

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

In the Matter of the Allocation of Conserved	)	FINAL ORDER APPROVING THE SEVENTH
Water Application CW-37, for Certificates	)	AND FINAL INCREMENT ON COMPLETION
74146/95175 and 74148/95177,	)	AND FINALIZATION OF ALLOCATION OF
Deschutes County	)	CONSERVED WATER CW-37

**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. On May 20, 2005, Tumalo Irrigation District (TID) filed an application for an allocation of conserved water. The Department assigned the application number CW-37.
2. On December 9, 2005, the Department issued Special Order Volume 67, Pages 509-517, approving the allocation of conserved water application. The approval order gave the applicant until October 31, 2015, to file a notice of completion of the conservation measures, unless the Director granted an extension of time.
3. The entire project proposed to pipe 32,617 feet (approximately 6 miles) of the Tumalo Feed Canal. The project, when complete, was approved for the following amounts of conserved water:

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.

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 87, 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 was correct.
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. On November 26, 2013, the Department issued a final order approving the 3<sup>rd</sup> incremental finalization, recorded at Special Order Volume 91, Pages 503-535, 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	34,356.82 AF

9. On September 19, 2016, TID requested a fourth incremental finalization of the allocation of conserved water application for the next portion of the project that has been completed. Phase IV involved piping 3,400 feet of open canal. Tumalo Irrigation District requested 1.03 cfs from Certificate 74146 be finalized and proportionally protected by

priority date instream in Tumalo Creek, and 276.9 acre-feet be finalized and protected from Certificate 74148 in Crescent Lake. On October 10, 2016, the Department issued a final order approving the 4<sup>th</sup> incremental finalization, recorded at Special Order Volume 103, Pages 15-21, as described below:

Certificate	Priority Date	District Maximum Rate / Duty After 3rd Finalization	4th Incremental Finalization	District Maximum Rate / Duty After 4th Increment
74146	Aug. 5, 1900	5.463 cfs	0.090 cfs	5.373 cfs
	Sept. 1900	38.320 cfs	0.640 cfs	37.680 cfs
	Apr. 28, 1905	4.043 cfs	0.070 cfs	3.973 cfs
	May 27, 1907	0.567 cfs	0.010 cfs	0.557 cfs
	June 1, 1907	13.308 cfs	0.220 cfs	13.088 cfs
	<b>Subtotal</b>	<b>61.701 cfs</b>	<b>1.030 cfs</b>	<b>60.671 cfs</b>
74148	April 7, 1911	34,356.82 AF	276.9 AF	34,079.92 AF

10. On December 5, 2018, TID requested a fifth incremental finalization of the allocation of conserved water application for the next portion of the project that has been completed. Phase V involved piping 4,890 feet of open canal. Tumalo Irrigation District requested 1.42 cfs from Certificate 74146 be finalized and proportionally protected by priority date instream in Tumalo Creek, and 383.1 acre-feet be finalized and protected from Certificate 74148 in Crescent Lake. On December 27, 2018, the Department issued a final order approving the 5th incremental finalization, recorded at Special Order Volume 112, Pages 175-181, as described below:

Certificate	Priority Date	District Maximum Rate / Duty After 4th Finalization	5th Incremental Finalization	District Maximum Rate / Duty After 5th Increment
74146	Aug. 5, 1900	5.373 cfs	0.126 cfs	5.247 cfs
	Sept. 1900	37.680 cfs	0.882 cfs	36.798 cfs
	Apr. 28, 1905	3.973 cfs	0.093 cfs	3.880 cfs
	May 27, 1907	0.557 cfs	0.013 cfs	0.544 cfs
	June 1, 1907	13.088 cfs	0.306 cfs	12.782 cfs
	<b>Subtotal</b>	<b>60.670 cfs</b>	<b>1.420 cfs</b>	<b>59.251 cfs</b>
74148	April 7, 1911	34,079.92 AF	383.1 AF	33,696.82 AF

11. On December 17, 2019, TID requested a sixth incremental finalization of the allocation of conserved water application for Phase VB. Phase VB involved piping 8,400 feet of open canal. Tumalo Irrigation District requested 2.59 cfs from Certificate 74146 be finalized and proportionally protected by priority date instream in Tumalo Creek, and 697.48 acre-feet be finalized and protected from Certificate 74148 in Crescent Lake. On January 13, 2020, the Department issued a final order approving the 6th incremental finalization, recorded at Special Order Volume 114, Pages 839-846, as described below:

Certificate	Priority Date	District Maximum Rate / Duty After 5th Finalization	6th Incremental Finalization	District Maximum Rate / Duty After 6th Increment
74146	Aug. 5, 1900	5.247 cfs	0.229 cfs	5.018 cfs
	Sept. 1900	36.798 cfs	1.609 cfs	35.189 cfs
	Apr. 28, 1905	3.880 cfs	0.170 cfs	3.710 cfs
	May 27, 1907	0.544 cfs	0.024 cfs	0.520 cfs
	June 1, 1907	12.782 cfs	0.559 cfs	12.223 cfs
	<b>Subtotal</b>	<b>59.251 cfs</b>	2.591 cfs	<b>56.660 cfs</b>
74148	April 7, 1911	33,696.82 AF	697.48 AF	32,999.34

12. The final order Approving CW-37, recorded in 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.
13. On December 2, 2020, Certificate 95175 was issued which superseded Certificate 74146 and Certificate 95177 was issued which superseded Certificate 74148. The superseding certificates confirmed the six incremental finalizations described in Findings of Facts #4 through #11, above.
14. On April 29, 2021, TID requested a seventh and final incremental finalization of the allocation of conserved water application CW-37. The project is fully complete. TID requested 2.709 cfs from Certificate 74146/95175 be finalized and proportionally protected by priority date instream in Tumalo Creek, and 731.34 acre-feet be finalized and protected from Certificate 74148/95177 in Crescent Lake as follows:

Certificate	Priority Date	District Maximum Rate / Duty After 5th Finalization	6th Incremental Finalization	District Maximum Rate / Duty After 6th Increment
74146	Aug. 5, 1900	5.018 cfs	0.240 cfs	4.778 cfs
	Sept. 1900	35.189 cfs	1.683 cfs	33.506 cfs
	Apr. 28, 1905	3.710 cfs	0.174 cfs	3.536 cfs
	May 27, 1907	0.520 cfs	0.025 cfs	0.495 cfs
	June 1, 1907	12.223 cfs	0.587 cfs	11.636 cfs
	<b>Subtotal</b>	<b>56.660 cfs</b>	<b>2.709 cfs</b>	<b>53.951 cfs</b>
74148	April 7, 1911	32,999.34	731.34 AF	32268.00 AF

### 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 is conserved and is allocated without harming other water rights.

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

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

1. The project is complete, and no additional time is needed for finalization.
2. Certificate 74146/95175 is modified. A new superseding certificate shall be issued to Tumalo Irrigation District for the remaining portion of Certificate 95175 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 95175. The associated priority dates and rates of the remaining right following this final partial finalization shall be:

Certificate	Priority Date	District Max. Rate After Final Increment (cfs)
95175	Aug.5, 1900	4.778
	Sept. 1900	33.506
	Apr. 28, 1905	3.536
	May 27, 1907	0.495
	June 1, 1907	11.636
	<b>Total</b>	<b>53.951</b>

3. 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 approximately 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 2.709 cfs, with the following priority dates and rates:

Priority Date	Rate (cfs)
August 5, 1900	0.240
September 1900	1.683
April 28, 1905	0.174
May 27, 1907	0.025
June 1, 1907	0.587
Total	2.709

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.

4. Certificate 74148/95177 shall be modified. A new superseding certificate shall be issued to Tumalo Irrigation District for the remaining portion of Certificate 95177 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 95177. The associated priority date and duty of the remaining right shall be approximately:

Certificate	Priority Date	District Max. Volume After 5th Incremental Finalization (AF)	6th Incremental Finalization (Phase VB) Reduction (AF)	District Max. Volume After 6th Increment (AF)
74148	Apr. 7, 1911	32,999.34	731.34	32,268.00

5. 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 approximately River Mile 120.

The instream water right shall be for a maximum of 731.34 AF, to be drawn from the State's share conserved water from 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

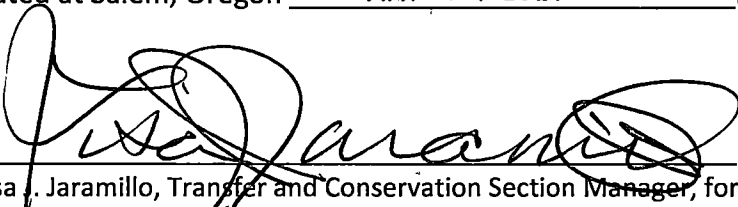
pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The right shall be limited to an annual maximum of 731.34 AF, from April 1 to November 1. No fee, annual or otherwise, will be assessed by TID or other parties to the State of Oregon for the 697.48 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.

6. The formalization of the gentlemen's agreement, described in Finding of Fact #12 above, regarding the operational flow release at Crescent Lake Reservoir will be memorialized in a separate Memorandum of Agreement.

Dated at Salem, Oregon MAY 14 2021

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

Mailing date: MAY 17 2021