



# INSTREAM

Spring '16 Newsletter



Upper Klamath National Wildlife Refuge by Jim McCarthy

## Stream of Consciousness: A Crime by Any Other Name



By John DeVoe, Executive Director

Recent events in Oregon remind me of Humpty Dumpty's apt description of the relationship between political power and the meaning of words in that classic work of literature, *Alice in Wonderland*:

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean – neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master – that's all."

Who is the master these days? Those who would speak – and act – like Humpty Dumpty unfortunately seem to

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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  
Instream three times annually.*  
Jim McCarthy, Editor

## WaterWatch Welcomes



### **Margaret Bowman, Board Member**

WaterWatch is thrilled to welcome Margaret Bowman to our board of directors. Margaret has over 25 years of conservation expertise, focused primarily on freshwater systems, but also including experience on marine and other domestic and international environmental issues. Previously, Margaret was Deputy Environment Program Director at the Walton Family Foundation, where she led the Foundation's work to ensure healthy river flows in the Colorado River. Margaret also directed the Lenfest Ocean Program at The Pew Charitable Trusts. For over a decade, Margaret served in a number of leadership positions at American Rivers. Margaret also directed the Environmental Program for Central and Eastern Europe for the Environmental Law Institute, served as an environmental consultant to the Czecho-Slovak government, and worked as an environmental attorney in private practice.



### **Justin Loveland, Development & Program Associate**

Justin joined WaterWatch in 2015 to help plan the annual auction, and now does development work, helps manage web content, and assists with policy-related projects. Prior to joining, he was a research assistant for a nonprofit working on campaign finance reform in Washington, D.C., and an intern for the A.C.L.U. of Oregon. He has also organized international projects, events, and trips relating to human rights and sustainability. Justin holds a B.A. from Western Washington University. Welcome to the team Justin!

be running amok in Oregon. If they succeed, it will have significant negative impacts on the health of Oregon's rivers, the rule of law, and our way of life.

In the world I thought I knew, if I cut down trees in the state forest without a permit and steal them, I would be a timber trespasser. If I took something from a store without paying, I would be a shoplifter and a thief. If I released pollutants into a river without a permit I would be a polluter and should be fined and prosecuted. If I took fish out of season or without a license, I would be a poacher.

But recent events suggest that words are losing meaning, becoming unhinged from accepted definitions. In some parts of Oregon individuals who drill wells and take groundwater without a permit are being called "traditional beneficial users" of water. The well in these cases is somehow not illegal but "maverick." The state's general approach to remedy these situations has been to issue a water permit after the fact, without any consideration of the illegal use that came before – even if that use adversely affects the sustainability of groundwater supplies, or national treasures such as the waterways and wetlands of Malheur National Wildlife Refuge.

Speaking of that stunning gem of Oregon's High Desert, the recent occupation of Malheur was – sadly – fertile ground for those who would apply Humpty Dumpty's theory of meaning to help further their efforts to take public lands and public resources to serve their own narrow interests. Here, people trespassed, committed theft, and destroyed public property while protesting in support of a convicted arsonist and poacher, among other things. For this, the occupiers were called "constitutional cowboys," "heroes," and "patriots" by some, including some among the news media and elected officials. When words are used this way, you know there's something wrong and the philosophy of Humpty Dumpty is holding sway. In reality, the occupation of Malheur was criminal.

Who is master of the words that can either protect, or squander, Oregon's irreplaceable waters and invaluable

rivers? Who gets to determine – or redefine – what our laws mean? Is using water without a permit "traditional beneficial use" or simply illegal? Is Humpty Dumpty in charge in Oregon? Let's not tolerate this Humpty Dumpty nonsense, because too much is at stake. Please join WaterWatch in standing up for common sense, the rule of law, and for the protection and restoration of Oregon's rivers. Thank you for all of your support.



## WaterWatch in the Community

WaterWatch...

