



Staff Report

TO: Water Resources Commission

FROM: Ivan Gall, Director

DATE: December 12, 2025

SUBJECT: Agenda Item K
Water Resources Commission

DIRECTOR'S REPORT

I. Recent Actions and Updates

A. Staffing Update

Since the September meeting, the Department has filled seven positions with start dates before November 15, 2025. Of the positions filled, there are six staff who are new to the state and one current staff member who took a job rotation within the agency. Positions filled include the following:

Assistant Watermaster (2)
Groundwater Field Technician
Portfolio & Policy Analyst
Senior Hydrographer
Water Use Data Analyst and Evapotranspiration Support
Water Rights Caseworker

As of November 15, 2025, the Department has eleven vacant positions and five recruitments that are in process. Two of the five recruitments that are in process are positions with accepted offers whose start dates are after November 15, 2025. These new hires will be detailed in the February 2026 Director's Report.

B. Tribal Update

Annual Government to Government Summit: The Director and the PCI Division Administrator attended this year's summit in person; the Tribal Liaison attended virtually. The Summit was held October 7th and 8th, in Coos Bay. The Summit provided an opportunity to hear from the Tribes the challenges they are facing and how the State can engage and consult in meaningful ways.

Bi-weekly Tribal Leaders & Governor's Office Coordination Call: The Director, as available, and Tribal Liaison are participating in bi-weekly calls with the Governor's office and Tribal Leadership, to keep abreast of current events throughout the state as well as at the federal

level.

State-Tribal Water Policy Forum: September 19, the Director sent letters to Tribal leadership and staff for all nine federally recognized Tribes to gauge interest in establishing an ongoing State-Tribal Water Policy Forum. To date, a majority of the nine Tribes have expressed interest in participating, and an additional planning meeting for the Forum is likely to convene in early 2026.

Task Force on Tribal Consultation and Department Policy on Tribal Engagement: The Department continues to monitor the progress of the Task Force charged with identifying and clarifying the requirements of State agencies to engage in Tribal consultation. The Department will rely on Task Force recommendations to update the Department's 2007 policy on Tribal engagement.

Burns Paiute Tribe Consultations: On September 29, the Director's Office consulted with the Burns Paiute Tribe on the Division 512 Rulemaking and its potential impacts on Tribal groundwater rights in the proposed Harney Basin Critical Groundwater Area (CGWA). The Tribe sought assurances that the proposed Division 512 rules and the designation of the CGWA would not impact Tribal water rights; the Tribe also asked the Department to work with them to develop a co-stewardship framework. On October 15, the Director's Office met again with the Tribe to discuss Harney Basin co-stewardship. On November 25, the Director's Office consulted with the Tribe on the IWRS 2025-27 Work Plans.

Water Rights Rulemaking Consultations: On September 5, the Director's Office sent letters to Tribal leadership and staff offering to engage informally at the staff-to-staff level as well as formally through government-to-government consultation on the proposed water rights process improvements rulemaking effort. Two Tribes accepted invitations to serve on the Rules Advisory Committee: Confederated Tribes of Grand Ronde and Confederated Tribes of the Umatilla Indian Reservation. The Director's Office also has consulted with the Confederated tribes of Coos, Lower Umpqua and Siuslaw (September 18) and Klamath Tribes (October 21).

Ongoing Coordination Efforts: The Department's Tribal Liaison and other staff continue to attend and provide updates during quarterly meetings held by the Oregon Legislative Commission on Indian Services (LCIS) Cultural Resources Cluster and the LCIS Natural Resources Working Group. During each update, Tribal staff are invited to offer input and encouraged to request either coordination or formal consultation on any issue of interest or concern. The Tribal Liaison continues to work with sister agencies and Tribal staff to update and standardize communications, coordination, and consultation efforts between the Department and the Tribes concerning policy issues of potential interest or concern.

Annual Government-to-Government Report – The Department's Tribal Liaison is working with staff to update the 2025 Annual Tribal-State Government-to-Government Report, which details Tribal engagement activities that occurred throughout the year. The Report is due to LCIS and the Governor's Office by December 15. Last year's report is available online:

[https://www.oregonlegislature.gov/cis/GovToGovReports/Annual%20Report%20\(OWRD\)%202024.pdf](https://www.oregonlegislature.gov/cis/GovToGovReports/Annual%20Report%20(OWRD)%202024.pdf).

C. Deschutes Basin Mitigation

The Department is required by OAR 690-505-0500(3) and OAR 690-521-0600 to provide annual evaluations on the Deschutes Basin Groundwater Mitigation Program. The annual evaluation is done in coordination with the Oregon Departments of Fish and Wildlife, Environmental Quality, State Lands, and Parks and Recreation. The 2023 and 2024 annual evaluations are included in Attachments 1 and 2. The goals of these annual evaluations are to identify how streamflows are responding to additional groundwater use within the Deschutes Groundwater Study Area and implementation of the mitigation program.

D. Klamath Update

Chinook salmon have returned to the Upper Klamath Basin. The Oregon Department of Fish and Wildlife, and the Klamath Tribes, are cooperatively monitoring the returning fish. Spawning runs have been identified in the Williamson River, Sprague River, Wood River and several tributaries. ODFW has advised OWRD staff that the reintroduction of anadromous fish has occurred because of dam removal, and this has implications for regulation of instream determined claims held by the Klamath Tribes.

Richard Whitman will continue to convene monthly interagency meetings with several other state agencies. The purpose of the meetings is to share information, key project work, and ensure that the state as an enterprise is working in a cohesive manner. Agencies participating in the monthly meetings include OWRD, ODFW, DEQ, OSMB, OWEB, DSL, OPRD, and the Governor's Natural Resources advisors.

E. Voluntary Agreements

During the September Commission and Groundwater Advisory Committee meetings, Department staff shared an update on efforts to draft guidance to aid the Commission in evaluating voluntary agreements submitted by groundwater users in accordance with ORS 537.745 (See WRC, September 12, 2025, Agenda Item G - See Attachment 1).

In response to comments received, staff revised Draft Guidance for "Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir" to (1) focus on the Harney Basin; (2) clarify assumptions relating to prior appropriation; (3) modify language relating to evaluating success; (4) remove minimum participation level; and (5) simplify qualification language. (See Attachment 3).

The revised draft was shared with the Groundwater Advisory Committee on October 28, which heard public comments.

On November 20, Staff met with water users in the Harney Basin to discuss voluntary agreements and answer questions from groundwater users about process and expectations. Staff anticipate seeing the development of at least two voluntary agreements over the next few months.

The draft guidance remains a working document, subject to change as the Department engages in further discussions with groundwater users in the Harney Basin.

F. Static Water Level Measurement and Reporting

In early November, OWRD sent out 576 Notices of Violation (NOVs) for failure to measure and report static water levels (SWL) as required in certain groundwater rights. This is part of a statewide effort to increase compliance with the water right requirement which collects important information to help OWRD define, monitor and manage groundwater resources. In an era of increased water scarcity, water level data are vital to understanding local groundwater conditions and trends. NOVs were sent to those water right holders who did not report any SWL as required in 2025. Water right holders can come into compliance by reporting the required SWL(s) in 2026.

SWL measurements are a requirement in most groundwater permits issued since the late 1990s. The specific requirement varies by individual water right but most commonly those subject to SWL requirements must take SWL measurements and report them to OWRD annually to comply with their permit conditions. SWL measurements typically must be taken in spring – March or April, as specified in the individual water right.

Starting in 2026, water right holders out of compliance with SWL requirements will be ordered to stop water use. Compliance can be reached by either submitting required measurements on a timeframe acceptable to OWRD or stopping water use under that right. Rights holders who remain out of compliance may face a civil enforcement Penalty. Paired with these NOVs, OWRD has focused on increasing awareness of the requirement and how to comply, developing a handout, video, and other materials. OWRD is working with water partners to get the word out and connect water right holders to information they need to come into compliance.

G. Place-Based Water Planning

Place-Based Water Planning (PBWP) is a voluntary, locally led, and collaborative process that brings together an area's water interests to develop a holistic understanding of the area's water resources and plan for a water future that promotes and sustains a healthy economy, environment, and society. Through PBWP, OWRD and other state agencies provide guidance, funding, and technical assistance to place-based initiatives to bring interested parties together, develop and update plans, and coordinate plan implementation.

The Place-Based Water Planning Fund (ORS 537.872-537.873) was authorized by the 2023 Legislature as a permanent funding program, with an initial allocation of \$2 million. OWRD has been working to stand up the new program to reflect new statutory language, lessons learned from past efforts, and recommendations from the Work Group on State-Supported Regional Water Planning and Management. In 2024, the Department formed a Rules Advisory Committee (RAC) to assist in developing rules for the Fund and program, and the Water Resources Commission adopted Division 602 rules in March 2025.

In September 2025, the Department released the Draft Handbook for Place-Based Integrated Water Resources Planning in Oregon for public review and comment. The Department is currently finalizing the handbook based on the feedback received and is developing grant application materials. The Department is also working on improving interagency coordination and developing new proactive technical assistance to support future Place-Based Water Planning efforts.

The first funding cycle will be announced in early 2026 and will offer three grant types to support different phases of planning: Planning Readiness Evaluation and Preparation (PREP), Plan Development, and Post-Plan Coordination. Applications will be submitted through the new online grant platform, with an anticipated due date in spring 2026.

H. Reservations Update

From 2015 to 2016, the Department worked with the Commission to extend several reservations of water in a number of basin programs. Reservations are held by the Oregon Department of Agriculture in the Malheur Lake, Burnt, Owyhee, Powder, Hood, and Grande Ronde River basins. A reservation of water for future economic development sets aside a quantity of water for multi-purpose storage to meet future needs in a defined sub-basin. To use reserved water, one needs to apply for a storage water right under the Department's regular permitting process and submit a supplemental form. If successful, the new storage right retains the priority date of the reservation. A secondary permit is required to put the stored water to beneficial use.

The Commission requested annual updates on interest in and progress on accessing water from reservations. There has been intermittent interest in the feasibility of storage and the use of specific reservations. However, there are currently no storage water right applications pending that propose to make use of reserved water.

II. Upcoming Board and Commission Meetings

Commission/Board	Date
Land Conservation and Development Commission	December 4 – 5, 2025
	February 26-27, 2026
	April 23 – 24, 2026
Parks and Recreation Commission	February 24, 2026
	April 21-22, 2026
	June 9-10, 2026
	September 15-16, 2026
Fish and Wildlife Commission	November 17-18, 2026
	December 12, 2025
	January 16, 2026
	February 19 – 20, 2026
Environmental Quality Commission	March 19 – 20, 2026
	December 2, 2025
	January 15 – 16, 2026
Watershed Enhancement Board	March 12 – 13, 2026
	January 27-28, 2026
	April 28-29, 2026
	July 28-29, 2026
	October 27-28, 2026

Board of Agriculture

December 3 – 5, 2025
March 18 – 20, 2026

Attachments:

1. 2023 Deschutes Groundwater Mitigation Program Annual Review
2. 2024 Deschutes Groundwater Mitigation Program Annual Review
3. Draft – Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir (October 20, 2025)
4. OWRD Active Litigation Chart
5. Rulemaking Update

DESCHUTES BASIN GROUNDWATER MITIGATION PROGRAM



OREGON



WATER RESOURCES
DEPARTMENT

DESCHUTES BASIN GROUNDWATER MITIGATION PROGRAM

2023 ANNUAL REVIEW

OREGON WATER RESOURCES DEPARTMENT



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Introduction

The attached report provides the 2023 Annual Evaluation of the Deschutes Basin Groundwater Mitigation Rules (Oregon Administrative Rules (OAR) Chapter 690, Division 505) and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules (OAR Chapter 690, Division 521).

Background

A groundwater study of the Deschutes Basin above Lake Billy Chinook was conducted in the late 1990's by the U.S. Geological Survey (USGS) in cooperation with the Oregon Water Resources Department (OWRD); the City of Bend; City of Redmond; City of Sisters; Deschutes and Jefferson counties; the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS); and the U.S. Environmental Protection Agency and the Bureau of Reclamation.

The CTWS (Reservation boundary shown in Appendix 1), along with the United States of America and the State of Oregon, is a party to the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997 and amended effective May 16, 2002 (WRSA). The WRSA recognizes CTWS tribal reserved water right interests on the Deschutes River and tributaries for on and off Reservation uses. In addition, the parties to the WRSA have agreed to pursue long-term, cooperative management of the waters that affect their interests.

On September 13, 2002, the Commission adopted the Deschutes Basin Groundwater Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules. The rules provide for mitigation of impacts to

scenic waterway flows and senior water rights including instream water rights, while allowing additional appropriations of groundwater in the Deschutes Basin Groundwater Study Area (Appendix 2). The mitigation program, by rule, allows an additional 200 cubic feet per second (CFS) of new groundwater use, referred to as the allocation cap.

Evaluation Requirements

Under OAR 690-505-0500(3) and OAR 690-521-0600 of the Deschutes Basin Groundwater Mitigation Rules, the Department is required to annually evaluate and report on the Deschutes Basin Groundwater Mitigation Program, including the implementation and management of mitigation credits allocated through existing mitigation banks. This annual evaluation report is to include information on new groundwater appropriations, streamflow impacts, and mitigation activity to determine whether scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base-period flows (1966 to 1995).

The annual review must address the following topics:

- New groundwater appropriations
- Mitigation activity
- Mitigation bank activity
- Streamflow impacts
- Consultation with the Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department, Oregon Department of Environmental Quality (ODEQ), and Oregon Department of State Lands

- Determination of whether the scenic waterway and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis.

Report Contents

This report incorporates all the elements required for the annual report, as outlined in OAR 690-505-0500(3) and OAR 690-521-0600.

Agency Comments

The Department provided a draft of the report for review by the agencies listed above on August 21, 2025. Comments were provided by ODFW (see Appendix 3) and are summarized below.

Issues and concerns raised by ODFW include:

- Improvements to the Program must be made prior to the allocation cap being lifted.
- Water accounting and monitoring should be improved to ensure mitigation is providing a true offset for impacts and remains available as “wet water” in perpetuity. Such improvements may require additional gages, flow measurement, and modeling beyond what is currently in place.
- Mitigation under the Program should directly offset the impact by being located upstream of the impacted reach, not within a larger “Zone of Impact.”
- Impacts of increased groundwater use under the Mitigation Program to local springs, which are an important source of cold-water inputs to streams by providing cold-water refugia and other habitat benefits for fish.
- The effect of the Mitigation Program on streamflows outside of the irrigation season.
- Continue working with other state agencies to seek funding for research, development and implementation of these concerns.

Allocation Cap

To limit the amount of impact on surface water flows, the mitigation program established a 200 CFS cap on the amount of water that may be allocated to new groundwater use. At the end of 2023 the amount of water use approved under the cap was 158.37 CFS. The allocation cap restriction may only be lifted or modified by the Commission if the Department’s evaluation determines that scenic waterway and instream water right flows are being met on at least an equivalent or more frequent basis as compared to long-term, representative base-period flows (1966 to 1995) and it meets the Department’s mission to sustainably protect and manage the resource.

The CFS amount deducted from the 200 CFS cap is the amount of water (in CFS) allowed in the Department’s final order approving an application requesting the use of groundwater located within the Deschutes Groundwater Study Area (DGWSA). Final orders set a five-year limit for the applicant to provide the required mitigation (i.e., the mitigation obligation). Once the applicant meets their mitigation obligation, the Department issues the groundwater permit. If the mitigation is not provided by the deadline, the final order expires and the CFS is added back into the cap.

All actions that allow CFS to be added back into the cap are:

1. Rates associated with offsets pursuant to 690-505-0610(8);
2. Rates associated with applications withdrawn after final order issuance pursuant to 690-505-0620;
3. Portions of rates approved by a final order issued under 690-505-0620, but not included in a water right permit that is issued following satisfaction of the mitigation requirement;
4. Rates associated with expired final orders pursuant to 690-505-0620(2);
5. Portions of rates associated with permits issued pursuant to 690-505-0620 and subsequently cancelled;
6. Rates associated with certificates issued pursuant to 690-505-0620 and subsequently canceled; and
7. Rates associated with the portion of use originally authorized under a permit issued pursuant to 690-505-0620, but not included in a subsequent certificate.

Since the adoption of the rules in September 2002 through the end of 2023, approximately 296 groundwater applications have been submitted to the Department within the DGWSA totaling approximately 355.39 CFS; however, approximately 162.96 CFS has been added back to the cap for various reasons (outlined above). Therefore, as of the end of 2023, the total allocated CFS remains under the 200 CFS cap, being 158.37 CFS on December 31, 2023.

The following breakout shows the status of all the applications received and the total amount of CFS associated with each action category. These action categories include the active and pending applications, as well as the cancelled, expired, withdrawn, rejected, misfiled, and denied applications.

Status of Files	Number of Files	Total CFS Per Status
Active/Approved	146	158.37
Pending	34	34.07
Cancelled	17	6.89
Expired	33	16.12
Withdrawn	48	91.49
Rejected	2	27.54
Misfiled	2	3.13
Denied	14	17.79
Totals	296	355.39

2023 Mitigation Activity

For each groundwater permit application submitted, the Department reviews the application and notifies the applicant of their “mitigation obligation.” The “mitigation obligation” is expressed as a volume of water in acre feet and is equivalent to the consumptive portion of the use proposed in the permit application. Groundwater applicants mitigate for this consumptive portion of their proposed use. Consumptive use is calculated using average consumptive use data for different types of use (i.e., irrigation, municipal, etc.) obtained from the U.S. Geological Survey and OWRD’s own information on consumptive use.

Mitigation must be provided in the amount (mitigation water) and in the location (zone of impact) specified by the Department. Each applicant has five years from the date the final order is issued to provide the required mitigation. Applicants must provide mitigation before a new permit may be issued.

New Groundwater appropriations and Mitigation Activities as of end of 2023

A. Active Permits:

- 150 permits issued
- 49 of which are certificated

B. Active Final Orders:

- 4 final orders

C. Applications Pending with No Final Order:

- 34 applications

D. Allocation cap summary (Figure 1):

- 158.37 CFS – total CFS allocated under cap (permits and final orders)
- 34.07 CFS – pending applications not yet deducted from 200 CFS cap
- 7.56 CFS – remaining CFS if all pending applications were approved

requiring mitigation to be provided before the permit is issued. These applicants must report annually to the Department on the volume of water used and the source of mitigation. There are 22 permits that have incremental development plans.

A summary of water use for municipal and quasi-municipal permit holders with incremental development plans is provided in Figure 2. This figure is a comparison between the amount that these water users are authorized to use at full development, the amount of water they could use based on how much mitigation they have provided through 2023, and the amount of water they actually used during 2023. Overall, in 2023, more mitigation was provided by entities with incremental development plans than was needed to mitigate for their actual use.

