



# Oregon

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## Water Resources Department

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Before the  
House Rules Committee  
Representative Chris Garrett, Chair

### **Testimony on House Bill 3536 Relating to the Deschutes Basin**

Presented by the Oregon Water Resources Department  
June 5, 2013

Thank you for the opportunity to present testimony on House Bill 3536. This bill represents a departure from the water right permitting process set forth in Oregon Water Law generally and in the Deschutes Groundwater Mitigation Program more specifically.

#### **Rationale behind the Deschutes Groundwater Mitigation Program**

History. A 2001 study jointly led by the Oregon Water Resources Department and the U.S. Geological Survey identified a hydraulic connection between groundwater and surface water within the Deschutes Groundwater Study Area. Because of this study, we know that new groundwater withdrawals affect surface water flows. As a result, new groundwater withdrawals must be offset or “mitigated” by transferring surface water rights instream in the same general area as the proposed groundwater development.

The Deschutes Groundwater Mitigation Program, established in 2002, provides the mitigation system that applicants need to develop new groundwater permits. This has the added benefit of: (1) maintaining flows for the Deschutes Scenic Waterway and instream water rights; (2) facilitating the restoration of flows in the middle reach of the Deschutes River below Bend; and (3) accommodating growth in the region, through new groundwater development.

Limitations and Protections. There are some very real limitations in the use of surface water for mitigation purposes. For instance, surface water rights in the Wychus Basin with a priority date more recent than 1902 have little mitigation value because their relatively junior status means they are regulated off the system most years; there is simply not enough water to go around. A proposal to use one of these surface water rights as mitigation for a new groundwater right would not yield much groundwater at all.

Note that the cumulative quantity of new groundwater that can be authorized under the Program is currently limited to 200 cubic feet per second (cfs). This is called the “allocation cap.”

Applications for groundwater-use permits under the Deschutes Groundwater Mitigation Program and the statewide water-use permitting program use a public process that is

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designed to protect senior water right holders, to protect scenic waterways, and to protect the integrity of springs and aquifers in the basin. This process includes public notice, along with opportunities for public comment and protest.

The Department decides whether to approve water-use permit applications and may place conditions on water-use permits, based on information gleaned during this public process.

**What the Bill Does**

Section 3(3)(f) of the bill states:

*“If the developer or owner transfers a surface water right to an instream use of water, the developer or owner is entitled to receive a groundwater right in an equal amount for the use of the developer’s or owner’s choice upon request to the Water Resources Department.”*

House Bill 3536 as written would circumvent the public comment and protest process that has been statutorily required since 1995.

The bill would also ignore the protections afforded under the current Deschutes Groundwater Mitigation Program.

- First, the bill presumably would allow the surface water mitigation to come from any location, because the bill is not specific as to the source of the surface water to be transferred instream.
- Second, the bill does not require the surface water right to be of any real mitigation value and directs the Department to issue a new groundwater permit “in an equal amount for the use of the developer’s or owner’s choice.”
- Third, the bill would require the Department to issue a new groundwater right, regardless of whether the 200 cfs allocation cap has reached its limit or not.
- Finally, it is unclear whether the permit issuance proposed in the bill is a one-time opportunity for a single situation or whether it constitutes a new standard for groundwater permit issuance in the Deschutes Basin.

**Conclusion**

House Bill 3536 represents a departure from the groundwater permitting process in place in the Deschutes Basin. The Deschutes Groundwater Mitigation Program, established by the Oregon Legislature, and implemented by the Water Resources Department and Basin Stakeholders, has allowed for continued economic development in the Basin, while protecting core environmental values.

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Under the program in place today, the public has an opportunity for notification, comment and protest. The Water Resources Department has the ability to condition a new water groundwater permit based on information related to each unique circumstance.

House Bill 3356 directs the Water Resources Department to issue new groundwater permits without taking into consideration key information.