

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

In the Matter of Instream Transfer)	FINAL ORDER APPROVING A
Application T-10463 and Mitigation Credit)	CHANGE IN PLACE OF USE AND
Project MP-110, Deschutes County)	CHARACTER OF USE AND
)	PRELIMINARY AND FINAL AWARD
)	OF MITIGATION CREDITS AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

Applicant
SWALLEY IRRIGATION DISTRICT (SID)
64672 COOK AVE., SUITE 1
BEND, OR 97701

Applicant
CITY OF BEND
62975 BOYD ACRES ROAD
BEND, OR 97701

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.

Findings of Fact

1. On September 24, 2007, SID and the Deschutes River Conservancy (DRC) filed an application to change the place of use and character of use under Certificate 74145 to instream use. The Department assigned the application number T-10463.
2. Notice of the application for transfer was published on October 2, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The application includes a Land Use Information form completed and signed by a representative of the Deschutes County Planning Department. Additionally, following receipt of the application, the Department provided notification on October 2 and 5, 2007, of the proposed action to the City of Bend, Deschutes County and Jefferson County.
4. A deficiency letter was mailed to the applicants on September 2, 2008. The deficiency letter identified several application deficiencies some of which applied to the application as a whole and others which were specific to certain properties included as part of the transfer application. Deficiencies included requests for ownership reports that included lien holder information, clarification of ownership or updated ownership reports, revised application maps, clarification of the place of use proposed for transfer, clarification of water right conveyance agreements, historic tax lot maps necessary for review of ownership documentation, and other documentation necessary to complete the transfer application and review of the transfer.
5. A response to the deficiency letter was received by the Department on October 29, 2008. Several of the issues were resolved in the response from the applicants. However, other issues were not resolved or requested information was not received.
6. In this deficiency letter, the Department had identified a need for clarification of the holder of the water right proposed for transfer. Prior information provided by the DRC identified that the portion of the right proposed for transfer had been conveyed from SID to City of Bend under a water right conveyance agreement. However, this agreement was not included with the transfer application materials. A water right conveyance agreement between SID and City of Bend was provided on October 29, 2008.
7. This instream transfer was originally submitted and processed under Reimbursement Authority. On December 19, 2008, the DRC requested that the application be removed from Reimbursement Authority and processed directly by the Department.
8. One of the items requested in the original deficiency letter included updated ownership reports. The original application was submitted with ownership reports that did not include lien holder information. The transfer application requirements at the time this application was filed included a requirement that ownership reports contain lien holder information. The DRC, in their response, did not include revised ownership reports and requested that this requirement be waived. The Department identified that we would be unable to waive this requirement. However, the Department agreed to look into this requirement further and

in late 2008 initiated a rulemaking process to eliminate the requirement for lien holder information as part of these ownership reports. The revised administrative rules (OAR Chapter 690, Division 380) for transfers were adopted by the Oregon Water Resources Commission on June 10, 2009.

9. It was also identified in the original deficiency letter that a portion of the right proposed for transfer was still inchoate under a previous transfer, T-8998, for which a Claim of Beneficial Use had not been received. A Claim of Beneficial Use report was received by the Department on September 16, 2008. A determination that satisfactory proof had been made under that transfer was completed by the Department on July 13, 2010, as evidenced by Special Order Volume 81, Page 413. The portion of Certificate 74145 proposed for transfer and involved in the previous transfer is no longer inchoate and is subject to transfer.
10. On May 20, 2010, the application was assigned to the City of Bend and SID. Adam Sussman, with GSI Water Solutions (GSI), was also identified as the agent for the applicants.
11. Follow up deficiency correspondence was sent to GSI, agent for the applicants, through e-mail on various dates, including October 22, 2010, October 27, 2010, December 23, 2010, January 26, 2011, February 2, 2011, June 28, 2011, June 29, 2011, July 1, 2011, August 4, 2011, August 8, 2011, August 9, 2011, August 11, 2011, August 18, 2011, August 19, 2011, August 25, 2011, August 26, 2011, August 30, 2011, September 6, 2011, September 19, 2011, September 23, 2011, September 26, 2011, September 27, 2011, September 30, 2011, October 7, 2011, October 26, 2011, November 14, 2011, and October 9, 2012.
12. Department staff also met with representatives from GSI on August 19, 2010, June 28, 2011, November 2, 2011, August 15, 2012, and September 20, 2012, to discuss various remaining application issues and deficiencies.
13. The Department had identified in the original deficiency letter that historic tax lot maps were needed to review older legal descriptions for properties that had since been partitioned, subdivided or otherwise modified. Historic tax lot maps were provided by GSI on September 29, 2010, February 10, 2011, and March 15, 2012.
14. In its original deficiency letter and follow up correspondence, the Department identified issues with various application maps. Superseding application maps, resolving deficiencies, were received by the Department on October 29, 2008, February 3, 2011, March 15, 2012, July 16, 2012, July 31, 2012, September 14, 2012, and November 6, 2012.
15. In its original deficiency letter and follow up correspondence, the Department identified issues with various Reports of Ownership, in addition to issues described in Finding of Fact No. 8. Updated or revised Reports of Ownership, resolving the deficiencies, were received on October 29, 2008, March 15, 2012, September 14, 2012, and November 6, 2012.

