

Doug Hancock
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February 26, 2006

Re: Testimony regarding Designating the Metolius Basin as an
Area of Critical State Concern

Dear DLCD Commission Members,

This written testimony is being submitted at the hearing being held in Madras on February 26, 2009 regarding designation of the Metolius Basin as an area of critical state concern.

As a preliminary matter, I want to thank the commission and its staff for taking the time to listen to the concerns of the public on the important issues before it. As you will see from my comments below, this may be the first time that government decision makers have listened to public concerns regarding the Metolius Basin.

Local Control

Much has been made of the argument that action at this time by the State to (a) prevent destination resorts in the Metolius Basin, or (b) otherwise take action that would adversely impact the County's plans to develop the basin would be an unjust usurpation of local control. This position is of course nonsense for a wide variety of reasons. However, since the developers and local officials have been so vocal in their support of this argument, and since it seems to have gained some popularity among some groups, I would like to address it.

a. Is it Unfair for the State to Protect the Metolius?

No, and in fact, the state has an obligation to do so. Jefferson County is focused on what is in the best economic interest of the county. However, the area that is at the center of this process, the Metolius Basin, is an area of critical concern to the entire state. When there is a conflict of interest between what is in the "best Interest" of a county and its citizens, and the interests of the citizens of the entire state, local interests must give way to the broader good. This is not inappropriate because the state cannot always count on local authorities to protect the interests of the state. The actions of Jefferson County bear this out. Nor is it unusual, as the state routinely enacts laws and regulations that affect local jurisdictions in ways that the locals may not like.

In this case the state has an obligation to step in and protect a natural resource that is a statewide, even nationwide treasure.

b. Jefferson County's Process

I have attended both of the first two hearings in Sisters and Madras on the ACSC process. At those hearings, and in the media, there has been a significant amount of comment regarding the perception that Jefferson County is being treated unfairly, that the county followed the rules and that no one objected during the process, and that for the state to act now is unfair. That perception of unfairness is incorrect.

I live in Jefferson County. When the county first decided to rewrite the comprehensive plan and zoning ordinances, they hand picked a committee of "representatives" from throughout the county. It came as a complete surprise to the members of the Camp Sherman community, that the "representative" appointed by the county from Camp Sherman was the owner of Lake Creek Lodge, who is not a resident of Camp Sherman, and who had a strong interest in changing zoning laws in order to allow significant changes to the zoning that pertained to Lake Creek Lodge. This representative had recently lost numerous challenges under the old zoning ordinance.

When the county presented its rewritten comprehensive plan and zoning ordinances, they were presented to the public with no summary of the changes, no reference to prior plans and ordinances, and no comparisons to the previous plan or ordinance. They also provided no copies. If you wanted to understand what was going on, you had to print hundreds of pages of documents and laboriously compare the old with the new, to discover the changes. When the county presented the proposed plan and ordinance, they also said that they'd had input from the Camp Sherman community. However, the only input they received was from a non-resident business owner who had an objective to change the plan to allow development.

I printed the existing and proposed documents and spent countless weekends and weeknights reviewing and comparing these documents in order to offer thoughtful comments. I quickly discovered that the new comprehensive plan deleted in its entirety an Appendix that was dedicated to Camp Sherman and which addressed zoning and development goals for this special area of the county. The public and the county had previously developed the Appendix as a result of a collaborative effort in the early 1990s.

I attended as many public hearings on the comprehensive plan and zoning ordinances as possible, and provided both written and oral testimony. I objected to many aspects of the plans, including the drastic changes that the county had decided to incorporate in the new plans, and to the proposed destination resorts. To give you a couple of examples, the county has not updated some of its inventories, such as wildlife, for some 25 or more years. I objected to this, pointing out that numerous landscape changing wildfires and other events in the last 25 years have had tremendous impact. The county did not address these concerns.

I objected to numerous other aspects of the plan and the county did not change the plan or zoning ordinance based on my objections. And I was not alone in objecting to the county's revisions. Numerous other individuals and groups objected at each public hearing and provided written testimony. The record from the hearings and public input on the county's new comprehensive plan and zoning ordinance is replete with objections like mine and it is simply disingenuous to say that those who are now testifying in favor of a management plan that excludes destination resorts did not object previously.

As you know, the way the system works is that the county's revisions to its comprehensive plan, zoning ordinances and the destination resort mapping can be challenged only after they are adopted. As soon as the county adopted its rewritten comprehensive plan, zoning ordinance and destination resort mapping, all three were challenged at LUBA by numerous parties. Those challenges are ongoing and pending today.

Local representatives did not listen to local voices, but they did know from the outset that the changes the county wanted to make were not supported by many, and that they would be challenged.

Sincerely,

Doug Hancock

February 26, 2009

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Attention: Lisa Howard

Re. Testimony at hearing in Madras
On the Metolius ACSC

Dear Commissioners,

First, I would like to compliment DLCD for its even-handed, unbiased assessment of the background and issues in this case. The assessment has been laid out accurately and thoroughly. Also laudable is the Commission's patience in considering divergent voices and working toward solutions.

In my opinion the revised draft Management Plan is definitely a move in the right direction, and it seems to address the key issues. The Round Butte location has great potential for destination resort development. It not only offers great mountain views and immediate access to the lake's boating, fishing and hiking trails, but also it is in close proximity to the lower Deschutes with its world class fishing and rafting opportunities. As pointed out, resorts in this location would create a significant attraction for economic development and employment in the Madras area. This transfer of development rights may not be orthodox, but it lays out a win-win-win opportunity for Jefferson County, the developers and the Metolius. The incentives are well balanced among all three entities.

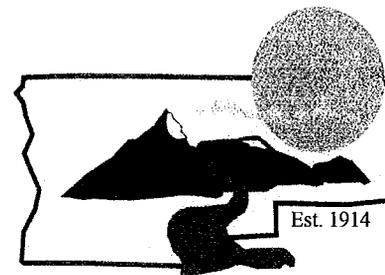
I do have a couple of detail questions:

1. In Areas 1 and 2, the plan offers to the owners the option of developing a limited number of "recreational dwellings" within the areas mapped as eligible. What exactly is a "recreational dwelling"? I don't see it defined anywhere.

JEFFERSON COUNTY

BOARD OF COMMISSIONERS

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454



February 24, 2009

Jefferson County Board of County Commissioners
Written Testimony Before The
Land Conservation and Development Commission
Sub-Committee On Metolius Basin

Dear Commissioners Jenkins and Pellett:

The Board of County Commissioner's first opportunity to review the newest proposal was yesterday. The Board of Commissioners has scheduled a public meeting to hear from our citizens on the latest proposal that includes designating the Round Butte area as eligible for Destination Resorts. This meeting will occur on March 5, 2009 at 4:00 PM.

We request that the Sub-Committee not take official action on a recommendation until we have had the opportunity to hear from our citizens. After we have heard from our citizens in a public meeting the Board of Commissioners requests that the sub-committee and/or DLCD staff meet with the Commissioners on March 6 to discuss the County's position.

In addition, the County is working on an alternative proposal that we would like to discuss with the Sub-Committee and/or DLCD staff on March 6, 2009. County staff is finalizing a draft proposal that the Commissioners will review during our March 4, 2009 meeting to determine if it is a proposal that we wish to pursue and we will ask for public comments during the same March 5, 2009 meeting.

The draft plan addresses:

1. Protection of the Metolius River by limiting development.
2. Current and future water quality concerns along the Metolius River.
3. Current and future water quantity concerns along the Metolius River.
4. Gives Jefferson County a clear path to allow development that does not impact the Metolius River, and
5. Provides a fair result for all property owners and Forest Service property lessees.

We look forward to meeting with you once we are able take public input on the latest proposal. In Governor Kulongoski's December 19th letter to DLCD and LCDC he stated that your organization should "work with Jefferson County to develop a state management plan..."

