



WATERWATCH

Protecting Natural Flows in Oregon Rivers

INSTREAM

June 2020 Newsletter

Inside Instream:

Stream of Consciousness.....2-3

Budget/COVID-19.....5

Rogue Basin Dam Removals.....6

*Willamette Reservoir
Recap.....7*

*Bob Hunter: Oregon
Conservationist.....8-10*

*Fight to Save the Lower
Clackamas.....11*

*Deschutes Habitat Conservation
Plan.....12*

Klamath Basin Briefs.....13

STREAM OF CONSCIOUSNESS

A Comforting Development in Uncertain and Challenging Times

By John DeVoe



In what feels like a very long time ago (a little over two months), in a different world (the Western hemisphere squaring off against two pandemics—COVID and racism), someone sent me a link

to a homemade video of Steve Martin playing a solo banjo tune in what, his backyard? The tune, called Banjo Balm, may seem dated and, given the extraordinary events of the past few months, even a tad out of the blue, which I'd understand. But the video has over 10 million views and almost half a million likes on Twitter—it's touching people for a reason.

My point? It's important to find your own tune—banjo or otherwise—to soothe you in private moments during these unprecedented times. Aside from staying virus free (hopefully) and protesting safely on the streets (if you can and choose to, that is) I hope each of you has found your own private tune to comfort and restore you as we fight together to contain COVID and battle the evils of systemic racism.

Another balm that I've returned to again and again this spring is a development—a triumphant song rather than a banjo tune, if you will—that we at

WaterWatch have not shared with you yet. So, in hopes that you, too, will find this development affirming, let me also share it with you.

A few short months ago, the Oregon Water Resources Department certificated 80 new instream water rights on north and mid coast streams. While these new instream water rights are not perfect—as a general matter, the rights certificated are for less water than was sought in the applications by the Department of Fish and Wildlife, and, of course, these new instream water rights are subject to water rights with earlier priority—these 80 new instream water rights protect a spectrum of streamflows for fish across the months of the year on many important north and mid coast rivers and streams.

These new protections for environmental water finally make use of what is arguably the best tool we have to allow salmonids to adapt to a changing climate in the years ahead—Oregon's Instream Water Rights Act—one of Oregon's truly landmark and forward thinking conservation laws. This law was the first of its kind in the West. The Act creates a water right for water left in the channel of a stream and recognizes that the use of water instream is

a beneficial use of water entitled to the same legal protections as water rights for out of stream use. One of Oregon's conservation visionaries, Bob Hunter, (interviewed in this newsletter), played a key role in drafting this law. WaterWatch and partners secured passage of the law through the 1987 Oregon Legislature. After an initial flurry of activity under the Act, the law was underutilized for many years.

The new instream water rights protect streamflows on treasured rivers like the North Fork Nehalem, Salmonberry, Necanicum, Kilchis, Wilson, Nestucca, Siletz (including its North and South Forks) and the North and South Forks of the Alsea. Significant streams that received new protections include Beaver Creek (tributary to the Columbia), Fishhawk Creek, Humbug Creek, Ecola, Arch Cape and Short Sands Creeks, Gods Valley and Cook Creeks, Slick Rock and Drift Creeks, among others. Many of these rivers and streams are strongholds for salmonids, not dammed, and many lack the large scale agricultural diversions found elsewhere in Oregon. These new instream water rights provide a fighting chance for north and mid coast populations of salmonids to adapt and survive in a climate changed world.

The new instream water rights are one culmination of about a decade of work with Oregon's last three governors (Ted Kulongoski, John Kitzhaber and Governor Kate Brown), their staffs and with relevant state agencies, as well as the Oregon Legislature. The new instream water rights demonstrate Oregon's

commitment to healthy, connected freshwater habitat in a climate changed world and they follow the science. Many scientists point to legal protections for environmental water as a critical means of preserving the life histories of salmonids and their ability to adapt and survive in a climate changed world.

