



August 20, 2021

Oregon Water Resources Commission
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Cc: Ms Breeze Potter
Rules/ISWR Coordinator
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Re: Rules Advisory Committee and OAR 690-077 Instream Water Rights

Oregon Water Resources Commission:

The Deschutes River Conservancy (DRC) was pleased to participate as a member on the Rules Advisory Committee (RAC) for instream water rights under Chapter 690, Division 77 of the Oregon Administrative Rules. Thank you for the opportunity to provide additional comment on the Draft Revision of the Division 77 rules. While DRC and instream stakeholder comments were heard at the RAC, we would like to ensure that they are not missed moving forward.

The DRC utilizes the Division 77 rules to support temporary and permanent instream flow utilizing annual instream leasing, permanent instream transfers and the allocation of conserved water programs. We appreciate the opportunity to improve the functionality for instream programs, support enforcement, monitoring and evaluation of instream flows, and to ensure that instream programs that support so many public benefits are not more onerous than transfer programs between out of stream uses.

Division 77 rules draft revisions provide a path for instream leasing to be streamlined while still allowing for all the protections of transparency and review. The leasing program is an essential, heavily used and steadily growing program for the Oregon Water Resources Department, the DRC, the environmental community, and other stakeholders. The clarification in the Division 77-0076(4) rules to materials required for instream leasing, will greatly improve processing of these transactions while simultaneously reducing the workload for OWRD. The Division 77-0076(4) revisions will bring the requirements for instream leases more in-line with those for temporary (one-year) transfers of water between out of stream uses, such as those allowed by SB 664 and SB 267. DRC would like to see these updates accepted even if some additions to the Division 77 may move to additional discussions.

While Statute already allows for the Instream transfers for secondary rights to storage, reconciling the Division 77 Rules to provide consistency and guidance in these transfers provides an important tool to allow for restoration of flows in the Deschutes River above Bend (the Upper Deschutes). Large scale conservation projects are in development and under construction, resolving these rules is timely and essential. Rules guidance provides a pathway to allow the permanent protection of water that is currently using the leasing programs and agreements rather than the long-term stability provided in permanently protected flows. While statute and instream lease rules already allow for instream protections of secondary water rights from stored water, these rules will clarify the same for permanent transfers that will support not only the agricultural economy, but the recreation, tourism, and local economy and the health of the upper Deschutes through the benefits that permanent instream protections provide.

The DRC is encouraged with the passage of HB 3103 in the 2021. Changing the character of use of storage rights will be a critical tool for managing and protecting storage water rights instream adaptively for fish and wildlife purposes in the Deschutes and to support the Deschutes Basin Habitat Conservation Plan implementation. While we feel that the legislation provides clear direction on changing the type of use associated with storage rights, we advocate that any rulemaking on this issue proceed expediently if additional guidance is necessary.

Potential for future rule makings, updates & considerations

- split season lease with 2 changes of use allowed rather than just 1
- split rate or split duty lease (with similar measurement requirements to split-season lease)
- allow for consultation with ODFW/ODEQ on current instream needs. For example, ENAF (Estimated Average Natural Flow) is limited to paper water rights which does not always translate to measurable/wet water instream
- ensure that instream programs are not more onerous than out of stream programs

DRC utilizes OWRD programs extensively to improve streamflows and looks forward to continuing participation and engagement in rules advisory committees in efforts to improve and update programs alongside other stakeholders.

Thank you for considering our comments and allowing the DRC to participate in this process.

Best Regards,



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