



Certificate	Priority Date	Before Project Maximum Rate/Duty	After Total Project Maximum Rate/Duty	Total Conserved Water Rate/Duty	Total Instream Water Right Rate/Duty
74146	Aug. 5, 1900	5.823 cfs	4.778 cfs	1.045 cfs	1.045 cfs
	Sept. 1900	40.835 cfs	33.506 cfs	7.329 cfs	7.329 cfs
	Apr. 28, 1905	4.309 cfs	3.536 cfs	0.773 cfs	0.773 cfs
	May 27, 1907	0.603 cfs	0.495 cfs	0.108 cfs	0.108 cfs
	June 1, 1907	14.181 cfs	11.636 cfs	2.545 cfs	2.545 cfs
	<b>Subtotal</b>	<b>65.751 cfs</b>	<b>53.951 cfs</b>	<b>11.800 cfs</b>	<b>11.800 cfs</b>
74148	April 7, 1911	35,000 AF	32,268 AF	2,732 AF	2,732 AF

4. On March 31, 2008, TID requested an incremental finalization of the allocation of conserved water application for the portion of the project that had been completed. The Department issued a Final Order Approving the First Increment of a Partial Finalization of Conserved Water on June 25, 2008, recorded at Special Order Volume 75, Pages 202-206. The first incremental finalization resulted in the following rates and duty:

Certificate	Priority Date	Total Conserved Water Rate / Duty	1 <sup>st</sup> Incremental Finalization (Vol 75, P. 203)	Conserved Water Remaining to be Finalized	District Maximum Rate/Duty After 1 <sup>st</sup> Increment
74146	Aug. 5, 1900	1.045 cfs	0.178 cfs	0.867 cfs	5.645 cfs
	Sept. 1900	7.329 cfs	1.242 cfs	6.087 cfs	39.593 cfs
	Apr. 28, 1905	0.773 cfs	0.131 cfs	0.642 cfs	4.178 cfs
	May 27, 1907	0.108 cfs	0.018 cfs	0.090 cfs	0.585 cfs
	June 1, 1907	2.545 cfs	0.431 cfs	2.114 cfs	13.750 cfs
	<b>Subtotal</b>	<b>11.800 cfs</b>	<b>2.000 cfs</b>	<b>9.800 cfs</b>	<b>63.751 cfs</b>
74148	April 7, 1911	2,732.00 AF	89.25 AF	2,642.75 AF	34,910.75 AF

5. On February 15, 2012, TID requested an incremental finalization of the allocation of conserved water application for the next portion of the project that had been completed. Tumalo Irrigation District requested the finalization of 0.82 cfs from Certificate 74146 be proportionally allocated for each of the priority dates. The Department issued a Final Order Approving the Second Increment of a Partial Finalization of Conserved Water on February 28, 2012, recorded at Special Order Volume 787, Pages 99-104. The Order contained scrivener's and mathematical errors; however, the total quantity of water requested to be finalized and the total maximum rate after the 2<sup>nd</sup> finalization for Certificate 74146 were correct.

A scrivener's error was made in the Order on the number of acre-feet finalized under Certificate 74148. The Order listed a quantity of 212.4 acre-feet. Certificate 87440 was issued for the requested quantity of 222.41 acre-feet. The table is corrected as follows, with the corrections in bold type:

Certificate	Priority Date	Total Conserved Water Rate / Duty	2nd Incremental Finalization	Conserved Water Remaining to be Finalized	District Maximum Rate / Duty After 2nd Increment
74146	Aug. 5, 1900	1.045 cfs	0.073 cfs	<b>0.794 cfs</b>	<b>5.572 cfs</b>
	Sept. 1900	7.329 cfs	0.509 cfs	<b>5.578 cfs</b>	<b>39.084 cfs</b>
	Apr. 28, 1905	0.773 cfs	0.054 cfs	<b>0.588 cfs</b>	<b>4.124 cfs</b>
	May 27, 1907	0.108 cfs	<b>0.007 cfs</b>	<b>0.083 cfs</b>	<b>0.578 cfs</b>
	June 1, 1907	2.545 cfs	0.177 cfs	<b>1.937 cfs</b>	<b>13.573 cfs</b>
	<i>Subtotal</i>	<i>11.800 cfs</i>	<i>0.820 cfs</i>	<i>8.980 cfs</i>	<i>62.931 cfs</i>
74148	April 7, 1911	2,732.00 AF	<b>222.41 AF</b>	<b>2,420.34 AF</b>	<b>34,688.34 AF</b>

