



INSTREAM

Fall '17 Newsletter



Molalla River courtesy U.S. Bureau of Land Management

Stream of Consciousness: Demanding Environmental Justice in Water Policy

By John DeVoe, Executive Director



Environmental justice - as it relates to water – rightly focuses on which people and communities bear the impact of processes, policies, or investments that unfairly distribute environmental benefits as well as burdens. From the hepatitis outbreak in San Diego, to the drinking water crisis in Flint, to the Portland Harbor cleanup, to the many ongoing but often ignored struggles of Native American people, water-related environmental injustices impact communities all around us. Research reveals overwhelming evidence confirming what many disadvantaged communities have suspected for a long time. In the words of

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WaterWatch's mission is to protect and restore streamflows in Oregon's rivers for fish, wildlife, and the people who depend on healthy rivers.

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*WaterWatch of Oregon publishes
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Jim McCarthy, Editor*

(Stream of Consciousness: Demanding... Continued from page 1)

Dr. Amy Vanderwarker, "Race and class matter in the distribution of environmental burdens."

Federal water policies that have contributed to environmental injustices, particularly regarding pollution and water quality, have received growing criticism and some federal agencies have taken initial steps toward reform. But there has been little accompanying analysis of state-level water policies in the West, including Oregon. This is a significant blind spot. States like Oregon have enormous power to allocate and manage water through prior appropriation and water right permitting systems. Unfortunately, the processes surrounding Oregon's decisions on water are frequently bewildering and opaque. Oregon is also increasingly becoming a water investor, providing public money for water infrastructure – often controlled by private interests. All of these decisions distribute benefits and burdens, sometimes unfairly and at the expense of the public interest and communities dependent on healthy freshwater ecosystems. For example, Oregon's ongoing unsustainable groundwater permitting debacle unfairly burdens specific communities as well as future generations. These issues require Oregonians' collective scrutiny and action.

One environmental injustice, which deserves your scrutiny and action, recently brought the Klamath Basin back into national headlines. Last year, federal investigators found agribusiness interests in the federal Klamath Irrigation Project had "wasted" \$32.2 million in taxpayer funds intended to secure water for the basin's struggling fish and wildlife between 2008 and 2015. Over this same period, salmon in the Klamath River and waterfowl in the Klamath's National Wildlife Refuges suffered catastrophic losses due to lack of water. For example, in 2015 Klamath Project irrigators bought themselves 31.4 billion gallons of supplemental water using millions in taxpayer dollars, but that spring the Project's managers refused to boost Klamath River flows by just 1.6 billion gallons. Federal fisheries officials had requested the water to

reduce mass mortality of outmigrating young salmon during drought, losses which had skyrocketed above ninety percent.

The few 2015 outmigrants who survived now make up the 2017 returning adults - projected to be the lowest Klamath salmon run ever recorded. In response, officials have shut down salmon fishing while the region's salmon-dependent Native American tribes and coastal fishing communities bear the brunt of this injustice. Oregon's Governor has requested a federal disaster declaration in anticipation of millions of pounds of lost food production, hundreds of lost jobs, and millions of dollars in lost economic activity.

The U.S. Bureau of Reclamation, which provided the \$32.2 million, has refused to acknowledge wrongdoing, despite corroboration of the investigators' findings in a review by the U.S. Office of Special Counsel. Meanwhile, Interior Secretary Ryan Zinke has ignored the findings of his own investigators.

Perhaps worst of all, Oregon's U.S. Senators Wyden and Merkley have not only remained silent in the face of this scandal, they inserted language in the pending 2017 Senate Energy Bill to authorize millions more dollars for more harm, injustice, and waste in the Klamath. Their language in Section 9301 of the bill authorizes an irrigator-authored water use plan for Klamath Project that isn't required to conserve water, return a single drop to the river, or even consult other interests in the basin, including tribes, fishermen or conservationists. The language also proposes sweetheart subsidies, funded by taxpayers, for the costs of pumping irrigation water in a region already plagued by runaway water use. These subsidies would overturn the biggest concrete water conservation gains in the Klamath since 2001, when the basin's water conflicts first grabbed national headlines.

Please take action to oppose Wyden and Merkley's unjust and damaging proposal and hold our government accountable for the harm done to Oregon's communities.



