

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1256, Deschutes County) PROPOSED 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.

Lessors

John & Sandy Williams
20420 Sturgeon Road
Bend, Oregon 97703

Lessor

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

Lessee

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

Findings of Fact

1. On March 2, 2022, the DRC, SID, and John and Sandy Williams filed an application to renew instream lease IL-1256, involving a portion of Certificate 74145 for instream use.
2. The portion of the right to be leased is as follows:

Certificate: 74145

Use: Irrigation for 1.0 acre

Priority Date: September 1, 1899

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)

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.

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

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	WM	21	SW SW	1100	1.0

Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL POD NO. 3 – 985 FEET NORTH AND 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29

3. 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 No. 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 No. 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 No. 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
0.008 CFS	0.010 CFS	0.019 CFS	6.61 AF

4. 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.

5. The instream use is as follows:
Deschutes River, tributary to the Columbia River

Instream Reach: From the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 2) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.007 Season 2: 0.009 Season 3: 0.017	5.45	April 1 – Oct. 25

6. 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.
7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. 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. 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.
9. 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.
10. 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.
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 and 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, 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.
14. The Lessors and Lessee have requested that the lease terminate on October 31, 2022.


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, 2022.

Dated at Salem, Oregon this day APR 04 2022.



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

Mailing date: APR 05 2022

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.