I hope you—like me—find this development energizing during these times that demand so much of our bodies, hearts and minds, and during the ongoing and non-stop rollback of environmental protections by the federal government.

In closing, I never planned to write a newsletter article during two pandemics. I am grateful to report that thanks to your support, WaterWatch has adjusted (mostly) to this new life. Our capacity is intact despite the physical changes wrought by COVID; separately, we have thought deeply about the global fight against racism (see Page 14 of this newsletter). And, as you will see through the articles in this newsletter, the work to fulfill our mission simultaneously continues at a high level. That is only possible because of your support. Rivers and streams, wetlands and lakes are a big part of our lives in Oregon. As the state slowly begins to reopen, I hope you will have an opportunity to spend some time finding comfort, inspiration and restoration in the fight against these two pandemics on your favorite piece of water—perhaps even on a river or stream now protected by a new instream water right. Stay safe and thank you! ■

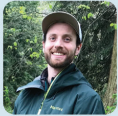


WATERWATCH
Protecting Natural Flows in Oregon Rivers

Staff



John DeVoe
Executive Director



Neil Brandt
Development Director



Lisa Brown
Staff Attorney



Jack Dempsey
Contract Lobbyist



Nancy Drinnon
Comptroller



Robyn Gottlieb
Admin & Development Assistant



Jim McCarthy
Southern Oregon Program Director



Brian Posewitz
Staff Attorney



Kimberley Priestley
Senior Policy Analyst



David Row
Communications Manager

Board of Directors

Karl Anuta
Vice President

Matt Deniston
Secretary

Dave Kilhefner
Treasurer

Jean Edwards

Bob Hunter

Lynn Palensky

Jeff Perin

Dean Runyan

Mary Scurlock

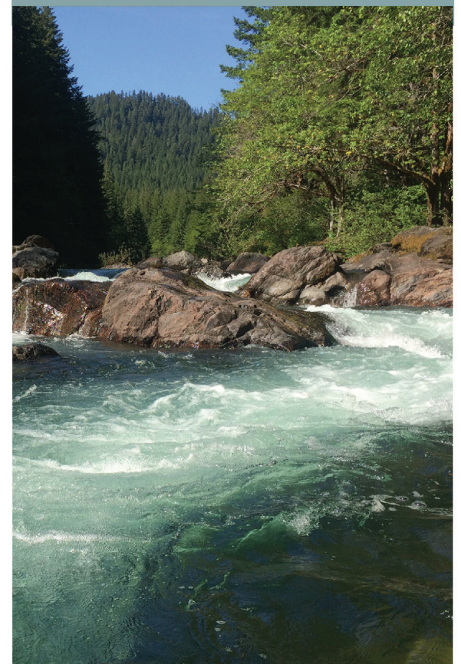
Bryan Sohl

Mary Lou Soscia

Kathryn Walter



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

WaterWatch of Oregon publishes
Instream three times annually.
David Row, Editor

FOLLOW • LIKE • CONNECT



@WaterWatchofOR



WaterWatch of Oregon



WaterWatch of Oregon

Learn more about our work,
become a member,
or sign up for
RiverAction Alerts at:
waterwatch.org
Email: info@waterwatch.org



PLEASE HELP PRESERVE FUNDING FOR KEY AGENCIES! Natural Resource Agencies are critical for Oregon's rivers, streams and aquifers—and the economic recovery from COVID-19

It comes as no surprise that COVID-19 has had a devastating effect on Oregon's economy. For what remains of the 2019-2021 biennium, there will be a \$1.9 billion general fund shortfall. To make bad news even worse, economists are projecting a more than \$4 billion revenue reduction in the 2021-2023 biennium.

