



INSTREAM

Winter '17 Newsletter



Chewaucan River by Greg Shine, U.S. Bureau of Land Management

Stream of Consciousness: Giving Thanks for the Women of WaterWatch

By John DeVoe, Executive Director



Women have, in many crucial ways, been the driving force for WaterWatch and for river conservation in Oregon. Women have always provided critical leadership, vision, and strategic thinking for WaterWatch – that is when they weren't raising money, securing landmark water policy reforms and protecting and restoring the waters that we love in Oregon. As I pause and give thanks this holiday season, I am struck by the amazing women WaterWatch has been so fortunate to be associated with over the years – and the importance of their contributions to Oregon's waters.

(Continued on page 3)

WHAT'S INSIDE

<i>WaterWatch Welcomes.....</i>	<i>2</i>
<i>Appellate Victory for McKenzie River.....</i>	<i>4</i>
<i>WaterWatch in the Community.....</i>	<i>5</i>
<i>Judge Denies Irrigators Special Treatment, Millions in Payments.....</i>	<i>6</i>
<i>Water Briefs from Around the State.....</i>	<i>7</i>
<i>Take Action: Willamette Basin Fish Need Water Too!</i>	<i>10</i>

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

Portland Office

213 SW Ash St., Suite 208
Portland, OR 97204
T: (503) 295-4039

Southern Oregon Office

P.O. Box 261
Ashland, OR 97520
T: (541) 708-0731

Staff

- | | |
|---|---|
| » <i>Lisa Brown</i>
Staff Attorney | » <i>Molly Whitney</i>
Development Director |
| » <i>John DeVoe</i>
Executive Director | » <i>Jim McCarthy</i>
Communication Director &
Southern Oregon Program
Manager |
| » <i>Nancy Drinnon</i>
Comptroller | » <i>Preston Korst</i>
Development and Program
Assistant |
| » <i>James Frazier</i>
Legal Assistant | » <i>Jack Dempsey</i>
Contract Lobbyist |
| » <i>Brian Posewitz</i>
Staff Attorney | |
| » <i>Kimberley Priestley</i>
Senior Policy Analyst | |

Board of Directors

- | | |
|---------------------------------------|------------------------|
| » <i>Mary Lou Soscia</i>
President | » <i>Jeff Curtis</i> |
| » <i>Matt Deniston</i>
Secretary | » <i>Jean Edwards</i> |
| » <i>Jerry Brown</i>
Treasurer | » <i>Bob Hunter</i> |
| » <i>Karl Anuta</i> | » <i>Lynn Palensky</i> |
| » <i>Margaret Bowman</i> | » <i>Jeff Perin</i> |
| | » <i>Dean Runyan</i> |
| | » <i>Bryan Sohl</i> |
| | » <i>Mary Scurlock</i> |

*WaterWatch of Oregon publishes
Instream three times annually.
Jim McCarthy, Editor*

WaterWatch Welcomes Board Member Mary Scurlock



Mary Scurlock of M. Scurlock & Associates and formerly of Pacific Rivers Council has become WaterWatch's newest board member. Mary has spent much of her professional life as an advocate for the environment and for rivers across the west. She started her career as an associate at the Eugene land-use law firm Johnson & Kloos. From 1991 through 2012, Mary gained extensive experience on forest and water issues as an advocate for freshwater ecosystem conservation at Pacific Rivers Council. She then left as head of their policy team to become an independent freshwater policy consultant. Mary is an inactive member of the Oregon State Bar, a former Oregon League of Conservation Voters board member, and co-founder of RiverPAC of Oregon (2015). We are thrilled to have Mary join us!

