

SB 839

90 & 110 Combined - Water dedicated instream for certain above-ground storage facilities

(1) A grant for the development of a new or expanded above-ground storage facility (reservoir) that impounds surface water on a perennial stream; diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or diverts more than 500 acre-feet of water annually must dedicate 25% of the newly developed water to instream use.

**Comment [jju1]:**  
Introduces the requirement to dedicate 25% instream - for certain storage developments

(2) To meet the requirements of subsection (1) of this section, dedicated water from projects may come from newly developed water or from other sources and may be put instream at other locations in the tributary if the Department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize instream benefits in a manner consistent with public health and safety.

**Comment [jju2]:** Adds flexibility for satisfying the requirement (other sources). Describes standard to review other sources. Department and ODFW determine timing of flows.  
a) Identifies what other sources of water can be used  
b) Other sources must be permanent  
c) Water instream will be protected by the Department

(a) Other sources of water as identified in this subsection include but are not limited to water released from another reservoir and protected under a secondary water right for instream use or a water right transferred instream.

(b) Other sources of water as identified in this subsection shall be permanent.

(c) The Department shall protect water dedicated to instream use under this subsection.

**Comment [jju3]:**  
There was a question about the reliability of water put instream compared with stored water releases. A concern was expressed that a water right that was regulated off every year would not have the same benefit as stored water releases that are protected.  
*Subsection (2) will require that any "other source" provides greater or equal to environmental benefit as determined by the Department in consultation with ODFW. In the case of a water right transferred instream the reliability of the water right including regulatory history will factor into that decision.*

(3) A storage water right that is using stored water releases to meet the requirement of subsection (1) of this section, shall be conditioned to achieve the following:

a) meet the dedication requirement with stored water releases that are protected under a separate secondary water right.

b) annually report the maximum volume of water stored in the funded reservoir, including water present in the reservoir at the beginning of the season. Twenty-five percent of this volume equals the dedication requirement.

c) if the dedication requirements are not fully met from other sources, the funded reservoir shall release and protect the balance of the water necessary to meet the dedication requirement.

d) demonstrate that the dedication requirement has been met.

**Comment [jju4]:** A storage water right using stored water releases to meet requirement will have the following conditions:  
a) Storage right holder must meet obligation with a separate secondary right.  
b) Storage right holder shall report the maximum amount of water in the reservoir annually - used to calculate 25% obligation  
c) If other sources cannot meet obligation then new reservoir has to make up balance.

(4) For an existing storage permit subject to the requirements of subsection (1) of this section, the permit holder shall enter into a stipulated agreement with the Department to meet the requirements of subsections (2) and (3) of this section.

**Comment [jju5]:** If an existing storage permit is subject to the 25% requirement then a stipulated agreement is required to meet the requirement of 2 & 3.