
THE SHASTA RIVER

THE NATURE CONSERVANCY'S INSTREAM FLOW TRANSFER: 1707 DEDICATIONS

What is an instream flow transfer?

Section 1707 was added to the California Water Code by the State Legislature in 1991, and then amended in 1999, to allow the State Water Resources Control Board (State Water Board) to approve changes of existing water rights specifically for the purpose of preserving or enhancing wetlands, fish and wildlife, or recreation. The statute allows any person with a water right (whether appropriative, riparian, or other right) to petition the State Water Board to change the purpose of use, on either a short-term or long-term basis, to include an instream use. Any transfer of a water right from a consumptive use (i.e., irrigation or domestic use) to use in a river, lake or wetland is what is known as an "instream transfer."



Background

In 2005 and 2009, The Nature Conservancy (TNC) purchased two adjacent ranches along the Shasta River with water rights under the Shasta River Adjudication. These water rights include 11 diversion points totaling 18.11 cubic feet/second; all pre-1914, high priority rights. TNC bought these ranches because of their location in the Upper Shasta River watershed and the water rights to cold water sources. This area contains important salmon spawning and rearing habitat. The sources of water on these ranches originate from four different bodies of water: the Shasta River, Big Springs Creek, Hole in the Ground Creek and Little Springs Creek.

Why would we bother?

Desired Outcomes of Filing 1707 Petitions for TNC owned Water Rights in the Shasta River Watershed

- ◆ TNC wants the State of California to legally recognize fish and wildlife as a beneficial use of our water rights in the Shasta River Watershed. When we are not leaving our water rights instream for fish and wildlife, we will continue to exercise our right to use the water for irrigation and stockwater.
- ◆ In addition to the 1707 approval by the State Water Board, TNC wants the instream transfer recognized by Siskiyou County Superior Court where the 1932 Shasta River Adjudication and Decree (Decree) is held. The change in the Decree followed the State Water Board approval and allows the Watermaster to oversee the instream use of these water rights. This means that water that TNC leaves instream for fish and wildlife will stay instream and not be diverted by downstream diverters.
- ◆ TNC also wants to ensure that the instream dedication does not cause injury to another legal water user (also a requirement to obtain State Water Board approval). TNC hired a licensed engineer to estimate the “consumed” portion of our water rights. The “consumed” portion of the water right is that amount that is evaporated, taken up by crops, consumed by livestock, or otherwise removed from, and not returned to, the stream. The non-consumed water is the amount that returns to the stream either as runoff or as seepage into groundwater and is available for use by downstream water users. To avoid injury to other water users, only the consumed portion of any water right will be transferred downstream.
- ◆ TNC at times will use our water rights instream for coho and Chinook. In the case of using our water rights for coho salmon, the benefits of leaving water instream are in the immediate area of our property. In the case of using our water for adult Fall Chinook, we will work in coordination with the Watermaster to get water into the Shasta River canyon to increase stream flows and decrease or maintain water temperatures for migrating adult Chinook. During times when there is no discernable benefit to leaving our water rights instream, we will continue to irrigate our pastures for livestock.



