

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-10490 and Mitigation Credit	)	PROPOSING APPROVAL OF A
Project MP-111, Deschutes County	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE AND
	)	PRELIMINARY AWARD OF
	)	MITIGATION CREDITS

**Authority**

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. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

**Applicant**

DESCHUTES RIVER CONSERVANCY (DRC) 700 NW HILL STREET BEND, OR 97701	SWALLEY IRRIGATION DISTRICT (SID) 64672 COOK AVENUE, SUITE 1 BEND, OR 97701
---	---

**Findings of Fact**

**Background**

1. On November 23, 2007, the DRC and SID filed an application to change the place of use and character of use under Certificate 74145 to instream use. The Department assigned the

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
--

application number T-10490. A signature page including Swalley Irrigation District's original signature was submitted to the Department on November 28, 2007.

- On March 17, 2010, the DRC requested to remove the following portion of Certificate 74145 from the proposed transfer application:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
<b>IRRIGATION</b>						
17 S	12 E	WM	17	SE SW	1300	0.3
17 S	12 E	WM	28	NW NE	3400	0.5
<b>DUST ABATEMENT</b>						
17 S	12 E	WM	17	SE SW	1300	0.5

- On September 16, 2010, the DRC submitted amended application materials to replace the acres identified above with 1.56 acres in the NW SW (tax lot 1200) of Section 8, Township 17 South, Range 12 East, W.M. Additional materials and information were submitted by the DRC and SID to complete the revision to the application on September 28, 2010, October 5, 2010, October 6, 2010, October 7, 2010, and October 19, 2010.
- On December 8, 2010, SID submitted an affidavit to voluntarily cancel the 0.5 acre of irrigation located in tax lot 3400 within the NW NE of Section 28, Township 17 South, Range 12 East, W.M.
- The portion of the right to be transferred has been modified from the original transfer application and is as follows:

**Certificate:** 74145 in the name of SWALLEY IRRIGATION DISTRICT (confirmed by Deschutes River, 1958 decree)

**Use:** IRRIGATION OF 7.96 ACRES AND DUST ABATEMENT OF 2.3 ACRES

**Priority Date:** SEPTEMBER 1, 1899

**Season of Use:** April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

**Maximum Quantity (Rate) that can be applied to an acre:**

Season 1: limited to 1/83<sup>rd</sup> cubic foot per second (CFS) per acre

Season 2: limited to 1/62<sup>nd</sup> CFS per acre

Season 3: limited to 1/33.45<sup>th</sup> CFS per acre

**Maximum Duty that can be applied to an acre:**

Not to exceed 9.58 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district's main canal system, but by direct pumping from the Deschutes River, are not allowed the 43% transmission loss.

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

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL POD #3 - 985 FEET NORTH AND 617 FEET WEST FROM EAST 1/4 CORNER OF SECTION 29
15 S	12 E	WM	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
<b>IRRIGATION</b>						
17 S	12 E	WM	8	NW SW	1200	1.56
17 S	12 E	WM	17	NE SW	1300	1.9
17 S	12 E	WM	28	NW NE	3400	4.5
<b>DUST ABATEMENT</b>						
17 S	12 E	WM	17	NE SW	1300	2.3

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

Season 1	Season 2	Season 3	Duty
0.078 CFS	0.105 CFS	0.198 CFS	67.86 AF

7. The applicant is not the owner of the lands to which the water rights described in Finding of Fact #5 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed from each landowner described in the table below to Swalley Irrigation District. The portion of this right to be transferred was appurtenant to lands owned by the identified landowners at the time interest in the water right was conveyed through a Quit Claim, a water right conveyance agreement.

Grantor (landowner)	Water Right Interest Holder	T	R	S	Q-Q	Tax Lot at time of Conveyance
Ray and Sharon Ruppel	Swalley Irrigation District	17 S	12 E	8	NW SW	1200
KDV, LLC	Swalley Irrigation District	17 S	12 E	17	NE SW	1300
Lawnae Hunter	Swalley Irrigation District	17 S	12 E	28	NW NE	3400

8. Application T-10490 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat

and other ecological values; recreation; and pollution abatement, and to establish mitigation credits in the Deschutes Ground Water Study Area.