Wayne Fording,
County Commissioner



Native Fish Society
River Steward - Upper Deschutes



**Native Fish Society Statement
To LCDC on the ACSC Second Draft Plan for the Metolius**

The Native Fish Society (NFS) supports the second draft of the ACSC management plan for the Metolius. It is obvious that LCDC listened to the technical and legal arguments presented for protecting the Metolius at the hearings in Sisters and Madras, and we appreciate that effort.

A few specifics:

1. Zones 1 and 2 and the development criteria appear to provide the necessary protection for groundwater, streamflow, threatened species and native salmonids.
2. We have no problem with Zone 3. Similar areas out of the Metolius influence area would also be acceptable for NFS. The exceptional values of the Metolius far outweigh the farmland value in this case.
3. Exceptionally high requirements regarding erosion-sedimentation, wastewater treatment, water quality, fish & wildlife habitat protection and downstream flow guarantees must apply to all Zone 3 developments.
4. Time is of the essence, so please move quickly to get the ACSC designation and plan through the Legislature to the degree needed.
5. Additional but complementary protection in a separate bill similar to SB 30 in the 2007 Legislature appears to us to be needed for maximum protection.
6. Please don't let the ACSC process end with the Metolius. Many more areas are ideal for the kind of protection ACSC designations and management plans for water, fish, wildlife and forests can provide. Oregon's programs according to EPA, ODEQ and ODFW are failing to protect these resources. For more information on this please review the article at:
http://www.nativefishsociety.org/StrngRns_ORFish_Not ProtecTDfinal.pdf

Thank you,

H. Tom Davis

H. Tom Davis, P.E.

February 26, 2009

To: LCDC Sub Committee

RE: Testimony on the Metolius Basin / Area of Critical State Concern,
MBACSC:

I appear before you today with a tear in my eye and my body trembling with the thoughts of your idiotic compromise of placing a destination resort receiving area inside our prime high-value and unique irrigation district. I have spent my entire adult life fostering and promoting this farming footprint in Jefferson County. In just four years it will be 100 years since a group of pioneering dryland farmers conceived and obtained the water rights to build the North Unit Irrigation District.

The Jefferson County Commissioners followed existing state statutes, rules, and goals and have respected our agricultural zone when mapping the land eligible for destination resorts. Our pristine ag zone is the cleanest from non-farm sprawl in the state. Even today, citizens are not allowed to place non-farm dwellings in our EFU A-1 zone, a standard more restrictive than state rules. For the staff and your subcommittee to propose this "receiving area" inside our irrigation district is preposterous.

Why is our ag belt so valuable and the economic engine of Jefferson County?

- This 58,902.8 irrigated acres represents the second largest irrigation district in Oregon, with its boundary of almost 100,000 acres eligible to receive water; it is the best farmland in Central Oregon.
- The high-value soils within this district are part of just 2-3% of all Eastern Oregon lands that have such soils suitable for intensive agriculture.
- There has always been a unique blend of crops grown, from the days of ladino clover and potatoes, to the largest county in the U.S. in peppermint production, to vegetable seeds, wheat, hay and grass seeds, today.

- Vegetable seed crops thrive in Central Oregon. This ag zone produces 15-16 million dollars of farm gate value in vegetable seeds annually. Jefferson County is supplying 65% of America's hybrid carrot seed needs and 40% of the world's use. The following vegetable seed crops: onion, carrot, radish, and sugar beets require pollination via honey bees. Each year approximately, 45 one-mile circles for bee placement are mapped on the district's farmland to accommodate isolation for different hybrid varieties. The farmers spend over \$750,000 on honey bee rentals and research to save the honey bee.
- We are one of the few regions that supply garlic seed to Central California's garlic industry. Our unique isolation is why companies desire farm products from this disease free region.
- We lead the nation in peppermint tea leaf production.
- We produce over 90% of America's supply of roughstalk bluegrass, a grass used for winter overseeding the lawns and golf courses across the southern U.S. Blue and rough grass is our largest acreage crop and most all farms use grass seed in their rotation. The continuance of the grass industry in Jefferson County is crucial. We facilitate each year, with DEQ, the smoke management area. We spend annually \$85,000-90,000 for research and staffing; to run the program to lessen the impacts of smoke intrusion into populated areas. Destination resorts (DR) placed inside our irrigation district would make that task onerous at best.
- Aerial and ground pesticide application is the required norm. We don't need another "zone" in which we must avoid application drift. Some potato and vegetables need weekly applications. A few legislators continue to introduce new bills in Salem, every year, to restrict applications within one to five miles of schools and neighborhoods.
- Now, the North Unit is the home of an organic dairy and one large fresh vegetable grower whom left the valley to supply Fred Meyer produce without the urban influence. That new dairy is just across the Willow Creek canyon and up wind from the proposed "receiving area".

- All said, this ag zone last year produced \$69 million of trade sector dollars farm dollars and it will continue to each year produce over \$50 million every year to bolster the economy of Jefferson County. Bringing new money to the region and state. Those dollars multiply throughout the community and the employment of workers in the two major ag equipment dealers, the three seed processing warehouses, and the three chemical and fertilizer dealers in Culver and Madras.

Why did DLCD not consult with the Department of Agriculture, before finding this supposed solution inside prime, unique farmland?

Your attempts to mediate and compromise between the Friends of the Metolius and Jefferson County Commissioners should not include this half-baked idea of a receiving area. Who are we compensating? Two forest property owners who both purchased their lands after the statutes and goals for farm and forest protection were in place. And before any DR zone map had been acknowledged, if they do have their properties included in the final map; it will be their windfall and not any Measure 49 taking.

One of the DR applicant's current intentions does not even fit the current guidelines for a DR. I thought recreation and tourism were the stated requirements for DR's in Goal 8. Since when does an eco-friendly housing tract in a forest setting meets those requirements? Their planned urban eco-friendly house tract, without on-site recreation, would need a complete law change in Salem to even be sited. Are we going to allow every private forest land owner in the state, wherever located: by Mt. Hood Meadows, by Crater Lake, in the Steens, or in the Three Sister Wilderness, to have housing tracts just because they are eco-friendly?

The other applicant, Ponderosa, has nearly 30,000 acres of forest land. Dividing by 240 acres using current rules he could have 125 homes on their land. The Friends of the Metolius must compromise! There area of critical concern has been drawn way too broad. And, get a clue; the water in the Deschutes basin in that area is abundant. Water Resources Department is allowing new underground extractions, up to an additional 200 cfs, all over the mitigated Deschutes Basin. Even with 164,000 irrigated acres diverting water from the basin's rivers and 250,000 people

domestically tapping the supply, the Deschutes River is flowing greater today than it did at the Moody gauging station when the first flow measurements were taken at the turn of the 1900 century. Enclosed is an Oregonian article referring to the vast abundance of water in this aquifer. Destination resorts are supposed to be “go there,” “stay there,” “recreate there,” and “leave there” opportunities for recreation and tourism. The Ponderosa property represents all these needs and could be a true destination resort rather than a rural affluent subdivision.

What is so special about the Round Butte area? It has a viewshed like almost all landscapes in Central Oregon; it is cultivated dryland, sagebrush, and juniper, and is approximately eight miles West of Madras. So what would a resort at that location be? These so-called resorts would be just another rural housing tract for people wanting to live in the rural zone and commute to their job and take advantage of a nearby lake. DLCD, as stated in the draft, will exempt these 1000 homes from the recreation component. Furthermore, the home owners would be required to have a “save the farmer fund;” what an administrative nightmare! Is it Oregon’s land use policy to allow housing tracts beside every natural amenity in Oregon so they can live on site?

The city of Madras just completed their Urban Reserve Area and the massive planning effort to allow developers to build Yarrow, a 1200 home, golf course and planned-unit development. The state has invested millions enabling Madras to treat the new prison’s sewage. This development was to gentrify and balance Madras’ housing needs. Why would people reside in that setting if they could live in a gated community out on the Round Butte rim?