Strong women were there at the beginning for WaterWatch – and have been there throughout our 32 year history. For about two thirds of WaterWatch's existence, women have served as president of the board. And it shows. We all owe a debt of gratitude to Audrey Jackson Simmons for her role in recognizing the need for a change agent like WaterWatch and, with Tom Simmons, launching the organization. Audrey's vision and organizing skills created the first real water policy reform initiative in the West. Our board has always benefitted from women who can lead and get things done from the front. Audrey Jackson Simmons, Nancy "Ned" Duhnkrack, Lynn Palensky and now Mary Lou Soscia have also all served as president of the board. The organization has thrived and grown under their individual brands of leadership. Each of their tenures as board president is filled with landmark conservation successes for Oregon's rivers. Importantly, these women have made WaterWatch an inclusive place to work for women.

Other board members like farmer and biologist Jean Edwards, former Congresswoman Elizabeth Furse, lawyer Elizabeth Wright and lawyer, consultant, and river conservationist Margaret Bowman have also provided essential resources, expertise, relationships, and strategic thinking that benefitted WaterWatch and Oregon's waters. Now our newest board member, water and forestry expert Mary Scurlock, adds to the legacy of strong and effective service by women on the WaterWatch board.

WaterWatch's policy staff has also been largely female over the years. Karen Russell, Kimberley Priestley, and Lisa Brown have all provided the formidable legal and negotiation skills and the water law expertise needed to protect and restore streamflows and to secure the balanced water policies Oregon so desperately needs. As WaterWatch lawyers and water policy specialists, each of these women has created a legacy of healthy

freshwater habitat in different parts of the state. Just recently, Lisa secured an Oregon appellate court victory protecting over 22 million gallons of cold water each day on the McKenzie River. Though she would never tell you this herself, there are few attorneys who can match her record of victory in Oregon's appellate courts. Karen, a fearless litigator, went to the mat with some of the largest corporations in the world to temper the impacts of giant development proposals that would have harmed the Columbia River. Kimberley has negotiated landmark reforms and protected cold water habitat across Oregon from tiny desert stream strongholds for Lahontan Cutthroat Trout to the Deschutes River. Rivers need water, yes, but they also need good lawyers and policy specialists.

Finally, none of this work can be done without the funding and infrastructure that makes it possible. Betty Brickson took the early communications and outreach oar and built the WaterWatch newsletter from scratch. Molly Whitney has taken development and engagement at WaterWatch to a new level, extending and building upon earlier efforts to diversify WaterWatch's funding started by Molly Baer Kramer. Their passion for Oregon's rivers over the years made it possible to fund landmark conservation successes. Take WaterWatch's annual auction. Molly Kramer got the show started. Molly Whitney has taken it to new heights. And after the fundraising, we can count on Nancy Drinnon to track every penny accurately.

This holiday season, I'm thankful for the strong women who have given so much to Oregon's rivers and WaterWatch. They are amazingly committed and effective people. If, in a century, Oregon has coldwater habitat for salmon and trout along with healthy aquifers and healthy wetlands, these women all deserve a big chunk of the credit. They have made the West a better place – for fish and wildlife, yes, but also for the people who depend on healthy waters.

Appellate Victory for McKenzie River

November 16th brought great news for a river prized by anglers, boaters, and nature enthusiasts from around the world. The Oregon Court of Appeals upheld a final order denying the Willamette Water Company's controversial application for a permit to withdraw 34 cubic feet per

second (22 million gallons per day) from the McKenzie River.

WaterWatch sparked the review process by challenging the permit application in March of 2010. Since then, thanks to your support, we have been there every step

of the way to defend the McKenzie against this harmful proposal.

Under Oregon law, Oregon's waters belong to the public – not to private water companies hoping to profit by monopolizing the resource for future sale. Despite this, Willamette Water Company proposed to lock up a large amount of McKenzie River water, but failed to identify any committed customers, could not complete the water development project in the time allowed, and failed to apply for needed land use approvals for developing the water project. The company also challenged the fish protection conditions recommended by the Oregon Department of Fish and Wildlife and proposed by the Oregon Water Resources Department.

