

**OWRD GROUND WATER MITIGATION PROJECT  
SUMMARY OF SEPTEMBER 5, 2008  
DESCHUTES GROUP MEETING  
(As approved at the October 22, 2008 meeting)**

**Deschutes Group Members Present:** Debbie Colbert, Kyle Gorman, Tod Heisler, Steve Johnson, Rick Kepler, Michelle McSwain, Martha Pagel, Kimberley Priestley, Adam Sussman, and Jan Wick

**Deschutes Group Members Absent:** Robert Brunoe and John Short

**Guests Present:** Mary Meloy (State Water Resources Commissioner), Jeremy Giffin (OWRD Water Master), Ken Lite (OWRD Hydrologist), Patrick Griffiths (City of Bend), and Mark Yinger (consultant)

**Meeting Facilitators:** Paul Hoobyar and Joanne Richter, Watershed Professionals Network

After group introductions, Paul Hoobyar discussed the purpose of the meeting, the group approved the agenda, and Paul reviewed the Meeting Agreements with the group and asked whether there had been any media contacts (there were none). The group then discussed proposed changes to the Draft Meeting Summary from the July 17<sup>th</sup> meeting, and approved those changes.

**Zone of Impact Issue Framing Discussion:** Kimberley presented an overview of the issue framing paper that she, Adam and John had worked on. Adam added a key question they were concerned about: How does the Department interpret their own rules regarding zone of impact determinations? Ken Lite discussed in some detail how he makes zone of impact findings and clarified technical issues for the group. Main questions raised by the group, Ken's responses, and additional information provided by the Department after the meeting are shown below:

- How does Ken pick the primary zone of impact? Response: OWRD currently identifies one zone of impact based on where most of the impact is going to occur. To identify the primary zone of impact, Ken uses the Department's conceptual understanding of the ground water flow system (based on the USGS-OWRD Deschutes Basin Ground Water Study) and well construction information provided by the applicant (e.g., well depth, water table elevation). He relates that to regional ground water flow direction, areas of ground water discharge, and the proximity of the proposed well to those discharge zones.
- Does the Department account for possible impacts in other zones? Response: Ken's review of an application for a groundwater permit involves three separate findings: under Division 690-08, Division 690-09, and the Scenic Waterway. The Division 8 (groundwater availability) and Division 9 (groundwater / surface

water interference) findings are recorded on a form called the "Public Interest Review for Ground Water Applications." There is a place on that form where Ken may identify specific stream reaches that would likely be impacted by the proposed ground water use. Those stream reaches may or may not be in another "zone of impact". A "zone of impact" finding is strictly related to a scenic waterway review in the upper Deschutes Basin.

- Why does the Department use a conceptual understanding of the system instead of the regional flow model to make zone of impact findings? Response: When the Department was moving forward with implementing the program, there was considerable thought about how to balance using the best information without making the review and process so complex as to overwhelm staff and applicant. That is why the Department chose to go with the conceptual approach to making these findings.
- Does the Department think its zone of impact implementation is consistent with the rules? Response: Yes
- Based on input from its AG, can the Department require mitigation in more than one mitigation zone? Response: Based on the rules, the Department could require mitigation in more than one zone.

Proposal (agreed upon by DG): Request that the Legislature give the Department funding to develop and refine the analytical tools used to determine the Program's impact in the Basin, including the development of a water budget for the Basin. This might include funding to run simulations of the ground water flow model that could be compared to the findings developed using the conceptual approach.

Proposal (tabled by DG): If OWRD's analysis shows a significant impact in more than one zone, the Department should look at splitting zones of impact and requiring mitigation in more than one zone. Staff indicated that in **some** cases the Department may be able to identify impacts in more than one zone. However, the Department noted that splitting by zone using the numerical model would be constrained by available staff resources and, in some cases, model uncertainty. This proposal was tabled for now because several members stated that the existing model should not be used to determine quantitative splits of impacts into more than one zone.

The Group also discussed the availability (or lack thereof) of mitigation in all zones of impact. The general public and elected officials don't seem to understand that mitigation water for new ground water permits is not available everywhere in the Basin.

Proposal (tabled by DG): Identify areas in the Basin where no permanent mitigation is currently available (Whychus, Metolius, Crooked River) so as to raise awareness and create better understanding of the issue. The proposal was tabled for now, but a request was made that the Final Report clarify that the mitigation available in all zones (shown in

Five Year Report) is based on the availability of temporary water rights, not permanent mitigation.

Proposal (tabled by DG): Look at other alternatives for mitigation if no mitigation water is available in certain zones of impact. The proposal was tabled for now so that the group could have more discussion about the range of mitigation options that might be available and acceptable to them.

Several members of the Group wanted to discuss issues related to the location of mitigation (where water is actually transferred back instream), but agreed to table the discussion until the next meeting.

**7(j) Conditioned Permits Issue Framing Discussion:** Kimberley presented an overview of the issue framing paper that she and Martha had worked on. A key question is whether 7(j) has been triggered, and if so how will the Department implement the rule and what would the mitigation look like? OWRD staff stated that if 7(j) conditioned permit holders can provide mitigation through the existing rules than the Department won't regulate them. Another key question is whether different types of mitigation could be applied to 7(j) conditioned permits?

Proposal (agreed upon by DG): Table the discussion of this issue for now, and move on to other issues that the Group may be able to positively affect.

**What is Counted under the 200 cfs Cap Issue Framing Discussion:** Adam presented an overview of the issue framing paper he had prepared. The cap is based on water right permits issued, not on perfected water rights. The cap also includes non-consumptive uses and uses that have been offset. The group discussed whether these should be included against the cap. Another key question is whether it makes sense to base the cap on rate instead of volume? Also, how do incremental mitigation and offset provisions used by municipal and quasi-municipal water providers to meet their long-term water supply commitments fit under the 200 cfs cap?

Proposal (tabled by DG): Modify the rule so that final orders for non-consumptive uses and uses associated with offsets are not counted under the cap and have no mitigation obligation. The proposal was tabled for now because members needed more discussion of what non-consumptive use really means. Adam agreed to further clarify offset provisions and why he believes they could be used for incremental mitigation.

Proposal (agreed upon by DG): Water allocated under the 200 cfs cap can be restored to the cap if not perfected under the permit.

Proposal (tabled by DG): Cap overall demand in terms of volume, not rate (cfs). This proposal was tabled for now because members felt that low flow periods are important for fish, and you need to look at more than just an averaged volume. Concern was also expressed that the Program may ultimately result in less flow in the winter because instream transfers do not occur outside of the irrigation season.

**Topics for Next Meeting:** The Group agreed that the following topics should be discussed at the next DG meeting:

- Water quality issue framing paper (discuss existing paper).
- Offset / incremental mitigation. Adam agreed to frame this issue by October 3<sup>rd</sup>.
- Non-irrigation season mitigation (winter flow restoration). Martha, Kimberley, Adam and Steve agreed to work on framing this issue by October 3<sup>rd</sup>. They will also try to tie in discussions of rate vrs volume and timing of impacts.
- Kimberley offered to frame the net consumptive use issue. Martha agreed to help frame this issue. The group recognized they may not have time to discuss this topic given the other items that still need to be discussed.
- Follow up on proposals (above) that were tabled by the Group and needed further discussion.
- Discuss what the draft final report should contain / consist of.

**Issues Bin:** Additional issues of concern raised by the group include the following:

- Need to address or develop ways to extend or improve alternative mitigation options.
- Location of Zones of Impacts and availability of mitigation water need to be addressed.

**Future Meeting Dates:** October 22nd and November 14<sup>th</sup>