

**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 APPROVING 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 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.

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.

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 filed an Allocation of Conserved Water Application. The Department designated the application number CW-106.
2. Swalley Irrigation District (SID) requested an allocation of conserved water under Certificate 74145. SID maintains the water delivery system for the benefit of the patrons in the district.
3. 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.
4. Swalley Irrigation District proposes to conserve water by 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.
5. Canal or lateral piping with HDPE pipe is a proven water conservation technique.
6. The right to be modified is Certificate 74145, in the name of Swalley Irrigation District, with the source listed as the Deschutes River, a tributary of the Columbia River. Certificate 74145 has a priority date of September 1, 1899, for 125.0 cubic feet per second. However, Certificate 74145 has been modified by partial cancellations, transfers, and other allocation of conserved water projects, completed pursuant to ORS 537 and ORS 540.

7. Certificate 74145 identifies the following number of acres:

Type of Use	Allowed by Certificate 74145
Irrigation	4,351.220
Equivalent Acres for Dust Abatement	3.500
Equivalent Acres for Industrial Use	24.285
Equivalent for Park Maintenance	2.800
Equivalent for Nursery Use	157.000
Equivalent Acres for Pond Maintenance	22.300
Domestic Use and Livestock	--
<b>TOTAL ACRES/EQUIVALENT</b>	<b>4,561.105</b>

Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 74145 will cause a corresponding change to the total number of acres served by this right.

8. Certificate 74145 limits the diversion rate by season of use. The irrigation season and diversion rates, including a 43% transmission loss, are as follows:

QUANTITY FOR CANAL DIVERSIONS FROM SOURCE		
Season	Period of Use	Rate
Season 1	April 1 to May 1 and October 1 to November 1	1/83
Season 2	May 1 to May 15 and September 15 to October 1	1/62
Season 3	May 15 to September 15	1/33.45

9. Certificate 74145 lists 15 authorized points of diversion. Two of the authorized points of diversion are canal diversions, Swalley Main Canal (POD 3) and Additional District Diversion (POD 15).
10. The authorized canal diversion under Certificate 74145 associated with this conserved water project (POD 3) is located as follows:

Twp	Rng	Mer	Sec	Q-Q	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

11. Certificate 74145 allows the following quantities of water for the canal diversions and direct diversion:

Transaction	Direct Diversion Acres	Canal Diversion Acres (PODs 3 & 15)	CFS			Volume/Duty AF
			Season 1	Season 2	Season 3	
Starting Point	118.310	4442.795	54.340	72.746	125.000	43,207.95

However, Certificate 74145 has been modified by cancellations, transfers, and other allocation of conserved water projects which were completed pursuant to ORS 537 and ORS 540 as listed below:

Transaction	Direct Diversion Acres	Canal Diversion Acres	CFS			Volume/Duty AF
			Season 1	Season 2	Season 3	
<b>Starting Point</b>	<b>118.310</b>	<b>4442.795</b>	<b>54.340</b>	<b>72.746</b>	<b>125.000</b>	<b>43207.95</b>
T-8519		-21.000	-0.144	-0.193	-0.358	-201.18
T-8879	1.000	-1.000	-0.005	-0.007	-0.011	-4.04
CW-13			-0.310	-0.420	-0.770	-417.00
T-8154		-1.000	-0.012	-0.016	-0.028	-9.02
CW-40			-1.480	-1.480	-1.480	-627.10
CW-41			-4.400	-4.400	-4.400	-1864.37
CW-43 cancel		-0.030	0.000	0.000	-0.001	-0.23
CW-43			-0.209	-0.294	-0.532	-172.57
CW-43-transfer		-40.160	-0.175	-0.235	-0.435	-126.50
CW-48			-0.760	-1.030	-1.630	-551.00
T-10356		-8.140	-0.080	-0.100	-0.190	-62.28
CW-47			-4.670	-6.670	-9.000	-3157.62
CW-54 (Phase 1)			-1.776	-11.944	-14.028	-4347.97
CW-54 (Phase 2)			-5.951	0.000	-5.366	-2029.15
T-10669	7.300	-7.300	-0.006	-0.008	-0.017	-7.99
T-10713		-10.000	-0.076	-0.102	-0.193	-66.14
T-10490		-10.260	-0.078	-0.105	-0.198	-67.86
T-10490 cancel		-0.500	-0.004	-0.005	-0.010	-3.31
T-10463		-137.475	-1.050	-1.404	-2.653	-909.17
T-10463	-3.000		-0.021	-0.028	-0.051	-16.40
T-10463	-5.660		-0.039	-0.052	-0.096	-30.91
T-10463 cancel		-0.310	-0.002	-0.003	-0.006	-2.05
T-11111		-13.000	-0.099	-0.133	-0.251	-85.97
<b>Total</b>	<b>117.95</b>	<b>4192.620</b>	<b>32.993</b>	<b>44.117</b>	<b>83.296</b>	<b>28448.12</b>