Water being pumped from Klamath National Wildlife Refuge lands so it can be commercially farmed instead of providing fish and wildlife habitat. Photo by Jim McCarthy

Take Action for Environmental Justice in the Klamath!

Learn more and take action to oppose Section 9301 of the 2017 Senate Energy Bill by visiting our online RiverAction Alerts at waterwatch.org.

Or call Oregon's U.S. Senators and ask them to:

Oppose Section 9301 of the Senate Energy Bill, and any other sweetheart subsidy efforts that unfairly distribute environmental benefits and burdens in the Klamath Basin.

Demand Interior Secretary Zinke hold accountable those responsible for wasting \$32.2 million in public funds in the Klamath Project, including the U.S. Bureau of Reclamation.

Support equitable solutions that bring demand for water in the Klamath Basin back into balance with what nature can provide, and allow fish and wildlife populations, Native American Tribes, coastal salmon communities, and farmers to thrive.

Office of U.S. Senator Ron Wyden: 202-224-5244

Office of U.S. Senator Jeff Merkley: 202-224-3753

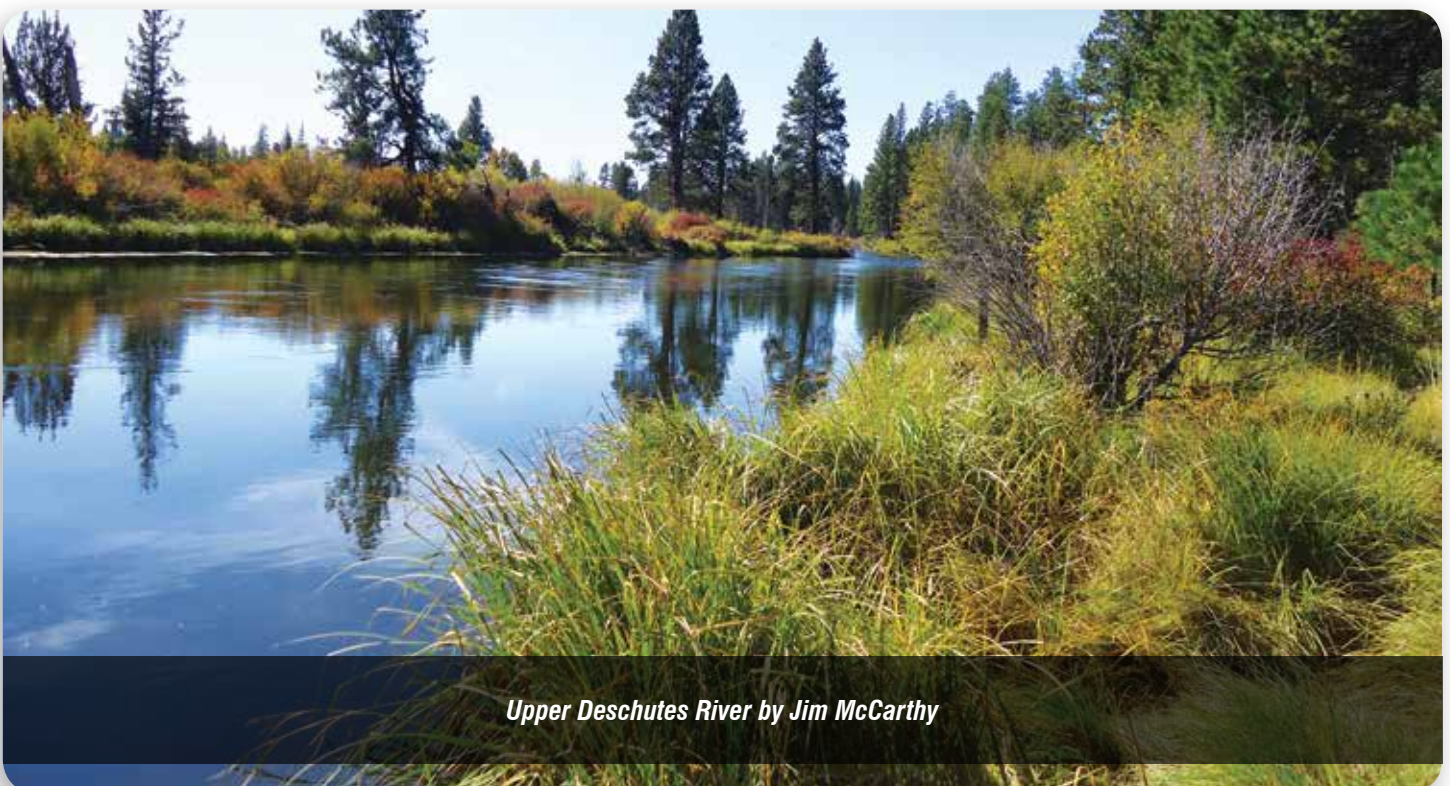
Help Shape the Fate of the Deschutes Basin for the Next Generation!

