



To: House Committee on Agriculture, Land Use, Natural Resources, and Water
Chair Helm
Vice-Chair Hartman
Vice-Chair Owens
Representative Gamba

Representative Levy
Representative Marsh
Representative McLain
Representative Scharf

From: Caylin Barter, Oregon Water Policy Program

Date: January 26, 2023

RE: Support for HB 2971 – Removing Barriers to Instream Leasing of Water Rights

Chair Helm, Vice-Chairs Hartman and Owens, and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 2971, which we support as one of several bills this session that will remove barriers to voluntary streamflow restoration efforts.

Wild Salmon Center is a nonprofit that works with partners to conserve healthy wild salmon fisheries across the North Pacific. In Oregon, WSC has worked for nearly three decades to protect and restore stronghold salmon habitats, using science to drive policy, lead planning processes, and support implementation. We advocate for state policies and programs that improve streamflow in places where salmon have the best chance of recovery. Low streamflows and high stream temperatures are stressing even our strongest salmon runs, and these problems are worsening due to climate change and increased human demand for water. But instream leasing is a win-win—it is a vital and proven tool for improving conditions in rivers where diversions of streamflow for out-of-stream uses have negatively impacted fish habitat.

Just like the residential leases and commercial leases and vehicle leases that we encounter in other areas of our lives, instream leases are a voluntary agreement between parties to temporarily change who gets to manage an asset. In this case, an irrigator agrees to temporarily use all or a portion of a water right to improve streamflows instead of using those same streamflows to irrigate crops or pasture. The Oregon Water Resources Department approves the lease through a temporary administrative change pursuant to ORS 537.348.

Instream leasing has been a tool for streamflow restoration since passage of the Instream Water Rights Act in 1987. Hundreds of instream leases have been completed since that time without impact to farm use tax status. Yet the lack of an explicit carveout for agricultural land involved in instream leasing has led to concerns that temporarily leasing an irrigation right for instream use could lead to the underlying land being disqualified from farm use special assessment, potentially exposing the participating landowner to significant tax liability.

HB 2971 resolves this uncertainty by clarifying that instream leasing of water rights associated with irrigated farmland will not disqualify that farmland from farm use special assessment. We look forward to conversations with the Committee and other interested stakeholders to ensure the bill language is narrowly tailored to address the problem. As a minor change, we would suggest striking the word “voluntary” from the proposed changes in order to maintain alignment between language in the farm use statutes and the instream leasing statute. Finally, we look forward to working with the Committee during this session to remove other barriers to voluntary streamflow restoration, including passing a bill to make permanent the statutory authority for split-season instream leases.

INTERNATIONAL HEADQUARTERS

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Thank you for the opportunity to testify in support of HB 2971.

A handwritten signature in black ink, appearing to read 'Caylin Barter', with a stylized flourish at the end.

Caylin Barter
Senior Program Manager
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