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Instream Transfers & Water Use Agreements
CLE Panel: Water Supply in a Time of Drought: Update & Tools
Caylin Barter, Director, Flow Restoration Program
October 23, 2015

Overview


- Introduction to The Freshwater Trust
- Focus on Flow Restoration Tools
 - Leasing / Transfers
 - Other water use agreements



We're changing the course of conservation.

Who we are and where we work

- Mission: To preserve and restore our freshwater ecosystems
- Nonprofit 501(c)(3)
- Formed by 2008 merger of Oregon Trout (1983) and Oregon Water Trust (1993)
- Headquartered in downtown Portland, offices in Ashland, Boise, and Sacramento, project managers in Union, Joseph, and John Day
- On-the-ground restoration work in Oregon, consulting work throughout United States

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What we do

Restoration	Ecosystem Services	Science & Analytics
<p>Flow & Habitat: Improve Function and Resilience</p>	<p>Water Quality Trading: Compliance through Green Infrastructure</p>	<p>Measure & Model: Quantifying Ecological Uplift</p>
		


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Flow Restoration Work

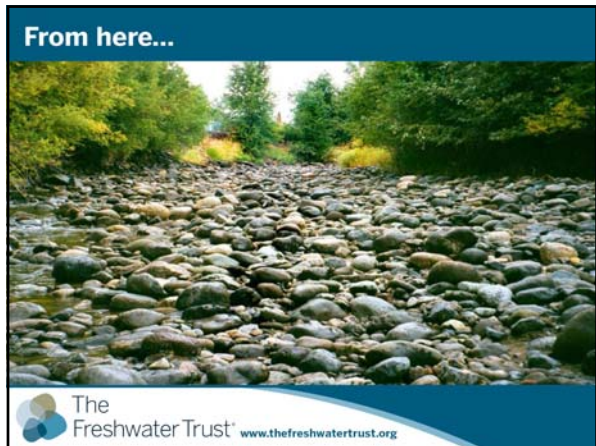
Mission	Vision	Methods
<p>Restore flow to ecologically significant rivers while maintaining the productivity of working lands.</p>	<p>Develop communities that value, measure, and manage water to balance economic and ecosystem health.</p>	<p>Use voluntary market transactions to incentivize entry into instream leases, transfers, and water-use agreements.</p>
		

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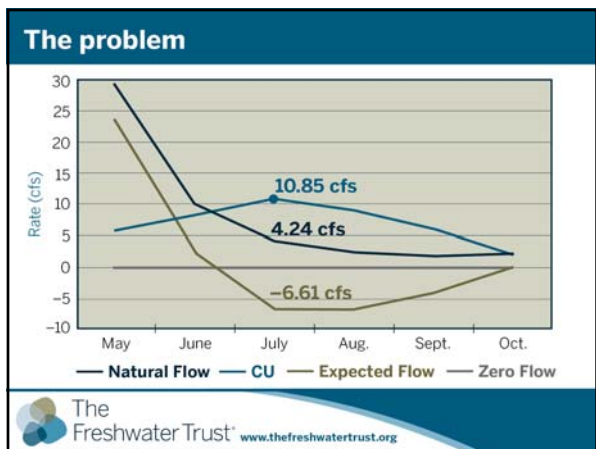
Columbia Basin Water Transactions Program (CBWTP)

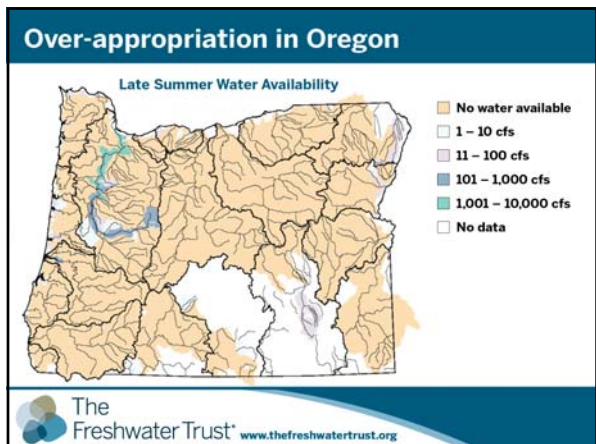
<ul style="list-style-type: none"> Started in 2003 Administered by NFWF with funding from BPA to promote salmon recovery 11 Qualified Local Entities negotiate deals with water-right holders on flow-limited streams 	
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Voluntary water transactions to enhance flow

