

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

In the Matter of Allocation of Conserved Water Application CW-106, Deschutes County ) FINAL ORDER ON COMPLETION AND ) FINALIZATION OF ALLOCATION OF ) CONSERVED WATER CW-106

**Applicant:**  
Swalley Irrigation District  
64672 Cook Avenue  
Bend, OR 97703

**Agent:**  
Deschutes River Conservancy  
700 NW Hill Street  
Bend, OR 97701

**Applicable Law**

Any person or group of persons holding a water use subject to transfer as defined in ORS 540.505 may submit an application for an Allocation of Conserved Water to the Water Resources Commission for a conservation project that has not yet been implemented or was implemented within five years prior to the submission of the application. ORS 537.465. Under the Allocation of Conserved Water Program, a portion of the water proposed to be conserved by an applicant may be used on additional lands, put to a different use, or be leased or sold to another user. OAR 690-018-0010.

After determining any quantity of water needed to mitigate the effects on other water rights, 25-percent of the conserved water shall be allocated to the state and 75-percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25-percent of the funds used to finance the conservation measures comes from federal or state sources. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the proposed measures; (b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities; (c) The amount of water that will be needed for the original, authorized use after implementation of the conservation measures; (d) The amount of conserved water expected from implementation of the conservation measures; (e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470; (f) The intended use of any water allocated to the applicant; (g) The

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.

applicant's choice of priority date for the conserved water; and (h) Any other information the commission considers necessary to evaluate the effectiveness of the proposal. ORS 537.465.

If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. ORS 537.465.

If an application for the allocation of conserved water is approved, the Department shall issue orders describing the changes in the original water rights. Once the conservation project is finalized, the Department shall issue new certificates preserving the previously established-priority date of the rights to reflect the unaffected portion of the water rights. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 18, implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

### **Findings of Fact**

1. On January 7, 2019, Swalley Irrigation District (SID) filed an Allocation of Conserved Water Application under Certificate 74145. The Department designated the application number CW-106.
2. On December 17, 2013, SID adopted by Resolution 13-06 the Swalley Irrigation District Transfer Policy which also incorporated and set forth its Allocation of Conserved Water policy pursuant to OAR 690-018-0025. On December 19, 2018, SID adopted by Resolution 18-06 its 5-Year Review and Revisions to its Transfer Policy.
3. The conservation project involves replacing approximately 16,045 feet (approx. 3.04 miles) of open ditch on the Rogers & Rogers Sub Lateral with buried high density polyethylene (HDPE) pipelines (24" graduating to 8"). Replacement of the existing open and leaky portions of the delivery system will eliminate seepage and evaporation losses conserving approximately 561.16 acre-feet of water per year.
4. Canal piping or lining are proven measures for conserving water.
5. An Order of Approval of Allocation of Conserved Water CW-106 (Approval Order) was issued on July 16, 2019. The order is recorded at Special Order Volume 113, Pages 627-637.

6. The Approval Order established the quantities of water conserved and allocated as follows:

Season	State's Portion			Applicant's Portion			Conserved Water	
	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
1	0.574	69.45	100 %	0	0	0%	0.574	69.45
2	0.744	44.27	100 %	0	0	0%	0.744	44.27
3	1.824	447.44	100 %	0	0	0%	1.824	447.44
Totals		561.16						561.16

7. The Approval Order established the reduced rates for the existing uses as follows:

	Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)	Grand Total
	Direct Diversion Maximum	Direct Diversion Maximum	Canal Diversion Maximum	Canal Diversion Maximum*	
Acreage	117.95		4192.62		4,310.57
Season 1	0.810	89.21	31.609	4049.36	
Season 2	1.084	64.50	42.289	2664.29	
Season 3	2.010	490.37	79.462	20529.23	
Totals		644.08		27242.88	27,886.96

8. The Approval Order established the priority date for any conserved water to be the same as the originating right.
9. The Approval Order established 100% of the conserved water was dedicated to the state for an instream water right and there were no areas within which the Applicant's portion of conserved water was to be used for out-of-stream uses.
10. The Approval Order established the deadline for filing the Notice of Completion of March 31, 2021, and the deadline for filing a Request for Finalization of April 1, 2021.
11. On April 6, 2020, the Applicant electronically submitted a Notice of Completion and a Request for Finalization forms.

### Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order Approving Allocation of Conserved Water CW-106, recorded at Special Order Volume 113, Pages 627-637, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-106, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

### Now, therefore, it is ORDERED:

1. The project is complete and no additional time is needed for finalization.

2. The quantities of water conserved and allocated 100% to the State are as follows:

Season	Maximum Rate (CFS)	Maximum Duty (Volume) AF
1	0.574	69.45
2	0.744	44.27
3	1.824	447.44
Totals		561.16

3. The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificate 74145, and any related decree.

4. Water Right Certificate 74145 is modified. The reduced rate for the existing uses under Certificate 74145, as modified by allocation conserved water applications, transfers, and partial cancellations is as follows:

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

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion not to exceed the quantity determined by the Circuit Court for Deschutes County, dated March 24, 1933, being:

**Rate, Acreage:**

	Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)	
	Direct Diversion Maximum	Direct Diversion Maximum	Canal Diversion Maximum	Canal Diversion Maximum*	Grand Total
Acreage	117.95		4192.62		4,310.57
Season 1	0.810	89.21	31.609	4049.36	
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for each acre irrigated from the Canal Diversions during the irrigation season of each year, not to exceed 6.48 acre feet for each acre irrigated during the irrigation season of each year as measured at the diversion from the source.

The above canal diversion rates include a transmission loss allowed by the Court to compensate for seepage from the canal, as modified by any allocation of conserved water applications, transfers, and partial cancellations.

The amount of water diverted directly from the Deschutes River and not through the main Swalley Irrigation District canal shall be limited to the above diversion rates **without** the transmission loss allowed by the

March 24, 1933 decree, and shall not exceed 5.46 acre feet for each acre irrigated during the irrigation season.

**Source:** DESCHUTES RIVER, tributary of the COLUMBIA RIVER

**Priority:** September 1, 1899

5. Water Use Measurement Conditions:

- a. SID shall maintain, monitor, and operate the existing measurement devices, or such other suitable measurement devices approved by the Director.
- b. SID shall maintain the meters or measuring devices in good working order.
- c. SID and the water users shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. An instream water right certificate shall be issued for the Deschutes River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation from the authorized point of diversion at approximately River Mile 165.0:

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL: 985 FEET NORTH AND 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29

To Lake Billy Chinook located at approximately River Mile 120.0.

The instream right shall allow the use and protection of flows as follows:

Season	Period of Use	Rate	Volume
Season 1	April 1 to May 1 and October 1 to November 1	0.574	69.45
Season 2	May 1 to May 15 and September 15 to October 1	0.744	44.27
Season 3	May 15 to September 15	1.824	447.44
Total			561.16

The instream water 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.

Dated at Salem, Oregon this APR 23 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M. BYLER, DIRECTOR  
Oregon Water Resources Department

Mailing Date: APR 24 2020