

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

In the Matter of Instream Lease Application )      CORRECTING & SUPERSEDING FINAL  
IL-1929, Deschutes County )      ORDER ON INSTREAM LEASE

**Authority**

Oregon Revised Statute (ORS) 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Co-Lessor**

Pooled Instream Lease for several water right holders (described in Finding of Fact No.3)

**Co-Lessor**

Swalley Irrigation District (SID)  
64672 Cook Ave., Suite 1  
Bend, OR 97703  
[kathy@swalley.com](mailto:kathy@swalley.com)

**Lessee**

Deschutes River Conservancy (DRC)  
700 NW Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On June 6, 2022, the DRC and SID, on behalf of several water right holders, filed an application to lease a portion of Certificate 74145 for instream use. The Department assigned the application number IL-1929.
2. On July 15, 2022, the Department issued an order approving Instream Lease IL-1880, as evidenced by Special Order Volume 125, Page 419. Following issuance of the order, a scrivener's error was identified in the number of acres being leased instream, 1.22 acre equivalent for nursery use was omitted. This order is being issued to correctly include all acreage and nursery use being leased instream.
3. Certificate 74145 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the right to be leased have changed since Certificate 74145 was issued. Some tax lot configurations no longer match those shown on the map of the water right. The portion of the water right to be leased is

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 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

described in Finding of Fact No. 4 and is consistent with the water right of record in so far as possible.

4. The portion of the right to be leased is as follows:

- Certificate:** 74145 in the name of the Swalley Irrigation District (perfected under Deschutes River Decree, recorded 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)
- Priority Date:** September 1, 1899
- Use:** Irrigation of 45.63 acres & 1.22 acre equivalent of Nursery Use
- Season of Use:** April 1 to November 1, further limited as follows:  
 April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1  
 May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2  
 May 15 to Sept. 15 described herein as Season 3
- Quantity:** Season 1 (limited to 1/83<sup>rd</sup> Cubic Foot per Second (CFS)/acre)  
 Season 2 (limited to 1/62<sup>nd</sup> CFS/acre)  
 Season 3 (limited to 1/33.45 CFS/acre)
- 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 decree of the Circuit Court for Deschutes County, dated March 24, 1933 (listed above) for each acre irrigated from the Swalley Canal during the irrigation season of each year, not to exceed 9.58 acre-feet for each acre irrigated during the irrigation season as measured at the diversion from the source. 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, which is not allowed for direct diversions.
- Source:** Deschutes River, tributary to the Columbia River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17S	12E	WM	29	SE NE	POD No. 3 SWALLEY MAIN CANAL – 985 FEET NORTH AND 617 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29.

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Users (Lessor)
16 S	12 E	WM	20	NE SE	9.50	1107	Charles Masson
17 S	12 E	WM	04	SW NE	2.03	218	Low Lane Properties
17 S	12 E	WM	08	NE SW	3.20	200	Darwin G Keep, Kerrie Duncan POA
17 S	12 E	WM	08	NE SW	6.80	500	Darwin G Keep, Kerrie Duncan POA
17 S	12 E	WM	09	SE SE	0.57	500	GDK Housing
17 S	12 E	WM	09	SE SE	1.14	400	GDK Housing

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Users (Lessor)
17 S	12 E	WM	22	NE NE	22.39	104	Bend Parks & Recreation District
Total Acres					45.63		

NURSERY							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Users (Lessor)
17 S	12 E	WM	22	NE NE	1.22	104	Bend Parks & Recreation District
Total Acres					1.22		

5. 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. 4), 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 Finding of Fact No. 4), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD No. 3 under Certificate 74145 shall be reduced over the full irrigation season, if this instream lease is approved.

IRRIGATION			
Season 1	Season 2	Season 3	Duty
0.349 CFS	0.467 CFS	0.882 CFS	301.59 AF

NURSERY			
Season 1	Season 2	Season 3	Duty
0.009 CFS	0.012 CFS	0.024 CFS	8.06 AF

6. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
7. The Co-Lessors and Lessee have requested to protect water instream from the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 4) to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.

8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach #1:** From the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 4) to the Madras Gage

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
74145	9/1/1899	Season 1: 0.322 Season 2: 0.431 Season 3: 0.798	255.47	April 1 through October 25

**Instream Reach #2:** From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	0.204	84.33	April 1 – Oct. 25

9. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 74145 does not include a 43% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

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 point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion;
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected instream in Instream Reach No. 2 has been reduced to account for return flows.

12. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
13. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
14. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
15. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
17. The Co-Lessors and Lessee have requested that the lease terminate on October 31, 2022. The lease may commence on the date this final order is signed.

### **Conclusions of Law**

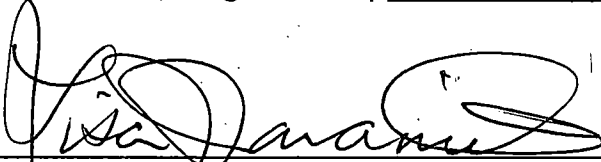
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. This correcting order supersedes Special Order Volume 125, Page 419.
3. During the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.

4. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2022.

Dated at Salem, Oregon this day AUG 17 2022



Lisa J. Jaramillo  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: AUG 18 2022

*This document was prepared by Sarah  
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please call 503-979-9872.*