6. Following the 2<sup>nd</sup> finalization, instream water right Certificate 87439, superseded by Certificate 88897, was issued and contained an error in the rate finalized for the May 27, 1907 priority date. The total quantity finalized from Certificate 74146 and protected instream is correct. A new superseding certificate will be issued with the correction.
7. On January 24, 2013, TID filed a request for an extension of time to complete the conservation project described in the Allocation of Conserved Water Application CW-37 from October 31, 2015. On February 11, 2013, the Department issued a Final Order Approving an Extension of Time, recorded at Special Order Volume 89, Pages 8-9, that extended the completion date of the project to October 1, 2025.
8. On June 24, 2013, TID requested a third incremental finalization of the allocation of conserved water application for the next portion of the project that has been completed. Phase III involved piping 3,817 feet of open canal. Tumalo Irrigation District requested 1.23 cfs from Certificate 74146 be finalized and proportionally protected by priority date instream in Tumalo Creek, and 331.52 acre-feet be finalized and protected from Certificate 74148 in Crescent Lake as described below:

Certificate	Priority Date	District Maximum Rate / Duty After 2 <sup>nd</sup> Finalization	3rd Incremental Finalization	District Maximum Rate / Duty After 3 <sup>rd</sup> Increment
74146	Aug. 5, 1900	5.572 cfs	0.109 cfs	5.463 cfs
	Sept. 1900	39.084 cfs	0.764 cfs	38.320 cfs
	Apr. 28, 1905	4.124 cfs	0.081 cfs	4.043 cfs
	May 27, 1907	0.578 cfs	0.011 cfs	0.567 cfs
	June 1, 1907	13.573 cfs	0.265 cfs	13.308 cfs
	<i>Subtotal</i>	<i>62.931 cfs</i>	<i>1.23 cfs</i>	<i>61.701 cfs</i>
74148	April 7, 1911	34,688.34 AF	331.52 AF	<b>34,356.82 AF</b>

9. Special Order Volume 67, Pages 509 through 517 describes an informal agreement that has allowed for the release of approximately 5.0 cfs from Crescent Lake Reservoir, as measured at Crescent Creek Gauging Station Number 14060000. As part of the conserved water project, TID requested that this gentleman's agreement be formalized. However, the order approving the project did not anticipate an incremental finalization, and did not address when the informal agreement would be finalized. On June 23, 2008, TID requested that the gentlemen's agreement be formalized when the entire project is complete.

**Conclusion of Law**

The project described in application CW-37 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Division 018. Water will be conserved that can be allocated without harming other water rights.

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

1. The applicant has until October 1, 2025, to file a notice of completion of the remaining conservation measures.
2. As described below, the formalization of the gentlemen’s agreement regarding the operational flow release at Crescent Lake Reservoir will occur when the entire project is complete, unless TID and the Department mutually agree on a different timeline.

An operational flow release of not less than 5.0 cfs shall be required year-around at Crescent Creek Gauging Station Number 14060000. The instream water rights that are created by CW-37 from Crescent Lake Reservoir shall be additive to the 5.0 cfs flow. However, the 5.0 cfs flow shall not be additive to TID irrigation releases. Any additional flow restoration activities, including but not limited to, instream transfers, allocations of conserved water, and instream leases, shall also be additive to the 5.0 cfs flow requirement, unless otherwise specified by a subsequent order. Water users above Crescent Lake Reservoir shall not be regulated to satisfy the 5.0 cfs requirement.

Consistent with Special Order Volume 67, Pages 509 through 517, the Department takes the following actions:

3. Certificate 74146 shall be modified. A new superseding certificate shall be issued to Tumalo Irrigation District for the remaining portion of Certificate 74146 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. The acreage, rate, duty, and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other prior modification to Certificate 74146. The associated priority date and rate of the remaining right shall be approximately:

Certificate	Priority Date	Originating Right after CW-9 (cfs)	1st Incremental Finalization Reduction (cfs)	2nd Incremental Finalization Reduction (cfs)	3rd Incremental Finalization Reduction (cfs)	District Maximum Rate After 3 <sup>rd</sup> Increment (cfs)
74146	August 5, 1900	5.823	0.178	0.073	0.109	5.463
	September 1900	40.835	1.242	0.509	0.764	38.320
	April 28, 1905	4.309	0.131	0.054	0.081	4.043
	May 27, 1907	0.603	0.018	0.007	0.011	0.567
	June 1, 1907	14.181	0.431	0.177	0.265	13.308
	<i>Total</i>		<i>65.751</i>	<i>2.000</i>	<i>0.820</i>	<i>1.230</i>