Deal types:

- Leases – ORS 537
- Transfers – ORS 540
- Water use changes

Prioritization:

- Target species
- Low flows
- Funding
- Opportunity

Deal terms:

- Short-term
- Long-term
- Permanent
- Putting water instream cannot cause injury to other users

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Instream leasing

→ Convert an existing water right to instream use for specified period

→ Retain priority date

→ Avoid forfeiture

ORS 537.332 to 537.360
OAR Ch 690, Division 077

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Leasing a Water Right Instream

- Any person can lease an existing water right for beneficial use instream
- Temporary: one to five years
- Full Season or Split Season
- Protects against forfeiture, can call water from junior users under prior appropriation
- Must pass OWRD injury review

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OWRD is Awesome at Processing Instream Leases

Summary of Results

State	Number of Legal Elements	Number of Total Transactions	Average Review Time
Arizona	3	0	N/A
California	9	34 (15 long term/permanent; 15 short term; 4 emergency)	1.3 years (long term); 4 months (short term)
Colorado	7	34 (7 temporary)	6.5 years (long term)
Idaho	5	30	3.8 months (state water bank)
Montana	8	50 (1 pending)	1.5-2 years
Nevada	5	57 (18 temporary)	
New Mexico	5	1	
Oregon	7	112 transfers; 1920 leases	2.8 years (transfers); 30-40 days (leases)
Texas	8	Approximately 20	1 year
Utah	6	8	7-2 years
Washington	8	1118 (586 temporary donations)	6 months-6 years
Wyoming	4	1	1 year

Source: Water in the West, *Environmental Water Rights Transfers: A Review of State Laws* (2015)

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Split Season Instream Lease: Growth v. Hydrograph

Plant Growth vs. Split Season Instream Leasing

- Cool Season Plant Growth (Hay/Alfalfa)
- Typical Stream Flow (Hydrograph)

Plant growth plateaus

Stream flow drops

Time period when instream leasing can be more profitable than irrigating crops

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Split Season Instream Lease: Crop \$ v. Instream \$

Crop Value (before and After July) vs. Split Season Instream Lease Value

Before July
1 acre foot of water
2,400 pounds of hay
\$58 crop value per acre foot
Peak time to irrigate crops for maximum growth

After July
1 acre foot of water
400 pounds of hay
\$10 crop value per acre foot
Crop value goes down, and instream value goes up during the time fish need it most

Split Season Instream Lease value per acre foot
\$35

After July, it takes 6x the water to grow the same 2.5 tons of hay as it does before July, and nets only 1/6 the profit per acre foot of water applied.

* Data/information derived from operations in Union and Grant Counties and prices paid by The Freshwater Trust for instream leasing.

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Split Season Instream Lease: the 2024 sunset...

- SB 199 (2013)
 - As introduced, SB 199 would have simply removed the 2014 sunset on split-season leasing that was added in 2007
 - As passed, SB 199 extended sunset to 2024 and added a 10-year cap for split-season leasing of any given water right
- Stay tuned...