Why would the Metolian and Ponderosa owners want to buy out the existing few property owners land, and at what price, to put in a typical 350 and 650 home subdivision? Also, the Madras site is additional 64 miles from the market, the Willamette Valley tourist via the Santiam pass.

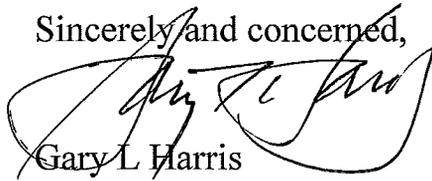
The bottom line is the Jefferson County Commissioners with their map are headed in the right direction. If different lands need to be added, then the county should be required to go through the same process that they previously undertook. This assures protection of all natural resources while providing for some development where appropriate. It is not a

super siting process such as proposed here by the department. The MBACSC needs to be drawn more narrowly and aligned with the State Scenic Waterway protection area.

For God's sake, no damn receiving area! Former Governor Tom McCall spoke on the Oregon Senate floor in 1973 against sage brush subdivisions in Jefferson County, which is just what this area would be. Sprawling Crooked River Ranch still exists for these people today. Are you going to potentially destroy the livelihood of 500 farm families for the supposed interests of two forest property owners?

How can the DLCD and the Governor ignore their own rules and Oregon state statute, ORS 215.243 to "preserve a maximum amount of the limited supply of agricultural land in large blocks necessary to maintain Oregon's agricultural economy"?

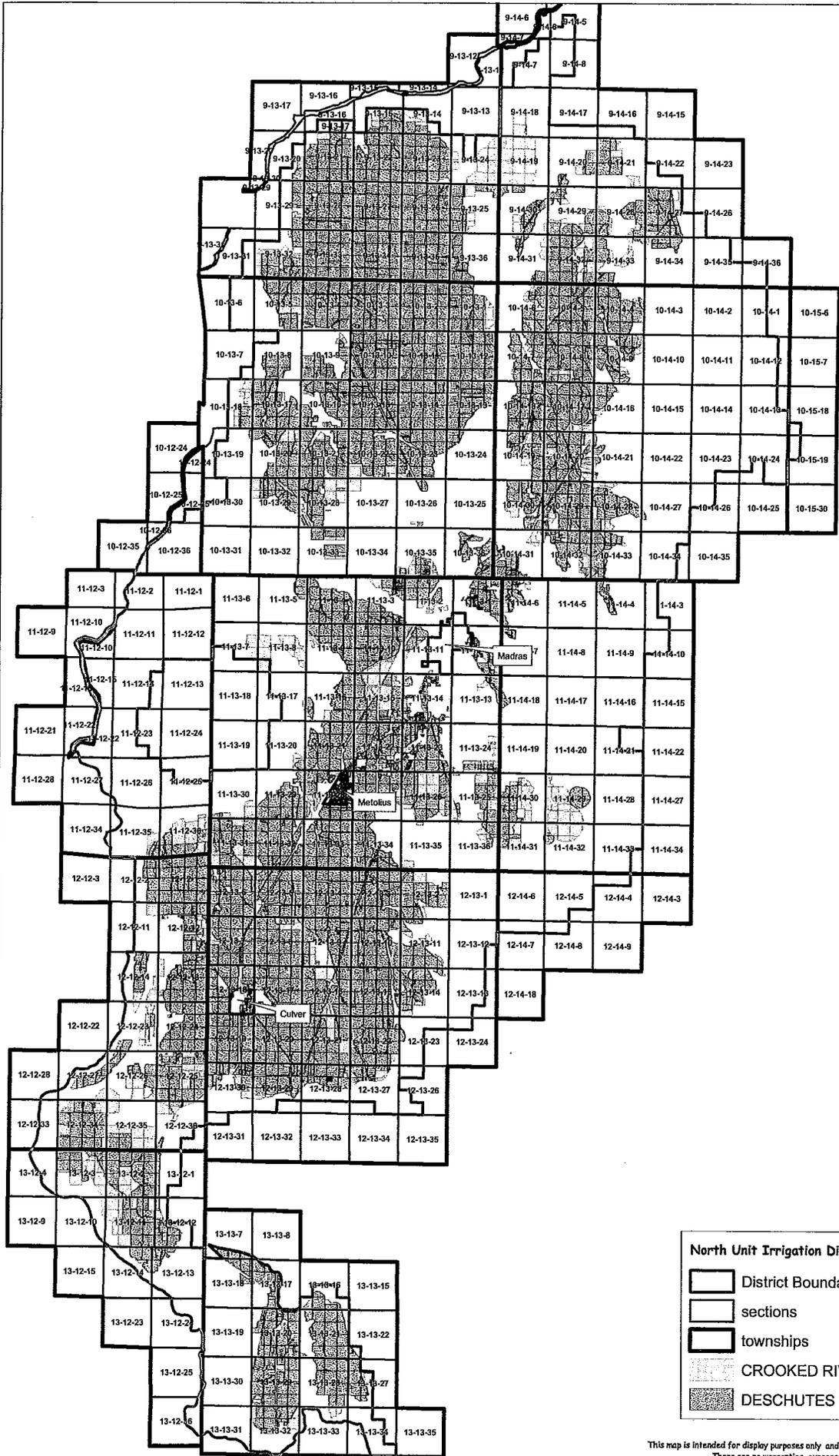
Sincerely and concerned,



Gary L Harris
7000 NW Danube Drive
Madras, OR 97741
541-475-6933

Attached are maps showing the North Unit Irrigation Districts boundary, irrigation rights and soil types, along with newspaper articles?

Cc: Governor Ted Kulongoski
Michael Carrier
Katy Coba
Richard Whitman
John Van Landingham
Representative Brian Clem
Jefferson County Commission
Jefferson County Farm Bureau
Oregon Farm Bureau



North Unit Irrigation District

- District Boundary
- sections
- townships
- CROOKED RIVER - 8,852.9 Acres
- DESCHUTES RIVER - 50,049.9 Acres



