



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Tom Paul, Field Services Division Administrator

SUBJECT: Agenda Item J, January 13, 2005
Water Resources Commission Work Session

Deschutes Basin Ground Water Mitigation Program Annual Implementation and Evaluation Report

I. Issue Statement

This report is the Department's annual evaluation of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505; and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules, OAR Chapter 690, Division 521. *This is an informational report only; no Commission action is required.*

II. Background

On September 13, 2002, the Commission adopted the Deschutes Ground Water Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules. These rules implement Senate Bill 1033 (1995 Oregon Laws) and HB 2184 (2001 Oregon Laws) and provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional appropriations of ground water in the Deschutes Ground Water Study Area (See Attachment 1).

The three objectives of the Deschutes Basin Mitigation Program are to:

- ◆ Maintain flows for Scenic Waterways and senior water rights, including instream water rights;
- ◆ Facilitate restoration of flows in the middle reach of the Deschutes River and related tributaries; and
- ◆ Sustain existing water uses and accommodate growth through new ground water development.

The Deschutes Ground Water Mitigation Rules provide two options for ground water users to provide mitigation – completion of an individual mitigation project or acquisition of mitigation credits awarded by the Department based on the completion of a mitigation project. One mitigation credit equals one acre-foot of mitigation water.

The Deschutes Basin Mitigation Bank and Mitigation Credit Rules provide for the establishment of a mitigation credit system and mitigation banks to help facilitate transactions among holders of mitigation credits and persons interested in acquiring mitigation credits.

III. Discussion

Under the Commission rules, the Department is required to annually report on and evaluate implementation of the Deschutes Ground Water Mitigation Rules. The purpose of the evaluation is 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 established by the Department. This annual evaluation is done in coordination with the Oregon Department of Fish and Wildlife (ODFW), Department of Environmental Quality (DEQ), Department of State Lands (DSL), and Oregon Parks and Recreation Department (OPRD) and considers new ground water appropriations, streamflow monitoring, and mitigation activity. The Department is also required to annually report on the implementation and management of the mitigation credits system under the Deschutes Basin Mitigation Bank and Mitigation Credit Rules.

The mitigation program in the Deschutes Ground Water Study Area continues to develop. Since the last update to the Commission in November 2003 numerous mitigation projects have been evaluated and approved, new ground water permits have been issued and new tools are in place and under development to further facilitate and streamline the evaluation of mitigation projects and ground water permit applications.

A. Implementation Activities

Highlights of the Departments implementation activities under the Deschutes Basin mitigation program include:

- The Department is in the process of constructing a new web page to provide interested parties information about the mitigation program, including information on mitigation requirements, zones of impact, mitigation projects, mitigation banks, program-related forms, questions and answers about the program including various fact sheets, and direct links to the mitigation rules.
- In March 2004, the Commission amended the Mitigation Bank Charter of the Deschutes Water Exchange (DWE) Mitigation Bank to allow instream leases, for mitigation purposes, to be submitted to the Department by the same deadline identified in the instream leasing administrative rules. This allows for greater flexibility by the bank to submit additional projects or replace others that do not result in the amount of mitigation anticipated or needed.
- The DWE Mitigation Bank submitted their first annual mitigation credit transaction report to the Department on February 26, 2004. The mitigation bank completed one mitigation credit transaction during the 2003 calendar year; no issues of concern were identified by the Department. The next annual report from the Mitigation Bank is due in

January 2005 and the next annual review of the Mitigation Bank Charter will likely occur in April 2005.

- Since the first mitigation credit transaction completed in 2003, there have been an additional 18 mitigation credit transactions completed with the mitigation bank and 4 mitigation credit transactions with other mitigation credit holders. These transactions involve the assignment of mitigation credits from a mitigation credit holder to a ground water permit applicant.
- Department staff have streamlined the coordination process with ODFW, DEQ, DOA, OPRD and DSL to provide notice and information on mitigation projects electronically. Department staff will also begin to accept submission of instream lease applications, the current primary source of mitigation, electronically. All mitigation project orders are presently being scanned and e-mail will be used as a tool for providing these documents to interested parties, including the applicants. Department staff continue to look for opportunities to improve the review process as more mitigation projects are submitted.

