

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

In the Matter of the Allocation of Conserved )  
Water Application CW-37 for Incremental ) CORRECTING FINAL ORDER  
Orders for Phases 5 and 6, and Certificates )  
94202 and 94857, Deschutes County )

**Authority**

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

**Applicant**

TUMALO IRRIGATION DISTRICT  
64697 COOK AVENUE  
BEND, OR 97701

**Findings of Fact**

1. This order is issued to correct the season of use errors in incremental finalization orders for Phases 5 and 6 and the accompanying instream certificates.
2. On May 20, 2005, Tumalo Irrigation District (TID) filed an application for an allocation of conserved water involving Certificate 74148. The Department assigned the application number CW-37.
3. On December 9, 2005, the Department issued Special Order Volume 67, Pages 509-517, approving the allocation of conserved water application. The order approving the project did not anticipate incremental finalization.
4. The approval order recorded in Special Order Volume 67, Pages 509 through 517, stated the instream right under Certificate 74148 shall allow the use and protection of flows from January 1 through December 31. (Ultimate Finding of Fact #H)
5. On December 2, 2020, Certificate 95177 was issued which superseded Certificate 74148. The superseding certificate confirmed the six incremental finalizations that had occurred.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

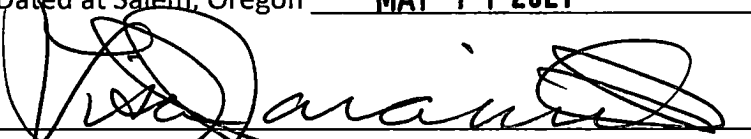
6. Subsequently, the Department discovered scrivener's errors in the seasons of use for the incremental finalization orders for the 5<sup>th</sup> and 6<sup>th</sup> increments recorded in Special Orders at Volume 112, Pages 175-181 and Volume 114, Pages 839-846, respectively. The season of use error was replicated in instream Certificates 94202 and 94578.
7. Both incremental finalization Special Orders, recorded at Volume 112, Pages 175-181 and Volume 114, Pages 839-846, contain an error in the season of use for the instream water rights created from storage under Certificate 74148/95177. The season of use should have been January 1 through December 31, as specified in the approval final order and in the finalization final orders and accompanying certificates issued for Increments 1 through 4.
8. Based on the above Findings of Fact, the Department finds the season of use for the instream rights listed in Special Order Volume 112, Pages 175-181 and Special Order Volume 114, Pages 839-846, should be corrected to January 1 through December 31.
9. Certificate 94202 and Certificate 94857, issued as a result of incremental finalizations 5 and 6, should be corrected to describe a season of use of January 1 through December 31.

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

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

1. The orders as recorded in Special Order Volume 112, Pages 175-181, and Special Order Volume 114, Pages 839-846 are corrected to a season of use of January 1 to December 31. All other provisions of the Special Orders shall remain in effect.
2. Certificate 94202 is cancelled. Superseding water right Certificate 95726 is issued to correct the season of use. Certificate 95726 is subject to all other terms and conditions of Certificate 94202 **Error! Reference source not found.**, and any related decree.
3. Certificate 94857 is cancelled. Superseding water right Certificate 95727 is issued to correct the season of use. Certificate 95727 is subject to all other terms and conditions of Certificate 94857 **Error! Reference source not found.**, and any related decree.

Dated at Salem, Oregon     MAY 14 2021    

  
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Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director

Mailing date:     MAY 17 2021