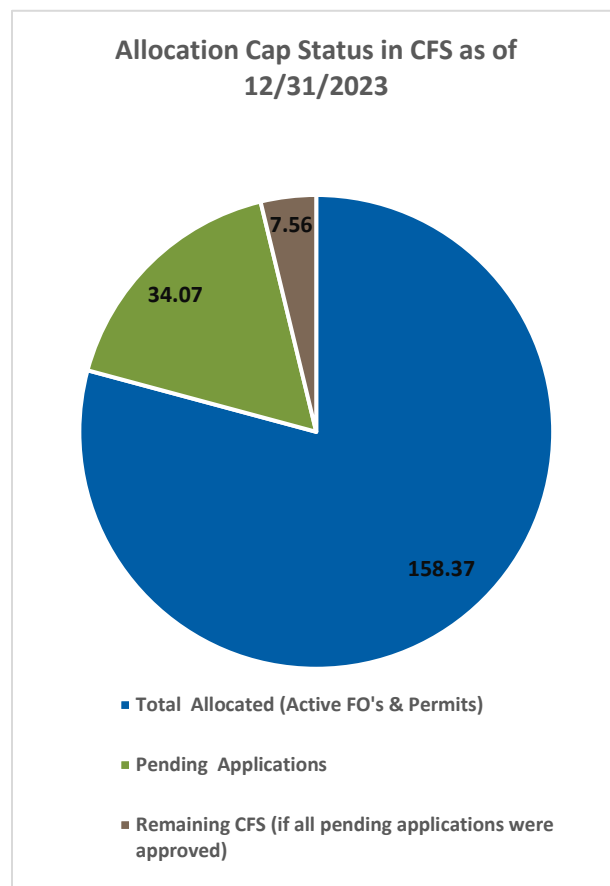


Figure 1: Allocation Cap Status

E. Incremental Development Plans: By rule, the Department may allow a municipal or quasi-municipal applicant to satisfy their mitigation obligation incrementally as the water use is developed, rather than

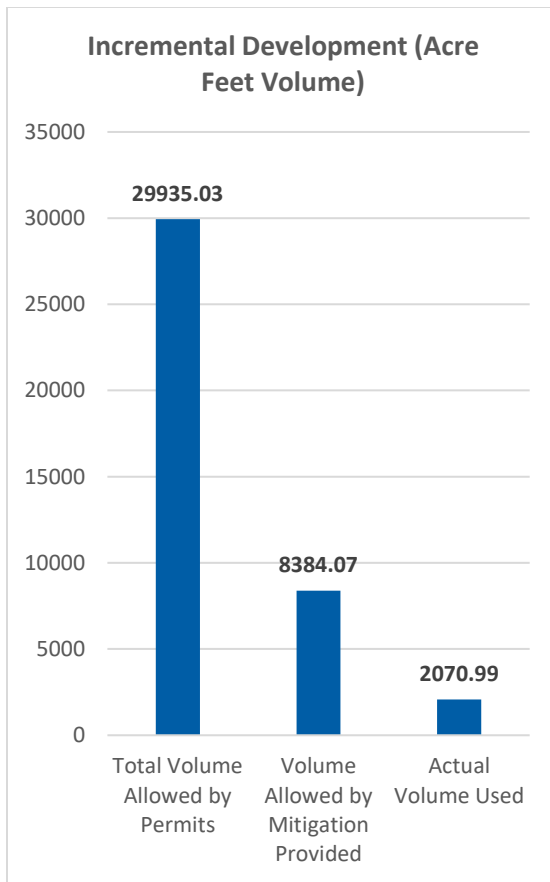


Figure 2: Incremental Development Permits

- F. **Mitigation Activity:** For each mitigation project submitted, the Department identifies the amount of water resulting from the project that can be used for mitigation purposes. The resulting protectable water, expressed in acre feet, is also referred to as “mitigation water” or “mitigation credits.” One acre foot of mitigation water is equal to one mitigation credit. For each project submitted, the Department also identifies the zone or zones of impact in which the mitigation water provides instream benefits and may be used for mitigation purposes. Mitigation for active groundwater permits and certificates issued by the Department under the Mitigation Program are provided through permanent instream transfers and

temporary instream leases (Figure 3). Mitigation credits established by a Mitigation Project are considered used when assigned to a groundwater application or permit.

- As of the end of 2023 there are 83 total active mitigation projects, consisting of:
 - 52 permanent instream transfer projects;
 - 30 temporary instream lease projects; and
 - 1 permanent reservoir release for City of Prineville.

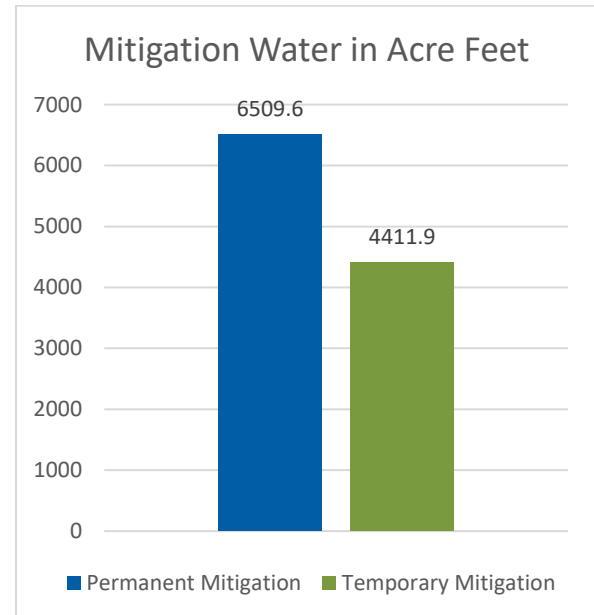


Figure 3: Mitigation Water

- Figure 4 shows the established mitigation broken out by zone of impact. The reason these amounts are more than the established amounts is because mitigation is sometimes established in multiple zones (i.e., 10 credits established in the middle and general zones, but only a maximum total of 10 credits can be used in either the middle or

general zones, or a combination thereof).

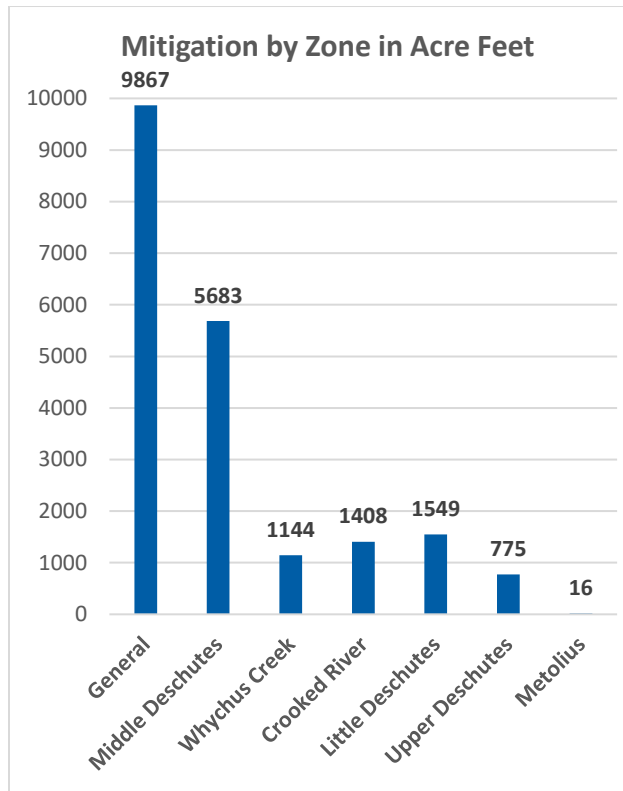


Figure 4: Mitigation by Zone

The above Figures 3 and 4 do not include the 5,100.0 AF of permanent mitigation credits issued to the City of Prineville as identified in Water Right Certificate 94149. These mitigation credits may be used to satisfy the mitigation obligation of a groundwater use found to impact surface water flows in the General and/or Crooked River Zones of Impact and are reported and managed on a water year schedule (Oct. 1 – Sept. 30). These mitigation credits may only be used by the City of Prineville and cannot be conveyed to any other person or mitigation bank. As of the writing of this report, 972.0 AF of these mitigation credits have been assigned to City of Prineville incremental groundwater permits.

G. Mitigation Banks: Mitigation banks must submit an annual report detailing all

credit transactions and activities for the preceding calendar year. As of the end of the 2023 year, there are three mitigation banks:

- Deschutes River Conservancy Mitigation Bank (DRC Mitigation Bank);
- Deschutes Irrigation, LLC; and
- Arnold Irrigation District Mitigation Bank.

H. Mitigation Bank Activity:

DRCMB

- Filed the required annual report
- Submitted 30 instream leases in 2023
- Maintained sufficient “reserve” credits to cover temporary mitigation credits used by groundwater permit holders in each zone of impact. (For each temporary mitigation credit used to satisfy all or part of the mitigation obligation of a groundwater permit, a mitigation bank is required to keep a matching credit in reserve.)

As of the end of 2023, the following mitigation banks had not yet undertaken any mitigation activity. The mitigation program rules do not require a mitigation bank to be active to remain in place.

Deschutes Irrigation, LLC

Arnold Irrigation District Mitigation Bank

Delinquent Permits:

Instream leases are one of the identified sources of mitigation under OAR 690-521-0300(1)(b); however, this temporary mitigation (instream lease-based mitigation) may only be established through a Mitigation Bank chartered by the Oregon Water Resources Commission. To date, temporary mitigation has been available from the DRC

Mitigation Bank, which primarily brokers temporary mitigation credits available through final orders issued by OWRD approving instream lease applications. Some permit holders who have used temporary mitigation in the past failed to continue providing that mitigation. Every year, the Department and DRC Mitigation Bank each notify permit holders who have failed to provide mitigation.

By rule and by permit condition, every groundwater user with a permit issued under the Deschutes Basin Groundwater Mitigation Program is required to maintain mitigation for the life of the groundwater use. Ultimately, the permit holder is responsible for maintaining any temporary mitigation being used annually with the DRC Mitigation Bank.

Since groundwater permit holders using temporary mitigation credits need to obtain mitigation credits on an annual basis, there is the risk of groundwater users failing to maintain the required mitigation. Under the Mitigation Program, when a permit holder fails to maintain their source of mitigation, OWRD is required, under OAR 690-505-0620, to regulate the use, propose denial of any permit extension request, and propose cancellation of the permit.

Figure 5 below shows the number of confirmed delinquent permits each year during a five-year period from 2019 through 2023. During the 2023 year, after being notified, all five delinquent permit holders rectified the situation by providing the required annual mitigation.

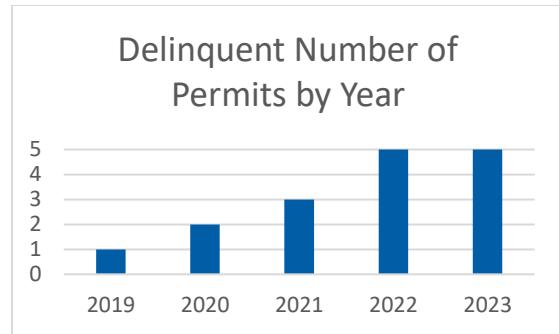


Figure 5: Delinquent Number of Permits by Year

Mitigation Effects on Streamflow

To evaluate the impact of the mitigation program on scenic waterway flows and instream water right flows, the Department developed a streamflow modeling program based on gaging records from the 1966-1995 base period, a pre-mitigation program time frame. The model simulates the long term (i.e., steady-state) estimated hydrologic effects of mitigation credits and debits on the historical records at the gaged locations across the basin, and then evaluates how often the instream flow requirements (ISFR) are met based on this adjusted streamflow data compared to the original flow records (Cooper, 2008). A modeling approach was used because the steady-state, long-term impact of streamflow to mitigation-related activities may take years or even decades to be reflected as actual changes in streamflow (Gannett and Lite, 2004), plus climate variability generally masks the streamflow response to mitigation activities at most locations (Cooper, 2008). The simulations do not reflect activities affecting streamflow outside of the mitigation program, such as canal piping/lining.

Analysis of the 2023 data demonstrates that, on an annual basis, the simulated change in percent of time instream flow requirements

(% ISFR) are met at the evaluation points ranges from -0.08% to +1.27%. Similarly, the overall annual change in mean streamflow ranges from -0.006 CFS to +26.8 CFS (Appendix 4).

Consistent with previous annual reports, the seasonal change in the quantity of streamflow (CFS) continues to be negative at all evaluation points during the non-irrigation season and positive at all evaluation points during the irrigation season, reflecting the general timing difference between the hydrologic impacts to streamflow of credits (irrigation season) and debits (year-around).

Similarly, the changes in % ISFR met generally follows this same seasonality as changes in streamflow quantity. The magnitude of change in % ISFR met varies by month and site, reflecting how close historical flows were to the ISFR prior to the mitigation program. If the historical flows were close to the ISFR for a given evaluation site, then a small change in flows can result in a large change in % ISFR if met, while the opposite is true if the historical flows differed greatly from the ISFR.

Again, this difference in seasonal results is expected due to the inherent timing difference between when the hydrologic effects of debits and credits reach the stream network. Debits (new groundwater withdrawals) produce a decrease in streamflow year-round due to the pumping effects on groundwater being attenuated in time (Gannett and Lite, 2004). Credit (instream leases and instream transfers of surface water rights) effects are immediate and occur primarily during the irrigation season.

Summary

The Department continues working to effectively implement the Deschutes Basin

Groundwater Mitigation Program.

Groundwater permit applications and mitigation projects are moving through the required processes. Overall, the program continues to produce positive benefits as more mitigation water has been approved and protected instream than is required for active groundwater permits and certificates.

In response to comments and questions received from sister agencies (as outlined in “Agency Comments” above and provided in Appendix 3 attached to this report), the Department understands the concerns brought forth regarding impacts to cold-water springs, the zonal mitigation impacts, model accounting and climate change, and impacts during the non-irrigation season. From the beginning of the Deschutes Mitigation Program, however, it was determined that the program should be structured in such a way so that it was a manageable system for OWRD to track and maintain long-term. OWRD considered the goals of the Mitigation Program, the Deschutes Groundwater Mitigation Flow Model, and the base period flows (1966-1995) and created sub-zones and consumptive use coefficients to keep the Deschutes Mitigation Program manageable. Seasonal uses were allowed to generate credits that could then be purchased to mitigate for year-round uses.

OWRD is continuing to work with ODFW, ODEQ, and interested parties to address these challenging issues. Other concerns may need to be addressed through other venues and initiatives to develop and implement a basin-wide water management plan.

The Deschutes Groundwater Mitigation Program is a performance based, adaptive approach to managing new groundwater permits in the Deschutes Groundwater Study

Area. As part of this adaptive approach, the program included a cap on how much new groundwater use could be approved. The Department may issue final orders approving groundwater permit applications for a cumulative total of up to 200 CFS. This limitation is one of the elements of the program that is to be reviewed as part of the program evaluation. The 200 CFS cap represents the rate up to which water may be withdrawn from the groundwater resource. It is important to note that this rate-based limitation is different from the consumptive use portion (in acre feet) for which groundwater permit applicants must provide mitigation.

As discussed in the “Allocation Cap” section of this report, the quantity of water (CFS) allocated under the cap fluctuates up and down from year to year as a result of various administrative actions (i.e., denial, cancellation, expiration, withdrawal, etc.) which add back previously deducted CFS to the cap. As of the end of 2023, 158.37 CFS was allocated under the cap.

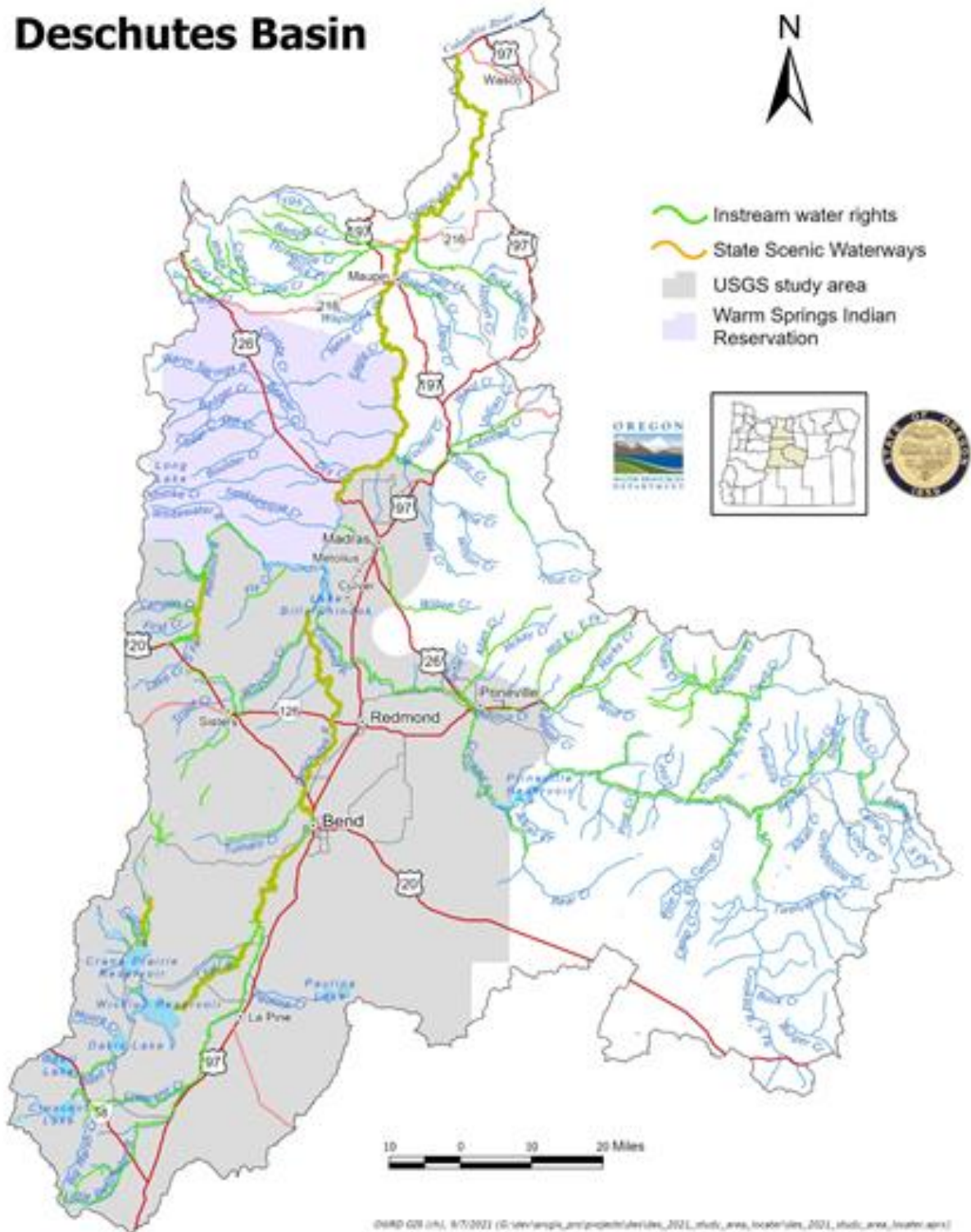
Given the status of the 200 CFS allocation cap, the Department understands there is much interest and diverse opinion in how the future of the Deschutes Basin Groundwater Mitigation Program should unfold. The Department has prioritized working through the many complex issues related to the Program. Both sister-agencies and interested parties have and will be invited to engage in the OWRD process to evaluate modifications to the existing Deschutes Basin Groundwater Mitigation Program.

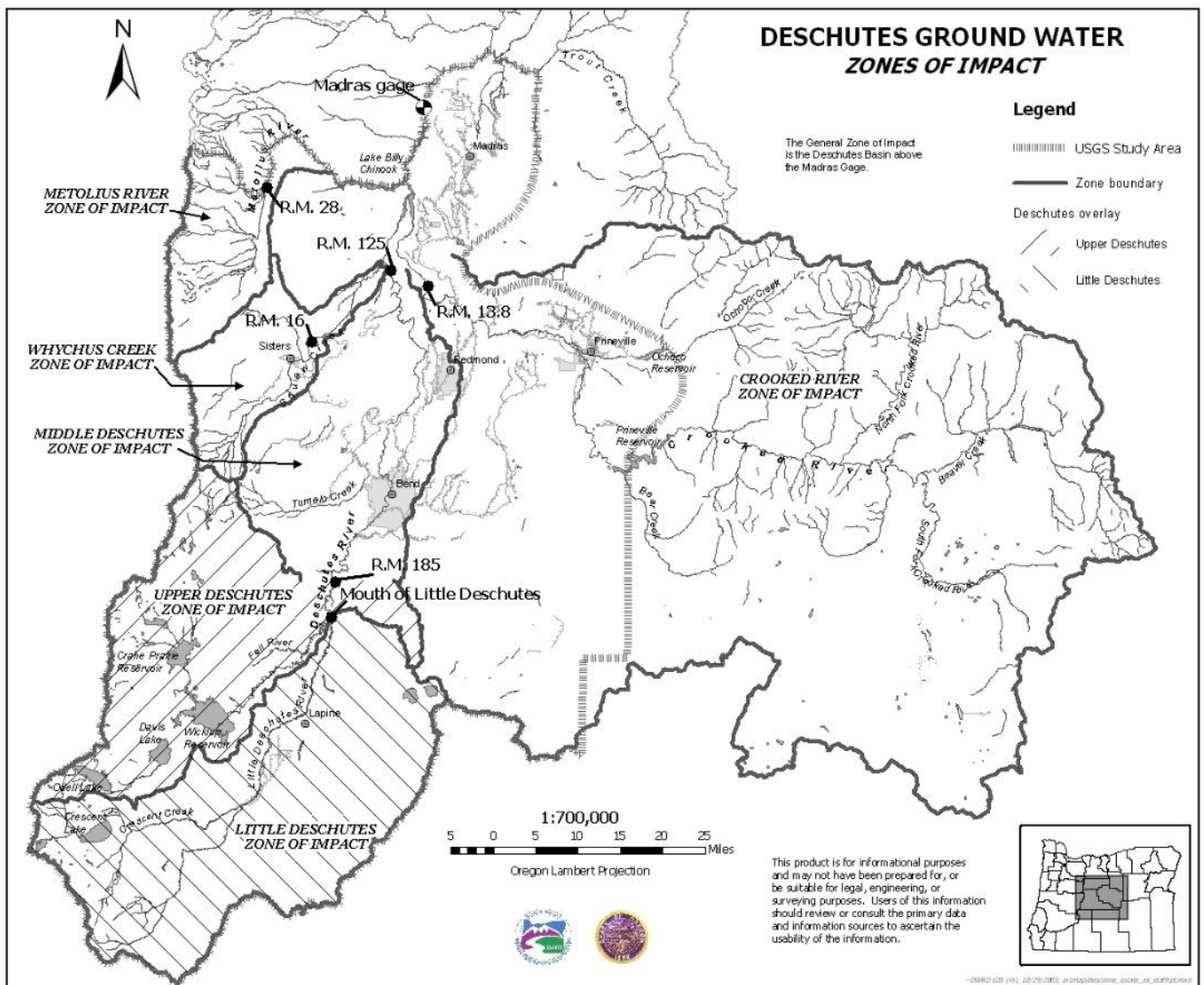
Appendices

1. Deschutes Basin Groundwater Study Area Map

2. Deschutes Basin Groundwater Study Area Zone of Impact Map
3. Comments from ODFW
4. Summary of Modeled Streamflow for Water Year Ending September 2023

Deschutes Basin







Oregon

Tina Kotek, Governor

Department of Fish and Wildlife

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October 14, 2025

Sarah Henderson
Flow Restoration Program Coordinator, Transfer and
Conservation Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271



RE: ODFW Comments on the DRAFT 2023 and 2024 Annual Review of the Deschutes Basin Groundwater Mitigation Program

Dear Ms. Henderson,

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comments on the DRAFT 2023 and 2024 Annual Review of the Deschutes Basin Groundwater Mitigation Program (Program). Overall, ODFW agrees that the Program has been successful in maintaining and improving flows for State Scenic Waterways and senior water rights, particularly instream water rights, during the irrigation season. However, as we acquire more information about the additional detrimental impacts to fish and wildlife expected in the future from a changing climate, we have increasing concerns about water accounting, the impacts to springs, and decreases in flow during the non-irrigation season.

