

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

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

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

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

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

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

(4) If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. [1987 c.264 §3; 1993 c.641 §3; 1995 c.274 §10; 2003 c.93 §3]

**Note:** See note under 537.455.

**537.470 Allocation of conserved water by commission; criteria; percentage to state; certificates showing change in original water right.** (1) Upon receipt of an application for allocation of conserved water under ORS 537.465, the Water Resources Commission shall give notice of receipt of the application in accordance with ORS 540.520 (5).

(2) The commission shall allocate conserved water as provided in subsection (3) of this section and approve modifications of water rights as provided in subsection (6) of this section. The commission may not allocate conserved water pursuant to an application under ORS 537.465 if the application is filed more than five years after the conservation measure was implemented.

(3) After determining the quantity of conserved water, if any, required to mitigate the 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, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance

the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

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

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

(6) After the commission completes the allocation of conserved water under subsection (3) of this section, the commission shall issue orders for proposed new certificates covering the changes in the original water rights. Once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights as set forth in ORS 537.485 shall be issued to cover the right to the use of the allocated water. [1987 c.264 §4; 1989 c.62 §1; 1993 c.641 §4; 1995 c.274 §13; 1999 c.664 §7; 2003 c.93 §4]

**Note:** See note under 537.455.

**537.475** [1987 c.264 §5; repealed by 1993 c.641 §13]

**537.480 Rules; criteria for evaluating allocation and determining mitigation required.** The Water Resources Commission shall adopt rules and standards necessary to carry out the provisions of ORS 537.455 to 537.500. The rules may include formulas or other criteria for evaluating the effects of allocation of water on existing rights and for determining whether, and to what extent, mitigation shall be required. [1987 c.264 §6; 1993 c.641 §5]

**Note:** See note under 537.455.

**537.485 Priority of right to use conserved water; choice of priority.** (1) Notwithstanding any other provision of ORS chapter 536, 537, 538, 539, 540, 541, 542 or 543, the priority of any right to the use of conserved water, including an in-stream water right, under an application submitted and approved by the Water Resources Commission under ORS 537.465 and 537.470 shall be