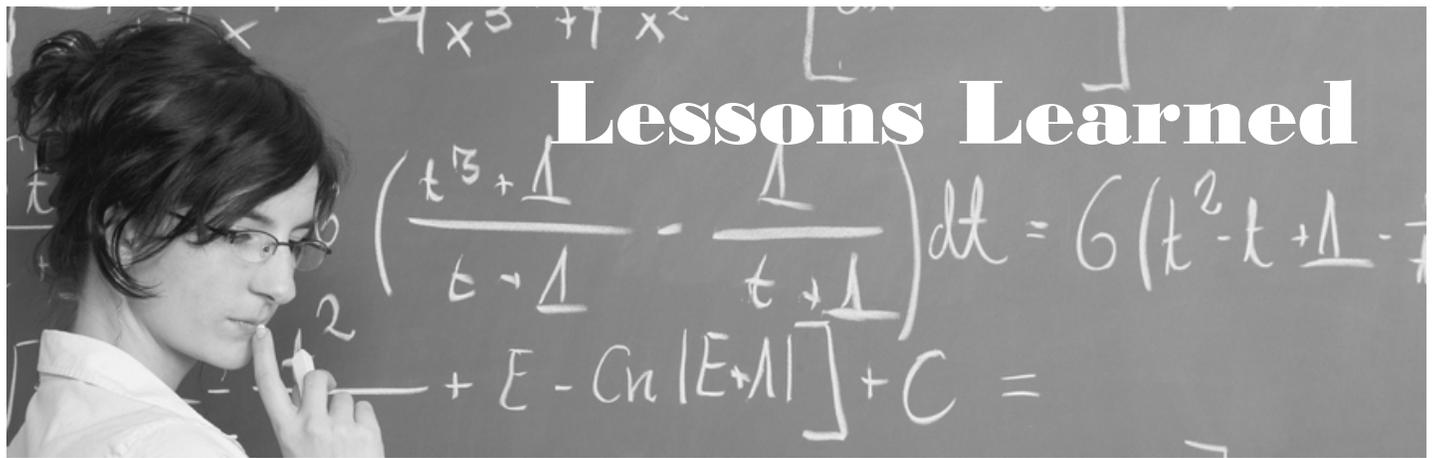
Amplification Needed

The potential importance of Section 1707 transfers for improving instream habitats has been affirmed in the California Water Plan and California Drought Contingency Plan, as well as in federal and state plans for salmon recovery. Although Section 1707 is widely viewed as a valuable tool for the protection and enhancement of stream resources, it has been used relatively sparingly. Over the past two decades, fewer than forty 1707 transfers have been processed in California.

WHY ARE THERE SO FEW INSTREAM FLOW TRANSFERS IN CALIFORNIA?

One reason for the limited use of Section 1707 instream transfers is ongoing uncertainty associated with the petition approval and implementation process. Those who have pursued instream transfers have historically encountered a range of challenges. These issues include lengthy petition processing, costly analysis requirements, risks to water rights, uncertain CEQA requirements and/or lead agency designation, practicality for use in emergency or temporary situations, and other petition approval and implementation procedures. These uncertainties can be disincentives to water right holders to pursue Section 1707, limiting the intended benefits of the 1991 legislation.

In recent months, The State Water Board has increased the amount of staff time and clarified key parts of the 1707 petition process. TNC and other conservation organizations including Trout Unlimited, the Scott River Water Trust, American Rivers, and others are taking advantage of these positive changes at the State Water Board and are working towards increasing the number of 1707 transfers throughout California.



Lessons Learned

1. *Consult with the State Water Board Staff Early and Often*

Meet early in the process with State Water Board staff. Even prior to filling out the 1707 petition paperwork, engage with staff in the Water Rights Division to discuss your specific instream transfer. They can help you understand what is needed throughout the process and then put you in touch with agencies or organization that can help you along the way.

2. *Reach Out to Other Water Users in Your Stream Reach*

Once you have clearly defined your 1707 project, meet with neighboring water users and possibly other interests groups, such as the local Farm Bureau, RCD, and County officials. You will need to ensure no injury to other water users, so you will want to carefully explain what your 1707 is about and how it will not affect downstream water users.

3. *Engage with California Department of Fish and Wildlife (DFW) Staff*

You will need DFW approval of your 1707 transfer. Meet with local DFW staff to inform them of your project and solicit feedback, if appropriate.

4. *Develop a Monitoring Plan*

You will need to describe how you, or others, will monitor the instream flow transfer. If there is a Watermaster in your watershed, then this will likely be the job of the Watermaster. You could work with local partners to develop and implement a monitoring plan.

5. *Consider Your 1707 Petition Process as an Opportunity*

There is great need to inform and educate others about the potential for 1707 transfers in California. Use your 1707 petition as an opportunity to get the word out about this option. This is an effective tool that can be used to leave water instream without losing your water right, while at the same time providing benefit to fish and wildlife.