

House Bill 2922

Sponsored by Representative SCHAUFLEER (at the request of Oregon Agricultural Alliance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes five-year limitation on allocation of conserved water following implementation of conservation measure. Imposes pricing floor on conserved water allocated for municipal use.

A BILL FOR AN ACT

1
2 Relating to the allocation of conserved water; creating new provisions; and amending ORS 537.465,
3 537.470 and 537.490.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 537.465 is amended to read:

6 537.465. (1) Any person or group of persons holding a water use subject to transfer as defined
7 in ORS 540.505 may submit an application to the Water Resources Commission for approval of an
8 allocation of conserved water for a measure that:

9 (a) The person or group of persons intends to implement; or

10 (b) Was implemented by the person or group of persons [*within five years*] prior to the sub-
11 mission of the application.

12 (2) An application submitted under subsection (1)(a) of this section shall include:

13 (a) A description of the proposed measures;

14 (b) A description of the existing diversion facilities and an estimate of the amount of water that
15 can be diverted at the facilities;

16 (c) The amount of water that will be needed to supply existing rights after implementation of
17 the conservation measures;

18 (d) The amount of conserved water expected from implementation of the conservation measures;

19 (e) The proposed allocation and use of the conserved water if different from the allocation
20 specified in ORS 537.470;

21 (f) The intended use of any water allocated to the applicant;

22 (g) The applicant's choice of priority date for the conserved water; and

23 (h) Any other information the commission considers necessary to evaluate the effectiveness of
24 the proposal.

25 (3) An application under subsection (1)(b) of this section shall include:

26 (a) A description of the measure as implemented and the date on which the measure was im-
27 plemented;

28 (b) A description of the diversion facilities before the conservation measure was implemented
29 and the amount of water that was diverted at the facilities before the conservation measure was
30 implemented;

31 (c) The amount of water needed to supply existing rights after implementation of the conserva-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 tion measure;

2 (d) The amount of water conserved by implementing the conservation measure;

3 (e) The proposed allocation and use of the conserved water if different from the allocation
4 specified in ORS 537.470;

5 (f) The intended use of any water allocated to the applicant;

6 (g) The applicant's choice of priority date for the conserved water;

7 *[(h) Evidence that the measure was implemented within five years prior to the date of filing the*
8 *application; and]*

9 **(h) A report of the measurement of water use, recorded monthly for a one-year period,**
10 **that demonstrates the effectiveness of the conservation measures taken; and**

11 (i) Any other information the commission considers necessary to evaluate the application.

12 (4) If a person proposes conservation measures within the boundaries of an irrigation district
13 organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at
14 the time the person submits the application, the person also must submit evidence that the district
15 has approved the conservation application.

16 **SECTION 2.** ORS 537.470 is amended to read:

17 537.470. (1) Upon receipt of an application for allocation of conserved water under ORS 537.465,
18 the Water Resources Commission shall give notice of receipt of the application in accordance with
19 ORS 540.520 (5).

20 (2) The commission shall allocate conserved water as provided in subsection (3) of this section
21 and approve modifications of water rights as provided in subsection (6) of this section. *[The com-*
22 *mission may not allocate conserved water pursuant to an application under ORS 537.465 if the appli-*
23 *cation is filed more than five years after the conservation measure was implemented.]*

24 (3) After determining the quantity of conserved water, if any, required to mitigate the effects
25 on other water rights, the commission shall allocate 25 percent of the remaining conserved water
26 to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the
27 state or more than 25 percent of the funds used to finance the conservation measures comes from
28 federal or state public sources. If more than 25 percent of the funds used to finance the conservation
29 measures comes from federal or state public sources and is not subject to repayment, the commission
30 shall allocate to the state a percentage equal to the percentage of public funds used to finance the
31 conservation measures and allocate to the applicant a percentage equal to the percentage of other
32 funds used to finance the conservation measures. If the commission determines that the water allo-
33 cated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332
34 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the
35 state is not necessary to support in-stream flow purposes, it shall revert to the public for appropri-
36 ation by the next user in priority. In no event, however, shall the applicant receive less than 25
37 percent of the remaining conserved water unless the applicant proposes a higher allocation to the
38 state.

39 (4) The commission shall notify the applicant and any other person requesting notice, of the
40 action the commission intends to take under subsection (3) of this section. Any person objecting to
41 the proposed allocation may file a protest requesting a contested case hearing before the commis-
42 sion.

43 (5) The modification of water rights under an allocation of conserved water may not require a
44 separate request for transfer under ORS 540.520.

45 (6) After the commission completes the allocation of conserved water under subsection (3) of this

1 section, the commission shall issue orders for proposed new certificates covering the changes in the
 2 original water rights. Once the conservation project is completed, separate new certificates pre-
 3 serving the previously established priority of rights shall be issued to cover the unaffected portion
 4 of the water rights and separate new certificates indicating the priority of rights as set forth in ORS
 5 537.485 shall be issued to cover the right to the use of the allocated water.

6 **SECTION 3.** ORS 537.490 is amended to read:

7 537.490. (1) Any person or agency allocated conserved water under ORS 537.470 may reserve the
 8 water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any
 9 person or agency to whom conserved water is allocated shall notify the commission of the dispen-
 10 sation of the right to the use of conserved water. The notice shall include:

11 (a) The name and address of the person buying or leasing the right to the use of conserved
 12 water;

13 (b) The use to which the conserved water is to be put; and

14 (c) The terms of any agreement between the appropriator and the person using the conserved
 15 water.

16 (2) Notwithstanding any other provision of law, a person who holds a water right permit or
 17 certificate having a subsequent priority to a certificate issued under ORS 537.470 may not acquire
 18 a vested right to any water or return flow of water that results from either the lease of the right
 19 to the use of conserved water or the reservation of conserved water in stream for future use under
 20 subsection (1) of this section.

21 (3) Any right to the use of conserved water sold under subsection (1) of this section:

22 (a) Shall become appurtenant to the premises upon which the purchaser uses the water; and

23 (b) Shall be subject to the provisions of ORS 540.505 to 540.585 and 540.610 to 540.650.

24 **(4) If conserved water is used for municipal use, the price of the right to use the water**
 25 **may not be less than the average cost of water used for municipal use as determined by the**
 26 **Public Utility Commission rate case orders during the one-year period preceding the date on**
 27 **which the application for allocation was filed.**

28 ~~[(4)]~~ (5) When the commission receives notice of the sale of the right to the use of conserved
 29 water under subsection (1) of this section, the commission shall issue to the purchaser a new water
 30 right certificate covering the right to the use of conserved water that was sold. The certificate shall
 31 indicate the priority of the water right according to the provisions of ORS 537.485.

32 **SECTION 4. (1) The amendments to ORS 537.465 and 537.470 by sections 1 and 2 of this**
 33 **2009 Act apply to conserved water allocation applications filed with the Water Resources**
 34 **Commission on or after the effective date of this 2009 Act. However, for any allocation ap-**
 35 **plication filed less than one year after the effective date of this 2009 Act, an applicant may**
 36 **elect to submit evidence that the conservation measure was implemented less than five years**
 37 **before the application date in lieu of submitting the report of recorded measurement of water**
 38 **use described in ORS 537.465 (3)(h).**

39 **(2) The amendments to ORS 537.490 by section 3 of this 2009 Act apply to agreements that**
 40 **an appropriator and a person using conserved water enter into on or after the effective date**
 41 **of this 2009 Act.**