

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12499, Deschutes County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN CHARACTER OF USE

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

SWALLEY IRRIGATION DISTRICT  
64672 COOK AVE., SUITE 1  
BEND, OR 97703

**Receiving Landowner**

BEND METRO PARKS AND  
RECREATION DISTRICT  
799 SW COLUMBIA STREET  
BEND, OR 97702

**Findings of Fact**

1. On October 7, 2016, Swalley Irrigation District filed an application to change the place of use and to change the character of use under a portion of Certificate 74145. The Department assigned the application number T-12499.
2. Bend Metro Parks and Recreation District is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on October 18, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On September 7, 2018, the applicant submitted a new revised application and map to clarify the changes proposed under Certificate 74145, withdrawing their request for a change in place of use.

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.

5. On October 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12499 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 4, 2018, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

6. 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, 1958)

**Use:** NURSERY USES for 76.95 ACRES EQUIVALENT

**Priority Date:** SEPTEMBER 1, 1899

**Seasons of Use:** Season 1: April 1 through April 30 & October 1 through October 31  
 Season 2: May 1 through May 14 & September 15 through September 30  
 Season 3: May 15 through September 14

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

Season 1: Limited to 1/83 cubic foot per second (cfs) per acre  
 Season 2: Limited to 1/62 cfs per acre  
 Season 3: Limited to 1/33.45 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 by direct pumping from the Deschutes River, are not allowed the 43% transmission loss and shall not exceed 5.46 af per acre per year.

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

**Authorized Points of Diversion**

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 E <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 29
15 S	12 E	WM	14	NW SE	ADDITIONAL DISTRICT DIVERSION - 2170 FEET NORTH AND 1350 FEET WEST FROM THE SE CORNER OF SECTION 14

**Authorized Place of Use**

NURSERY USES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	22	NE NE	104	22.39
17 S	12 E	WM	22	NW NE	104	3.56
17 S	12 E	WM	22	SW NE	104	6.50
17 S	12 E	WM	22	SE NE	104	27.64
17 S	12 E	WM	23	NW NW	1802	14.28
17 S	12 E	WM	23	SW NW	1802	2.58
Total						76.95

7. Transfer Application T-12499 proposes to change the character of use on the above described acres from Nursery Use to Irrigation and will be limited to the irrigation season.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

8. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12499.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Determination and Proposed Action**

The change in character of use proposed in Transfer Application T-12499 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12499 is approved, the final order will include the following:*

1. *The change in character of use proposed in Transfer Application T-12499 is approved.*
2. *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.*
3. *The season of use of the transferred lands will be limited to the irrigation season.*
4. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the receiving landowner to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*

5. *Water right certificate 74145 is modified. The Department will issue a superseding certificate in the name of Swalley Irrigation District describing the right when it determines it is necessary for record keeping.*

Dated at Salem, Oregon this JAN 22 2019,



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or [Ken.D.Dowden@oregon.gov](mailto:Ken.D.Dowden@oregon.gov)

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

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 11, 2019

**VIA E-MAIL**

### Applicant

SWALLEY IRRIGATION DISTRICT  
64672 COOK AVE., SUITE 1  
BEND, OR 97703

### Receiving Landowner

BEND METRO PARKS AND  
RECREATION DISTRICT  
799 SW COLUMBIA STREET  
BEND, OR 97702

SUBJECT: Water Right Transfer Application T-12499

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12499. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@wr.d.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12499  
Jeremy T. Giffin, Watermaster District 11 *(via e-mail)*  
Niall W. Boggs, CWRE #80674 *(via e-mail)*

encs