Since inception of the Program, ODFW has repeatedly submitted comments that address our ongoing concerns and have discussed potential solutions with the Oregon Water Resources Department (OWRD) many times. As our concerns are already on record, please refer to past comment letters for a full account of ODFW concerns (e.g., ODFW Comments on the DRAFT 2021 Annual Review of the Deschutes Basin Groundwater Mitigation Program, January 6, 2023). We were previously engaged in thorough discussions with OWRD for Program improvements as we get closer to the allocation cap being reached and the Program sunset in 2029 and are eager to reinitiate those conversations. ODFW looks forward to further advising the agency on ways to strengthen the efficacy of the Program to improve and protect instream flow for fish, wildlife, and their habitats.

As in the past, ODFW will review our primary concerns here for the record. In general, and as previously discussed with OWRD, ODFW recommends these tangible improvements to the

*To protect and enhance Oregon's fish and wildlife and their habitats
for use and enjoyment by present and future generations.*

ODFW Comments

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Program be addressed before the 200 cfs cap on the Program is lifted and/or the Program is reauthorized:

- **Water Accounting and Impacts of Climate Change:** ODFW would like to see a comparison of the streamflow model reporting and current, measured improvements and declines in streamflow. The draft identifies success based on an annual Acre Feet of instream flow (7,471.5 AF as of 2024) being permanently restored to the Deschutes River and its tributaries. A comparison showing how this amount truly offsets the impacts from new groundwater use and information on the reliability of the mitigation water in regard to its physical and regulatory availability would tell a more complete story.
- **Zonal Mitigation:** ODFW recommends mitigation under the Program directly offset specific impacts by being located upstream of the impacted reach, especially for impacts on tributaries.
- **Impacts to Springs:** ODFW would like to again discuss the proposed path forward regarding combined efforts to obtain funding for a study aimed at identifying impacts to the springs within the Study Area and to understand whether any impacts are the direct result of the mitigation program.
- **Impacts During the Non-Irrigation Season:** ODFW recommends providing a more complete picture when communicating the efficacy of the Program at meeting key goals by looking at both the benefits and impacts to flow during the non-irrigation season as well as the irrigation season. Concluding that the Program has been successful in meeting key goals by relying on assessments on an annual basis is misleading given the Program allows declines in flow (and potential impacts to the Scenic Waterway and senior water rights) during the non-irrigation season.

Thank you for the chance to comment. We look forward to revisiting Program goals and rule language and pursuing solutions to our concerns as OWRD plans for Program updates. In the meantime, ODFW recommends the 200 cfs cap not be lifted or the Program reauthorized until these issues are resolved, and the Commission can determine that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met year round (including during the non-irrigation season) on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department per OAR 690-505-0500(4). If you have any questions, please contact me at 971-280-3773.

Sincerely,



Danette Faucera, Water Policy Coordinator

Oregon

Kate Brown, Governor



Department of Fish and Wildlife

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January 6, 2023

Sarah Henderson
Flow Restoration Program Coordinator, Transfer and Conservation Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

**RE: ODFW Comments on the DRAFT 2021 Annual Review of the Deschutes Basin
Groundwater Mitigation Program**

Dear Ms. Henderson,

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comments on the DRAFT 2021 Annual Review of the Deschutes Basin Groundwater Mitigation Program (Program). Overall, ODFW agrees that the Program has been successful in maintaining and improving flows in the middle and lower Deschutes River during the irrigation season. Increases in stream flow during the irrigation season in the Middle Deschutes has provided an added benefit to the overall objective of the rules, which are to provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water in the Deschutes Basin. However, as we acquire more information about the additional detrimental impacts to fish and wildlife expected in the future from a changing climate, we continue to have increasing concerns about water accounting, the impacts to springs, and decreases in flow during the non-irrigation season. These issues are also of immediate concern, as water users are currently moving ahead with innovative means to secure future mitigation credits that may not fully meet the needs of fish and wildlife in the basin (e.g., proposed winter reservoir releases with unclear mitigation intent).

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Since inception of the Program, ODFW has annually submitted comments that address our ongoing concerns and have discussed potential solutions with the Oregon Water Resources Department (OWRD) many times. We were pleased to see that OWRD included several actions to improve the Program in the 2021 5-year Program review and that OWRD is currently proposing a funding package to better understand potential impacts to springs from groundwater extraction. ODFW looks forward to continuing conversations and advising the agency on ways to strengthen the efficacy of the Program to improve and protect instream flow for fish, wildlife, and their habitats.

As in the past, ODFW will review our primary concerns here for the record. Specifically, ODFW recommends these tangible improvements to the Program be addressed before the 200 cfs cap on the Program is lifted:

Water Accounting and Impacts of Climate Change

- A. To offset potential impacts from new uses, water rights proposed for mitigation must represent valid and reliable replacement sources of water. Basin-specific hydrologic conditions, any history of regulation, and past use determine the reliability of a water right. ODFW recommends surface water rights used for mitigation demonstrate 100% reliability at the full rate for the past 8 out of 10 years and groundwater rights demonstrate use for the past 8 out of 10 years. This means that any water right that is regulated off on a frequent basis or cannot be/has not been reliably used will not be sufficient mitigation. As such, suitable mitigation will generally need to be in the form of a senior water right that has historically proven reliable as “wet water” for the permitted use.
- B. ODFW recommends the Program include a protocol for monitoring, accounting (measuring), and reporting the volume of water transferred instream from annual mitigation credits in each zone of influence. Currently, the Deschutes River Conservancy (the only active mitigation bank) tracks and accounts for the administrative transfer of water instream, but the verification and measurement of actual “wet water” used as mitigation in each zone is limited. A monitoring program to ensure mitigation is providing a true offset for impacts as initially intended and remains available as “wet water” in perpetuity (or for the life of the project) is necessary for assessing effectiveness of the Program. This may require additional gauges and flow measurement beyond what is currently in place.

We know that climate change will exacerbate existing issues and alter streamflow, temperatures, and adjacent landscape characteristics necessary to support fish and wildlife populations. As we acquire more information about the detrimental impacts to fish and wildlife expected from a changing climate, closely monitoring groundwater use and associated mitigation is a necessity for the Program. In fact, Gannett and Lite, in their 2013 report “Analysis of 1997–2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon,” found that groundwater flow model simulations indicated that climate

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variations have the largest influence on groundwater levels throughout the upper Deschutes Basin.

- C. A portion of the water supporting the Mitigation Program is leased instream. ODFW is concerned with mitigating permanent groundwater rights with temporary leased water. This could set up the potential in the future to not have enough mitigation water to cover all the permanent groundwater rights that need mitigated. In cases where permanent groundwater pumping certificates have been granted, temporary instream leasing provides no certainty that the mitigation will remain in place for the life of the permit and/or certificate. Past Program reports have identified permit holders that have allowed temporary credits to expire while continuing to irrigate. It is not clear if this issue has been addressed. Therefore, we recommend that OWRD increase compliance monitoring and immediate regulation of non-compliant participants. ODFW proposes that OWRD and Program partners work more proactively to provide permanent mitigation water (permanent instream transfers) to offset groundwater pumping.
- D. ODFW recommends modifying the presentation of flow data. The annual reports for the Program consistently present flow data on a monthly and annual basis, which demonstrate minor changes in flow. Because fish and other aquatic organisms are very susceptible to acute and chronic events (e.g., dewatered reaches or lower flow rates for extended periods), annual and even seasonal changes do not necessarily reflect true impacts to aquatic life. ODFW recommends presenting flow data in a form that is more relevant to fish needs, such as improvements in low flows, variability in flows throughout the year, and flows during critical time periods for fish.

Zonal Mitigation

Allowing mitigation for groundwater impacts to occur away from the point of impact but within a larger “Zone of Impact” results in localized impacts to streams and the fish and wildlife they support. This is particularly true for the General Zone, which according to Figure 5 in the Draft Review, is where most of the current mitigation occurs. Mitigation under the Program should directly offset the impact by being located upstream of the impacted reach consistent with the Program goals to provide for new ground water uses while maintaining scenic waterway and instream water right flows in the Deschutes Basin.

Impacts to Springs

The Program was not intended to mitigate for the impacts of groundwater development on groundwater levels, and groundwater in the basin continues to decline (see Figure 1; Thoma et al. 2021). Groundwater levels in parts of the basin are quickly approaching the 50 ft total decline benchmark, being one of the thresholds of “excessively declined” (OAR 690-008). OWRD (Iverson and Scandella 2021) ranked 15 townships in the Middle/Upper Deschutes State Scenic

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Waterway Restriction Area as “significant concern” for groundwater resources. As a result and given the close hydraulic connection between ground and surface water in the basin, ODFW continues to express concerns with the localized impacts of groundwater pumping on springs.

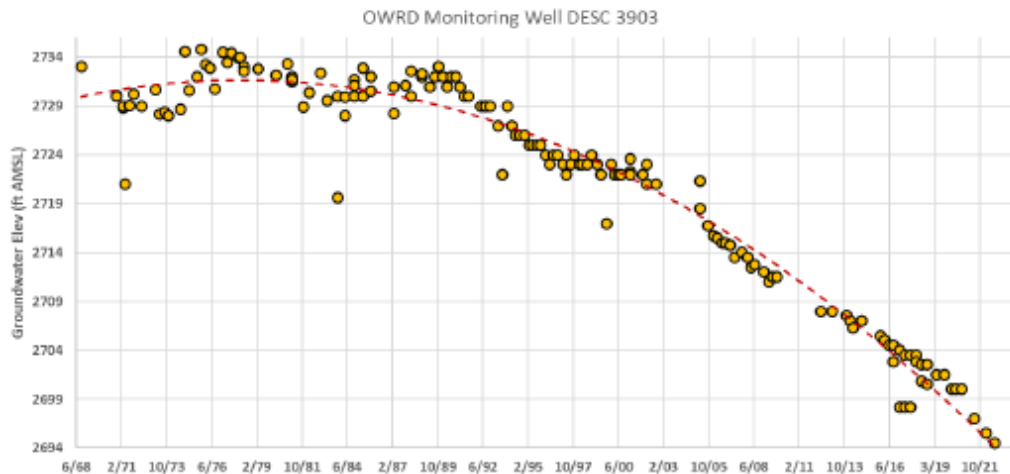


Figure 1. Oregon Water Resources Department groundwater elevation measurements at monitoring well DESC 3903 west of Redmond, Oregon 1968-2022.

Springs and seeps provide very important cold-water inputs to streams by providing cold water refugia and other habitat benefits for fish and by helping to cool stream temperatures during the summer in streams with depleted flows. The native trout, salmon and whitefish in the Deschutes basin require consistent sources of cold, clear water to complete their life histories and zones of groundwater discharge provide critically important habitat.

Monitoring of local springs needs to be improved to better understand how trends in regional groundwater supply and use are expressed as surface water flows and to assess the efficacy of the Program. One of the few springs with consistent monitoring is the main head springs on the Metolius River where groundwater discharge has declined over 50% between the spring of 2018 and fall of 2021 (OWRD 2022). Over time, continued and increased groundwater withdrawal for agricultural, residential, and municipal needs will further affect springs when there is a surface/groundwater connection.

Impacts to springs from current and future groundwater withdrawals are exacerbated by the increasing trend to convert area irrigation canals to piped delivery systems. While this is positive in that it generates conserved water that currently results in improved instream flows in the middle Deschutes River, it also eliminates seepage which recharges the aquifer and contributes to spring recharge of cold water. The result is an exchange (loss) of cold spring water for warmer water upstream. Further, any future shift for conserved water projects that return flow to

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the upper Deschutes River to benefit the Oregon Spotted Frog (*see Impacts During the Non-Irrigation Season*), particularly during the winter months, will add additional stress on the middle Deschutes and lower Crooked rivers in the valuable spring recharge areas. The impacts to fish and aquatic resources from these inconsistencies are likely to become more pronounced in future years as climate change continues to be increasingly more influential. Cold water refugia could likely become critical to long-term persistence of many fish species and populations and should be considered in water management decisions and when assessing effectiveness of the Program.

For many years, ODFW has requested that OWRD consider implementing a program to monitor key springs/spring complexes in the basin to determine ecological impacts to spring flow, including temperature and nutrient changes resulting from groundwater pumping. Monitoring impacts of groundwater pumping on springs and spring complexes is important in respect to their aquatic habitat, botanical, wildlife, water quality, water quantity, and societal values. In the past, this issue was recognized by state and federal agencies but work to address the concerns faded due to other priorities.

ODFW is pleased that OWRD has recently engaged in the spring flow concerns by moving forward to seek funding, coordinate efforts for research, and develop and implement a strategy to address these concerns.

As stated in the 2021 5-Year Review of the Deschutes Basin Groundwater Mitigation Program, WRD proposed the following specific action to improve the Mitigation Program: “The Department is working towards a more complete understanding of how the mitigation program has been implemented and whether changes to the program are necessary to improve protection of local water resources, or if those protections are outside the scope of the mitigation program. The Department should be partnering with ODFW and DEQ to jointly secure funding for a study aimed at these issues. OWRD staff intend to continue conversations with ODFW, DEQ, CTWS, and stakeholders on issues outlined above as well as other issues raised in the report as part of this evaluation to identify opportunities for improving the Mitigation Program.”

As a result, OWRD currently has a proposed Policy Option Package (POP) in the 2023-2025 Agency Requested Budget for spring monitoring.

Impacts During the Non-Irrigation Season

As currently designed, the Program mitigates year-round groundwater withdrawals with irrigation season water and reports changes to streamflow on an annual basis. This type of mitigation does provide for more instream water during the irrigation season, as is consistently reported, but is also reported to reduce flows in the lower river during the non-irrigation season. Critical fish life history components occur outside of the irrigation season, particularly during

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“shoulder months” at the beginning and end of the irrigation season (March/April and October/November) when reductions in streamflow are consistently reported.

In addition, current implementation of the Program poses potential impacts to the ESA-listed Oregon Spotted Frog (OSF) outside of the irrigation season. Improving winter flows on the upper Deschutes River below Wickiup Reservoir and on Crescent Creek is essential to the survival of the OSF, and freshwater spring habitats in the upper Deschutes Basin have been identified as critical to overwinter survival.

The continual detrimental impact to streamflow during the non-irrigation season is now a greater concern for more than just the “shoulder months.” Most stakeholders recognize that non-irrigation flow concerns still need to be addressed for the Deschutes basin as a whole. In the past, OWRD recognized this concern as well. One option, which is currently being implemented by Section 7 permittees under the Deschutes Basin Habitat Conservation Plan, is for water users in the basin to release stored water in Wickiup, Crane Prairie, Crescent and other reservoirs instream during the winter and shoulder months. ODFW recognizes the release of stored water during the non-irrigation season as a valuable tool for supplementing the existing mitigation credits that are currently limited to the irrigation season. Winter releases would aide in offsetting impacts of groundwater withdrawal on a true 1:1, year round basis, but only if utilized as mitigation for winter impacts and in partnership with other mitigation applied to the irrigation season. To fully mitigate impacts to fish and wildlife resulting from groundwater withdrawals, mitigation credits should apply the appropriate volume and quality of reliable, wet water to both the middle and upper Deschutes River on a year-round basis.

200 CFS Cap

Stream flows outside the irrigation season are important to fish for a number of reasons, including providing habitat for spawning, overwintering, rearing habitat throughout the year, and especially for juvenile salmon and steelhead during the spring smolt outmigration beginning in March and continuing through May. When the Program rules were developed, all parties recognized the Program would reduce flows in the lower river during the non-irrigation season. Because of this, the 200 cfs cap was put in place to limit flow reduction impacts in the lower river outside of the irrigation season and allow for an overall assessment of the Program. All stakeholders at the time recognized that non-irrigation flow concerns still needed to be addressed for the Deschutes basin as a whole.

As stated in the 2021 5-Year Review of the Deschutes Basin Groundwater Mitigation Program, OWRD proposed the following specific action to improve the Program:

- “OWRD to consider possibility of modifying allocation cap as part of work to be prioritized with Basin stakeholders.”

ODFW Comments

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ODFW looks forward to OWRD and Program partners working with us to seek clear options for year-round mitigation to offset year-round impacts. Therefore, ODFW recommends the 200 cfs allocation cap remain until such time as the winter flow and other issues can be resolved. Maintaining the cap will ensure that groundwater reductions due to unmitigated, non-irrigation season use is kept to a minimum (*see Impacts During the Non-Irrigation Season*).

Review of Mitigation Projects

OWRD works in cooperation with ODFW to enhance the resource benefits and make the most effective use of mitigation projects and mitigation water (OAR 690-505-0615(7)). Currently, ODFW's understanding is that in practice, OWRD is seeking input regarding shaping of mitigation flows for proposed mitigation projects. However, this shaping is limited to the season of the original water right and some certificates have protocols that preclude releasing higher amounts during shoulder months. In addition, reliability of the water rights to provide wet water are not fully assessed. As such, ODFW is limited in our ability to effectively comment on mitigation projects so that they maximize benefits to fish and wildlife. ODFW would like to provide more meaningful input that benefits fish and wildlife year-round in reach-specific locations, which may require updates to the existing rules. This will aide in ensuring that mitigation is offsetting the local impact and not resulting in impacts during the non-irrigation season.

Thank you for the chance to comment. We look forward to revisiting Program goals and rule language and pursuing solutions to our concerns in upcoming discussions as OWRD plans for Program updates. In the meantime, ODFW recommends the 200 cfs cap not be lifted until these issues are resolved, and the Commission can determine that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met year round on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department per OAR 690-505-0500(4). If you have any questions, please contact me (503-947-6092) in Salem or Jerry George (541-388-6363) in Bend.

Sincerely,



Danette Faucera, Water Policy Coordinator



Jerry George, Deschutes District Fish Biologist

ODFW Comments

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References:

Gannett, M.W., and Lite, K.E., Jr., 2013, Analysis of 1997–2008 groundwater level changes in the upper Deschutes Basin, Central Oregon: U.S. Geological Survey Scientific Investigations Report 2013-5092, 34 p., <http://pubs.usgs.gov/sir/2013/5092>.

Oregon Water Resources Department. 2022. Metolius Springs Date Query. Available online at: https://apps.wrd.state.or.us/apps/sw/misc_measurements_view_only/

Iverson, J., and B. Scandella. 2021. Oregon Groundwater Resource Concerns Assessment – 2021. Memorandum to Water Resources Commission and Attached Assessment. Oregon Department of Water Resources.

Thoma, M, A. Bouchier, J. Iverson, and H. Burright. 2021. Response to Technical Assistance Request: Groundwater Mitigation Program purpose in relation to observed groundwater level trends. Memorandum from the Oregon Water Resources Department to the Deschutes Basin Water Collaborative Groundwater Mitigation Technical Committee.

