

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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-128,) PROPOSING APPROVAL OF ALLOCATION OF
Deschutes County) CONSERVED WATER CW-128

Applicant

Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97703

Agent

GSI Water Solutions
Attn: Owen McMurtrey
1600 SW Western Avenue, Suite 240
Corvallis, OR 97333

Applicable Law

Any person or group of persons holding a water use subject to transfer as defined in ORS 540.505 may submit an application for an Allocation of Conserved Water to the Water Resources Commission for a conservation project that has not yet been implemented or was implemented within five years prior to the submission of the application. ORS 537.465. Under the Allocation of Conserved Water Program, a portion of the water proposed to be conserved by an applicant may be used on additional lands, put to a different use, or be leased or sold to another user. OAR 690-018-0010. A portion of the water conserved is allocated to the state to be converted to an instream water right or to revert to the public for appropriation by other water users. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the measure as implemented and the date on which the measure was implemented; (b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented; (c) The amount of water needed to supply existing rights after implementation of the conservation measure; (d) The amount of water conserved by implementing the conservation measure; (e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470; (f) The intended use of any water allocated to the applicant and the proposed location of use; (g) The applicant's choice of priority date for the conserved water; (h) Evidence that the measure was implemented within five years prior to the date of filing the application; and (i) Any other information the commission considers necessary to evaluate the application. ORS 537.465.

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.

After determining any quantity of water needed to mitigate the effects on other water rights, 25-percent of the conserved water shall be allocated to the state and 75-percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25-percent of the funds used to finance the conservation measures comes from federal or state sources not subject to repayment. ORS 537.470(3).

If an application for the allocation of conserved water is approved, the Department shall issue orders describing the changes in the original water rights. Once the conservation project is finalized, the Department shall issue new certificates preserving the previously established-priority date of the rights to reflect the unaffected portion of the water rights and new certificates reflecting the changes for the portions of the water rights involved in the conserved water application. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 18, implements the statutes and provides the Department’s procedures and criteria for evaluating allocation of conserved water applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

Findings of Fact

1. On February 22, 2022, Tumalo Irrigation District (TID) filed an allocation of conserved water application under Certificates 95175, 95176, and 95177. The Department assigned the application number CW-128.
2. On March 8, 2005, TID adopted an Allocation of Conserved Water Policy pursuant to OAR 690-018-0025. On December 14, 2010, and October 13, 2015, the District reviewed the policy and no changes were made. On December 8, 2020, TID’s Board reviewed the Allocation of Conserved Water Policy and discussed revisions. The revisions were approved on March 9, 2021.
3. The conservation project involves piping the unlined Columbia Southern Canal with HDPE pipe, from its point of origin on the Tumalo Feed Canal to its intersection with Highway 20. Canal or lateral piping or lining is a proven technology for conserving water.
4. Application CW-128, proposes a rate reduction of approximately 0.439 cubic foot per second (cfs) and proposes to reduce the annual volume by approximately 159.96 acre-feet (AF) under Certificate 95175; a rate reduction of approximately 0.817 cfs and an annual volume reduction of 130.17 AF under Certificate 95176; and a volume reduction of 257.30 AF under Certificate 95177.

Conserved Water Description Certificate 95175							
		Before Project		After Project		Conserved Water	
		Maximum Rate	Maximum Volume	Maximum Rate	Maximum Volume	Maximum Rate	Maximum Volume*
Certificate	Priority	CFS	AF	CFS	AF	CFS	AF
95175	8/5/1900	4.486	733.68	4.447	733.68	0.039	14.23
	9/1900	31.457	7301.61	31.185	7301.61	0.272	99.27

	4/28/1905	3.320	542.88	3.291	542.88	0.029	10.58
	5/27/1907	0.465	77.76	0.461	77.76	0.004	1.46
	6/1/1907	10.924	1786.77	10.829	1786.77	0.095	34.67
Totals		50.652	10442.70	50.213	10442.70	0.439	160.22

* Conserved Water Volume is calculated: (rate x 184 days (season) x 1.983471 (conversion factor))

Conserved Water Description Certificate 95176							
		Before Project		After Project		Conserved Water	
		Maximum Rate	Maximum Volume	Maximum Rate	Maximum Volume	Maximum Rate	Maximum Volume
Certificate		CFS	AF	CFS	AF	CFS	AF
95176	Season 1	80.106	9794.76	79.916	9771.80	0.190	22.96
	Season 2	107.709	6455.13	107.522	6444.37	0.187	10.76
	Season 3	129.846	48,083.07	129.029	47,986.62	0.817	96.45
Totals		129.846	64,332.96	129.029	64,202.79	0.817	130.17

* Certificate 95176 is currently limited to a total of 129.846 cfs. After CW-128, Certificate 95176 will be limited to 129.029 cfs.

