

**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-54, Deschutes County) WATER and PARTIAL FINALIZATION
) OF THE CONSERVED 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 December 17, 2007, Swalley Irrigation District filed an allocation of conserved water application. The Department assigned the application number CW-54.
2. On January 10, 2008, the application was amended to include three small projects in addition to conserving water on the main canal.
3. On March 26, 2008, the amount of water conserved by the project was clarified.
4. The right involved in the allocation of conserved water is as follows:

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

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

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

5. 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 maximum rate and the total duty associated with Certificate 74145 are described in the allocation of conserved water application as 106.80 cfs and 36,294.38 AF. The actual maximum rate and duty is less, as shown below.

Certificate 74145 has been modified (reduced) by the following allocation of conserved water and transfer applications:

- 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 (Special Order Volume 73, Page 212),
- CW-47 (Special Order Volume 73, Page 393),
- CW-48 (Special Order Volume 73, Page 307),
- T-8154 (Special Order Volume 53, Page 1445),
- T-8519 (Special Order Volume 55, Page 1010),
- T-9308 (Special Order Volume 65, Page 472), and
- T-10356 (Special Order Volume 73, Page 382).

Special Order Volume 73, Page 382 (approving T-10356) describes in detail the starting point for Certificate 74145, being:

	Initial Rate / Duty
Season 1 Rate	42.275 cfs
Season 2 Rate	58.143 cfs
Season 3 Rate	106.611 cfs
Duty	36,232.10 AF

If any order is approved affecting Certificate 74145 prior to the order for CW-54 being approved, then the starting point for CW-54 will change.

6. The applicant has an allocation of conserved water policy pursuant to OAR 690-018-0025.
7. 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.
8. 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-54.
9. The Swalley Main Canal Piping project (Phases II and III) proposes to replace approximately 18,700 feet (3.5 miles) of open, unlined main canal with 42, 48, and 54 inch diameter High Density Polyethylene (HDPE) pipe. Additionally, the following open, unlined laterals are to be replaced with HDPE pipe:
 - Riley Sub Lateral 780 feet,
 - Marshal Lateral 800 feet, and
 - Warner Lateral 5,129 feet.

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.

10. Notice of the application for allocation of conserved water was published on February 12, 2008, in the Department's weekly public notice and on February 7, 14, and 21, 2008, in The Bulletin as required under OAR 690-018-0050. No comments were received.
11. Pursuant ORS 537.485, the applicant's request that the priority dates of the conserved water be the same as the originating right.
12. The proposed allocation of conserved water project is proposed to be completed incrementally, with the following water conserved:

	Proposed Completion Date	Season 1 (cfs)	Season 2 (cfs)	Season 3 (cfs)	Duty (AF)
Increment #1					
Swalley Main Phase II	March 15, 2008	1.734	11.904	13.800	4,284.88
Riley Sub Lateral	June 1, 2008	0.042	0.04	0.200	56.26
Marshall Lateral	June 1, 2008	0.00	0.00	0.028	6.83
<i>Total</i>		1.776	11.944	14.028	4,347.97
Increment #2					
Swalley Main Phase III	March 15, 2009	0.976	6.696	6.200	2,029.12
Warner Lateral	March 15, 2009	0.300	0.300	0.815	252.98
<i>Total</i>		1.276	6.996	7.015	2,282.10
Grand Total		3.052	18.940	21.043	6,630.07

13. Once complete, the quantity of water allowed for diversion under Certificate 74145 with a priority date of September 1, 1899, will be reduced by the amounts shown in Finding of Fact #12.
14. The proposed allocation of conserved water will not harm existing rights.
15. The application includes land use information forms completed and signed by representatives of the City of Bend Planning Department. The applicant also provided notification of the proposed action to Deschutes County and Jefferson County. Furthermore, the Department provided notice to Deschutes County and Jefferson County indicating that the application had been filed.
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 on other water rights.
17. After Increment #1 of the allocation of conserved water project, the water right held by the applicant will allow use of approximately 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	42.275 cfs	(1.776) cfs	40.499 cfs
		Season 2 Rate: May 1 - 14 & Sept. 15 - 30	58.143 cfs	(11.944) cfs	46.199 cfs
		Season 3 Rate: May 15 - Sept. 14	106.611 cfs	(14.028) cfs	92.583 cfs
		Duty	36,232.10 AF	(4,347.97 AF)	31,884.13 AF

18. After Increment #2 of the allocation of conserved water project, the water right held by the applicant will allow use of approximately 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	40.499 cfs	(1.276) cfs	39.223 cfs
		Season 2 Rate: May 1 - 14 & Sept. 15 - 30	46.199 cfs	(6.996) cfs	39.203 cfs
		Season 3 Rate: May 15 - Sept. 14	92.583 cfs	(7.015) cfs	85.568 cfs
		Duty	31,884.13 AF	(2,282.10AF)	29,602.03 AF

* If other orders affecting Certificate 74145, including those for transfer applications T-10463 or T-10490 are approved prior to the completion and finalization of Increment #2 for CW-54, then the start point for the Increment #2 will change.