4. A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in Tumalo Creek from the authorized point of diversion for TID at the Tumalo Feed Canal:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23

to the mouth of Tumalo Creek and then into the Deschutes River to Lake Billy Chinook at River Mile 120. The instream water right shall allow the use of the water to provide fish screen bypass and cleaning flows at the Tumalo Feed Canal diversion provided such use does not interfere with use of instream flow to operate fish passage facilities at the same site.

The instream water right shall be for a total of 1.23 cfs, with the following priority dates and rates:

Priority Date	Rate (cfs)
August 5, 1900	0.109
September, 1900	0.764
April 28, 1905	0.081
May 27, 1907	0.011
June 1, 1907	0.265
Total	1.230

and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The rights shall allow for the use and protection of flows from April 15 to October 15.

5. Certificate 74148 shall be modified. A new superseding certificate shall be issued to Tumalo Irrigation District for the remaining portion of Certificate 74148 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. The acreage, rate, and duty are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other prior modification to Certificate 74148. The associated priority date and duty of the remaining right shall be approximately:

Certificate	Priority Date	Originating Right after CW-9 (AF)	1st Incremental Finalization Reduction (AF)	2nd Incremental Finalization Reduction (AF)	3rd Incremental Finalization Reduction (AF)	District Maximum Rate After 3 <sup>rd</sup> Increment (AF)
74148	April 7, 1911	35,000.00	89.25	222.41	331.52	34,356.82

6. A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in Crescent Creek from the authorized point of diversion for TID at the Crescent Lake Reservoir:

Twp	Rng	Mer	Sec	Q-Q
24 S	6 E	WM	11	SE SW & SW SE

to the mouth of Crescent Creek and then into the Little Deschutes River to the mouth of the Little Deschutes River and then into the Deschutes River to Lake Billy Chinook at River Mile 120.

The instream water right shall be for a maximum of 331.52 AF, to be drawn from the State's share of Crescent Lake Reservoir, with an April 7, 1911 priority date, and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The right shall be limited to an annual maximum of 331.52 AF, from January 1 to December 31. No fee, annual or otherwise, will be assessed by TID or other parties to the State of Oregon for the 331.52 AF of stored water.

To account for channel losses, an 18 percent loss factor shall be applied between the mouth of Crescent Creek on the Little Deschutes River to Benham Falls on the Deschutes River. A 7 percent loss factor shall be applied on the Deschutes River between Benham Falls and the City of Bend. For example, if 9.18 cfs was protectable under this right at Crescent Creek Gauging Station No. 14060000, then the 7.53 cfs would be protectable at Benham Falls and 7.00 cfs would be protectable at Bend.

The State of Oregon may call for water to be released from storage during any month of the year, but the State is limited to a maximum of two changes in the amount of water being released in any month, unless the Water Resource Director and TID concur that additional changes may be made.

7. The remaining portion of the approved conserved water to be finalized is as follows:

Certificate	Priority Date	Total Conserved Water Rate / Duty	1st Incremental Finalization Reduction	2nd Incremental Finalization Reduction	3rd Incremental Finalization Reduction	Conserved Water Remaining to be Finalized
74146	August 5, 1900	1.045 cfs	0.178 cfs	0.073 cfs	0.109 cfs	0.685 cfs
	September 1900	7.329 cfs	1.242 cfs	0.509 cfs	0.764 cfs	4.814 cfs
	April 28, 1905	0.773 cfs	0.131 cfs	0.054 cfs	0.081 cfs	0.507 cfs
	May 27, 1907	0.108 cfs	0.018 cfs	0.007 cfs	0.011 cfs	0.072 cfs
	June 1, 1907	2.545 cfs	0.431 cfs	0.177 cfs	0.265 cfs	1.672 cfs
	<i>Total</i>		<i>11.800 cfs</i>	<i>2.000 cfs</i>	<i>0.820 cfs</i>	<i>1.230 cfs</i>
74148	April 7, 1911	2,732.0 AF	89.25 AF	222.41 AF	331.52 AF	2088.82 AF

Dated at Salem, Oregon this 26 day of November, 2013.

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

Mailing date: NOV 27 2013