9. Application T-10490 proposes to change the place of use of the right to create an instream reach from Swalley Main Canal POD #3 (as described in Finding of Fact #5) to Lake Billy Chinook, at approximately River Mile 120.
10. The original instream transfer application proposes that water be protected instream as follows:

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
74145	September 1, 1899	Season 1 (requested to end on Oct. 25)	0.069 cfs	55.35 AF
		Season 2	0.092 cfs	
		Season 3	0.170 cfs	

11. The applicant has requested to replace a portion of instream water rights established pursuant to ORS 537.341 (minimum perennial streamflow) or 537.346 (state agency application) with a more senior priority date and be in addition to instream water rights established pursuant to ORS 537.348 (instream transfer) or 537.470 (allocation of conserved water).
12. Notice of the application for transfer was published on December 11, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
15. The original application did not include sufficient information to demonstrate that the water right had been used in the five years prior to the transfer being submitted. In addition, the application did not include sufficient information to evaluate the quantity of water that could be transferred beneficially and without waste for dust abatement. On April 8, 2008, the Department requested additional information to resolve these deficiencies. Additional information was provided by the applicant on June 27, 2008, which resolved a portion of the deficiencies identified by the Department.
16. Insufficient information was provided by the applicants in response to the request for additional information on the use of water for dust abatement. However, on August 20, 2009, the Department's South Central Regional Manager provided an evaluation of the amount of water that may be used beneficially and without waste for the dust abatement portion of the right proposed for transfer.
17. Follow up deficiency letters were sent on August 5, 2008 and November 20, 2009, December 22, 2009. Deficiencies included documentation demonstrating that water had been used on lands in the SE SW of Section 17 in Township 17 South, Range 12 East W.M., and resolution of an irrigated acreage discrepancy in the NW NE of Section 28, Township 17 South, Range 12 East, W.M. On January 21, 2010, the DRC requested additional time to address the deficiencies, which would likely include replacing a portion of the right proposed for transfer with a different portion.

18. These remaining deficiencies were resolved by the applicant with the additional information provided as described in Findings of Fact #2, #3, and #4.
19. For the amendment to the application referenced in Finding of Fact #3, a deficiency letter was sent on September 29, 2010. The deficiency letter identified the need for documentation in support of the affidavit of use and a revised application map. These deficiencies were addressed with additional information provided by the applicant as referenced in Finding of Fact #3.
20. On March 21, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10490 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of April 19, 2011, for the applicants to respond.
21. On March 22 and March 23, 2011, the DRC submitted comments requesting additional information on the Department's findings with regard to return flows. Specifically, the DRC requested that the Department relook at where return flows were accounted for associated with the 4.5 acres of irrigation located in the NW NE of Section 28, Township 17 South, Range 12 East, W.M.
22. The Department considered these comments and provided additional information to the applicant. In addition, the Department also identified, based on continued evaluation, that return flows from the 4.5 acres of irrigation identified in Finding of Fact #21 returned to the river system below the proposed reach. Therefore, the instream use may be modified protect the full quantity of water that may be protected instream for these acres from the point of diversion to Lake Billy Chinook (see Finding of Fact #31).
23. On April 13, 2011, the applicants, with the above change, concurred with the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

24. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
25. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10490.

26. Use of water under the existing right for 2.3 acres equivalent of dust abatement is subject to beneficial use without waste in accordance with ORS 536.310. Absent the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total quantity appropriated at the place of use under the right proposed for transfer would be as follows:

Season 1	Season 2	Season 3	Duty
0.016 CFS	0.021 CFS	0.039 CFS	12.7 AF

The maximum volume (duty) is equivalent to 5.46 acre-feet per acre during the irrigation season of April to November 1. Given the use authorized under Certificate 74145, the total volume at the full face value of the right could not be beneficially used.