Streamflow Model Data

The data presented in the following tables are from the Department's Deschutes Mitigation model. The "before mitigation" or baseline condition of streams in the Deschutes Basin has been determined from streamflows measured during water years 1966 to 1995. The model has been developed to mathematically estimate the change in streamflow expected due to mitigation (credits) and groundwater allocation (debits). The model is designed to reflect the theoretical, steady-state response of streamflow to mitigation-related activities only. In some cases, the actual hydrologic response to mitigation activities, such as new groundwater pumping, may take years or decades to be reflected as changes in streamflow.

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Mouth

Time: 14:18

Date: 02/04/2025

Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	93.20	92.90	-0.32	-0.35
FEB	90.80	90.20	-0.59	-0.65
MAR	95.30	95.10	-0.22	-0.23
APR	99.90	99.80	-0.11	-0.11
MAY	99.10	99.50	0.32	0.32
JUN	98.00	98.80	0.78	0.79
JUL	91.00	93.40	2.47	2.65
AUG	100.00	100.00	0.00	0.00
SEP	98.10	98.20	0.11	0.11
OCT	97.40	97.40	0.00	0.00
NOV	99.90	99.80	-0.11	-0.11
DEC	91.70	91.10	-0.64	-0.71
ANNUAL	96.20	96.40	0.15	0.15

CHANGE IN MEAN STREAM FLOW (CFS) IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Mouth

Time: 14:19

Date: 02/04/2025

Month	Base Line	Mitigated	Change	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	6910.0	6880.0	-30.5	-0.44
FEB	7080.0	7050.0	-30.5	-0.43
MAR	7250.0	7220.0	-30.3	-0.42
APR	6640.0	6630.0	-2.51	-0.04
MAY	5800.0	5830.0	24.8	0.43
JUN	5200.0	5240.0	43.6	0.83
JUL	4590.0	4640.0	49.9	1.08
AUG	4380.0	4430.0	47.8	1.08
SEP	4430.0	4470.0	33.2	0.74
OCT	4710.0	4710.0	1.97	0.04
NOV	5390.0	5360.0	-30.1	-0.56
DEC	6190.0	6160.0	-30.5	-0.50
ANNUAL	5710.0	5710.0	4.09	0.07

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River below Pelton Dam				
Time: 14:21		Date: 02/04/2025		
Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	64.70	63.90	-0.86	-1.35
FEB	63.00	61.50	-1.53	-2.50
MAR	67.80	66.70	-1.18	-1.77
APR	71.40	71.30	-0.11	-0.16
MAY	58.80	64.10	5.27	8.22
JUN	55.60	60.80	5.22	8.59
JUL	41.00	46.10	5.16	11.20
AUG	98.20	99.50	1.29	1.30
SEP	66.80	69.40	2.67	3.84
OCT	81.10	81.10	0.00	0.00
NOV	97.20	97.10	-0.11	-0.11
DEC	66.10	65.40	-0.75	-1.15
ANNUAL	69.30	70.60	1.27	1.80

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River below Pelton Dam				
Time: 14:22		Date: 02/04/2025		
Month	Base Line	Mitigated	Change	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	5240.0	5210.0	-30.5	-0.58
FEB	5190.0	5160.0	-30.5	-0.59
MAR	5520.0	5490.0	-30.3	-0.55
APR	5130.0	5130.0	-2.51	-0.05
MAY	4420.0	4450.0	24.8	0.56
JUN	4230.0	4270.0	43.6	1.02
JUL	4020.0	4070.0	49.9	1.23
AUG	3940.0	3980.0	47.8	1.20
SEP	3980.0	4010.0	33.2	0.83
OCT	4190.0	4190.0	1.97	0.05
NOV	4680.0	4650.0	-30.1	-0.65
DEC	5030.0	5000.0	-30.5	-0.61
ANNUAL	4630.0	4630.0	4.09	0.09

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Metolius River at Lake Billy Chinook				
Time: 14:22		Date: 02/04/2025		
Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	97.70	97.70	0.00	0.00
FEB	99.20	99.20	0.00	0.00
MAR	99.80	99.80	0.00	0.00
APR	100.00	100.00	0.00	0.00
MAY	100.00	100.00	0.00	0.00
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	100.00	100.00	0.00	0.00
OCT	100.00	100.00	0.00	0.00
NOV	100.00	100.00	0.00	0.00
DEC	100.00	100.00	0.00	0.00
ANNUAL	99.70	99.70	0.00	0.00

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Metolius River at Lake Billy Chinook				
Time: 14:23		Date: 02/04/2025		
Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	1510.0	1510.0	-0.044	0.00
FEB	1560.0	1560.0	-0.044	0.00
MAR	1560.0	1560.0	-0.044	0.00
APR	1520.0	1520.0	-0.044	0.00
MAY	1560.0	1560.0	0.056	0.00
JUN	1590.0	1590.0	0.056	0.00
JUL	1490.0	1490.0	0.056	0.00
AUG	1400.0	1400.0	0.056	0.00
SEP	1350.0	1350.0	0.006	0.00
OCT	1330.0	1330.0	-0.044	0.00
NOV	1370.0	1370.0	-0.044	0.00
DEC	1450.0	1450.0	-0.044	0.00
ANNUAL	1470.0	1470.0	-0.006	0.00

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Lake Billy Chinook				
Time: 14:23		Date: 02/04/2025		
Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	100.00	100.00	0.00	0.00
FEB	100.00	100.00	0.00	0.00
MAR	100.00	100.00	0.00	0.00
APR	97.10	100.00	2.89	2.89
MAY	100.00	100.00	0.00	0.00
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	100.00	100.00	0.00	0.00
OCT	94.40	99.90	5.48	5.49
NOV	100.00	100.00	0.00	0.00
DEC	100.00	100.00	0.00	0.00
ANNUAL	99.30	100.00	0.70	0.70

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Lake Billy Chinook				
Time: 14:24		Date: 02/04/2025		
Month	Base Line	Mitigated	Change	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	1300.0	1290.0	-9.65	-0.75
FEB	1320.0	1310.0	-9.65	-0.74
MAR	1300.0	1290.0	-9.50	-0.74
APR	843.0	860.0	17.2	2.00
MAY	552.0	595.0	42.7	7.18
JUN	606.0	665.0	59.0	8.86
JUL	550.0	615.0	65.2	10.60
AUG	519.0	582.0	63.1	10.80
SEP	537.0	586.0	48.6	8.29
OCT	725.0	745.0	19.5	2.62
NOV	1130.0	1120.0	-9.65	-0.86
DEC	1220.0	1210.0	-9.65	-0.80
ANNUAL	881.0	903.0	22.4	2.48

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Lower Bridge
Time: 14:24 Date: 02/04/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	60.50	59.00	-1.51	-2.55
FEB	63.80	62.50	-1.30	-2.08
MAR	68.30	67.70	-0.54	-0.79
APR	23.60	25.10	1.56	6.19
MAY	1.29	1.72	0.43	25.00
JUN	2.11	3.56	1.44	40.60
JUL	0.11	0.97	0.86	88.90
AUG	0.86	2.15	1.29	60.00
SEP	3.67	4.78	1.11	23.30
OCT	13.00	14.10	1.08	7.63
NOV	52.20	50.90	-1.33	-2.62
DEC	56.30	55.60	-0.75	-1.35
ANNUAL	28.60	28.80	0.20	0.70

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Lower Bridge
Time: 14:25 Date: 02/04/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	683.0	681.0	-2.24	-0.33
FEB	705.0	703.0	-2.24	-0.32
MAR	714.0	711.0	-2.24	-0.31
APR	299.0	323.0	23.7	7.36
MAY	51.2	98.4	47.2	48.00
JUN	50.5	111.0	60.6	54.50
JUL	42.6	106.0	63.2	59.70
AUG	46.2	109.0	62.4	57.50
SEP	61.0	109.0	48.2	44.20
OCT	222.0	247.0	25.1	10.20
NOV	551.0	548.0	-2.24	-0.41
DEC	614.0	612.0	-2.24	-0.37
ANNUAL	335.0	362.0	26.8	7.40

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River above Diversion Dam at Bend
Time: 14:25 Date: 02/04/2025

Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	37.30	37.20	-0.11	-0.29
FEB	40.00	39.30	-0.71	-1.80
MAR	42.90	42.20	-0.75	-1.79
APR	73.20	74.00	0.78	1.05
MAY	97.00	97.50	0.54	0.55
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	97.00	98.20	1.22	1.24
OCT	54.60	56.50	1.83	3.24
NOV	29.00	28.70	-0.33	-1.16
DEC	35.70	35.50	-0.22	-0.61
ANNUAL	67.40	67.50	0.19	0.28

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River above Diversion Dam at Bend
Time: 14:26 Date: 02/04/2025

Month	Base Line	Mitigated	Change in	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	712.0	710.0	-2.21	-0.31
FEB	738.0	736.0	-2.21	-0.30
MAR	781.0	778.0	-2.21	-0.28
APR	877.0	885.0	8.04	0.91
MAY	1180.0	1200.0	17.4	1.45
JUN	1360.0	1380.0	22.3	1.62
JUL	1440.0	1460.0	25.7	1.76
AUG	1290.0	1310.0	25.2	1.92
SEP	1090.0	1110.0	19.4	1.75
OCT	721.0	731.0	10.3	1.40
NOV	590.0	588.0	-2.21	-0.38
DEC	650.0	648.0	-2.21	-0.34
ANNUAL	953.0	963.0	9.84	1.02

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Benham Falls
Time: 14:26 Date: 02/04/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	43.40	43.10	-0.32	-0.75
FEB	54.50	54.20	-0.35	-0.65
MAR	32.50	31.40	-1.08	-3.42
APR	69.60	69.60	0.00	0.00
MAY	78.10	78.10	0.00	0.00
JUN	92.60	92.60	0.00	0.00
JUL	96.80	96.80	0.00	0.00
AUG	94.50	94.60	0.11	0.11
SEP	67.80	67.90	0.11	0.16
OCT	54.00	54.00	0.00	0.00
NOV	35.90	35.70	-0.22	-0.62
DEC	44.60	44.60	0.00	0.00
ANNUAL	63.70	63.60	-0.15	-0.23

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River at Benham Falls
Time: 14:27 Date: 02/04/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	814.0	812.0	-2.19	-0.27
FEB	845.0	843.0	-2.19	-0.26
MAR	901.0	899.0	-2.19	-0.24
APR	1240.0	1240.0	-0.825	-0.07
MAY	1850.0	1850.0	0.250	0.01
JUN	2100.0	2100.0	0.931	0.04
JUL	2200.0	2210.0	4.27	0.19
AUG	2040.0	2040.0	3.79	0.19
SEP	1730.0	1740.0	3.15	0.18
OCT	1000.0	1010.0	2.69	0.27
NOV	685.0	683.0	-2.19	-0.32
DEC	752.0	749.0	-2.19	-0.29
ANNUAL	1350.0	1350.0	0.294	0.02

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Little Deschutes River at mouth

Time: 14:27

Date: 02/04/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	22.90	20.80	-2.15	-10.40
FEB	37.30	34.60	-2.72	-7.85
MAR	27.40	27.10	-0.32	-1.19
APR	45.20	45.00	-0.22	-0.49
MAY	55.90	55.80	-0.11	-0.19
JUN	56.60	56.70	0.11	0.20
JUL	85.10	87.50	2.47	2.83
AUG	93.90	94.30	0.43	0.46
SEP	72.00	73.30	1.33	1.82
OCT	11.60	12.90	1.29	10.00
NOV	14.70	14.00	-0.67	-4.76
DEC	20.30	19.70	-0.64	-3.28
ANNUAL	45.30	45.20	-0.08	-0.18

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Little Deschutes River at mouth

Time: 14:28

Date: 02/04/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	162.0	160.0	-2.16	-1.35
FEB	183.0	181.0	-2.16	-1.19
MAR	219.0	217.0	-2.16	-1.00
APR	262.0	261.0	-0.794	-0.30
MAY	329.0	329.0	0.281	0.09
JUN	298.0	299.0	0.962	0.32
JUL	230.0	235.0	4.30	1.83
AUG	200.0	204.0	3.83	1.88
SEP	144.0	147.0	3.18	2.16
OCT	76.7	79.4	2.72	3.42
NOV	108.0	106.0	-2.16	-2.04
DEC	142.0	140.0	-2.16	-1.54
ANNUAL	196.0	197.0	0.324	0.17

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River above Little Deschutes River
Time: 14:28 Date: 02/04/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	29.70	29.70	0.00	0.00
FEB	30.10	30.10	0.00	0.00
MAR	33.50	33.50	0.00	0.00
APR	68.40	68.40	0.00	0.00
MAY	97.80	97.80	0.00	0.00
JUN	98.80	98.80	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	99.80	99.80	0.00	0.00
OCT	56.80	56.80	0.00	0.00
NOV	20.90	20.90	0.00	0.00
DEC	24.70	24.70	0.00	0.00
ANNUAL	63.50	63.50	0.00	0.00

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2023

Deschutes River above Little Deschutes River
Time: 14:28 Date: 02/04/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	329.0	329.0	0.000	0.00
FEB	331.0	331.0	0.000	0.00
MAR	319.0	319.0	0.000	0.00
APR	654.0	654.0	0.000	0.00
MAY	1220.0	1220.0	0.000	0.00
JUN	1500.0	1500.0	0.000	0.00
JUL	1690.0	1690.0	0.000	0.00
AUG	1530.0	1530.0	0.000	0.00
SEP	1260.0	1260.0	0.000	0.00
OCT	561.0	561.0	0.000	0.00
NOV	246.0	246.0	0.000	0.00
DEC	280.0	280.0	0.000	0.00
ANNUAL	829.0	829.0	0.000	0.00

DESCHUTES BASIN GROUNDWATER MITIGATION PROGRAM



OREGON



WATER RESOURCES
DEPARTMENT

DESCHUTES BASIN GROUNDWATER MITIGATION PROGRAM

2024 ANNUAL REVIEW

OREGON WATER RESOURCES DEPARTMENT



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Introduction

The attached report provides the 2024 Annual Evaluation of the Deschutes Basin Groundwater Mitigation Rules (Oregon Administrative Rules (OAR) Chapter 690, Division 505) and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules (OAR Chapter 690, Division 521).

Background

A groundwater study of the Deschutes Basin above Lake Billy Chinook was conducted in the late 1990's by the U.S. Geological Survey (USGS) in cooperation with the Oregon Water Resources Department (OWRD); the City of Bend; City of Redmond; City of Sisters; Deschutes and Jefferson counties; the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS); and the U.S. Environmental Protection Agency and the Bureau of Reclamation.

The CTWS (Reservation boundary shown in Appendix 1), along with the United States of America and the State of Oregon, is a party to the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement, dated November 17, 1997 and amended effective May 16, 2002 (WRSA). The WRSA recognizes CTWS tribal reserved water right interests on the Deschutes River and tributaries for on and off Reservation uses. In addition, the parties to the WRSA have agreed to pursue long-term, cooperative management of the waters that affect their interests.

On September 13, 2002, the Commission adopted the Deschutes Basin Groundwater Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules. The rules provide for mitigation of impacts to

scenic waterway flows and senior water rights including instream water rights, while allowing additional appropriations of groundwater in the Deschutes Basin Groundwater Study Area (Appendix 2). The mitigation program, by rule, allows an additional 200 cubic feet per second (CFS) of new groundwater use, referred to as the allocation cap.

Evaluation Requirements

Under OAR 690-505-0500(3) and OAR 690-521-0600 of the Deschutes Basin Groundwater Mitigation Rules, the Department is required to annually evaluate and report on the Deschutes Basin Groundwater Mitigation Program, including the implementation and management of mitigation credits allocated through existing mitigation banks. This annual evaluation report is to include information on new groundwater appropriations, streamflow impacts, and mitigation activity to determine whether scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base-period flows (1966 to 1995).

The annual review must address the following topics:

- New groundwater appropriations
- Mitigation activity
- Mitigation bank activity
- Streamflow impacts
- Consultation with the Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department, Oregon Department of Environmental Quality (ODEQ), and Oregon Department of State Lands

- Determination of whether the scenic waterway and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis.

Report Contents

This report incorporates all the elements required for the annual report, as outlined in OAR 690-505-0500(3) and OAR 690-521-0600.

Agency Comments

The Department provided a draft of the report for review by the agencies listed above on August 21, 2025. Comments were provided by ODFW (see Appendix 3) and are summarized below.

Issues and concerns raised by ODFW include:

- Improvements to the Program must be made prior to the allocation cap being lifted.
- Water accounting and monitoring should be improved to ensure mitigation is providing a true offset for impacts and remains available as “wet water” in perpetuity. Such improvements may require additional gages, flow measurement, and modeling beyond what is currently in place.
- Mitigation under the Program should directly offset the impact by being located upstream of the impacted reach, not within a larger “Zone of Impact.”
- Impacts of increased groundwater use under the Mitigation Program to local springs, which are an important source of cold-water inputs to streams by providing cold-water refugia and other habitat benefits for fish.
- The effect of the Mitigation Program on streamflows outside of the irrigation season.
- Continue working with other state agencies to seek funding for research, development and implementation of these concerns.

Allocation Cap

To limit the amount of impact on surface water flows, the mitigation program established a 200 CFS cap on the amount of water that may be allocated to new groundwater use. At the end of 2024 the amount of water use approved under the cap was 160.14 CFS. The allocation cap restriction may only be lifted or modified by the Commission if the Department’s evaluation determines that scenic waterway and instream water right flows are being met on at least an equivalent or more frequent basis as compared to long-term, representative base-period flows (1966 to 1995) and meets the Department’s mission to sustainably protect and manage the resource.

The CFS amount deducted from the 200 CFS cap is the amount of water (in CFS) allowed in the Department’s final order approving an application requesting the use of groundwater located within the Deschutes Groundwater Study Area (DGWSA). Final orders set a five-year limit for the applicant to provide the required mitigation (i.e., the mitigation obligation). Once the applicant meets their mitigation obligation, the Department issues the groundwater permit. If the mitigation is not provided by the deadline, the final order expires and the CFS is added back into the cap.

All actions that allow CFS to be added back into the cap are:

1. Rates associated with offsets pursuant to 690-505-0610(8);
2. Rates associated with applications withdrawn after final order issuance pursuant to 690-505-0620;
3. Portions of rates approved by a final order issued under 690-505-0620, but not included in a water right permit that is issued following satisfaction of the mitigation requirement;
4. Rates associated with expired final orders pursuant to 690-505-0620(2);
5. Portions of rates associated with permits issued pursuant to 690-505-0620 and subsequently cancelled;
6. Rates associated with certificates issued pursuant to 690-505-0620 and subsequently canceled; and
7. Rates associated with the portion of use originally authorized under a permit issued pursuant to 690-505-0620, but not included in a subsequent certificate.

Since the adoption of the rules in September 2002 through the end of 2024, approximately 302 groundwater applications have been submitted to the Department within the DGWSA totaling approximately 371.76 CFS; however, approximately 167.04 CFS has been added back to the cap for various reasons (outlined above) and 44.58 CFS is in pending status. Therefore, as of the end of 2024, the total allocated CFS remained under the 200 CFS cap.

The following breakout shows the status of all the applications received and the total amount of CFS associated with each action category. These action categories include the active and pending applications, as well as the cancelled, expired, withdrawn, rejected, misfiled, and denied applications.

Status of Files	Number of Files	Total CFS Per Status
Active/Approved	145	160.14
Pending	33	44.58
Cancelled	18	7.02
Expired	35	16.19
Withdrawn	50	92.53
Rejected	2	27.54
Misfiled	2	3.13
Denied	17	20.63
	302	371.76

2024 Mitigation Activity

For each groundwater permit application submitted, the Department reviews the application and notifies the applicant of their “mitigation obligation.” The “mitigation obligation” is expressed as a volume of water in acre feet and is equivalent to the consumptive portion of the use proposed in the permit application. Groundwater applicants mitigate for this consumptive portion of their proposed use. Consumptive use is calculated using average consumptive use data for different types of use (i.e., irrigation, municipal, etc.) obtained from the U.S. Geological Survey and OWRD’s own information on consumptive use.

Mitigation must be provided in the amount (mitigation water) and in the location (zone of impact) specified by the Department. Each applicant has five years from the date the final order is issued to provide the required mitigation. Applicants must provide mitigation before a new permit may be issued.

