

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use, Certificate 74145, Deschutes County,)	PROPOSED INSTREAM
Oregon)	LEASE

FINDINGS OF FACT

1. On June 14, 2004, a Short-Term Lease Application, which proposed to lease a portion of certificate 74145 for instream purposes was submitted to the Department by:

Lessor #1
Anna Morrison Spencer Trust 1997
3260 N Torrey Pines Road
Las Vegas, NV 89108

Lessor #2
Swalley Irrigation District
64672 Cook Ave.
Bend, OR 97701

Lessee
Deschutes Resources Conservancy
PO Box 1560
Bend, OR 97709

2. The Department assigned this lease agreement number L-578.
3. The lease application includes the required information under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
4. The right to be leased, as requested by the applicant, is as follows:

Certificate: 74145

Priority Date: September 1, 1899

Use: Irrigation

Acres: 9.8

Season of Use: April 1 through October 31, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as
Season 1

May 1 to May 15 and September 15 to October 1 described herein as
Season 2

May 15 to September 15 described herein as Season 3

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Quantity: Season 1 (limited to 1/83rd Cubic Foot per Second (CFS) per acre): 0.12 CFS
 Season 2 (limited to 1/62nd cfs per acre): 0.16 CFS
 Season 3 (limited to 1/33.45th cfs per acre): 0.29 CFS
 Duty (limited to 9.58 acre-feet per acre): 93.9 Acre-Feet (AF)
 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 Deschutes River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	29	SE	NE	Swalley Main Canal - 985 feet North & 617 feet West from East 1/4 Corner, Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Tax Lot #	Priority Date	Acres
17	S	12	E	W.M.	9	NE	NE	800	9/1/1899	3.2
17	S	12	E	W.M.	4	SE	SE	500	9/1/1899	1.4
17	S	12	E	W.M.	3	SW	SW	500	9/1/1899	5.2
									Total Acres	9.8

- The Department finds that the lease application requires modification in order to clarify the portion of certificate 74145 that may be leased. During Season 3, the water right allows the diversion of 1/33.45th CFS for each acre to which water is applied. This certificate allows for water to be used on 4561.105 acres, including equivalent acres for uses other than irrigation. If water were being applied to all acres allowed by the certificate, the amount that could be diverted in Season 3, 136.36 CFS, would exceed the rate limitation on the certificate, 125.0 CFS. To identify the portion of this certificate that may be leased in Season 3, the Department has proportioned the 125.0 CFS allowed by the certificate to each acre on which water may be applied, which amounts to 1/36.49th CFS per acre.
- Based upon Finding 5 and 6, the portion of the certificate to be leased is clarified as follows (changes are shown in bold text):

Certificate: 74145
Priority Date: September 1, 1899
Use: Irrigation
Acres: 9.8
Season of Use: April 1 through October 31, further limited as follows:
 April 1 to May 1 and October 1 to November 1 described herein as Season 1
 May 1 to May 15 and September 15 to October 1 described herein as Season 2
 May 15 to September 15 described herein as Season 3

Quantity: Season 1 (limited to 1/83rd CFS per acre): 0.12 CFS
 Season 2 (limited to 1/62nd cfs per acre): 0.16 CFS
 Season 3 (limited to 1/33.45th cfs per acre): **0.27 CFS (proportioned rate)**
 Duty (limited to 9.58 acre-feet per acre): 93.9 AF
 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 Deschutes River

7. The application proposes to lease water for instream as follows:

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74145	9/1/1899	0.07 cfs in Season 1 0.09 cfs in Season 2 0.17 cfs in Season 3	April 1 - Oct. 31, being Season 1: April 1 to May 1 & Oct. 1 to Nov. 1 Season 2: May 1 to May 15 & Sept. 15 to Oct. 1 Season 3: May 15 to Sept. 15	Season 1: 61 Season 2: 30 Season 3: 123	54.25 AF

8. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified. Clarification of the rate at which water is to be leased instream in Season 3 is necessary. The quantity of water to be leased instream for Season 3 has been proportioned based upon the findings made in Finding 5 above. The volume of water to be leased instream has also been modified. At the rates identified below, only 50.85 AF may be leased during the full period requested. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74145	9/1/1899	0.07 cfs in Season 1 0.09 cfs in Season 2 0.15 cfs in Season 3	April 1 - Oct. 31, being Season 1: April 1 to May 1 & Oct. 1 to Nov. 1 Season 2: May 1 to May 15 & Sept. 15 to Oct. 1 Season 3: May 15 to Sept. 15	Season 1: 61 Season 2: 30 Season 3: 123	50.85 AF

9. To prevent injury an enlargement, the amount of water to be leased instream under certificate 74145 accounts for a 43% transmission loss that may not be leased and protected instream.
10. Based upon review of the application, information provided by the Department's Watermaster, and other information, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
11. The instream lease application identifies that the lease is to terminate on November 2, 2008. However, the last day of the irrigation season is October 31st. Therefore, the lease will terminate on October 31, 2008. The lessor has requested the option of terminating the lease early, with written notice to the Department.

CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

Therefore, it is ORDERED:

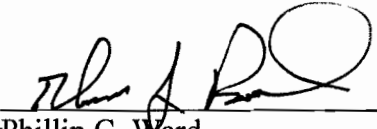
1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

Reach: From the Swalley Main Canal POD (SE NE, Section 29, T17S, R12E, W.M.; 985 feet North and 617 feet West from East 1/4 Corner, Section 29 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74145	9/1/1899	0.07 cfs in Season 1 0.09 cfs in Season 2 0.15 cfs in Season 3	April 1 - Oct. 31, being Season 1: April 1 to May 1 & Oct. 1 to Nov. 1 Season 2: May 1 to May 15 & Sept. 15 to Oct. 1 Season 3: May 15 to Sept. 15	Season 1: 61 Season 2: 30 Season 3: 123	50.85 AF

4. The lease will terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, prior to the lease being exercised (April 1), with 30 days written notice to the Department.

Dated at Salem, Oregon this 26th day of July, 2004.


for Phillip C. Ward
Acting Director