The starting point for this transaction for Certificate 74145 is based on all previously approved Allocation of Conserved Water projects being completed and finalized. If projects are completed and finalized in a different order, or if there are other intervening transfers, partial cancellations, allocations of conserved water, or other modifications to the right, then the actual quantity of water available under Certificate 74145 may change.

12. Any previously approved or pending transfers, partial cancellations, allocations of conserved water, or other modifications to Certificate 74145, which are not listed in Finding of Fact #11, will cause a corresponding change to the rate, duty, and total number of acres served by Certificate 74145.
13. Based on the above adjusted starting point for Certificate 74145, conserved water application CW-106 proposes to conserve approximately 1.824 cfs of water from the canal diversion as follows:

	Before Project				After Project				Conserved Water	
	Rate (CFS)		Volume (AF)		Rate (CFS)		Volume (AF)		Rate (CFS)	Volume (AF)
	Direct Diversion Maximum	Canal Diversion Maximum	Direct * Diversion Maximum	Canal * Diversion Maximum	Direct Diversion Maximum	Canal Diversion Maximum	Direct * Diversion Maximum	Canal * Diversion Maximum		
Season 1	0.810	32.183	89.21	4118.81	0.810	31.609	89.21	4049.36	0.574	69.45
Season 2	1.084	43.033	64.50	2708.56	1.084	42.289	64.50	2664.29	0.744	44.27
Season 3	2.010	81.286	490.37	20976.67	2.010	79.462	490.37	20529.23	1.824	447.44
Totals			644.08	27804.04			644.08	27242.88		561.16

14. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. Diversion structures, canals, and ditches sufficient to deliver the full quantity of water allowed under the existing right were present within the five-year period prior to submission of Allocation of Conserved Water application CW-106.
16. The Applicant requests the priority date for any conserved water be the same as the originating right.
17. When Allocation of Conserved Water Project CW-106 is complete, it will result in a maximum of 1.824 cfs and 561.16 acre-feet of conserved water under Certificate 74145 with a September 1, 1899 priority.
18. Pursuant to OAR 690-018-0012(1), SID requests that 100% of the conserved water under Certificate 74145 be dedicated to the state as a new instream water right.

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

19. The Applicant received funding for this conservation project; however, since the applicant is proposing 100% of the conserved water be allocated to the state for an instream water right, no adjustments to the proposed allocation need to be made.
20. The Applicant has not proposed any areas for the conserved water to be used for out-of-stream purposes.
21. On June 15, 2016, SID's representative provided notice of the proposed conservation project to the Deschutes County Planning Department, the City of Bend, the Jefferson County Planning Department, the City of Redmond, and the Confederated Tribes of the Warm Springs Indians as required by OAR 690-018-0040(22).

22. On March 30, 2016, the Department's District 11 Watermaster reviewed Allocation of Conserved Water Application CW-106 and determined that the conservation project would result in conserved water which could be allocated without harm to other rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate effects on other water rights.
23. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Parks and Recreation Department (OPRD) to determine whether the water is necessary instream to support a public use. The Department has determined the water allocated to the state is necessary to support instream flows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values and recreation. The Deschutes River is in an ODFW flow restoration priority watershed, the stream is listed as water quality limited, and the increased flows will enhance the scenic and recreational values. OAR 690-018-0050(4)(f).
24. The initial requested deadline for filing the Notice of Completion was March 31, 2020, and requested deadline for filing the Request for Finalization was April 1, 2020. On May 14, 2019, SID amended the application to request 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.
25. Notice of the proposed conservation project was published in the Department's weekly notice on January 29, 2019, and in *The Bulletin* newspaper on February 2 and 9, 2019, as required under OAR 690-018-0050. No comments were filed in response to the notices. On May 15, 2019, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-106, and mailed a copy to the Applicant on May 16, 2019. No protests were filed within 60 days from the date of mailing the Preliminary Determination. OAR 690-018-0050(6).