16. In its original deficiency letter and follow up correspondence, the Department identified issues with various conveyance agreements. Updated or revised conveyance agreements (recorded quit claim deeds) or other ownership documentation, resolving the deficiencies, were received on October 29, 2008, and March 15, 2012.
17. In follow up correspondence, the Department identified issues with some affidavits of use. Additional evidence of use information and/or clarification was received resolving the deficiencies on November, 2, 2011, March 15, 2012 and November 6, 2012.
18. On September 27, 2011, the Department requested additional information on the portion of the right proposed for transfer involving 13.625 acres equivalent of industrial use, which may be used anywhere within the District's boundaries. The Department requested information to clarify who holds this portion of the right, the number of equivalent acres proposed for transfer, a revised application map, and clarification of the amount and beneficial use of water associated with the industrial use. On March 15 and November 6, 2012, GSI submitted information from SID clarifying the number of acres proposed for transfer and that SID is the sole holder of the industrial use. A revised application map was received on September 20, 2012. On November 6, 2012, the Department also received the information requested regarding the amount and beneficial use of water for the industrial use.
19. On July 1, 2011, the Department identified an issue with the application map and lot size for the property located within Township 16 South, Range 12 East, Section 27, NE SE, Tax Lot 101 (formerly lot tax 100). The number of acres of irrigation available within this lot appeared to be less than that identified. On November 6, 2012, GSI (agent for the applicant) provided a revised application map clarifying the portion of the right to be transferred and the portion remaining. To resolve the acreage discrepancy, they also requested to amend the application and reduce the number of acres proposed for transfer.
20. On September 26, 2011, the Department identified an issue with the application map and lot size for the property located within Township 16 South, Range 12 East, Section 29, NE NW, Tax Lot 3700. The number of acres of irrigation available within this lot appeared to be less than that identified in the water right of record. On March 15, 2012, GSI (agent for the applicant) provided a revised application map clarifying the portion of the right to be transferred and the portion remaining. To resolve the acreage discrepancy, they also submitted an affidavit of cancellation on July 16, 2012, for 0.02 acre, signed by both SID and the City of Bend.
21. On October 22, 2010, the Department identified an issue with the application map and lot size for the property located within Township 17 South, Range 12 East, Section 9, SW SE, Tax Lot 2800 (originally part of tax lot 3900 on Certificate 74145). The number of acres of irrigation available within this lot appeared to be less than that identified in the water right of record. On September 15, 2012, GSI (agent for the applicant) provided a revised application map clarifying the portion of the right to be transferred and the portion remaining. To resolve the acreage discrepancy, they also submitted an affidavit of cancellation on July 16, 2012, for 0.27 acre signed by both SID and the City of Bend.

22. On September 19, 2011, the Department identified an issue with the application map and lot size for the property located within Township 17 South, Range 12 East, Section 22, NW SE, Tax Lot 6200 (originally part of tax lot 1501 on Certificate 74145). The number of acres of irrigation available within this lot appeared to be less than that identified in the water right of record. To resolve the acreage discrepancy, GSI submitted an affidavit of cancellation on July 16, 2012, for 0.02 acre, signed by both SID and the City of Bend.
23. On September 30, 2011, the Department identified that there was insufficient information submitted with the application describing the delivery system. Additional information was provided by the applicant, resolving this deficiency, on March 15, 2012, and June 4, 2012.
24. On October 22, 2010, the Department identified an issue with the application map and portion of the right proposed for transfer located within Township 17 South, Range 12 East, Section 9, NW SE, Tax Lot 100. It appears that a portion of the 3.0 acres proposed for transfer was located on an adjoining property. On March 15, 2012, GSI provided a revised application map removing 0.04 acre from the transfer application map and showing this small piece of irrigation on the adjoining property. The remaining right was not clearly identified as being on adjacent property. However, Department staff have marked the superseding application map to identify that the 0.04 acre is on tax lot 6700, based on property lines shown on the application map.
25. In its original deficiency letter and follow up correspondence, the Department identified that the Report of Ownership for properties identified as owned previously by Stonebrook Association (Township 17 South, Range 12 East, Section 22, NWSE, multiple tax lots) did not cover all of the properties identified in the application and in the conveyance agreement between Swalley Irrigation District and Stonebrook Association. Specifically, the Report of Ownership did not identify that properties included within Plats Stonebrook, Phase 1, were owned by Stonebrook at the time that corporation conveyed the interest in their portion of Certificate 74145 to Swalley Irrigation District. In addition, the Report of Ownership only identified that properties included within common areas and private ways of Phases 2 through 5 were owned by Stonebrook Association at the time of the conveyance agreement. Phases 2 through 5 also include several individual properties that were included in the original transfer application.
26. On September 14, 2012, the Department received a request to amend the application and remove properties within Phase 1 and individual lots in Phases 2 through 5. The request also included a change in the number and configuration of the acres of irrigation proposed for transfer. The proposed change resolved the deficiency described in Finding of Fact No. 25.
27. On July 16, 2012, as part of resolving the deficiencies associated with properties identified as owned by Stonebrook Association, the Department received four affidavits of cancellation for several properties identified in the transfer application as being owned previously by Stonebrook Association, Inc. The affidavits of cancellation were signed by a representative for the City of Bend. However, neither applicant owns the lands on which this portion of

Certificate 74145 is appurtenant nor was the water right conveyed to the City of Bend or Swalley Irrigation District. The affidavits of cancellation were not withdrawn by the applicants following resolution of the issue identified in Finding of Fact No. 25. The Department is unable to proceed with cancellation of the following acreage without consent of the current landowners:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot Listed on the Affidavit	Tax Lot Number as Listed on Certificate
17 S	12 E	WM	22	NW SE	0.05	3302	1600
17 S	12 E	WM	22	NW SE	0.05	3312	1600
17 S	12 E	WM	22	NW SE	0.25	3800	1600
17 S	12 E	WM	22	NW SE	0.18	5700	1600

In addition, Department staff also identified that the portion of the right (acreage), specifically on Lots 3312 and 5700, may not be accurately reflected in the affidavits.

28. The applicant also submitted additional affidavits of cancellation that were later withdrawn. The affidavits of cancellation were received on March 15, 2012 and on July 16, 2012, by the Department for the following:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot Listed on the Affidavit	Tax Lot Number as Listed on Certificate
17 S	12 E	WM	21	NENW	0.135	400	200
17 S	12 E	WM	21	NE NW	0.06	900	200
17 S	12 E	WM	20	NW NE	0.01	300	300

These affidavits of cancellation were withdrawn by the applicant on July 16, 2012 and November 6, 2012. The section number for the affidavit for cancellation for Section 20 was misidentified as Section 29.