After ten years of planning and the expenditure of over \$3.4 million of public funds, the Deschutes Basin Habitat Conservation Plan has begun moving through the National Environmental Policy Act process. This plan covers most of the 10,000-square-mile Deschutes River Basin, with the exception of the Metolius River subbasin. Native fish and wildlife covered in the plan include three federally-listed species (Oregon spotted frog, bull trout, and steelhead) and two non-listed species (sockeye salmon and spring chinook salmon).

Eight irrigation districts and the City of Prineville are preparing the plan in order to receive a permit granting relief from liability under the federal Endangered Species Act for activities such as water storage, operation of dams and reservoirs, and water diversions from Deschutes Basin rivers and streams, among other actions. Known as an Incidental Take Permit, this permit would allow the holders to legally proceed with activities which would otherwise result in the unlawful harm to fish and wildlife on the brink of extinction.

The plan will direct future management of the Deschutes and Crooked Rivers, including determining how much flow the irrigation districts must restore in rivers and streams to help support fish and wildlife. For example, Wickiup Dam on the Upper Deschutes River will fall under this plan. For those concerned about the harmful practice of dewatering the Upper Deschutes in the winter and annually flooding it in summer, please register your concerns during this process. For lovers of the Crooked River, please push for adequate dry year management to ensure flows beyond those provided by the Federal Crooked River Act of 2014.

The next step – public comment on the draft Environmental Impact Statement prepared by the U.S. Fish and Wildlife Service – will be extremely important. Please sign up for RiverAction Alerts so you can help! WaterWatch will let our members know of critical deadlines in the coming months so we can all work together to protect and restore these Central Oregon rivers for all the critters and people who depend on them.



Upper Deschutes River by Jim McCarthy



In Harney County, the state has issued far more groundwater permits than the resource can support. Photo by Lisa Brown

Groundwater Management Reform Still Lacking Despite Ongoing Harm

In the year since “Draining Oregon” *The Oregonian’s* landmark exposé of Oregon’s unsustainable groundwater management, followed by a state audit which further underscored the problem, the state has continued to blindly issue new groundwater pumping permits when it lacks data to determine if the new pumping is sustainable. When the state lacks that data, it defaults to issuing the permit. This reckless practice has contributed to the overtaxing of groundwater supplies in many areas across Oregon – including most recently the Walla Walla sub-basin and the Malheur Lake Basin. WaterWatch continues to urge the state to instead default to “no” in these cases while sounding the alarm on the harm caused to Oregon’s communities, water supplies, and the environment.

WaterWatch analyzed groundwater permit issuance by

the Oregon Water Resources Department from August 1, 2016 through August 31, 2017. During that time, 83 percent of the 123 new groundwater permits, or 102 new permits, were issued when the Department could not determine whether groundwater was already overdrawn. Another two were issued with a determination that groundwater was already over-drawn. “Draining Oregon” highlighted this misguided policy, but the Department has been unwilling or unable to change.

Oregon’s 1955 Groundwater Act sets out permit issuance standards, including limiting new rights to those “within the capacity of available sources.” The state also has policies and rules against over-appropriation of groundwater and requirements that water be available for

(Continued on page 6)

any new permit. However, the Department has continued to over-appropriate groundwater that – along with all water in Oregon – belongs to the public.