In 2014, the Oregon



"WaterWatch has acted as a watchdog for Oregonians, making sure their rights are protected and preserved." Photo by David Merwin

Water Resources Commission found that Willamette Water Company's proposal was illegal because the company was attempting to tie up a large block of water for undefined future sale, rather than proposing to use the water beneficially as required by law, and because the company had failed to apply for needed land use approvals for its project. The appellate court agreed with the Commission that the permit had been properly denied because the company could not develop the permit in a timely manner.

The permit application drew considerable local media attention and inspired community concern regarding one of the public's most valuable resources – water – in one of the state's most iconic waterways. The McKenzie's renowned beauty, along with the fish and wildlife it supports, in turn sustain jobs and economic activity in the region. The company now has the option to seek review in the Oregon Supreme Court. If they do, WaterWatch will be there to defend the McKenzie.

IN THE NEWS

The *Eugene Register-Guard* saluted WaterWatch's advocacy for the McKenzie River in a November 17th editorial:

"Oregon's water supply is precious and deserves the safeguards that have been put in place by the Legislature, enforced by the commission and upheld by the courts. Strong defenses are needed to protect this resource for the benefit of this and future generations.

WaterWatch has acted as a watchdog for Oregonians, making sure their rights are protected and preserved."

*Read the rest of the editorial
at registerguard.com*



WaterWatch in the Community

WaterWatch...

- ... Tabled at the Wild and Scenic Film Festival in Ashland
- ... Presented on two panels at the Oregon Water Law Conference in Portland
- ... Tabled at the Irvington Tennis Club Non-Profit Night in Portland
- ... Guest lectured on water policy to undergraduates at Oregon State University in Corvallis
- ... Spoke about the practice of water law to a class at the University of Oregon Law School



Judge Denies Irrigators Special Treatment, Millions in Payments

On September 29th, Judge Marian Blank Horn of the U.S. Court of Claims ruled against agribusiness interests within the federal Klamath Irrigation Project that had been demanding some \$30 million in compensation for reduced irrigation water deliveries during an extreme drought that struck the Klamath River Basin in 2001. WaterWatch participated as amicus in support of our conservation and fishing allies who intervened.

Though other groups in the Klamath Basin of Oregon and California suffered during the 2001 drought – including Tribal Nations, the salmon fishing industry, and farmers outside of the Klamath Project – Klamath Project irrigation interests wanted a special payout to compensate them for a federal decision to leave some water in the Klamath River and Upper Klamath Lake for imperiled salmon and other fish.

Judge Horn ruled that The Klamath Tribes' rights to the water were superior to the agribusiness interests, and that the amount of water needed to maintain those tribal

rights was at least as much as was needed to meet the requirements of the federal Endangered Species Act to save fish.

The \$30 million in compensation requested by the irrigators would have been in addition to the approximately \$40 million in state and federal relief provided to Klamath agribusiness interests immediately after the 2001 drought.

In an appalling twist, irrigation interests involved in this case were recently found by federal investigators to have missappropriated \$32.2 million in taxpayer funds intended to help struggling fish and wildlife between 2008 and 2015. Although these findings were backed up by a report submitted to the White House by the U.S. Office of Special Counsel, Interior Secretary Ryan Zinke has refused to hold anyone to account. Even worse, Oregon's U.S. Senators Wyden and Merkley have remained mum on the issue while inserting language in the 2017 Senate Energy Bill to reactivate the taxpayer funding pipeline to Klamath irrigators which was shut down in early 2016 once federal whistleblower complaints brought rampant waste and abuse to light. WaterWatch and our allies are opposing this legislation – and you can too by visiting the "Take Action!" section at waterwatch.org.

Meanwhile, the basin's fundamental problem remains: too much water has been promised to too many interests. This imbalance will continue to cause serious harm to Klamath fish and wildlife as well as all the communities that depend on the Klamath River until we bring the basin's demand for water into balance with what nature can provide. With your support, WaterWatch will continue our longstanding work to help achieve agency accountability and a sustainable water future in the Klamath.