What does this mean for Oregon's natural resource agencies and the programs that are so important to protecting Oregon's rivers, streams, wetlands and aquifers? Governor Kate Brown has asked all agencies to provide her with a 17% cuts list for the remaining year of the biennium. While the cuts have not yet been ordered by the Oregon Legislature, some will certainly occur. We can expect the same for the 2021-2023 biennium budget, where projections look even worse.

Combined, the Natural Resource Agencies in Oregon account for about two percent of Oregon's General Fund expenditures. Water is just one small piece of that. After cuts imposed in past economic downturns, it has taken more than a decade to restore and build programs to help manage Oregon's waters, and protect and restore streamflows. Two examples: While state funding for groundwater studies fell to zero following the 2008 economic crash, this past biennium not only

included funding for a new study, but added six groundwater staff to the Oregon Water Resources Department's roster. Oregon Department of Fish and Wildlife's water program, which is so critical to the protection and restoration of our streams, gained four positions over the past two biennia. Together, these are essential positions and programs for Oregon's water future.

Healthy rivers and aquifers are critical to Oregon's economy. Data generated after the 2008 crisis demonstrated that for every dollar invested in Natural Resource Agencies, Oregon receives a \$376 economic return on the investment. State agencies are critical to ensuring smart water management into the future. The sustainable management of water is a key piece of any economic recovery from the pandemic. As Oregon navigates the fallout from the pandemic, please join us in calling upon Governor Brown and the Oregon Legislature to preserve these and other critical agency programs for water. Healthy aquatic ecosystems take care of Oregonians and the economy. ■

Sign up now for WaterWatch's River Action Alerts on our website, waterwatch.org, to stay current on the development of the state budget as it affects these critical issues.

ROGUE BASIN DAM REMOVALS CONTINUE TO SHOW BENEFITS

Restoration Boosts Salmon Resilience and Abundance During Climate Change

State biologists also ranked these two dams among the 10 most significant fish barriers on Oregon's 2013 Statewide Fish Passage Priority List.

This summer will mark the fifth anniversary of work crews demolishing Fielder and Wimer dams on Evans Creek to restore access for native fish on a key spawning tributary of the Rogue River. Above these former dam sites, approximately 19 miles of habitat is available for fall chinook production, 60 miles for coho salmon production, and 70 miles for steelhead production. Evans Creek also supports cutthroat trout, Pacific lamprey, and suckers.

Since the removals, biologists have collected scientific data indicating that these removals have improved the health and resiliency of Rogue Basin fish runs. This spring brought more good news. For years, Oregon Department of Fish and Wildlife (ODFW) has maintained a survey site on West Evans Creek, above the two dams removed on the mainstem. Now, for the first time, ODFW recorded outmigrating lamprey at this site. ODFW reports that even during this year's unusually low flows, winter steelhead appeared in the West Evans creek system. Before removal, the two dams' inadequate fish ladders likely would have prevented steelhead from accessing this high quality habitat during drought.

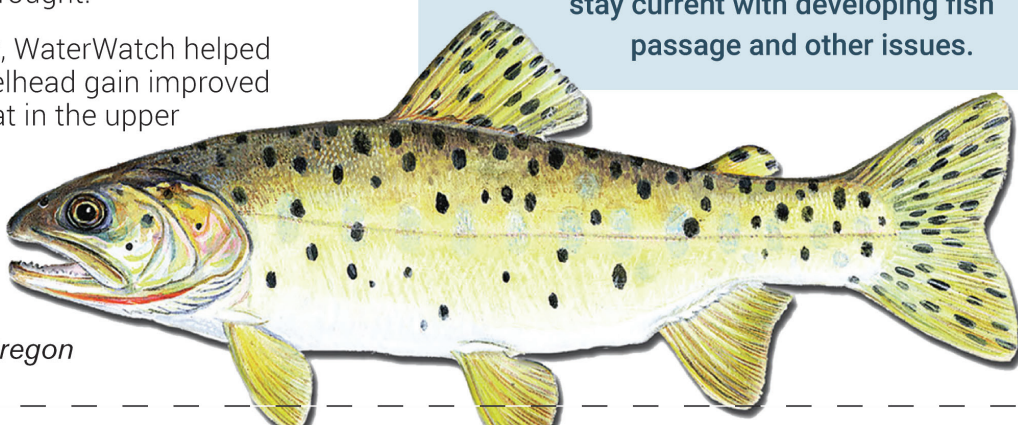
Thanks to your support, WaterWatch helped Rogue salmon and steelhead gain improved access to quality habitat in the upper reaches of the creek. This important river restoration project is a great credit to the