Irrigation District

Legend

North Unit Irrigation District



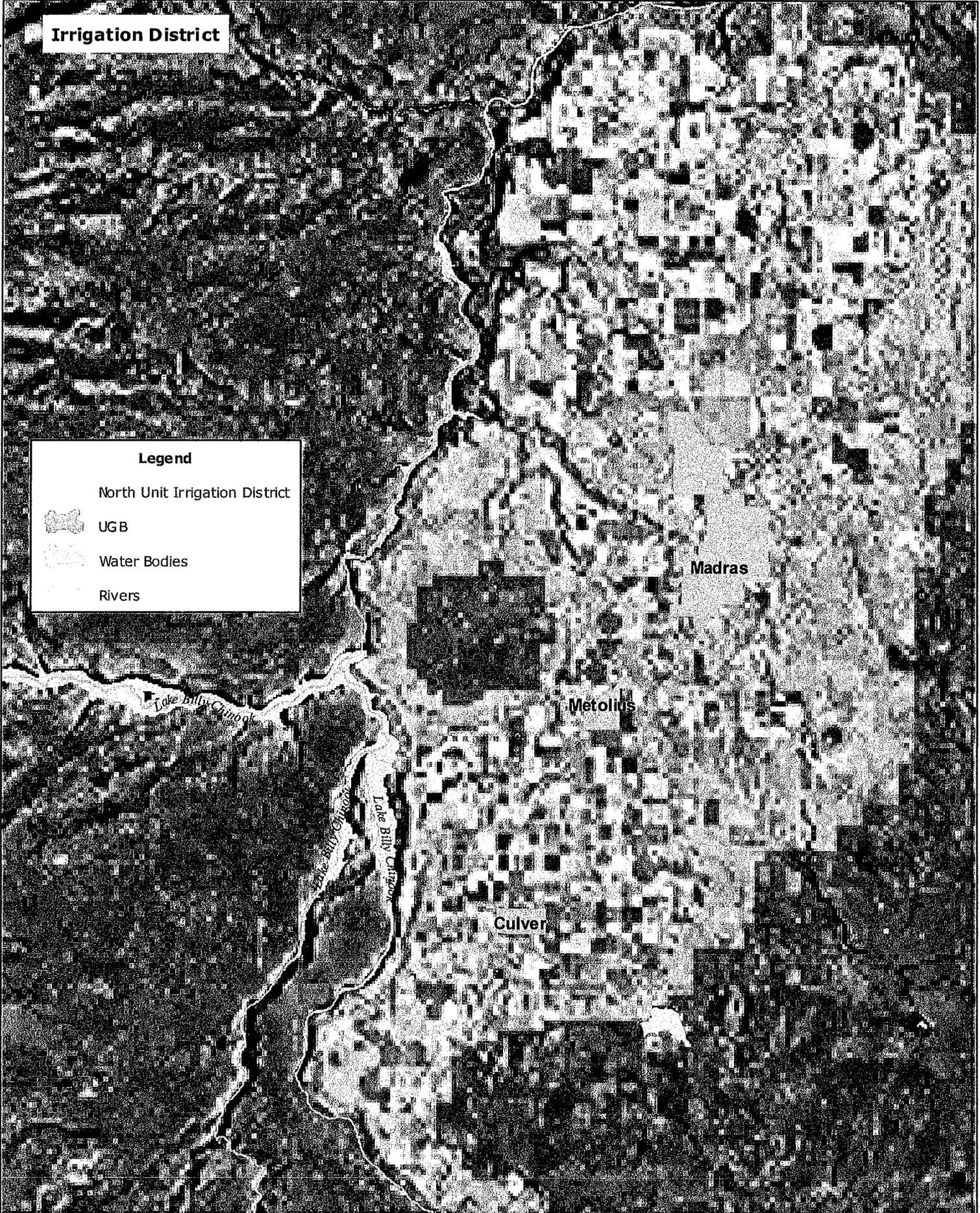
UGB



Water Bodies



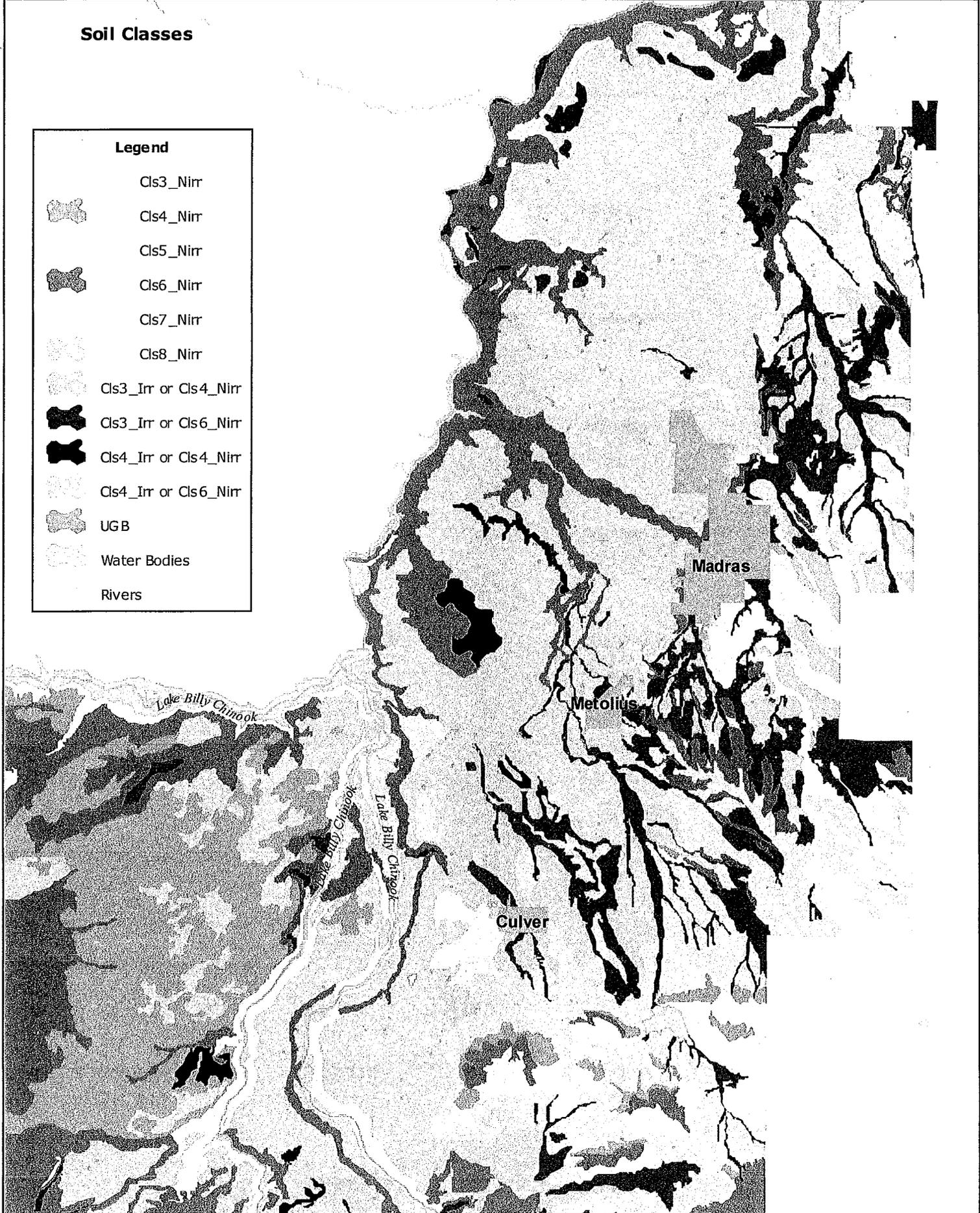
Rivers



Soil Classes

Legend

-  Cls3_Nirr
-  Cls4_Nirr
-  Cls5_Nirr
-  Cls6_Nirr
-  Cls7_Nirr
-  Cls8_Nirr
-  Cls3_Irr or Cls4_Nirr
-  Cls3_Irr or Cls6_Nirr
-  Cls4_Irr or Cls4_Nirr
-  Cls4_Irr or Cls6_Nirr
-  UGB
-  Water Bodies
-  Rivers



