

Action item: Rulemaking Petition to Designate the Metolius River as an Outstanding Resource Water

Water Quality Standards and Assessment

Item F

Sept. 23, 2022

Outline

- Petition request and ORW policy
- Petition process
- Petition evaluation
- Summary of public comment
- Additional considerations
- Recommendation



Photo courtesy of Connie Dou, DEQ

Outstanding Resource Water Policy

- Antidegradation policy :
 - Three classes of waters:
 - Impaired,
 - High quality, and
 - **Outstanding resource waters**
 - “Where high quality waters constitute an outstanding state resource, existing water quality must be maintained and protected.”



Photo courtesy of Connie Dou, DEQ

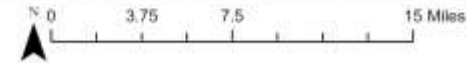
Metolius ORW Petition Request

- Submitted by Friends of the Metolius and the Northwest Environmental Defense Center
- Requests rulemaking amendments to:
 - Designate the Metolius River from its headwaters to Monty Campground as an Outstanding Resource Waters
 - Establish policies to protect current water quality and ecological integrity of this portion of the Metolius River.

Location of ORW Designation in Petition

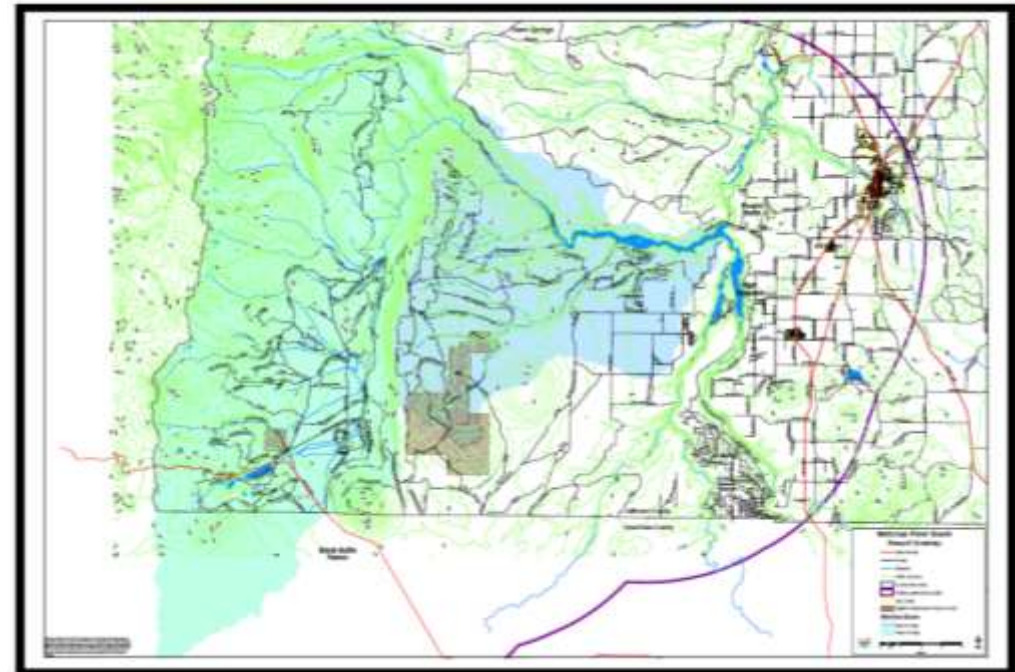


- Proposed Metolius River ORW Designation
- Tributaries to Proposed ORW Designation
- Tribal Lands



Proposed Protections in the Petition

- Prohibit new NPDES discharges.
- Prohibit activities that would degrade existing water quality and ecological values of Metolius.



Petition Process

- Any person can submit petition to adopt, amend or repeal a rule.
- The petition must:
 - Clearly show the proposed revisions;
 - Provide supporting facts and arguments; and
 - Address several considerations in OAR 130-001-0070(2).
- Agency must invite public comment.
- Agency has 90 days to act on the petition.

Commission Options

- Commission options for a petition:
 - Grant the petition and direct DEQ to initiate rulemaking based on the petition
 - Deny the petition
 - Deny and direct DEQ to take other action

Evaluation Factors for Petitions

Rule with proposed deletions/additions

Reasons for and effects of rule amendment

All propositions of law asserted by petitioner

Options for achieving the existing rule's goals while reducing negative economic impact on businesses

Continued need for existing rule

Extent to which existing rule overlaps, duplicates, or conflicts with other rules

Degree to which technology, economic conditions, other factors have changed in area

Petition: Supporting information

- Water quality
 - Cold, spring-fed, clear water
 - Stable
- Ecological Value
 - Robust Bull Trout population
 - Salmon, Trout, Mountain Whitefish
- Recreational Value
 - Fly-fishing, camping horseback riding, scenic views



Photo courtesy of Connie Dou, DEQ

Effects of Proposed Rule

- Petition does not present information on the potential effect of proposed rule on various uses and land and resource managers.
 - Confederated Tribes of Warm Springs
 - Deschutes National Forest
 - ODFW
 - OWRD
 - Residents and businesses

Petition Evaluation

- Complexity, due to multiple land uses and regulators.
- Current designations/protections
 - Wild and Scenic River
 - State Scenic Waterway
 - State Area of Critical Statewide Concern
 - Deschutes Forest Plan/Northwest Forest Plan



Photo courtesy of Connie Dou, DEQ

Petition Evaluation

| | |
|---|-----|
| Rule with proposed deletions/additions | ✓ |
| Reasons for and effects of rule amendment | X |
| All propositions of law asserted by petitioner | ✓ |
| Options for achieving the existing rule's goals while reducing negative economic impact on businesses | X |
| Continued need for existing rule | n/a |
| Extent to which existing rule overlaps, duplicates, or conflicts with other rules | X |
| Degree to which technology, economic conditions, other factors have changed in area | ? |

Public Comment

- 1,804 comments
 - 1,742 comments in support of petition
 - 58 opposing petition
 - Four comments neither supporting nor opposing petition.
 - Comments from ODFW and Deschutes National Forest

Other factors to consider

- Water Quality Standards triennial review to prioritize work.
- A robust 2021 WQS triennial review workplan
- Benefit of ORW designation



Photo courtesy of Connie Dou, DEQ

Recommendation

- DEQ recommends that the commission deny the petition because it doesn't meet state petition requirements.
- *“I move that the Oregon Environmental Quality Commission deny the petition on the rule amendments proposed by the Friends of the Metolius and co-petitioner Northwest Environmental Defense Center on June 27, 2022.”*