Conserved Water Description Certificate 95177				
		Before Project		Conserved Water
		Maximum Volume	Maximum Volume	Maximum Volume
Certificate		AF	AF	AF
95177	Season 1			22.31
	Season 2	30,331.13	30,073.83	14.87
	Season 3			220.12
Totals		30,331.13	30,073.83	257.30

5. The entirety of the first right (after finalization of CW-116) to be modified by CW-128 is as follows:

Certificate: 95175 in the name of TUMALO IRRIGATION DISTRICT (confirmed by Tumalo Creek Decree)

Use: IRRIGATION OF 5772.98 ACRES; 3.46 ACRES INCHOATE IRRIGATION, 23.06 ACRES-EQUIVALENT FOR POND MAINTENANCE, 2.00 ACRES-EQUIVALENT FOR INDUSTRIAL USE, AND DOMESTIC USE INCLUDING LIVESTOCK

Priority Dates: AUGUST 5, 1900, SEPTEMBER 1900, APRIL 28, 1905, MAY 27, 1907, and JUNE 1, 1907.

Rate: 50.652 CUBIC FEET PER SECOND (CFS), measured at the point of diversion from the source:

Priority Date	CFS	Acres Equivalent
8/5/1900	4.486	407.60
9/1900	31.457	4056.45
4/28/1905	3.320	301.60
5/27/1907	0.465	43.20
6/1/1907	10.924	992.65
Totals	50.652	5801.50

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-SEVENTIETH of one cubic foot per second (or its equivalent) and 1.8 acre-feet, measured at or within one-half mile of the land to be irrigated, for each acre irrigated during the irrigation season of each year.

Source: TUMALO CREEK, tributary to the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	TUMALO FEED CANAL POD 1: NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23
18 S	10 E	WM	2	NW SW	TUMALO CREEK POD 2: NORTH 14 DEGREES 2 MINUTES EAST, 1713 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 2

6. Certificate 95175 does not list a period of use; however, pursuant to Tumalo Creek Decree, the season of use is April 15 through October 15 of each year.
7. As described in Finding of Fact #4 above, the duty of water is calculated at or within ½ mile of the place of use. Because this conservation project is for a delivery system improvement, the “on-farm” rate and duty, and the total volume of water are not affected.
8. The entirety of the second right (after finalization of CW-116) to be modified by CW-128 is as follows:

Certificate: 95176 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-19628)

Use: IRRIGATION OF 1,556.25 ACRES, INCHOATE IRRIGATION OF 17.68 ACRES, 2.00 ACRES EQUIVALENT FOR INDUSTRIAL USE, 3.77 ACRES-EQUIVALENT FOR POND MAINTENANCE, SUPPLEMENTAL IRRIGATION OF 4997.38 ACRES, 3.46 ACRES FOR INCHOATE SUPPLEMENTAL IRRIGATION, 2.00 ACRES-EQUIVALENT FOR SUPPLEMENTAL INDUSTRIAL USE, 8.06 ACRES-EQUIVALENT FOR SUPPLEMENTAL POND MAINTENANCE, and STOCK AND DOMESTIC USE

Priority Date: OCTOBER 29, 1913

Rate: 129.846 CUBIC FEET PER SECOND

Limit/Duty: The use is limited to 129.846 CUBIC FEET PER SECOND (CFS) from TUMALO CREEK with any deficiency from Tumalo Creek to be made up by diverting no more than 40.0 CFS from CRATER CREEK, 34.0 CFS from LITTLE CRATER CREEK, and 1.0 CFS from THE THREE SPRING BRANCHES, or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right for existing for the same lands, is limited as shown in the table below, and shall conform to such reasonable rotation system as may be ordered by the proper state officer, provided that the quantity of water to be diverted during the non-irrigation season for stock use shall

not exceed 60.0 CFS at any time nor shall it exceed the equivalent of a continuous flow of 20.0 CFS during the non-irrigation season.

CUBIC FEET PER SECOND PER ACRE AT DIVERSION			ACRE-FEET (AC-FT) PER ACRE AT DIVERSION DURING THE SEASON
SEASON	PERIOD OF USE	RATE/ACRE	DUTY
1	April 1 through April 30 and October 1 through October 31	1/80	9.76 AC-FT/ACRE
2	May 1 through May 14 and September 15 through September 30	1/60	
3	May 15 through September 14	1/32.4	

Source: TUMALO CREEK, CRATER CREEK, LITTLE CRATER CREEK, and THREE SPRING BRANCHES, tributaries of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	TUMALO FEED CANAL POD 1: NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23
18 S	10 E	WM	2	NW SW	TUMALO CREEK POD 2: NORTH 14 DEGREES 2 MINUTES EAST, 1713 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 2
17 S	9 E	WM	31	SE SE	CRATER CREEK
17 S	9 E	WM	31	NW SE	LITTLE CRATER CREEK
17 S	9 E	WM	31	NW SE	SPRING BRANCH #1
17 S	9 E	WM	31	NE SW	SPRING BRANCH #2
18 S	9 E	WM	5	SE NW	SPRING BRANCH #3

9. Certificate 95176 does not list a season of use; however, pursuant to Deschutes River Decree, the season of use is April 1 to November 1.
10. Certificate 95176 is classified as a supplemental right for the primary acreage under Certificate 95175. Certificate 95175 was decreed under the Tumalo Creek Decree with a season of April 15 through October 15, and a duty limitation of 1.8 acre-feet per acre measured at or within ½ mile of the place of use.
11. The Deschutes River Decree allowed a season of April 1 through October 31 and duty of 9.91 acre-feet per acre (including a 45% conveyance loss) measured at the point of diversion from the source. At the time of appropriation of what is now Certificate 95176, it appears the intent was to have issued a supplemental right to make up a deficiency in the season of use during the early and late periods (i.e., 4/1 to 4/14 and 10/16 to 11/1 of each year) and the rate and duty for the primary lands covered under Certificate 95175 issued under the Tumalo Decree.