New Groundwater appropriations and Mitigation Activities as of end of 2024

A. Active Permits:

- 149 permits issued
- 51 of which are certificated

B. Active Final Orders:

- 4 final orders

C. Applications Pending with No Final Order:

- 33 applications

D. Allocation cap summary (Figure 1):

- 160.14 CFS – total CFS allocated under cap (permits and final orders)
- 44.58 CFS – pending applications not yet deducted from 200 CFS cap
- -4.72 CFS (Negative) – remaining CFS all pending applications would not be able to be approved - *As discussed above in this report, the quantity of water (CFS) allocated under the cap fluctuates up and down from year to year as a result of various administrative actions (i.e., denial, cancellation, expiration, withdrawal, etc.) which add back previously deducted CFS to the cap. Once the cap limit is met, no additional permits can be issued without the Water Resources Commission modifying its rules and adjusting the cap.*

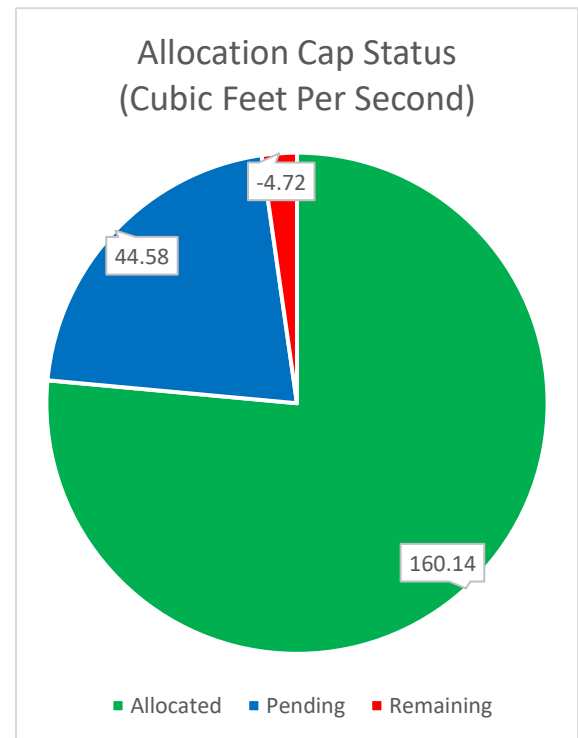


Figure 1: Allocation Cap Status

- E. Incremental Development Plans:** By rule, the Department may allow a municipal or quasi-municipal applicant to satisfy their mitigation obligation incrementally as the water use is developed, rather than requiring mitigation to be provided before the permit is issued. These applicants must report annually to the Department on the volume of water used and the source of mitigation. There are 22 permits that have incremental development plans.

A summary of water use for municipal and quasi-municipal permit holders with incremental development plans is provided in Figure 2. This figure is a comparison between the amount that these water users are authorized to use at full development, the amount of water they could use based on how much mitigation they have provided through

2024, and the amount of water they actually used during 2024. Overall, in 2024, more mitigation was provided by entities with incremental development plans than was needed to mitigate for their actual use.

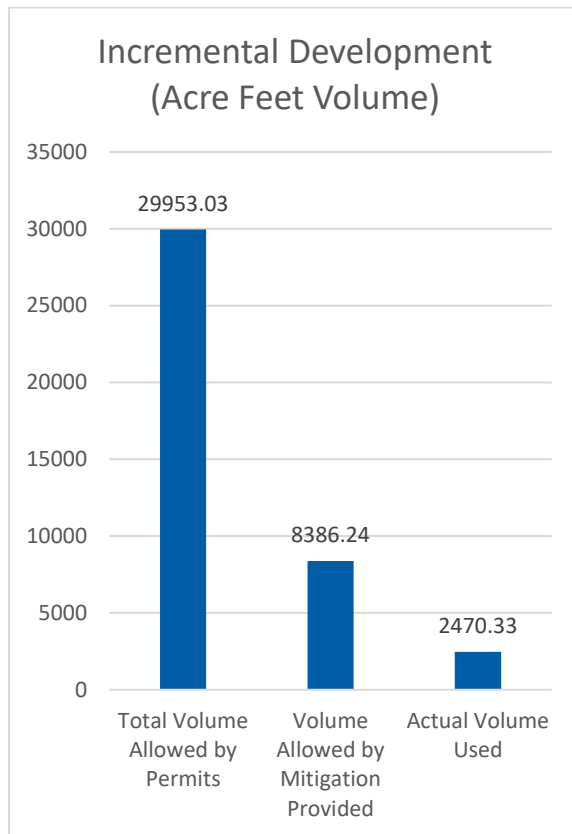


Figure 2: Incremental Development Permits

- F. **Mitigation Activity:** For each mitigation project submitted, the Department identifies the amount of water resulting from the project that can be used for mitigation purposes. The resulting protectable water, expressed in acre feet, is also referred to as “mitigation water” or “mitigation credits.” One acre foot of mitigation water is equal to one mitigation credit. For each project submitted, the Department also identifies the zone or zones of impact in which the mitigation water provides instream

benefits and may be used for mitigation purposes. Mitigation for active groundwater permits and certificates issued by the Department under the Mitigation Program are provided through permanent instream transfers and temporary instream leases (Figure 3). Mitigation credits established by a Mitigation Project are considered used when assigned to a groundwater application or permit.

- As of the end of 2024 there are 83 total active mitigation projects, consisting of:
 - 53 permanent instream transfer projects;
 - 29 temporary instream lease projects; and
 - 1 permanent reservoir release for City of Prineville.

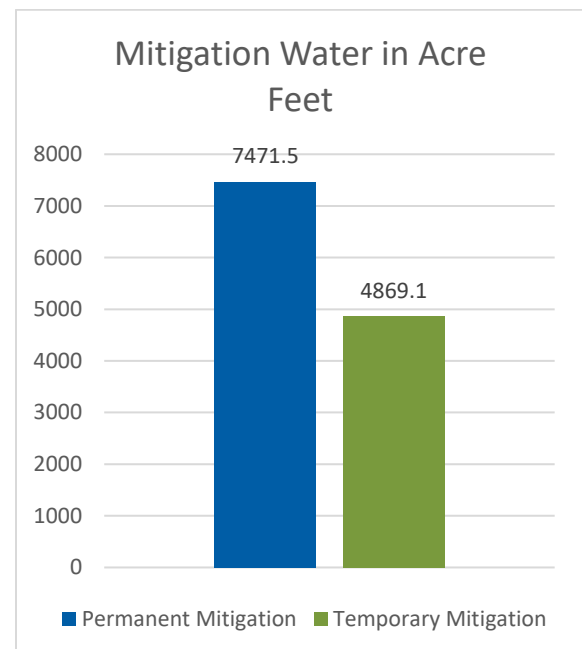


Figure 3: Mitigation Water

- Figure 4 shows the established mitigation broken out by zone of impact. The reason these amounts are more than the established

amounts is because mitigation is sometimes established in multiple zones (i.e., 10 credits established in the middle and general zones, but only a maximum total of 10 credits can be used in either the middle or general zones, or a combination thereof).

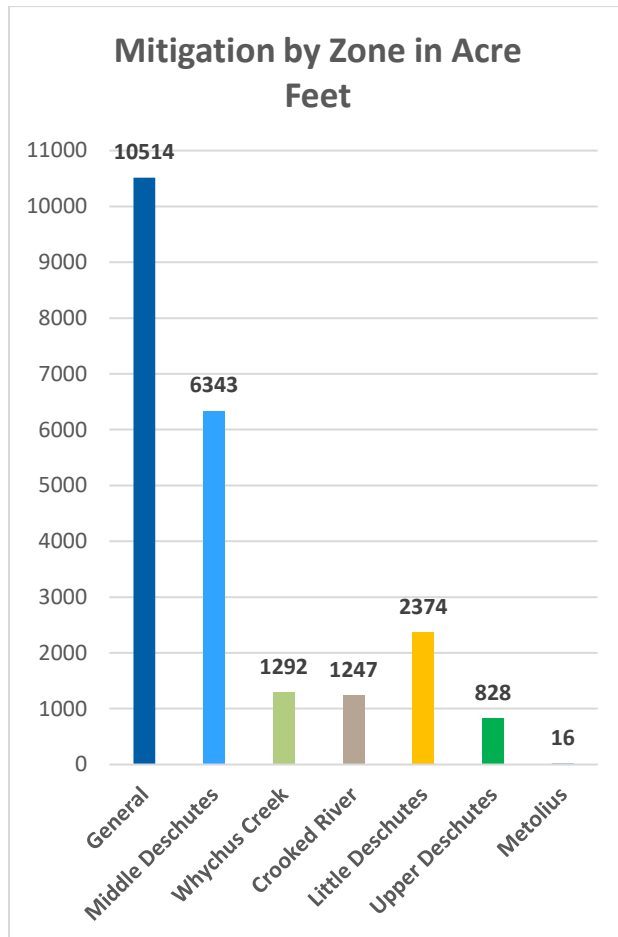


Figure 4: Mitigation by Zone

The above Figures 3 and 4 do not include the 5,100.0 AF of permanent mitigation credits issued to the City of Prineville as identified in Water Right Certificate 94149. These mitigation credits may be used to satisfy the mitigation obligation of a groundwater use found to impact surface water flows in the General and/or Crooked River Zones of Impact and are reported and managed on a

water year schedule (Oct. 1 – Sept. 30). These mitigation credits may only be used by the City of Prineville and cannot be conveyed to any other person or mitigation bank. As of the writing of this report, 972.0 AF of these mitigation credits have been assigned to City of Prineville incremental groundwater permits.

G. Mitigation Banks: Mitigation banks must submit an annual report detailing all credit transactions and activities for the preceding calendar year. As of the end of the 2024 year, there are three mitigation banks:

- Deschutes River Conservancy Mitigation Bank (DRC Mitigation Bank);
- Deschutes Irrigation, LLC; and
- Arnold Irrigation District Mitigation Bank.

H. Mitigation Bank Activity:

DRCMB

- Filed the required annual report
- Submitted 29 instream leases in 2024
- Maintained sufficient “reserve” credits to cover temporary mitigation credits used by groundwater permit holders in each zone of impact. (For each temporary mitigation credit used to satisfy all or part of the mitigation obligation of a groundwater permit, a mitigation bank is required to keep a matching credit in reserve.)

As of the end of 2024, the following mitigation banks had not yet undertaken any mitigation activity. The mitigation program rules do not require a mitigation bank to be active to remain in place.

Deschutes Irrigation, LLC

Arnold Irrigation District Mitigation Bank

Delinquent Permits:

Instream leases are one of the identified sources of mitigation under OAR 690-521-0300(1)(b); however, this temporary mitigation (instream lease-based mitigation) may only be established through a Mitigation Bank chartered by the Oregon Water Resources Commission. To date, temporary mitigation has been available from the DRC Mitigation Bank, which primarily brokers temporary mitigation credits available through final orders issued by OWRD approving instream lease applications. Some permit holders who have used temporary mitigation in the past failed to continue providing that mitigation. Every year, the Department and DRC Mitigation Bank each notify permit holders who have failed to provide mitigation.

By rule and by permit condition, every groundwater user with a permit issued under the Deschutes Basin Groundwater Mitigation Program is required to maintain mitigation for the life of the groundwater use. Ultimately, the permit holder is responsible for maintaining any temporary mitigation being used annually with the DRC Mitigation Bank.

Since groundwater permit holders using temporary mitigation credits need to obtain mitigation credits on an annual basis, there is the risk of groundwater users failing to maintain the required mitigation. Under the Mitigation Program, when a permit holder fails to maintain their source of mitigation, OWRD is required, under OAR 690-505-0620, to regulate the use, propose denial of any permit extension request, and propose cancellation of the permit.

Figure 5 below shows the number of confirmed delinquent permits each year

during a five-year period from 2020 through 2024. During the year 2024, after being notified, all five delinquent permit holders rectified the situation by providing the required annual mitigation.

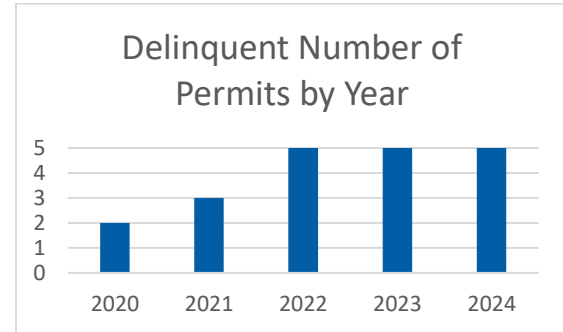


Figure 5: Delinquent Number of Permits by Year

Mitigation Effects on Streamflow

To evaluate the impact of the mitigation program on scenic waterway flows and instream water right flows, the Department developed a streamflow modeling program based on gaging records from the 1966-1995 base period, a pre-mitigation program time frame. The model simulates the long term (i.e., steady-state) estimated hydrologic effects of mitigation credits and debits on the historical records at the gaged locations across the basin, and then evaluates how often the instream flow requirements (ISFR) are met based on this adjusted streamflow data compared to the original flow records (Cooper, 2008). A modeling approach was used because the steady-state, long-term impact of streamflow to mitigation-related activities may take years or even decades to be reflected as actual changes in streamflow (Gannett and Lite, 2004), plus climate variability generally masks the streamflow response to mitigation activities at most locations (Cooper, 2008). The simulations do not reflect activities affecting streamflow

outside of the mitigation program, such as canal piping/lining.

Analysis of the 2024 data demonstrates that, on an annual basis, the simulated change in percent of time instream flow requirements (% ISFR) are met at the evaluation points ranges from -0.26% to +1.23%. Similarly, the overall annual change in mean streamflow ranges from -0.006 CFS to +29.4 CFS (Appendix 4).

Consistent with previous annual reports, the seasonal change in the quantity of streamflow (CFS) continues to be negative at all evaluation points during the non-irrigation season and positive at all evaluation points during the irrigation season, reflecting the general timing difference between the hydrologic impacts to streamflow of credits (irrigation season) and debits (year-around).

Similarly, the changes in % ISFR met generally follows this same seasonality as changes in streamflow quantity. The magnitude of change in % ISFR met varies by month and site, reflecting how close historical flows were to the ISFR prior to the mitigation program. If the historical flows were close to the ISFR for a given evaluation site, then a small change in flows can result in a large change in % ISFR if met, while the opposite is true if the historical flows differed greatly from the ISFR.

Again, this difference in seasonal results is expected due to the inherent timing difference between when the hydrologic effects of debits and credits reach the stream network. Debits (new groundwater withdrawals) produce a decrease in streamflow year-round due to the pumping effects on groundwater being attenuated in time (Gannett and Lite, 2004). Credit (instream leases and instream transfers of surface water rights) effects are immediate

and occur primarily during the irrigation season.

Summary

The Department continues working to effectively implement the Deschutes Basin Groundwater Mitigation Program. Groundwater permit applications and mitigation projects are moving through the required processes. Overall, the program continues to produce positive benefits as more mitigation water has been approved and protected instream than is required for active groundwater permits and certificates.

In response to comments and questions received from sister agencies (as outlined in “Agency Comments” above and provided in Appendix 3 attached to this report), the Department understands the concerns brought forth regarding impacts to cold-water springs, the zonal mitigation impacts, model accounting and climate change, and impacts during the non-irrigation season. From the beginning of the Deschutes Mitigation Program, however, it was determined that the program should be structured in such a way so that it was a manageable system for OWRD to track and maintain long-term. OWRD considered the goals of the Mitigation Program, the Deschutes Groundwater Mitigation Flow Model, and the base period flows (1966-1995) and created sub-zones and consumptive use coefficients to keep the Deschutes Mitigation Program manageable. Seasonal uses were allowed to generate credits that could then be purchased to mitigate for year-round uses.

OWRD is continuing to work with ODFW, ODEQ, and interested parties to address these challenging issues. Other concerns may need to be addressed through other venues

and initiatives to develop and implement a basin-wide water management plan.

The Deschutes Groundwater Mitigation Program is a performance based, adaptive approach to managing new groundwater permits in the Deschutes Groundwater Study Area. As part of this adaptive approach, the program included a cap on how much new groundwater use could be approved. The Department may issue final orders approving groundwater permit applications for a cumulative total of up to 200 CFS. This limitation is one of the elements of the program that is to be reviewed as part of the program evaluation. The 200 CFS cap represents the rate up to which water may be withdrawn from the groundwater resource. It is important to note that this rate-based limitation is different from the consumptive use portion (in acre feet) for which groundwater permit applicants must provide mitigation.

As discussed in the “Allocation Cap” section of this report, the quantity of water (CFS) allocated under the cap fluctuates up and down from year to year as a result of various administrative actions (i.e., denial, cancellation, expiration, withdrawal, etc.) which add back previously deducted CFS to the cap. As of the end of 2024, 160.14 CFS was allocated under the cap.

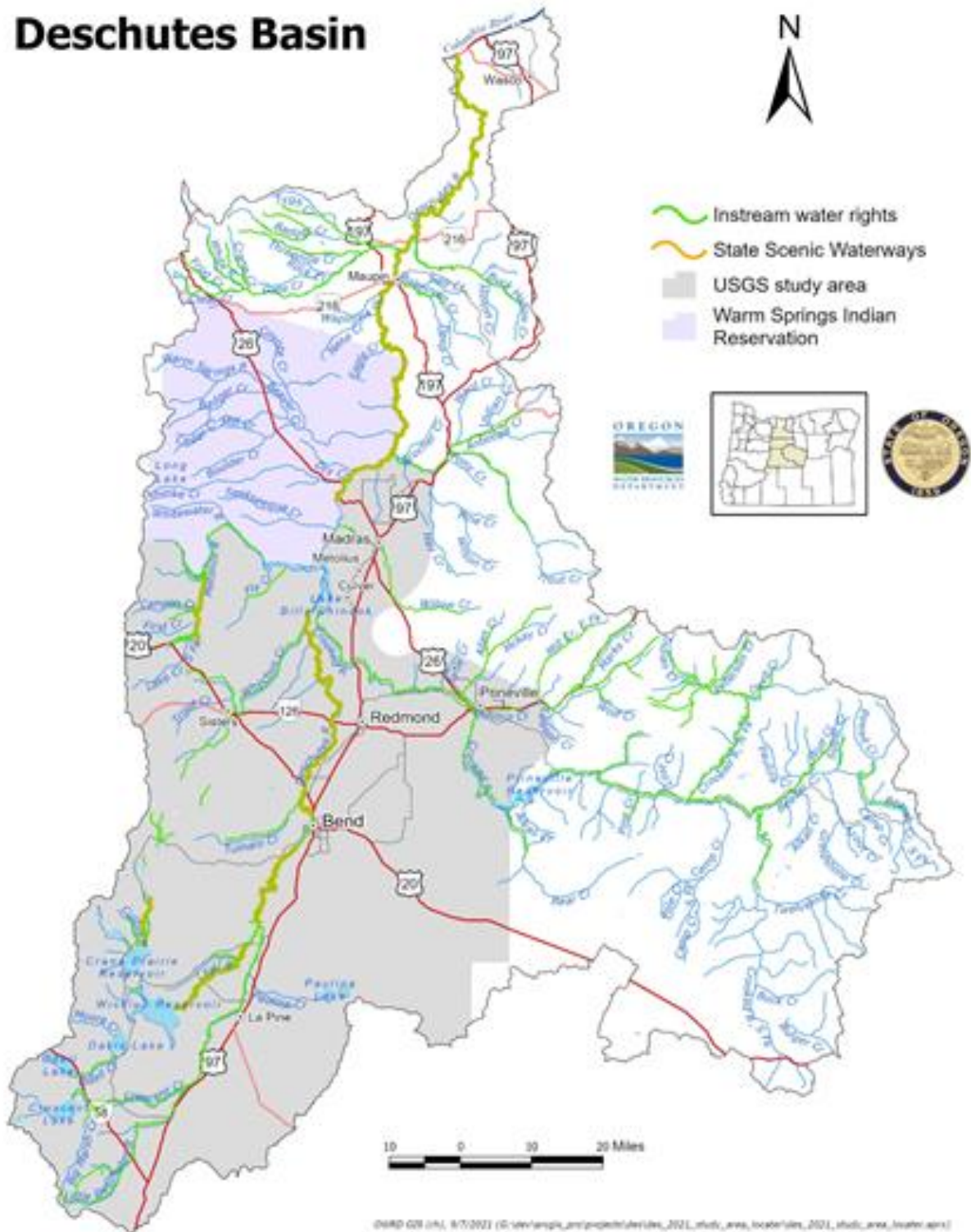
Given the status of the 200 CFS allocation cap and that all currently pending applications cannot be accommodated without exceeding the cap, the Department understands the significant need to engage with the diverse landscape of interested parties in the basin to work together to shape how the future of the Deschutes Basin Groundwater Mitigation Program will unfold in the future. The Department has already prioritized and put

