



Native Fish Society Statement
Deschutes County, January 20 Hearing on Destination Resort Remapping
By: Tom Davis, NFS Volunteer River Steward for the Upper Deschutes

In summary our position on additional destination resorts in the Upper Deschutes is that we already have too many from both economic and natural resource health perspectives. The issues concern economic engines and supply/demand for our County; your legal standing for saying “no more”; the recent LUBA decision regarding streamflow reduction and stream temperature increases related to additional water use; nonpoint sources of water quality problems; and spawning-rearing gravel degradation from erosion-sedimentation.

Economic engines and supply/demand

Many argue that more destination resorts are important drivers of jobs and economic recovery. The drivers of our economy are the destinations, which destination resorts compromise. Since some approved or proposed destination resorts are facing foreclosure and there is an adequate supply of guest rooms in Deschutes County this argument is moot. Future demands for guest rooms and homes can be, and should be, provided in our cities or urban growth areas. The same real estate sales and jobs for homebuilders will exist and mitigating the adverse effects will be the responsibility of legally accountable public service/facility providers. If the County wants to rev up our economic engine it should protect and restore the reasons we're a destination.

If you want to stimulate our economy one important alternative is to push the Bureau of Reclamation to release 300 cfs minimum below Wickiup Dam to create a **55-mile** world-class tailwater fishery. The **four-mile** San Juan River tailwater fishery in New Mexico brings in 20 to 30 million annually to the local economy. I've been to both areas and the Deschutes would be of much higher quality.

Legal standing

The following is taken from a summary of Oregon law specifically prepared for use in the Deschutes County Comprehensive Planning by the Northwest Environmental Defense Center in anticipation of the angst felt by some about the “takings issue”.

“Measure 49 provides an exception for regulations ‘restricting or prohibiting activities for the protection of public health and safety.’ As to regulations restricting agricultural and forestry land use, the statute narrows the exception by requiring that public health and safety be the primary purpose of such regulations. Again, there is no case law interpreting the meaning and scope of this exception.

The Oregon Legislature, however, provided the following examples of regulations that would qualify under this exception:

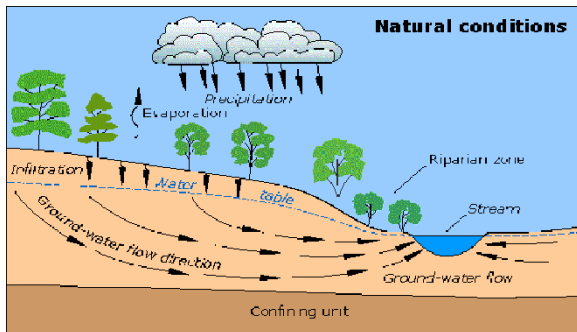
“A law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.”

Consistent with this definition, pollution control regulations such as water and air quality protections, erosion and sediment control regulations, floodplain regulations, ridgeline protections, storm water and

wastewater regulations, steep slope regulations, and transportation and street design regulations will fall under the exception."

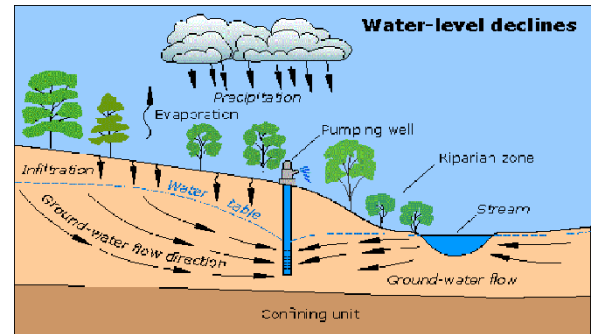
It is clear that you can and should fulfill your obligation under Oregon and federal law to protect the public's water and fish property.

Streamflow reduction and stream temperature increases



Groundwater and the numerous dependent streams in Deschutes County are connected. Wells for destination resorts can and usually will affect the groundwater level, streamflows and stream temperature for miles. A September, 2009 Land Use Board of Appeals (LUBA) decision remanded the County's approval of the Thornburgh destination resort for this reason, so the

technical rationale and legal mandate should be clear. The Oregon Water Resources Department's Groundwater Mitigation program does a poor job of mitigating flows in the upper Deschutes reach affected by well pumping, and does not consider the impact of mitigating cold groundwater stream recharge with warm surface water.