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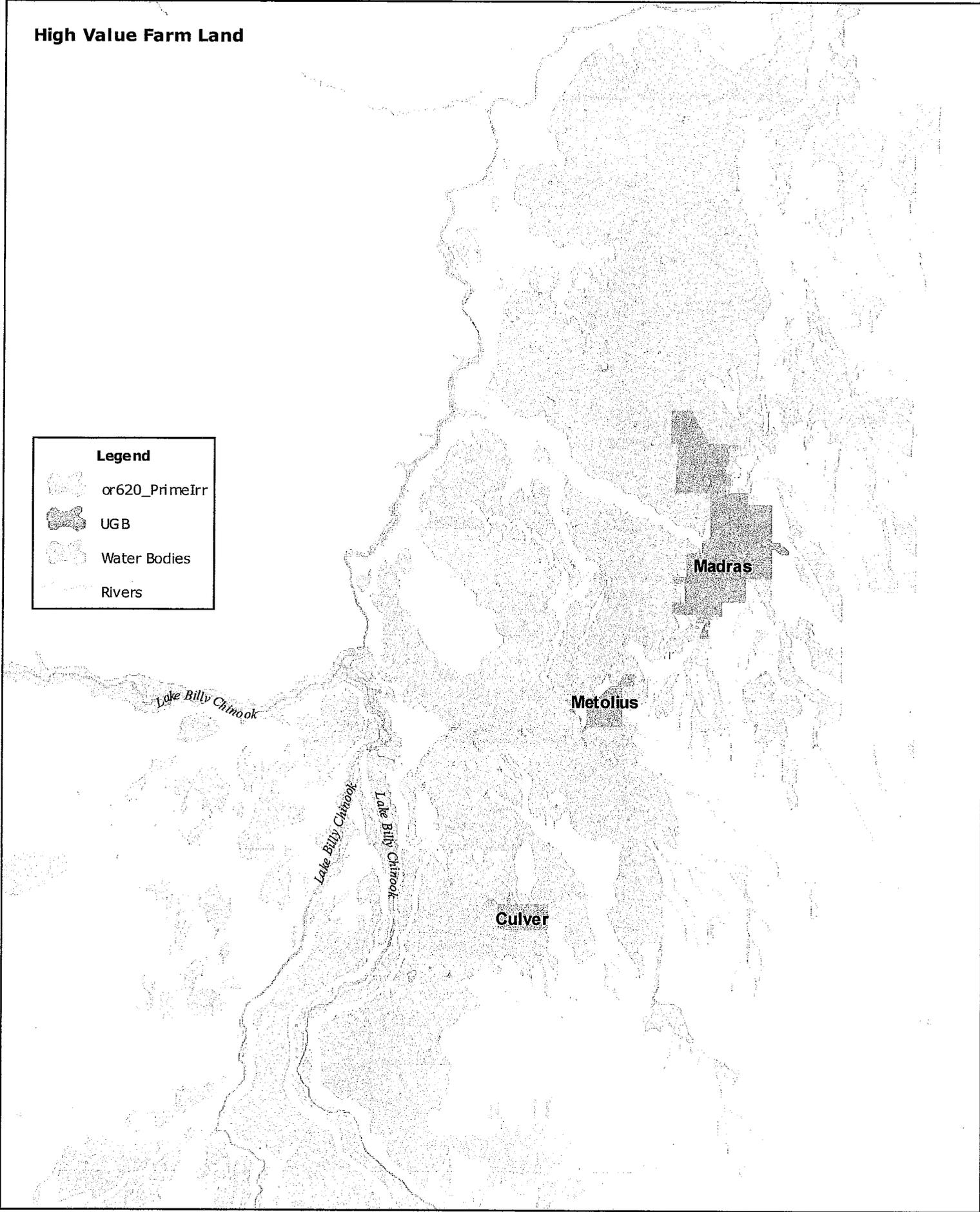
4 Miles



High Value Farm Land

Legend

- or620_PrimeIrr
- UGB
- Water Bodies
- Rivers



Water: Supply may help serve rest of West

Continued from Page One

State University and vice chair of a National Research Council panel examining the connection between forests and water.

That all-year reliability of water from the underground store puts Oregon in a much stronger position than the rest of the West as global warming dries out nearby states, some already suffering through record drought.

At the same time, it may also make the Northwest a sought-after source of future water for the rest of the West. Southwest states have already floated the far-out idea of piping in water from the Columbia River. Businesses such as technology companies that require reliable water supplies for manufacturing may see the consistency of Oregon's enormous reservoir as a strategic advantage.

Looking into the future, "the value of water coming out of this system absolutely exceeds any other economic value from national forests," Grant says.

The underground pool lies almost entirely within Oregon. Volcanic rock in the highest reaches of the Oregon Cascades is typically less than a few million years old, with cracks and crevices that store far more water than the older, dense

Washington Cascades. The spongy rock and the water it holds extend into northeastern California, and some of its spring water emerges into the Sacramento River system.

More study proposed

A group of OSU and other scientists including Grant are proposing more research to better gauge the subterranean supply and examine the potential effects if thirsty regions such as California and the Southwest someday seek to extract its water.

"We need to have a better understanding of what's there so we're in a position to make wise decisions about it in the future," said Michael Campagna, director of the Institute for Water and Watersheds at Oregon State University. "There's an exceptionally big resource here, and someone, someday, may want to use it."

Grant took flak from colleagues last summer after Campagna posted a California newspaper article on his blog, WaterWired. It described a lecture by Grant and hinted that Oregon's hidden reservoir could help cure California's perennial water shortage.

Some thought Grant was suggesting the water might go to

California. Not so, says Grant. Rather, he wanted to focus attention on where water comes from now, and how those places are likely to become increasingly important in a climate-warmed and water-challenged future," he wrote in a response on Campagna's blog.

But the exchange highlighted the value of the underground water system, and researchers are now considering how to better understand it.

On par with Lake Mead

The volume of the underground water is difficult to fathom. Most of it lies in a layer around 500 feet thick, Grant says. Rough estimates suggest the system probably holds at least as much water as Lake Mead, the largest constructed reservoir in the nation.

Actually, it probably holds much more, but some water remains locked in cracks and crevices and cannot find its way out. While eight years of drought has left Lake Mead half full, however, Oregon's reservoir is still brimming.

Given the enormous value of the reservoir of pristine water, Grant says, land managers may need to think about new ways to safeguard its quality. For in-

stance, it might be worth considering limits on transport of hazardous materials across some parts of the Cascades to reduce the risk of spills contaminating the water, he said.

Forests such as those that house the groundwater system must be managed in the future to promote sustainable water supplies as much as anything else, Jones' National Research Council panel concluded in a report last summer.

That's especially true as growth and development erode forested areas that have long held crucial watersheds, Jones said.

Huge springs discovered

When Grant and his team began studying the water system, they found its water spilling from large springs so little-known they don't appear on maps. One spring pours out a full 1 percent of the summer volume of the Willamette River — some 43 million gallons a day, enough to supply almost half of Portland's year-round water needs.

Grant isn't highlighting its location. "You can be sure the bottled water people would like to know all about it," he said.

He and his colleagues are also studying the way global warming may influence the underground water supply. Many climate models show that as temperatures rise, more winter snow will fall as rain instead and runoff the landscape more quickly. Less snow will remain to melt and feed rivers in summer, when water is needed most.

The underground Cascade reservoir changes the picture in the rivers its springs supply. Water entering the reservoir as rain or melting snow pushes water out of the springs, so as less water flows in from melting snow in the summer, less will exit the springs, Grant says.

However, because so much water remains underground, plenty is left to flow out during the summer. That means rivers fed by the reservoir's springs — though reduced somewhat by climate change — will keep flowing far more reliably than rivers fed by snowmelt alone.

"The high Cascades will continue to have water when others are losing it," Grant said. "When people look for where water comes from in the West, this is a place they will look."

Michael Milstein: 503-294-7689; michaelmilstein@news.oregonian.com



CENTRAL OREGON LANDWATCH

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WWW.CENTRALOREGONLANDWATCH.ORG

*Protecting Central Oregon's natural environment
and working for sustainable communities.*

MEMORANDUM

To: Land Conservation & Development Commission

From: Paul Dewey, Central Oregon LandWatch

Date: 2/26/2009

Re: Metolius Area of Critical State Concern – Whether There is a Risk to the Metolius

At the Madras hearing on February 12, representatives of the Ponderosa Land & Cattle Co. questioned whether or not there was any true risk to the Metolius from groundwater withdrawals associated with the Ponderosa's proposed destination resort. There was one particular reference to a communication from USGS hydrologist Marshall Gannett where it was represented that he stated that there would be little impact on flows as measured at a downstream gauge. There was also some reference to impacts on the Metolius being minimal and, finally, there was the suggestion that since you cannot see the Headwaters of the Metolius from where the resort is going to be built that there would be no impact.

None of these arguments hold water. USGS hydrologist Marshall Gannett has clearly stated that the proposed groundwater withdrawals by Ponderosa "most likely will result in diminished discharge" at the Headwaters of the Metolius. Just because there is a large amount of additional water entering the Metolius system further downstream so that the total water impact is small as measured downstream does not mean that the Headwaters of the Metolius and the surrounding area are not going to be impacted.

Additionally, the suggestion that a "small" or "minimal" impact to the Metolius is fine is totally unacceptable. There should be absolutely no negative impact to the Headwaters of the Metolius or the Metolius system. This is a waterway considered by many to be sacred. It would also be presumptuous to assume that we can model for all possible impacts.