19. 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.
20. 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.
21. The amounts of water to be allocated to the state for an instream water right are:

Priority Date	Season	Instream Water Right from Conserved Water Project		
		Increment #1	Increment #2	Total
Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	1.776 cfs	1.276 cfs	3.052 cfs
	Season 2 Rate: May 1 - 14 & Sept. 15 - 30	11.944 cfs	6.996 cfs	18.94 cfs
	Season 3 Rate: May 15 - Sept. 14	14.028 cfs	7.015 cfs	21.043 cfs
	Duty	4,347.97 AF	2,282.10 AF	6,630.07 AF

22. 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 #4) to Lake Billy Chinook (RM 120). The instream use shall allow the use and protection of flows from April 1 through October 31.
23. The applicant indicated that a portion of the project is completed and should be finalized upon approval of this order. Another portion of the project is not yet complete, but is expected to be completed by March 15, 2009, and should be finalized when completed. The amounts that are to be finalized upon approval of this order are described in Finding of Fact #12 as Increment #1, and the portion of the project not yet completed is described in Finding of Fact #12 as Increment #2.

24. 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-54 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 proposed in CW-54, as modified by the applicant, are approved.

Increment #1 of the Allocation of Conserved Water Project

2. Modify Certificate 74145. 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:

Certificate	Priority Date	Season	Conserved Water
74145	Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	1.776 cfs
		Season 2 Rate: May 1 - 14 & Sept. 15 - 30	11.944 cfs
		Season 3 Rate: May 15 - Sept. 14	14.028 cfs
		Duty	4,347.97 AF

The associated rate and duty of the remaining right shall be approximately:

Season	After Project Maximum	Maximum per acre
Season 1 Rate: April 1 - 30 & Oct. 1 - 31	40.499 cfs	1 cfs to 83.0 acres
Season 2 Rate: May 1 - 14 & Sept. 15 - 30	46.199 cfs	1 cfs to 62.0 acres
Season 3 Rate: May 15 - Sept. 14	92.583 cfs	1 cfs to 33.45 acres
Duty	31,884.13 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:

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

to Lake Billy Chinook (RM 120).

The instream water right shall be as described below:

Priority Date	Season	Conserved Water
Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	1.776 cfs
	Season 2 Rate: May 1 - 14 & Sept. 15 - 30	11.944 cfs
	Season 3 Rate: May 15 - Sept. 14	14.028 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.

Increment #2 of the Allocation of Conserved Water Project

4. For the remainder of the project, the applicant has until December 31, 2010, to file a notice of completion of the conservation measures, unless the Director grants an extension of time.
5. When the applicant files the notice of completion, the project will be finalized, unless the applicant requests additional time to finalize the project and the Director grants an extension of time for the purposes of finalization.

On submittal of notice of completion of the Increment #2 of the conservation project described in the application for allocation of conserved water, the Department shall:

6. Modify Certificate 74145. 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:

Certificate	Priority Date	Season	Conserved Water
74145	Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	1.276 cfs
		Season 2 Rate: May 1 – 14 & Sept. 15 - 30	6.996 cfs
		Season 3 Rate: May 15 - Sept. 14	7.015 cfs
		Duty	2,282.10 AF

The associated rate and duty of the remaining right shall be approximately:

Season	After Project Maximum*	Maximum per acre
Season 1 Rate: April 1 - 30 & Oct. 1 - 31	39.223 cfs	1 cfs to 83.0 acres
Season 2 Rate: May 1 – 14 & Sept. 15 - 30	39.203 cfs	1 cfs to 62.0 acres
Season 3 Rate: May 15 - Sept. 14	85.568 cfs	1 cfs to 33.45 acres
Duty	29,602.03 AF	9.58 AF

* If other orders affecting Certificate 74145, including those for transfer applications T-10463 or T-10490 are approved prior to the completion and finalization of Increment #2 for CW-54, then the start point for the Increment #2 will change.

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.

7. 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
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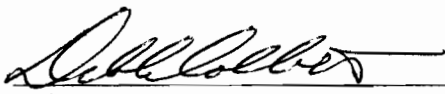
to Lake Billy Chinook (RM 120).

The instream water right shall be as described below:

Priority Date	Season	Conserved Water
Sept. 1, 1899	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	1.276 cfs
	Season 2 Rate: May 1 - 14 & Sept. 15 - 30	6.996 cfs
	Season 3 Rate: May 15 - Sept. 14	7.015 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 2nd day of October, 2008.


 Pz Phillip C. Ward
 Director

Date of Mailing: OCT 09 2008