B. New Ground Water Appropriations and Mitigation Activities

Ground Water Appropriation Activity

- Since adoption of the mitigation rules in September 2002, a total of 19 ground water permits, with associated mitigation, have been issued, 1 in 2003 and 18 in 2004. Attachment 2 provides a breakdown of these permits by zone of impact.
- Fourteen ground water permit applications have been processed to the Final Order stage. Permits will be issued when the required mitigation is provided. These applicants have five years from the issuance of the Final Order to submit the required mitigation.
- There are another 50 pending applications for ground water use in the Deschutes Ground Water Study Area. Three of the applications that currently have Proposed Final Orders have been protested. These are the first applications subject to the mitigation program that have been protested since the adoption of the mitigation rules. Attachment 3 provides a general breakdown of the pending applications and their status by zone of impact.
- The Department has seen a marked increase in the number of applications submitted in the Deschutes Ground Water Study Area since adoption of the mitigation rules. In 2003, the Department reported that 7 applications were submitted following adoption of the rules. Since the Department's update to the Commission in 2003, an additional 22 applications have been filed.

Mitigation Activity

- Mitigation for the 19 ground water permits issued by the Department is being provided through instream transfers and instream leases. For these permits, a total of 289.5 acre-feet (AF) of mitigation water was required. Most of the mitigation water (240.8 AF) was provided from instream leases via the DWE Mitigation Bank. As required, the Mitigation Bank held another 240.8 AF of mitigation water (credits) in reserve in the appropriate zones of impact. The remaining mitigation water was provided from other mitigation credit holders, outside of the Mitigation Bank, where the credits were generated from permanent instream transfers.
- There are presently 15 active mitigation projects, a marked increase from the four reported by the Department in 2003. Of the active mitigation projects, 12 are instream leases (submitted by the Mitigation Bank) and 3 are permanent instream transfers (submitted by other parties). Active mitigation projects in 2004 resulted in 2,310 AF of mitigation water (credits) available in various zones of impact and 20.4 cubic feet per second (CFS) of water protected instream. Attachments 4 and 5 provide a summary of ground water permit and mitigation activity by zone of impact and demonstrate that more mitigation is in place than required in each of the zones of impact in which new ground water permits have been issued.
- The Department is in the process of evaluating an additional 8 mitigation projects. These projects include an aquifer recharge project in the Middle Deschutes River subbasin and seven permanent instream transfers. Three of the instream transfers are mitigation projects proposed by individual ground water permit applicants. All other projects have been proposed to establish mitigation credits.

Allocation Cap

In addition to the annual review of the mitigation program, the Commission is required to review the mitigation program prior to January 1, 2008, or upon reaching 150 CFS of the 200 CFS cap on new appropriations. As part of this review, the Commission will evaluate the program to determine whether the 200 CFS cap should be lifted or otherwise modified. At this time, 21.4 CFS has been appropriated under the cap (Attachment 6).

C. Mitigation and Streamflow Monitoring

Department staff have developed a draft streamflow monitoring plan for the Mitigation Program. This draft plan was shared with the Commission as part of the 2003 annual report on the Mitigation Program. The primary objective of the draft plan is to track whether scenic waterway flows and instream water right flows continue to be met on at least an equivalent or more frequent basis as compared to the long-term representative base period flows as determined by the Department. The purpose is also to ensure that the balance between ground water use in each zone of impact and mitigation is being maintained. The draft plan identified three tools, which

would be used to monitor streamflows, mitigation, and ground water use in the Deschutes Ground Water Study Area.

The first of these tools is a streamflow monitoring computer model, which is nearing completion. This model will use long-term representative base period flows to estimate how streamflows are responding to new ground water use and mitigation activity in the Deschutes Ground Water Study Area. The second tool is a database to aid instream flow monitoring and to determine whether the objectives of the rules are being met. This database is currently under development. The database is intended to track, by zone of impact, new ground water use and mitigation activity including mitigation credit transactions. A working system for tracking ground water use and mitigation activity is currently in place and is the primary basis for information presented in this report.

The remaining tool is the monitoring of yearly streamflow gage records. These records may not be useful for short-term evaluation due to a multitude of variables, but will be valuable as the Department continues to track and monitor mitigation in the basin to identify trends over the long-term.

IV. Summary

The Department continues to implement the Deschutes Ground Water Mitigation Rules and Deschutes Basin Mitigation Bank and Mitigation Credit Rules. Ground water permit applications and mitigation projects are moving through the required processes. The program is producing positive benefits as more mitigation water has been approved and protected instream than required for the 19 ground water permits issued. Active mitigation projects in the General, Squaw Creek, and the Crooked River zones of impact (locations of new ground water permits) have resulted in a surplus of mitigation water (credits), including the reserve mitigation credit obligation for those permits using temporary mitigation credits.

V. Recommendation

This is an informational report. No Commission action is required.

Attachments:

1. Deschutes Ground Water Study Area Zones of Impact Map
2. Permits Issued (2003 and 2004) by Zone of Impact
3. Status of Pending Ground Water Applications
4. Summary of Mitigation Activity for 2004
5. Mitigation Provided by Subbasin and Zone of Impact for 2004
6. Allocation Cap Summary

Laura Snedaker
(503) 986-0884