

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING A  
T-7074, Deschutes County                                )     CHANGE IN POINT OF DIVERSION

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

OREGON PARKS AND RECREATION DEPARTMENT  
725 SUMMER ST NE SUITE C  
SALEM OR 97301

**Findings of Fact**

1. On December 29, 1993, Oregon Parks and Recreation Department filed a transfer application to change the point of diversion under Certificate 29045. The Department assigned the application number T-7074.
2. Between the time the application was filed and when the application was processed Swalley Irrigation District re-mapped the water right according to the provisions of ORS 541.329. This re-mapping resulted in the issuance of superseding Certificate 74145 in the name of Swalley Irrigation District.
3. Department records reveal that as a result of the re-mapping as stated in Finding of Fact #2 the water right of record, Certificate 74145, listed a different place of use than the application.
4. On February 7, 2006, Curtis Smith, Assistant Area Manager for Oregon State Parks, amended the application to include a change in point of diversion for all those lands identified in the tables of Finding of Fact #9.
5. On March 28, 2006, Jan Houck, of Oregon Parks and Recreation Department requested an amendment to the application's authorized place of use so as to reflect the place of use as listed on Certificate 74145.
6. On May 8, 2006 a draft Preliminary Determination was sent to the applicant proposing rejection of the application based on the potential to injure instream water rights unless the

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a 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.

applicant requested a recommendation from Oregon Department of Fish and Wildlife (ODFW) to consent to injury of the instream rights.

7. Following the issuance of the *initial* draft Preliminary Determination the Department identified conditions that, if incorporated, would ensure that the change in point of diversion proposed in T-7074 would not result in injury to the instream water rights. Identification of these conditions made it unnecessary for the applicant to pursue consent to injury.
8. On July 24, 2006, a *revised* draft Preliminary Determination and cover letter were sent to the applicant. The revisions to the draft Preliminary Determination incorporated conditions that, if accepted by the applicant, would be sufficient to ensure that the change in point of diversion would not result in injury to the instream water rights. The cover letter set forth a deadline of August 24, 2006, for the applicant to notify the Department whether or not they agreed with the conditions. The letter further explained that if a response was not received the Department would issue a Preliminary Determination consistent with the *revised* draft Preliminary Determination. No response from the applicant was received.

9. The portion of the right to be transferred is as follows:

**Certificate:** 74145 in the name of SWALLEY IRRIGATION DISTRICT (confirmed by Deschutes River Decree)

**Use:** IRRIGATION of 8.6 ACRES and 2.8 ACRES equivalent for PARK MAINTENANCE.

**Priority Date:** SEPTEMBER 1, 1899

**Rate:** 0.31 CUBIC FOOT PER SECOND

**Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	6	NW SE	NORTH 27 DEGREES 1 MINUTE EAST, 678 FEET FROM THE SW CORNER, NWSE, OF SECTION 6

**Authorized Place of Use:**

**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
17 S	12 E	WM	6	NE SW	0.8	100
17 S	12 E	WM	6	SE SW	0.7	100
17 S	12 E	WM	6	NE SE	0.6	100
17 S	12 E	WM	6	NW SE	6.3	100
17 S	12 E	WM	6	SW SE	0.2	100

**PARK MAINTENANCE**

Twp	Rng	Mer	Sec	Q-Q	Acre Equivalent	Tax Lot
17 S	12 E	WM	6	NW SE	2.8	100

10. Transfer Application T-7074 proposes to move the authorized point of diversion approximately 1000 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	6	SE SW	1397 FEET SOUTH AND 345 FEET WEST FROM THE CENTER OF SECTION 6 LATITUDE-44 DEGREES 7 MINUTES 38.26898 SECONDS LONGITUDE-121 DEGREES 20 MINUTES 6.42549 SECONDS

11. On September 6, 2006, the Department issued a Preliminary Determination proposing to approve Transfer Application T-7074 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's week notice on September 12, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
12. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in enlargement of the right.
15. Instream water rights (Certificates 76687, 80856, 80400, 80965, 81324, 81332, 81333 and 81509) exist for the reach of the Deschutes River to which the authorized point of diversion is proposed to move. These instream rights require a total of 16.363 cubic feet per second to be maintained in the Deschutes River. Since the point of diversion is proposed to be moved approximately 1000 feet upstream, these instream rights could be injured unless the transfer is conditioned to protect the instream water right flow values.
16. Applicant agreement to the following conditions is sufficient to ensure that the change in point of diversion would not result in injury to the instream water rights:
- a) Prior to diverting water at the proposed point of diversion (POD), the water user shall check the flows at the U.S. Department of the Interior, Bureau of Reclamation's gages identified as Deschutes River Below Bend (DEBO) and Tumalo Creek near Bend (TUMO) listed on the internet at [www1.wrd.state.or.us/cgi-bin/choose\\_realtime\\_gage.pl?basin=05](http://www1.wrd.state.or.us/cgi-bin/choose_realtime_gage.pl?basin=05) ensuring that a minimum cumulative value of 16.383 cubic feet per second (cfs) is reported as being discharged.
  - b) The water user shall not divert water at the proposed POD for the authorized uses whenever flows in the Deschutes River, as measured at the DEBO and TUMO

gages, drop below a combined total of 16.383 cubic feet per second. However, the water user may divert water at less than the authorized rate as long as a minimum of 16.383 cfs is maintained in the Deschutes River, as measured at the gages.

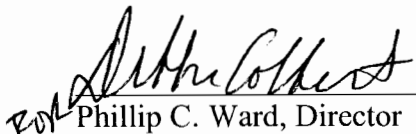
### **Conclusions of Law**

The proposed change in point of diversion in Transfer Application T-7074, as conditioned, is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 74145 and any related decree.
2. Certificate 74145 is modified and the Department shall issue a superseding water right certificate on a determination that it is necessary to produce a certificate describing the right.
3. The applicant agrees to those conditions outlined in Finding of Fact #16 and will ensure that a minimum value of 16.383 cfs is reported as being discharged, as reported by the gages identified as DEBO and TUMO. At no time shall diversion of water from the proposed diversion result in flows of less than 16.383 cfs instream.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
5. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate or measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.

Dated at Salem, Oregon this 23<sup>rd</sup> day of October 2006.

  
Phillip C. Ward, Director

Mailing date: OCT 26 2006