

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1399, Deschutes County) FINAL ORDER ON PROPOSED
) 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

Pooled Instream Lease for several water right holders (described in Findings of Fact #2)

Co-Lessor

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

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill St.
Bend, OR 97701
gen@deschutesriver.org

Findings of Fact

1. On April 24, 2014, the DRC, SID, on behalf of several Lessors, filed an Application to lease a portion of Certificate 74145 for instream use; the Department assigned the lease application IL-1399.

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

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by Deschutes River Decree)

Use: Irrigation of 10.16 acres and Nursery Use on 8.17 acres

Priority Date: September 1, 1899

Period of Use: 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)

Rate: Season 1 – Limited to 1/83 Cubic Feet per Second (cfs) per acre
Season 2 – Limited to 1/62 cfs per acre
Season 3 – Limited to 1/33.45 cfs per acre

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.

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 for each acre irrigated from the Swalley Canal during the irrigation season of each year, not to exceed 5.46 acre feet for each acre irrigated during the irrigation season as measured at the diversion from the source.

The quantities listed do not 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 of the Columbia River

Authorized Point of Diversion:

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

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water User
16 S	12 E	WM	21	NW SW	500	0.44	Swalley Irrigation District
16 S	12 E	WM	29	NE NW	600	0.46	Swalley Irrigation District
17 S	12 E	WM	5	SW NE	2401	3.44	Ron Davis
17 S	12 E	WM	9	NW SW	102	1.00	Shawn P. Sahlberg
17 S	12 E	WM	9	SW SW	102	2.71	Shawn P. Sahlberg
17 S	12 E	WM	9	SE SW	102	1.01	Shawn P. Sahlberg
17 S	12 E	WM	9	NE SE	102	0.50	Shawn P. Sahlberg
17 S	12 E	WM	9	SW SE	3700	0.50	Swalley Irrigation District
17 S	12 E	WM	16	SE SW	1302	0.10	Swalley Irrigation District
Total						10.16	

NURSERY USE							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water User
17 S	12 E	WM	22	NW NE	103	8.17	Swalley Irrigation District

3. Certificate 74145 contains scrivener’s errors in the description of the Point of Diversion (POD) #15. Pursuant to the order issued approving Conserved Water Application CW-13, as evidenced by Special Order Volume 61, Page 630, the location coordinates should have read:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	NE SE	ADDITIONAL DISTRICT DIVERSION #15 – 2065.82 FEET NORTH AND 1401.41 FEET EAST FROM THE S¼ CORNER OF SECTION 14

4. 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 volume (based on the duty) allowed (described in Finding of Fact #2),

the total rate, and volume 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 volume allowed at the PODs (described in Finding of Fact #2), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and 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	Duty
0.140 cfs	0.187 cfs	0.354 cfs	121.22 af

5. 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.
6. The Lessors and Lessee have requested to protect water instream from POD #3, as described in Finding of Fact #2, to the mouth of the Deschutes River. A portion of the diverted water from the POD returns to the Deschutes River within the proposed reach and may be available to downstream water right holders. Return flows from existing uses generally reappear in the river system once the river flows reach the Madras Gage. To prevent injury to downstream water right holders or enlargement of the right, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.

7. 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 Swalley Main Canal POD #3 (as described in Finding of Fact #2) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.126 Season 2: 0.169 Season 3: 0.312	99.93	April 1 through Oct. 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	0.080	32.99	April 1 through Oct 25

8. 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.

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. 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 Reach #2 has been reduced to account for these return flows.
11. 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.
12. 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.
13. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
14. 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.
15. If a right which has been leased later is proposed to be leased again, transferred, and/or reviewed for 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.
16. The Lessors and Lessee have requested that the lease terminate on October 31, 2014. The lease may commence on the date this final order is signed.

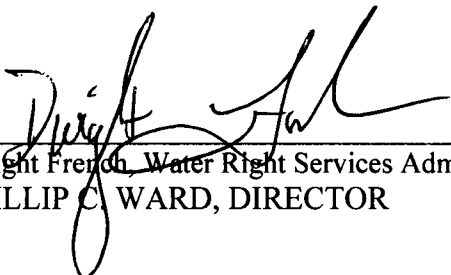
Conclusions of Law

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. 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.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2014.

Dated at Salem, Oregon this 4 day of June 2014.



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

*This document was prepared by
Joan Smith, if you have questions,
Please call 503-986-0892.*

Mailing date: JUN 05 2014