



VOLUNTARY INSTREAM LEASING & EXCLUSIVE FARM USE DEFERRAL

BACKGROUND

Instream leasing is a tool used to flexibly meet the water needs of farms and fish. By temporarily leasing their water rights instream, members of the agricultural community can help address streamflow needs of rivers while maintaining their ability to use their water rights to meet the needs of their farming operations under ever changing conditions.

In the Deschutes Basin, farmers voluntarily lease up to 60 cubic feet per second in rivers through the Deschutes River Conservancy's (DRC) voluntary lease program – amounting to 20% of the streamflow in the Deschutes River below Bend in the summer. Through 20 years of partnering with farmers, DRC has identified that some farmers do not want to participate for fear of losing their Exclusive Farm Use (EFU) tax deferral status and potentially owing back taxes. HB 2971 addresses this issue by explicitly allowing voluntary and temporary instream leasing as an acceptable use of EFU land. Farmers should not be penalized for protecting their water rights while voluntarily helping meet the streamflow needs of rivers and communities.

THE ISSUE

Oregon tax law does not explicitly recognize voluntary instream leasing as a farm use under ORS 308A.056(3). Irrigators may risk losing their EFU tax deferral should they voluntarily and temporarily lease their water rights instream, hampering instream leasing programs and benefits to farms, fish and communities.

This not only limits the ways in which irrigators can manage their water rights and their property, but also limits the ability of voluntary instream leasing programs to reach their full potential.

Currently, an irrigator who leases their water rights may risk losing their EFU deferral status and risks being penalized with up to 10 years of back deferred taxes. This hampers instream leasing programs as many irrigators are not willing to assume this risk.

THE SOLUTION

HB 2971 amends ORS 308A.056(3) to explicitly include voluntary instream leasing as a qualified farm use of agriculture land. Including proposed 308A.056(3) section (m) would ensure that voluntary instream leasing is within the definition of farm use and eliminate any potential risk of irrigators losing their EFU deferral status and owing costly back taxes.

This minimal change would provide more ways agricultural producers can manage their land and water and create a win-win-win for farmers, rivers, fish and the communities who live, work, play, and rely on these local waterways.



DESCHUTES RIVER
CONSERVANCY