

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

In the Matter of Transfer Application            )    F I N A L   O R D E R  
T-10649, Deschutes County                    )    APPROVING A DISTRICT  
  )    TEMPORARY TRANSFER

**Authority**

ORS 540.570 establishes the process in which a district may submit a request to temporarily transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

**Applicant**

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

**Findings of Fact**

1. On June 12, 2008, the Swalley Irrigation District filed a district transfer application to temporarily change the point of diversion in response to an emergency under Certificate 74145. The Department assigned the application number T-10649.
2. Notice of the application for transfer was published June 24, 2008, pursuant to ORS 540.570 and OAR 690-385-3400. No comments were filed in response to the notice.
3. Staff consulted with the Oregon Department of Fish and Wildlife (ODFW) about whether the proposed diversion was equipped with a proper fish screen device. ODFW has determined that a fish screening and/or by-pass device is necessary at the new point of diversion 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 currently equipped with an appropriate fish screening and/or by-pass device.

4. The following right is proposed to be modified:

**Certificate:** 74145

**Priority Date:** September 1, 1899

**Use:** Irrigation of 86.68 acres

**Season of Use:** April 1 to November 1, further limited as follows:

April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1

May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2

May 15 to Sept. 15 described herein as Season 3

**Quantity:** Rate: Season 1 (limited to 1/83<sup>rd</sup> Cubic Foot per Second (CFS)/acre)

This is a final 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 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.

Season 2 (limited to 1/62<sup>nd</sup> CFS/acre)  
 Season 3 (limited to 1/33.45 CFS/acre)  
 Duty (limited to 9.58 acre-feet per acre)

The quantities listed reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933

**Source:** Deschutes River, tributary to the Columbia River

**Authorized Point 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 E1/4 CORNER OF SECTION 29

- Application T-10372 proposes to temporarily change the point of diversion in response to an emergency to:

TWP	RNG	MER	SEC	Q-Q	SURVEY COORDINATES
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM E1/4 CORNER OF SECTION 29

- Due to unforeseen events, Swalley Irrigation District is unable to divert the quantity of water to which it is legally entitled and convey through the Main Canal, and this situation necessitates immediate action to minimize property losses to district water users
- Pursuant to OAR 690-385-3145(6)(a), Swalley Irrigation District consulted with the Oregon Water Resources Department, Central Oregon Irrigation District, Deschutes County and the City of Bend prior to submitting the district temporary transfer application

**Transfer Review Criteria (OAR 690-385-3500)**

- The district temporary transfer application satisfies the criteria of OAR 690-385-3000 and 690-385-3145, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
- The water right is subject to transfer as defined in OAR 690-385-0100(17).
- The emergency meets the definition of *emergency* under OAR 690-385-0100(19).
- The proposed change in point of diversion in response to an emergency would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.


**Conclusions of Law**

The change in point of diversion in response to an emergency proposed in application T-10649 satisfies the requirements of ORS 540.574(3) and 540.570.

**Now, therefore, it is ORDERED:**

1. The proposed temporary change in point of diversion in response to an emergency to serve the water rights evidenced by Certificate 74145 is approved.
2. The temporary transfer is effective for the **2008** irrigation season.
3. 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.
4. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right.
5. The water user shall maintain and operate a rate and totalizing flow meter on the pump at the temporary point of diversion at the Central Oregon Irrigation District North Canal. The water user also shall record daily meter readings of the acre-feet diverted and report the daily data to the Watermaster at the end of each month.
6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
7. At the end of the **2008** irrigation season all use of water under this temporary transfer reverts automatically to the terms and conditions of the original water right permit, certificate, or adjudication as evidenced by a court decree.

Dated at Salem, Oregon this 1<sup>ST</sup> day of July, 2008.

  
Phillip C. Ward, Director

Mailing date: JUL 08 2008

