

Deschutes Estuary Restoration Team (DERT) (David Montai)

I'm the, uh, the president of the Deschutes Estuary Restoration Team, Commonly known as DERT. Um, after the legislature enacted the Streamflow Restoration Act in 2018. Um, ecology convened a water... watershed restoration and enhancement Committee for WRIA 13, the Deschutes watershed, and DERT was the environmental representative to that committee into that process. We spent two and a half years developing a plan per the direction of the legislature ultimately produced a final draft plan in March of 2021, and I'm holding up a copy of it. the plan identified and projected another 2,606 exempt wells that would be constructed in the watershed by the year 2038. Um, estimated the impact to stream flows as they were required to do and came up with a set of projects and other measures to offset the impacts to the streams.

And also to improve the habitat in the watershed.

Um, those recommendations included a set of policy recommendations. I don't know if you'll be able to see it, but It was chapter 6. Um, in the plan that was produced.

[I didn't know my video was off. Um... so I don't know what you have...] anyway, Chapter 6.

Um, of the, uh, plan included a set of policy recommendations Including things like. additional water conservation, making it easier to use reclaimed water.

Uh, I think there are a total of 15 recommendations, including revising the in-stream flow rules that have been adopted in 1980, 45 years ago. Um, because there was... one objection by one party to that one recommendation, Uh, the plan did not receive consensus. Afterwards, ecology followed the process outlined in state law.

And one of the things ecology did was delete the entire chapter of policy recommendations. that they had voted in favor of as a member of the committee. So as a consequence, we were left with a plan that actually was not the plan developed by the committee, it was a plan that, was developed by Ecology.

Nonetheless, um... The statutory provision that ecology is now relying on for this rulemaking is the provision in the Streamflow Restoration Act. that says, um, ecology at this point has to conduct rulemaking. to implement the recommendations in the final plan.

I read the final plan, and I made this comment back in the fall.

There is no recommendation in the final plan, and there was no recommendation from the WREC to take the existing statutory provisions. Um, and place them into rule.

So I think that the process that ecology is following is not authorized, um, by the law. Um, and as I mentioned before, it's totally inconsistent with the general direction by the legislature to state agencies for rulemaking. Um, which is, you engage the parties who are affected by the rulemaking ahead of time, you develop the rules, and conjunction with those people. Um, you evaluate alternatives. Uh, and then you move forward. So, when we found out about this rulemaking, we actually wrote to the director of the Department of Ecology.

and said, please have a meeting with the people who developed this plan, spent two and a half years developing the plan and explain to us why you're proposing to do what you're doing instead of implementing a number of policy recommendations that the group recommended.

We never heard back from the Director of Ecology.

Which is very disturbing. Um, so, what we're looking at is a rule developed internally by the Department of Ecology without regard to the committee process that took two and a half years.

In addition to that, ecologies, um. proposed rule simply green lights Um, another 2,606 exempt wells. with documented impacts to stream flows. And with no requirement that those withdrawals, groundwater withdrawals, be metered. that they be mitigated, or that there be any monitoring for them.

Um, so Ecology is essentially saying, we're okay. with reducing the stream flows in the watershed.

Um, for... some reason that they haven't discussed with anybody else in the watershed. Other than, as I understand it, the Squaxin Island tribe.

Um, so we object. We think legally ecology cannot do this.

Um, we think from the perspective of the legislature. they are not doing this consistent with the direction of the legislature.

Um, for, um... engaging in rulemaking and adopting rules.

Uh, we think they're doing it knowingly. affecting stream flows.

Um, that already have, um, significant problems. And ecology has already identified these problems in its TMDL, That it adopted for the Deschutes River and its tributaries.

acknowledging that there are temperature problems, dissolved oxygen problems, that allowing additional exempt wells will simply exacerbate. So

our request, and we will be providing formal comments, although I appreciated Claire's comment that. We submit a comment and never got any feedback.

We'll be providing formal comments, but our request at this point is that Ecology actually take the 2 years that it's allowed to take for this rulemaking. and actually have some discussions with the people who are working in the watershed. Um, trying to... maintain, um, and restore habitat trying to maintain and restore streamflows. Uh, which this particular rule will not be doing. Um... You have ample time under the statute to have those discussions. I don't see any reason why you shouldn't be having those discussions.

and if... If you proceed down this path, which you seem very determined to proceed down without regard to the comments you're getting Um, I think it's both illegitimate and unwise. And our request is that you take a pause.

Thank you.