29. In its original deficiency letter and follow up correspondence, the Department identified that the Conveyance Agreement (recorded Quit Claim Deed) for the property identified as having been previously owned by Bell Development in the NW NE and NE NW of Section 21, Township 17 South, Range 12 East (tax lot 200) did not appear to include all of the property described in the transfer application and shown on the transfer application map. It only covered Phase 1 of Yardley Estates (except certain lots) while the footprint of a portion of the right proposed for transfer covered additional phases of Yardley Estates. In addition, the Report of Ownership provided to the Department also seemed to indicate that Bell Development did not own the entire footprint of the water right described in the Conveyance Agreement. However, a portion of the footprint of the water right not covered by the Conveyance Agreement or the Report of Ownership was dedicated to the City of Bend as part of a roadway. To resolve this discrepancy, the applicant submitted updated ownership documentation on March 15, 2012, and on November 6, 2012, a revised application map and request to amend the application to only transfer that portion of the water right clearly on lands owned by Bell Development at the time the Conveyance Agreement was recorded with Deschutes County and dedicated to the City of Bend (transfer applicant) as part of a roadway.

30. Other information responding to requests for clarification on application materials was received on October 29, 2008, October 20, 2011, October 21, 2011, February 16, 2012, February 17, 2012, March 15, 2012, July 16, 2012, September 14, 2012.
31. On July 16, 2012, September 14 and 15, 2012, November 6, 2012, GSI (agent for the applicants), in association with resolving deficiency issues, submitted a request to amend the application to reduce the number of acres proposed to be transferred to instream use associated with the following properties:

Twp	Rng	Mer	Sec	Q-Q	Original Acres	Amended Acres	Tax Lot Number as Listed on Certificate/Water Right of Record
16 S	12 E	WM	27	NE SE	2.59	1.10	100
17 S	12 E	WM	9	SW SE	0.50	0.23	3900
17 S	12 E	WM	9	NW SE	3.00	2.96	100
17 S	12 E	WM	22	NW SE	4.05	0.15	1600 (now on lots 3313, 3315, and 3321)
17 S	12 E	WM	22	NW SE	0.00	0.06	DA 3000
17 S	12 E	WM	22	NW SE	0.00	0.09	DA 3100
17 S	12 E	WM	22	NW SE	0.00	0.34	DB 4500
17 S	12 E	WM	22	NW SE	0.00	0.40	DB 5900
17 S	12 E	WM	22	NW SE	0.00	0.30	DB 3314
17 S	12 E	WM	22	NW SE	0.00	0.18	DB 3325
17 S	12 E	WM	17	SW SE	3.30	3.26	616
17 S	12 E	WM	20	NE SE	2.00	1.88	2200
17 S	12 E	WM	21	NW NE	3.46	0.80	200
17 S	12 E	WM	21	NE NW	1.54	1.22	200
17 S	12 E	WM	22	NW SE	3.00	2.98	1501
Total					23.44	15.95	

As part of the amendment to the application for the lands described in the NW SE of Section 22, Township 17 South, Range 12 East, the applicant also requested to modify the configuration of the portion of the right proposed for transfer.

32. On May 14, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10463 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 12, 2013, for the applicants to respond. GSI, on behalf of the applicants, requested until July 8, 2013, to review the draft Preliminary Determination. On July 3, 2013, the applicants requested that the Department proceed with issuance of a Preliminary Determination.
33. Following issuance of the draft Preliminary Determination, the Watermaster provided a revised evaluation of the application to specifically address whether the original use resulted in return flows that must be accounted for as part of this transfer. Based on the revised evaluation, it does not appear that the portion of the right involved in this transfer has associated return flows. This updated determination is reflected in Finding of Fact No. 52.
34. On October 11, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10463 and mailed a copy to the applicants. Additionally,

notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 15, 2013, and in the Bulletin newspaper on October 17, 24, and 31, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

35. Certificate 74145 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots from which a portion of the right is to be transferred have changed since Certificate 74145 was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be transferred as described in Finding of Fact No. 36 is consistent with the water right of record in so far as possible.

36. The portion of the right to be transferred is as follows:

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by Deschutes River Decree, which is of record at Salem, in the order Record of the Water Resources Director, in Volume 16, at Pages 148 and 396)

Use: Irrigation of 132.51 Acres and 13.625 Acres Equivalent of Industrial Use

Priority Date: September 1, 1899

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

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/83rd cubic foot per second (CFS) per acre

Season 2: limited to 1/62nd CFS per acre

Season 3: limited to 1/33.45th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.58 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district's main canal system, but by direct pumping from the Deschutes River, are not allowed the 43% transmission loss.

Source: DESCHUTES RIVER, tributary to COLUMBIA RIVER

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL POD No. 3 - 985 FEET NORTH AND 617 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION POD No. 15 - 2170 FEET NORTH AND 1350 FEET WEST FROM THE SE CORNER OF SECTION 14
17 S	12 E	WM	20	SE NW	POD No. 5 - NORTH 60 DEGREES WEST, 117 FEET FROM THE CENTER OF SECTION 20

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	20	NE NW	POD No. 7 - 590 FEET SOUTH AND 1920 FEET EAST FROM THE NW CORNER OF SECTION 20

Authorized Place of Use:

Irrigation of 132.51 Acres							
Twp	Rng	Mer	Sec	Q-Q	Acres	POD	Tax Lot Number as Listed on Water Right of Record
16 S	12 E	WM	1	SE SE	0.20	3 & 15	602
16 S	12 E	WM	26	NW SW	2.49	3 & 15	201
16 S	12 E	WM	27	NE SE	1.10	3 & 15	100
16 S	12 E	WM	27	NE SE	0.26	3 & 15	200
16 S	12 E	WM	29	NE SW	0.50	3 & 15	3700
16 S	12 E	WM	32	NW NW	0.80	3 & 15	502
17 S	12 E	WM	4	NW SE	0.75	3 & 15	503
17 S	12 E	WM	6	SE SE	0.40	3 & 15	1103
17 S	12 E	WM	6	SE SE	0.10	3 & 15	1104
17 S	12 E	WM	9	SE NE	0.70	3 & 15	100
17 S	12 E	WM	9	SE SW	4.70	3 & 15	400
17 S	12 E	WM	9	SE SW	5.00	3 & 15	500
17 S	12 E	WM	9	NE SE	7.00	3 & 15	6800
17 S	12 E	WM	9	NW SE	2.96	3 & 15	100
17 S	12 E	WM	9	SW SE	0.23	3 & 15	3900
17 S	12 E	WM	16	NE NE	0.17	3 & 15	100
17 S	12 E	WM	16	NW NE	0.83	3 & 15	100
17 S	12 E	WM	16	NW NE	0.25	3 & 15	501
17 S	12 E	WM	16	SW NE	0.75	3 & 15	3300
17 S	12 E	WM	16	SE NE	6.50	3 & 15	102
17 S	12 E	WM	16	NW SW	0.90	3 & 15	500
17 S	12 E	WM	16	SW SW	2.20	3 & 15	500
17 S	12 E	WM	16	SE SW	3.00	3 & 15	112
17 S	12 E	WM	16	NE SE	4.50	3 & 15	200
17 S	12 E	WM	16	NE SE	3.10	3 & 15	2100
17 S	12 E	WM	16	NE SE	5.00	3 & 15	2300
17 S	12 E	WM	17	NE SE	3.00	3 & 15	101
17 S	12 E	WM	17	SW SE	1.50	3 & 15	609
17 S	12 E	WM	17	SW SE	2.20	3 & 15	614
17 S	12 E	WM	17	SW SE	3.26	3 & 15	616
17 S	12 E	WM	17	SE SE	3.90	3 & 15	609
17 S	12 E	WM	17	SE SE	2.00	3 & 15	615
17 S	12 E	WM	20	NW NE	7.00	3 & 15	300
17 S	12 E	WM	20	NE SE	0.10	3 & 15	700
17 S	12 E	WM	20	NE SE	0.10	3 & 15	1100
17 S	12 E	WM	20	NE SE	0.25	3 & 15	1200
17 S	12 E	WM	20	NE SE	0.25	3 & 15	1300
17 S	12 E	WM	20	NE SE	1.88	3 & 15	2200
17 S	12 E	WM	20	NE SE	0.30	3 & 15	2800
17 S	12 E	WM	21	NW NE	0.80	3 & 15	200
17 S	12 E	WM	21	NW NE	0.04	3 & 15	200
17 S	12 E	WM	21	NE NW	1.22	3 & 15	200
17 S	12 E	WM	21	NE NW	0.07	3 & 15	200
17 S	12 E	WM	21	NE NW	0.15	3 & 15	200

Irrigation of 132.51 Acres							
Twp	Rng	Mer	Sec	Q-Q	Acres	POD	Tax Lot Number as Listed on Water Right of Record
17 S	12 E	WM	21	NE NW	0.12	3 & 15	200
17 S	12 E	WM	21	NE NW	1.50	3 & 15	800
17 S	12 E	WM	21	NE NW	0.12	3 & 15	200
17 S	12 E	WM	21	NE NW	4.89	3 & 15	900
17 S	12 E	WM	21	NE NW	2.00	3 & 15	1000
17 S	12 E	WM	21	NE NW	3.00	3 & 15	1100
17 S	12 E	WM	21	NW NW	1.19	3 & 15	900
17 S	12 E	WM	21	SW NW	0.20	3 & 15	900
17 S	12 E	WM	21	SE NW	0.50	3 & 15	800
17 S	12 E	WM	21	SE NW	0.22	3 & 15	900
17 S	12 E	WM	21	NW SW	0.50	3 & 15	1300
17 S	12 E	WM	21	SW SE	2.00	3 & 15	700
17 S	12 E	WM	21	SE SE	3.00	3 & 15	200
17 S	12 E	WM	21	SE SE	3.00	3 & 15	300
17 S	12 E	WM	22	NW SW	1.00	3 & 15	400
17 S	12 E	WM	22	NW SW	1.00	3 & 15	401
17 S	12 E	WM	22	NW SW	2.00	3 & 15	403
17 S	12 E	WM	22	SW SW	1.50	3 & 15	602
17 S	12 E	WM	22	NW SE	0.15	3 & 15	1600
17 S	12 E	WM	22	NW SE	0.06	3 & 15	DA 3000
17 S	12 E	WM	22	NW SE	0.09	3 & 15	DA 3100
17 S	12 E	WM	22	NW SE	0.34	3 & 15	DB 4500
17 S	12 E	WM	22	NW SE	0.40	3 & 15	DB 5900
17 S	12 E	WM	22	NW SE	0.30	3 & 15	DB 3314
17 S	12 E	WM	22	NW SE	0.18	3 & 15	DB 3325
17 S	12 E	WM	22	NW SE	2.98	3 & 15	1501
17 S	12 E	WM	28	NW NE	2.00	3 & 15	1600
17 S	12 E	WM	28	NW NE	2.00	3 & 15	1700
17 S	12 E	WM	28	NW NW	3.20	3 & 15	400
17 S	12 E	WM	28	NW NW	2.00	3 & 15	600
Total Acres for POD #3 and #15					123.85		
17 S	12 E	WM	20	SW NE	3.00	5	1801
Total Acres for POD #5					3.00		
17 S	12 E	WM	20	NE NW	1.40	7	100
17 S	12 E	WM	20	NE NW	1.00	7	101
17 S	12 E	WM	20	NE NW	1.60	7	102
17 S	12 E	WM	20	NE NW	0.66	7	702
17 S	12 E	WM	20	NE NW	0.60	7	703
17 S	12 E	WM	20	SE NW	0.40	7	703
Total Acres for POD #7					5.66		

13.625 Acres Equivalent of Floating Industrial Use							
Twp	Rng	Mer	Sec	Q-Q	Acres	POD	Tax Lot Number as Listed on Water Right of Record
17 S	12 E	WM	29	SE NE	13.625	3 & 15	Not Applicable

37. Certificate 74145 contains an error in the description of the location for Additional District Diversion No. 15. This error is identified and corrected in Special Order Volume 61, Page 630 issued by the Department on September 30, 2004. This point of diversion should be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION POD No. 15 – 2065.82 FEET NORTH AND 1401.41 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 14

38. Certificate 74145 is a deficient water right. Since Certificate 74145 was issued, the amount of water that may be diverted under this certificate has been affected (reduced) by allocation of conserved water projects, instream transfers, and other Department actions. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 36), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Findings of Fact No. 36 and 37), the portion of the right involved in this instream transfer would be limited as described in the tables below. These rates and duty are also the quantities by which diversion of water under Certificate 74145 shall be reduced over the full irrigation season, if this instream transfer is approved.