Refuge staff collect dead birds during the 2014 waterfowl kill in the Klamath Basin. Photo by Nate Schweber

Water Briefs From Around the State

Victory for Oxbow Springs, and Oregon's Public Waters

In a major victory for the protection of Oregon's public waters, multinational giant Nestle's plan to bottle water from an important cold water spring in the Columbia Gorge has gone down to defeat. On October 27th, citing costs to taxpayers, Governor Brown asked the Oregon Department of Fish and Wildlife to withdraw the water right exchange application necessary for Nestle to obtain water from Oxbow Springs in the Herman Creek watershed.

In Nestle's complicated scheme, the Department had agreed to exchange to the City of Cascade Locks part of a spring-fed water right used to operate a state-run salmon hatchery. The City would then have sold that water to Nestle. Although Cascade Locks has available surplus water from a well, Nestle wanted the spring water.

Under Oregon law, all water within the state from all sources of water supply belongs to the public. The water

code provides standards under which an applicant may obtain a permit to use this public water. While issues surrounding the bottled water industry drove much opposition to Nestle's scheme, allowing a public agency to obtain a water right for a public purpose then sell it to a private water bottling company would have undermined Oregon's water right system. Although the amount of water at issue was relatively small, this is not acceptable.

All those who worked and who spoke out against the Nestle scheme deserve to celebrate. It is also time to build on this win by mobilizing to protect the other critical waters flowing from Mt. Hood which are threatened by large scale water withdrawals. These include the Clackamas River as well as the West Fork of the Hood River and its important cold water tributary Lake Branch Creek. Working together, we can protect Oregon's vital public waters.

Connect with WaterWatch on the Web!

Learn more about our work, become a member, or sign up for RiverAction Alerts at ***waterwatch.org***.



Join us on Instagram at
WaterWatchofOregon



Follow us on Twitter
@WaterWatchofOR



"Like" Us
on Facebook!