12. The portion of Certificate 95176 identified as supplemental to Certificate 95175 (being 5,010.9 acres) has always been used as a “primary” supply of water from 4/1 to 4/14 and 10/16 to 11/1 of each year. This finding does not establish any precedent regarding the season of use of any other supplemental water right established by the Deschutes River Decree or permit.
13. The entirety of the third right (after finalization of CW-116) to be modified by CW-128 is as follows:

Certificate: 95177 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-624)

Use: SUPPLEMENTAL USE ON 7,329.23 ACRES OF IRRIGATION, 21.14 ACRES OF INCHOATE IRRIGATION, 4.0 ACRES-EQUIVALENT OF INDUSTRIAL USE, AND 26.83 ACRES-EQUIVALENT OF POND MAINTENANCE.

Priority Date: APRIL 7, 1911

Rate: 30,331,13 ACRE-FEET

Limit/Duty: The use is limited to 30,331,13 ACRE-FEET STORED WATER ONLY or its equivalent in case of rotation measured at the point of diversion from the source. The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of the following amounts measured at the point of diversion from the Deschutes River for each acre irrigated during the periods indicated during the irrigation season of each year.

SEASON	PERIOD OF USE	ACRE-FEET PER ACRE	TOTAL DIVERSION PER SEASON
1	April 1 through April 30 and October 1 through October 31	0.75	30,331.13 ACRE-FEET
2	May 1 through May 14 and September 15 through September 30	0.50	
3	May 15 through September 14	7.40	

Source: CRESCENT LAKE RESERVOIR, a tributary of CRESCENT CREEK (Constructed under Permit R-102)

Authorized Points of Diversion:

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

14. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of the application.

16. The Applicant requested 100% of the conserved water be allocated to the State as follows:

Conserved Water Allocation Certificate 95175									
Priority	State's Portion			Applicant's Portion			Conserved Water		
	Percent	Max. Rate (CFS)	Max. Volume (AF)*	Percent	Max. Rate (CFS)	Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)*
8/5/1900	100%	0.039	14.23	0%	0	0	100%	0.039	14.23
9/1900	100%	0.272	99.27	0%	0	0	100%	0.272	99.27
4/28/1905	100%	0.029	10.58	0%	0	0	100%	0.029	10.58
5/27/1907	100%	0.004	1.46	0%	0	0	100%	0.004	1.46
6/1/1907	100%	0.095	34.67	0%	0	0	100%	0.095	34.67
Totals		0.439	160.22					0.439	160.22

Conserved Water Allocation Certificate 95176*										
Certificate	Season	State's Portion			Applicant's Portion			Conserved Water		
		Percent	Max. Rate (CFS)	Max. Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)
95176	1	100%	0.190	22.96	0%	0	0	100%	0.190	22.96
	2	100%	0.187	10.76	0%	0	0	100%	0.187	10.76
	3	100%	0.817	96.45	0%	0	0	100%	0.817	96.45
Totals			0.817	130.17					0.817	130.17

* Certificate 95176 will be limited to a total of 129.029 cfs.

Conserved Water Allocation Certificate 95177							
Certificate	Season	State's Portion		Applicant's Portion		Conserved Water	
		Percent	Max. Volume (AF)	Percent	Max. Volume (AF)	Percent	Max. Volume (AF)
95177	1	100%	22.31	0%	0	100%	22.31
	2	100%	14.87	0%	0	100%	14.87
	3	100%	220.12	0%	0	100%	220.12
Total			257.30				257.30

17. The Applicant did not propose any out-of-stream water uses.
18. The Applicant requested the priority dates for any conserved water be the same as the originating rights.
19. The Applicant received state and federal funds for approximately 95 percent of the projected cost of this conservation project.
20. Pursuant to OAR 690-005-0045, the Applicant provided notification of its intent to create instream water rights to the City of LaPine, City of Bend Planning Department, Deschutes County Community Development, Klamath County Community Development, Jefferson County Community Development and the Confederated Tribes of the Warm Springs Indians as required under OAR 690-0018-0040(22).

