# Overview: Western States Conserved & Salvaged Water Programs

Dari Duval, graduate research assistant and Bonnie Colby, Professor, University of Arizona October 30, 2013

# **California Conserved Water Program**

Statute: California Water Code § 1011

# Summary

"Water users can retain rights to water that are "saved" as a result of conservation efforts. This water can be sold, leased, or otherwise transferred subject to provisions to protect other water users and fish and wildlife. The program targets agricultural users by specifying fallowing and crop rotations as included conservation methods."<sup>1</sup> Land conversion from agricultural to non-agricultural use does not count as conservation.

# **Effectiveness of Program**

"The impact of section 1011 on water consumption and conservation is difficult to quantify. Most water transfers authorized through section 1011 "involve conservation efforts that apparently would have occurred for other reasons. [However,] [s]ection 1011 probably has served to reduce resistance to water conservation." Not all water saved can be transferred, as there are provisions to protect other water users, as well as fish and wildlife for injury and adverse effects."<sup>3</sup> "By 2002, SWRCB had approved seven short-term transfers and no long-term transfers. Unfortunately, due to funding and staffing issues, the SWRCB has not accumulated recent data on conserved water projects and transfers." <sup>2</sup>

#### **Quantifying Conserved Water**

Water transfers in California apply to "consumptive use". For conservation resulting from cropland idling and altering crop rotations, ETAW values are used to quantify expected water available for transfer and use the previous five years of crop history in order to establish the baseline consumptive use.

# **Montana Salvaged Water Statute**

Statute: Mont. Code Ann. § 85-2-419

Summary

<sup>&</sup>lt;sup>1</sup> Doherty, Todd & Rod Smith, "Water Transfers in the West: Projects, Trends, and Leading Practices in Voluntary Water Trading," Western Governors' Association, December 2012. Retrieved 10/25/2013 from <a href="https://www.westgov.org/policies/doc\_download/1657-water-transfers-in-the-west">www.westgov.org/policies/doc\_download/1657-water-transfers-in-the-west</a>.
<sup>2</sup> Behnampout, Leila C. "Reforming a Western Institution: How Expanding the Productivity of Water Rights Could

<sup>&</sup>lt;sup>2</sup> Behnampout, Leila C. "Reforming a Western Institution: How Expanding the Productivity of Water Rights Could Lessen Our Water Woes," Environmental Law, Vol. 41: 201, 2011.

"Montana's salvaged water statute allows right holders who conserve water to retain the right to the water for beneficial use. Efforts to use salvaged water for purposes and in places other than those associated with the underlying water right must be approved through the state's change application process. The statute also allows for the sale and lease of salvaged water subject to certain conditions."<sup>3</sup>

# **Effectiveness of Program**

"Accessible data on the success of salvaged water efforts is limited. A representative from the state water rights division stated that the statute has had limited use, and that many water rights holders in the state have not taken advantage of the statute to improve irrigation efficiency".<sup>3</sup>

# **Quantifying Conserved Water**

Per water marketing application form, applicant must submit a plan for measuring the amount of water to be diverted from the source and the amount of water to be marketed.<sup>4</sup>

# **New Mexico Abandonment and Forfeiture Policy**

Statute: N.M. Stat. §§ 72-5-18C, N.M. Stat. §§ 72-5-28(G)

#### Summary

"The New Mexico Code states: "Periods of nonuse when water rights are acquired and placed in a State Engineer-approved water conservation program...shall not be computed as part of the...forfeiture period."<sup>3</sup>

#### **Effectiveness of Program**

Few water rights holders have taken advantage of this policy, due in part to the lack of "push" factors encouraging conservation through incentives, as well as the definition and enforcement of wasteful uses.<sup>5</sup>

# **Quantifying Conserved Water**

No information found

# **Oregon Allocation of Conserved Water Program**

Statute: Or. Rev. Stat. §§ 537.455-.500 and Or. Rev. Stat. §§ 537.455-.500

#### Summary

"The program allows users that conserve water to use up to 75% of the conserved water on additional lands, or lease or sell the water, or dedicate the savings to instream flows. 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 needed to satisfy the existing beneficial use stated in the original water right."<sup>3</sup>

<sup>&</sup>lt;sup>3</sup> Bell, Craig and Jeff Taylor, "Water Laws and Policies for a Sustainable Future: A Western States' Perspective," Report Prepared by the Staff of the Western States Water Council, June, 2008. Retrieved 10/25/2013 from <a href="http://www.westgov.org/wswc/laws%20&%20policies%20report%20(final%20with%20cover">http://www.westgov.org/wswc/laws%20&%20policies%20report%20(final%20with%20cover).pdf</a>.