See the attached recent newspaper article on unforeseen impacts to the area's hydrology. The current modeling apparently did not predict that water levels in these wells would be falling as precipitously as they are. If anything, this should give us caution as to relying on a model to show all possible impacts. The fundamental conservation "precautionary principle" should be applied here so that where there is any indication of an impact to such an important resource we should protect it rather than risk harming it by allowing uses that

REDMOND-PRINEVILLE-POWELL BUTTE TRIANGLE

Drop in groundwater perplexes scientists

2/23/09

By Nick Budnick

The Bulletin

SALEM — State and federal scientists are investigating a mysterious drop in groundwater levels in the triangle between Redmond, Prineville and Powell Butte.

One mile south of Redmond, for instance, they've seen water levels underground decline nearly 20 feet in the last 15 years.

If that trend looks to continue, it would be "troubling," said Doug Woodcock, a Salem-based groundwater manager with the Oregon Water Resources Department.

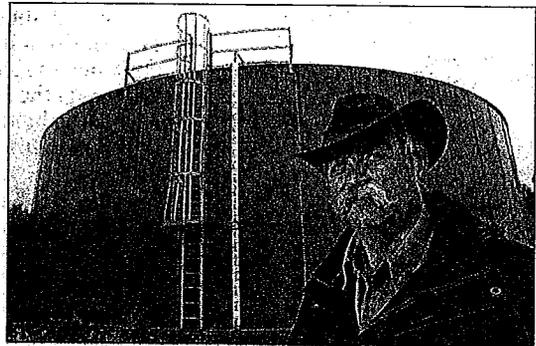
And depending on where the

new study points the finger, he acknowledged, it could reignite debate over a touchy subject: how water is managed in the Deschutes area.

"Basically, what we're trying to get a read on is, how solid (is) our management in this basin?" he said.

To let developers build and farmers grow, the state's Deschutes groundwater mitigation program requires users to purchase water rights to offset the effect their activities might have on the Deschutes River and its tributaries.

See Water / A5



Pete Erickson / The Bulletin

Mark Kerns, with Avion Water Co., Inc., said declines in groundwater levels shouldn't be a problem for cities or large users, whose wells reach deeper underground.

Water

Continued from A1

However, if the new study suggests that the program is not protecting underground water supplies, then it could lead to tighter rules, according to Kimberley Priestley of the group Water Watch of Oregon.

"I would think it would be of interest not only to the state but to developers," she said of the study. "If we're seeing declines, then that could bring a whole new layer of management."

A July 2008 U.S. Geological Survey document said that some of the area's well-water declines are because the basin started receiving less rain in the 1950s. However, it added, many wells "in the more developed parts of the basin appear to show declines larger than what would be expected due to climate alone."

If that is true, then it could have "important implications" for the Deschutes groundwater mitigation program, the document said.

A new model

For months, state officials been working with USGS hydrologists on the new study. They have been gathering data to dust off a computer groundwater model they haven't updated in years.

The three-dimensional model essentially carves the basin's surface area into hundreds of tiny squares, then cuts each of them into eight layers extending 1,800 feet deep. Each section is assigned a value to show how easily water moves through it, to simulate how water moves through the region's underground layers of rock, sand and sediment.

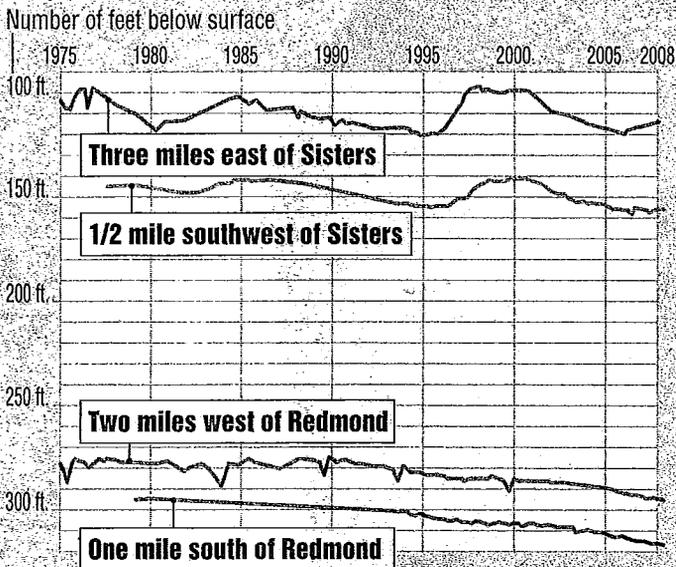
The model is being updated to show the number and location of new wells, add more recent data on rain and snowfall, and to show that some irrigation canals have been replaced by pipes - affecting recharge of the underground aquifer.

Once that work is complete, hydrologists will run tests to determine how much of the reduced groundwater reduction is due to pumping, how much to ir-

Well water levels

State and federal government scientists are studying declines in water levels in monitoring wells near Redmond.

Hydrographs of observation wells



Source: U.S. Geological Survey

Greg Cross / The Bulletin

rigation changes, and how much is attributable to reduced rain and snowfall.

Different opinions

It's a study that Kevin Limbeck will be watching with more than casual interest.

Limbeck is board president of the Powell Butte View Estates Water District, which serves 88 homes perched on the butte's western slope. He says the district drilled its well more than a decade ago, and has seen its water level drop 15-20 feet.

While it isn't affecting them now, he said, "In five or 10 years, who knows?"

He contacted the state water department about the issue, and was told that officials are working on it already.

Limbeck is keeping an open mind, but suspects the rapid pace of development in recent years is largely to blame, saying, "There've been quite a few large wells put down in the Powell Butte area."

Limbeck thinks Brasada Ranch is one possible contribu-

tor to the problem. But Mark Kerns, an Avian Water Co. manager who helps supply water for the development, disagrees. He said the development has barely started to pump due to the slow economy.

He agrees that pumping for new homes around Redmond, as well as changes in irrigation, such as moving water in pipes rather than canals, could be to blame for the decline in government observation wells. But he said the declines in upper reaches of groundwater don't pose a problem for cities and large users, whose wells reach deeper underground.

"All the wells we trust up there are in the 600-foot range," he said.

Marshall Gannett, the USGS hydrologist who is spearheading the study, said he doesn't think the declines pose an "imminent risk" to the basin's underground resource.

The study is expected to be completed by year's end.

Nick Budnick can be reached at 503-566-2839 or at nbudnick@bendbulletin.com.

Metolius resort may face water snag

2/14/09

Talks are under way on Ponderosa's well plan, but it may go to a judge

would damage the Metolius and the creeks that feed it.

Dwight French, a water rights administrator with OWRD, said there are talks under way to try and improve the Ponderosa well plan.

"We're trying to see where we're at, what the next step is," he said. See [Water / A7](#)

By Nick Budnick
The Bulletin

SALEM — The Ponderosa Land and Cattle Co. wants to drill as many as 10 wells 1,000 feet into the earth to draw water for the company's pro-

posed 2,500-unit destination resort on the edge of the Metolius River Basin.

And in December, the Oregon Water Resources Department issued a proposed permit that tentatively approved the plan.

But the department now appears to be having second thoughts after four environmental groups, the Confederated Tribes of Warm Springs, and some state and federal officials raised objections, saying the plan

raised objections, saying the plan

Water

Continued from A1

The talks are intended to overcome some of the objections. And the company's lobbyist, Rick Allen, a former Madras mayor, said his client welcomes the opportunity to address the concerns. "We'll follow all requirements," he added.

Environmentalists are less sanguine. They say their objections go to the heart of the Deschutes Groundwater Mitigation Program, a state-approved water-rights transfer system designed to protect rivers while supporting Central Oregon's economy.

"The program has serious shortcomings, and we're going to see that play out in the Metolius basin," said John DeVoe, head of

the group Water Watch. "It may boil down to a question of law that has to be litigated."

The issue is more simple than it sounds.

The Deschutes groundwater program requires that for every gallon of water you pump out of the Deschutes basin, you must pump another gallon into the waterways to make up for what you use.

