rate:</b> May 15 - Sept. 14	0.122 cfs	1 cfs to 92.3 acres
<b>Duty</b>	52.66 AF	3.15 AF

All other conditions and limitations of the existing water right, Certificate 74145, shall be included in the superseding certificate.

9. In accordance with Order Condition #5, the allocation of conserved water remaining right certificate will be issued describing that portion of Certificate 74145 involved in the allocation of conserved water and not involved in the transfer, being:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	WM	20	NE NE	2500	11.15
16 S	12 E	WM	20	NE NE	2501	4.29
16 S	12 E	WM	20	NW NE	100	0.30
16 S	12 E	WM	20	NW NE	101	1.81
16 S	12 E	WM	20	NW NE	102	3.12
16 S	12 E	WM	20	NW NE	103	4.81
16 S	12 E	WM	20	NW NE	104	2.99
16 S	12 E	WM	20	NE NW	104	0.40
TOTAL						28.87



The associated rate of the remaining right shall be approximately:

Season	Total Maximum	Per Acre Maximum
<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.126 cfs	1 cfs to 229.5 acres
<b>Season 2 Rate:</b> May 1 – 14 & Sept. 15 - 30	0.169 cfs	1 cfs to 170.9 acres
<b>Season 3 Rate:</b> May 15 - Sept. 14	0.313 cfs	1 cfs to 92.3 acres
<b>Duty</b>	134.64 AF	3.15 AF

All other conditions and limitations of the existing water right, Certificate 74145, shall be included in the superseding certificate.

10. 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 original point of diversion (RM 154.5) for Certificate 83243 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	17	SE SW	POD 1 (Original POD): 84 FEET NORTH AND 847 FEET WEST FROM THE S¼ CORNER OF SECTION 17

to Lake Billy Chinook (RM 120).

The instream water right shall be as described below:

Certificate	Priority Date	Season	Instream Water Right from Conserved Water Project
83243	Spring 1885	April 1 - October 31	0.113 cfs

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.

11. 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. There shall be two instream reaches associated with this right:

Certificate	Priority Date	Season	Instream Water Right from Conserved Water Project	
			Reach 1	Reach 2
74145	September 1, 1899	<b>Season 1 Rate (cfs):</b> April 1 - 30 & Oct. 1 - 31	0.384	0.209
		<b>Season 2 Rate (cfs):</b> May 1 – 14 & Sept. 15 - 30	0.529	0.294
		<b>Season 3 Rate (cfs):</b> May 15 – Sept. 14	0.967	0.532

Reach 1: From Swalley Main Canal (RM 165) (POD #3 as described in Finding of Fact #7) to the Deschutes River Ranch Direct Diversion POD #2 (as described in Finding of Fact #6)


Reach 2: From Deschutes River Ranch Direct Diversion POD #2 (as described in Finding of Fact #6) to Lake Billy Chinook (RM 120)

The right 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.

12. The right to the use of the water is restricted to beneficial use at the place of use described, in Order Conditions #7 and #8 and is subject to all other conditions and limitations contained in the originating certificates and any related decree.
13. For the transfer involving Certificate 74145, the quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
14. The former place of use of the transferred rights shall no longer receive water under the rights.
15. Prior to diverting water, from the new POD authorized for Certificate 74145, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
16. Prior to water being protected instream, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted on the lands involved in the allocation of conserved water. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
17. The water user shall maintain the existing headgates and shall make such improvements as may be required by the Department.
18. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2008. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

19. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 11<sup>th</sup> day of September, 2007.

  
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Phillip C. Ward  
Director

*Date of Mailing:* SEP 14 2007