

Enrolled Senate Bill 199

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CHAPTER

AN ACT

Relating to the transfer of water rights to in-stream use; creating new provisions; amending ORS 537.348; and repealing section 3, chapter 205, Oregon Laws 2001.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is amended to read:

537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. **Except as provided in subsections (2) to (6) of this section,** a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) **Subject to subsections (3) to (6) of this section,** any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of *[such]* **the** lease, the use of the water right as an in-stream water right shall be considered a beneficial use. **The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed. However, the total period for which a water right may be leased for split use as described in subsection (3) of this section may not exceed 10 years regardless of the number of leases or renewals of leases issued for the water right.**

(3) **A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream water right during the same calendar year, provided:**

(a) **The uses of the existing water right and the in-stream water right are not concurrent; and**

(b) **The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right.**

(4) **A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval**

of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(5) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights. If the lease is for the split use of water between the existing water right and the in-stream water right during the same calendar year, the conditions imposed in the order approving the request must include, but need not be limited to, compliance with subsection (3) of this section.

(6) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right.

SECTION 2. ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, and section 1 of this 2013 Act, is amended to read:

537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to [(6)] (5) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to [(6)] (5) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed. *[However, the total period for which a water right may be leased for split use as described in subsection (3) of this section may not exceed 10 years regardless of the number of leases or renewals of leases issued for the water right.]*

[(3)] (3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream water right during the same calendar year, provided:]

[(a)] (a) The uses of the existing water right and the in-stream water right are not concurrent; and]

[(b)] (b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right.]

[(4)] (3) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

[(5)] (4) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights. *[If the lease is for the split use of water between the existing water right and*

the in-stream water right during the same calendar year, the conditions imposed in the order approving the request must include, but need not be limited to, compliance with subsection (3) of this section.]

[(6)] (5) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right.

SECTION 3. The amendments to ORS 537.348 by section 2 of this 2013 Act become operative on January 2, 2024.

SECTION 4. Section 3, chapter 205, Oregon Laws 2001, as amended by section 1, chapter 355, Oregon Laws 2007, is repealed.

SECTION 5. (1) The amendments to ORS 537.348 by section 1 of this 2013 Act apply to leases and lease renewals entered into on or after the effective date of this 2013 Act.

(2) Notwithstanding the amendments to ORS 537.348 by section 2 of this 2013 Act, any lease or lease renewal allowing the split use of water between an existing water right and an in-stream water right during the same calendar year and having a term that began before the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act may continue in effect until the earlier of the expiration of the term or five years after the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act. This subsection does not allow the total period for which a water right may be leased for the split use of water during the same calendar year to exceed 10 years.

Passed by Senate March 4, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 9, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State