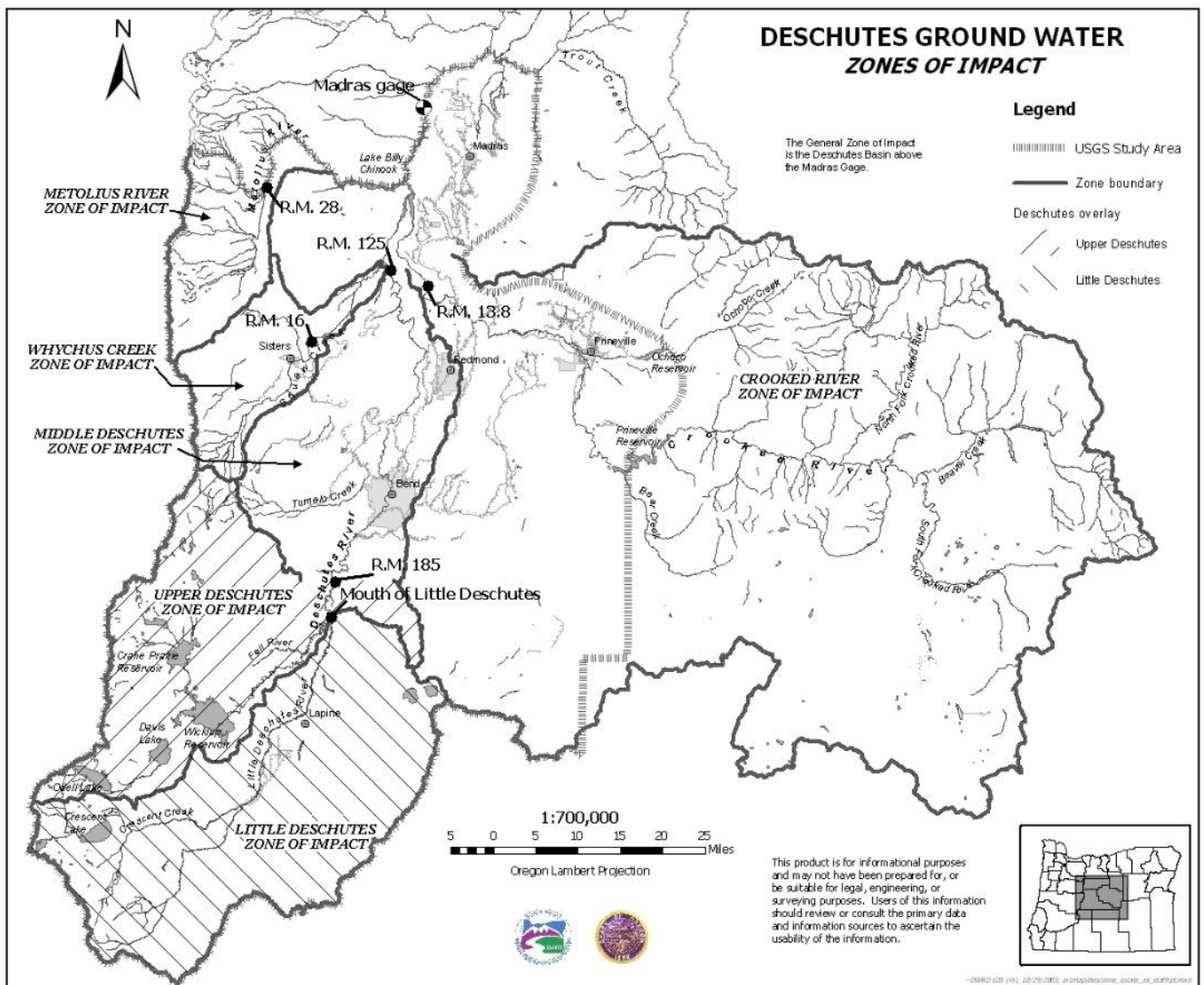
forth effort to work through the many complex issues related to the Program. Both sister-agencies and interested parties have and will be invited to engage in the OWRD process to evaluate modifications to the existing Deschutes Basin Groundwater Mitigation Program.

Appendices

1. Deschutes Basin Groundwater Study Area Map
2. Deschutes Basin Groundwater Study Area Zone of Impact Map
3. Comments from ODFW
4. Summary of Modeled Streamflow for Water Year Ending September 2024

Deschutes Basin







Oregon

Tina Kotek, Governor

Department of Fish and Wildlife

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October 14, 2025



Sarah Henderson
Flow Restoration Program Coordinator, Transfer and
Conservation Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

**RE: ODFW Comments on the DRAFT 2023 and 2024 Annual Review of the Deschutes
Basin Groundwater Mitigation Program**

Dear Ms. Henderson,

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comments on the DRAFT 2023 and 2024 Annual Review of the Deschutes Basin Groundwater Mitigation Program (Program). Overall, ODFW agrees that the Program has been successful in maintaining and improving flows for State Scenic Waterways and senior water rights, particularly instream water rights, during the irrigation season. However, as we acquire more information about the additional detrimental impacts to fish and wildlife expected in the future from a changing climate, we have increasing concerns about water accounting, the impacts to springs, and decreases in flow during the non-irrigation season.

Since inception of the Program, ODFW has repeatedly submitted comments that address our ongoing concerns and have discussed potential solutions with the Oregon Water Resources Department (OWRD) many times. As our concerns are already on record, please refer to past comment letters for a full account of ODFW concerns (e.g., ODFW Comments on the DRAFT 2021 Annual Review of the Deschutes Basin Groundwater Mitigation Program, January 6, 2023). We were previously engaged in thorough discussions with OWRD for Program improvements as we get closer to the allocation cap being reached and the Program sunset in 2029 and are eager to reinitiate those conversations. ODFW looks forward to further advising the agency on ways to strengthen the efficacy of the Program to improve and protect instream flow for fish, wildlife, and their habitats.

As in the past, ODFW will review our primary concerns here for the record. In general, and as previously discussed with OWRD, ODFW recommends these tangible improvements to the

*To protect and enhance Oregon's fish and wildlife and their habitats
for use and enjoyment by present and future generations.*

ODFW Comments

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Program be addressed before the 200 cfs cap on the Program is lifted and/or the Program is reauthorized:

- **Water Accounting and Impacts of Climate Change:** ODFW would like to see a comparison of the streamflow model reporting and current, measured improvements and declines in streamflow. The draft identifies success based on an annual Acre Feet of instream flow (7,471.5 AF as of 2024) being permanently restored to the Deschutes River and its tributaries. A comparison showing how this amount truly offsets the impacts from new groundwater use and information on the reliability of the mitigation water in regard to its physical and regulatory availability would tell a more complete story.
- **Zonal Mitigation:** ODFW recommends mitigation under the Program directly offset specific impacts by being located upstream of the impacted reach, especially for impacts on tributaries.
- **Impacts to Springs:** ODFW would like to again discuss the proposed path forward regarding combined efforts to obtain funding for a study aimed at identifying impacts to the springs within the Study Area and to understand whether any impacts are the direct result of the mitigation program.
- **Impacts During the Non-Irrigation Season:** ODFW recommends providing a more complete picture when communicating the efficacy of the Program at meeting key goals by looking at both the benefits and impacts to flow during the non-irrigation season as well as the irrigation season. Concluding that the Program has been successful in meeting key goals by relying on assessments on an annual basis is misleading given the Program allows declines in flow (and potential impacts to the Scenic Waterway and senior water rights) during the non-irrigation season.

Thank you for the chance to comment. We look forward to revisiting Program goals and rule language and pursuing solutions to our concerns as OWRD plans for Program updates. In the meantime, ODFW recommends the 200 cfs cap not be lifted or the Program reauthorized until these issues are resolved, and the Commission can determine that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met year round (including during the non-irrigation season) on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department per OAR 690-505-0500(4). If you have any questions, please contact me at 971-280-3773.

Sincerely,



Danette Faucera, Water Policy Coordinator

Oregon

Kate Brown, Governor



Department of Fish and Wildlife

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January 6, 2023

Sarah Henderson
Flow Restoration Program Coordinator, Transfer and Conservation Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

**RE: ODFW Comments on the DRAFT 2021 Annual Review of the Deschutes Basin
Groundwater Mitigation Program**

Dear Ms. Henderson,

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comments on the DRAFT 2021 Annual Review of the Deschutes Basin Groundwater Mitigation Program (Program). Overall, ODFW agrees that the Program has been successful in maintaining and improving flows in the middle and lower Deschutes River during the irrigation season. Increases in stream flow during the irrigation season in the Middle Deschutes has provided an added benefit to the overall objective of the rules, which are to provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water in the Deschutes Basin. However, as we acquire more information about the additional detrimental impacts to fish and wildlife expected in the future from a changing climate, we continue to have increasing concerns about water accounting, the impacts to springs, and decreases in flow during the non-irrigation season. These issues are also of immediate concern, as water users are currently moving ahead with innovative means to secure future mitigation credits that may not fully meet the needs of fish and wildlife in the basin (e.g., proposed winter reservoir releases with unclear mitigation intent).

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Since inception of the Program, ODFW has annually submitted comments that address our ongoing concerns and have discussed potential solutions with the Oregon Water Resources Department (OWRD) many times. We were pleased to see that OWRD included several actions to improve the Program in the 2021 5-year Program review and that OWRD is currently proposing a funding package to better understand potential impacts to springs from groundwater extraction. ODFW looks forward to continuing conversations and advising the agency on ways to strengthen the efficacy of the Program to improve and protect instream flow for fish, wildlife, and their habitats.

As in the past, ODFW will review our primary concerns here for the record. Specifically, ODFW recommends these tangible improvements to the Program be addressed before the 200 cfs cap on the Program is lifted:

Water Accounting and Impacts of Climate Change

- A. To offset potential impacts from new uses, water rights proposed for mitigation must represent valid and reliable replacement sources of water. Basin-specific hydrologic conditions, any history of regulation, and past use determine the reliability of a water right. ODFW recommends surface water rights used for mitigation demonstrate 100% reliability at the full rate for the past 8 out of 10 years and groundwater rights demonstrate use for the past 8 out of 10 years. This means that any water right that is regulated off on a frequent basis or cannot be/has not been reliably used will not be sufficient mitigation. As such, suitable mitigation will generally need to be in the form of a senior water right that has historically proven reliable as “wet water” for the permitted use.
- B. ODFW recommends the Program include a protocol for monitoring, accounting (measuring), and reporting the volume of water transferred instream from annual mitigation credits in each zone of influence. Currently, the Deschutes River Conservancy (the only active mitigation bank) tracks and accounts for the administrative transfer of water instream, but the verification and measurement of actual “wet water” used as mitigation in each zone is limited. A monitoring program to ensure mitigation is providing a true offset for impacts as initially intended and remains available as “wet water” in perpetuity (or for the life of the project) is necessary for assessing effectiveness of the Program. This may require additional gauges and flow measurement beyond what is currently in place.

We know that climate change will exacerbate existing issues and alter streamflow, temperatures, and adjacent landscape characteristics necessary to support fish and wildlife populations. As we acquire more information about the detrimental impacts to fish and wildlife expected from a changing climate, closely monitoring groundwater use and associated mitigation is a necessity for the Program. In fact, Gannett and Lite, in their 2013 report “Analysis of 1997–2008 Groundwater Level Changes in the Upper Deschutes Basin, Central Oregon,” found that groundwater flow model simulations indicated that climate

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variations have the largest influence on groundwater levels throughout the upper Deschutes Basin.

- C. A portion of the water supporting the Mitigation Program is leased instream. ODFW is concerned with mitigating permanent groundwater rights with temporary leased water. This could set up the potential in the future to not have enough mitigation water to cover all the permanent groundwater rights that need mitigated. In cases where permanent groundwater pumping certificates have been granted, temporary instream leasing provides no certainty that the mitigation will remain in place for the life of the permit and/or certificate. Past Program reports have identified permit holders that have allowed temporary credits to expire while continuing to irrigate. It is not clear if this issue has been addressed. Therefore, we recommend that OWRD increase compliance monitoring and immediate regulation of non-compliant participants. ODFW proposes that OWRD and Program partners work more proactively to provide permanent mitigation water (permanent instream transfers) to offset groundwater pumping.
- D. ODFW recommends modifying the presentation of flow data. The annual reports for the Program consistently present flow data on a monthly and annual basis, which demonstrate minor changes in flow. Because fish and other aquatic organisms are very susceptible to acute and chronic events (e.g., dewatered reaches or lower flow rates for extended periods), annual and even seasonal changes do not necessarily reflect true impacts to aquatic life. ODFW recommends presenting flow data in a form that is more relevant to fish needs, such as improvements in low flows, variability in flows throughout the year, and flows during critical time periods for fish.

Zonal Mitigation

Allowing mitigation for groundwater impacts to occur away from the point of impact but within a larger “Zone of Impact” results in localized impacts to streams and the fish and wildlife they support. This is particularly true for the General Zone, which according to Figure 5 in the Draft Review, is where most of the current mitigation occurs. Mitigation under the Program should directly offset the impact by being located upstream of the impacted reach consistent with the Program goals to provide for new ground water uses while maintaining scenic waterway and instream water right flows in the Deschutes Basin.

Impacts to Springs

The Program was not intended to mitigate for the impacts of groundwater development on groundwater levels, and groundwater in the basin continues to decline (see Figure 1; Thoma et al. 2021). Groundwater levels in parts of the basin are quickly approaching the 50 ft total decline benchmark, being one of the thresholds of “excessively declined” (OAR 690-008). OWRD (Iverson and Scandella 2021) ranked 15 townships in the Middle/Upper Deschutes State Scenic

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Waterway Restriction Area as “significant concern” for groundwater resources. As a result and given the close hydraulic connection between ground and surface water in the basin, ODFW continues to express concerns with the localized impacts of groundwater pumping on springs.

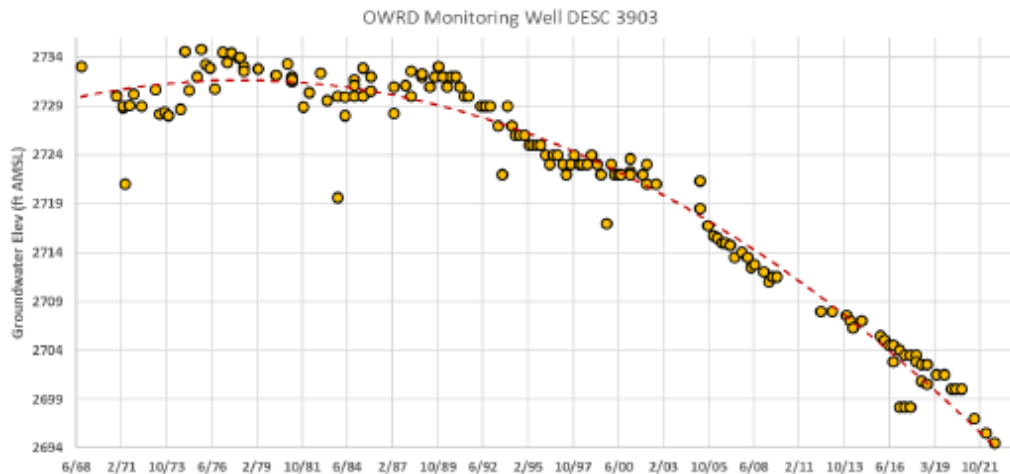


Figure 1. Oregon Water Resources Department groundwater elevation measurements at monitoring well DESC 3903 west of Redmond, Oregon 1968-2022.

Springs and seeps provide very important cold-water inputs to streams by providing cold water refugia and other habitat benefits for fish and by helping to cool stream temperatures during the summer in streams with depleted flows. The native trout, salmon and whitefish in the Deschutes basin require consistent sources of cold, clear water to complete their life histories and zones of groundwater discharge provide critically important habitat.

Monitoring of local springs needs to be improved to better understand how trends in regional groundwater supply and use are expressed as surface water flows and to assess the efficacy of the Program. One of the few springs with consistent monitoring is the main head springs on the Metolius River where groundwater discharge has declined over 50% between the spring of 2018 and fall of 2021 (OWRD 2022). Over time, continued and increased groundwater withdrawal for agricultural, residential, and municipal needs will further affect springs when there is a surface/groundwater connection.

Impacts to springs from current and future groundwater withdrawals are exacerbated by the increasing trend to convert area irrigation canals to piped delivery systems. While this is positive in that it generates conserved water that currently results in improved instream flows in the middle Deschutes River, it also eliminates seepage which recharges the aquifer and contributes to spring recharge of cold water. The result is an exchange (loss) of cold spring water for warmer water upstream. Further, any future shift for conserved water projects that return flow to

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the upper Deschutes River to benefit the Oregon Spotted Frog (*see Impacts During the Non-Irrigation Season*), particularly during the winter months, will add additional stress on the middle Deschutes and lower Crooked rivers in the valuable spring recharge areas. The impacts to fish and aquatic resources from these inconsistencies are likely to become more pronounced in future years as climate change continues to be increasingly more influential. Cold water refugia could likely become critical to long-term persistence of many fish species and populations and should be considered in water management decisions and when assessing effectiveness of the Program.

For many years, ODFW has requested that OWRD consider implementing a program to monitor key springs/spring complexes in the basin to determine ecological impacts to spring flow, including temperature and nutrient changes resulting from groundwater pumping. Monitoring impacts of groundwater pumping on springs and spring complexes is important in respect to their aquatic habitat, botanical, wildlife, water quality, water quantity, and societal values. In the past, this issue was recognized by state and federal agencies but work to address the concerns faded due to other priorities.

ODFW is pleased that OWRD has recently engaged in the spring flow concerns by moving forward to seek funding, coordinate efforts for research, and develop and implement a strategy to address these concerns.

As stated in the 2021 5-Year Review of the Deschutes Basin Groundwater Mitigation Program, WRD proposed the following specific action to improve the Mitigation Program: “The Department is working towards a more complete understanding of how the mitigation program has been implemented and whether changes to the program are necessary to improve protection of local water resources, or if those protections are outside the scope of the mitigation program. The Department should be partnering with ODFW and DEQ to jointly secure funding for a study aimed at these issues. OWRD staff intend to continue conversations with ODFW, DEQ, CTWS, and stakeholders on issues outlined above as well as other issues raised in the report as part of this evaluation to identify opportunities for improving the Mitigation Program.”

As a result, OWRD currently has a proposed Policy Option Package (POP) in the 2023-2025 Agency Requested Budget for spring monitoring.

Impacts During the Non-Irrigation Season

As currently designed, the Program mitigates year-round groundwater withdrawals with irrigation season water and reports changes to streamflow on an annual basis. This type of mitigation does provide for more instream water during the irrigation season, as is consistently reported, but is also reported to reduce flows in the lower river during the non-irrigation season. Critical fish life history components occur outside of the irrigation season, particularly during

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“shoulder months” at the beginning and end of the irrigation season (March/April and October/November) when reductions in streamflow are consistently reported.

In addition, current implementation of the Program poses potential impacts to the ESA-listed Oregon Spotted Frog (OSF) outside of the irrigation season. Improving winter flows on the upper Deschutes River below Wickiup Reservoir and on Crescent Creek is essential to the survival of the OSF, and freshwater spring habitats in the upper Deschutes Basin have been identified as critical to overwinter survival.

The continual detrimental impact to streamflow during the non-irrigation season is now a greater concern for more than just the “shoulder months.” Most stakeholders recognize that non-irrigation flow concerns still need to be addressed for the Deschutes basin as a whole. In the past, OWRD recognized this concern as well. One option, which is currently being implemented by Section 7 permittees under the Deschutes Basin Habitat Conservation Plan, is for water users in the basin to release stored water in Wickiup, Crane Prairie, Crescent and other reservoirs instream during the winter and shoulder months. ODFW recognizes the release of stored water during the non-irrigation season as a valuable tool for supplementing the existing mitigation credits that are currently limited to the irrigation season. Winter releases would aide in offsetting impacts of groundwater withdrawal on a true 1:1, year round basis, but only if utilized as mitigation for winter impacts and in partnership with other mitigation applied to the irrigation season. To fully mitigate impacts to fish and wildlife resulting from groundwater withdrawals, mitigation credits should apply the appropriate volume and quality of reliable, wet water to both the middle and upper Deschutes River on a year-round basis.

200 CFS Cap

Stream flows outside the irrigation season are important to fish for a number of reasons, including providing habitat for spawning, overwintering, rearing habitat throughout the year, and especially for juvenile salmon and steelhead during the spring smolt outmigration beginning in March and continuing through May. When the Program rules were developed, all parties recognized the Program would reduce flows in the lower river during the non-irrigation season. Because of this, the 200 cfs cap was put in place to limit flow reduction impacts in the lower river outside of the irrigation season and allow for an overall assessment of the Program. All stakeholders at the time recognized that non-irrigation flow concerns still needed to be addressed for the Deschutes basin as a whole.