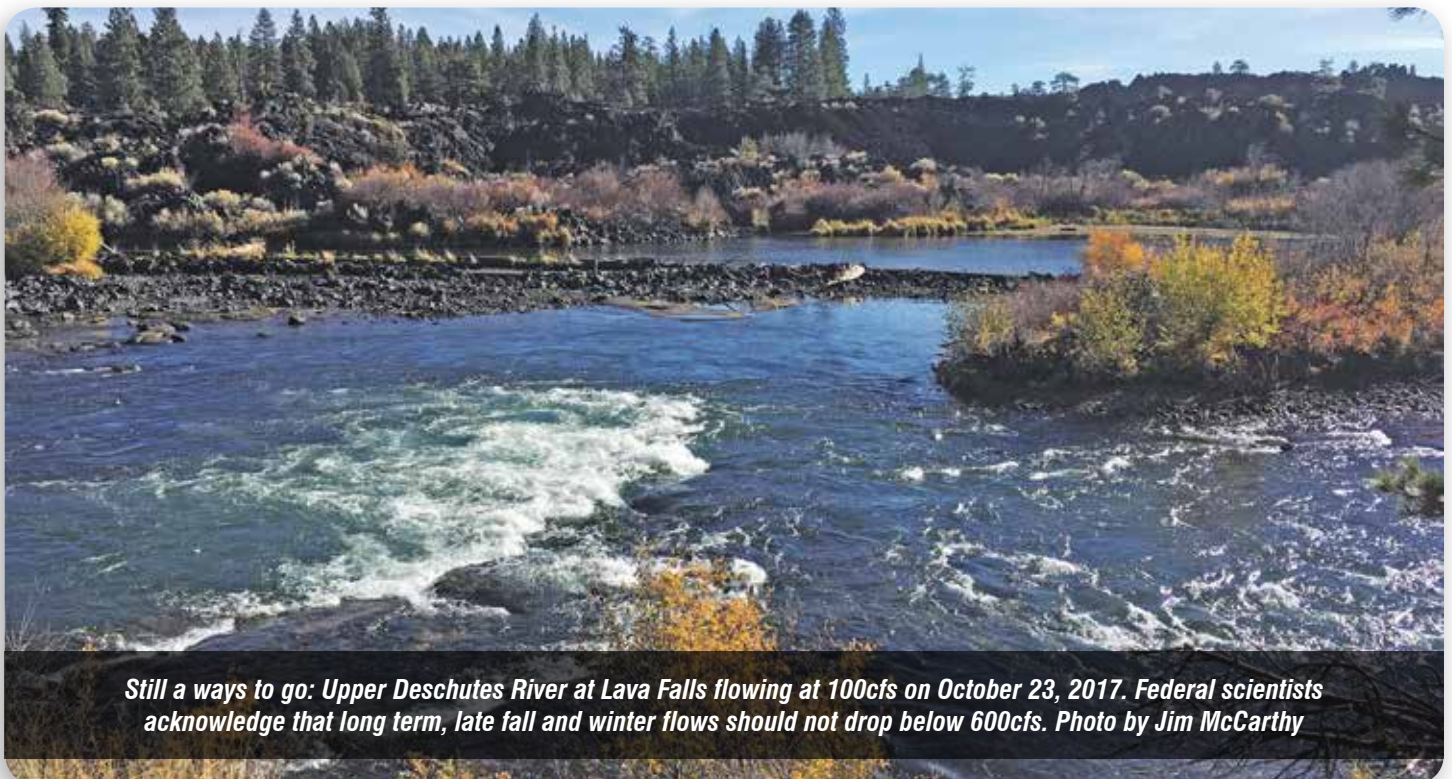
Agency Releases Biological Opinion for Water Management on Upper Deschutes River

This September, the U.S. Fish and Wildlife Service released its biological opinion on the U.S. Bureau of Reclamation's proposed operation of Crane Prairie and Wickiup Dams for the next two years. These dams traditionally choke off late fall, winter, and early spring flows to the Upper Deschutes, causing devastating harm to native fish as well as the Oregon Spotted Frog, which is listed as threatened under the federal Endangered Species Act. Prior to a lawsuit brought by WaterWatch and the Center for Biological Diversity, the Upper Deschutes was managed more like an irrigation ditch than a river. Leading into each winter, water managers dropped the river down to twenty cubic feet per second, robbing it of 600 to 800 cubic feet per second of natural flow, which in turn killed large numbers of fish and left frog habitat high and dry.

In 2016 WaterWatch, the Center for Biological Diversity, Reclamation, and several irrigation districts reached an interim agreement to temporarily boost flows in the Upper Deschutes River to reduce harm to the spotted frog. The deal also required consultation with the Bureau on dam operations, on a timeline that is intended to result in the creation of a long-term, science-based plan by 2019 that will further reduce harm to the frogs.

WaterWatch is still assessing the Service's biological opinion. Unfortunately, rather than moving forward on the significant flow restoration needed for Oregon Spotted Frog survival, the Service punted on requiring much-needed restoration now, in the hope that substantive change will occur under the Deschutes Basin Habitat Conservation Plan, which is due to be completed by July 2019.

The Service found that the proposed winter flows of only 100 cubic feet per second over the next two years will likely have adverse effects to the spotted frog and its critical habitat, but also stated that the proposal will not likely jeopardize the continued existence of the frog over the next two years. On the upside, the biological opinion details how irrigation practices in the Upper Deschutes devastated the frog and its habitat, which could help pave the way for a more robust Habitat Conservation Plan. Additionally, the biological opinion makes clear that the Service expects the eventual restoration of a winter flow minimum of 600 cubic feet per second in the Upper Deschutes. Whether this happens before the frogs go extinct on major portions of the Upper Deschutes due to irrigation practices in Central Oregon is the question.



