



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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October 31, 2007

Governor Theodore Kulongoski
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Dear Governor Kulongoski:

Thank you for your July 13, 2007 letter directing the Water Resources Department (WRD) to evaluate whether the existing laws and rules that it administers are adequate to ensure that new destination resort development in or near the Metolius Basin would result in no reduction of stream flows in the Metolius River. We have completed that evaluation and offer the following for your consideration.

WRD has a number of programs in place to administer laws that ensure existing water rights and public values are protected, while allowing for new development. In the Deschutes Basin, of which the Metolius is a part, the Deschutes Mitigation Program is the strongest program available to the department to address protection of streamflow in the Metolius River.

The Deschutes Mitigation Program was established in 2002 as a result of a multi-year ground water research study conducted by WRD and the United States Geological Survey (USGS). The study confirmed that ground and surface water are directly connected within the Deschutes study area, including the Metolius sub-basin. This means any new ground water use would impact stream flow that is already fully appropriated in the Deschutes Basin.

The mitigation program divides the Upper Deschutes Basin into seven sub-basins or "zones of impact" and requires bucket for bucket mitigation for any new ground water use to protect streamflow in the primary zone of impact. Water right applicants purchase credits from a mitigation bank as needed to balance their new use. The credits are generally derived from existing out-of-stream water rights that are left instream. The program has been successful at protecting streamflow in the Deschutes Basin and at the same time allowing for economic growth in the region. While mitigation credits are available for most sub-basins, there are no credits currently available for the Metolius zone due to the lack of historic water development in that area.

Any new development would likely rely on ground water to meet its water supply needs. The study found that ground water is connected to surface water beyond the sub-basin boundary where the wells are constructed. This means that ground water withdrawal outside of the Metolius sub-basin could have an impact on stream flow in the Metolius River.

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The Deschutes Mitigation Program will ensure no diminishment of flow in the Metolius River when the primary zone of impact of the new development is the Metolius sub-basin. The mitigation program, as currently administered, does not provide that same level of protection of the Metolius River when the Metolius sub-basin is not the primary zone of impact.

One option to strengthen these protections would be to require mitigation for new ground water use in all zones where state scenic waterways are impacted. The Metolius River is a designated state scenic waterway from its source at river mile 41.2 downstream to Candle Creek at river mile 29. We've been advised by the Attorney General's office that mitigation could be required for impacts to multiple zones involving state scenic waterways. This option however, could have far reaching effects that could potentially eliminate most new ground water development in portions of the Deschutes Basin. For example, using this broader "mitigate everywhere" approach could seriously constrict the economic growth in the Sisters area, since withdrawal from wells near Sisters could affect flows in the Metolius sub-basin and require mitigation where credits are not available.

A second option would be to close the Metolius Basin to new appropriations of water. This could be done by Water Resource Commission (WRC) or legislative action, however this option would not provide protection against ground water use by proposed development located outside of the Metolius sub-basin.

A third option would be for the WRC to withdraw designated areas from particular ground water uses. This would limit where new development could withdraw ground water. The difficulty with this option would be hydrologically justifying the withdrawal boundaries.

If implemented, option one could have significant consequences on economic development in the region. Option two does not provide additional protection beyond what the existing mitigation program provides. Option three would limit the development of ground water in designated areas, but without a strong hydrologic basis for delineating those areas, actions under this option would likely be subject to legal challenge.

It is the department's view that the Deschutes Mitigation Program has been successful at balancing streamflow protection with economic development in the Deschutes Basin. For this reason, we recommend this program continue to operate as it is currently administered.

Sincerely,



Phillip C. Ward
Director