

Criteria for Reviewing Lease Agreements

The standards and procedures used by the Water Resources Department in evaluating an application for the lease of an existing water right for instream use (lease agreement) are described in Oregon Revised Statute (ORS) Chapter 537 (<http://landru.leg.state.or.us/ors/>) and in Oregon Administrative Rules (OAR) Chapter 690, Division 77 for regular and split season instream use leases and Division 19 for temporary drought instream leases (<http://www.wrd.state.or.us/law/oar1999.shtml>).

This is a summary, prepared by the Water Resources Department, of criteria and procedures that are generally applicable to lease agreements. The summary is necessarily general, and may not specifically address every applicant's fact situation. The summary is intended as general guidance for applicants, and not as a substitute for reference to applicable statutes and rules.

Any person may apply to the Water Resources Commission to convert to an instream water right an existing right or a portion of a right that the applicant would acquire or has acquired through purchase, gift, or lease. If the instream water right is acquired through lease, the period of the lease cannot exceed five years. Split season lease agreements are valid for one year only. Drought lease agreements are for one year, or the term of the drought, whichever is shorter. Both regular leases and split season lease agreements may be renewed.

In reviewing applications under ORS 537.332 to 537.360, the Department will consider the following criteria:

- Water right is subject to being leased [OAR 690-077-0077(1)]
- Enlargement of the original water right [OAR 690-077-0077]
- Injury to existing water rights of record [OAR 690-077-0077]
- Instream reach length [OAR 690-077-0015]
- Public purpose served [OAR 690-077-0077]
- Comments received through the public notice and comment process [OAR 690-077-0077]
- Evidence that water has been used over the past 5 years in accordance with the terms and conditions of the water right [OAR 690-077-0077] or as an instream water right, or an explanation why the water right is not subject to forfeiture under ORS 540.610
- Split season use instream lease [OAR 690-077-0079]
- Temporary drought instream lease [OAR 690-019-0058]

Lease Agreement Procedures and Review

The Water Resources Department processes a lease agreement using the following procedure:

1. Application Fees

Applications must include the appropriate fees described in ORS 536.050.

2. Submittal Deadlines

With some exceptions, completed lease applications must be submitted to the Department prior to July 1, or for year round uses, prior to October 1. Additionally, split season use lease applications must be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose.

3. Public Notice and Comment

Upon receipt of a proposed lease agreement, the Department gives public notice of the application in the weekly notice published by the Department, posts notice in the applicable watermaster office, and mails notice to any water purveyor listed in the proposed agreement. For temporary drought leases, the Department provides public notice of either the application or approval of the application.

4. Departmental Review

Allegations of injury to existing water rights or enlargement of the original water right received within 21 days of the date of notice in the weekly notice are reviewed by the parties to the proposed lease before final execution of the lease agreement. If no comments are received, the Department may presume that no injury or enlargement will result from the proposed lease agreement. The Director of the Water Resources Department signs an order approving the lease. Copies of the lease agreement are distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's instream database.

If the Department determines that the proposed lease agreement may cause injury to existing water rights or enlargement of the original right, the lease agreement is modified to prevent injury or enlargement. If injury or enlargement cannot be prevented, the Department will not execute the agreement. If the agreement has already been executed, the Department will terminate the agreement.

If the Department receives a claim of injury or enlargement after the execution of a lease, the Department notifies the parties. If the Department determines the claim is valid, the Department will not distribute water in a way that would cause injury or enlargement to continue.

For temporary drought leases, the Department may sign orders before public noticing the lease application, or before the close of the public comment period. However, if injury is later found, the order is revoked, unless it can be modified to prevent the injury.