Still a ways to go: Upper Deschutes River at Lava Falls flowing at 100cfs on October 23, 2017. Federal scientists acknowledge that long term, late fall and winter flows should not drop below 600cfs. Photo by Jim McCarthy

Klamath Dam Removal Process Underway, WaterWatch Files to Intervene

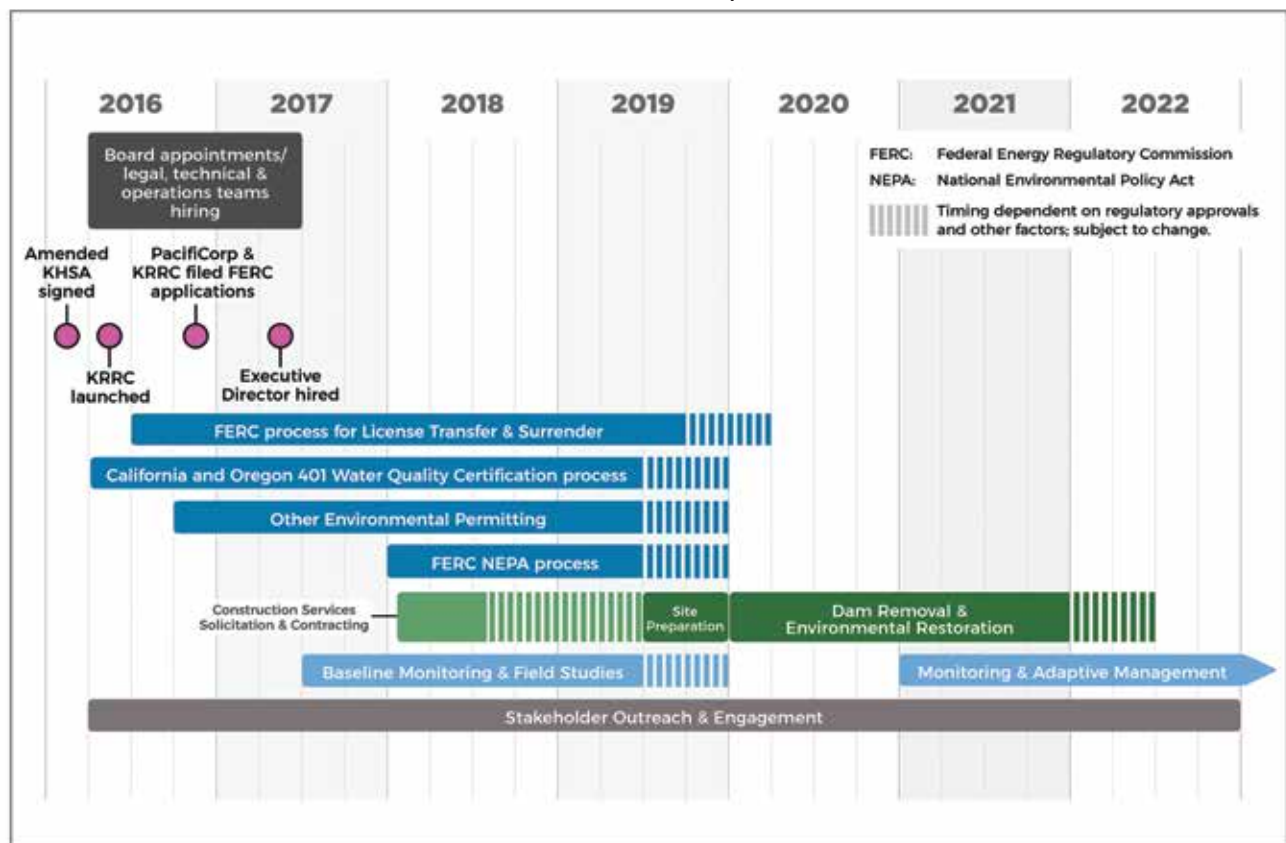
In early 2016, two states, federal parties, and PacifiCorp salvaged the Klamath Hydroelectric Settlement Agreement for the removal of four harmful and outdated dams on the mainstem Klamath River. J.C. Boyle, Copco I, Copco II, and Iron Gate dams cause profound damage to salmon populations and water quality. Their removal will be a boon for the many communities which depend upon the Klamath's invaluable resources, help fulfill Native American fishing rights throughout the basin, and protect thousands of commercial and recreational salmon fishing jobs.

