

# Clearing the Air on Water Part Three

By Tom Annear, Game and Fish Department Instream Flow Specialist

There's a funny thing about instream flows. The words inspire strong sentiments in a lot of people, but at the same time, it seems at some level almost everyone likes 'em.



PAUL DEY

Game and Fish has filed for an instream flow right on South Cottonwood Creek, in the Wyoming Range near Big Piney, to ensure enough water will remain to protect Colorado River cutthroat trout.

Instream flows are essential for fishing, boating or pretty river pictures. Instream flow also has a thing or two to do with getting water to irrigation diversions, thirsty towns and cities or thirsty cows. Ask anybody and you won't find many folks who'll say they'd rather see a dry river than a flowing one. But if that's true, why is there so much controversy? A lot of possible reasons come to mind, but it might be that we're just not all on the same page.

The reality is the words "instream flow" probably are more complex than most folks think. For example, a practical definition of instream flow is simply water in the creek. However, the ability of a certain amount of water to support a healthy fishery or meet irrigation demands is quite another matter.

There are a lot of ways to get water-in-the-creek instream flows. For example, you can move the point on a stream where it's taken out farther downstream, lease the water to a downstream user, use less water, let water out of a dam or simply not take water out. This is just a partial list of ways that happen all the time to manage water in streams.

Other times when people talk about instream flows, they're talking about a water right. A water right gives the holder the privilege to use a certain amount of water in a certain way at a certain time when it's available. But a water right doesn't necessarily put any water in the stream, or even mean that that amount of water needs to be there all the time.

You don't need an instream flow water right to have an instream flow, but having a water right will help you protect that water from someone else taking it out of the stream when Mother Nature puts it there.

In general, getting instream flows by water management usually involves restoring flow to streams with low or no flow. Restoration is an issue mostly on private lands (where flow has been depleted) and usually can be done without a water right. Game and Fish typically doesn't get directly involved in flow restoration unless required by law, though we may provide technical assistance if requested.

Acquiring instream flow water rights, on the other hand, typically involves protection of existing flows. Flow protection usually occurs on public lands and entails a legal process that is the exclusive responsibility of the state.

So much for definitions and water law: Let's look at some examples of what the words "instream flow" can mean in different settings.

To begin, let's say you're a rancher along the Little Snake River near Baggs and the stream on your place looks like the one in the picture to the right for part of the year. When you hear the words "instream flow," it might make you think the government's got a plan for the water you use and they're just waiting to spring it on you.

The fact is, there is no such plan to take private water rights from any individual or an entire group of water users, nor has there ever been one, and it's implausible to think there ever would be.

As for the business of instream flow on the Little Snake, it actually already has one. It's just not enough to grow many trout or native fish that used to call

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this river home. Since the water in this river mostly is permitted to private landowners, getting more water in the creek is a water management issue for the existing water users to solve. Getting an instream flow water right won't do anything here to put more water in the stream.

The Snake River near Jackson offers another example of how the words instream flow can mean something different (see the picture on this issue's cover). This river has an adequate year-round instream flow, but doesn't have an instream flow water right. Here, the renowned Snake River cutthroat trout fishery is maintained by a water management agreement between Wyoming, the Bureau of Reclamation and the state of Idaho. This strategy works (so far) because 96 percent of the water in that drainage must be delivered to Idaho as specified by our interstate compact, and we're able to provide the water and have a top-notch fishery by spreading water deliveries out over the whole year.



TOM ANNEAR

Instream flow on the Little Snake River near Baggs isn't enough to grow many trout, or the native fish that once called the river home.

South Cottonwood Creek (at the top of this page) in the Wyoming Range near Big Piney offers yet another perspective. This stream has an instream flow and we've filed for an instream flow water right. In this case, an instream flow water right helps ensure that water will remain in the designated stream reach when it is naturally available to protect a population of Colorado River cutthroat trout.

This is an important part of managing this native cutthroat, and it's also a good way to keep the species from being listed as threatened or endangered – which means losing state control over management of this fish.

So now, answer the question: What do you think about instream flow? You're right; it's not a simple answer because it's not a simple question. The words can convey a different meaning depending on related issues ranging from land ownership to how water is used and managed to the application of water law. It just might be that our inability to recognize this fact is one of the reasons why there's so much controversy over this particular use of water.

The bottom line is we can all be more responsible citizens by making sure that when we do have disagreements on this subject, we're at least talking about the same thing. ♣