21. The construction of the conservation measures is projected to begin by September 1, 2022. The Applicant anticipates completion of construction by April 1, 2024. The Applicant asserts it has attempted to identify and resolve the concerns of water right holders in the area, governmental entities and other organizations.
22. The Applicant proposed that any instream water right created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
23. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificates 95175 and 95176 from the common authorized point of diversion (Tumalo Feed Canal) on Tumalo Creek to the mouth at its confluence with the Deschutes River, and then into the Deschutes River to Lake Billy Chinook at approximately River Mile (RM) 120.0.
24. The rate and volume to be protected will be determined by the local Watermaster so the volume for each season is maximized but is not exceeded. In carrying out these duties, prior to April 1, in coordination with TID, the Watermaster will document the flows to be protected instream under Certificate 95176 during Season # 1 (April 1 through April 30, October 1 through October 31) and Season # 2 (May 1 through May 14; September 15 through September 30). Between May 1 and May 15, in coordination with TID, the Watermaster will document the flows to be protected instream under Certificate 95176 during Season # 3 (May 15 through September 14). To the extent possible, flows will be consistent with the expected shape of the hydrograph for Tumalo Creek. The Watermaster's annual documentation of protected flows under Certificate 95176 shall be available for review upon request.
25. The Applicant requested the Department protect the water allocated under Certificate 95177 in Crescent Creek from the dam on Crescent Lake Reservoir to the mouth of Crescent Creek at the confluence with the Little Deschutes River, and then into the Little Deschutes River to the mouth at the confluence with the Deschutes River, and then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.
26. The application meets the requirements of OAR 690-018-0040.
27. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) to ascertain whether the proposed instream flows are necessary to support instream flow uses. ODFW concluded the proposed instream water rights would enhance flows necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat during the irrigation season.
28. The Applicant proposed a deadline for submitting the Notice of Completion of April 1, 2024. The Applicant proposed to submit a Request for Finalization on or before April 1, 2025.
29. Notice of the proposed conservation project was published in the Department's weekly notice on May 10, 2022, and in *The Bulletin* newspaper on May 7 and 14, 2022, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

Allocation of Conserved Water Review Criteria [OAR 690-018-0050]

30. The proposed allocation of conserved water will result in reduced diversions allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #4).
31. On March 30, 2022, the District #11 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would not harm other water rights; therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).
32. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #20), OAR 690-018-0050(4)(c).
33. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates and volumes for the existing uses involved in Allocation of Conserved Water Application CW-128 under Certificates 95175, 95176, and 95177 are as follows:

Certificate 95175			
		Rate	Volume
Certificate	Priority	CFS	AF
95175	8/5/1900	4.447	733.68
	9/1900	31.185	7301.61
	4/28/1905	3.291	542.88
	5/27/1907	0.461	77.76
	6/1/1907	10.829	1786.77
Totals		50.213	10442.70

Certificate 95176*			
		Rate	Volume
Certificate	Season	CFS	AF
95176	1	79.916	9771.80
	2	107.522	6444.37
	3	129.029	47,986.62
Totals		129.029	64,202.79

* Certificate 95176 is limited to a total of 129.029 cfs.

Certificate 95177	
Certificate	Volume
	AF
95177	30,073.83

(Finding of Fact #4).

34. Certificate 95176 contained a rate limitation of 129.846 cfs and a duty limitation of 9.76 AF/acre after the finalization of CW-116. Because the overall volume is being reduced under this conserved water application, a corresponding reduction to the duty per acre must occur as well. The duty per acre after this conserved water application will be 9.74 AF/acre (64,202.79/6590.6).

35. The Applicant requested 100% of the conserved water be allocated to the State. Pursuant to OAR 690-018-0050(4)(e), the rates and volumes allocated to the State for instream uses are as follows:

Conserved Water Allocation Certificate 95175		
Priority	Max. Rate	Max. Volume
	CFS	AF
8/5/1900	0.039	14.23
9/1900	0.272	99.27
4/28/1905	0.029	10.58
5/27/1907	0.004	1.46
6/1/1907	0.095	34.67
Totals	0.439	160.22

Conserved Water Allocation Certificate 95176		
Season	Max. Rate	Max. Volume
	CFS	AF
1	0.190	22.96
2	0.187	10.76
3	0.817	96.45
Totals	0.817	130.17

Conserved Water Allocation Certificate 95177		
Certificate	Season	Max. Volume
		AF
95177	1	22.31
	2	14.87
	3	220.12
Totals		257.30

(Finding of Fact #16).

36. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream rights created will support public benefits. The proposed instream water rights will help to meet the flows identified as necessary by the current instream water rights with an earlier priority date. (Finding of Fact #27).
37. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the Applicant does not need to be adjusted because the Applicant proposed 100% of the conserved water to be allocated to the state. The Applicant received approximately 95% of non-reimbursable state and federal funds. (Findings of Fact #16 and #19).
38. The new instream water right created under Certificate 95175 will be protected in Tumalo Creek from the authorized point of diversion (Tumalo Feed Canal) as described in Finding of Fact #5, to the mouth at the confluence with the Deschutes River, and then into the Deschutes River (approximately RM 160.5) to Lake Billy Chinook at approximately River Mile 120.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

39. The instream right under Certificate 95175 for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values shall allow the use and protection of flows as follows:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Max. Rate (CFS)	Max. Volume (AF)	Season of Use
8/5/1900	0.039	14.23	April 15 through October 15
9/1900	0.272	99.27	
4/28/1905	0.029	10.58	
5/27/1907	0.004	1.46	
6/1/1907	0.095	34.67	
Totals	0.439	160.22	

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River, then into the Deschutes River (approximately RM 160.5) to Lake Billy Chinook at approximately RM 120.0.

The instream right 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.