POD No. 3:

Season 1	Season 2	Season 3	Season Duty
Irrigation Use			
0.946 CFS	1.265 CFS	2.390 CFS	819.06 AF
Industrial Use			
0.104 CFS	0.139 CFS	0.263 CFS	90.11 AF
Total Reduction			
1.050 CFS	1.404 CFS	2.653 CFS	909.17 AF

POD No. 5:

Season 1	Season 2	Season 3	Season Duty
0.021 CFS	0.028 CFS	0.051 CFS	16.40 AF

POD No. 7:

Season 1	Season 2	Season 3	Season Duty
0.039 CFS	0.052 CFS	0.096 CFS	30.91 AF

39. A total of 866.37 acre-feet of water, excluding transmission losses, may be beneficially used annually under the existing right for Irrigation purposes.

40. The applicants are not the owners of the lands to which the most water right described in Finding of Fact No. 36 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed from each landowner described in the table below to SID or the City of Bend. The portion of this right to be transferred was appurtenant to lands owned by the identified landowners at the time interest

in the water right was conveyed through a Quit Claim, a water right conveyance agreement. Or the water right is now located within City of Bend roadways and the lands have been dedicated to the public through recorded Plat maps.

Grantor (landowner)	Water Right Interest Holder	T	R	S	Q-Q	Tax Lot at time of Conveyance	Tax Lot as listed on Certificate, if different
Ronald and Sandra Federspiel	City of Bend	16 S	12 E	29	NE SW	3700	
Vision Properties, LLC	City of Bend	17 S	12 E	9	NE SE	6800	
Vision Properties, LLC	City of Bend	17 S	12 E	9	SE NE	100	
Vision Properties, LLC	City of Bend	17 S	12 E	9	NW SE	100	
Vision Properties, LLC	City of Bend	17 S	12 E	9	SW SE	2800	3900
Bass Lake Investors Limited Partnership	City of Bend	17 S	12 E	9	SE SW	400	
Lee Construction and Development, LLC	SID and City of Bend	17 S	12 E	16	NE NE	100	
Lee Construction and Development, LLC	SID and City of Bend	17 S	12 E	16	NW NE	100	
Remarkable Properties, Inc.	City of Bend	17 S	12 E	16	NE SE	2100	
Remarkable Properties, Inc.	City of Bend	17 S	12 E	16	NE SE	2300	
John and Judith Barton	City of Bend	17 S	12 E	16	SE NE	1700	102
Tangle Creek Partners, LLC	City of Bend	17 S	12 E	16	SW NE	3300	
Rowe Sanderson III	City of Bend	17 S	12 E	20	NE NW	4800	702
Richard Lane and Lawrence F. Dolezal	City of Bend	17 S	12 E	20	NE NW	4900	703
Richard Lane and Lawrence F. Dolezal	City of Bend	17 S	12 E	20	SE NW	4900	703
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	NE NW	800	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	NE NW	900	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	NW NW	900	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	SW NW	900	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	SE NW	800	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	SE NW	900	
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	NE NW	1000	

Grantor (landowner)	Water Right Interest Holder	T	R	S	Q-Q	Tax Lot at time of Conveyance	Tax Lot as listed on Certificate, if different
Parkhurst LLC/Golden Crest Development, Inc.	City of Bend	17 S	12 E	21	NE NW	1100	
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 4 and 5 Common Area and Private Way	1600
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 2 Private Way	DA 3000
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 2 Common Area	DA 3100
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 3 Common Area	DB 4500
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 3 Common Area	DB 5900
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 4 Common Area	DB 3314
Stonebrook Association, Inc.	SID	17 S	12 E	22	NW SE	Stonebrook Phase 5 Common Area	DB 3325
Paul and Cathy J. Imwalle	City of Bend	17 S	12 E	22	NW SW	400	
Leonard and Patricia King	City of Bend	16 S	12 E	1	SE SE	602	
Oregon Department of Transportation	City of Bend	16 S	12 E	26	NW SW	201	
Oregon Department of Transportation	City of Bend	16 S	12 E	27	NE SE	100	
Oregon Department of Transportation	City of Bend	16 S	12 E	27	NE SE	200	
Oregon Department of Transportation	City of Bend	17 S	12 E	16	NW SW	500	
Oregon Department of Transportation	City of Bend	17 S	12 E	16	SW SW	500	
Oregon Department of Transportation	City of Bend	17 S	12 E	28	NW NW	400	
Oregon Department of Transportation	City of Bend	17 S	12 E	16	NW NW	600	
Ray and Kathleen Nemeth	City of Bend	16 S	12 E	32	NW NW	502	
George and Johnson	City of Bend	17 S	12 E	4	NW SE	503	
Ron Schiff and Laura Remington-Schiff	City of Bend	17 S	12 E	6	SE SE	1103	
Ron Schiff and Laura Remington-Schiff	City of Bend	17 S	12 E	6	SE SE	1104	
Oscar Bratton	City of Bend	17 S	12 E	16	NW NE	500	501

