



## **OPPOSE HB 3536**

### **Testimony of WaterWatch of Oregon In front of the House Committee on Rules June 5, 2013**

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. WaterWatch works to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

#### **WaterWatch opposes HB 3536**

Among other things, HB 3536 provides a loophole to the longstanding Deschutes Basin Mitigation Rules that govern groundwater permit issuance in the Deschutes basin. These rules were adopted in 2001 to ensure that groundwater pumping did not diminish state scenic waterway flows and instream water rights in the basin.

Specifically, pg. 3 lines 21-24 of HB 3536 state that if a developer/owner transfers a surface water right to an instream use of water, the developer/owner is entitled to receive a ground water right in an equal amount for use of the developer's/owner's choice upon request to the WRD.

There are a number of key provisions of the Deschutes Mitigation program, and also state permitting laws, that this proposed bill would allow a single developer to get around. These include, but are not limited to:

- **Zone of impact:** Under the Deschutes Groundwater Mitigation rules, mitigation water must be provided in the "zone of impact", which means that the water must be put in the stream where flows are diminished by the groundwater pumping. Under the bill the owner/developer simply has to transfer a surface water right instream without any consideration of location. Under the bill a transfer could put water in the Crooked River even though the impact will likely be on Wychus Creek.
- **Mitigation water:** Under the Deschutes Groundwater Mitigation rules, mitigation water must offset impacts of groundwater use. Thus, a water right that is transferred instream must be of old enough priority date to actually provide wet water to stream to offset impacts. HB 3536 allows virtually any water right, whether there is actually wet water associated with that right, to serve as mitigation.

- 200 cubic foot per second (cfs) cap on groundwater permits: The Deschutes Mitigation Rules set a limit of 200 cfs for new permits in the basin. This cap can be lifted upon a finding by the Commission that the mitigation program is in fact protecting scenic waterway flows. This bill guarantees one developer a groundwater right regardless of whether or not there will be water available under the cap at the time of application.
- Public interest review: Under the state permitting laws, the WRD cannot issue a water right that will impair or be detrimental to the public interest. HB 3536 guarantees a water right regardless of the WRD's determination on the effect on the public interest.
- Public involvement: Under state permitting laws, the public has the right to comment and/or appeal a WRD decision on a water right. HB 3536 guarantees a water right without any provision for public comment/appeal.

In a nutshell, this bill will undermine the Deschutes Groundwater Mitigation program, state permitting requirements and public participation in the state's decisions regarding private use of the public's water. This bill is also bad public policy in that it grants an outright exception to a whole host of important Oregon laws that all other citizens of this state must abide by.

WaterWatch urges rejection of this special interest bill.

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