Previously, the dam removal agreement was held hostage for years to a separate, deeply-flawed water sharing deal which required passage of controversial and costly federal legislation. WaterWatch worked with conservation and tribal allies to oppose this wrongheaded linkage, raise support for moving dam removal forward, and end attempts to piggy-back bad water policy onto any dam removal deal. At long last, the dam removal process is now going forward without federal legislation, using state

and ratepayer funding provided under the settlement.

Paperwork filed on September 23, 2016 with the Federal Energy Regulatory Commission kicked off the formal removal process. If all goes as hoped, dam owner PacifiCorp will transfer the four dams to a newly formed private company known as the Klamath River Renewal Corporation, which will then remove the structures. PacifiCorp will continue to operate these dams until they are decommissioned.

WaterWatch has intervened in this new process, which builds on the Klamath dam relicensing process we have actively participated in for over a decade, thanks to your support. We will continue to push for prompt removal of the four dams while working to ensure that instream flows throughout and below the removal project meet the needs of fish and support the restoration of salmon and steelhead populations to the Oregon side of the Klamath Basin. Going forward, there will be opportunities for the public to weigh in with their support, so please stay tuned for updates.



Take Action: Willamette Basin Fish Need Water Too!

Please Ask the Army Corps of Engineers to Give Fish the Water They Need from Willamette Basin Reservoirs

The U.S. Army Corps of Engineers recently released its proposal to allocate water stored in Willamette Basin reservoirs and is taking comments on the plan through **December 22**. Your voice is needed! Please act now and ask the Corps to give more water to fish and wildlife and to prioritize threatened fish populations in low-water years.

The Corps operates 13 reservoirs in the Willamette Basin, including well known reservoirs such as Detroit on the North Santiam River, Cougar on the McKenzie River and Lookout Point on the Middle Fork of the Willamette River. Together the reservoirs can store up to 1.6 million acre feet of water for release later in the year to help fish and satisfy contracts for irrigation water. The Corps is in the process of deciding how much of the stored water should go, respectively, to fish and wildlife, irrigation, and municipal and industrial uses in the 50-year period starting in 2020.

The Corps has proposed allocating 962,000 acre feet to fish and wildlife, 254,000 to irrigation, and 73,000 to municipal and industrial use. The remainder (300,000 acre feet) will be unallocated for now. While that may sound like a lot for fish and wildlife, the Corps' analysis shows it would not be enough to meet minimum flows set for threatened salmon and steelhead in roughly a quarter of the years. Meanwhile, the allocation to irrigation is more than triple the amount currently used for that purpose, and municipal and industrial suppliers would get their extra water even though they already have significant unused existing rights and would not be expected to increase conservation to reduce future demands. Moreover, in low water years when reservoirs don't store enough to meet all of the allocations, threatened fish would be required to share the pain with other uses even though the flow targets used to set their allocation were already reduced for low water years.

