

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-978, 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**

CLR c/o Jerry Curl  
703 NW Stonepine Dr.  
Bend, OR 97701

**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 1, 2009, the DRC, SID, and CLR (Jerry Curl) filed an application to lease a portion of Certificate 74145 to instream use. The Department assigned the application number IL-978.
2. The portion of the right to be leased is as follows:
  - Certificate:** 74145
  - Priority Date:** September 1, 1899
  - Use:** Irrigation of 25.0 acres, being 5.4 acres from POD #12 and 19.6 acres from POD #13
  - 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)

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.

Duty: limited to 9.58 acre-feet per acre

The quantities listed do not 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

**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	POD #
16 S	12 E	WM	20	NE NW	202	9.8	13
16 S	12 E	WM	20	NW NW	202	2.9	13
16 S	12 E	WM	20	NW SW	201	5.4	12
16 S	12 E	WM	20	SW NW	200	6.9	13

**Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	12 E	WM	20	SW NW	POD #12 – 130 FEET NORTH & 340 FEET WEST FROM THE SE CORNER OF SW NW, SECTION 20
16 S	12 E	WM	20	NW NW	POD #13 – 880 FEET SOUTH & 1010 FEET EAST FROM NW CORNER OF SECTION 20

- The quantities that may be diverted under Certificate 74145 from the direct POD's described in Finding of Fact #2 do not include the 43% transmission loss. The portion of the right involved in this instream lease is limited as described in the table below.

POD #	Season 1	Season 2	Season 3	Duty
#12	0.037 CFS	0.050 CFS	0.092 CFS	29.49 AF
#13	0.135 CFS	0.180 CFS	0.334 CFS	107.03 AF
<b>Totals</b>	<b>0.172 CFS</b>	<b>0.230 CFS</b>	<b>0.426 CFS</b>	<b>136.52 AF</b>

- 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.
- The Lessor and Lessee have requested to protect water instream from each of the POD's described in Finding of Fact #2 to the mouth of the Deschutes River. A portion of the water diverted at each POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. The place of use associated with each POD is located near the Deschutes River. Return flows are likely back in the river system immediately below each POD. To prevent injury to downstream water right holders or enlargement, the quantity of water that may be protected instream requires modification to account for return flows below each POD.

- 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: At POD #12 (as described in Finding of Fact #2)**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.037 Season 2: 0.050 Season 3: 0.092	29.46	April 1 – Oct. 25

**Instream Reach #2:** From immediately below POD #12 to POD #13 (as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	0.024	9.7	April 1 – Oct. 25

**Instream Reach #3:** At POD #13 (as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.159 Season 2: 0.204 Season 3: 0.358	116.62	April 1 – Oct. 25

**Instream Reach #4:** From immediately below POD #13 to mouth of Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	0.110	45.0	April 1 – Oct. 25

7. 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.

8. 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.
9. 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.
10. 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.
11. The Lessor and Lessee have requested that this lease terminate on October 31, 2009.

### 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, 2009.

Dated at Salem, Oregon this 29<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
Phillip C. Ward, Director *for*

Mailing date: JUN 08 2009