The catch? The program doesn't require that you replace the water in the area of where it was taken out.

The proposed resort's wells would use more groundwater in a year than the city of Sisters. According to a federal study, and to OWRD itself, those wells could eventually affect the levels of the Metolius River and its tributaries.

The groundwater program's rules, however, allow the impacts on flows in the Metolius basin to be offset by purchasing water rights far downstream, in the Deschutes River.

DeVoe and the other critics of Ponderosa's water plan say that is not sufficient.

This aspect of the state program has bugged environmentalists for years, but letters submitted by the U.S. Forest Service and the Oregon Department of Fish and Wildlife suggest that the greens' ideas are gaining traction.

John Allen, the Forest Service manager who oversees the Deschutes National Forest, wrote in a Jan. 14 letter that by failing to protect the Metolius and its tributaries, the plan would have significant impacts on fish spawn-

ing grounds.

Similarly, on Jan. 27, Brett Hodgson, a Bend-based fish biologist with the Oregon Department of Fish and Wildlife, warned the water department that the Ponderosa plan appears likely to hurt rare and endangered species, including bull trout, redband trout, kokanee, spring chinook and sockeye salmon.

The water resources department in the past has rejected the idea of changing the Deschutes groundwater program in the way environmentalists want. Requiring that impacts of new water permits be offset in the immediate area of those impacts could do serious damage to Central Oregon's economy, state officials say.

For instance, such a rule would

"seriously constrict" new development in the Sisters area, according to an Oct. 31, 2007, letter sent to Gov. Ted Kulongoski by state Water Resources Director Phillip Ward. That's because new wells near Sisters would hurt the Metolius basin water flows, and the regional water bank has no water rights for sale in that area to offset any impacts as such a rule would call for.

To shepherd through its water application, Ponderosa has retained attorney Martha Pagel of the firm Schwabe, Williamson & Wyatt, who spent eight years in the top state water post now held by Ward.

Asked about environmentalists' objections, she said that any impact on the Metolius "would be very small and not measurable in relation to the amount of

flow in the river."

DeVoe, however, scoffs at her argument.

"That's the problem with these issues is we are often dealing with the death by a thousand cuts," he said. "The Metolius is one of Oregon's crown jewels; we wouldn't let someone come in and cut a couple of hundred feet off the top of Mt. Hood, and we shouldn't let someone have an incremental impact on the Metolius, either."

The department has one month to try to improve Ponderosa's plan before deciding on whether to issue a permit or send the dispute to an administrative judge.

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*Protecting Central Oregon's natural environment
and working for sustainable communities.*

MEMORANDUM

To: Land Conservation & Development Commission

From: Paul Dewey, Central Oregon LandWatch

Date: 2/26/2009

Re: Metolius Area of Critical State Concern – Justification for ACSC Designation Because Important Values are Threatened (see related Memo, “Whether There is a Risk to the Metolius”)

The critical criterion for ACSC designation that there is “an area with natural, cultural, or other values of importance to the state as a whole, where those important values are threatened by sources that are not controlled by existing systems” is clearly met here.

While the draft LCDC materials on the Metolius ACSC are correct in stating that Jefferson County in the past limited development in the area by designating most of the lands as forest lands, LCDC actually understates that protection. The previous Jefferson County plan and code for the area were among the strictest in the state regarding protection of forest lands. No forest lands could be partitioned and there was no automatic right to a forest dwelling. Rather, there needed to be justification that qualified a house as an appropriate “forest dwelling.” The LCDC Metolius ACSC discussion draft is wrong at page 16 in suggesting that houses could be built on parcels of 240 acres. That was only a state rule and the County had not adopted it.

Also, the LCDC Metolius ACSC materials fail to note that the Camp Sherman Area was considered a special area under the Jefferson County Comprehensive Plan. A special Appendix I Camp Sherman Area included 36 pages of description of the special qualities of the Camp Sherman/Metolius area, its history, its physical features and processes, goals for the area, recognition of the open spaces, scenic and historic areas and natural resources, plus air, water and land resources. Because these comprehensive plan provisions were apparently seen as a potential impediment to allowing increased development in the zoning code, and because of Goal 2's requirement of consistency between a comprehensive plan and a code, Jefferson County deleted this special Camp Sherman Appendix in its entirety.

In addition to dropping the previous recognition of Camp Sherman/Metolius as a unique area in Jefferson County, the County then amended its zoning code to allow increased

development in the forest (to the maximum allowed by state law), allowed partition of forest lands down to 80 acres in size (again to the maximum allowed by state law), allowed lot of record dwellings for the first time and allowed destination resort development. Despite this substantial increase of allowed development in the Camp Sherman and Metolius area, the County did no assessment of environmental impacts associated with the new development and did not update its 28-year-old Goal 5 inventories.

At the same time Jefferson County was removing substantial protections for the Camp Sherman and Metolius areas in its comprehensive plan and zoning code, three state agencies, ODFW, DEQ and OWRD were notifying the Governor that current state laws are inadequate to protect the waters of the Metolius.

Accordingly, this combination of Jefferson County's fundamental shift in no longer protecting the Metolius/Camp Sherman area and the state agencies' recognition of a gap in protection for the Metolius clearly justify the State's designation of the area as an ACSC.

There is no dispute by anyone that it is an area of statewide importance.



Central Oregon LandWatch

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MEMORANDUM

To: Land Conservation & Development Commission

From: Paul Dewey, Central Oregon LandWatch

Date: 2/26/2009

Re: Metolius Area of Critical State Concern – No Violation of the “Fixed Goal Posts” Rule is Involved Here

In the debate on protection of the Metolius from destination resorts, there have been arguments and suggestions by the developers that the “fixed goal posts” rule is being violated and that there are existing development rights being abrogated. That is not the case. There are no “fixed goal posts” here and no acknowledged or effective plan or code amendment or maps that allow destination resorts in Jefferson County. There have also not even been any destination resort applications.

The “fixed goal posts” rule of ORS 215.427(3) shields applications for a permit, limited land use decision or zone change from changes in applicable land use law that are adopted after an application for one of those kinds of land use decisions is complete. *Friends of the Applegate v Josephine County*, 44 Or LUBA 786, 789 (2003). ORS 215.427(3)(a) also requires that a comprehensive plan and land use regulations be “acknowledged” under ORS 197.251.

Jefferson County’s proposed comprehensive plan, map and zone code amendments for destination resorts are not “acknowledged.” The Oregon Court of Appeals has ruled that if an appeal is taken within 21 days of adoption of local legislation that “the amendment or new legislation is not deemed acknowledged until the time that a LUBA or judicial decision affirming it becomes final. ORS 197.625(1), (2).” *Orenco Neighborhood v City of Hillsboro*, 135 Or App 428, 432 (1995).

ORS 197.625 defines when an amendment or new regulation is considered acknowledged and it expressly provides that an amendment to a comprehensive plan or land use regulation is not considered acknowledged unless LUBA or the appellate courts affirms the local government decisions. Where LUBA has already remanded the destination resort comprehensive plan and destination resort provisions, *Johnson v Jefferson County*, ___ Or LUBA ___ (Feb. 11, 2008) (slip op at 43), and other provisions are currently on appeal to

the Oregon Supreme Court, there is no acknowledged plan amendment, map or zone code for destination resorts.¹

In addition to the fact that the “fixed goal posts” rule does not apply here, the Jefferson County ordinances are also not “effective.” ORS 197.625(3) provides that prior to acknowledgment a comprehensive plan or land use regulation amendment may be considered “effective” at the time specified in the ordinance and if adopted in substantial compliance with ORS 197.615(1). However, the local government ordinances adopting the comprehensive plan, map and zone code amendments became “ineffective” when LUBA remanded the County’s decisions. *See, Hollywood Neighborhood Assoc Inc v City of Portland*, 22 Or LUBA 267 (1991), *citing Standard Insurance Co v City of Hillsboro*, 17 Or LUBA 886, 900 (1989).