In the arid Malheur Lake Basin, which roughly overlaps Harney County, the Department apparently issued permits for approximately 100,000 acre-feet more water than the resource can sustain. That represents about half the total developed groundwater in this area and about a third of the issued groundwater permits.. The frenzied groundwater permitting only ended after WaterWatch challenged several permitting decisions. The United States Geologic Survey and WRD are currently conducting a study to better understand the area's groundwater—unfortunately, only after the state over-appropriated the resource.

Issuing groundwater permits without data to determine whether pumping will be sustainable hurts both people and the environment. It hurts irrigators who have invested in wells and infrastructure only to face an uncertain water future. It hurts people who rely on domestic wells, which tend to be more shallow and vulnerable to dropping aquifer levels. And it hurts fish, wildlife, and habitat supported by groundwater fed springs, streams, and lakes.

In Harney County, the Department provided a one-year grant to help fund a collaborative process for people to address water issues within existing law. WaterWatch is participating and believes that while these processes can yield positive results, a one-year grant for a collaborative process is inadequate to address the problematic situation created by over-appropriating the groundwater. The Department should focus on avoiding creating the problem in the first place.

In the fall of 2016, the Oregon Water Resources Commission directed the Department to develop a long-term groundwater workplan. Among other things, WaterWatch is urging that this workplan clearly halt the “default to yes” policy, and instead commit to implementing the requirement that only permits within the capacity of the resource be issued. WaterWatch will continue to push for needed policy changes, challenge unsustainable groundwater permitting decisions, work to secure resources for groundwater studies, and engage with stakeholders to ensure a better water future for all Oregonians.

Connect with WaterWatch on the Web!

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Water Briefs From Around the State

Help Achieve Lasting Protections for the Nehalem River

With beloved tributaries such as the Salmonberry River, the Nehalem River emerges from Oregon's northern Coast Range to flow into the Pacific Ocean near the small town

of Nehalem, just south of Manzanita. The river is a favorite of boaters, anglers, and hikers, while providing important habitat to a myriad of fish species, including coho, spring and fall chinook, steelhead, chum, and sea-run cutthroat.

The State Scenic Waterway Act, voted into law by Oregon citizens in 1970 by a two-to-one margin, exists to protect Oregon's most beloved wild and scenic rivers – such as the Nehalem. This visionary Act mandates that the highest and best uses of waters in state scenic waterways are for fish, wildlife, and recreation.

Once designated, the state of Oregon would manage these waterways to protect their natural resources, scenic values, and recreational uses. Importantly, the protections afforded to the Nehalem River under this designation would include safeguards for water quality and instream flows, as well as a prohibition against the building of new dams.

The Oregon Department of Parks and Recreation held a public hearing in the small town of Nehalem (approximately 300 residents) on September 12th to gauge support for moving forward in its study of this river. Over 45 people showed up! As of that date, a month before written comments were due, over 500 people had submitted letters and emails of support. Thank you to all those WaterWatch's members who either went to the hearing or submitted comments!

Your support will still be needed at important junctures in the coming months. WaterWatch and our allies will get the word out, so sign up for RiverAction Alerts and stay tuned for further opportunities to voice your support. For the Nehalem, thank you!



WaterWatch board member Matt Deniston enjoying the Nehalem River. Photo by Marcus Straw



WaterWatch is working to ensure threatened fish in the Willamette Basin have enough water to survive. Hills Creek Dam by Brian Posewitz