- ... Presented before the Umpqua Fly Fishers Club and Central Oregon Fly Fishers Club
- ... Spoke at the City Club of Bend
- ... Tabled at the Northwest Fly Tyer and Fly Fishing Expo
- ... Guest lectured at Oregon State University and Lewis & Clark Law School
- ... Served on two panels at the Oregon Water Law Conference
- ... Spoke at the Oregon Dairy Industry Annual Conference
- ... Tabled at the Sandy River Spey Clave



# The Klamath Basin Refuges Need Your Help!

Over the next several weeks, you have the opportunity to make a difference for some of the Klamath Basin's last remaining wetlands, which provide a crucial migratory stopover for roughly three-quarters of the waterfowl of the Pacific Flyway.

Last spring, WaterWatch and our allies won a court ruling ordering the U.S. Fish and Wildlife Service to complete a long overdue "Comprehensive Conservation Plan" for five of the Klamath Basin's national wildlife refuges. These plans, mandated by a 1997 law, must ensure that commercial activities on refuge lands do not harm wildlife. The vast majority of refuges nationwide have completed such plans, but Upper Klamath, Bear Valley, Tule Lake, Clear Lake, and Lower Klamath national wildlife refuges have lagged behind.

The completion and implementation of this plan may be the best hope to save these important but long-abused public lands from a harmful commercial farmland leasing program. This federal program – which is unique in the nation and distinct from more well-known cooperative farming programs on many refuges – displaces some 22,000 acres of wetland habitat in favor of agribusiness, regularly consumes nearly all of the refuges' available water supply, allows the use of toxic pesticides, and oversees the wholesale mechanized destruction of baby and adult birds in their nests each spring. As a consequence of this program, the federal government regularly denies water to parched refuge wetlands and instead directs the refuge's most senior water rights to supply commercial crops. This shameful practice undermines established refuge purposes and represents a regular death sentence for thousands of migratory waterfowl.

The draft plan for these five refuges is now available for review and public comment. Please submit your comments today, and join us in making the case that eagles, ducks, and geese must take priority over agribusiness on refuge lands. Let's help secure a better future for the Klamath's spectacular wildlife!

As we go to press the comment deadline is being extended – likely to July 11, 2016, but WaterWatch and our allies

are pushing for even more opportunity for comment. Visit [waterwatch.org](http://waterwatch.org) for more information and updates.

In your comments, please let the U.S. Fish and Wildlife Service know that they should:

- Provide for the conservation and restoration of migratory birds, fish, wildlife, plants, and their habitats within the refuges.
- Enhance and increase refuge wetlands and riparian areas, including restoring the historic lakebeds of Lower Klamath Lake and Tule Lake within refuge boundaries.
- Phase out the leaseland farming program and restore these lands to wetland habitats for wildlife.
- Use all refuge water rights for refuges purposes such as waterfowl habitat, including the most senior refuge water rights now used for commercial farming.
- Vigorously pursue refuge claims in the Oregon Klamath Water Rights Adjudication for the full amount of water needed by the refuges.
- Ensure off-refuge junior water users are regulated so that on-refuge senior water rights are delivered.
- Purchase water from willing sellers to meet refuge water needs through the Federal Water Rights Acquisition Program, or other programs or funds.

Comments may be submitted online here:

<http://1.usa.gov/1TOWrrR>

Or via regular mail:

Public Comments Processing

Attn: FWS-R8-NWRS-2016-0063

Division of Policy and Directives Management

U.S. Fish and Wildlife Service

4401 N. Fairfax Drive, MS 2042-PDM

Arlington, VA 22203

Thank you for taking a stand for the Klamath Basin refuges!

*Background: Snow geese on Lower Klamath  
National Wildlife Refuge by Brett Cole*



# Oregon Legislative Roundup

The short session of the 2016 Oregon State Legislature was not for the faint of heart. With over 250 bills to consider, and Republicans' dramatic stalling tactics causing disarray, the session quickly became tense – and stayed that way.

