

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

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

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**

Jane Eilers  
PO Box 6838  
Bend, OR 97708

**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 25, 2007, the DRC, SID, and Jane Eilers filed an application to lease a portion of Certificate 74145 to instream use. The Department assigned the application number IL-818.
2. The right to be leased is clarified from the lease application and is as follows:

**Certificate:** 74145

**Priority Date:** September 1, 1899

**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)

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.

Season 1	Season 2	Season 3	Duty
0.013 CFS	0.018 CFS	0.03 CFS	10.54 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 Columbia River

**Place of Use:**

Irrigation Use on 1.1 acres						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	4	NW SE	512	1.1

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	Swalley Main Canal Diversion #3 – 985 feet North & 617 feet West from the East ¼ Corner of Section 29
15 S	12 E	WM	14	NW SE	Additional District Diversion #15 – 2170 feet North & 1350 feet West from SE Corner of Section 14

3. The lease application includes the information required 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 instream use is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach:** From the Swalley Main Canal POD (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Priority Date	Period Protected Instream	Instream Rate (cfs)	Instream Volume (AF)
74145	SEPT. 1, 1899	Season 1	0.008	5.71
		Season 2	0.01	
		Season 3	0.017	

5. Other conditions to prevent injury and enlargement are:

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.

6. 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.

7. 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. This finding is made through an abbreviated review recognizing that the 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.

8. 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.
9. The lease will terminate on October 31, 2011.
10. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### CONCLUSIONS OF LAW

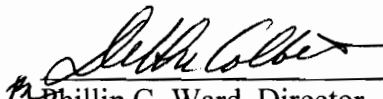
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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 during the term of the lease.
3. The lease will terminate on October 31, 2011. The Lessor has the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 24<sup>th</sup> day of May 2007.

  
Phillip C. Ward, Director

Mailing date: MAY 29 2007