



Deschutes Basin Board of Control



VIA EMAIL (WRD_DL_rule-coordinator@water.oregon.gov)

June 14, 2024

Laura Hartt - Rulemaking Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

RE: Proposed Groundwater Allocation Rules

Dear Ms. Hartt,

The Deschutes Basin Board of Control (“DBBC”) appreciates this opportunity to provide comments on the Oregon Water Resources Department’s (“Department”) February 22, 2024 proposal to amend, repeal, and adopt rules pertaining to allocation of new groundwater rights (“Proposed Rules”).

By way of background, the DBBC is an organization comprised of eight irrigation districts in the Deschutes Basin, which include Arnold Irrigation District, Central Oregon Irrigation District, Lone Pine Irrigation District, North Unit Irrigation District, Ochoco Irrigation District, Swalley Irrigation District, Three Sisters Irrigation District, and Tumalo Irrigation District. The DBBC’s member districts deliver water to over 150,000 acres of farms and ranches, as well as local cities, parks, and schools.

In addition to delivering water within the basin, the DBBC’s members, together with the City of Prineville, are responsible for implementing the Deschutes Basin Habitat Conservation Plan (“HCP”). The HCP encompasses over 480 miles of rivers and creeks and multiple reservoirs in the Deschutes Basin and prescribes conservation measures to restore and enhance aquatic habitats in these waters for species covered by the plan.

Many of the conservation measures in the HCP modify the hydrology of waters in the Deschutes Basin to improve conditions for covered species. To implement these conservation measures, the DBBC’s members have significantly modified the way they store, deliver, and manage irrigation water. As a result, the DBBC’s members must balance ensuring reliable water deliveries to their patrons, while satisfying the conservation measures in the HCP.

The DBBC appreciates the Department’s efforts in this rulemaking to safeguard existing surface and groundwater users, while managing groundwater resources more sustainably. Although the

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DBBC Member Districts

*Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District
DBBC President -Craig Horrell, 541-548-6047; chorrell@cod.org*

contours of the surface and groundwater connection continue to be investigated, the DBBC believes that the Deschutes Basin leads the state in this area. Accordingly, the DBBC respectfully asks the Department to include a carveout in the Proposed Rules for the Deschutes Basin, which is already the subject of coordinated programs and efforts to conjunctively manage surface water and groundwater, and to ensure that the Proposed Rules do not discourage existing efforts in the basin to conserve water and otherwise meet the objectives of the HCP.

The Proposed Rules Should Include a Carveout for the Deschutes Basin, which is the Only Basin in the State with an Existing Groundwater Mitigation Program

The DBBC asks, first, that the Department include a carveout in the Proposed Rules for groundwater uses in the Deschutes Basin, to encourage the existing, collaborative efforts to conjunctively manage groundwater and surface water in the basin.

The Deschutes Basin is ahead of the rest of the state in addressing the hydraulic connection between groundwater and surface water. Groundwater and surface water have been managed together in the basin for over twenty years. This occurs through the Deschutes Groundwater Mitigation Program (“Mitigation Program”).

As the Department is well aware, the Mitigation Program prohibits a prospective groundwater user from obtaining a new groundwater permit within the Deschutes Groundwater Study Area (“Study Area”) without first securing replacement water to mitigate the effects of the proposed groundwater use on surface water. A permit applicant may provide mitigation through direct implementation of mitigation projects, which convert existing consumptive use surface water right to instream use, or through mitigation credits, which are generated from such projects. The DBBC’s member districts are important partners in the Mitigation Program. A large percentage of the mitigation credits established in the Study Area originate from water rights held by the DBBC’s members.

As currently drafted, the Proposed Rules would stall or otherwise impede implementation of the Mitigation Program. Although the Department has stated that the Proposed Rules do not directly modify the Mitigation Program, the rules would establish new requirements that overlay the existing requirements in the program. The new requirements in the Proposed Rules include the obligation for applicants for a new groundwater permit to demonstrate “reasonably stable groundwater levels.” We understand that this requirement would prevent the issuance of most new groundwater permits in the basin.

Although the Proposed Rules include an offramp to allow the Water Resources Commission to adopt a basin-specific definition of “reasonably stable groundwater levels,” implementing this offramp would require an additional rulemaking. The rules offer little guidance or clarity regarding that rulemaking process. Without question, the rulemaking process to establish a Deschutes Basin-specific definition of “reasonably stable groundwater levels” would require additional time and administrative resources, especially if a subsequent basin-specific rule were litigated.

