

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

In the Matter of the Allocation and Assignment)
of Conserved Water by Swalley Irrigation)
District under Allocation of Conserved Water)
CW-54 for Certificate 74145, Deschutes County)

ORDER FINALIZING THE
ALLOCATION AND ASSIGNMENT
OF CONSERVED WATER

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Findings of Fact

1. On December 17, 2007 Swalley Irrigation District (SID) filed an allocation of conserved water application. The Department assigned the application number CW-54.
2. On October 8, 2008 the Department issued an order approving CW-54. That order was recorded at, Special Order Volume 75, pages 40-48.
3. On December 4, 2008 the Deschutes River Conservancy filed a Petition for Reconsideration of the order approving CW-54.
4. On January 8, 2009 the Department issued Special Order Volume 77, Page 59 granting the petition for reconsideration and approving Allocation of Conserved Water Application CW-54.
5. On June 11, 2009 Swalley Irrigation District notified the Department that the conservation project had not performed as expected and requested the Department to modify the quantities of water to be conserved to reflect the actual results achieved under increment two of CW-54.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is an order in other than a 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.

6. On June 30, 2009 Swalley Irrigation District submitted notice of completion of increment 2 of CW-54 and requested that CW-54, increment 2, be finalized with the following rates and duty:

Season	Conserved Water
Season 1 Rate: April 1 - 30 & Oct. 1 - 31	5.951 cfs
Season 2 Rate: May 1 - 14 & Sept. 15 - 30	0.000 cfs
Season 3 Rate: May 15 - Sept. 14	5.366 cfs
Duty:	2029.15 AF

Now, therefore, it is ORDERED:

Consistent with Special Order Volume 77, Page 59, the Department takes the following actions:

1. Certificate 74145 shall be modified and a new superseding certificate shall be issued to Swalley Irrigation District for the remaining portion of Certificate 74145 upon a determination that it is necessary to produce a certificate to confirm the remaining portion of the water right. The associated priority date and rate of the remaining right shall be approximately:

Season	After Project Maximum	Maximum per acre
Season 1 Rate: April 1 - 30 & Oct. 1 - 31	34.548 cfs	1 cfs to 83.0 acres
Season 2 Rate: May 1 - 14 & Sept. 15 - 30	46.199 cfs	1 cfs to 62.0 acres
Season 3 Rate: May 15 - Sept. 14	97.217 cfs	1 cfs to 33.45 acres
Duty:	29,855.01 AF	9.58 AF

*The above rates include a 43% transmission loss allowed by the Court to compensate for seepage from the canal. The transmission loss is not allowed on direct diversion rates.

The per acre duty associated with acreage served by the canal shall not exceed 9.58 acre feet for each acre irrigated during the irrigation season as measured at the diversion from the source. For acreage served by direct diversions, the per acre duty is limited to 5.46 acre feet.

The place of use shall be those lands evidenced by Certificate 74145, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River from the authorized point of diversion (RM 165) for Certificate 74145 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #3, SWALLEY MAIN CANAL: 985 FEET NORTH & 617 FEET WEST FROM E1/4 CORNER, SECTION 29

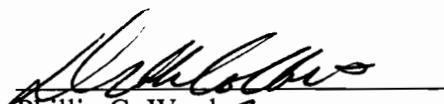
to Lake Billy Chinook (RM 120).

The new instream water right shall be as follows:

Certificate	Priority Date	Season	After Project Maximum
74145	September 1, 1889	Season 1 Rate: April 1 - 30 & Oct. 1 - 31	5.951 cfs
		Season 2 Rate: May 1 - 14 & Sept. 15 - 30	0.000 cfs
		Season 3 Rate: May 15 - Sept. 14	5.366 cfs
		Duty:	2029.15 AF

and 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. The rights shall allow for the use and protection of flows from April 1 through October 31.

Dated at Salem, Oregon this 19th day of August, 2009.


Phillip C. Ward
Director

Date of Mailing: AUG 26 2009