40. The new instream water right created under Certificate 95176 will be protected in Tumalo Creek from the authorized point of diversion (Tumalo Feed Canal) as described in Finding of Fact #8, to the mouth at the confluence with the Deschutes River, and then into the Deschutes River (approximately RM 160.5) to Lake Billy Chinook at approximately River Mile 120.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8). The instream right under Certificate 95176 for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values shall allow the use and protection of flows as follows:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Season	Period of Use	Max. Rate	Max. Volume
			CFS	AF
10/29/1913	1	April 1 through April 30 and October 1 through October 31	0.190	22.96
	2	May 1 through May 14 and September 15 through September 30	0.187	10.76
	3	May 15 through September 14	0.817	96.45
Totals			0.817	130.17

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River (approximately RM 160.5), then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

The rate and volume to be protected will be determined by the local Watermaster so the volume for each season is maximized but is not exceeded. The Watermaster's annual documentation of protected flows under Certificate 95176 shall be available for review upon request.

41. The new instream water right created under Certificate 95177 will be protected in Crescent Creek from the authorized points of diversion on Crescent Lake Reservoir to the mouth of Crescent Creek at the confluence with the Little Deschutes River (approximately RM 55.0), and then into the Little Deschutes River to the mouth at the confluence with the Deschutes River (approximately RM 192.5), and then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

Certificate 95177 has three separate seasons and acre-feet per acre duty associated with the right along with an annual volume limitation. However, the source of water under this certificate is exclusively from storage with the authorized use as multi-purpose. Therefore, the Department finds no injury or enlargement will occur by changing the character of use to instream uses and the associated season of use to year-round provided the maximum annual volume limitation is not exceeded including the individual seasonal limitations as outlined in Finding of Fact #35. Seasonal volume limitations do not apply to release of water outside the irrigation season. The volume to be protected will be determined by the local Watermaster to ensure the seasonal and annual volumes are not exceeded.

To account for channel losses, an 18 percent loss factor shall be used between the Crescent Creek Gauging Station No. 14060000 and the Benham Falls Gauging Station No. 14064500 on the Deschutes River. A 7 percent loss factor shall be used on the Deschutes River between Benham Falls and the City of Bend. For example, if 9.18 cfs was protected under this right at Crescent Creek Gauging Station No. 14064500, then the 7.53 cfs would be protected at Benham Falls and 7.00 cfs would be protected at Bend.

42. The instream right under Certificate 95177 for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values shall provide for a protection of flows as follows from January 1 through December 31:

Source: CRESCENT LAKE RESERVOIR, a tributary of CRESCENT CREEK (Constructed under Permit R-102)

From the authorized points of diversion for TID at the Crescent Lake Reservoir on Crescent Creek:

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

To the mouth of Crescent Creek at the confluence with the Little Deschutes River (approximately RM 55.0), and then into the Little Deschutes River to the mouth at the confluence with the Deschutes River (approximately RM 192.5), and then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Maximum Annual and Seasonal Volume Limitations:

Priority Date	Season	Period of Use	Volume (AF)
April 7, 1911	1	April 1 through April 30 and October 1 through October 31	22.31
	2	May 1 through May 14 and September 15 through September 30	14.87
	3	May 15 through September 14	220.12
Total Annual Volume			257.30

The volume to be protected throughout the year, including any volume to be released outside the irrigation season, will be determined by the local Watermaster to ensure the seasonal and annual volumes are not exceeded.

The instream right 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 257.30 AF. No fee, annual or otherwise, will be assessed by TID or other parties to the State of Oregon for the 257.30 AF of stored water.

This instream flow shall be additive to the 5.0 cfs flow release required at Crescent Creek Gauging Station Number 1406000, as specified in the Final Order Approving Allocation of Conserved Water CW-37, recorded at Special Order Volume 67, pp. 509 – 517, at p. 512. Additionally, a memorandum of agreement was approved on June 1, 2021, recorded at Special Order Volume 120, Page 773, and superseded and corrected on August 24, 2022, recorded at Special Order Volume 125, Page 635.

43. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
44. The protection of flows within the proposed reaches is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the riverbed downstream from the point of diversion under Certificates 95175 and 95176. There are known areas

of natural loss of stream flow to the riverbed downstream from the point of diversion for Certificate 95177; however, they have been addressed in the loss factors identified in Finding of Fact #42; and

d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reaches of the instream water rights.

OAR 690-077-0015(8).

45. The combination of instream rights for the proposed reaches on Tumalo Creek, Crescent Creek, the Little Deschutes River, and the Deschutes River does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
46. The existing instream water rights on Tumalo Creek, Crescent Creek, the Little Deschutes River, and the Deschutes River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process) within the proposed reaches are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this allocation will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.
47. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water rights established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).
48. There are no proposed areas within which the conserved water is to be used for out-of-stream uses. (Finding of Fact #17). OAR 690-018-0050(4)(h).
49. The deadline for submitting a Notice of Completion is April 1, 2024. The deadline for submitting a Request for Finalization is April 1, 2025. (Finding of Fact #28). OAR 690-018-0050(4)(i).
50. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #31). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-128, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. If protests are not filed pursuant to OAR 690-018-0050(6), the conserved water application will be approved.