Further, it is unclear that the proposed definition of “reasonably stable groundwater levels” adequately accounts for artificial recharge that has been occurring in the Deschutes Basin for over a century. The Proposed Rules define “reasonably stable groundwater levels” based on a reference level, which is the “highest known water level unless Annual High Water Levels have been increased measurably by human activity.” Proposed Rules, p. 16. If water levels have been measurably increased by human activity, then “the Department may set a different reference level using best available information.” Id.

In the Deschutes Basin, many forms of artificial recharge may have historically contributed to increased groundwater levels, including application of irrigation water to arid farmland, water storage projects, and other agricultural activities. The effects of these human activities on groundwater levels likely vary across the basin. It is unclear how the Department will determine and account for artificial recharge from these activities, if at all, when calculating “reasonably stable groundwater levels.”

In sum, the Mitigation Program is the only program of its kind in the state and is currently being utilized to mitigate effects of groundwater withdrawals in the Deschutes Basin. The resolution of issues such as “reasonably stable groundwater levels” will require data and time. The DBBC requests that the Department not bring the basin’s existing groundwater Mitigation Program to a halt while these issues are resolved.

The Proposed Rules Should Not Undermine Water Conservation Projects and Ongoing Efforts to Maintain Stream Flows in the Deschutes Basin

The DBBC also urges the Department to ensure that the Proposed Rules do not interfere with ongoing efforts in the Deschutes Basin to conserve water and otherwise meet the objectives of the Deschutes Basin HCP.

As described above, the DBBC’s members are responsible for implementing conservation measures in the HCP that require modifying operation of reservoirs and diversions to maintain minimum flows in rivers and creeks covered by the plan. The HCP was approved by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in 2020 and 2021, respectively, and the DBBC’s members are bound by the conservation measures in that plan.

In addition, the DBBC’s member districts have historically and are continuing to undertake water conservation projects in the basin, including the lining and piping of district canals and private laterals. These projects allow the districts to implement the conservation measures required under the HCP, while still delivering water to their patrons, which include thousands of farmers and ranchers, schools, and local park and recreation districts in the Deschutes Basin. To date, the DBBC’s members have lined many miles of canals and private laterals resulting in significant water savings. For a significant portion of these projects, one hundred percent of the water conserved by the DBBC’s members through piping and lining projects is dedicated to instream flows.

Although there is little data on the topic, some sources suggest that canal piping and lining projects may contribute to lower groundwater levels in the vicinity of the projects by preventing seepage that would otherwise percolate to groundwater. The relationship between piping projects and groundwater levels is not well-documented. To the extent that declining groundwater levels have been observed in areas where piping projects have occurred, those declining water levels may also be the result of removal of farmland from irrigation, which eliminates recharge that would otherwise occur from on-farm application of irrigation water.

Setting aside any localized effects of piping on groundwater levels, piping projects serve important functions to keep water in streams. By reducing water losses to evaporation and seepage, piping projects allow the DBBC's districts to reduce stream diversions. And the DBBC's members dedicate water that would otherwise be lost to evaporation or seepage to instream uses.

In connection with the rulemaking, the DBBC encourages the Department to take a wholistic view of water management and avoid unintentionally prioritizing groundwater over stream flows. To the extent that a goal of groundwater management is to keep water in streams, water conservation projects (like canal piping) are vital to that end. Meanwhile, a basic principle of our state's water law is that conveyers and users of water should not be required to divert, convey, or use more water than is needed to achieve the beneficial purpose for which the governing water rights were granted. If the DBBC districts are able to reduce their stream diversions while their members are able to continue to achieve the beneficial use provided for under the DBBC district-held water rights, the Proposed Rules should not operate or be construed to preclude or otherwise disincentivize these water conservation efforts.

Accordingly, the Proposed Rules should not undermine water conservation projects or conservation measures in the HCP. As well, the Proposed Rules should not oversimplify the relationship between groundwater and surface water. As an example, the conclusion in the statement of need for the Proposed Rules that "[a]s groundwater sources decline, less surface water becomes available in streams, rivers, and lakes to meet the needs of existing surface water users and to support healthy fish, aquatic habitat, and recreation," may not always be correct. See Proposed Rules, p. 4.

Thank you for the opportunity to comment on the Proposed Rules and please do not hesitate to contact us if you have any questions.

Sincerely,



Craig Horrell
Board President
Deschutes Basin Board of Control