

**INSTREAM FLOW GROUP**  
**SUMMARY OF CONCEPTS DISCUSSED TO-DATE**  
**August 1, 2017**

**Likely Areas of Consensus (in no particular order):**

1. Agriculture needs to receive a direct benefit rather than an incidental or peripheral benefit;
2. Agricultural water right holders need assurance that they will retain control over their rights to prevent against abandonment and forfeiture and to prevent water from permanently leaving agriculture;
3. Instream transfers made via leases with non-state actors will likely need to be temporary with an option to renew to avoid speculation and to address agriculture's concerns about retaining control over agricultural water rights;
4. If water can only be transferred instream or banked on a temporary basis, both parties involved in leasing agricultural water rights for instream or other uses will need sufficient legal assurances rather than mere "gentlemen's agreements;"
5. Transaction costs need to be lower if instream changes are to be temporary;
6. The procedure needed to implement water banking, split season leasing, and instream flows needs to be transparent, relatively easy and quick to implement, and allow for science-based decision making;
7. The concepts of water banking and split season leases are likely more politically feasible than the concept of instream flows at the present time, although both concepts could be structured to allow for instream use;
8. Water banking, split season leasing, or instream flows need to be voluntary, incentive-based transactions between willing parties;
9. Finding ways to foster and support local, ground-up problem solving regarding water banking, split season leases, and instream flows will be critical, particularly in terms of protecting or shepherding water from one point to another; and
10. There is a need to incentivize rather than penalize efforts to increase the efficiency of water diversions and use, and to protect against forfeiture.

**Areas Where Additional Work Is Needed or Where Consensus May Not Be Possible (in no particular order):**

1. Authorized purposes – native vs. non-native species, water quality, recreation, natural stream environment, endangered species, etc.;
2. Whether the regulatory focus should place more emphasis on the "why" (i.e., the purpose of the flows) rather than the "who" (i.e., who can legally file an instream flow change);
3. How to support local decision making and what role, if any, local basin councils should play;
4. The interplay between providing sufficient certainty and allowing flexibility;
5. Whether the group's effort should utilize pilot programs or similar "small bites" as opposed to larger more permanent changes;
6. How to address priority of water rights transferred to instream use when the supply to other water rights has been maintained;
7. The role of water companies;
8. How enforcement and shepherding will work;
9. Whether permanent instream transfers should be allowed;
10. Whether federal agencies should be able to transfer water instream; and
11. How "sunsetting" provisions in leases or other temporary transfer mechanisms will work.