If Allocation of Conserved Water Application CW-128 is approved, the Order Approving will include the following:

1. The proposed change will result in a reduced diversion for the uses allowed under the original water rights. Findings of Fact #4 and #33.
2. The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #31 and #50.
3. The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #20 and #32.
4. The changes proposed in CW-128 are approved.
5. The quantities of water conserved and allocated are as follows:

Conserved Water Allocation Certificate 95175									
Priority	State's Portion			Applicant's Portion			Conserved Water		
	Percent	Max. Rate (CFS)	Max. Volume (AF)*	Percent	Max. Rate (CFS)	Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)*
8/5/1900	100%	0.039	14.23	0%	0	0	100%	0.039	14.23
9/1900	100%	0.272	99.27	0%	0	0	100%	0.272	99.27
4/28/1905	100%	0.029	10.58	0%	0	0	100%	0.029	10.58
5/27/1907	100%	0.004	1.46	0%	0	0	100%	0.004	1.46
6/1/1907	100%	0.095	34.67	0%	0	0	100%	0.095	34.67
Totals		0.439	160.22					0.439	160.22

Conserved Water Allocation Certificate 95176*										
Certificate	Season	State's Portion			Applicant's Portion			Conserved Water		
		Percent	Max. Rate (CFS)	Max. Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)	Percent	Max. Rate (CFS)	Max. Volume (AF)
95176	1	100%	0.190	22.96	0%	0	0	100%	0.190	22.96
	2	100%	0.187	10.76	0%	0	0	100%	0.187	10.76
	3	100%	0.817	96.45	0%	0	0	100%	0.817	96.45
Totals			0.817	130.17					0.817	130.17

* Certificate 95176 will be limited to a total of 129.029 cfs.

Conserved Water Allocation Certificate 95177							
Certificate	Season	State's Portion		Applicant's Portion		Conserved Water	
		Percent	Max. Volume (AF)	Percent	Max. Volume (AF)	Percent	Max. Volume (AF)
95177	1	100%	22.31	0%	0	100%	22.31
	2	100%	14.87	0%	0	100%	14.87
	3	100%	220.12	0%	0	100%	220.12
Total			257.30				257.30

Findings of Fact #16 and #35.

6. The right to the use of the water is restricted to beneficial use at the places of use described and is subject to all other conditions and limitations contained in Certificate 95175, 95176, 95177, and any related decrees.

Upon filing the Notice of Completion:

7. Water Right Certificate 95175 is modified by the rate only and is as follows:

Certificate: 95175 in the name of TUMALO IRRIGATION DISTRICT (confirmed by Tumalo Creek Decree)

Use: IRRIGATION OF 5772.98 ACRES; 3.46 ACRES INCHOATE IRRIGATION, 23.06 ACRES-EQUIVALENT FOR POND USE, 2.0 ACRES-EQUIVALENT FOR INDUSTRIAL USE, AND DOMESTIC USE INCLUDING LIVESTOCK

Priority Dates: AUGUST 5, 1900, SEPTEMBER 1900, APRIL 28, 1905, MAY 27, 1907, and JUNE 1, 1907.

Rate: 50.213 CUBIC FEET PER SECOND (CFS), measured at the point of diversion from the source:

Priority Date	CFS	Acres Equivalent
8/5/1900	4.447	407.60
9/1900	31.185	4056.45
4/28/1905	3.291	301.60
5/27/1907	0.461	43.20
6/1/1907	10.829	992.65
Totals	50.213	5801.50

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-SEVENTIETH of one cubic foot per second (or its equivalent) and 1.8 acre-feet, measured at or within one-half mile of the land to be irrigated, for each acre irrigated during the irrigation season of each year.

Source: TUMALO CREEK, tributary to the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	TUMALO FEED CANAL POD 1: NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23
18 S	10 E	WM	2	NW SW	TUMALO CREEK POD 2: NORTH 14 DEGREES 2 MINUTES EAST, 1713 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 2

8. Water Right Certificate 95176 is modified by the rate and duty only and is as follows:

Certificate: 95176 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-19628)

Use: IRRIGATION OF 1,556.25 ACRES, INCHOATE IRRIGATION OF 17.68 ACRES, 2.00 ACRES EQUIVALENT FOR INDUSTRIAL USE, 3.77 ACRES-EQUIVALENT FOR POND MAINTENANCE, SUPPLEMENTAL IRRIGATION OF 4997.38 ACRES, 3.46 ACRES FOR INCHOATE SUPPLEMENTAL IRRIGATION,

2.00 ACRES-EQUIVALENT FOR SUPPLEMENTAL INDUSTRIAL USE, 8.06 ACRES-EQUIVALENT FOR SUPPLEMENTAL POND MAINTENANCE, and STOCK AND DOMESTIC USE

Priority Date: OCTOBER 29, 1913

Rate: 129.029 CUBIC FEET PER SECOND

Limit/Duty: The use is limited to 129.029 CUBIC FEET PER SECOND (CFS) from TUMALO CREEK with any deficiency from Tumalo Creek to be made up by diverting no more than 40.0 CFS from CRATER CREEK, 34.0 CFS from LITTLE CRATER CREEK, and 1.0 CFS from THE THREE SPRING BRANCHES, or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right for existing for the same lands, is limited as shown in the table below, and shall conform to such reasonable rotation system as may be ordered by the proper state officer, provided that the quantity of water to be diverted during the non-irrigation season for stock use shall not exceed 60.0 CFS at any time nor shall it exceed the equivalent of a continuous flow of 20.0 CFS during the non-irrigation season.