Grantor (landowner)	Water Right Interest Holder	T	R	S	Q-Q	Tax Lot at time of Conveyance	Tax Lot as listed on Certificate, if different
John and Pamela Chaky	City of Bend	17 S	12 E	16	SE SW	112	
William J. Matthews	City of Bend	17 S	12 E	16	NE SE	400	200
Deschutes Co. Rural Fire Protection District No. 2	City of Bend	17 S	12 E	17	NE SE	101	
Harvest Park, LLC	City of Bend	17 S	12 E	17	SW SE	609	
Harvest Park, LLC	City of Bend	17 S	12 E	17	SW SE	614	
Harvest Park, LLC	City of Bend	17 S	12 E	17	SW SE	616	
Harvest Park, LLC	City of Bend	17 S	12 E	17	SE SE	609	
Harvest Park, LLC	City of Bend	17 S	12 E	17	SE SE	615	
Patricia Elliott	City of Bend	17 S	12 E	17	SE SE	609	
S/S&H Baker Joint Venture and Ronald Edward Pederson	City of Bend	17 S	12 E	20	SW NE	1801 originally - then made up of various small lots	1801
Sanderson Company Inc.	City of Bend	17 S	12 E	20	NE NW	4400	100
Sanderson Company Inc.	City of Bend	17 S	12 E	20	NE NW	4600	102
Terri Pauls Family Ltd. Partnership	City of Bend	17 S	12 E	20	NE NW	4500	101
Walker Family Irrevocable Trust Dated 12/8/92	City of Bend	17 S	12 E	20	NE SE	2800	
Sally B. and Charles C. Brown	City of Bend	17 S	12 E	20	NE SE	2200	
Ronald LaFranchi	City of Bend	17 S	12 E	20	NE SE	700	
Ronald LaFranchi	City of Bend	17 S	12 E	20	NE SE	1100	
Ronald LaFranchi	City of Bend	17 S	12 E	20	NE SE	1200	
Ronald LaFranchi	City of Bend	17 S	12 E	20	NE SE	1300	
Ronald LaFranchi	City of Bend	17 S	12 E	21	NW SW	1300	
Bell Development, Gary E. Bell	City of Bend	17 S	12 E	21	NW NE	200	
Bell Development, Gary E. Bell	City of Bend	17 S	12 E	21	NE NW	200	
Tracy & Suzanne Thompson	City of Bend	17 S	12 E	21	NE NW	600	200
Brandon and Kristen Raz	City of Bend	17 S	12 E	21	NE NW	300	200
David and Shawn Hilbig	City of Bend	17 S	12 E	21	NE NW	800	200
Gerald and Clairee Brickell	City of Bend	17 S	12 E	21	NW NE	1300	200
Gerald and Clairee Brickell	City of Bend	17 S	12 E	21	NE NW	1300	200
William J. Walton III, Rene G. Verbrugge, and Susan L. Buckley	City of Bend	17 S	12 E	21	SW SE	700	
Richard & Roxylee Rumgay	City of Bend	17 S	12 E	21	SE SE	200	

Grantor (landowner)	Water Right Interest Holder	T	R	S	Q-Q	Tax Lot at time of Conveyance	Tax Lot as listed on Certificate, if different
Richard & Roxylee Rungay	City of Bend	17 S	12 E	21	SE SE	300	
Richard & Roxylee Rungay	City of Bend	17 S	12 E	22	SW SW	4400	602
Gretchen Thoma	City of Bend	17 S	12 E	22	NW SW	401	
Terrango Associates LLC	City of Bend	17 S	12 E	22	NW SW	403	
Cascades LLC	City of Bend	17 S	12 E	22	NW SE	6200	1501
Glenshire, LLC	City of Bend	17 S	12 E	28	NW NE	3300	1700
Dennis G. Bennett Family Trust	City of Bend	17 S	12 E	28	NW NE	3100	1600
Swalley Irrigation District (floating industrial use)	SID and City of Bend	17 S	12 E	28	SE NE	Not Applicable	
L. Todd Haaby	City of Bend	17 S	12 E	20	NW NE	300	
Dickey Family Limited Partnership	City of Bend	17 S	12 E	9	SE SW	300	500

41. Transfer Application T-10463 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values and to establish mitigation credits in the Deschutes Groundwater Study Area.
42. Transfer Application T-10463 proposes to change the place of use of the right to create an instream reach from Swalley Main Canal POD No. 3 (described in Finding of Fact No. 36) at approximately River Mile (RM) 165 to Lake Billy Chinook at approximately RM 120.
43. The applicant originally proposed the quantities water to be transferred instream be protected as follows:

Proposed Instream Period	Proposed Instream Rate	Proposed Instream Volume
Season 1	1.05 CFS	838.77 AF
Season 2	1.41 CFS	
Season 3	2.62 CFS	

44. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

- 45. The portion of the right proposed for transfer has been leased instream during all or a part of the five years prior to the transfer being received. Therefore, 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.
- 46. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10463. It appears that individual delivery systems were likely removed from the irrigated lands from which the portion of Certificate 74145 is proposed for transfer shortly after interest in the water right was conveyed to SID.
- 47. Use of water under the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Absent the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total face value quantity appropriated for the 13.625 acres equivalent of “floating” industrial use under this portion of the right proposed for transfer would be as follows:

Season 1	Season 2	Season 3	Seasonal Volume/Duty
0.094 CFS	0.125 CFS	0.232 CFS	74.4 AF

The maximum volume (duty) is equivalent to 5.46 acre-feet per acre during the irrigation season of April 1 through October 31. Given the use authorized under Certificate 74145, it was not clear that the full face value of the right could be beneficially used.

- 48. The applicant has provided information describing how water was used under the “floating” industrial use prior to this use being leased instream in 2000 and 2003 through 2007. Specifically, information was provided by Newton Consultants describing that the “floating” industrial use had been used for road construction purposes, site grading and rehabilitation following road construction, and fire protection. No data was provided to support the quantity of water used for site grading and rehabilitation. In addition, data provided for fire protection described the use as being associated with maintenance of storage ponds for fire protection. Certificate 74145 includes pond maintenance as a separate use. Therefore, information provided for maintenance of storage ponds for fire protection may not be included in the demonstration of the amount and beneficial use of water for the “floating” industrial use.
- 49. However, data and information was provided to support the use of the “floating” industrial use for road construction (road watering). The information describes that the “floating” industrial use was used for construction of the Bend Parkway between 1994 and 1996. Water trucks operating 180 days during the irrigation season used approximately 11.05 AF. Newton Consulting estimates that there were likely a minimum of 4 watering trucks operating daily using up to 44.2 AF over the course of the season. In addition, analysis provided by Newton Consultants identified that water was also provided to Deschutes County Road Department during 1992 to 2000 for road construction projects. Newton

Consultants identified that during peak use up to 200,000 gallons (0.6 AF) were provided to Deschutes County during the irrigation season. Therefore, it appears that up to 44.8 AF were beneficially used under the “floating” industrial use for road watering projects during the 1990’s.

