

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

In the Matter of the Allocation of Conserved Water Application CW-37, for Certificates 74146 and 74148, Deschutes County) FINAL ORDER APPROVING THE SECOND PHASE OF ALLOCATION OF CONSERVED WATER APPLICATION 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 February 15, 2012 Tumalo Irrigation District (TID) requested the Department to finalize the second phase of CW-37.
2. On May 20, 2005, Tumalo Irrigation District (TID) filed an application for an allocation of conserved water. The Department assigned the application number C-37. Application C-37 is now referred to as CW-37.
3. On December 9, 2005, the Department issued Special Order Volume 67, Pages 509 through 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.
4. The entire project is to pipe 32,617 feet (approximately 6 miles) of the Tumalo Feed Canal. The project, when completed, 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 District Maximum Rate/Duty	After Total Project District 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
	Subtotal	65.751 cfs	53.951 cfs	11.800 cfs	11.800 cfs
74148	April 7, 1911	35,000 AF	32,268 AF	2,732 AF	2,732 AF

5. On March 31, 2008, TID requested finalization of Phase I of Allocation of Conserved Water Project CW-37 as follows:

Certificate	Priority Date	Total Conserved Water Rate / Duty	Phase I Finalization Request	Conserved Water Remaining to be Finalized	District Maximum Rate/Duty After Phase I Finalization
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
	Subtotal	11.800 cfs	2.000 cfs	9.800 cfs	63.751 cfs
74148	April 7, 1911	2,732 AF	89.25 AF	2,642.75 AF	34,910.75 AF

6. On February 15, 2012 TID requested finalization of Phase II of Allocation of Conserved Water Project CW-37 as follows:

Certificate	Priority Date	Total Conserved Water Rate / Duty	Phase II Finalization Request	Conserved Water Remaining to be Finalized	District Maximum Rate/Duty After Finalization of Phase II
74146	Aug. 5, 1900	1.045 cfs	0.073 cfs	0.855 cfs	5.633 cfs
	Sept. 1900	7.329 cfs	0.509 cfs	6.001 cfs	39.507 cfs
	Apr. 28, 1905	0.773 cfs	0.054 cfs	0.633 cfs	4.169 cfs
	May 27, 1907	0.108 cfs	0.008 cfs	0.089 cfs	0.584 cfs
	June 1, 1907	2.545 cfs	0.177 cfs	8.980 cfs	13.720 cfs
	Subtotal	11.800 cfs	0.820 cfs	9.800 cfs	62.931 cfs
74148	April 7, 1911	2,732 AF	212.4 AF	2,642.75 AF	34,698.350 AF

7. 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, as amended by 2003 HB 2456, 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 31, 2015, to file a notice of completion of the remaining conservation measures, unless the Director grants an extension of time.
2. When the applicant files the notice of completion, the project will be finalized, unless the applicant requests additional time to finalize the project and the Director grants an extension of time for the purposes of finalization.
3. 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 time-line.

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:

4. 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. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 74146 as described below:

Certificate	Priority Date	Reduction Due to Finalization of Phase II (cfs)
74146	August 5, 1900	0.073
	September 1900	0.509
	April 28, 1905	0.054
	May 27, 1907	0.008
	June 1, 1907	0.177
	<i>Total</i>	<i>0.820</i>

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	District Maximum Rate (cfs) After Finalization of Phase II
74146	August 5, 1900	5.572
	September 1900	39.084
	April 28, 1905	4.124
	May 27, 1907	0.577
	June 1, 1907	13.573
	<i>Total</i>	62.931

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 Tumalo Creek from the authorized point of diversion for TID at the Tumalo Feed Canal:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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 from the mouth of Tumalo Creek 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 2.000 cfs, with the following priority dates and rates:

Priority Date	Rate (cfs)
August 5, 1900	0.073 cfs
September, 1900	0.509 cfs
April 28, 1905	0.054 cfs
May 27, 1907	0.008 cfs
June 1, 1907	0.177 cfs
TOTAL:	0.820 cfs

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.

6. 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. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 74148 as described below:

Certificate	Priority Date	Reduction Due to Finalization of Phase II
74148	April 7, 1911	222.41 AF

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 74148. The associated priority date and rate of the remaining right shall be approximately:

Certificate	Priority Date	District Maximum Duty After 1 st Increment
74148	April 7, 1911	34,698.350 AF

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

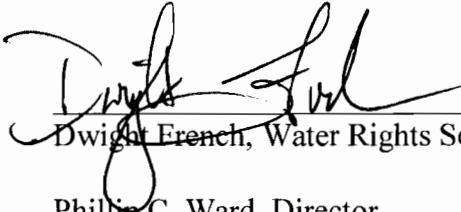
The instream water right shall be for a maximum of 89.25 AF, to be drawn from the State's share of Crescent Lake Reservoir, with an April 7, 1911 priority date, and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream 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 89.25 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 89.25 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.

Dated at Salem, Oregon this 28 day of February 2012.



Dwight French, Water Rights Services Administrator *for*

Phillip C. Ward, Director

Mailing date: FEB 28 2012