

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

In the Matter of the Proposed Short-Term        )     DETERMINATION and  
Lease of Existing Water Rights for Instream    )     FINAL ORDER ON  
Use, Certificate 74145, Deschutes County,       )     PROPOSED INSTREAM  
Oregon   )     LEASE

**FINDINGS OF FACT**

1. On April 28, 2004, a Short-Term Lease Application, which proposed to lease a portion of certificate 74145 for instream purposes was submitted to the Department by:

Lessor #1  
Basil S. & Elfriede L. Karras  
64785 Half Mile Lane  
Bend, OR 97701

Lessor #2  
Swalley Irrigation District  
64672 Cook Ave.  
Bend, OR 97701

Lessee  
Deschutes Resources Conservancy  
PO Box 1560  
Bend, OR 97709

2. The Department assigned this lease agreement number L-560.
3. The lease application includes the required information under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
4. The right to be leased, as requested by the applicant, is as follows:

**Certificate:** 74145

**Priority Date:** September 1, 1899

**Use:** Irrigation

**Acres:** 21.0

**Season of Use:** April 1 through October 31, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as  
Season 1

May 1 to May 15 and September 15 to October 1 described herein as  
Season 2

May 15 to September 15 described herein as Season 3

This is a final order in other than 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

**Quantity:** Season 1 (limited to 1/83<sup>rd</sup> Cubic Foot per Second (CFS) per acre): 0.25 CFS  
 Season 2 (limited to 1/62<sup>nd</sup> cfs per acre): 0.34 CFS  
 Season 3 (limited to 1/33.45<sup>th</sup> cfs per acre): 0.63 CFS  
 Duty (limited to 9.58 acre-feet per acre): 201.2 Acre-Feet (AF)  
 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:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	29	SE	NE	985 feet North & 617 feet West from East 1/4 Corner, Section 29

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres
16	S	12	E	W.M.	34	NW NW	301	9/1/1899	21.0

- The Department finds that the lease application requires modification in order to clarify the portion of certificate 74145 that may be leased. During Season 3, the water right allows the diversion of 1/33.45<sup>th</sup> CFS for each acre to which water is applied. This certificate allows for water to be used on 4561.105 acres, including equivalent acres for uses other than irrigation. If water were being applied to all acres allowed by the certificate, the amount that could be diverted in Season 3, 136.36 CFS, would exceed the rate limitation on the certificate, 125.0 CFS. To identify the portion of this certificate that may be leased in Season 3, the Department has proportioned the 125.0 CFS allowed by the certificate to each acre on which water may be applied, which amounts to 1/36.49<sup>th</sup> CFS per acre.
- Based upon Finding 5, the portion of the certificate to be leased is clarified as follows (changes are shown in bold text):

**Certificate:** 74145

**Priority Date:** September 1, 1899

**Use:** Irrigation

**Acres:** 21.0

**Season of Use:** April 1 through October 31, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as Season 1

May 1 to May 15 and September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

**Quantity:** Season 1 (limited to 1/83<sup>rd</sup> Cubic Foot per Second (CFS) per acre): 0.25 CFS

Season 2 (limited to 1/62<sup>nd</sup> cfs per acre): 0.34 CFS

Season 3 (limited to 1/33.45<sup>th</sup> cfs per acre): **0.58 CFS (proportioned rate)**

Duty (limited to 9.58 acre-feet per acre): 201.2 Acre-Feet (AF)

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:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	29	SE	NE	985 feet North & 617 feet West from East 1/4 Corner, Section 29

**Authorized Place of Use:**

Township	Range	Meridian	Sec	1/4 1/4	Tax Lot #	Priority Date	Acres		
16	S	12	E	W.M.	34	NW NW	301	9/1/1899	21.0

7. The application proposes to lease water for instream as follows:

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74145	9/1/1899	0.14 cfs in Season 1 0.19 cfs in Season 2 0.36 cfs in Season 3	April 1 - Oct. 31, being Season 1: April 1 to May 1 & Oct. 1 to Nov. 1 Season 2: May 1 to May 15 & Sept. 15 to Oct. 1 Season 3: May 15 to Sept. 15	Season 1: 61 Season 2: 30 Season 3: 123	116.24 AF

8. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified. Clarification of the rate at which water is to be leased instream in Season 3 is necessary. The quantity of water to be leased instream for Season 3 has been proportioned based upon the findings made in Finding 5 above. The volume of water to be leased instream has also been modified. At the rates identified below, only 11.1 AF may be leased during the full period requested. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74145	9/1/1899	0.14 cfs in Season 1 0.19 cfs in Season 2 <b>0.33 cfs in Season 3</b>	April 1 - Oct. 31, being Season 1: April 1 to May 1 & Oct. 1 to Nov. 1 Season 2: May 1 to May 15 & Sept. 15 to Oct. 1 Season 3: May 15 to Sept. 15	Season 1: 61 Season 2: 30 Season 3: 123	<b>108.97 AF</b>

9. To prevent injury an enlargement, the amount of water to be leased instream under certificate 74145 accounts for a 43% transmission loss that may not be leased and protected instream.
10. Based upon review of the application, information provided by the Department's Watermaster, and other information, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
11. The instream lease application identifies that the lease is to terminate on November 2, 2008. However, the last day of the irrigation season is October 31<sup>st</sup>. Therefore, the lease will terminate on October 31, 2008. The lessor has requested the option of terminating the lease early, with written notice to the Department.

### CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.

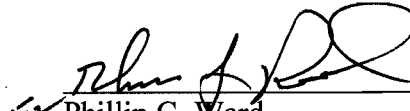
3. Water is leased instream as follows:

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
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4. The lease will terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, prior to the lease being exercised (April 1), with 30 days written notice to the Department.

Dated at Salem, Oregon this 12<sup>th</sup> day of July, 2004.

  
 For Phillip C. Ward  
 Acting Director