27. Information provided by the landowner identifies that water was used for dust abatement for a riding arena and an unpaved parking area. Water was applied for control dust during the spring, summer and fall several days a week.
28. On August 20, 2009, the Department’s South Central Regional Manager completed an evaluation to estimate the amount of water that could be beneficially used under the existing water right for dust abatement. Based on this evaluation, approximately 1.6 acre-feet per acre could be used beneficially and without waste for dust abatement. For 2.3 acres equivalent of dust abatement the total volume would be 3.7 acre-feet.
29. A portion of the water diverted at the POD returns to the Deschutes River below the POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for both surface and subsurface return flows.

The hydro-geologic evaluation of where subsurface return flows occur is generally based on the following information: 1) the local shallow and regional ground water elevations, 2) the shallow and regional head gradient (i.e. ground water flow direction), 3) elevation of nearby streams, 4) elevation of closest gaining stream reaches, 5) distance from nearby streams and gaining stream reaches, and 6) local geologic information. When evaluating for return flows, the Department generally considers the place of use as a whole and where the majority of return flows occur based upon the presence of surface return flows (overland flow) and the factors described above for any subsurface return flows.

The place of use under a portion of the right proposed for transfer is located in close proximity to the Deschutes River, specifically the 1.56 acres of irrigation use located in the NW SW of Section 8, T17S, R12E, and the 1.9 acres of irrigation use located in the NE SW of Section 17, T17S, R12E, as described in Finding of Fact #5. A portion of the water diverted to the place of use returns to the river system in the area of Tumalo State Park near River Mile 157. Therefore, the instream flows at Tumalo State Park near River Mile 157 will be reduced to the consumptive portion of the 3.46 acres described above to account for return flows.

30. The applicant has requested to protect water instream at the full rate and duty allowed for a portion of the right proposed for transfer in the original application (10.0 acres) during the period April 1 through October 25, as described in Finding of Fact #10. The number of acres of irrigation that may be transferred to instream use has been modified based on Findings of Fact #2, #3 and #5. In addition, the instream use requires modification to account for return flows and the portion of the right for dust abatement that is available for transfer considering beneficial use without waste, as described in Finding of Fact #28. For the dust abatement portion of the right, given a maximum volume of 3.7 acre-feet, water can be protected instream at a rate of 0.009 CFS during the period April 1 through October 25.
31. Based on Findings of Fact #26 through #30, the Department proposes to modify the quantities of water to be protected instream to prevent injury and enlargement as follows:

**Instream Reach 1:** From the POD (as described in Finding of Fact #5) to River Mile 157 near Tumalo State Park

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	0.064 CFS	47.22 AF
		Season 2	0.082 CFS	
		Season 3	0.145 CFS	

**Instream Reach 2:** From River Mile 157 near Tumalo State Park to Lake Billy Chinook, at approximately River Mile 120

Certificate	Priority Date	Instream Period	Instream Rate	Volume Instream
74145	September 1, 1899	Season 1 (modified to end October 25)	0.055 CFS	34.51 AF
		Season 2	0.065 CFS	
		Season 3	0.101 CFS	

32. The proposed change, as modified, would not result in enlargement of the right.
33. The proposed change, as modified, would not result in injury to other water rights.
34. The amount and timing of the proposed instream flow, as modified, are allowable within the limits and use of the original water right.
35. The protection of flows within the proposed reach are appropriate, considering:
- a) The instream water right 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) The quantity of water to be protected instream in Reach #2 has been reduced to account for return flows. A portion of return flows resulting from the exercise of the existing

water right would re-enter the river downstream from the point of diversion approximately at River Mile 157 near Tumalo State Park on the Deschutes River.