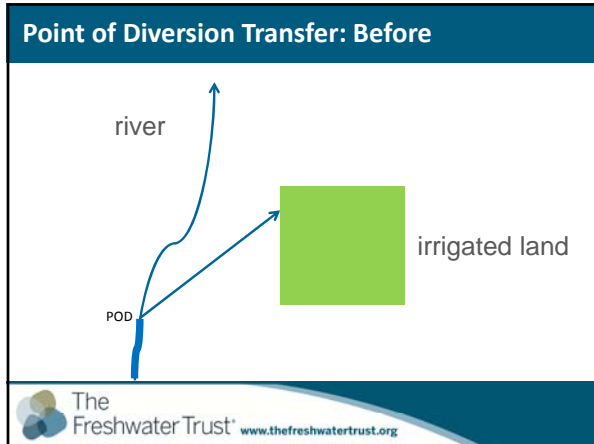
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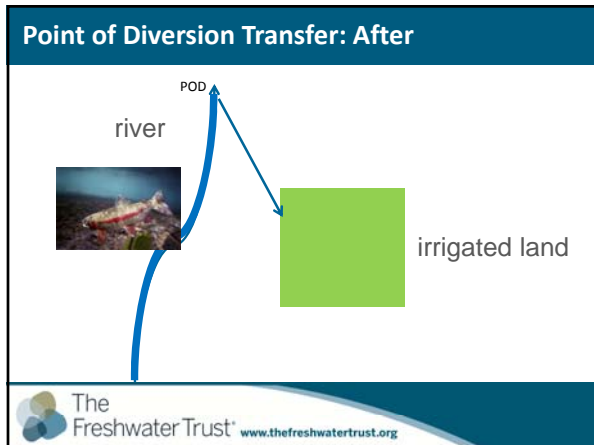
Transfers

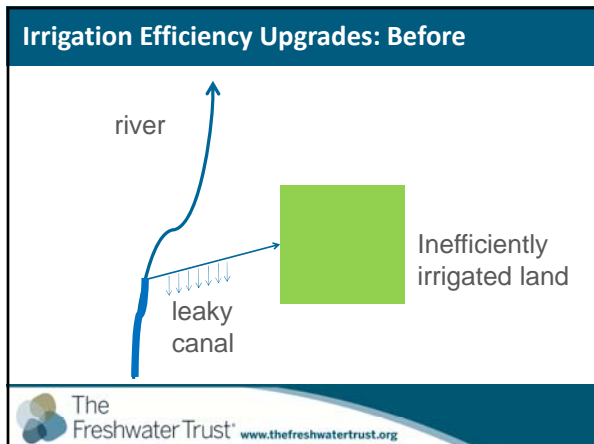
- Put water instream for a longer term
- Time-limited or permanent

ORS 540.505 to 540.587

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After: Allocation of Conserved Water

river

ORs 537.455 to 537.500

New water right to satisfy more efficient use,
Minimum of 25% of conserved water instream,
Maximum of 75% of conserved water to user

Efficiently irrigated land

river

piped canal

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Other Water Use Agreements

- Cooperative, voluntary agreements that function outside prior appropriation doctrine (i.e. water is not protected instream by OWRD)
- More flexibility, but potentially higher transaction costs if multiple users
- Examples:
 - Forbearance agreements: e.g., single landowner controls all water rights on stream
 - Flow-based trigger for change in water management: e.g., Lostine Minimum Flow Agreement
 - Temperature-based trigger for change in water management: e.g., FAST

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Flow-based water agreement: case study

Lostine Minimum Flow Agreement

- Lostine River near Enterprise, tributary to Willowa and Grande Ronde Rivers
- 1999: chronic low flows impede adult Chinook returning to spawn, only 13 fish counted
- Response: since 2005, minimum flow agreement with ~100 irrigators on six ditches to maintain mean daily flow of 15 cfs at Caudle Lane gage from August 22 to September 30
- Impact: >1,000 adult Chinook during last fish count

Station: 13000050
Name: LOSTINE R AT CAUDLE LANE AT LOSTINE, OR
County: WASHINGTON
Elevation: 1077.00
Near Point Date: 08/22/2005
Near Point Time: 12:00 AM
Near Point Flow: 15.00
Near Point Date: 08/22/2005
Near Point Time: 12:00 AM
Near Point Flow: 15.00

Mean Daily Flow

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Temperature-based water agreement: case study

Fifteenmile Action to Stabilize Temperature (FAST)