many partners who came together to get it done, and demonstrates the need to maintain the federal and state programs that made the project possible.

State and federal agencies identified Evans Creek, and restoring access to high quality fish habitat in its upper reaches, as important to the recovery of Southern Oregon/Northern California Coast coho salmon, listed as threatened under the Endangered Species Act. State biologists also ranked these two dams among the 10 most significant fish barriers on Oregon's 2013 Statewide Fish Passage Priority List.

The removal of outdated dams is helping to blunt some of the stress on fish populations during climate change, but we need to do more. There are many other high priority barriers to salmon and steelhead still left in the Rogue—and the rest of Oregon. WaterWatch has been working hard to address these barriers, and remains a leader in dam removal statewide. ■

Sign up now for WaterWatch's River Action Alerts on our website, waterwatch.org, to stay current with developing fish passage and other issues.



FISH NEED A BETTER DEAL FROM WILLAMETTE RIVER RESERVOIRS

Congress should say “No” to Corps of Engineers water allocation plan

The United States Army Corps of Engineers owns 13 reservoirs on major tributaries to the Willamette River, including well known reservoirs such as Fern Ridge on the Long Tom, Lookout Point on the Middle Fork of the Willamette, Cougar on the South Fork of the McKenzie, and Detroit on the North Fork of the Santiam. The Corps is near the end of a process to decide who gets how much water from these reservoirs. Unfortunately, the Corps is asking Congress to approve a plan that would be a bad deal for fish.

The Corps’ reservoirs can store up to 1.6 million acre feet of water—enough to cover 1.6 million acres of land with water one foot deep—for release in the spring and summer. Currently, all but about five percent of that water (which is under contract for irrigation) gets used to meet minimum flow needs of the basin’s winter steelhead and spring Chinook. Both species are listed as “threatened” under the federal Endangered Species Act and are in perilous decline.



Reservoir at Detroit Dam

In 2008, the National Marine Fisheries Service wrote a “biological opinion” that recommended minimum flows for the threatened fish. Among other things, the flows help salmon and steelhead migrate to and from the ocean and keep the water cold enough for them to survive the myriad human impacts that warm the water and change the shape of the river. The Corps’ own modeling says it would take two million acre feet of stored water each year—all of the water in the reservoirs and then some—to always provide the minimum flows recommended by the Fisheries Service.

The Corps’ reservoir plan would give fish only 1.1 million acre feet of stored water—half what’s needed to meet minimum flow needs for the threatened fish. It would make the rest of the water available to irrigators and cities—allowing them to dictate when the water gets released and to withdraw it from the river at some point. Irrigators say they need more water to grow more crops in the basin. Cities want reservoir water

to meet additional summertime demand, which is primarily to water lawns and decorative landscaping.

After evaluating a plan that included reserving all water for fish and a plan to give each category of use less than its total need, the Corps proposed a plan that would give irrigators and cities all the water they say they need for the next 50 years—based on inflated demand estimates that assume such variables as zero improvements in conservation and efficiency over the next 50 years. In turn, threatened fish would get only what’s left over. The Corps did not even consider other species in the Willamette River basin, such as lamprey and coho salmon.