36. Within the proposed instream reach on the mainstem Deschutes River, there are several existing instream water rights. There is one instream water right, Certificate 59777, established under ORS 537.346 (minimum streamflow conversion) for the purpose of supporting aquatic life and minimizing pollution, from the confluence of the Little Deschutes River to the confluence with Spring River. There is another instream water right, Certificate 59778, also established under ORS 537.346 for the purpose of supporting aquatic life and minimizing pollution, from the confluence with Spring River to the Central Oregon Irrigation District (COID) North Canal Dam. There is also a pending instream water right application, IS-70695, filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341, with the Department to establish an instream water right from the COID North Canal Dam to Lake Billy Chinook. The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) and are generally located between the Central Oregon Canal and Lake Billy Chinook.

This portion of the Deschutes River is a designated State Scenic Waterway. The State Scenic Waterway designation provides for protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat, and recreation, which is a matter of statutory policy. In addition, to flows for the designated Scenic Waterway, which are not always met during requested period for instream protection, this segment of the Deschutes River is on DEQ's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.

37. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River are sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide for protection of streamflows identified as necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, under an earlier priority date.
38. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the portion of the proposed reach located on the mainstem Deschutes River, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
39. During the period April 1 through October 25, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to



ORS 537.348 or 537.470, unless otherwise specified by an order approving a new instream water right under these statutes.

40. The total monthly quantities of water proposed to be protected instream (as described in Findings of Fact #31) within the proposed reach will provide for a beneficial purpose and, in conjunction with other existing instream water rights, will not exceed the estimated average natural flow.

**Partial Cancellation of a Water Right**

41. On December 8, 2010, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Swalley Irrigation District. The right to be cancelled is as follows:

**Certificate:** 74145 in the name of SWALLEY IRRIGATION DISTRICT (confirmed by Deschutes River, 1958 decree)

**Use:** IRRIGATION OF 0.5 ACRE

**Priority Date:** SEPTEMBER 1, 1899

**Season of Use:** April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

**Maximum Quantity (Rate) that can be applied to an acre:**

Season 1: limited to 1/83<sup>rd</sup> cubic foot per second (CFS) per acre

Season 2: limited to 1/62<sup>nd</sup> CFS per acre

Season 3: limited to 1/33.45<sup>th</sup> CFS per acre

**Maximum Duty that can be applied to an acre:**

Not to exceed 9.58 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district's main canal system, but by direct pumping from the Deschutes River, are not allowed the 43% transmission loss.

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

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	SWALLEY MAIN CANAL POD #3 - 985 FEET NORTH AND 617 FEET WEST FROM EAST 1/4 CORNER OF SECTION 29
15 S	12 E	WM	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
<b>IRRIGATION</b>						
17 S	12 E	WM	28	NW NE	3400	0.5

42. Based on Finding of Fact #6, the quantity by which this right will be reduced as a result of this cancellation is as follows:

Season 1	Season 2	Season 3	Duty
0.004 CFS	0.005 CFS	0.010 CFS	3.31 AF

***Preliminary Award of Deschutes Basin Mitigation Credits***

- 43. The DRC and SID (the Applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Applicant has requested that any mitigation credits generated from this project be assigned to the DRC and SID.
- 44. The Department assigned this mitigation credit project number MP-111.
- 45. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on December 25, 2007. No comments were received in response to this notice.
- 46. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on December 18, 2007.
- 47. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
- 48. As part of the public notice of the mitigation project, the Department identified that the project may result in 18.0 mitigation credits. Since the application was originally submitted, the portion of the right proposed for transfer has been modified. However, based upon continued evaluation of the project, the Department finds that the transfer of 7.96 acres of irrigation use and 2.3 acres equivalent of dust abatement has an average consumptive use of 18.0 AF. Therefore, 18.0 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to the DRC and SID. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Middle Deschutes and General Zones of Impact.
- 49. A total of 47.22 AF is proposed to be transferred to instream use and 18.0 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
- 50. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete. Mitigation credits awarded to this

mitigation credit project (MP-111) may be valid the first year that water is protected instream under any new instream water right issued as a result of this transfer.