As stated in the 2021 5-Year Review of the Deschutes Basin Groundwater Mitigation Program, OWRD proposed the following specific action to improve the Program:

- “OWRD to consider possibility of modifying allocation cap as part of work to be prioritized with Basin stakeholders.”

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ODFW looks forward to OWRD and Program partners working with us to seek clear options for year-round mitigation to offset year-round impacts. Therefore, ODFW recommends the 200 cfs allocation cap remain until such time as the winter flow and other issues can be resolved. Maintaining the cap will ensure that groundwater reductions due to unmitigated, non-irrigation season use is kept to a minimum (*see Impacts During the Non-Irrigation Season*).

Review of Mitigation Projects

OWRD works in cooperation with ODFW to enhance the resource benefits and make the most effective use of mitigation projects and mitigation water (OAR 690-505-0615(7)). Currently, ODFW's understanding is that in practice, OWRD is seeking input regarding shaping of mitigation flows for proposed mitigation projects. However, this shaping is limited to the season of the original water right and some certificates have protocols that preclude releasing higher amounts during shoulder months. In addition, reliability of the water rights to provide wet water are not fully assessed. As such, ODFW is limited in our ability to effectively comment on mitigation projects so that they maximize benefits to fish and wildlife. ODFW would like to provide more meaningful input that benefits fish and wildlife year-round in reach-specific locations, which may require updates to the existing rules. This will aide in ensuring that mitigation is offsetting the local impact and not resulting in impacts during the non-irrigation season.

Thank you for the chance to comment. We look forward to revisiting Program goals and rule language and pursuing solutions to our concerns in upcoming discussions as OWRD plans for Program updates. In the meantime, ODFW recommends the 200 cfs cap not be lifted until these issues are resolved, and the Commission can determine that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met year round on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department per OAR 690-505-0500(4). If you have any questions, please contact me (503-947-6092) in Salem or Jerry George (541-388-6363) in Bend.

Sincerely,



Danette Faucera, Water Policy Coordinator



Jerry George, Deschutes District Fish Biologist

ODFW Comments

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References:

Gannett, M.W., and Lite, K.E., Jr., 2013, Analysis of 1997–2008 groundwater level changes in the upper Deschutes Basin, Central Oregon: U.S. Geological Survey Scientific Investigations Report 2013-5092, 34 p., <http://pubs.usgs.gov/sir/2013/5092>.

Oregon Water Resources Department. 2022. Metolius Springs Date Query. Available online at: https://apps.wrd.state.or.us/apps/sw/misc_measurements_view_only/

Iverson, J., and B. Scandella. 2021. Oregon Groundwater Resource Concerns Assessment – 2021. Memorandum to Water Resources Commission and Attached Assessment. Oregon Department of Water Resources.

Thoma, M, A. Bouchier, J. Iverson, and H. Burright. 2021. Response to Technical Assistance Request: Groundwater Mitigation Program purpose in relation to observed groundwater level trends. Memorandum from the Oregon Water Resources Department to the Deschutes Basin Water Collaborative Groundwater Mitigation Technical Committee.

Streamflow Model Data

The data presented in the following tables are from the Department's Deschutes Mitigation model. The "before mitigation" or baseline condition of streams in the Deschutes Basin has been determined from streamflows measured during water years 1966 to 1995. The model has been developed to mathematically estimate the change in streamflow expected due to mitigation (credits) and groundwater allocation (debits). The model is designed to reflect the theoretical, steady-state response of streamflow to mitigation-related activities only. In some cases, the actual hydrologic response to mitigation activities, such as new groundwater pumping, may take years or decades to be reflected as changes in streamflow.

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Mouth					
Time: 09:56			Date: 04/24/2025		
Month	Base Line	Mitigated	Change in	Percent	
	%	%	Percentage	Change	
			%	%	
JAN	93.20	92.50	-0.75	-0.81	
FEB	90.80	89.80	-0.94	-1.05	
MAR	95.30	94.90	-0.32	-0.34	
APR	99.90	99.90	0.00	0.00	
MAY	99.10	99.50	0.32	0.32	
JUN	98.00	98.80	0.78	0.79	
JUL	91.00	94.70	3.76	3.97	
AUG	100.00	100.00	0.00	0.00	
SEP	98.10	98.20	0.11	0.11	
OCT	97.40	97.50	0.11	0.11	
NOV	99.90	99.80	-0.11	-0.11	
DEC	91.70	91.10	-0.64	-0.71	
ANNUAL	96.20	96.40	0.20	0.21	

CHANGE IN MEAN STREAM FLOW (CFS) IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Mouth					
Time: 09:57			Date: 04/24/2025		
Month	Base Line	Mitigated	Change	Percent	
	cfs	cfs	in cfs	Change	
			cfs	%	
JAN	6910.0	6880.0	-35.3	-0.51	
FEB	7080.0	7040.0	-35.3	-0.50	
MAR	7250.0	7210.0	-35.2	-0.49	
APR	6640.0	6640.0	1.39	0.02	
MAY	5800.0	5830.0	30.4	0.52	
JUN	5200.0	5250.0	51.4	0.98	
JUL	4590.0	4650.0	59.0	1.27	
AUG	4380.0	4440.0	56.2	1.27	
SEP	4430.0	4470.0	37.5	0.84	
OCT	4710.0	4710.0	4.04	0.09	
NOV	5390.0	5360.0	-34.5	-0.64	
DEC	6190.0	6150.0	-35.3	-0.57	
ANNUAL	5710.0	5710.0	5.58	0.10	

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River below Pelton Dam				
Time: 09:59		Date: 04/24/2025		
Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	64.70	63.40	-1.29	-2.03
FEB	63.00	60.80	-2.24	-3.69
MAR	67.80	66.20	-1.61	-2.44
APR	71.40	71.40	0.00	0.00
MAY	58.80	64.10	5.27	8.22
JUN	55.60	60.90	5.33	8.76
JUL	41.00	47.50	6.56	13.80
AUG	98.20	99.50	1.29	1.30
SEP	66.80	69.40	2.67	3.84
OCT	81.10	81.10	0.00	0.00
NOV	97.20	97.10	-0.11	-0.11
DEC	66.10	64.80	-1.29	-1.99
ANNUAL	69.30	70.60	1.23	1.75

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River below Pelton Dam				
Time: 10:00		Date: 04/24/2025		
Month	Base Line	Mitigated	Change	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	5240.0	5210.0	-35.3	-0.68
FEB	5190.0	5160.0	-35.3	-0.69
MAR	5520.0	5490.0	-35.2	-0.64
APR	5130.0	5140.0	1.39	0.03
MAY	4420.0	4450.0	30.4	0.68
JUN	4230.0	4280.0	51.4	1.20
JUL	4020.0	4080.0	59.0	1.45
AUG	3940.0	3990.0	56.2	1.41
SEP	3980.0	4010.0	37.5	0.94
OCT	4190.0	4190.0	4.04	0.10
NOV	4680.0	4650.0	-34.5	-0.74
DEC	5030.0	5000.0	-35.3	-0.71
ANNUAL	4630.0	4630.0	5.58	0.12

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Metolius River at Lake Billy Chinook
Time: 10:00 Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	97.70	97.70	0.00	0.00
FEB	99.20	99.20	0.00	0.00
MAR	99.80	99.80	0.00	0.00
APR	100.00	100.00	0.00	0.00
MAY	100.00	100.00	0.00	0.00
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	100.00	100.00	0.00	0.00
OCT	100.00	100.00	0.00	0.00
NOV	100.00	100.00	0.00	0.00
DEC	100.00	100.00	0.00	0.00
ANNUAL	99.70	99.70	0.00	0.00

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Metolius River at Lake Billy Chinook
Time: 10:01 Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	1510.0	1510.0	-0.044	0.00
FEB	1560.0	1560.0	-0.044	0.00
MAR	1560.0	1560.0	-0.044	0.00
APR	1520.0	1520.0	-0.044	0.00
MAY	1560.0	1560.0	0.056	0.00
JUN	1590.0	1590.0	0.056	0.00
JUL	1490.0	1490.0	0.056	0.00
AUG	1400.0	1400.0	0.056	0.00
SEP	1350.0	1350.0	0.006	0.00
OCT	1330.0	1330.0	-0.044	0.00
NOV	1370.0	1370.0	-0.044	0.00
DEC	1450.0	1450.0	-0.044	0.00
ANNUAL	1470.0	1470.0	-0.006	0.00

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Lake Billy Chinook
Time: 10:01 Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	100.00	100.00	0.00	0.00
FEB	100.00	100.00	0.00	0.00
MAR	100.00	100.00	0.00	0.00
APR	97.10	100.00	2.89	2.89
MAY	100.00	100.00	0.00	0.00
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	100.00	100.00	0.00	0.00
OCT	94.40	99.90	5.48	5.49
NOV	100.00	100.00	0.00	0.00
DEC	100.00	100.00	0.00	0.00
ANNUAL	99.30	100.00	0.70	0.70

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Lake Billy Chinook
Time: 10:02 Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	1300.0	1290.0	-12.9	-1.00
FEB	1320.0	1310.0	-12.9	-0.99
MAR	1300.0	1280.0	-12.8	-1.00
APR	843.0	865.0	21.9	2.53
MAY	552.0	601.0	48.9	8.13
JUN	606.0	674.0	67.3	9.99
JUL	550.0	625.0	74.8	12.00
AUG	519.0	591.0	72.0	12.20
SEP	537.0	591.0	53.4	9.03
OCT	725.0	747.0	21.9	2.94
NOV	1130.0	1110.0	-12.4	-1.12
DEC	1220.0	1210.0	-12.9	-1.07
ANNUAL	881.0	906.0	24.9	2.75

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Lower Bridge
Time: 10:02 Date: 04/24/2025

Month	Base Line	Mitigated	Change in	Percent
	%	%	Percentage	Change
			%	%
JAN	60.50	58.60	-1.94	-3.30
FEB	63.80	62.10	-1.65	-2.66
MAR	68.30	67.70	-0.54	-0.79
APR	23.60	25.60	2.00	7.83
MAY	1.29	1.94	0.64	33.30
JUN	2.11	3.67	1.56	42.40
JUL	0.11	0.97	0.86	88.90
AUG	0.86	2.47	1.61	65.20
SEP	3.67	5.00	1.33	26.70
OCT	13.00	14.30	1.29	9.02
NOV	52.20	50.40	-1.78	-3.52
DEC	56.30	54.30	-2.04	-3.76
ANNUAL	28.60	28.80	0.12	0.41

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Lower Bridge
Time: 10:03 Date: 04/24/2025

Month	Base Line	Mitigated	Change	Percent
	cfs	cfs	in cfs	Change
			cfs	%
JAN	683.0	678.0	-4.92	-0.73
FEB	705.0	700.0	-4.92	-0.70
MAR	714.0	709.0	-4.92	-0.69
APR	299.0	328.0	29.1	8.86
MAY	51.2	105.0	54.1	51.40
JUN	50.5	119.0	68.9	57.70
JUL	42.6	115.0	72.2	62.90
AUG	46.2	117.0	70.6	60.50
SEP	61.0	113.0	52.3	46.20
OCT	222.0	250.0	28.1	11.20
NOV	551.0	546.0	-4.44	-0.81
DEC	614.0	609.0	-4.91	-0.81
ANNUAL	335.0	364.0	29.4	8.08

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River above Diversion Dam at Bend
Time: 10:03 Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	37.30	37.10	-0.22	-0.58
FEB	40.00	39.00	-1.06	-2.73
MAR	42.90	41.80	-1.08	-2.57
APR	73.20	74.10	0.89	1.20
MAY	97.00	97.70	0.75	0.77
JUN	100.00	100.00	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	97.00	98.40	1.44	1.47
OCT	54.60	57.70	3.12	5.40
NOV	29.00	28.70	-0.33	-1.16
DEC	35.70	35.30	-0.43	-1.22
ANNUAL	67.40	67.60	0.26	0.39

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River above Diversion Dam at Bend
Time: 10:03 Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	712.0	707.0	-4.89	-0.69
FEB	738.0	733.0	-4.89	-0.67
MAR	781.0	776.0	-4.89	-0.63
APR	877.0	891.0	14.5	1.63
MAY	1180.0	1210.0	26.5	2.20
JUN	1360.0	1390.0	33.6	2.42
JUL	1440.0	1470.0	37.0	2.51
AUG	1290.0	1320.0	35.4	2.68
SEP	1090.0	1120.0	25.1	2.25
OCT	721.0	735.0	14.0	1.90
NOV	590.0	586.0	-4.41	-0.75
DEC	650.0	645.0	-4.88	-0.76
ANNUAL	953.0	967.0	13.6	1.41

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Benham Falls

Time: 10:04

Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	43.40	42.70	-0.75	-1.76
FEB	54.50	53.80	-0.71	-1.32
MAR	32.50	31.40	-1.08	-3.42
APR	69.60	69.70	0.11	0.16
MAY	78.10	78.10	0.00	0.00
JUN	92.60	92.60	0.00	0.00
JUL	96.80	96.90	0.11	0.11
AUG	94.50	94.60	0.11	0.11
SEP	67.80	67.90	0.11	0.16
OCT	54.00	54.10	0.11	0.20
NOV	35.90	35.20	-0.67	-1.89
DEC	44.60	44.20	-0.43	-0.97
ANNUAL	63.70	63.50	-0.26	-0.40

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River at Benham Falls

Time: 10:04

Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	814.0	809.0	-4.87	-0.60
FEB	845.0	841.0	-4.87	-0.58
MAR	901.0	896.0	-4.87	-0.54
APR	1240.0	1240.0	2.99	0.24
MAY	1850.0	1850.0	4.44	0.24
JUN	2100.0	2100.0	6.01	0.28
JUL	2200.0	2210.0	9.35	0.42
AUG	2040.0	2040.0	7.80	0.38
SEP	1730.0	1740.0	4.07	0.23
OCT	1000.0	1010.0	3.61	0.36
NOV	685.0	681.0	-4.39	-0.64
DEC	752.0	747.0	-4.86	-0.65
ANNUAL	1350.0	1350.0	1.23	0.09

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Little Deschutes River at mouth
Time: 10:05 Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	22.90	20.20	-2.69	-13.30
FEB	37.30	33.40	-3.90	-11.70
MAR	27.40	26.50	-0.97	-3.66
APR	45.20	45.80	0.56	1.21
MAY	55.90	57.20	1.29	2.26
JUN	56.60	59.40	2.89	4.86
JUL	85.10	90.80	5.70	6.28
AUG	93.90	94.60	0.75	0.80
SEP	72.00	73.30	1.33	1.82
OCT	11.60	13.70	2.04	15.00
NOV	14.70	13.60	-1.11	-8.20
DEC	20.30	18.40	-1.94	-10.50
ANNUAL	45.30	45.60	0.36	0.78

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Little Deschutes River at mouth
Time: 10:05 Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	162.0	157.0	-4.84	-3.08
FEB	183.0	178.0	-4.84	-2.72
MAR	219.0	214.0	-4.84	-2.26
APR	262.0	265.0	3.02	1.14
MAY	329.0	333.0	4.47	1.34
JUN	298.0	304.0	6.04	1.99
JUL	230.0	240.0	9.38	3.91
AUG	200.0	208.0	7.83	3.77
SEP	144.0	148.0	4.10	2.77
OCT	76.7	80.3	3.64	4.53
NOV	108.0	104.0	-4.36	-4.20
DEC	142.0	137.0	-4.83	-3.52
ANNUAL	196.0	197.0	1.26	0.64

CHANGE IN PERCENT OF TIME INSTREAM REQUIREMENTS ARE MET
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River above Little Deschutes River
Time: 10:05 Date: 04/24/2025

Month	Base Line	Mitigated	Change in Percentage	Percent Change
	%	%	%	%
JAN	29.70	29.70	0.00	0.00
FEB	30.10	30.10	0.00	0.00
MAR	33.50	33.50	0.00	0.00
APR	68.40	68.40	0.00	0.00
MAY	97.80	97.80	0.00	0.00
JUN	98.80	98.80	0.00	0.00
JUL	100.00	100.00	0.00	0.00
AUG	100.00	100.00	0.00	0.00
SEP	99.80	99.80	0.00	0.00
OCT	56.80	56.80	0.00	0.00
NOV	20.90	20.90	0.00	0.00
DEC	24.70	24.70	0.00	0.00
ANNUAL	63.50	63.50	0.00	0.00

CHANGE IN MEAN STREAM FLOW (CFS)
IN THE DESCHUTES BASIN AS A RESULT OF MITIGATED GROUNDWATER USE

Effective Date: 9/30/2024

Deschutes River above Little Deschutes River
Time: 10:06 Date: 04/24/2025

Month	Base Line	Mitigated	Change in cfs	Percent Change
	cfs	cfs	cfs	%
JAN	329.0	329.0	0.000	0.00
FEB	331.0	331.0	0.000	0.00
MAR	319.0	319.0	0.000	0.00
APR	654.0	654.0	0.000	0.00
MAY	1220.0	1220.0	0.000	0.00
JUN	1500.0	1500.0	0.000	0.00
JUL	1690.0	1690.0	0.000	0.00
AUG	1530.0	1530.0	0.000	0.00
SEP	1260.0	1260.0	0.000	0.00
OCT	561.0	561.0	0.000	0.00
NOV	246.0	246.0	0.000	0.00
DEC	280.0	280.0	0.000	0.00
ANNUAL	829.0	829.0	0.000	0.00



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DRAFT - Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir

Background

This guidance outlines initial criteria the Oregon Water Resources Department (Department) has determined to be consistent with ORS 537.745 (Attachment A) to help the Oregon Water Resources Commission (Commission) consider voluntary agreements among groundwater users from the Harney Basin groundwater reservoir. To date, no voluntary agreements have been proposed or approved for groundwater management in Oregon. These initial criteria are subject to change as groundwater users and the Department learn and work through management challenges in the basin.

General Applicability

Voluntary agreements may be entered into for any groundwater reservoir in the state; being a critical groundwater area is not a prerequisite. The agreement must be consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992 (pertaining to civil penalties), in particular ORS 537.525 (pertaining to general policy considerations), 537.730 to 537.740 (pertaining to critical groundwater area designation), and 537.780 (pertaining to Commission authority). This guidance focuses specifically on voluntary agreements within the Harney Basin.

Authority

The Commission has authority to approve or reject voluntary agreements. The Department may provide advice to the Commission. Under ORS 536.037(1)(d), the Department may participate in any proceeding. The Commission can explicitly delegate authority to the Department to act as the Commission's staff in making a recommendation to approve or reject a voluntary agreement, including amendments, to the Commission. The Commission can delegate its authority to approve or reject voluntary agreements, including amendments, to the Department. These guidelines outline terms that the Department would consider adequate for recommending approval of a voluntary agreement to the Commission. The Department will work with the Commission to refine these terms and guidance as more is learned from proposed voluntary agreements submitted by groundwater users.

Groundwater Users

INITIAL PARTIES

(1) Parties of a voluntary agreement may include groundwater users who are

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- (a) individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public and private municipal corporations, political subdivisions, the state, and any agencies thereof, the federal government and any agencies thereof and federally recognized Indian tribes; and
- (b) districts, corporations, or political subdivisions organized for public purposes.

CONSIDERATION OF PRIOR APPROPRIATION

Because voluntary agreements approved by the Commission “...shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992” the participants within an approved voluntary agreement are not subject to other orders/rules of the commission, and may not be subject to regulatory reductions in water use within a Critical Groundwater Area (CGWA) designation. Thus, if a junior right participates in a Commission-approved voluntary agreement, the junior right may not be subject to regulation under the CGWA while a more senior right not part of the voluntary agreement may be regulated off. Considering the number of voluntary agreements, the proposed amount of groundwater use reduction, and the overall tabulation of groundwater rights and priority dates in the area will all be important to the long-term management success of the groundwater reservoir.

OVERRIDING ASSUMPTION FOR DEPARTMENT RECOMMENDATION OF APPROVAL OF A VOLUNTARY AGREEMENT

For Department staff to recommend a voluntary agreement for approval by the Commission, the water rights enrolled in the voluntary agreement must demonstrate that substantial water use reductions will be implemented over an appropriate timescale. The Department may model the proposed voluntary agreement reductions to support a recommendation to the Commission which may include an evaluation of how the simulated water levels compare with the proposed trajectories for success in the proposed OAR 690-512 rules. If the reductions are likely to achieve similar median water level trends (no lower than the median trajectory) within the subarea, then the Department will recommend the voluntary agreement be adopted. Regulation of non-participating users will occur in alignment with the scheduled volume of reductions outlined in proposed OAR 690-512-0070.