To make matters worse, the Corps is trying to push its plan through Congress even though the Fisheries Service is in the middle of updating its 2008 biological opinion and the Corps is in the middle of preparing an Environmental Impact Statement on the dams. These studies are almost sure to provide new information—information that should be incorporated in the reservoir plan—including how much water fish need and how much will be available (considering new flow data and expected effects of climate change, for example).

As a requirement of its process, the Corps asked the Fisheries Service to agree that its plan would not harm threatened fish. The Fisheries Service did not agree and instead told the Corps in June 2019 that its plan would “jeopardize” the threatened fish if several critical changes weren’t made. Still, the Corps is now asking Congress to approve the plan without incorporating two changes recommended by the Fisheries Service: that the Corps retain authority to reallocate the water later without going back to Congress; and that the Corps prioritize flows for fish in years when the reservoirs don’t fill.

Oregon’s Congressional delegation has an opportunity to stop the Corps’ bad reservoir plan. Congressman Peter DeFazio, whose district includes Corvallis, Eugene and the South Coast, is chair of the House of Representatives committee the plan must go through. Sen. Jeff Merkley is a member of the committee that considered the plan in the Senate and approved some placeholder language for the House version. The rest of Oregon’s Congressional delegation should also have a say, given the importance of the Willamette Basin to the entire state.

Oregon’s Congressional delegation should make the Corps wait for the two major studies to be done and to then reconsider its plan. At the very least, the delegation should ensure the plan clearly and expressly incorporates all the recommendations made by the Fisheries Service. ■

BOB HUNTER

WaterWatch and its Singular Role in Oregon's Conservation Movement



As WaterWatch turns 35 and celebrates, albeit quietly, its singular and determined presence in Oregon's water conservation movement, we thought it would be appropriate to turn to someone well known for wisdom and perspective: Bob Hunter.

Hunter has been a leading force in this, one of Oregon's most muscular, tough-minded environmental bodies. A WaterWatch founding board member, Hunter co-drafted Oregon's landmark Instream Water Rights Act and was the organization's lead voice in the Free the Rogue Campaign, ultimately one of the most successful river restoration campaigns in the nation. The campaign removed three main stem dams from the Rogue, including Savage Rapids and Gold Ray Dams. It also protected streamflows of 800 cubic feet per second in the Rogue when Savage Rapids Dam was removed. Those achievements demonstrated to the public WaterWatch's gritty, unrelenting and powerful soul: It took 21 years to achieve these removals.

To many in the WaterWatch family, Hunter's story is fun and well known: The Michigan native, who received both his undergraduate and law degrees from the University of Michigan, made his way out to Oregon after law school in a beat up old car he purchased for \$500.

Two seemingly unobtrusive events led to a long career in law that would also help launch WaterWatch. While dropping off a law school buddy in Eugene, Hunter hung around long enough to take a bar review course and later the bar exam.

Also: The task of repairing a fly rod broken on the Blitzen River took him to a Medford fly fishing shop, Hook & Hackle. In Medford, Hunter started knocking on doors for work and founded a law practice with John Ferris that would allow them just enough time to pursue outdoor interests and do a bit of pro bono legal work as well.

Soon, Hunter also met Tom Simmons, board president of the Rogue Flyfishers. The two bonded over fishing and environmental issues but also pondered and worried about the state of rivers, streams, fish and wildlife. What followed, as they say, is a lot of history that would result in unprecedented changes in Oregon water law. We spoke with Hunter recently, both to touch base during these strange and difficult times, and to reflect on WaterWatch as we celebrate our 35th anniversary. The interview was edited for clarity and length.

Q: Your involvement in fly fishing inadvertently led to a lot of important things, including protecting streamflows, the birth of WaterWatch, and a lot of other stuff. Can you talk a bit about this genesis for those who simply may not know the back history?