- Fifteenmile Creek near The Dalles, tributary to Columbia River
- 2009: hot weather + low flows = extensive "take" of ESA-listed steelhead, warning from NMFS to change practices or face civil/criminal penalties
- Response: ODFW builds predictive model
 - uses climate and flow data to forecast lethal stream temperatures
 - notifies irrigators when there is still time to manage water use proactively
- Irrigators compensated to shut off or reduce diversions during FAST alerts through funding from OWEB and CBWTP



FAST: Daily email forecast to irrigators

Water Temperatures will exceed thresholds: Not Predicted

Days exceeding thresholds: 0 days
Sites exceeding thresholds: 0 sites

Alert will be given if water temperatures exceed 72°F at two sites for two or more days.

Elevation	Measured	Water Temperature Forecast (°F)							
		4-Jun	Today	6-Jun	7-Jun	8-Jun	9-Jun	10-Jun	11-Jun
Eightmile Cr: 200 ft			54	56	59	62	65	68	68
		54	56	59	61	65	67	68	
Fifteenmile Cr: 200 ft		53	55	58	62	65	68	69	
		61	57	58	59	61	63	64	65
		56	56	56	57	59	60	61	



FAST: flexibility to meet irrigators' and stream's needs

FAST Option 1	Required to shut off during temperature alerts, payment at beginning of season based on acres enrolled and baseline alert days	1856–1896	\$51.82/acre
		1897–1909	\$44.42/acre
		1910–1949	\$22.24/acre
		1950–1959	\$13.88/acre
		1960–1985	\$9.45/acre
FAST Option 2	Choose to shut off during temperature alerts, payment at end of season based on gallons curtailed (capped at payment under FAST Option 1)	Any, provided not already regulated off at time of temp. alert	Jun: \$0.0004/gal Jul: \$0.0003/gal Aug: \$0.0003/gal Sep: \$0.0003/gal



Coming soon: ecological prioritization of water rights on John Day River to focus flow restoration efforts



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See you on the river



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Selected rules on instream leasing

WATER RESOURCES DEPARTMENT

DIVISION 77

INSTREAM WATER RIGHTS

690-077-0000

Purpose

(1) The purpose of this Division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights.

(2) This Division also provides for the conversion of existing minimum streamflows to instream water rights; for the **instream transfer or lease of existing water rights for use as instream water rights**; and for the enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses.

(3) **In 1987, the Legislature created a new type of water right called an instream water right.** Instream water rights are established by certificate from the Water Resources Commission or by an order approving a time-limited instream transfer or lease, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18).

(4) **In 2001, the Legislature authorized the split season use leasing of water rights for instream purposes.** Under ORS 537.348(3), all or a portion of an existing water right may be used for the existing use and for instream use during the same year, provided that the uses are not concurrent and that the holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the instream water right.

(5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.

(6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358
Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06

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Instream Transfers and Leases

690-077-0065

General Provisions

(1) The Department shall promote and facilitate potential instream transfers and leases under ORS 537.348 that would provide benefits for public uses.

(2) The Department encourages irrigation districts and other water purveyors to develop single lease applications that pool individual water rights and ownerships that are to be leased during the same term.

(3) Department personnel shall review all instream transfer or lease applications pursuant to OAR 690-077-0070 through 690-077-0079 to assure that they comply with these rules and, if possible, to develop conditions to prevent enlargement of the original right or injury to other water right owners.

(4) Completed lease applications submitted pursuant to OAR 690-077-0076, including signatures of lessor and lessee (if applicable), and all necessary attachments or exhibits, must be received by the Department's Salem office prior to July 1, or for year around uses, must be received prior to October 1. Completed lease applications received after this date shall be returned or, at the request of the applicant, be processed to be effective for the next calendar year. At the discretion of the Director, an application may be received and processed after this date during the current year.

(5) The Department may compile descriptive information to assist all parties in addressing technical issues related to instream transfers and leases, including but not limited to describing injury and enlargement issues, determining whether a proposed instream water right would support a public use, setting the location of a proposed instream water right and making agreements for measuring and monitoring the instream water right. The descriptive information shall not restrict new leases, but shall offer options that have been used in earlier leases to ensure compliance with OAR chapter 690, division 77.

