





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

**Certificate:** 74145 in the name of Swalley Irrigation District (confirmed by decree)  
**Use:** Irrigation of 2.15 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  
**Priority Date:** September 1, 1899  
**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)  
                   Volume: Duty (limited to 9.91 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
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL- 985 FEET NORTH AND 617 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT 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
17S	12E	WM	7	SW SE	800	1.55
17S	12E	WM	7	SE SE	800	0.60
Total Acres						2.15

5. The description of POD #15 in Certificate 74145 contains scrivener's errors. 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	Measured Distances
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 volume (based on the duty) allowed (described in Finding of Fact No. 4), the total rate and volume 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 volume allowed at the PODs (described in Finding of Fact No. 4), 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 at POD No. 3



under Certificate 74145 shall be reduced over the full irrigation season, if this instream lease is approved.

Season 1	Season 2	Season 3	Volume
0.016 CFS	0.022 CFS	0.041 CFS	14.22 AF

7. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on March 11, 2014, pursuant to OAR 690-077-0077(1). The lease application was noticed as IL-643. No comments were received.

8. The instream use has been modified from the original ease application and is as follows: Deschutes River, tributary to the Columbia River

**Instream Reach:** From the Swalley Main Canal POD No. 3 (as described in Finding of Fact No. 4) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
74145	9/1/1899	Season 1: 0.015	11.83	April 1- October 25
		Season 2: 0.020		
		Season 3: 0.037		

9. 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.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right

11. 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 no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.

12. 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.

13. 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.

14. 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.



15. Based upon review of the application, 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.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
17. The Lessor and Lessee have requested that the lease terminate on October 31, 2014. 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 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 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, 2014.

Dated at Salem, Oregon this 15 day of April, 2014.

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

*This document was prepared by Joan Smith and if you have any questions, please call 503-986-0892*

Mailing date: APR 16 2014