

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1558, Deschutes County) FINAL ORDER ON 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.

Lessor

Pooled Instream Lease for several water right holders (described in Finding of Fact No. 2)

Co-Lessor

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

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill St., Ste #1
Bend, Oregon 97703
gen@deschutesriver.org

Findings of Fact

1. On June 24, 2016, the DRC and SID, on behalf of several water right holders, filed an application to lease a portion of Certificate 74145 for instream use. The Department assigned the application number IL-1558.
2. On July 27, 2016, the Department contacted the applicant regarding deficiencies in the application, mainly there was acreage that did not appear to have met the evidence of use standard and clarification was requested on some descriptions. On August 4, 9 and 17, 2016 and September 1, 2016, the applicant submitted evidence on some portions and removed 1.12 acres from the lease application.
3. The portion of the right to be leased is as follows:

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by the Deschutes River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 12, at Page 282 and Volume 16, at Pages 148 and 39)

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.

Priority Date: September 1, 1899

Use: Irrigation of 24.07 acres

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)

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 (listed above) for each acre irrigated from the Swalley Canal during the irrigation season of each year, not to exceed 9.58 acre-feet for each acre irrigated during the irrigation season as measured at the diversion from the source.

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, which is not allowed for direct diversions.

Source: Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

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

Authorized Place of Use (POU):

Irrigation							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Right Holder (Lessors)
15 S	12 E	WM	14	SW SE	6.50	800	Frank Chase
16 S	12 E	WM	15	SE NW	3.40	1300	Patrick Agnew
16 S	12 E	WM	29	SE SE	2.51	1200	Swalley Irrigation District
17 S	12 E	WM	8	NW SW	0.94	1200	Swalley Irrigation District
17 S	12 E	WM	8	NW SW	1.50	1300	RF Wilson
17 S	12 E	WM	8	NW SE	1.00	1200	William Lovelace
17 S	12 E	WM	9	NE SE	5.00	6700	Cascade Village / Paul Brewer
17 S	12 E	WM	17	SW NE	3.22	400	Vicki Brownrigg
Total Acres:					24.07		

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 duty allowed (described in Finding of Fact No. 3), the total rate and duty 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 duty allowed at the POD's (described in Finding of Fact No. 3), 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 under Certificate 74145 shall be reduced over the full irrigation season, if this instream lease is approved.

Irrigation			
Season 1	Season 2	Season 3	Volume
0.184 CFS	0.246 CFS	0.464 CFS	159.18 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 Co-Lessor and Lessee have requested to protect water instream from Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 3) to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders, 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 is as follows:

Deschutes River, tributary to the Columbia River;

Instream Reach No. 1: From the Swalley Main Canal (POD No. 3) (as described in Finding of Fact No. 3) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.165 Season 2: 0.221 Season 3: 0.410	131.18	April 1 – Oct. 25

Instream Reach No. 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	0.105	43.33	April 1 – Oct. 25

8. Other conditions to prevent injury and enlargement are:

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.

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.

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 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 No. 2 has been reduced to account for 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 significantly affect land use 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, as conditioned, 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 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.
16. The Lessors and Lessee have requested that the lease terminate on October 31, 2016. 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 this right, 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, 2016.

Dated at Salem, Oregon this 15 day of September, 2016.



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

*This document was prepared by Sarah
Henderson, if you have any questions,
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