



# Oregon

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## Water Resources Department

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Before the  
Senate Environment and Natural Resources Committee  
Senator Jackie Dingfelder, Chair

### **Testimony on SB 199 “Removing the Sunset on Split-Season Leasing”**

Presented by:  
Oregon Water Resources Department  
February 11, 2013

Thank you for the opportunity to present testimony on Senate Bill 199, a Department bill that would remove a sunset date of 2014 from the Water Resources Department’s existing program called “Split-Season Leasing.” This is a program that has been in place for more than a decade without causing injury to other water right holders. Additionally, the program has worked well for the Department, its customers, and the environment.

#### **Program Background**

The Department’s instream leasing program provides a voluntary means to aid the restoration and protection of streamflows. This arrangement provides benefits both to water right holders and to instream values by providing water users with options that protect their water rights while also leasing water for instream benefits.

The Split Season Leasing Program is a specific type of instream leasing program. Established by the Oregon Legislature in 2001, the program sunset was extended to January 2, 2014 by the 2007 Legislature.

The Split Season Leasing program allows for both instream and out-of-stream uses to occur from the same water right, but at different times of the year. For example, an irrigator would bring in a cutting or two of hay with an existing water right, and then would work with the Department to leave and protect water “instream” for the remainder of the growing season.

The program resides in ORS 536.348 Section 3 and is supported by Department rules found in OAR 690-077-0079.

#### **Program Implementation**

Participants may lease for up to five years at a time, with the option to renew.

The first two split season instream leases were submitted to the Department in 2002. To date, the Department has approved 17 individual split season instream leases, two of which have been renewed, with an annual average instream use of 3.7 cubic feet per second.

Although this program is available state-wide, most participants are irrigators from the Deschutes, Rogue River, and Willamette Basins.

Requiring Measurement and Reporting. Applicants must meet additional requirements, including measurement and reporting. Applicants must consult with the Department's Watermaster prior to submitting the application to determine appropriate measuring and reporting conditions. Instream and out-of-stream use under the lease may not exceed the total amount noted on the water right.

Protection Against Injury. To lease any water right to instream use, including under a split season instream lease, the lease must not result in injury to other water rights or enlargement to the existing right. The lease is reviewed by Department staff, including the local Watermaster, and is subject to a public comment period during which issues of injury and enlargement may be raised. If a proposed lease would result in injury or enlargement, the Department may reduce and/or condition the resulting instream use in the approving Final Order to prevent the injury or enlargement. If the injury or enlargement cannot be prevented, the Department will deny the lease application. No issues of injury have been identified associated with split season instream leases that were not addressed during the review process.

### **Development of the Bill**

During 2012-13, the Department convened a Split-Season Leasing Work Group. The purpose of the Work Group was to review the Split-Season Leasing Program and to assist in the development of a legislative concept to address the 2014 sunset date presently on the program.

The Work Group met on the following dates:

- May 11, 2012
- June 13, 2012
- August 27, 2012
- February 1, 2013.

Participants in the Work Group included:

- Deschutes River Conservancy
- The Freshwater Trust
- Klamath Basin Rangeland Trust
- Oregon Farm Bureau
- Water For Life
- League of Oregon Cities
- Oregon Network of Watershed Councils
- Oregon Water Resources Congress
- Deschutes National Forest
- Gordon Larson, Program Participant

Participants were clear that they did not want to increase the cost nor the administrative burden of the program. They did not advocate changing the program in any way. They did, however, suggest a number of adjustments that would improve the bill.

The Department was able to address each of the following suggestions in Senate Bill 199, which would amend ORS 537.348, the statutory home for the Department's instream transfers program.

- Section 1(1) replaces the phrase “purchase or lease all or a portion of an existing water right or accept a gift.” Participants did not like the fact that the word “lease” is used in slightly two different ways in the same paragraph.
- Section 1(1) confirms that permanent instream conversions are subject to the same requirements as other water right transfers under ORS 540.505 to 540.585. Short term instream conversions, called instream leases, on the other hand, can be revoked or modified as noted in the bill. Therefore, they are not subject to the more costly review and newspaper notice requirements as permanent water right transfers.
- Section 1(2) focuses on short term instream transfers, called instream leases. Clarify that the maximum term of an instream lease is five years and that terms are renewable. Previously, this language resided only in rule.
- Section 1(3) focuses on a specific type of instream lease, the split-season lease. It notes that the uses should not be concurrent and also notes the measurement and reporting requirement.
- Section 1(4) describes how to file a request and obtain Department approval for the overall instream leasing program. Specifically it lays out requirements for the Department to provide notice and receive allegations of injury. Previously, this language resided in only in rule.
- Section 1(5) directs the Department to issue an order approving a request for an instream lease if it finds that the lease can implemented without injury to other existing water rights. Again, this language previously resided only in rule.
- Finally, Section 1(6) confirms that the Department may revoke or modify an order issued for an instream lease if the Department finds injury. This language previously resided in rule.

One participant also suggested extending the program sunset. Other participants disagreed, noting that the program has been under-utilized by their members and partners in part because of the sunset date. As a result, the suggestion to sunset the program was not incorporated into Senate Bill 199.

## **Conclusion**

Senate Bill 199 would modify ORS 537.348 to remove the sunset date of 2014 from the Split-Season Leasing Program and make the other adjustments described above.

With valuable input from the 2012-13 Split Season Leasing Workgroup, Senate Bill 199 contains language that would place in statute: the five-year term of each lease, the requirements for review, the requirement for public notice, the opportunity for comment, the protection against injury, and the process for approval or modification of a lease.

Additionally, the Department has discussed with members of this committee potential amendments to the bill, which would incorporate a 12-year sunset and remove the word “acquire” from Section 1. The Department has no objective to amendments of this nature.

This bill has a minimal fiscal impact, as it would continue a program that currently operates through the use of fees.