



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Tom Paul
Administrator, Field Services Division

SUBJECT: Agenda Item K, October 22, 2004
Water Resources Commission Meeting

Instream Leasing Program Review

I. Issue Statement

This report provides an update on the instream leasing program (OAR Chapter 690, Division 77) and responds to rule requirements that the Commission review the leasing program no later than December 2004 to determine if: 1) the current lease term length of five years should be modified; and 2) if there should be changes made to the split season use instream leasing program. *This is an informational report only; no Commission action is required.*

II. Background

The instream leasing program provides a voluntary means to aid the restoration and protection of streamflows. This arrangement provides benefits both to water right holders and to instream values by providing water users with options that protect their water rights while leasing water for instream benefits.

In November 2001, the Commission extended the maximum instream lease term from two to five years, with no limit on renewability. The purpose of increasing the maximum leasing term length was to reduce staff and applicant time associated with filing, reviewing, and processing leases. At the time this change was instituted, some individuals were concerned that the longer lease term would diminish incentives for water right holders to permanently transfer their water rights instream. Consequently, the rules included a provision that the Commission review these rules by December 2004.

Concurrent with increasing the term length, the Commission adopted rules under OAR 690-077-0079 implementing the legislatively-created split season use instream leasing program (2001 Oregon Laws Chapter 205). A split season lease allows an existing water use to occur for a part of the year and an instream use for a different period. The rules included a provision that the

Commission review the split season use instream leasing program to allow any necessary changes to be made before the authorizing statute sunsets on January 2, 2008. To date, the Department has approved three split season use instream leases.

III. Discussion

In May 2004, the Department invited public comments on the instream leasing program, and asked the following questions:

- Whether the current lease term of five years should be modified (OAR 690-077-0077).
- Whether changes should be made to the Split Season Use Instream Leasing Program (OAR 690-077-0079).
- Are there other changes that should be made to the Instream Leasing Program.

The Department received comments from the following organizations:

Deschutes Resources Conservancy (DRC)
Klamath Basin Rangeland Trust (KBRT)
Oregon Cattleman's Association (OCA)
Oregon Water Trust (OWT)
Water For Life (WFL)

Their comments are discussed below and are included as an Attachment.

A. Maximum Term Length

There was general support for the changes made in 2001 that increased the maximum term length from two to five years, while maintaining lease renewability. The KBRT and OWT cited the "opt-out" lease provision that allows leases to be terminated between irrigation seasons as a useful provision that encourages longer leases by giving the water right holder greater comfort in signing a longer term lease.

The DRC would support a trial period for longer leases, such as 10 years, while the OCA and WFL would oppose increasing the maximum instream lease term length beyond five years.

B. Split Season Use Instream Leasing

There was support for maintaining the split season rules in their present form (KBRT, OCA, OWT, and WFL), even though there have only been three split season leases. WFL and OCA would oppose any changes that would restrict irrigators' flexibility. Since split season leases generally require measurement, OWT anticipates that, as water measurement becomes more common, landowners will be less reluctant to have the diversion measured and the number of split season leases will rise.

The OWT recognized that split season leases could cause an additional workload for field staff. They requested that the Department make the split season use instream leasing program a priority for field staff and want to work with the Department to promote split season leasing.

C. Other Suggested Changes

As part of the Department's continuing efforts to promote and streamline the leasing program, the Department asked for and received several suggestions, including:

- Clarification on how return flows and instream reach lengths are quantified;
- Suggestions to further expedite lease review, and conversely to increase scrutiny of lease applications; and
- Request to increase monitoring and regulation for instream leases.

These issues will require broader discussion within the water right and leasing communities and may be considered in any future lease program rule making and program adjustments.

IV. Summary

The Department received comments from five organizations, which generally support maintaining the maximum five-year leasing term and the split season leasing option as they currently exist. The Department also received suggestions to clarify and streamline the program, as well as concerns about the effects of the program on other irrigators. These issues may be considered in future rulemakings and program adjustments.

V. Recommendation

WRC Agenda Item K
October 22, 2004
Page 4

This is an informational report only and responds to OAR Chapter 690, Division 77, requiring that the Commission review the lease program no later than 2004 to determine if: 1) the current lease term length of five years should be modified; and 2) if there should be changes made to the Split Season Use Instream Leasing Program. *No Commission action is necessary.*

Attachment:
Public Comments on the Instream Leasing Program

Bob Rice
(503) 986-0885