CUBIC FEET PER SECOND PER ACRE AT DIVERSION			ACRE-FEET (AC-FT) PER ACRE AT DIVERSION DURING THE SEASON
SEASON	PERIOD OF USE	RATE/ACRE	DUTY
1	April 1 through April 30 and October 1 through October 31	1/80	9.74 AC-FT/ACRE
2	May 1 through May 14 and September 15 through September 30	1/60	
3	May 15 through September 14	1/32.4	

Source: TUMALO CREEK, CRATER CREEK, LITTLE CRATER CREEK, and THREE SPRING BRANCHES, tributaries of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	23	SW NE	TUMALO FEED CANAL POD 1: NORTH 70 DEGREES 21 MINUTES WEST, 1550 FEET FROM THE EAST 1/4 CORNER OF SECTION 23
18 S	10 E	WM	2	NW SW	TUMALO CREEK POD 2: NORTH 14 DEGREES 2 MINUTES EAST, 1713 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 2
17 S	9 E	WM	31	SE SE	CRATER CREEK
17 S	9 E	WM	31	NW SE	LITTLE CRATER CREEK
17 S	9 E	WM	31	NW SE	SPRING BRANCH #1
17 S	9 E	WM	31	NE SW	SPRING BRANCH #2
18 S	9 E	WM	5	SE NW	SPRING BRANCH #3

9. Water Right Certificate 95177 is modified by the duty only and is as follows:

Certificate: 95177 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-624)
Use: SUPPLEMENTAL USE ON 7,329.23 ACRES OF IRRIGATION, 21.14 ACRES OF INCHOATE IRRIGATION, 4.0 ACRES-EQUIVALENT OF INDUSTRIAL USE, AND 26.83 ACRES-EQUIVALENT OF POND MAINTENANCE.
Priority Date: APRIL 7, 1911
Rate: 30,073.83 ACRE-FEET
Limit/Duty: The use is limited to 30,073.83 ACRE-FEET STORED WATER ONLY or its equivalent in case of rotation measured at the point of diversion from the source. The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of the following amounts measured at the point of diversion from the Deschutes River for each acre irrigated during the periods indicated during the irrigation season of each year.

SEASON	PERIOD OF USE	ACRE-FEET PER ACRE	TOTAL DIVERSION PER SEASON
1	April 1 through April 30 and October 1 through October 31	0.75	30,073.83 ACRE-FEET
2	May 1 through May 14 and September 15 through September 30	0.50	
3	May 15 through September 14	7.40	

Source: CRESCENT LAKE RESERVOIR, a tributary of CRESCENT CREEK (Constructed under Permit R-102)

Authorized Points of Diversion:

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

10. Water use measurement conditions:

- a. Before the use of the Applicant's portion of conserved water, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
- b. The water user shall maintain the meters or measuring devices in good working order.
- c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

11. All conserved water shall be managed instream for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values shall provide for a protection of flows until a Request for Finalization is submitted as follows:

Certificate 95175:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Max. Rate (CFS)	Max. Volume (AF)	Season of Use
8/5/1900	0.039	14.23	April 15 through October 15
9/1900	0.272	99.27	
4/28/1905	0.029	10.58	
5/27/1907	0.004	1.46	
6/1/1907	0.095	34.67	
Totals	0.439	160.22	

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River (approximately RM 160.5), then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Certificate 95176:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Season	Period of Use	Max. Rate	Max. Volume
			CFS	AF
10/29/1913	1	April 1 through April 30 and October 1 through October 31	0.190	22.96
	2	May 1 through May 14 and September 15 through September 30	0.187	10.76
	3	May 15 through September 14	0.817	96.45
Totals			0.817	130.17

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River (approximately RM 160.5), then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

The rate and volume to be protected will be determined by the local Watermaster so the volume for each season is maximized but is not exceeded. The Watermaster's annual documentation of protected flows under Certificate 95176 shall be available for review upon request.

Certificate 95177:

Source: CRESCENT LAKE RESERVOIR, a tributary of CRESCENT CREEK (Constructed under Permit R-102)

From the authorized points of diversion for TID at the Crescent Lake Reservoir on Crescent Creek from January 1 through December 31:

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

To the mouth of Crescent Creek at the confluence with the Little Deschutes River (approximately RM 55.0), and then into the Little Deschutes River to the mouth at the confluence with the Deschutes River (approximately RM 192.5), and then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Maximum Annual and Seasonal volume Limitations:

Priority Date	Season	Period of Use	Volume (AF)
April 7, 1911	1	April 1 through April 30 and October 1 through October 31	22.31
	2	May 1 through May 14 and September 15 through September 30	14.87
	3	May 15 through September 14	220.12
	Total		257.30

The volume to be protected throughout the year will be determined by the local Watermaster to ensure the seasonal and annual volumes are not exceeded.