Accordingly, there is no acknowledged or existing effective comprehensive plan, map or zone code provision allowing destination resorts in Jefferson County and no land use applications involved here.

¹ *See also, Rutigliano v Jackson County*, 42 Or LUBA 565 (2002), where LUBA pointed out that the goal posts rule does not apply to an application for a zone change where that application is part of an application for a comprehensive plan amendment, as is the case here. Additionally, there have been no destination resort development applications filed here.



Central Oregon LandWatch

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February 26, 2009

LCDC Sub-Committee Hearing
Draft Metolius ACSC

Dear Chairman and Committee Members,

Jefferson County Farm Bureau has been involved with destination resorts trying to be sited within our North Unit Irrigation District irrigated agricultural lands since 1908. Last October we testified before this commission at the joint hearing held by this commission with the Interim House Agriculture and Natural Resources Sub-Committee on destination resorts. Our position has not changed.

In that testimony we spoke about the battles that we as a farm bureau had fought over 20 years to protect our high value crop areas. It truly caught us off guard to be under attack by this agency as the solution to "fairness" for the resort developers and Jefferson County if "area of critical State concern" if adopted for the Metolius Basin. How did we wind up in the middle of the battle to protect the Metolius Basin?

You may feel that this hearing is just a testing of the waters and that we shouldn't be so upset. We are upset and do feel that we are under attack and we are prepared to fight to save our agricultural lands as we have in the past. In the past we worked with the department of DLCD and ODA.

It has always been our belief that we need to work together to have strong protection of our agricultural lands within our North Unit boundaries. Nothing has changed except that now we aren't viewing DLCD or LCDC as our allies.

Bottom line is why would you be willing to damage one of the best agricultural areas in Oregon to appease resort developers. We are still in production and an economic engine for Jefferson County and the State of Oregon. We haven't laid off our farm workers and stop crop production just because the economy has turned bad. We have not exported our lands or jobs out of the State of Oregon. With everything about green house gases and carbon foot print that is even another reason to protect us over a resort.

The law isn't broken to protect our best soils and crop area unless you as an agency and the Governor decide to break it. Please stop this madness and stop the proposal to swap the proposed land in the North Unit Irrigation District to make the county and developers whole in your eyes. We ask for you to keep us whole.

Sincerely,

Ed Chotard
President
Jefferson County Farm Bureau
798 SE Dover Lane
Madras, Oregon 97741

JEFFERSON County officials ; RESORT LOBBYISTS ALLEGE "RULES HAVE BEEN CHANGED IN THE MIDDLE OF THE GAME". Warm Spgs TREATY RIGHTS ; SENIOR WATER RIGHT HAS BEEN IN FORCE OVER A HUNDRED YEARS! JEFFERSON County OVERLOOKED OR IGNORED MY RIGHT TO QUESTION ITS PROPOSALS. S.C. FAILED TO FORMALLY APPROACH THE CONFEDERATED TRIBES BEFORE FINALIZING IT REVISED COMPREHENSIVE PLAN AND THE APPROVAL OF TWO RESORTS IN A WATERSHED WHERE WE POSSESS SENIOR WATER RIGHT. "IGNORANCE OF THE LAW IS AN INDEFENSIBLE ARGUMENT"

THERE IS AN OBVIOUS LACK OF PRUDENT ADMINISTRATION, OVERSIGHT AND ENFORCEMENT BY FEDERAL, STATE AND LOCAL AUTHORITIES OF EXISTING LAWS, REGULATIONS, AND

WATER QUALITY AS OUTFRINED BY THE CLEAN WATER ACT IS NOT BEING ADHERED TO OR ENFORCED. LAKE SIMTUS HAS ALREADY HAS IDENTIFIED NITRATE OVERLOADING, THE DISCHUTES/CROOKED RIVER SHOW EVIDENCE OF THE SAME. NONE OF WHICH CAN ~~BE~~ THE BLAME FOR SUCH DEGRADATION IS FROM NOT FROM ANY DEVELOPMENT ~~THE~~ OF THE CTWS BUT YOUR TRIBES' ECONOMIC PURSUITS! IT DOES NOT REQUIRE A DEGREE IN ENVIRONMENTAL SCIENCE, ONE ONLY NEEDS TO COMMON SENSE ; THE ABILITY TO PUT TWO & TWO TOGETHER. ELEVATED NITRATES ; WATER TEMPERATURES WILL MATERIALIZE IN THE METOLIAS RIV unless APPROPRIATE AGENCIES ARE HELD ACCOUNTABLE FOR THEIR LACK OF PRUDENT ADMIN, OVERSIGHT AND ADHERENCE TO EXISTING LAWS ; REGULATIONS!

Water Demand is ~~the~~ ANOTHER SERIOUS FLOW THAT CANNOT BE IGNORED! IT IS A WELL KNOWN FACT THAT OREGON DEPARTMENT OF WATER RESOURCES HAS OVER ALLOCATED THE WATER RESOURCES WITHIN THE DESCHUTES/METOLIAN WATER SHED. So how is the huge water demand these two resorts will require going to be met?

THE METOLIAN AT LEAST made the ^{Proposal} ATTEMPT to go "GREEN", however our Senior Water Right cannot be ignored! THE larger of the two could cover 10,000 ACRES, 2500 homes and multiple GOLF COURSES.

EVALUATING my concerns OF ^{Improper} ~~prudent~~ MANAGEMENT BY ~~THE~~ ODWR IS THE FACT STATE EMPLOYEES LACK THE ABILITY TO VERIFY ACTUAL WATER DIVERSIONS OF ^{EXISTING} Junior Water ^{DIVERSIONS} Right, THE media has published STATEMENTS THAT ODWR HAVE BEEN DENIED ACCESS TO VERIFY ACTUAL WATER ~~and~~ property and BEEN THREATENED WITH physical violence trying to administer ^{WATER DIVERSION} ~~the~~ verify existing ~~water~~ REGULATIONS OR LAWS, THAT SAY A LOT ABOUT ~~the~~ ~~seriousness~~ the lack of prudent oversight AT ALL LEVELS OF GOVERNMENT. ~~agencies~~,

THE RESERVED RIGHTS OF NATIVE AMERICANS TREATY IS KNOWN AS FEDERAL INDIAN LAW AND THEY HAVE BEEN ACKNOWLEDGED NUMEROUS TIMES AT ALL LEVELS OF ^{THE} JUDICIAL SYSTEM, INCLUDING THE U.S. SUPREME COURT. THESE UNIQUE ~~Reserved~~ Treaty Rights ARE NOT "SPECIAL RIGHTS", ~~as~~ ~~but~~ IT IS A SHINING EXAMPLE OF THE NEGOTIATING SKILLS OF MY ANCESTORS. THEIR ACUTE PERCEPTION [;] FORTSIGHT OF LIFE'S BASIC NEEDS WAS IMPECCABLE. THEY UNDERSTOOD HOW IMPORTANT THESE RESERVED RIGHTS WOULD BECOME WITH THE PASSING OF TIME, THEY UNDERSTOOD NATURAL

RESOURCES WERE limited in supply, that demand would exceed supply. THEY WERE NOT THE IGNORANT people THAT the public ~~perceived~~ HAS PORTRAYED them to be, THEY IN FACT WERE VERY "COMPREHENSIVE" in ^{the} RESERVING OF RIGHTS for following generations, for their survival and THEIR enjoyment!

THANK YOU
RANDY SMITH

✓ THE PUBLICS OR ANY OF PERSONAL
IF ~~you~~ YOUR RIGHTS WERE IGNORED OR NEGLECTED YOU NATURALLY WOULD BRING THIS CONCERN TO THE APPROPRIATE INDIVIDUAL OR AGENCY. I AM EXERCISING ~~this~~ EXACTLY THAT ON MY BEHALF, FOR THE ENROLLED MEMBER UNABLE TO ATTEND AND THE COUNTLESS GENERATIONS OF MY/OUR DESCENDANTS
FOR USG