

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1291, Certificate 74145, Deschutes ) FINAL ORDER ON PROPOSED  
County ) INSTREAM LEASE

**Authority**

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor #1**

Pooled Instream Lease for several water right holders (described in Findings of Fact #3)

**Lessor #2**

Swalley Irrigation District (SID)  
64672 Cook Ave., Suite 1  
Bend, OR 97701  
[Kathy@swalley.com](mailto:Kathy@swalley.com)

**Lessee**

Deschutes River Conservancy (DRC)  
P.O. Box 1560  
Bend, Oregon 97709  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On April 9, 2013, the DRC and SID, on behalf of several landowners, filed an application to lease a portion of Certificate 74145 for instream use. The Department assigned the application number IL-1291.
2. On July 18, 2013, the Department requested additional information from Lessor #2 and the Lessee to clarify the portion of the right to be leased and to complete the lease application. Additional information necessary to complete the application was received on August 5, 2013. Materials submitted by Lessor #2 included a revised application and several superseding application maps.
3. Certificate 74145 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the right to be leased have changed since Certificate 74145 was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be leased is described in Finding of Fact #4 consistent with the water right of record in so far as possible.

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.

4. The portion of the right to be leased has been modified from the original lease application and is as follows:

**Certificate:** 74145

**Priority Date:** September 1, 1899

**Use:** Irrigation of 34.47 acres and 72.1 acres equivalent of Nursery Use

**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 1/83<sup>rd</sup> Cubic Foot per Second (CFS)/acre)

Season 2 (limited to 1/62<sup>nd</sup> CFS/acre)

Season 3 (limited to 1/33.45 CFS/acre)

Duty: limited to 9.58 acre-feet per acre

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

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17S	12E	W.M.	29	SE NE	POD #3 SWALLEY MAIN CANAL – 985 FEET NORTH AND 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.
15 S	12 E	W.M.	14	NW SE	ADDITIONAL DISTRICT DIVERSION POD #15 – 2170 FEET NORTH AND 1350 FEET WEST FROM SE CORNER OF SECTION 14

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
<b>Irrigation of 34.47 Acres</b>							
16 S	12 E	W.M.	27	NW SW	0	5.80	Starwood Homeowners Assoc.
16 S	12 E	W.M.	28	NE SE	0	6.90	
16 S	12 E	W.M.	28	SW SE	0	1.30	
16 S	12 E	W.M.	28	SE SE	0	0.17	
17 S	12 E	W.M.	8	NE SW	300	8.0	Betty Jean Hendrix
17 S	12 E	W.M.	22	SW SE	105	12.30	Bend Parks and Recreation Dept.
<b>Nursery Use for 72.1 acres</b>							
17 S	12 E	W.M.	22	NE NE	100	23.61	Bend Parks and Recreation Dept.
17 S	12 E	W.M.	22	NW NE	100	4.25	
17 S	12 E	W.M.	22	SW NE	100	7.90	
17 S	12 E	W.M.	22	SE NE	100	12.39	
17 S	12 E	W.M.	23	NW NW	1800	2.62	
17 S	12 E	W.M.	23	NW NW	1800	4.20	U.S. Forest Service – Deschutes National Forest
17 S	12 E	W.M.	23	SW NW	1800	12.30	Bend Parks and Recreation Dept.
17 S	12 E	W.M.	23	SW NW	1800	5.98	U.S. Forest Service – Deschutes National Forest

5. The Department has information that POD #15 is incorrectly described in Certificate 74145. Pursuant to the order issued approving Conserved Water Application CW-13, as evidenced by Special Order Volume 61, Page 630, the location coordinates should be:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	12 E	WM	14	NE SE	Additional District Diversion #15 – 2065.82 feet North and 1401.41 feet East from the South quarter Corner of Section 14

6. 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 seasonal volume (based on the duty limit) allowed (described in Finding of Fact #4), the total rate and seasonal volume limit 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 seasonal volume allowed at the PODs (described in Finding of Fact #4 and #5), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and seasonal volume are also the quantities by which the diversion at POD #3 under Certificate 74145 shall be reduced over the full irrigation season, if this instream lease is approved.

Irrigation Use:

Season 1	Season 2	Season 3	Duty
0.263 CFS	0.352 CFS	0.665 CFS	227.96 AF

Nursery Use:

Season 1	Season 2	Season 3	Duty
0.551 CFS	0.737 CFS	1.391 CFS	476.82 AF

7. 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.
8. The Lessor and Lessee have requested to protect water instream from the Swalley Main Canal POD #3 (as described in Finding of Fact #4) 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.

9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach #1:** From the Swalley Main Canal POD #3 (as described in Finding of Fact #4) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.732 Season 2: 0.980 Season 3: 1.816	581.21	April 1 – Oct. 25

**Instream Reach #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	0.465	191.83	April 1 – Oct. 25

10. 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.

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, comments received, 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 or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
14. The Lessor has requested that the lease terminate on October 31, 2013. 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.

## ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During each year of 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2013.

Dated at Salem, Oregon this 16 day of August, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.*

**AUG 16 2013**  
Mailing date: \_\_\_\_\_