



ALLOCATION OF CONSERVED WATER FREQUENTLY ASKED QUESTIONS



The allocation of conserved water program is a voluntary activity that provides benefits to both water right holders and instream needs. The law (ORS 537.455) allows a water user who conserves water to use a portion of the conserved water on additional lands, lease or sell the water, or dedicate the water for instream use.

OREGON WATER RESOURCES DEPARTMENT
725 Summer Street NE, Suite A
Salem, OR 97301
503-986-0881

In the absence of this law, the user would not be entitled to use conserved water to meet new needs; instead, the water would simply return to the stream where it would be available for the next downstream appropriator. In exchange for granting the user the right to “spread” a portion of the conserved water to new uses, the law allocates a portion to the state for instream use.

Specifically, after mitigating the effects on any other water rights, the Water Resources Commission allocates 25% of the conserved water to the state (state’s portion) and 75% to the applicant (applicant’s portion), unless more than 25% of the project costs come from federal or state non-reimbursable sources or the applicant proposes a higher allocation to the state.

The water right for the original use is reissued to reflect the reduced quantity of water being used with the improved technology and the priority date stays the same. The remaining (conserved) water is then split between the state and the applicant and an instream certificate for the state’s portion of conserved water is issued. The applicant’s portion of conserved water is temporarily reserved instream for future out-of-stream use, applied to new lands, or dedicated instream for a new instream water right in the name of the State of Oregon.

How do I apply for the conserved water allocation?

- Application forms are available on our [website](#).
- A video presentation describing the process is also available at the above website.

What type of conservation projects may qualify for this program?

- For irrigation rights there are two broad categories.
 1. Distribution projects, such as canal or ditch piping or lining, and
 2. On-farm efficiency projects, such as converting from flood irrigation to sprinkler or drip irrigation.
- Projects for other beneficial uses, such as industrial use are encouraged.

Can I design my own project?

- Yes. The project design must clearly show how conservation will be achieved. In some cases this may require the professional services of a person specializing in irrigation design. Applicants are encouraged to work with agencies that specialize in irrigation system design such as the Natural Resources Conservation Service. In addition to technical assistance, they may also provide cost-share assistance for irrigation system upgrades.

What types of water rights are eligible for the allocation of conserved water program?

- A water use subject to transfer, whether a decreed or certificated right, or an approved transfer for which proof of completion of the change has been accepted and approved by the Department.

Will my original water right be cancelled when I file an application to allocate conserved water?

- No. The original water right certificate is cancelled only after the applicant reports that the project is complete. Once the project is completed, the original certificate will be cancelled and a new certificate will be issued, at a reduced rate, for use on the original acreage.

What is the difference between “project completion” and “request that the application be finalized?”

- Essentially, *project completion* means that on-the-ground work has been accomplished and the system improvements have been implemented on the original acreage.
- Once the applicant has determined how the system will operate and is comfortable with the amount of water needed by using the improved system to meet the original use, a request for finalization is submitted.
This request prompts the department to finalize the allocation application. Water cannot be used for new out-of-stream uses until finalization has occurred and new certificates have been issued.
- The request for finalization may occur up to five years after project completion. This five-year period was established to allow an applicant time to test the system in order to ensure that it is performing as planned and the amount of water proposed in the application is adequate. The applicant may request a change in the allocation formula if the amount of water requested is insufficient to satisfy the beneficial use.

Can I get an extension if I cannot complete the project as originally scheduled?

- A formal extension is required. The only firm deadline is the five-year period (testing phase) between when the project is completed and when the request for finalization must be made. This five-year period cannot be extended.

If for financial or other reasons I decide not to complete the project, can I go back to my old system with the water right at the original face value?

- Yes. There are two opportunities for an applicant to halt the allocation of conserved water application.
 1. If you choose to discontinue the project prior to completing it, simply notify the Department so that the order authorizing the project can be rescinded. Up until that point, the original water has not been altered so the quantity and use allowed under the original certificate will remain intact.
 2. If the project is not performing as designed and the beneficial use of water in the original certificate cannot occur with the amount of water remaining after conservation, an applicant may request to reinstate the original amounts granted under the certificate prior to the deadline for the Request for Finalization.

