

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

In the Matter of Transfer Application) FINAL ORDER
T-12535, Deschutes County) APPROVING A CHANGE IN
) CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

SWALLEY IRRIGATION DISTRICT
64672 COOK AVE., SUITE 1
BEND, OR 97703

Receiving Landowner

UNITED STATES FOREST SERVICE
63095 DESCHUTES MARKET ROAD
BEND, OR 97701

Findings of Fact

1. On December 14, 2016, Swalley Irrigation District filed an application to change the place of use and to change the character of use under a portion of Certificate 74145. The Department assigned the application number T-12535.
2. United States Forest Service is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on December 27, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On September 7, 2018, the applicant submitted a new revised application and map to clarify the changes proposed under Certificate 74145, withdrawing their request for a change in place of use.

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.

5. On October 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12535 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 4, 2018, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. On January 22, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12535 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on January 22, 2019, and in the Bend Bulletin newspaper on February 1 and 8, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The portion of the right to be transferred is as follows:

Certificate: 74145 in the name of SWALLEY IRRIGATION DISTRICT (confirmed by Deschutes River Decree, 1958)

Use: NURSERY USES for 0.84 ACRES EQUIVALENT

Priority Date: SEPTEMBER 1, 1899

Seasons of Use: Season 1: April 1 through April 30 & October 1 through October 31
 Season 2: May 1 through May 14 & September 15 through September 30
 Season 3: May 15 through September 14

Maximum Quantity (Rate) that can be applied to an acre:
 Season 1: Limited to 1/83 cubic foot per second (cfs) per acre
 Season 2: Limited to 1/62 cfs per acre
 Season 3: Limited to 1/33.45 cfs per acre

Maximum Duty that can be applied to an acre:
 Not to exceed 9.58 acre-feet (af) per acre per year.

The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served by direct pumping from the Deschutes River, are not allowed the 43% transmission loss and shall not exceed 5.46 af per acre per year.

Source: DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Points of Diversion

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 E¼ CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION - 2170 FEET NORTH AND 1350 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use

NURSERY USES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	23	NW NW	1800	0.72
17 S	12 E	WM	23	SW NW	1800	0.12
Total						0.84

- Transfer Application T-12535 proposes to change the character of use on the above described acres from Nursery Use to Irrigation and will be limited to the irrigation season.

Transfer Review Criteria [OAR 690-380-4010(2)]

- Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12535.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Conclusions of Law

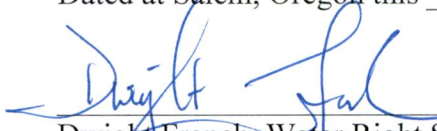
The change in character of use proposed in Transfer Application T-12535 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- The change in character of use proposed in Transfer Application T-12535 is approved.
- The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 74145 and any related decree.
- The season of use of the transferred lands will be limited to the irrigation season.
- Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

5. Water right certificate 74145 is modified. The Department will issue a superseding certificate in the name of Swalley Irrigation District describing the right when it determines it is necessary for record keeping.

Dated at Salem, Oregon this MAR 18 2019,


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: MAR 19 2019