Finding a Fair Share for Fish in the Willamette Basin Reservoirs

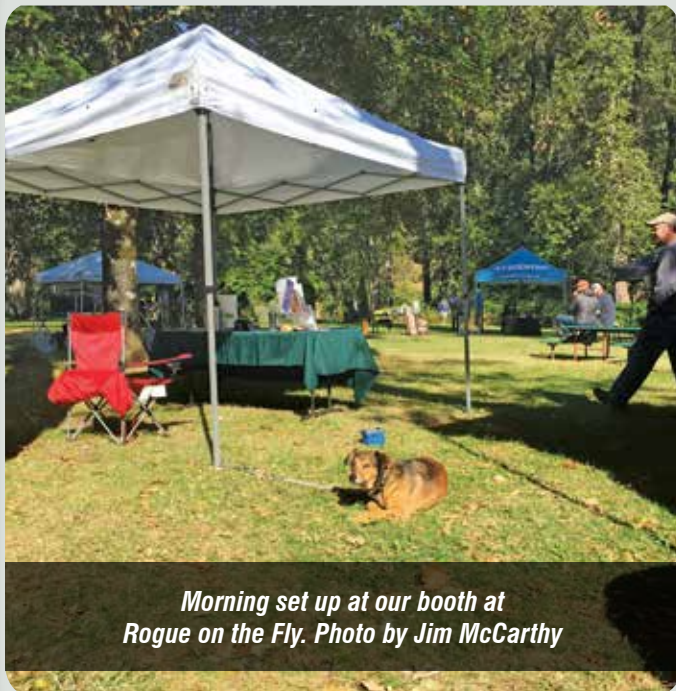
The U.S. Army Corps of Engineers and the Oregon Water Resources Department are currently determining which interests get how much water from the Corps' thirteen Willamette River Basin reservoirs. WaterWatch is working in this process to ensure threatened fish in the Willamette Basin have enough water to survive. The public will soon have a chance to weigh in with their views when the official proposal is released.

Unfortunately, we expect the agencies' initial proposal to provide fish less water than federal experts have recommended by only meeting mandated flow targets for struggling fish about 75 percent of the time. Meanwhile, the expected proposal would make generous allocations for increases for irrigation, municipal, and industrial uses. We can do better for the Willamette, which is a cherished backyard river for many people living in the most populated areas of the state.

In years of adequate runoff, these Corps reservoirs store about 1.6 million acre-feet of water to release later

for fish and wildlife, irrigation, and municipal use. The dams store water for these and many other purposes, but current law and regulations are silent about which purpose gets how much water. Worse, the water rights for the reservoirs, which are held by the U. S. Bureau of Reclamation, authorize only irrigation use, which means only irrigators can get contracts for the water. Water is released for fish primarily to protect fish listed under the federal Endangered Species Act, but unlike the water in irrigation contracts, the water currently released for fish cannot be protected from use downstream by other interests with water rights. The reallocation of reservoir water could eventually provide contracts to protect flows for fish, which would represent a big win for the river and the people who depend upon it.

You can help us convince the Corps and the Water Resources Department to do the right thing and set aside enough water for fish. Sign up for RiverAction alerts for more information on this issue and reminders of your chance to comment.



*Morning set up at our booth at
Rogue on the Fly. Photo by Jim McCarthy*

WaterWatch in the Community

WaterWatch...

- ... Presented at Conservation Alliance's Portland Backyard Collective
- ... Tabled at Rogue on the Fly
- ... Spoke on a panel at the Fly Fishers Club of Oregon
- ... Spoke at a Coalition of Oregon Land Trusts event on Oregon water challenges and solutions

Pushing for Improvements to Highway Culvert Fish Passage Program

The Oregon Department of Fish and Wildlife plans to propose renewing and expanding an expiring program that has been in effect west of the Cascades since late 2014 which lets the Oregon Department of Transportation do less than required for fish passage when it repairs culverts for streams crossing state highways. Culverts often create fish migration problems because they increase water velocities and create elevation changes that fish can't jump.

The Department of Transportation says it has 11,000 culverts in need of repair statewide and that it would cost \$1.4 billion to repair them all to current fish passage standards. The program allowing repairs to less than full standards is based on budget constraints of the Department, which says it has only about \$90 million for culvert repairs.

In December, Fish and Wildlife plans to ask its Commission

to renew the program for another five years and expand it to sites east of the Cascades. In exchange, the Department would pay money for fish passage at other high priority sites, including \$4.2 million in its own program and at least \$2 million through Fish and Wildlife. In theory, the inadequate culverts will someday be fully replaced and brought up to fish passage standards.

This program may be well intentioned, but there are significant concerns about the precedent of the state suspending its own fish passage standards for what may turn out to be forever. WaterWatch is advocating for a requirement that each culvert meet a fish passage performance standard rather than simply requiring some incremental improvement, however small. We also are pushing for the Department of Transportation to pay a larger percentage of its estimated savings – currently more than a billion dollars – for fish passage at other sites.



Culverts can create significant migration problems for fish. Photo courtesy WildEarth Guardians



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