The goal of a voluntary agreement in the proposed Harney Basin Critical Groundwater Area (CGWA) should be to reduce use such that groundwater levels are stabilized. Success of the voluntary agreement will be measured in conjunction with the adaptive management checkpoints outlined in the proposed OAR 690-512-0080. If the median groundwater level change for the subarea is on track or higher than the median groundwater level change trajectory outlined in rule for the Harney Basin CGWA, then the voluntary agreement will be considered on track and successful. However, if the median groundwater level change (as measured from 2028) is below the median groundwater level change trajectory outlined in the proposed OAR 690-512 rules for the subarea, then the voluntary agreement may be considered unsuccessful. Regular review at the adaptive management checkpoints will ensure that measured groundwater level changes match with the proposed trajectory for achieving success. If they fail to do so, the Department may recommend to the Commission termination of the voluntary agreement and regulatory reductions to reduce groundwater use to slow the rate of groundwater level decline.

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Groundwater Rights

Groundwater rights eligible to participate in a voluntary agreement are limited to current, valid water rights not subject to forfeiture under ORS 540.610.

The following conditions also apply:

- No point of appropriation which has exceeded a permit decline condition or has resulted from a transfer of a point of appropriation that has exceeded a decline condition may be used to pump water or otherwise participate in a voluntary agreement.
- All points of appropriation and the full place of use of any participating water right must be fully subject to the agreement; partial inclusion of points of appropriation or place of use of any water right is not permissible.
- Only lands listed as a place of use on a valid groundwater right may be included in a voluntary agreement.
- Only wells listed as a point of appropriation on a valid water right may be included in a voluntary agreement.
- The maximum volume of water used by an individual right participating in the voluntary agreement may not exceed the volume authorized by the right.

Groundwater Reservoir

BOUNDARIES DEFINED

A voluntary agreement must define the portion of the Harney Basin groundwater reservoir that will be included in the voluntary agreement. A voluntary agreement must be wholly contained within a single proposed Harney Basin CGWA subarea boundary as defined in OAR 690-512. Any groundwater points of appropriation proposed to be included in an agreement must be within the boundaries of the area covered by the agreement.

MAP

- (1) A voluntary agreement must include a map depicting all places of use and points of appropriation for the water rights included in the agreement.
- (2) A voluntary agreement must contain a list of the groundwater rights that provide the basis for water use on all authorized places of use within the geographic scope of the agreement. The list of groundwater rights should also include the current owner and operator of the groundwater right as well as contact information including phone, email, and mailing address.

Groundwater Use

AGREED WATER USE LIMIT

The “Agreed Water Use Limit” is the maximum total volume of water that the parties agree can be pumped annually under the voluntary agreement. A submitted agreement must specify an agreed water use limit, and the total water use by all parties to the agreement may not exceed this value.

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Water use reductions within the voluntary agreement may be implemented over a period of years by reducing the agreed water use limit. The schedule for water use reductions must be specified in the voluntary agreement and should demonstrate a commitment to achieving stable water levels within the same timeframe set in rule by the Commission.

The Permissible Total Withdrawal (PTW) as defined in OAR 690-512 is the annual volume of groundwater pumping for each subarea the Department has determined can achieve the target groundwater level trend by 2058 when following the schedule of reductions defined in proposed OAR 690-512-0070. The PTW and schedule of reductions should be used as a reference for achieving stability within a subarea and considered by voluntary agreement participants as they develop a proposed voluntary agreement.

RATE AND DUTY

The Director may determine, pursuant to ORS 537.735(3)(d), that a higher instantaneous pumping rate, up to 1/60th cubic foot per second per acre, would be allowable. The use of a higher rate shall be discontinued if the Department determines, based on a valid call, that regulation of a groundwater well is necessary to satisfy a senior water right.

OVERUSE

“Overuse” means use above the agreed water use limit approved in the voluntary agreement.

Overuse is a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with [“Agreement Termination” (a)].

At no time will underuse result in an increase to the agreed water use limit.

USE FROM UNAUTHORIZED WELLS

Parties to a voluntary agreement may only withdraw water from wells listed as authorized points of appropriation (POA) on water rights participating in the voluntary agreement. Withdrawal of water from any other well by any party may be a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with [“Agreement Termination” (a)].

Duration

The agreement will include the period over which groundwater use will be reduced. For voluntary agreements proposed within the Harney Basin CGWA, the duration of the agreement shall not exceed the number of years until the next adaptive management checkpoint outlined in OAR 690-512-0080. This timeline allows for regular review of water use and groundwater level trends, and renewal of voluntary agreements in coordination with the adaptive management checkpoints where median groundwater level change is tracked within the Harney Basin CGWA.

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Reporting and Monitoring

ANNUAL STATEMENT OF PLACE OF USE

No later than January 5th of each year, the parties to the agreement must provide the Department with:

- (1) a map depicting lands subject to irrigation during the upcoming irrigation season. The total number of acres, when multiplied by the approved duty, may not exceed the annual agreed water use limit.
- (2) a list of each well to be pumped during the irrigation season.
- (3) contact information, including telephone and email address, for owners of every well to be pumped during the irrigation season.

Failure to provide an annual statement of place of use in a timely manner may result in a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with ["Agreement Termination" (a)].

MONITORING

- (1) All parties to the agreement must maintain functional totalizing flow meters in accordance with proposed OAR 690-512-0110.
- (2) Any agreement recommended by the Department to the Commission for approval must include an acknowledgment that Department staff may, with reasonable notice, enter the property of a party for the purposes of water level measurement, reading and recording flow meters, and ensuring that the flow meters are properly functioning. Failure to maintain functional flow meters or provide reasonable access is a basis for termination of the agreement ["Agreement Termination" (a)].
- (3) Prior to the Department recommending a voluntary agreement for approval to the Commission, watermaster staff must visit each participating landowner's property to verify wells authorized for use under the voluntary agreement and the proper installation and functioning of totalizing flow meters.

Agreement Modification Prior to Commission Approval

Once groundwater users submit a voluntary agreement for the Commission to review and approve, the Department requires a minimum of 90 days to review the voluntary agreement proposal and prepare a report and recommendation for the Commission. Several factors will influence the timing of the Department's review and decision of the Commission. This guidance document provides the minimum requirements for the Department to recommend a voluntary agreement be approved by the Commission. The Commission may require additional agreement terms prior to approval if the Commission determines that the terms are necessary to ensure that the goals of the agreement will be achieved. As voluntary agreements are new to both groundwater users and the Commission, new and innovative approaches to groundwater management and use may require additional conversation.

October 20, 2025

Agreement Amendment After Commission Approval

The Commission has the authority to approve or reject amendments to approved voluntary agreements. The Commission should be allowed at least 90 days to review any submitted agreement before approving or rejecting a submitted agreement. Amendments should not attempt to modify the voluntary agreement in the middle of the irrigation season, and should be submitted for review well ahead of the following irrigation season.

CHANGED CONDITIONS

Voluntary agreements may be amended if the Commission determines changed conditions, including new information regarding the performance of, or compliance with the agreement, have made the continuance of the agreement a detriment to the public welfare, safety and health or have resulted in the agreement no longer meeting the requirements of ORS 537.745. The parties may agree to amend the agreement to the satisfaction of the Commission as an alternative to termination [“Agreement Termination” (b)].

ADDITIONAL PARTIES

Voluntary agreements may be amended to add parties to the agreement. Additional holders of water rights of record within the subarea or area of an existing voluntary agreement may join the voluntary agreement. New parties must comply with all provisions of the voluntary agreement. In addition:

- (1) A prospective party must notify the Department, and the existing parties to the agreement, of their intent to join the agreement by November 1st prior to the year in which they wish to join.
- (2) Watermaster staff must visit the prospective party’s agricultural operation to verify wells authorized for use under the voluntary agreement and the proper installation and functioning of totalizing flow meters.
- (3) All existing parties to the agreement and the Commission must consent to the addition of any new party.
- (4) The parties to the voluntary agreement must demonstrate how adding a prospective party to the agreement will not reduce the effectiveness of the agreement in achieving stable water levels within the subarea where the agreement is in effect

PARTY TERMINATION

With approval of the Commission, voluntary agreements may be amended to remove parties who request removal. Any party terminating their involvement in the agreement will become subject to any existing groundwater control measures pertaining to the geographic location of their water right.

The remaining parties in the voluntary agreement must demonstrate to the Commission how the voluntary agreement will remain viable and contribute to water use reductions that will lead to the stabilization of water levels in the subarea.

October 20, 2025

WATER RIGHT TRANSACTIONS

Voluntary agreements must be amended and approved by the Commission and all parties to the agreement if any water right subject to the agreement is modified by a water right transaction in a way that changes the amount of water available to the agreement or changes the places of use subject to the agreement. Such transactions include, but are not limited to, changes to the place of use, changes to the points of appropriation, or splitting of a right. All parties to the agreement must be notified of the need to amend the agreement.

Agreement Approval

Any agreement that meets the requirements of this document may be recommended by the Department to the Commission for approval.

Agreement Termination

Any agreement approved by the Commission may be terminated by the lapse of time as provided in the agreement, by the consent of all parties to the agreement, or by the Commission if the Commission finds, after investigation and a public hearing upon at least 30-days' notice, that:

- (a) The agreement is not being substantially complied with by one or more parties thereto, or;
- (b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992 (pertaining to civil penalties), in particular ORS 537.525 (pertaining to general policy considerations), 537.730 to 537.740 (pertaining to critical groundwater area designation), and 537.780 (pertaining to Commission authority).

The Department also may recommend the Commission consider termination of an approved agreement based on (a) or (b) above.

The Commission's termination of an approved voluntary agreement is an order in other than contested case.

October 20, 2025

Attachment A

ORS 537.745 Voluntary agreements among ground water users from same reservoir.

(1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement.

Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992. Any agreement approved by the commission may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the commission if the commission finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the commission may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the commission shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section. [1955 c.708 §31; 1985 c.673 §65]

OWRD ACTIVE LITIGATION CHART

STATE COURT CASES (TRIAL LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
<i>KBA</i>	Klamath Case 00001	Adjudication of water rights in the Klamath Basin	The US's motion to stay this case because of the government shutdown has been granted and the case is stayed for 30 days (ending Nov. 10). Separately, the Klamath Tribes (KT) have filed a petition for judicial review of OAH's decision to reassign the ALJ overseeing the remand of the tribal claims naming OAH as a party. KT has also filed a motion to stay the OAH proceedings and/or the court's remand order.
<i>KID 3</i>	Marion 21CV39570	PJR of April 6, 2021 Order to BOR; challenges OWRD's method of calculating whether stored water is being released	Court granted petitioner's motion to continue 4.15.2022 stay on 4.18.24. At the June 30, 2025, status hearing, the court agreed to continue the stay and set a new status hearing for January 2026. Petitioner should be preparing a new motion to stay now.
<i>Sprague River Cattle</i>	Marion County 22CV27077	Takings and declaratory judgment claim.	Markowitz firm has taken lead on discovery efforts. Electronic document collection and privilege review are occurring now. During the June 30, 2025 hearing on plaintiff's motion to compel, the court denied the motion as to the waiver of privilege argument and asked for further briefing on the question of whether the attorney-client privilege ever expires. Supplemental briefs have been filed.
<i>Rogue River v. OWRD</i>	Marion County 23CV19220	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case consolidated with MID. On October 16, 2024, the court entered an order granting parties' stipulated motion to abate case pending completion of infrastructure project necessary to release water reservoir for downstream senior users. Status updates to be filed every six months.
<i>MID v. OWRD</i>	Marion County 23CV19218	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case consolidated with Rogue River. On October 16, 2024, the court entered an order granting parties' stipulated motion to abate case pending completion of infrastructure project necessary to release water reservoir for downstream senior users. Status updates to be filed every six months.
<i>Lloyd Piercy v. OWRD, et al.</i>	Umatilla County 23CV27740	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project.	Cross-motions for summary judgment--briefing complete; oral argument scheduled Nov 5; trial scheduled for Jan 20 to 22
<i>New Foothills Properties LLC, et al. v. OWRD, et al (New Foothills I)</i>	Umatilla County 23CV27892	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project.	Cross-motions for summary judgment--briefing complete; oral argument scheduled Nov 5; trial scheduled for Jan 20 to 22
<i>Lloyd Piercy, et al. v. OWRD, et al (New Foothills II)</i>	Umatilla County 24CV32021	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project. This is the 2024 version of New Foothills I.	Cross-motions for summary judgment--briefing complete; oral argument scheduled Nov 5; trial scheduled for Jan 20 to 22; Amended NOV issued with "NOT a final order" box
<i>NBCC, LLC, et al v. OWRD, et al</i>	Marion County 23CV32928	PJR Case Regarding Water Rights.	Partial motion to dismiss granted during October 2024 hearing. Awaiting entry of order and petitioner's amended petition. Discovery ongoing.
<i>Winchester Water Control Dist. v. OWRD, et al</i>	Marion County 23CV33445	Petitioner district contends OWRD wrongfully denied amendment to their water right registration statement that claims less water than is actually held in reservoir.	Petitioner filed a new amended petition on 4.9.25, and we filed an answer on 5.2.25. OWRD has scanned and sent us all surface water registration files for discovery. The court set the following deadlines: petitioner's motion for summary judgment due 11.21.25; our cross-motion due 12.12.25; petitioner's reply due 1.2.26; our reply due 1.16.26; summary judgment hearing to be held on 2.18.26. The court scheduled a two-day trial for 3.9.26 and 3.10.26.
<i>Upper Crooked River Conservationists v. OWRD</i>	Crook County, 23CV46779	Petitioners (nonprofit org and a ranch) challenge permit issued to Bureau of Reclamation for fish life	The court issued its opinion letter on the cross motions for summary judgment on 02.10.2025. The court granted our motion on claim 1 (whether the agency unlawfully granted the Bureau an instream water right) and denied our motion on claim 2 (whether the agency exceeded its authority in finding that no public interest issued were raised in the expedited review process). Petitioners have filed a motion for affirmative relief on claim 2, we filed our opposition, and Petitioners filed their reply. The court granted Petitioner's motion on claim 2. The Court entered its judgment on 7.22.2025. The appeal deadline was 8.21.2025 and no party filed a notice of appeal. The case will be closed.

Roaring Springs Ranch, Inc. v. Water Resources Department, et al.	Harney County, 24CV20196	Petition for Judicial Review challenging the decison by the Water Resources Department denying an application for groundwater use for irrigation.	The Court denied OWRD's motion to dismiss during a hearing on March 18, 2025. During a hearing regarding the parties' disputed proposed orders on July 23, 2025, the court approved OWRD's straightforward order. We filed an answer on August 4, 2025, and are now evaluating options for next steps in the case including whether discovery may be needed and potential cross-motions for summary judgment.
Pinnacle Utils v. OWRD (mandamus)	Marion County, 25CV07127	Mandamus petition seeking to compel OWRD to process Transfer Application T-14165	Hearing on Tribes' motion to dismiss held on August 25; awaiting court's decision.
Western State Steelhead vs. OWRD	Marion County, 24CV59824	Petition for Judicial Review challenging OWRD's final order approving a water right permit amendment as it relates to certain wells on the property and their permissible use.	The parties are exploring settlement options. Status check hearing scheduled for October 28, 2025, at 8:30 a.m. The court wants a responsive pleading filed before then.
Piercy, New Foothills v. OWRD et al (New Foothills III)	Marion County, 25CV37634	A junior water-rights holder filed this petition challenging OWRD's enforcement of the Westland Irrigation Districts' call per the Water Mangment Plan for the Umatilla Basement Project. This is the 2025 version of New Foothills I.	Withdrew regulation order for reconsideration pending decision in 2023 and 2024 PJR cases; Amended NOV issued with "NOT a final order" box
Piercy v. OWRD (Piercy II)	Marion County, 25CV40394	Petition for judicial review challenging OWRD's notice of violation, which asserts that the water user is unlawfully using groundwater	Amended NOV issued with "NOT a final order" box
Gould v. OWRD (Gould II)	Marion County, 25CV44570	Petition for judicial review challenging OWRD's approval of Pinnacle Utilities' Water Management and Conservation Plan	Accepted service of summonses; awaiting draft motion to stay from plaintiff
STATE COURT CASES (APPELLATE LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
Waterwatch/East Valley v. OWRD	A173292	Challenge to OWRC order denying reservoir application	Decided 8/7/25. Remanded to Water Resources Commission. Appellate judgment issued 9/19/25, we will be closing our file.
Gould vs. OWRD	A185116	PJR of order granting temporary change in place of use and points of diversion. Pinnacle Utilities has moved to intervene.	Briefing is completed, waiting for argument to be scheduled.
Pinnacle Utils v. OWRD	A187620	Challenge to OWRD order denying limited license application	Transcript settled 10/10, opening brief will be due 49 days from that date.
FEDERAL COURT CASES (TRIAL LEVEL)			
Case	Court	Description	Rulings & Dates/Litigation Deadlines/Next Steps
US v. OWRD (fka BOR v. OWRD)	USDC OR 21-cv-1442 Judge Clarke	BOR asserts same claims as in Yurok case and also a PJR under the Oregon APA against the April 6 No Release Order	N/A [Stayed] Status update filed on 4/28/25. Next status update due October 29, 2025.
Yurok v BOR & NMFS Intervenor: KWUA and Klamath Tribes	ND CA3:19-cv-04405 Judge Orrick	Tribes and others challenge the final BiOp (2019), BOR's environmental assessment and finding of no significant impact from BOR operations; primarily that set amount of irrigation water is unlawful and harmful to listed species	Limited judgment entered on US's First Claim for Relief; Appellate is handling appeal; opening and response briefs filed in 9th Circuit; oral argument complete and waiting on a decision; filed repsonse to KID motion to certify state law questions on 11/18/24. The court denied motions to dismiss by BoR and KWUA on 9/12/2025. We are waiting on a decision on KID's motion to certify and on the merits of the appeal.
Grant Knoll v. OWRD/WRC	USDC Oregon 1:23-cv-00928-CL Judge Mark D. Clarke	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case is stayed. Status update filed on 6/30/25. Next status update is due within 14 days of a ruling in the Yurok Tribe case.
Grant Knoll v. OWRD/WRC	USDC Oregon 1:23-cv-00929-CL Judge Mark D. Clarke	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case is stayed. Status update filed on 6/30/25. Next status update is due within 14 days of a ruling in the Yurok Tribe case.

Glenda Stilwell v. OWRD/WRC	USDC Oregon 1:23-cv-00930-CL Judge Mark D. Clarke	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case is stayed. Status update filed on 6/30/25. Next status update is due within 14 days of a ruling in the Yurok Tribe case.
Ryan Hartman, et al v. OWRD/WRC	USDC Oregon 1:23-cv-00927-CL Judge Mark D. Clarke	A junior water-rights holder filed this petition challenging Oregon Water Resources Department’s enforcement of the Klamath Tribes’ call on claim No. KA 622.	Case is stayed. Status update filed on 6/30/25. Next status update is due within 14 days of a ruling in the Yurok Tribe case.



Rulemaking Update December 2025

Current Rulemaking

Rule Name	Topic	Lead Staff	GWAC Input Expected?	Target WRC Adoption Date	Status
Division 512-Malheur Lake Basin Program	Update to Basin Rules Following the Publication of Groundwater Study	Jason Spriet, Tim Seymour, Kelly Meinz	Complete	December 2025	Petition for Rulemaking And Adoption Decisions
Water Rights Related Rulemaking	Primarily implementing HB 3544(2025) regarding Protests and Contested Cases and HB 3342(2025) Water Right process and targeted policy improvements including Division 77. Improvements and efficiencies possible to include OAR 690 Divisions 2, 14, 17, 18, 52, 53, 54, 77, 300, 305, 310, 315, 320, 325, 330, 340, 380, and 382.	Racquel Rancier, Katie Ratcliffe, Laura Hartt	Yes	March 2026	RACs Complete in November

Upcoming Rulemaking

Rule Name	Topic	Lead Staff	GWAC Input Expected?	Target WRC Date	Status
Division 250, 260 and Exempt Use under 340 (Unnamed Rulemaking)	Modernization of existing rules and aligns with statutory and other case law changes. Implements HB 4061(2021), SB 326 (2023) and potentially HB 2929 (2023), if needed. Establishes civil penalty classification and schedule to discourage noncompliance and improve water distribution and compliance. Exempt Uses under 340 evaluated.	Kim Fritz-Ogren, Jake Johnstone, Kelly Meinz	Yes	Unknown	In Planning and Scoping Stage

Repeal Package	Division 25 [Repeal] Groundwater in Klamath Basin Division 76 [Repeal] Establishment of Minimum Perennial Streamflows Division 22 [Possible Repeal] Klamath Drought Rules Division 95 [Repeal] Columbia Basin Water Development Loan Program	Margo Mashkovskaya	No	Unknown	In Planning and Scoping Stage
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