



DESCHUTES RIVER
CONSERVANCY

January 27, 2023

TO: House Committee on Agriculture, Land Use, Natural Resources, and Water
FROM: Kate Fitzpatrick, Executive Director, Deschutes River Conservancy
RE: HB 2971 – Exclusive Farm Use Tax Deferrals and Voluntary Instream Leasing

Chair Helm and Committee Members,

This letter is to serve as testimony providing support for HB 2971, related to Exclusive Farm Use tax deferrals and voluntary instream leasing. The Deschutes River Conservancy fully supports this legislation amending ORS 308A.056 and wishes to provide additional information detailing the importance of the bill. The amendments proposed would make for a win-win-win situation for farms, fish, and communities that rely on our state's waters.

The Deschutes River Conservancy (DRC) was formed in 1996 by the Confederated Tribes of Warm Springs, irrigation, and environmental interests. The DRC's mission is to restore streamflow and water quality in the Deschutes Basin using collaborative approaches that support agriculture and other uses of water. Our board of directors includes irrigation and environmental interests and operates by consensus. We have restored significant flows to our basin's rivers while increasing the reliability of agricultural water rights and operations.

Why are we restoring flows? Many of our rivers in the state are over-appropriated, meaning more water rights were issued to use water out of the stream than is naturally available in the river, leaving some rivers dry or with very low flows during certain times of the year. In 1987, the state developed several tools to create voluntary mechanisms to restore flows (*See*, ORS 537.348(2)). One of the major tools we use is the temporary and voluntary instream leasing of water rights. An instream lease gives a farmer the option to leave their water right instream on a temporary basis.

A farmer may choose to participate in instream leasing programs for a variety of reasons. It may be part of their crop rotation plan. They may be sick or aging and need a year or two off from farming. They may be in transition, for example, moving to Central Oregon from out of state and trying to figure out how to set up their irrigation system. Instream leasing can be an especially useful tool in drought years when farmers find themselves trying to irrigate with unreliable water. In addition, instream leasing may be utilized to maintain beneficial use requirements under Oregon water law. The DRC provides compensation to farmers who choose to lease their water rights instream.

Instream leasing programs have been a significant and successful tool in the Deschutes River Basin. The DRC has maintained an annual leasing program for two decades. We partner with the seven irrigation districts in the basin as well as with individual water right holders. On average, approximately 4,500 acres from about 250 water right holders participate in the program each year. For context, 4,500 acres is roughly 2% of the total irrigated acres in the Deschutes Basin, but the ecological benefit from their participation in our instream leasing programs is significant. Instream leasing protects upwards of 20% of the flow in the Deschutes River below Bend and in Whychus Creek during the summer.

HB 2971 helps enhance the potential of instream leasing programs and helps protect a valuable tool for irrigators to manage their land and their water rights. Presently, Exclusive Farm Use tax deferral law does not explicitly recognize instream leasing as a farm use allowing for the tax deferral. As such, when a landowner temporarily falls their land in accordance with an instream lease, they may risk losing their Exclusive Farm Use status on that portion of their property. This may result in back taxes being owed, in some cases a significant financial burden. Some landowners may view this risk as too significant to participate in an instream leasing program, limiting the potential of those programs, and taking away a tool for that landowner to manage their own property.

The amendment proposed in HB 2971 corrects this issue by explicitly recognizing instream leasing as a farm use qualified for an Exclusive Farm Use tax deferral. By including instream leasing in Exclusive Farm Use laws, farmers will have a reliable tool to manage their land, and instream leasing programs may continue to grow as irrigators no longer have any potential risk to losing their Exclusive Farm Use status by participating. This amendment is a small fix that provides potentially significant benefits to the agricultural community, the environment, and the communities that rely on the waters of Oregon. The Deschutes River Conservancy expresses its support for this bill and offers its expertise on the matter should the committee and its members need any additional information.

Thank you for providing an opportunity to provide additional input into this process.

Sincerely,



Kate Fitzpatrick
Executive Director
Deschutes River Conservancy