



Criteria for Evaluating Applications For the Allocation of Conserved Water

The standards and procedures used by the Water Resources Department in evaluating applications for the allocation of conserved water are described in Oregon Revised Statutes (ORS) Chapter 537 and in Oregon Administrative Rules (OAR) Chapter 690, Division 18.

This is a summary prepared by the Water Resources Department, of criteria and procedures that are generally applicable to applications for the allocation of conserved water. The summary is general, and may not specifically address every applicant's fact situation. The summary is intended as general guidance for the applicants, and not as a substitute for reference to applicable statutes and rules.

In reviewing an application for the allocation of conserved water under ORS 537.455 to 537.500 and 540.510, the Department will consider the following criteria:

- Compliance with statewide planning goals [OAR 690-005-0030]
- Compliance with acknowledged land use comprehensive plans [OAR 690-005-0035]
- Completeness of application [OAR 690-018-0040]
- Reduced diversion for the uses need under the original water right [OAR 690-018-0050]
- Harm to existing water rights of record [OAR 690-018-0050]
- For existing conservation measures: Evidence that the existing conservation measure was not implemented more than 5 years prior to submitting the conserved water application [OAR 690-018-0014]

Procedures and Review of Applications For the Allocation of Conserved Water

The Water Resources Department processes an application for the allocation of conserved water using the following procedure:

1. Application:

Applicant submits complete application.

2. Public Notice:

After receipt of a complete application, the Director provides public notice by publication in a newspaper having general circulation in the area in which the water rights are located. Notice is provided for a period of at least two weeks with not less than one publication each week. The Director also notifies individuals and agencies on the Department's weekly mailing list, irrigation districts in the area, and other interested parties. The public comment period is no less than 20 days from the date of the last publication in the newspaper.

3. Department Review and Determination:

The Department reviews the application and any comments received. The Department also reviews the application to determine the quantity of conserved water, if any, necessary to mitigate the effects on other water rights. The Department then allocates 25 percent of the remaining water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation of water to the state. If more than 25 percent of the funds used to finance the conservation measures are from federal or state sources and is not subject to repayment, the Water Resources Commission allocates to the state a percentage equal to the percentage of public funds used and allocates the remaining percentage to the applicant. The applicant shall receive at least 25 percent of the conserved water unless the applicant proposes to receive less.

4. Notice of Allocation:

The Department provides notice of the allocation of conserved water (Preliminary Determination) to the applicant and to each person who commented on the application for allocation of conserved water. Within 60 days of the mailing of the Preliminary Determination, any person may protest the proposed allocation. The Department works with the applicant and any protestant to determine if the issues can be resolved through mutually agreeable conditions, or by modifying the application.

5. Final Order:

If no protests are received or if the protests are resolved between the parties and the Department, the Director issues an order approving the allocation, subject to completion of the project. In the event of an unresolved protest, the Water Resources Commission reviews the application and prepares a final order approving or denying the application. The Commission may also elect to schedule a contested case hearing. The hearing would result in a final order approving or denying the allocation of conserved water.

6. Project Completion:

After the application for allocation of conserved water has been approved, the applicant begins construction and completion of the project. Once the conservation project is complete, the applicant files a notice of completion. If the applicant has requested time to test the project to ensure that adequate water has been allocated for the original use, the Department issues an order providing for the use of water at a reduced rate for the original use and protecting the conserved water instream. If the applicant has not requested a test period or is satisfied that the water allocated to the original use is adequate, the project proceeds to finalization.

7. Finalization:

After the request for finalization is received, the Department will issue an order allocating the conserved water for use by the water right holder and for the required instream use. In addition, the Department will issue a superseding certificate for the original water right to reflect the reduced quantity of water now being used following the conservation measures. The priority date stays the same. The Department will also issue a certificate for the instream flow. The conserved water allocated for the instream flow and new uses will have the same priority date or a priority date of one minute after the original water right