

HB 3164 (2023)

Keep Split-Season Instream Leasing in the Voluntary Toolkit

BACKGROUND

Split-season instream leasing under ORS 537.348(3) allows the use of a water right to be “split” between out-of-stream and instream uses. Through a split-season instream lease, water can be diverted to support an existing beneficial use (typically irrigation) for a portion of the year, and then protected instream for another period during the same year when low river levels may threaten vulnerable fish species.

Fifty-nine split-season instream leases have been approved by the Oregon Water Resources Department since this tool was created in 2001, with most leases occurring since 2014. Split-season instream leasing generates reliable revenue for agricultural producers and has improved streamflows in the Deschutes, Grande Ronde, Hood, John Day, Klamath, Rogue, Umatilla, and Willamette Basins.

PROBLEM

Without action from the Legislature, statutory authority for split-season instream leasing will sunset on January 2, 2024. The sunset on split-season instream leasing has already been extended twice, once in 2007 and again in 2013. The last time the sunset was extended, a 10-year cap was also added to restrict the number of years a single water right can be leased instream on a split-season basis. Several water rights have reached the 10-year cap and are no longer eligible for leasing. Farmers and ranchers are losing access to this revenue stream, and voluntary flow restoration efforts will be hampered in already struggling river systems.

SOLUTION

HB 3164 is a simple fix that permanently authorizes a flexible tool for voluntary water management:

- Eliminates the 2024 sunset on split-season instream leasing.
- Removes the 10-year cap on water right eligibility.
- Supports implementation of Oregon’s Integrated Water Resources Strategy, Recommended Action 11.B: Expand the use of voluntary programs to protect and restore streamflow.
- Ensures split-season instream leasing remains a reliable approach to support instream and out-of-stream beneficial uses under increasingly uncertain water conditions.

Split-Season Instream Leasing makes good ecological, agricultural and economic sense



Credit: The Freshwater Trust

NOTE: HB 3164 modifies ORS 537.348 as it will read after the current version of the statute sunsets on January 2, 2024. Section 1 merely restores statutory language currently in force and removes the 10-year cap on eligibility, while Section 2 repeals language that will be mooted by the removal of the sunset (pertaining to leases already in effect at the sunset). HB 3164 was introduced at the request of the Oregon Water Resources Department after the agency’s LC 549 was not filed during the Governor transition.