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-10490 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

This mitigation project appears to result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

*If application T-10490 is approved, the final order will include the following:*

1. *The changes in character of use and place of use to instream use proposed in application T-10490 are approved. The portion of the right that has been abandoned is cancelled.*
2. *Water right certificate 74145 is modified. A new certificate confirming the instream water right shall be issued. The Department shall issue a new water right certificate to supersede Certificate 74145 on a determination that it is necessary to produce a certificate to describe that portion of the right not affected by this transfer and cancellation. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 74145 by the following:*

<i>Season 1</i>	<i>Season 2</i>	<i>Season 3</i>	<i>Duty</i>
<i>0.082 CFS</i>	<i>0.110 CFS</i>	<i>0.208 CFS</i>	<i>71.17 AF</i>

3. *The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River as follows:*

***Instream Reach 1:*** *From the POD (as described in Finding of Fact #5) to River Mile 157 near Tumalo State Park*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Period</i>	<i>Instream Rate</i>	<i>Volume Instream</i>
<i>74145</i>	<i>September 1, 1899</i>	<i>Season 1 (modified to end October 25)</i>	<i>0.064 CFS</i>	<i>47.22 AF</i>
		<i>Season 2</i>	<i>0.082 CFS</i>	
		<i>Season 3</i>	<i>0.145 CFS</i>	

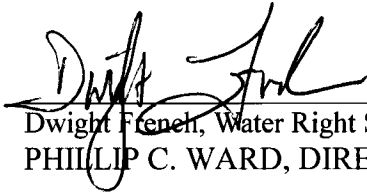
***Instream Reach 2:*** *From River Mile 157 near Tumalo State Park to Lake Billy Chinook, at approximately River Mile 120*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Period</i>	<i>Instream Rate</i>	<i>Volume Instream</i>
<i>74145</i>	<i>September 1, 1899</i>	<i>Season 1 (modified to end October 25)</i>	<i>0.055 CFS</i>	<i>34.51 AF</i>
		<i>Season 2</i>	<i>0.065 CFS</i>	
		<i>Season 3</i>	<i>0.101 CFS</i>	

4. *Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.*
5. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise identified in a subsequent order establishing a new instream water right under these statutes.*
6. *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.*
7. *The former place of use of the transferred water shall no longer receive water as part of this right.*
8. ***Preliminary Award of Mitigation Credits:** Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of **18.0 credits**, as described herein, may be awarded to this mitigation project and assigned to the Deschutes River Conservancy and Swalley Irrigation District. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Middle Deschutes and General Zones of Impact**. Any mitigation credits awarded will begin being valid the first year that water is to be protected instream under a new instream water right resulting from this mitigation project.*
9. *Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.*

10. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this 25 day of April, 2011.



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

*Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

This Preliminary Determination was prepared by Laura Wilke. If you have questions about the information in this document, you may reach me at 503-986-0884 or [Laura.K.Wilke@ wrd.state.or.us](mailto:Laura.K.Wilke@ wrd.state.or.us).

**Notice of Preliminary Determination for  
Water Right Transfer T-10490 / Mitigation Project MP-111**

T-10490 filed by Deschutes River Conservancy (PO BOX 1560, BEND, OR 97709) and Swalley Irrigation District (64672 Cook Ave, Suite 1, Bend, OR 97701), proposes a change in place of use and a change in character of use under Certificate 74145. The right allows the use of UP TO 0.198 Cubic Foot Per Second (CFS) (priority date September 1, 1899) from the Deschutes R in Sec. 29, T 17 S, R 12 E, W.M. for Irrigation of 7.96 acres in Sections 8, 17 and 28, and 2.3 equivalent acres of Dust Abatement in Sec. 17. The applicant proposes to create an instream use in the Deschutes River (from the point of diversion to Lake Billy Chinook) at a maximum of 0.145 CFS, and to establish mitigation credits in the Middle Deschutes and General Zones of Impact. The application was amended to remove a few acres of irrigation and dust abatement, add additional acres of irrigation and to cancel 0.5 acre of irrigation. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000, and OAR 690-077-0075. The Department has also concluded that the proposed transfer appears to result in mitigation credits pursuant to OAR 690-521-0300 & OAR 690-521-0400.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is [INSERT DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.