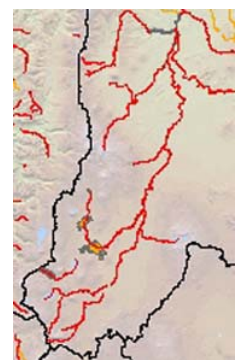


The LUBA decision leaves County destination resort decisions vulnerable to legal challenges. It states; *"From the above findings, it appears the hearings officer was not persuaded by Thornburgh's experts that the potential thermal impact on Whychus Creek was so small that it could be ignored. To ensure that there would be no adverse thermal impact, the hearings officer took Thornburgh up on its offer to secure additional mitigation water from the Three Sisters Irrigation District. Unfortunately, in doing so, the hearings officer either did not recognize or for some other reason failed to respond to petitioner's contention that the mitigation water from the Three Sisters Irrigation District that will be generated by eliminating upstream irrigation diversions will not mitigate the destination resort's thermal impacts on Whychus Creek because that mitigation will replace cool water with warmer water."... "The county's decision is remanded."*

Nonpoint sources of water quality problems

Nonpoint sources are a serious water quality problem in our area as LaPine illustrates. Most Deschutes County streams are on Oregon's 303d list as shown in red on the map to the right. This means they violate Oregon water quality law, primarily because of land activities such as onsite treatment, construction, riparian damage and stormwater runoff.

In a November 2007 letter to Governor Kulongoski about destination resorts, the Oregon Department of Fish and Wildlife had this to say, *"If the development relies on septic systems there would likely be an impact to groundwater quality, which in turn could affect surface water quality through groundwater discharge to surface water."*



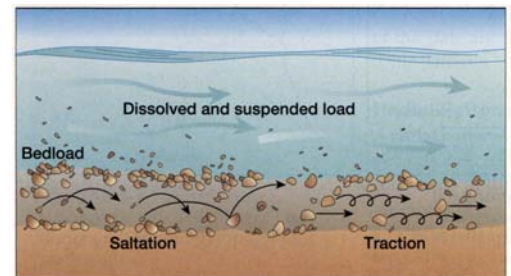
Also in November 2007 the Oregon Department of Environmental Quality stated to the Governor *"Subsurface discharge to shallow soils or land application to the surface of soils may be allowed. ... The river is sensitive to nutrients, and small increases in nutrients could result in some degradation of water quality, such as decreased dissolved oxygen, increased aquatic plant growth, and changes in pH, among others."*

In December, 2005 the U.S. Environmental Protection Agency stated – *“there is a significant body of science demonstrating that regulatory programs in Oregon do not adequately protect water quality and associated beneficial uses (e.g., salmonid spawning and rearing, public water supply).”*

Federal and Oregon laws mandate elimination of these problems but implementation/enforcement has been lax. This is changing as the quote from a 01/18/10 Oregonian article states: *“The controversy stems from a federal law requiring 34 states, including Oregon, to combat so-called non-point source pollution: the fouling of waterways from small sources, like road runoff, as opposed to large, obvious polluters like factory waste pipes.”* For private land development in Oregon the mandate is clearly directed to the cities and counties.

Spawning-rearing gravel degradation from erosion-sedimentation

Sediment from construction causes major problems for salmonids through the sliding and bouncing of eroded soil particles along the substrate surface of the spawning and rearing gravel. This is called bedload movement. Alevins, the recently hatched salmonids, live in the gravel for three to eight months. Bedload and/or suspended sediment fills and blocks the interstices, or space between substrate particles, thereby immobilizing the alevins and blocking the needed flow of water and oxygen. The water column is usually clear during bedload movement.



The following description and graphic on the left regarding alevins are from the U.S. Fish and Wildlife Service. *“The eggs lie in the gravel through the winter, as the embryos within develop. In early spring, yolk-sac fry, or alevins, hatch. The tiny fish carry a food supply (a sac of egg yolk) attached to their bellies. They will not leave the protection of the gravel until the yolk is used up, 12 weeks or more.”*

A common misconception is that such erosion and sediment movement occurs only briefly. One of the FS's top erosion specialists stated to me in email correspondence that: *“When we have a large risk of erosion in a watershed, like a wildfire or logging practices 100 years ago, massive amounts of sediment get deposited in the watershed. Caspar Creek in N. CA is a forest example of this when they first removed the redwoods a century ago. It is still delivering unusually large amounts of sediment even though the forest is now regrown.”* This is particularly true in our Upper Deschutes watersheds, which contain very erodible soils.

Closing

We're fortunate to have numerous natural amenity destinations revolving around publicly owned water, fish, wildlife and clean air. More destination resorts will damage those amenities and are counterproductive for long-term economic recovery, so Deschutes County should eliminate the destination resort map and provisions in the Comprehensive Plan. To the degree that development mitigation is possible it must be the responsibility of legally accountable public service/facility providers. Protecting and enhancing those amenities is a legal obligation of cities and counties that is becoming clearer and is entirely defensible regarding “takings”.

Thank you,

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