To account for channel losses, an 18 percent loss factor shall be used between the Crescent Creek Gauging Station No. 14060000 and the Benham Falls Gauging Station No. 14064500 on the Deschutes River. A 7 percent loss factor shall be used on the Deschutes River between Benham Falls and the City of Bend. For example, if 9.18 cfs was protected under this right at Crescent Creek Gauging Station No. 14064500, then the 7.53 cfs would be protected at Benham Falls and 7.00 cfs would be protected at Bend.

This instream flow shall be additive to the 5.0 cfs flow release required at Crescent Creek Gauging Station Number 1406000, as specified in the Final Order Approving Allocation of Conserved Water CW-37, recorded at Special Order Volume 67, pp. 509 – 517, at p. 512. Additionally, a memorandum of agreement was approved on June 1, 2021, recorded at Special Order Volume 120, Page 773, and superseded and corrected on August 24, 2022, recorded at Special Order Volume 125, Page 635.

Upon Filing the Request for Finalization:

12. The project is complete, and no additional time is needed for finalization.
13. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values as follows:

From Certificate 95175:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Max. Rate (CFS)	Max. Volume (AF)	Season of Use
8/5/1900	0.039	14.23	April 15 through October 15
9/1900	0.272	99.27	
4/28/1905	0.029	10.58	
5/27/1907	0.004	1.46	
6/1/1907	0.095	34.67	
Totals	0.439	160.22	

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River (approximately RM 160.5), then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this allocation shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified in an order approving a new instream water right under these statutes.

14. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values as follows:

From Certificate 95176:

Source: Tumalo Creek, tributary to Deschutes River

Priority	Season	Period of Use	Max. Rate	Max. Volume
			CFS	AF
10/29/1913	1	April 1 through April 30 and October 1 through October 31	0.190	22.96
	2	May 1 through May 14 and September 15 through September 30	0.187	10.76
	3	May 15 through September 14	0.817	96.45
Totals			0.817	130.17

From the authorized point of diversion:

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

To: the mouth at RM 0.0, at the confluence with the Deschutes River (approximately RM 160.5), then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this allocation shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified in an order approving a new instream water right under these statutes.

15. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values as follows:

From Certificate 95177:

Source: CRESCENT LAKE RESERVOIR, a tributary of CRESCENT CREEK (Constructed under Permit R-102)

From the authorized points of diversion for TID at the Crescent Lake Reservoir on Crescent Creek from January 1 through December 31:

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

To the mouth of Crescent Creek at the confluence with the Little Deschutes River (approximately RM 55.0), and then into the Little Deschutes River to the mouth at the confluence with the Deschutes River (approximately RM 192.5), and then into the Deschutes River to Lake Billy Chinook at approximately RM 120.0.

Maximum Annual and Seasonal Volume Limitations:

Priority Date	Season	Period of Use	Volume (AF)
April 7, 1911	1	April 1 through April 30 and October 1 through October 31	22.31
	2	May 1 through May 14 and September 15 through September 30	14.87
	3	May 15 through September 14	220.12
	Total		257.30

The volume to be protected throughout the year will be determined by the local Watermaster to ensure the seasonal and annual volumes are not exceeded.

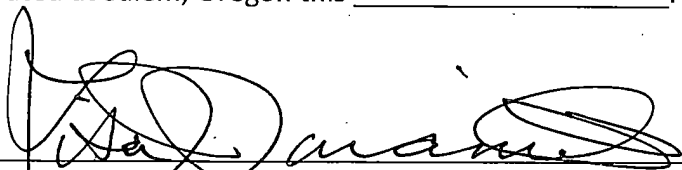
To account for channel losses, an 18 percent loss factor shall be used between the Crescent Creek Gauging Station No. 14060000 and the Benham Falls Gauging Station No. 14064500 on the Deschutes River. A 7 percent loss factor shall be used on the Deschutes River between Benham Falls and the City of Bend. For example, if 9.18 cfs was protected under this right at Crescent Creek Gauging Station No. 14064500, then the 7.53 cfs would be protected at Benham Falls and 7.00 cfs would be protected at Bend.

This instream flow shall be additive to the 5.0 cfs flow release required at Crescent Creek Gauging Station Number 1406000, as specified in the Final Order Approving Allocation of Conserved Water CW-37, recorded at Special Order Volume 67, pp. 509 – 517, at p. 512. Additionally, a memorandum of agreement was approved on June 1, 2021, recorded at Special Order Volume 120, Page 773, and superseded and corrected on August 24, 2022, recorded at Special Order Volume 125, Page 635.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this allocation shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified in an order approving a new instream water right under these statutes.

Dated at Salem, Oregon this DEC 19 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing Date: DEC 20 2022

NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415. The Commission shall notify the applicant and any other person requesting notice, of the action the Commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the Commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant to OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent

with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).

If a protest is withdrawn, or any party to a hearing notifies the Department or the administrative law judge that the party will not appear, or if the party fails to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that parties have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

Any party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Protests should be addressed to the attention of Allocation of Conserved Water Program, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.