

OREGON



WATER RESOURCES
DEPARTMENT

WSWC 2021 Spring Meeting Legal Committee March 25, 2021

ALLOCATION OF CONSERVED WATER

Presented By: Tom Byler, Director

Voluntary program that provides benefits to the water user and environment through efficiencies.

Background

- **Enacted in 1987 under ORS 537.455 to ORS 537.500 as a way to extend current water supplies by encouraging users to conserve water**
 - Only allowed conserver to use or sell water that was “irretrievably lost”
 - 75% given to conserver as new right with priority date of one minute after original right
 - Through rulemaking (OAR 690 Div. 18), Water Resources Commission could increase or decrease the percentage of water dedicated to the user or instream flow
 - Would cause no injury to other users
 - Only two applications submitted

Background Cont'd

- **1993 & 2003 Amendments**
 - Changed how conserved water is calculated: smaller of face value of certificate or maximum diverted using existing facilities less amount needed after implementation of conservation measures.
 - Removed Commission's discretion to change 75/25 allocation.
 - Minimum of 25% to conserver unless conserver requests less
 - Allocation based on non-reimbursable state and federal funds – no longer strictly 75/25
 - Allowed for offset of conserved water for potential injury.

The Allocation

$$\text{Before Project Water Right} - \text{After Project Need for Original Use} = \text{Conserved Water}$$

- The conserved water is allocated based on the 75%/25% split, unless more than 25% of the project funds come from state or federal non-reimbursable sources
- If more than 25% of the project costs come from public non-reimbursable sources, then the allocation is adjusted proportionate to the % of the public funds (60% public funds = 60% to the State for an instream water right)

ORS 537.470(3)

Conserved Water

State's portion of
conserved water



Instream water
right certificate

Applicant's portion
of conserved water



- Use on new lands
- Lease instream for future out-of-stream use
- Lease to a neighbor

ORS 537.470(3)

Example – Piping Project



Irrigation District

- Piped 2.5 miles of open unlined canal
- Eliminated 19.6 cfs, 8319.4 AF of seepage loss
- 19.6 cfs (100%) of conserved water converted to instream water right

Example – On Farm Improvement



Source of Water: South Umpqua River

- Converted from sprinkler to drip irrigation on 70.1 acres
- Conserved 0.27 cfs / 53.3 AF
- No public funds involved
- 0.20 cfs / 40.0 AF to applicant (75%), 0.07 cfs / 13.3 AF to state (25%)
- Applicant applied 0.20 cfs / 40.0 AF to 22.8 acres of new lands
- State instream water right for 0.07 cfs / 13.3 AF

By the Numbers

- **122 applications since inception (1987)**
 - First 29 years averaged 2.9 per year
 - Within last 5 years averaged 7.4 per year
 - Irrigation Districts comprise 43% of applications and 55% of the conserved water
 - Other entities comprise 57% of applications and 45% of the conserved water
- **Total of 390 cfs of conserved water**
 - 220 cfs protected instream
 - 170 cfs for use on new lands

Strengths

- Provides incentives to conserve
- Benefit to both environment and economy
- Maximum use of scarce resource

Weaknesses

- Statutes focus mostly on surface water
- No way to protect State's portion of groundwater
- No discretion to adjust allocation percentages (75%/25%)

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