The results for rivers were mixed. A handful of non-controversial bills and budget adjustments which benefitted Oregon's waterways passed into law, but a broadly supported initiative to reform suction dredge mining stalled, while a number of anti-conservation initiatives consumed much of the legislature's limited time before going down to deserved defeat.

## Water Policy Progress

**HB 4113:** A Governor-appointed task force will evaluate short term measures and tools to alleviate the effects of drought on farms, cities, rivers, and fish. Conservation interests will have a seat on this task force.

**SB 1529:** Prohibits homeowners associations from enforcing residential lawn and landscape watering requirements in the face of drought declarations or municipal orders for conservation. WaterWatch favored a more comprehensive bill, HB 4090, which would have prohibited homeowners associations from requiring the watering of lawns, but this bill did not pass. However, SB 1529 is a step toward helping municipalities and

residential water users cope with drought.

**Harney County Groundwater Study:** The legislature approved approximately \$700,000 in emergency funding to support a groundwater study in Harney County, where the Water Resources Department has observed significant declines in groundwater levels in recent years. Because

of concerns raised by WaterWatch over unsustainable groundwater use, the Water Resources Department has imposed limits on the granting of new groundwater permits and is undertaking a groundwater study in cooperation with the U.S. Geological Survey.

## Missed Opportunity

In 2013, WaterWatch and our allies helped pass SB 383, which

reduced the harm of suction dredge mining in Oregon's rivers. This law included a 5 year moratorium on suction dredging – beginning January 1, 2016 – in waterways with designated Essential Salmon Habitat. This session, WaterWatch led a broad coalition of conservationists, anglers, and outdoor businesses seeking to expand the existing moratorium to most of Oregon waterways through HB 1530 and its companion bill, SB 1530. We also sought to replace the moratorium in 2021 with an agency framework providing lasting protections for salmon, steelhead, bull trout, mussels, and lamprey.

However, because of unrelated, highly partisan



*WaterWatch staff John DeVoe, Brian Posewitz, and Lisa Brown hard at work at Oregon's capitol, testifying on streamflow legislation. Photo by Brian Posewitz.*

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controversies, the legislature's Democratic leadership decided to let this broadly-supported bill die. This means the current temporary moratorium remains. We will continue to seek long term protections against suction dredging in future sessions.

## **Wins on Defense**

**SB 1584:** This designated Oregon Conservation Network Major Threat would have overturned a WaterWatch win before the Oregon Court of Appeals and exempted more than 60 cities and an unknown volume of their water diversions from fish persistence reviews. These reviews allow for water permit conditions necessary to ensure the persistence of struggling populations of salmon, steelhead, cutthroat trout, and lamprey. The bill would have also removed the requirement for some cities to adopt common sense Water Management and Conservation Plans. In a highly unusual move, Senate Democratic leadership brought SB 1584 to the floor despite opposition from the Chair of the Senate Rules Committee, Sen. Rosenbaum. After a brief hearing with less than 24 hours of public notice, the Rules Committee voted 4-1 in support of the bill. Chair Rosenbaum and Sen. Prozanski then led opposition to the bill in a spirited floor debate, and eight other Democrats joined with them. However, eight Democrats sided with their leadership and Senate Republicans, giving SB 1584 enough support to pass the Senate. Thankfully, the bill did not advance further because House Democratic leaders held firm against the bill.

**HB 4137:** Representative Whitsett tried but failed to advance yet another bill to curb the Water Resources Department's ability to regulate junior groundwater right holders in favor of senior surface water right holders.

**HB 4012A:** This defeated bill would have provided a state taxpayer bailout of a Josephine County decision – belatedly reversed – to fund an unnecessary and unjustifiably expensive water quality monitoring contract. The county commissioners relied on misinformation regarding the water quality impacts of the

removal of Fielder Dam – one of Oregon's top-ranked fish passage barriers on a key salmon Rogue River spawning tributary – which was removed in 2015 through the efforts of WaterWatch. Local outcry over the waste of limited public resources caused the commissioners to reverse course and cancel the contract, but not before the contractor billed Josephine County for \$77,000.