50. The instream use requested by the applicant, as described in Finding of Fact No. 43, requires modification to prevent injury and enlargement. The number of acres of irrigation use to be transferred to instream use has been reduced and the quantity of water that may be protected instream associated with the “floating” industrial use is less than the face value of the water right. In addition, the applicant has also requested to protect water instream over the full irrigation season, April 1 through October 31, a 214 day period. At the full rate and volume that may be transferred instream, specifically for the irrigation use, water may be protected instream for up to 208 days without exceeding the volume limitation.
51. The applicants have requested to protect water instream from the Swalley Main Canal POD No. 3 (described in Finding of Fact No. 36) to Lake Billy Chinook, at approximately River Mile 120. In review of the transfer application, the Department identified that there are two additional points of diversion involved in the transfer, points of diversion No. 5 and No. 7 as described in Finding of Fact No. 36. The proposed reach requires modification to include these additional points of diversion.
52. Based on Findings of Fact No. 47 through No. 51, the Department proposes to modify the quantities of water to be protected instream to prevent injury and enlargement as follows:

Instream Reach 1: From the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 36) to POD No. 5 (as described in Finding of Fact No. 36)

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
Resulting from Irrigation of 123.85 Acres				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.851 CFS	675.39 AF
		Season 2	1.139 CFS	
		Season 3	2.110 CFS	
Resulting from 13.625 acres equivalent of Industrial Use				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.094 CFS	44.8 AF
		Season 2	0.114 CFS	
		Season 3	0.114 CFS	
Total Instream Beginning at POD #3				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.945 CFS	720.19 AF
		Season 2	1.253 CFS	
		Season 3	2.224 CFS	

Instream Reach 2: From POD No. 5 to POD No. 7 (as described in Finding of Fact No. 35)

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	0.966 CFS	736.59 AF
		Season 2	1.281 CFS	
		Season 3	2.275 CFS	

Instream Reach 3: From POD No. 7 to Lake Billy Chinook, at approximately River Mile 120

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	1.005 CFS	767.35 AF
		Season 2	1.333 CFS	
		Season 3	2.371 CFS	

53. The proposed changes, as modified, would not result in enlargement of the right.
54. The proposed changes, as modified, would not result in injury to other water rights.
55. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
56. The protection of flows within the proposed reaches is appropriate, considering:
 - a) The instream water right begins at the recorded points of diversion;
 - b) The location of confluences with other streams downstream of the points of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
57. Within the proposed instream reach on the mainstem Deschutes River, there are several existing instream water rights. There are no instream water rights established under ORS 537.341 (state agency application process) and ORS 537.346 (minimum flow conversion). However, there is a pending instream water right application, IS-70695, filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341, to establish an instream water right for anadromous and resident fish rearing from the Swalley Main Canal to Lake Billy Chinook, which if approved will have a priority date of September 19, 1990. The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) and are generally located between the Swalley Main Canal and Lake Billy Chinook. These additional instream rights are generally for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values.

This portion of the Deschutes River is also a designated State Scenic Waterway. The State Scenic Waterway designation provides for protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat along with other uses, which is a matter of statutory policy. Flows for the designated Scenic Waterway are not always met during requested period for instream protection.

58. The pending instream water right, proposed to be established under ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River will be sufficient to protect the monthly quantities of water necessary for anadromous and resident fish rearing but will likely not always be met and will have a priority date junior in comparison to other water rights on the Deschutes River. By replacing a portion of any instream right created at the request of state agencies, the proposed instream right will provide protection for streamflows previously identified as necessary for fish and wildlife habitat under an earlier priority date.
59. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values.
60. During the period April 1 to October 25, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
61. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed reaches will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

62. On July 16, 2012, the applicants submitted complete affidavits certifying that certain affected portions under Certificate 74145 have been abandoned. The affidavits identified the rate to be cancelled based upon the paper water right. Since Certificate 74145 has been issued it has also been affected by subsequent transactions that have affected the rate available under this Certificate. The correct rate associated with the cancellation is reflected in Finding of Fact No. 65 below.
63. One of the affidavits received on July 16, 2012, identifies the number of acres to be cancelled as 0.273 acre from the SW SE of Section 9, Township 17 South, Range 12 East. However, the portion of the right involved is identified on Certificate 74145 as being 0.5 acre of irrigation. The applicant is requesting to transfer 0.23 acre and cancel the difference. Based on the right and quantity proposed for transfer, the portion to be cancelled is 0.27 acre.

64. The portion of the right to be cancelled is:

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by Deschutes River Decree, which is of record at Salem, in the Order Record of the Water Resources Director, in Volume 12, at Page 282 and Volume 16, at Pages 148 and 396)

Use: Irrigation of 0.31 Acre

Priority Date: September 1, 1899

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

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/83rd cubic foot per second (CFS) per acre

Season 2: limited to 1/62nd CFS per acre

Season 3: limited to 1/33.45th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.58 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district's main canal system, but by direct pumping from the Deschutes River, are not allowed the 43% transmission loss.

