

**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-48, Deschutes County ) WATER

**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.

**Applicant**

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

**Agent**

DESCHUTES RIVER CONSERVANCY  
P.O. BOX 1560  
BEND OR 97701

**Findings of Fact**

1. On February 12, 2007, Swalley Irrigation District filed an allocation of conserved water application. The Department assigned the application number CW-48.
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 right, and there is no information in the record that would demonstrate that the right is 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 were present within the five-year period prior to the submittal of Allocation of Conserved Water application CW-48.
6. The right involved in the allocation of conserved water is as follows:

**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.

**Certificate:** 74145 in the name of SWALLEY IRRIGATION DISTRICT (confirmed by Deschutes River decree)

**Use:** IRRIGATION, DUST ABATEMENT, INDUSTRIAL USE, PARK MAINTENANCE, NURSERY USE, POND MAINTENANCE, DOMESTIC, AND STOCK USE

**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 E1/4 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

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:

<b>Season 1:</b> April 1 - 30 & Oct. 1 - 31	1 cfs to 83.0 acres
<b>Season 2:</b> May 1 - 14 & Sept. 15 - 30	1 cfs to 62.0 acres
<b>Season 3:</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 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 maximum rate and the total duty associated with Certificate 74145 is described in the allocation of conserved water application as 108.380 cfs and 36,815.90 AF. The actual maximum rate and duty may be slightly less, as shown in the table below.

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-43 which includes canceling 0.03 acres (Special Order Volume 73, Page 213), 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. This 1.0 acre will be removed from the water right. Additionally, 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 have been subtracted 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 show in the table below.

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

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

	Cancellation Associated with CW-43 Rate/ Duty	CW-43 Rate/ Duty	Approximate Before CW-48 Rate/Duty*
Season 1 Rate (cfs)	(0.000)	(0.209)	43.115
Season 2 Rate (cfs)	(0.000)	(0.294)	59.273
Season 3 Rate (cfs)	(0.001)	(0.532)	108.431
Duty AF	(0.23)	(172.57)	36,845.38

\* This presumes that CW-47 would be finalized. It also 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 7,080 feet of the Frakes Lateral, an open unlined canal, with 6 – 12 inch diameter HDPE buried pipe. By piping the open canal, water seepage through the unlined floor and sides of the canal will be eliminated. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
9. Notice of the application for allocation of conserved water was published as on February 20, 2007, in the Department’s weekly notice and on February 18, 25, and March 4, 2007, in The Bulletin as required under OAR 690-018-0050. No comments were received.

10. On July 18, 2007, the Department issued a Proposed Final Order proposing to approve Conserved Water Application CW-48, and mailed a copy to the applicant and e-mailed a copy to the applicant's agent.
11. On September 13, 2007, a red-lined Draft Final Order was e-mailed to the applicant and their agent. This red-line draft order highlighted changes to the Proposed Final Order due to modifications in how Allocation of Conserved Water application CW-43 was approved. On September 14, 2007, the applicant and agent gave their consent to the red-lined changes.
12. Pursuant ORS 537.485, the applicant's request that the priority dates of the conserved water be the same as the originating rights.
13. The proposed allocation of conserved water project, once complete, will result in the conservation of 0.76 cfs in Season 1, 1.03 cfs in Season 2, 1.63 cfs in Season 3, and 551.00 AF. The quantity of water allowed for diversion under Certificate 74145 with a priority date of September 1, 1899, will be reduced by this quantity.
14. The proposed allocation of conserved water will not harm existing rights.
15. The application includes land use information forms completed and signed by Deschutes County officials demonstrating that the application is compatible with the local comprehensive land use plan.
16. 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 to other water rights.
17. After the allocation of conserved water, the water right held by the applicant will approximately allow use of the following quantities of water:

<b>Certificate</b>	<b>Priority Date</b>	<b>Season</b>	<b>Before Project Maximum</b>	<b>Conserved Water</b>	<b>After Project Maximum</b>
74145	Sept. 1, 1899	<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	43.115 cfs	(0.76) cfs	42.355 cfs
		<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	59.273 cfs	(1.03) cfs	58.243 cfs
		<b>Season 3 Rate:</b> May 15 - Sept. 14	108.431 cfs	(1.63) cfs	106.801 cfs
		<b>Duty</b>	36,845.38 AF	(551.00 AF)	36,294.38 AF

18. 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, wildlife, fish and wildlife habitat and other ecological values.

19. 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.

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

Certificate	Priority Date	Season	Instream Water Right from Conserved Water Project
74145	Sept. 1, 1899	<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.76 cfs
		<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	1.03 cfs
		<b>Season 3 Rate:</b> May 15 - Sept. 14	1.63 cfs
		<b>Duty</b>	551.00 AF

21. 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.

22. On April 3, 2007, the applicant indicated that the project was complete and requested that the allocation of conserved water be finalized.

23. 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-48 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:

1. The changes in Conserved Water Application CW-48, as modified by the applicant, are approved.
2. Water Right Certificate 74145 is modified. 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 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	0.76 cfs
		<b>Season 2 Rate:</b> May 1 – 14 & Sept. 15 - 30	1.03 cfs
		<b>Season 3 Rate:</b> May 15 - Sept. 14	1.63 cfs
		<b>Duty</b>	551.00 AF

The associated rate and duty of the remaining right 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	42.355 cfs	1 cfs to 83.0 acres
<b>Season 2 Rate:</b> May 1 – 14 & Sept. 15 - 30	58.243 cfs	1 cfs to 62.0 acres
<b>Season 3 Rate:</b> May 15 - Sept. 14	106.801 cfs	1 cfs to 33.45 acres
<b>Duty</b>	36,294.38 AF	9.58 AF

and the priority date shall September 1, 1899.

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.

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.

3. 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:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Survey Coordinates</b>
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

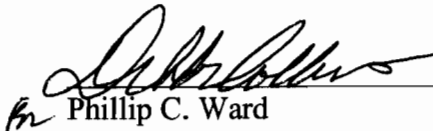
to Lake Billy Chinook (RM 120).

The instream water right shall be as described below:

Certificate	Priority Date	Season	Conserved Water
74145	Sept. 1, 1899	<b>Season 1 Rate:</b> April 1 - 30 & Oct. 1 - 31	0.76 cfs
		<b>Season 2 Rate:</b> May 1 - 14 & Sept. 15 - 30	1.03 cfs
		<b>Season 3 Rate:</b> May 15 - Sept. 14	1.63 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.

Dated at Salem, Oregon this 19<sup>th</sup> day of September, 2007.

  
Phillip C. Ward  
Director

Date of Mailing: SEP 26 2007