

JEFFERSON COUNTY BOARD OF COMMISSIONERS



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February 20, 2008

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**WATER RESOURCES DEPT
SALEM, OREGON**

Oregon Water Resources Commission
c/o Phil Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

Dear Commissioners:

Thank you for the opportunity to comment on the Deschutes Basin Ground Water Mitigation Program Five-Year Program Evaluation Report. We commend the Oregon Water Resources Department (OWRD) and the Oregon Water Resources Commission (OWRC) on the success of the mitigation program in meeting program objectives to protect state Scenic Waterways and senior water rights while providing opportunities for new growth in the basin. We are concerned, however, that the program's objectives will be stifled, and the basin will face a potentially crippling moratorium on new development without your immediate action to address the "cap" on new water right applications that may be processed under the rules.

As you know, the Ground Water Mitigation Program was established by administrative rules adopted by the Commission in 2002. The rules include a system of checks and balances that require annual reports and a more comprehensive five-year program evaluation. The rules also impose a "cap" of no more than a cumulative total of 200 cfs of new ground water uses that may be approved prior to the five-year review. Upon reaching the cap, the Commission is directed to review the cap to determine whether the restriction should be lifted or otherwise modified through a rulemaking process.

The five-year evaluation report confirms that the mitigation program is working well. Stream flows are improving throughout the basin. However, the 200 cfs cap has apparently been reached – at least based on the manner in which OWRD has administered the program to date. As a result, the basin will face an immediate and indefinite moratorium on new growth as potential new projects – or even municipal water supplies – will not be able to obtain water rights, even with full mitigation under the rules. We are especially concerned about the impact this will have in Jefferson County. Although substantial growth has occurred in Deschutes County over the past five years while the existing cap has been in place, Jefferson County is just now poised to move forward with several exciting new projects. As you may know, for nearly two years, Jefferson County has been involved in a process to amend its comprehensive land use plan and map to identify areas within the county that could be suitable for new destination resort development. Pursuant to Statewide Planning Goal 8, without the map and comprehensive plan change in place, new resort projects could not submit applications for land use approval. In an opinion issued on February 11, the Oregon Land Use Board of Appeals upheld the Jefferson County mapping process and remanded the issue for minor corrections. Once

the remand process is complete, the County will be able to accept applications for projects we know are already on the drawing board.


The County's slow and steady progress toward paving the way for possible destination resort development will grind to a halt without the ability for projects to obtain new ground water rights – subject to compliance with the state's mitigation requirements. In the meantime, new projects and municipal development in Deschutes County have moved forward –using a disproportionate share of the available “cap.” Of the 73 ground water applications currently pending before OWRD, only three are for new uses in Jefferson County. Surely the citizens of Jefferson County should be able to benefit from the mitigation program in the same way as neighboring areas.


The OWRD evaluation report indicates that the mitigation program is working. In almost all cases, the Deschutes River has greater instream flow today than it had five years ago and there is a good supply of mitigation water available to prospective water right applicants.

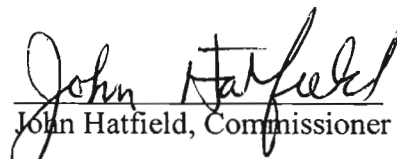
With these excellent program results in place, there is no reason not to continue with the mitigation program and no justification for a moratorium on new development. We urge your immediate action to adjust the cap sufficiently to allow for appropriate new projects. The proposals offered by the Deschutes Water Alliance provide a sensible approach for clarifying how the cap should be calculated, and for processing all pending applications as quickly as possible to weed out speculative and premature requests that are currently charged against the cap. We strongly support the DWA recommendations for immediate rulemaking to address these concerns.

Thank you for the opportunity to comment.

Sincerely,



Bill Bellamy, Chair

Mike Ahern, Commissioner

John Hatfield, Commissioner



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Prineville District Office
3050 N.E. 3rd Street
Prineville, Oregon 97754

Rec'd
2-13-08

IN REPLY REFER TO:

1788.7 (OR-056)

Oregon Water Resources Department
1128 NW Harriman St.
Bend, OR 97701
Attn: Mr. Kyle Gorman

Dear Mr. Gorman:

Thank you for the opportunity to comment on the Deschutes Ground Water Mitigation Program Five-Year Program Evaluation Report. Michelle McSwain of my staff attended your presentation on this subject in Bend on January 23, 2008 and found the session to be very informative. In response to the presentation and the Oregon Water Resources Department (OWRD) draft report, I would like to bring to your attention two matters for consideration.

First, while I recognize that the Oregon Administrative Rules specify a necessity to maintain water quantity for State Scenic Waterways (SWW) and instream water rights, the *quality* of water replacing extracted groundwater should also be considered. There exists potential for groundwater degradation as a function of water that is returned to the Deschutes River as mitigation flows. For example, if surface water of lesser water quality is used to replace spring or groundwater flows, water quality of the river could be affected.

Therefore, the BLM would like to gain a better understanding of the source of mitigation water. Additionally, I would support a focused water quality monitoring effort to determine whether water quality is degraded as a consequence of the ground water mitigation program in the upper basin.

Second, the BLM is concerned that the groundwater mitigation program may have unanticipated impacts on the flora and fauna associated with springs along the margins of the Deschutes River. Although the total quantity of water as measured at stream gages may indicate a positive flow response to the mitigation program, extraction of groundwater may decrease flow to springs resulting in a change in the areal extent of springs and potentially a change in the composition of the unique plants and animals associated with those springs. To determine if these changes are occurring as a result of the mitigation program, I suggest establishing a monitoring program to track condition of springs both in the Middle Deschutes River and the lower Crooked River.

These river segments are of particular interest for the BLM since these segments are federally designated as Wild and Scenic and fall under the jurisdiction of the BLM. As you may well know, Congress designated these resources as Wild and Scenic based on, among other values, the springs, groundwater, and botanical resources associated with the rivers and springs that have been deemed "Outstandingly Remarkable Values".

The BLM has provided data and maps including the location and size of springs on both river segments, as well as the vegetative composition associated with the springs and the riparian area adjacent to the rivers. We believe these data can be useful for establishing important baseline understanding of this unique system. My staff would be happy to assist you in utilizing this data to establish a monitoring program for these rivers.

Many thanks for your consideration. I or my staff would be happy to discuss these comments as well as your thoughts or concerns regarding these issues. Please do not hesitate to contact me at (541) 416-6766 or Molly_Brown@blm.gov. You may also contact Michelle McSwain at (541) 416-6877 or Michelle_McSwain@blm.gov.

Sincerely,

A handwritten signature in black ink that reads "Molly M. Brown". The signature is written in a cursive, flowing style.

Molly M. Brown
Field Manager, Deschutes Resource Area