Source: DESCHUTES RIVER, tributary to COLUMBIA RIVER

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL POD No. 3 - 985 FEET NORTH AND 617 FEET WEST FROM EAST 1/4 CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION POD No. 15 - 2065.82 FEET NORTH AND 1401.41 FEET EAST FROM S QUARTER CORNER OF SECTION 14

*Note - Coordinates provided for POD No. 15 reflect correct location as identified location in Finding of Fact No 37.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD	Additional Information: Tax Lot Number as Listed on Certificate
16 S	12 E	WM	29	NE SW	0.02	3 & 15	3700
17S	12 E	WM	9	SW SE	0.27	3 & 15	3900
17S	12 E	WM	22	NW SE	0.02	3 & 15	1501

65. Certificate 74145 is a deficient water right. Since Certificate 74145 was issued, the amount of water that may be diverted under this certificate has been affected (reduced) by allocation of conserved water projects, instream transfers, and other transfer actions. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 64), the total rate and

duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Findings of Fact No. 64), the portion of the right involved in this instream transfer would be limited as described in the tables below. These rates and duty are also the quantities by which the diversion under Certificate 74145 shall be reduced over the full irrigation season based upon the cancellation of 0.31 acres of irrigation:

Season 1	Season 2	Season 3	Duty
0.002 CFS	0.003 CFS	0.006 CFS	2.05 AF

Preliminary Award of Deschutes Basin Mitigation Credits

- 66. SID and the City of Bend (the Applicants) have requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Applicant has requested that any mitigation credits generated from this project be assigned to the City of Bend.
- 67. The Department assigned this mitigation credit project number MP-110.
- 68. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on October 9, 2007. No comments were received in response to this notice.
- 69. The Department consulted with representatives from ODFW, Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands (DSL), the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on October 5, 2007. DSL responded to the Department notice and identified that they did not have any comments on the proposed project. Comments were received from ODFW. ODFW provided some general comments on the Mitigation Program and also recommended that the instream period be extended to include the months of March and November.
- 70. The period of allowed use for Certificate 74145 is April 1 through October 31. The period during which water can be protected instream may not be extended outside the authorized irrigation season without resulting in injury to other water rights and/or enlargement of the original water right. Therefore, no changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
- 71. As part of the public notice of the mitigation project, the Department identified that the project may result in 276.5 mitigation credits. This was based on an original assumption that the transfer may result in the conversion of 153.62 acres of irrigation use to instream use. Based upon continued evaluation, the Department has identified that 132.51 acres of irrigation and 13.625 acres of "floating" industrial use may be transferred to instream use. Mitigation is determined based upon the consumptive portion of the right transferred to instream use. Irrigation use generally has a consumptive use factor of 1.8 acre-feet per acre. Information provided by the applicant, identifies that the "floating" industrial use has been used for a variety of road construction projects, primarily for road watering, which is 100%

consumptive. The Department has identified that 44.8 AF of water may be protected instream based upon the “floating” industrial use.

72. The proposed instream reach is located within both the General and Middle Deschutes Zones of Impact.
73. Therefore, the Department finds that 283.3 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to the City of Bend. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Middle Deschutes and General Zones of Impact.
74. A total of 767.35 AF is proposed to be transferred to instream use and 283.3 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
75. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete.
76. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in Transfer Application T-10463 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned portion of the right should be cancelled.

This mitigation project does result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in Transfer Application T-10463 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 74145 is modified. A new certificate confirming the instream water right shall be issued. The Department shall issue a new water right certificate to supersede Certificate 74145 on a determination that it is necessary to produce a certificate to describe that portion of the right not affected by this transfer and cancellation. Approval of this

transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 74145 by the following:

POD No. 3 and No. 15:

Season 1	Season 2	Season 3	Seasonal Duty
Irrigation Use			
0.946 CFS	1.265 CFS	2.390 CFS	819.06 AF
Industrial Use			
0.104 CFS	0.139 CFS	0.263 CFS	90.11 AF
Total Reduction			
1.050 CFS	1.404 CFS	2.653 CFS	909.17 AF

POD No. 5:

Season 1	Season 2	Season 3	Seasonal Duty
0.021 CFS	0.028 CFS	0.051 CFS	16.40 AF

POD No. 7:

Season 1	Season 2	Season 3	Seasonal Duty
0.039 CFS	0.052 CFS	0.096 CFS	30.91 AF

3. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values as follows:

Instream Reach 1: From the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 36) to POD No. 5 (as described in Finding of Fact No. 36)

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
Resulting from Irrigation of 123.85 Acres				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.851 CFS	675.39 AF
		Season 2	1.139 CFS	
		Season 3	2.110 CFS	
Resulting from 13.625 acres equivalent of Industrial Use				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.094 CFS	44.8 AF
		Season 2	0.114 CFS	
		Season 3	0.114 CFS	
Total Instream Beginning at POD #3				
74145	September 1, 1899	Season 1 (modified to end October 25)	0.945 CFS	720.19 AF
		Season 2	1.253 CFS	
		Season 3	2.224 CFS	

Instream Reach 2: From POD No. 5 to POD No. 7 (as described in Finding of Fact No. 36)

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	0.966 CFS	736.59 AF
		Season 2	1.281 CFS	
		Season 3	2.275 CFS	

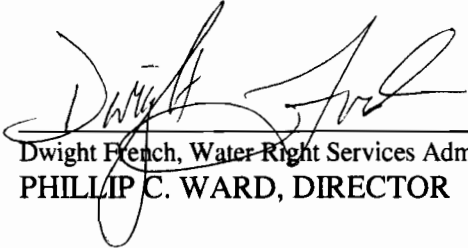
Instream Reach 3: From POD No. 7 to Lake Billy Chinook, at approximately River Mile 120

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	1.005 CFS	767.35 AF
		Season 2	1.333 CFS	
		Season 3	2.371 CFS	

4. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original points of diversion.
5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.
6. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. 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.
8. The former place of use of the transferred water shall no longer receive water as part of this right.
9. **Preliminary and Final Award of Mitigation Credits:** Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, results in completion of the project and verification by the Department that the project is complete. Therefore, mitigation credits, in the amount of **283.3 credits**, as described herein, are awarded to this mitigation project and assigned to the City of Bend. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Middle Deschutes and General Zones of Impact**. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under a new instream water right, beginning in 2014.
10. Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

11. The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.

Dated at Salem, Oregon this 5 day of December, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 09 2013