

Deschutes Groundwater Mitigation Program
A Brief Introduction
by the Deschutes River Conservancy

The use of available surface water resources for irrigated agriculture in Central Oregon began in the 1860s and accelerated at the turn of the century. Surface water rights in the Deschutes Basin have been limited since the early 1900's due to early development of irrigation districts and the allocation of water rights by the State Engineer. In the 1990s, growth and development in Central Oregon led municipalities, developers and small irrigators to turn to groundwater to supply new water needs. Growing demand for groundwater led to concern that the groundwater permitting process ignored the potential for impact of groundwater withdrawal on surface waters. A century of geologic and hydrologic investigation suggested that surface water and groundwater in the basin were hydraulically connected.

In 1995 a moratorium on further groundwater permit approvals was instituted by the Water Resources Commission pending the outcome of a collaborative examination of groundwater in the upper Deschutes Basin. The study, carried out by the US Geological Survey and OWRD confirmed that snowmelt infiltrates into the ground and recharges the underlying aquifers, and that aquifer discharge provide much of the surface water to streams in the Deschutes Basin. The results suggested the potential for groundwater withdrawals to impact surface water flows and cause injury to surface water rights holders, including junior instream rights.

The Water Resources Commission approved rules for the implementation of the Deschutes Groundwater Mitigation Program in 2002 (OAR 690-505). The program is intended to allow for water development while mitigating for the effects of groundwater withdrawals on surface water flows in the Basin. The approach taken is to offset withdrawals on a long-term volumetric basis.

Groundwater permit applicants need to acquire groundwater mitigation credits in order to receive a groundwater permit. These credits mitigate for the applicants' annualized consumptive water use, which varies with the type of use. The program suggests that credits may be established through instream transfers, aquifer recharge, storage release and conserved water projects. State-chartered groundwater mitigation banks may use temporary transfers to establish credits subject to holding an equal amount of credits in reserve (OAR 690-521). Applicants may acquire permanent credits from individuals or they may purchase temporary credits through a mitigation bank. The only mitigation bank currently operating in the Deschutes Basin is the Deschutes River Conservancy's Groundwater Mitigation Bank (GMB). Three years into the program only leases and transfers have been used to create mitigation credits.

The Groundwater Mitigation Rules established for the Deschutes Basin do not require drop-for-drop mitigation of groundwater withdrawals on a specific temporal and spatial schedule. Instead, they allow groundwater applicants to mitigate for the effects of their groundwater withdrawals under an annual, zone-based framework. OWRD has

delineated zones of impact (ZOI) where groundwater withdrawals will theoretically affect specific reaches in the basin. For example, a groundwater applicant in Whychus Creek ZOI may obtain credits established through an instream lease in Whychus Creek. The applicant may withdraw water year-round, but the instream lease is only effective during the irrigation season.

Concerns regarding timing of the impact from groundwater pumping (and other issues) led to a lawsuit against the administrative rules by a number of protestants, including WaterWatch of Oregon. The suit was decided in favor of the protestants in early 2005 and the program was terminated. Subsequently HB 3494 was passed by the legislature and reinstated the program. The new law confirmed the legislature's intent that the program rules govern the program and the allocation of new groundwater permits in the Deschutes.

The Mitigation Rules set a 200 cfs cap on final orders for new groundwater permits in the Deschutes Basin. Once 150 cfs of final orders are in place OWRD must initiate a review of the program. In March 2006, permit applications in the Deschutes Basin surpassed 200 cfs. New groundwater applications have been and continue to be filed after March 2006, but OWRD is currently not processing those applications until after it processes the pre-March 2006 applications.