## **Thank you!**

Our sincere thanks to all of WaterWatch's supporters who responded to calls for action by writing, calling, and traveling to Salem to speak up for Oregon's rivers!

## **Connect with WaterWatch on the Web!**

Learn more about our work, become a member, or sign up for RiverAction Alerts at [\*\*waterwatch.org\*\*](http://waterwatch.org).



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# Water Briefs From Around the State



***PacifiCorp's Iron Gate Dam on the Klamath River blocks hundreds of miles of salmon and steelhead habitat. The structure, along with three other dams upstream, will be removed under an agreement announced this spring. Photo by Jim McCarthy courtesy LightHawk.***

## Klamath Dam Removal Advances

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This spring, utility company PacifiCorp, the states of Oregon and California, and the federal government announced a new stand-alone agreement to remove PacifiCorp's four lower mainstem Klamath River dams by the year 2020. These four obsolete hydropower facilities – J.C. Boyle, Copco I, Copco II, and Iron Gate dams – generate a relatively tiny amount of electricity, but cause profound harm to salmon populations and water quality. Their removal will be a boon for the many communities which depend upon the Klamath River's natural resources, help fulfill Native American fishing rights throughout the basin, and protect thousands of commercial and recreational salmon fishing jobs.

Unfortunately, an earlier Klamath dam removal deal had remained stalled for years by linkage to federal legislation to implement the Klamath Basin Restoration Agreement, an expensive and controversial water deal that had divided conservationists and the basin's Native American tribes. Congress held dam removal hostage by failing to act on this water deal, which expired in 2015.

WaterWatch has long advocated for a stand-alone Klamath dam removal agreement, unhindered by linkage to federal legislation and an unworkable water deal. We are gratified to see this extremely positive step for the Klamath Basin.

## Securing Fish and Wildlife Flows in the Willamette Basin

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WaterWatch is working to secure flows for fish and wildlife dependent on the Coast and Middle forks of the Willamette, Long Tom, McKenzie, and Santiam rivers. We are participating in a study process, conducted jointly by the U.S. Army Corps of Engineers and the Oregon Water Resources Department, that will allocate for particular uses the water storage capacity in the 13 Willamette Basin reservoirs run by the Corps.

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## Key Differences in Artificial Beaver Dams



*This type of artificial beaver dam, distinguished in the rulemaking as a “beaver dam analogue,” is designed to mimic a real beaver dam, and help real beavers build their own dams in streams where channel incision has made dam-building difficult. Dams such as these are generally thought to help watersheds by reconnecting streams to historic floodplains without overheating the water or blocking fish passage.*



*This type of artificial beaver dam, distinguished in the rulemaking as a “restoration check dam,” is made from rocks and dirt and generally does not involve real beavers. Dams such as these may reconnect incised streams with their historic floodplains, but they also may block fish passage, and their impacts on stream flow and water temperature are not well known.*

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These reservoirs can store up to 1.6 million acre feet of water. Presently, the storage space is allocated to joint uses, which include flood control, irrigation, municipal water supply, and fish and wildlife. However, there are currently no allocations specifically to each use.

This management system is likely to change, creating the opportunities for stored water to be released and protected downstream for specific uses, including fish and wildlife. Various interest groups – agricultural, municipal, industrial, and environmental – are formulating estimates and advocating to receive as much water as possible from the reservoirs. WaterWatch is advocating for fish and wildlife, and to ensure allocations for other uses are not excessive.

### Keeping Artificial Beaver Dams Honest

While nothing new, artificial beaver dams have become increasingly popular in recent years as a tool to mimic the positive effects of real beaver dams, which slow down streamflows and create healthier riparian areas. Unfortunately, the misuse of this term has also become popular, as it is sometimes used to describe in-stream structures that have different purposes than stream restoration and actually impair stream health.

