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Judge tosses Deschutes Basin water plan

The state's plan to allow groundwater drilling fails to ensure key water flows to the lower Deschutes, the ruling says

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An Oregon judge on Wednesday declared invalid a state plan to supply groundwater to fast-growing cities and destination resorts along the Deschutes River in arid Central Oregon.

Fishing guides and other river advocates argued in a lawsuit that the state's plan to allow well-drilling in the Deschutes Basin failed to compensate for loss of water flowing to the lower Deschutes River. Oregon Appeals Court Judge Mary Deits agreed, writing that Oregon officials do not know the consequences of well-drilling "but are engaging in an experiment to find out."

The ruling means the state can no longer issue water rights for groundwater across a large section of the Deschutes Basin including Bend, Redmond, Sisters, Madras and La Pine. At least 64 entities have applied for groundwater rights in the area now off-limits, from the city of Bend to private developers of resorts and golf courses. Most individual homeowners drilling private wells are exempt from permit requirements and thus not affected by the court ruling.

Conservation groups said the ruling sets a precedent for stronger protection of rivers, particularly those covered by the State Scenic Waterway Act, passed by ballot initiative in 1970.

"This decision will help ensure that rivers will have the amount of water needed to support fish, wildlife, recreation and other public values," said John Devoe, executive director of WaterWatch of Oregon, one of the groups involved in the lawsuit.

Tapping groundwater has become controversial in the Deschutes Basin because seepage from underground aquifers supplies a significant part of the river's flow. Water pumped from wells can gradually reduce river flows for fish and recreation. But farmers and others have locked up rights to surface waters, forcing towns and resort developers to turn to groundwater sources.

To what extent the ruling will limit building and development remains unclear, said city officials, homebuilders and others in the region. The state could appeal the decision or develop new rules for well-drilling.

"I don't think it will slam the door on all development, but it could have an impact on some," said Tim Knopp of the Central Oregon Builders Association in Bend. "There is always a concern about access to water in our region, where nothing grows and you can't live without a water source, either through rivers or a well."

Mike Miller, Bend's assistant public works director, said the ruling won't have an immediate effect on the city's ability to supply water to its fast-growing population. The city estimates its existing water rights will be sufficient for five to seven years. But he said the ruling is a frustrating setback for efforts to plan for future needs.

"It will require cities and all water users to sit back down and hammer out a new game plan," Miller said.

The lawsuit by WaterWatch, Oregon Trout and a dozen other groups, people and businesses argued that state rules governing use of well water in the basin violate the state Scenic Waterway Act and Instream Water Rights Act.

The new rules adopted by the Oregon Water Resources Commission in 2002 followed years of conflict over water and river health, intensified by the region's rapid population growth.

Faced with the reality that irrigation diversions and other water uses often leave the Deschutes with less water than needed for fish, wildlife and recreation, the Oregon Water Resources Commission attempted a compromise. The rules it adopted required developers or others drilling new wells in the basin to compensate for the additional water they extract, for instance, by paying farmers to leave water in the river.

Opponents asserted that loopholes would allow a net decrease in water flowing in the lower Deschutes, the section protected as a scenic waterway. Judge Deits, in a written opinion, said that the rules wrongly emphasized average annual water volumes in the river and failed to take into account the need to maintain flows at the specific times needed for fish spawning and rearing.

The judge noted that groundwater extraction may take up to five years to affect river flows, and that the rules failed to match mitigation water additions to the time when needed.

A representative of the Oregon Water Resources Department declined to comment on the ruling and said the state has not decided whether to file an appeal.

"We're evaluating it with our legal counsel, and we will consider our alternatives," said Adam Sussman, senior policy coordinator.

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