***Allocation of Conserved Water Review Criteria [OAR 690-018-0050]***

26. Allocation of Conserved Water Application CW-106 contains all the information required by OAR 690-018-0040.
27. As established in Findings of Fact #13, the proposed Allocation of Conserved Water project will result in a reduced diversion for the uses allowed under the original rights. OAR 690-018-0050(4)(a)
28. Consistent with Finding of Fact #22, the proposed Allocation of Conserved Water will not harm existing water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the effects on other water rights. OAR 690-018-0050(4)(b) and (d).

29. Allocation of Conserved Water Application CW-106 is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans). (Finding of Fact #21), OAR 690-018-0050(4)(c).
30. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate for the existing use involved in this conserved water project under Certificate 74145 is as follows:

	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	
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

(Finding of Fact #13).

31. In consultation with ODFW and OPRD, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #23), OAR 690-018-0050(4)(f).
32. Consistent with ORS 537.470(3), SID requested 100% of the conserved water be allocated for an instream water right to be held in trust by the Water Resources Department for the people of Oregon with the priority date of the instream right to be the same as the originating right. The quantity of water allocated to the state is 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

(Finding of Fact #18), OAR 690-018-0050(4)(g).

33. Swalley Irrigation District requested the Department protect the new instream water right created from the conserved water under Certificate 74145 from the authorized point of diversion, commonly referred to as POD #3 or the Main Canal, at approximately river mile 165.0 to Lake Billy Chinook at approximately river mile 120.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
34. Consistent with OAR 690-077-0015(8) and (10), the conserved water shall have a priority date of September 1, 1899, and shall be allocated as an instream water right for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation. The instream water right shall provide for the protection of flows in the Deschutes River from the authorized point of diversion located 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. (Finding of Fact #33).

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

35. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
36. The protection of flows within the proposed reaches are appropriate, considering:
  - i. The instream water use begins at the recorded point of diversion;
  - ii. The location of confluences with other streams downstream of the point of diversion;
  - iii. The known areas of natural loss of stream flow to the river beds downstream from the point of diversion; and
  - iv. 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.  
OAR 690-077-0015(8).
37. The combination of instream rights for the proposed reach does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
38. 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.
39. There are no areas for which the conserved water is proposed to be used for out-of-stream uses. (Finding of Fact #20), OAR 690-018-0050(4)(h).
40. The deadline for filing the Notice of Completion is March 31, 2021. The deadline for filing the Request for Finalization is April 1, 2021. (Finding of Fact #24), OAR 690-018-0050(4)(i).
41. No conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #22), OAR 690-018-0050(4)(j).



**Conclusions of Law**

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.

1. The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #13 and #30.
2. The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #22 and #42.
3. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #29.

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

4. The changes proposed in CW-106 are approved.
5. The deadline for filing the Notice of Completion is March 31, 2021. The deadline for filing the Request for Finalization is April 1, 2021.

Upon filing the Notice of Completion and Request for Finalization, the Order will include the following:

6. *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

*Findings of Fact #18 and #32.*

7. *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.*
8. *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	
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

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

9. **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.
  
10. 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

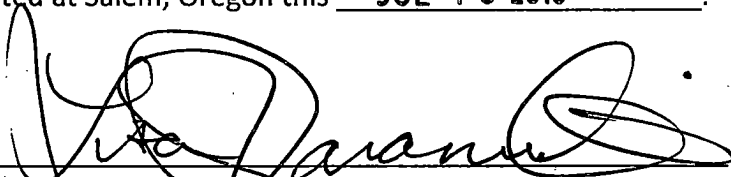
To Lake Billy Chinook located at approximately River Mile 120.0.

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 JUL 16 2019.



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

Mailing Date: JUL 18 2019