The Oregon Department of State Lands is exploring expedited permitting options for artificial beaver dams. WaterWatch is serving on the Rules Advisory Committee for this process, working to ensure that dams authorized by the program serve primarily to restore streams and do not significantly harm streamflow, water quality, or fish passage. WaterWatch is also seeking to make clear that the permitting program does not change requirements for fish passage or water rights associated with dams.



# Lawsuit Filed to Stop Harm to Deschutes River

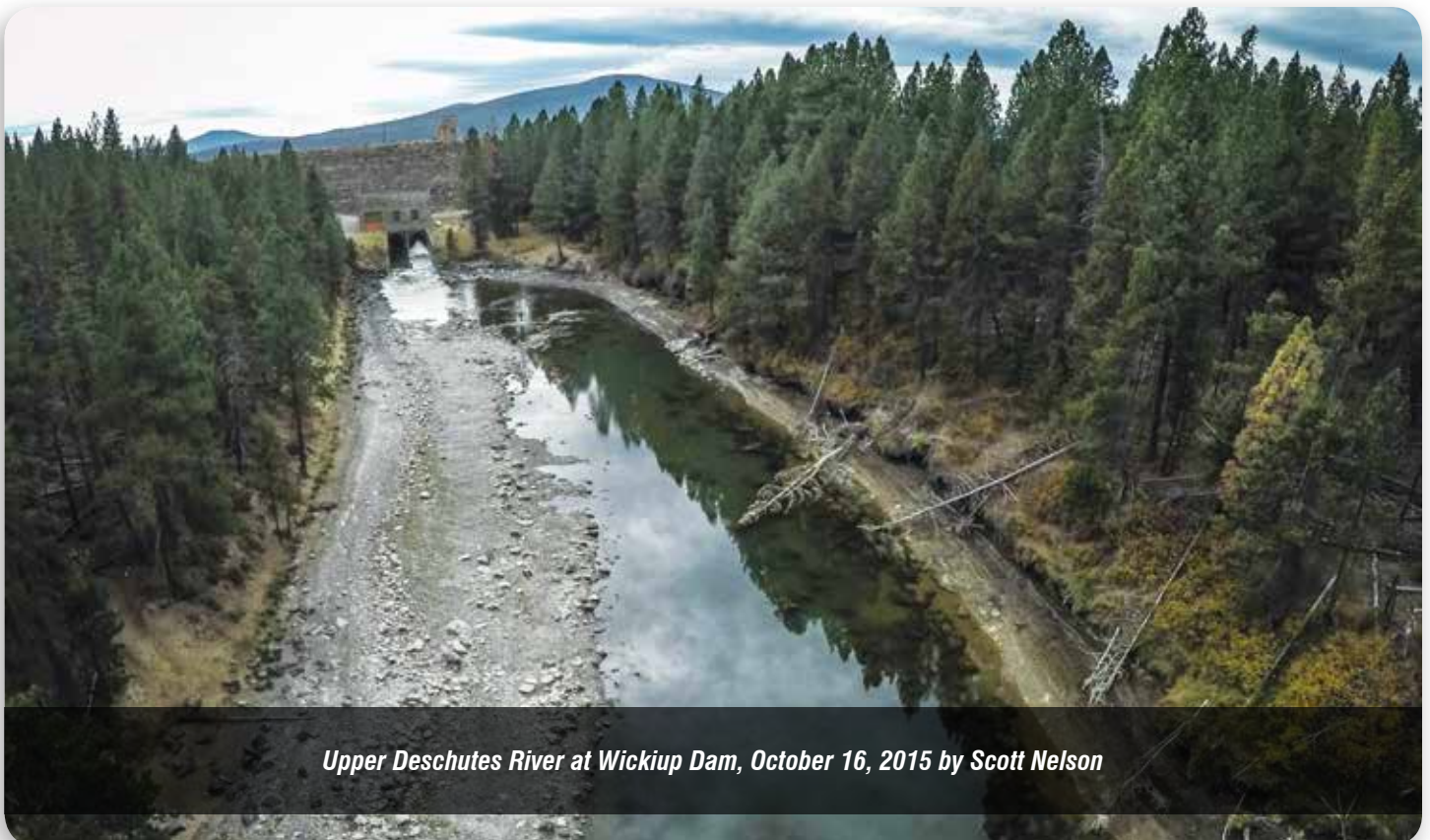
In January, WaterWatch filed suit in federal district court against the U.S. Bureau of Reclamation and several irrigation districts over harm caused by their water use operations in the Upper Deschutes River. Managing the Upper Deschutes like an irrigation ditch rather than a river has caused significant damage to the river's health, including harm to the Oregon spotted frog, a threatened species under federal law.

