

Overview of Water Conservation Laws, Policies, and Programs in Other Western States

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Overview

- **Topic:** State laws providing incentives to conserve water, especially used in irrigation, to make possible additional uses
- 1. **The basics:** Water rights, beneficial use, consumptive use, salvaged water, conserved water, irrigation efficiency
- 2. **A look at four states:**
 - California
 - Montana
 - Oregon
 - Washington
- 3. **Summary**

The basics

- **Water right:** right to divert/withdraw, in priority, specified maximum rate of flow of water for beneficial use
- **Beneficial use:** use of that amount of water reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made.

The basics (cont'd)

- **Consumptive use:** that portion of the water diverted under a water right that does not return to the source because of beneficial use (evaporation; evapotranspiration; out of basin)
- **Salvaged water:** diverted water historically “wasted” that becomes available for beneficial use
- **Conserved water:** diverted water historically beneficially used that becomes available for additional or new use

Basics-cont'd

- **Irrigation efficiency:** the overall performance of an irrigation system in delivering water to the crop root zone of an individual farm or field
- Typically described as the percentage of the water diverted or withdrawn that is stored in the root zone or otherwise beneficially used to satisfy crop requirements

California approach

- “Water conservation” “the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right.” Water Code § 1011.
- Expressly tolls the forfeiture provision and allows for resumption of original use
- Includes land fallowing or crop rotation
- Authorizes the sale, lease, exchange, or other transfer of “water ... the use of which has ceased or been reduced as the result of water conservation efforts....”

Montana Water Salvage

- "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods. Mont. Code Ann. 85-2-102 (16)(definitions).
- Change of use: "(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant."
Mont. Code Ann. 85-2-402 (2).

Oregon Conserved Water Statute

- “Conservation”: “the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.” (underline added)
Oregon Revised Statutes 537.455 (1)

Oregon

- “Conserved water”: that amount of water that results from conservation measures, measured as the difference between:
 - (a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
 - (b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.

Oregon

- Application to Water Resources Commission for approval of an allocation of conserved water
- “After determining the quantity of conserved water, if any, required to mitigate effects on other water rights, the commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant,”

Oregon

- Same priority as existing right or one minute later
- May reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water
- Water right for conserved water has same legal status as any other water right

Washington Trust Water Rights Program

- Use state funding to generate a “net water savings” that becomes the basis of a trust water right (a separate, state-held water right)
- “net water savings”-“the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that would otherwise have been available to existing uses.” Revised Code of Washington § 90.42

Summary

1. Limited opportunities for satisfying new consumptive uses through improvements to irrigation efficiency (benefits to stream and juniors)
2. Preference for fallowing to obtain the full historical consumptive use portion
3. Provision for long-term leasing, with ability to resume irrigation use
4. Consider water bank to facilitate