<sup>&</sup>lt;sup>4</sup> Retrieved 10/28/2013 from <u>http://www.dnrc.mt.gov/wrd/water\_rts/wr\_general\_info/wrforms/600-606\_wma.pdf</u>

<sup>&</sup>lt;sup>5</sup> Brookshire, David, Hoshin Gupta, & Olen Paul Matthews. (2012) "Water Policy in New Mexico: Addressing the Challenge of an Uncertain Future" New York: RFF Press.

# **Effectiveness of Program**

It took a few years for the program to get off the ground, especially as Oregon Water Trust and Deschutes River Conservancy were in their infancy. Between 1996 and 1999 the number of transfer applications rose gradually, and since 2000 has been around 4 to 8 applications per year, with a spike in 2003 linked to activity in the Umatilla Basin. <sup>6</sup>

The language of the original law passed in 1987 was overly restrictive, defining conservation as "the reduction of the amount of water consumed or irretrievably lost in the process of satisfying 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." This required the application to prove that no other user could have appropriated the water conserved. With this language in place, only two applications were received and neither was approved. The language defining conservation was later amended to "the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either by improving technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures" and conserved water as "as 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."<sup>2</sup> With these changes in place, the program started to grow after a few years lag time.

# **Quantifying Conserved Water**

According to the language of the revised statute, conserved water is measured as "the reduction of the amount of water diverted to satisfy an existing beneficial use . . ."

Per the program's application form, applicants are asked to take the maximum rate and annual volume of water that may be diverted as stated on the water right, as well as the maximum amount of water that can be diverted using pre-conservation project facilities (the system capacity), and from the smaller of those two numbers, subtract the amount of water that will continue to be needed after implementing the conservation measure.<sup>7</sup>

# Washington Trust Water Rights Program

Statute: Washington State Water Code § 90.42.030

#### Summary

"The program authorizes the state to provide funding assistance for water conservation projects. In consideration for this assistance, funding recipients convey all or a portion of the resulting net water savings for deposit in the program. The state and recipients determine the amount of water to deposit to the program through negotiation."<sup>3</sup> Established in 1992, the program allows "net water saved" to be acquired by the state given that a state or federal agency is providing the funding for the conservation

<sup>&</sup>lt;sup>6</sup> Aylward, Bruce, "Restoring Water Conservation Savings to Oregon Rivers: A Review of Oregon's Conserved Water Statute: Report to the National Fish and Wildlife Foundation," July 2008. Retrieved 10/25/2013 from <u>http://www.ecosystemeconomics.com/Resources\_files/Aylward%20(2008)%20Oregon's%20Conserved%20Water%2</u> <u>OProgram.pdf</u>.

<sup>&</sup>lt;sup>7</sup> Retrieved 10/28/2013 from http://www.oregon.gov/owrd/PUBS/docs/forms/Conserved\_Water\_App\_2\_21\_13.pdf

project. Net water savings is defined as 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 other water rights existing at the time that a water conservation project is undertaken."<sup>2</sup>

# **Effectiveness of Program**

"Since 2001, WSDE has approved forty projects, resulting in nearly 12,000 acre-feet of saved water, all of which has been transferred to the state to hold in trust as instream flows."<sup>3</sup> The program has been used for a number of projects in the Yakima River Basin, oftentimes in conjunction with the Bureau of Reclamation. The program is viewed as being effective, citing the importance of state and federal funding for conservation projects.<sup>3</sup>

# **Quantifying Conserved Water**

Per the application form, applications are asked to identify the current purposes of water use (i.e., irrigation, stockwater, domestic, etc.) and the season of use (i.e., continuous, year-round, April – September, etc.), as well as the existing quantities of water use as authorized under the water right, and then identify any proposed purpose of use and the water quantity intended for use of the water right while in the trust water right program.<sup>8</sup>

<sup>&</sup>lt;sup>8</sup> Retrieved 10/28/2013 from https://fortress.wa.gov/ecy/publications/publications/ecy07054.pdf