

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1266, Certificate 74145, Deschutes) FINAL ORDER ON PROPOSED
County) INSTREAM LEASE

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor #1

Steve Wilson
3326 NW Franklin Court
Portland, OR 97210

Lessor #2

Swalley Irrigation District (SID)
64672 Cook Ave., Suite 1
Bend, OR 97701
Kathy@swalley.com

Lessee

Deschutes River Conservancy (DRC)
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On February 27, 2013, the DRC, SID, and Steve Wilson filed an application to renew instream lease IL-563, involving a portion of Certificate 74145.
2. Based on updated accounting of the quantity of water that may be diverted under Certificate 74145, the Department has identified that the quantity of water originally identified as being suspended under IL-563 has changed since the original lease was approved in 2004. The Department has also identified that the description of the instream use requires modification to more accurately reflect the quantities that may be protected instream. Therefore, the Department has reassigned this lease to IL-1266.
3. On May 13, 2013, the Department requested additional information necessary to clarify and complete the lease application. The requested information was received on May 13 and 16, 2013.

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.

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

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by decree of Circuit Court of Oregon for Deschutes County in Volume 12, Page 282 and Volume 16, Pages 148 and 396)

Priority Date: September 1, 1899

Use: Irrigation of 5.5 acres

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: Rate: Season 1 (limited to 1/83rd Cubic Foot per Second (CFS)/acre)
 Season 2 (limited to 1/62nd CFS/acre)
 Season 3 (limited to 1/33.45 CFS/acre)

Duty: limited to 9.58 acre-feet per acre

The quantities listed reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933

Source: Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17S	12E	W.M.	29	SE NE	POD #3 SWALLEY MAIN CANAL – 985 FEET NORTH & 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.
15 S	12 E	W.M.	14	NW SE	ADDITIONAL DISTRICT DIVERSION #15 – 2170 FEET NORTH AND 1350 FEET WEST FROM SE CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	W.M.	21	NW SW	900	4.0
16 S	12 E	W.M.	21	SW SW	900	1.5

5. Certificate 74145 contains an error in the description of the location for Additional District Diversion #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	Survey Coordinates
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION POD #15 – 2065.82 FEET NORTH AND 1401.41 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 14

6. 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 seasonal volume (based on the duty limit) allowed (described in Finding of Fact #4), the total rate and seasonal volume limit 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 seasonal volume allowed at the PODs (described in Finding of Fact #4 and #5), the portion of the right involved in this instream lease would be

limited as described in the table below. These rates and seasonal volume are also the quantities by which the diversion at POD #3 under Certificate 74145 shall be reduced over the full irrigation season, if this instream lease is approved.

Season 1	Season 2	Season 3	Volume Limit (based on duty)
0.042 CFS	0.056 CFS	0.106 CFS	36.37 AF

7. 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) on March 5, 2013, under lease application number IL-1266. No comments were received.
8. The original instream period was April 1 through October 31, a 214 day period. However, at the rates and volume that may be leased instream, as identified in Finding of Fact #8, water may be protected instream for a period of 207 days. Therefore, the instream period requires modification to prevent injury and enlargement.
9. 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: From the Swalley Main Canal POD #3 (as described in Finding of Fact #4) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.038 Season 2: 0.051 Season 3: 0.094	30.03	April 1 – Oct. 24

10. 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.

11. 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.
12. Based upon review of the application, comments received, 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.
13. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.

14. The Lessor has requested that the lease terminate on October 31, 2013.

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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During each year of 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2013.

Dated at Salem, Oregon this 29 day of May, 2013.



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

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*

Mailing date: **MAY 30 2013** _____