The applicant will need to show to the satisfaction of the Director that the project is not performing as designed and the beneficial use described in the right cannot occur. If approved, a new certificate for the acreage and original priority date will be issued.

May I still apply for an allocation of conserved water if my conservation project is already completed?

- Yes. However, conserved water may not be allocated if the application is filed more than five (5) years after the conservation measures were implemented.

How does the Department determine the amount of “conserved water?”

- The amount of conserved water is the difference between the amount stated on the existing water right or system capacity, whichever is smaller, and the amount of water required to satisfy the existing beneficial use after implementation of the conservation project

Why is water needed to mitigate against harm and how is harm determined?

- Water needed to *mitigate* against harm is the portion of the conserved water needed to ensure that other water right holders are not injured as a result of conservation measures. Injury occurs when an action harms or diminishes an existing allowable use. This case-by-case determination will be made by the department when the application is being reviewed. The Department will consider other water rights of record within the project area, existing studies, and comments provided by other water right holders and the general public when making this determination.

Will I have to measure my water use during the construction of my project and when the project is complete?

- It is likely that the Department will require that water use is measured and reported to ensure that conservation measures are performing as designed.

How is the conserved water divided up?

- Conserved water may be divided up three ways: 1) water needed to mitigate for harm for other existing water rights, if necessary; 2) the state's portion, and 3) the applicant's portion.
- The standard allocation for the remainder of the conserved water is 75% to the applicant and 25% to the state, typically in the form of an instream water right. These percentages will change if public funding was used to complete the project. The 25% allocated to the state may go as high as 75% depending on the amount of non-repayable public funds used.

The applicant may also choose to dedicate all of the conserved water, minus any water needed for mitigation, to an instream right.

What priority date does the conserved water receive?

- The conserved water can either have the same priority date as the original right or the priority date of the original right, plus one minute. It is up to the applicant to decide which priority date they want to establish for the conserved water. The applicant cannot assign one priority date to the out-of-stream use and a different one to the instream use.

Once the allocation has been finalized, how long do I have to put my portion of the conserved water to a beneficial use?

- After the project has been finalized, the applicant must decide how they want the conserved water to be managed:
- If an applicant is not prepared to use the water for another out-of-stream use, the applicant may elect to temporarily reserve the water instream by completing a 60-Day Notice of Use or Disposition. To access the form please [Click here](#).
- If an applicant is prepared to use the water and the project has been finalized, the applicant may use the conserved water for another use provided:
 - The areas where the water will be used fall within the areas designated on the application;
 - The applicant completes and submits a 60-Day Notice of Use or Disposition, a completed land use form, and provides a sufficient map.
 - The proposed new use does not enlarge the right.

If my original water right is for irrigation, can I use the conserved water for another use?

- Yes, as long as the new use is identified as a beneficial use in the Basin Program. Keep in mind that surface water rights for irrigation will always be limited to the irrigation season identified in the original right. This is true for both the instream right and the new out-of-stream right created by the allocation of conserved water. For example, if an applicant sold their portion of the conserved water

to a municipality, the municipality could only use the water during the irrigation season spelled out in the original right.

Typically, the allocation of conserved water process will satisfy transfer requirements so an additional transfer application may not be necessary.

Can I submit an application if I am within an Irrigation District boundary?

- Yes. However, the applicant must submit evidence that the Irrigation District approves of the application at the time of submittal.

What happens if another party protests my project based on potential injury to their water right?

- The purpose for allowing individuals to comment is to help the Department ensure that an injury to another water right is not likely to occur as a result of the action. There are several opportunities for individuals to comment on or protest a conserved water application. The Department will consider issues raised in the comment period as it reviews the application. If protests are received, the Department may work with the applicant and any protesting party to develop mutually agreeable conditions.

If the issues cannot be resolved, the application will be forwarded to the Water Resources Commission for review. If the Commission finds that the application will not injure other water right holders, the Commission will direct the Department to issue an order approving the application. If the Commission finds that the application would injure other water right holders, or the application is inconsistent with agency rules, the Commission may direct the Department to hold a contested case hearing on the application.

For more Information

See your local [Watermaster](#) or call the Salem office, 503-986-0881, to learn more about the program and how you can begin putting an application together.

Authority

[ORS 537.455 to 537.500](#)

[OAR Chapter 690, Division 18](#)