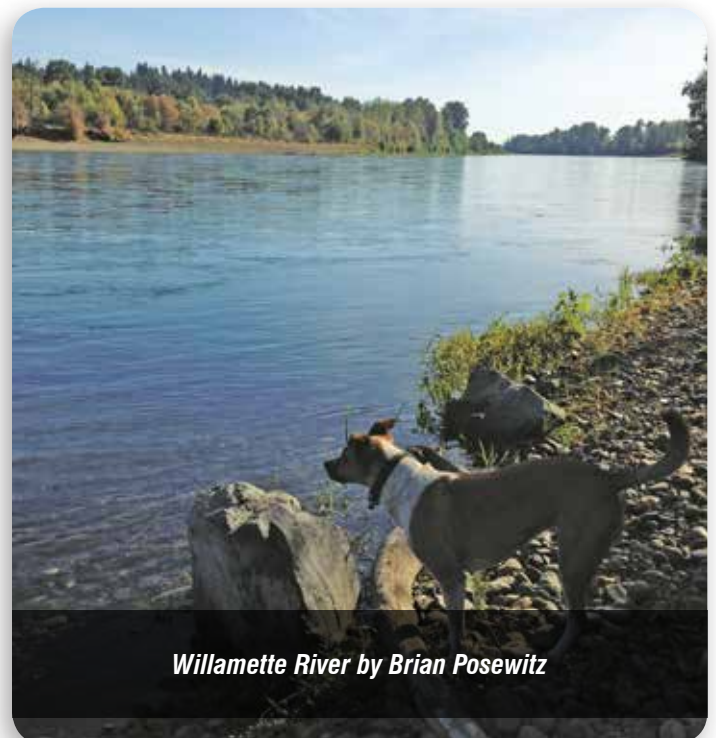
Please email your comments to **wbr@usace.army.mil** and tell the Corps:

- The allocation of stored water for fish and wildlife needs to meet flow targets for threatened salmon and steelhead more often.
- In low water years, threatened salmon and steelhead need to take priority. Their survival is worth asking for more conservation in irrigation and municipal uses, especially since the flow targets already go down in low water years to recognize that there is less water for everyone.

Important: Per instructions from the Corps, please make sure you include the following in your message:

- Public notice number: CENWP-PM-E-18-01
- Draft Willamette Basin Review Integrated Feasibility Report and Environmental Assessment
- Issue date: November 7, 2017

Thank you for taking action for Oregon's rivers!



Willamette River by Brian Posewitz



Do you appreciate WaterWatch's work? *Please donate now!*

We rely on the support of donors like you to monitor, defend, and restore Oregon's water resources. There are many options for giving and we appreciate donations large and small.

Mail

Donations may be sent to:

WaterWatch

213 SW Ash Street, Suite 208
Portland, OR 97204

Online

Make a one-time or reoccurring donation at
waterwatch.org.

Donate Securities

Donating securities (stocks, bonds, mutual funds, etc.) can be one of the most effective, and economical, ways to support WaterWatch.

Estate Planning

When you include WaterWatch in your estate plans, you help secure a legacy of healthy rivers in Oregon. We can help you find a plan that meets your needs and benefits Oregon's rivers long into the future.

Fred Meyer Rewards

Take full advantage of your grocery runs by choosing WaterWatch to receive a percentage of eligible shopping through Fred Meyer Rewards.

Telephone

Our Development Director, Molly, is available at (503) 295-4039 x0 to answer any questions, take a donation by credit card, or provide pertinent information regarding our many donation options.

Become a Monthly Donor

Monthly donations can be automatically deducted from your checking account or credit card. They keep your membership current and provide reliable support.

Workplace Giving

Many employers make it easy and efficient to donate through payroll contributions, and many will match your donation. Talk with your employer to find out if your workplace is able to help you support WaterWatch.

Donate Your Vehicle

WaterWatch accepts vehicle donations with Charity Connections, a non-profit vehicle donations program.

WaterWatch is proud to participate in the following programs:



WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204

Printed on 30% post-consumer fiber

15th Annual Celebration of Oregon Rivers

Thanks to all who joined us for our yearly banquet and auction benefit this November at the Tiffany Center in Portland! We are grateful for your record-breaking support for Oregon's rivers and streams!



Thanks to our sponsors