(6) The Department may prepare lease application forms that include the requirements listed in OAR 690-077-0076(3) and any additional information the Department deems necessary to comply with the policies of OAR chapter 690, division 77 and to reflect the nature of the water rights subject to being leased instream. For example, a special form could be prepared for an irrigation district to sponsor a single lease application that involved multiple water right owners.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01, Renumbered from 690-077-0078; WRD 4-2006, f. & cert .ef. 10-2-06

690-077-0070

Application for Instream Transfer

(1) As provided in ORS 537.348(1), **any person may apply for an instream transfer, including a time-limited instream transfer.**

(2) In addition to the transfer application requirements described in OAR 690-380-3000, an instream transfer application shall include the following information:

(a) Public use(s) for which the instream right is desired;

(b) Description of the time periods of the instream use and quantity of water to be transferred to instream use;

(c) The location of the proposed instream use. If a reach or lake level is requested, identify the upstream and downstream extent of the reach or the appropriate lake level;

(d) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right;

(f) For a time-limited instream transfer, the duration or number of years for which the time-limited instream transfer is being requested.

(3) The Department may require additional information needed to complete the evaluation of the proposed conversion.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 4-2006, f. & cert .ef. 10-2-06

690-077-0075

Processing an Instream Transfer Application

A proposed instream transfer, including a time-limited instream transfer, of a water use subject to transfer to an instream water right shall be processed pursuant to the water rights transfer rules in OAR chapter 690, division 380 and the following provisions:

(1) The Department shall provide notice of the proposed instream transfer pursuant to OAR 690-380-4000, and to affected Indian tribes.

(2) In addition to the assessment described in OAR 690-380-4010, the Department's preliminary determination shall include an assessment of whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and

(b) The proposed reach(es) is (are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion;

(B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream;

(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-077-0015(8);

(D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate the reduced flows available, in accordance with paragraph (2)(c)(B) of this rule.

(c) The proposed flow(s) is (are) consistent with OAR 690-077-0015(7), (8) and (11), shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.

(3) An instream transfer shall be approved if the Department determines that the transfer is consistent with OAR 690-380-5000, and Section (2) of this rule.

(4) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 and Section (2) of this rule if no protests are received under 690-380-4030.

(5) Upon approval of an instream transfer, the Department shall issue a permanent instream water right certificate. However, upon approval of a time-limited instream transfer, the Department shall issue a final order with a specific date of expiration or other conditions for termination for the instream water right and suspend the use of the original right during the effective period of the instream water right. A copy of the certificate or final order shall be mailed to the applicant and as appropriate to affected Indian tribes, ODFW, DEQ and Parks. The Director shall also issue a new certificate for any remaining right for the existing use as appropriate.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06

690-077-0076

Application for an Instream Lease

(1) **A holder of any of the following types of water rights may enter into a lease to convert all or a portion of a water right to an instream water right for a specified time period not to exceed five years:**

(a) **Surface water rights for beneficial use or storage** established by a water right certificate or an adjudication under ORS Chapter 539 as evidenced by court decree; or

(b) A surface water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Director under 537.250, or transfer application for which an order has been issued under 540.530 approving the change and for which proper proof of completion of the change has been filed with the Commission;

(c) **Secondary water rights for the use of stored water** established by permit, certificate or court decree; or

(d) **The conserver's portion of conserved water allocated under ORS 537.445 to 537.500.**

(2) The parties to the lease application shall include but are not limited to:

(a) The holder(s) of the subject water right(s) as the lessor(s);

(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor, if applicable; and

(c) The lessee, if different than the Department.

