There are three basic mechanisms by which water can be made available for instream flows, and each mechanism has advantages and disadvantages relative to implementation of a local water trust program. A mechanism that works in one tributary, at one time of the year, may not be practical on another tributary or at another time of the year. Factors that will dictate use of one mechanism over another include timing of water needs, availability of funding, number of water rights involved, stakeholder buy-in, etc. Ultimately, the local water trust program, along with participating rightholders, will have to make that determination on a case-by-case basis. This Figure identifies general considerations which will guide the decision-making process.

**WATER ACQUISITION DECISION TREE**

1. Does the stream potentially provide desirable migration, spawning and/or rearing habitat for fishery?
   - **NO**
   - **YES**

2. Is there sufficient natural flows during target migration, spawning and/or rearing needs? **NO**
   - **YES**

3. Are there willing participants in a water trusts program? **NO**
   - **YES**

4. Can the participants demonstrate recent exercise of water rights and use? **NO**
   - **YES**

5. Are there concerns that non-participants will divert acquired water? **YES**
   - **NO**

**FORBEARANCE ARRANGEMENT**

- Appropriators risk loss by nonuse if participate for 5 consecutive years or more.
- Inactive rights may be subject to loss by nonuse for 5 consecutive years.
- If governmental approval, permit or funding required, may need to comply with CEQA.
- No SWRCB approval. Formal agreement with rightholder triggers implementation.
- Can be used for emergency, short-term or long-term acquisitions.

**SECTION 1707 TRANSFER**

- **Urgency – 1707/1435**
  - “No Injury” analysis required
  - Acquisition must be necessary to further the constitutional policy of reasonable use and avoidance of waste
  - No express exemption from CEQA
  - SWRCB approval may take weeks to several months
  - Supplemental Decree not likely required
  - SWRCB approval and other governmental approval, permit or funding, if applicable, may require CEQA compliance
  - Minor petition process available which may shorten the SWRCB review period
  - Seek Supplemental Decree from Court
  - Would be permanent change to affected water rights; no further SWRCB or court review required

- **Less than one-year – 1707/1725**
  - “No Injury” analysis required
  - Acquisition limited to water which would have been “consumptively used or stored” prior to acquisition
  - Expressly exempt from CEQA
  - SWRCB approval may take several months to several years
  - Seek SWRCB approval to ensure instream flows remain available for fishery purposes

- **More than one-year – 1707/1700 or 1735**
  - “No Injury” analysis required
  - Acquisition must be necessary to further the constitutional policy of reasonable use and avoidance of waste
  - No express exemption from CEQA
  - SWRCB approval may take weeks to several months
  - Supplemental Decree not likely required
  - SWRCB approval and other governmental approval, permit or funding, if applicable, may require CEQA compliance
  - Minor petition process available which may shorten the SWRCB review period
  - Seek Supplemental Decree from Court
  - Would be permanent change to affected water rights; no further SWRCB or court review required

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*Scott River Water Trust*

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