As a result of water storage and irrigation operations, the once stable natural flows of the Upper Deschutes have been replaced by dramatic and unnatural flow swings, which damage water quality while harming fish and wildlife. One of the most visible recent examples of this harm occurred in October 2013, when a rapid flow reduction due to irrigation management caused a kill that claimed nearly 3,000 fish and sparked outrage throughout the state.

Since January, WaterWatch has agreed to combine our lawsuit with another brought by the Center for Biological

Diversity over similar issues. In addition, two positive changes have occurred that wouldn't have happened without the pressure exerted by the lawsuit. During the early spring period, Reclamation and three irrigation districts opted to slightly change water management in the Upper Deschutes to make reproduction less difficult for frogs. This is small step, and by no means resolves the considerable disruption that the current flow management causes in the frog's reproduction cycle, including the harm caused by extreme low flows in the fall and winter. However, this is a step in the right direction.

Reclamation has also begun consultation, as required by law, with the U.S. Fish and Wildlife Service over potential harm their operations cause to frogs. This was one of the key demands of our lawsuit. As this ongoing process continues to highlight the harmful effects of current irrigation water operations, we expect pressure will continue to increase for the changes needed to improve the health of the Upper Deschutes.



*Upper Deschutes River at Wickiup Dam, October 16, 2015 by Scott Nelson*

# Chetco and Molalla River Segments Gain Protections

River lovers are celebrating Governor Kate Brown's January 2016 designation of portions of the Chetco and Molalla rivers as State Scenic Waterways. After a lengthy process with considerable public input and support, state officials determined that these two segments met the Scenic Waterways Act criteria for outstanding scenic, fish, wildlife, geological, botanical, cultural, and outdoor recreation opportunities. These two iconic waterways have been the first designated under the Act since 1988.