(3) At a minimum, the lease application shall include:

(a) Names and signatures of the parties;

(b) A description of the water right(s) to be leased. If only a portion of a water right will be leased, a clear description, including maps if necessary, of the portion to be leased;

(c) Rate, total volume, timing and location of the instream right, including any necessary conditions to avoid enlargement of the original right or potential injury to other water right holders;

(d) A description of how the lease will serve a public use or uses;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed lease is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(f) Provision insuring the original use will be suspended;

(g) The term of the lease;

(h) A statement by the lessors verifying that the water rights described in Subsection (3)(b) of this rule have been used under the terms and conditions of the rights during the last five years, or as an instream water right, or an explanation why the water right is not subject to forfeiture under ORS 540.610. As an alternative, an irrigation district or other water purveyor may provide evidence for owners, verifying delivery of water for the lands appurtenant to the rights to be leased;

(i) If the lessor(s), as identified in Subsection (2)(a) of this rule, is not the deeded landowner to which the water right is appurtenant, sufficient documentation to demonstrate that the lessor(s) is authorized to pursue the instream lease. Such documentation shall include:

(A) A notarized statement from the landowner consenting to the lease and a copy of the recorded deed;

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner.

(j) The name and address of any water purveyor that conveys water to the water right(s) described in Subsection (3)(b) of this rule.

(4) Lease applications shall conform with applicable provisions of OAR 690-077-0015.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.332 - 537.360, 537.455 - 537.500

Hist.: WRD 4-2006, f. & cert .ef. 10-2-06

690-077-0077

Processing an Instream Lease Application

(1) On receipt of a lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office.

(2) A written assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use and avoid injury or enlargement;

(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include but are not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the year leased; the role of return flows; conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and issues potentially arising from water users that share a conveyance system. Any allegations of injury to existing water rights or enlargement of the original water right that are received within 21 days of the date of mailing of the weekly public notice shall be reviewed by the parties to the lease before the Department issues an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.

(4) If the Department determines that the proposed lease may cause injury to existing water rights or enlargement of the original right, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or

enlargement. If injury or enlargement cannot be prevented the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

(5) If a lease is for more than one year the parties shall review any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.

(6) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to continue.

(7) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(3)(c) shall conform to the provisions of 690-077-0015(7) and (8) and 690-077-0075(2).

(8) Except as provided in OAR 690-077-0079, a lease involving a water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the original water right or the instream right, not both, during any one season unless the source is from stored water.

(9) If the water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the original right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source.

(10) Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a lease when needed to establish an instream water right in a particular season or at a particular time. A renewal shall be subject to the provisions of this rule.

(11) Water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right.

(12) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

(13) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system.

(14) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered by OAR chapter 690 division 19.

(15) Except as provided in Sections (4) and (5) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

690-077-0079

Split Season Use Instream Leasing

(1) An applicant for a split season use lease of water shall provide the information and follow the lease process described under OAR 690-077-0076 and 690-077-0077.

(2) In addition to the application requirements described in OAR 690-077-0076, split season use leases applications shall:

(a) Be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose.

(b) Describe when the water will be used for the existing purpose and when the water will be used for the instream purpose.

(A) The existing water use and the instream use shall not be concurrent. However, a portion of a water right appurtenant to one piece of land may undergo split season use, while another portion appurtenant to a different piece of land may undergo only one type of use, or a different time period for split season use.

(B) The type of use under a split season use may be changed only once during a calendar year, except for full-year uses which may have a single instream use period and two existing use periods.

(3) The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Department, or provide for third party measurement and reporting to the satisfaction of the Department. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

(4) The water right lessor or lessee shall contact the watermaster or other Department field staff to determine the necessary measurement and reporting requirements associated with leasing a water right. The complete lease application shall include:

(a) Location(s) and type(s) of measuring device(s);

(b) Frequency of measurement;

(c) Parties responsible for the respective measurements; and

(d) Amount of water proposed to be used, listed by rate and duty for the existing purpose and the instream purpose, including monthly or partial season rate or duty limitations, if appropriate.

(5) The Commission shall review the split season use leasing program no later than the year 2014 to determine if any changes should be made in the program.

NOTE: ORS 537.348(3) sunsets on January 2, 2008. [SB 199 (2013) extended sunset to January 2, 2024; added a 10-year cap on how long a water right may be leased for split use]

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06