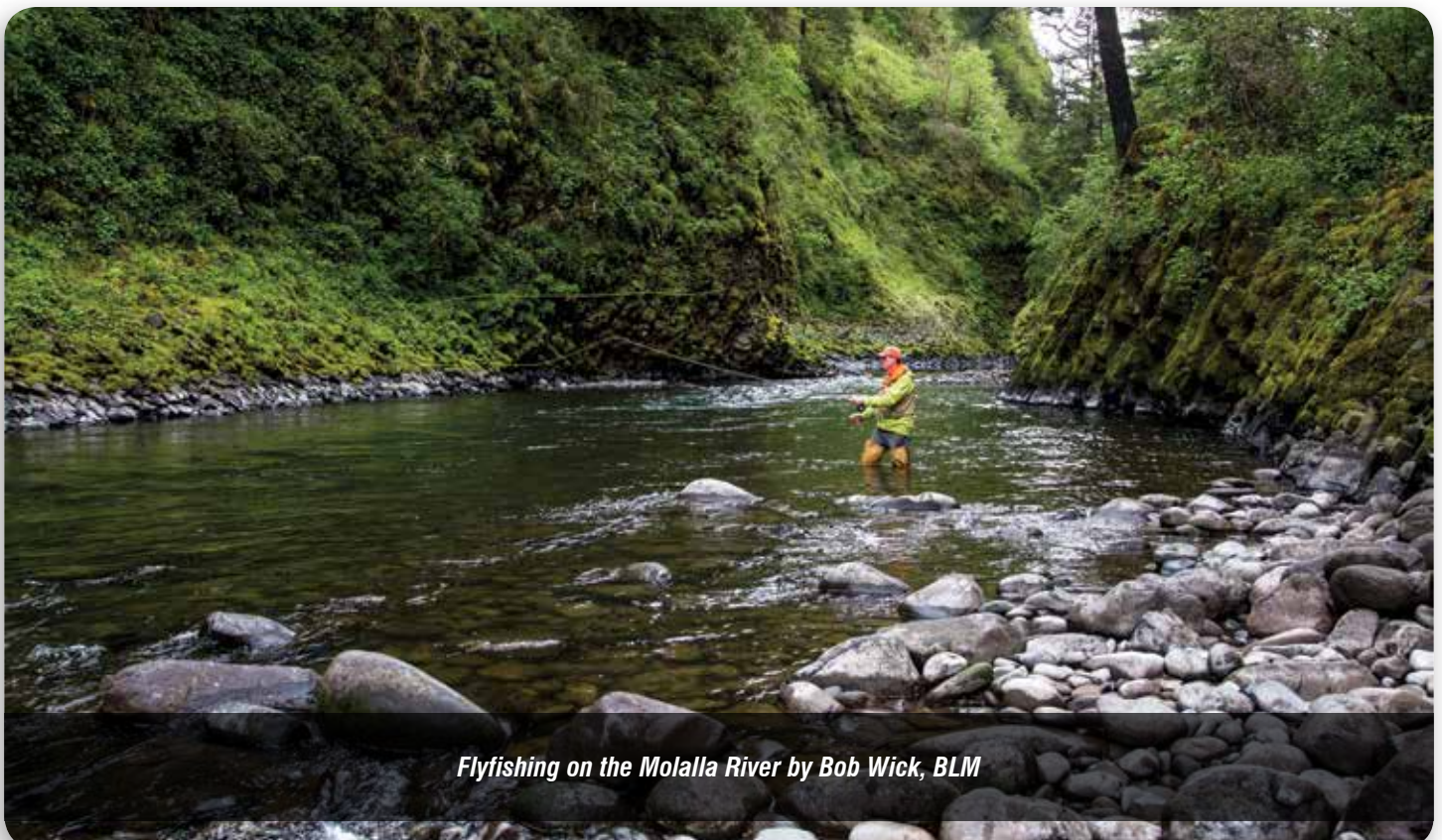
The stretches of the Chetco and Molalla rivers now protected under the Act are among the most beloved in the state. The clear waters of the Chetco River on Oregon's southern coast support a myriad of recreational opportunities, are the home to important populations of steelhead trout and salmon, and provide exceptionally clean drinking water to downstream communities. People flock from all over the nation to recreate on this unique river. The Molalla River in the foothills of Cascade Range supports native winter steelhead and salmon runs, is full of geological wonders, and supports a wide range

of recreational activities, including boating, swimming, camping, and hiking.

The State Scenic Waterway Act, voted into law by Oregon residents in 1970 by a two to one margin, exists to protect our most beloved rivers. This visionary Act mandates that the highest and best uses of waters in state scenic waterways are fish, wildlife, and recreation.

Once designated, Oregon manages these waterways to protect their natural resources, scenic values, and recreational uses. The protections afforded, including safeguards for water quality and instream flows and prevention of dams, also benefit fish populations.

Many thanks to the WaterWatch members who weighed in on surveys, submitted public comments, and attended hearings. Your voices were heard! Moving forward, the state has committed to studying three rivers each biennium for possible designation as new scenic waterways, so please keep your pens readied to help protect more rivers!



*Flyfishing on the Molalla River by Bob Wick, BLM*



## 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.

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213 SW Ash Street, Suite 208  
Portland, OR, 97204

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Our Development Director, Molly, is available at (503) 295-4039 x0 to take a donation by credit card over the phone, or answer any questions.

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**Saturday, November 5, 2016**

## **Location**

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## **Details & Tickets Available**

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