A: I moved to Medford in October of 1978 after the bar exam. By that November or December, I found out about a group called the Rogue Flyfishers. That's where I met Tom Simmons, who was on the board of the Flyfishers and later became its president. He befriended me and brought me on to the board by 1979. The Rogue Flyfishers did a lot of habitat improvement projects, where they

worked with Oregon Department of Fish and Wildlife on fish restoration projects. We'd supply the manpower and materials to do them. A lot of these projects improved fish passage on salmon and steelhead tributaries to the Rogue River. A lot of tributaries that Tom and I worked on were dry early on in the summer. So we were losing productivity for salmon and steelhead. That alerted us to a water issue. At the same time, he and I were generally getting interested in water, and how to protect water for fish.

Oregon's Water Policy Review Board was doing a basin update at the time, which was essentially a planning process where the Review Board would go to different basins and conduct hearings and try to establish policies to manage water innovation. They had the ability to do a lot of things: adopt minimum streamflows, close streams to further appropriation, limit the uses of water in a stream, and classify rivers for fish or domestic water use. There was an ability, through that process, allowed under a 1955 law in Oregon, to get protections in the Rogue Basin.

A local advisory committee was formed to advise the Review Board, and we joined it and became advocates for flows in the Rogue Basin. There were vast quantities of minimum flow proposals for key spawning tributaries and we presented that to the Review Board. There were a series of meetings. And we organized a lot of people to support these minimum flows. One member of the Review Board didn't like this, however, and he organized a second meeting and got all the agricultural users to come out and speak out against it. Ultimately, the commission didn't enact minimum streamflows, or not many of them. That really spurred Tom.

Q: What happened next?

A: Well, Tom was very upset and angry that those protections weren't put into place. We looked at the



Savage Rapids Dam Remnant

whole water law system and how it worked and how it was possible to drain our rivers dry unnaturally by allowing appropriations without protections for survival flows for fish. This prompted Tom to take a look at the water code. Both Tom and I met with people in Salem to reform Oregon's water law. This was the early 1980s—there's no organization at this point. But during that time we worked on different concepts to protect flows. At one point, Tom even produced a major re-write of the water code!

Q: Tom eventually met Audrey Jackson, who worked for the League of Women Voters, and they got married and started to hold a lot of think tank gatherings with agencies, legislators, conservationists, and others, in water law.

A: Yes, Audrey was also a gourmet chef from her days in New York and Philadelphia. And we gathered out where she lived in Hillsboro at a place called Horse Heaven. Eventually, it was Charles Wilkinson, then a law professor at University of Oregon, who suggested that what we—Oregon—needed was a state wide organization that focused on water issues, since each state had the legal right to manage and allocate the state's water resources.

Q: That was a very singular need that no one else was providing. And still, today, no one else does, except WaterWatch.

A: Yeah. As we like to say, Tom and Audrey got married and then spawned WaterWatch. I spent a lot of time working with Tom and Audrey. Tom and I and others talked about drafting some type of legislation: We wanted to create something that had the same status and rights as an actual water right. So we drafted Oregon's Instream Water Rights Act. We worked with Jeannette Holman, one of the Legislative counsels for Oregon, and polished off the draft. Then, Tom and Audrey

(Bob Hunter: ...Continued from page 9)

carried the lobbying effort forward. We had people like Doug Meyer as a lobbyist; Audrey also had all of these political connections—John Kitzhaber who was then president of the Senate, Bill Bradbury and others. We organized a lot of other groups to support the bill. Lo and behold, in 1987, we got the bill passed. We made sure to draft the law so that water could be leased, donated or purchased and placed instream. One benefit of the law was to spark the water trust movement that you see today in Oregon and across the West. You can't undervalue the scale of this achievement: It was the first law of its kind in the West and one of Oregon's true conservation landmark achievements.

Q: That inspired another part of WaterWatch's mission that's changed and impacted how organizations involved with water operate.

A: Yes, at the same time, we realized it was important to have an organization that would monitor what was going on in agencies. So we started to monitor and play a role in water politics—to operate in part like a watchdog group to protect the public interest. We monitored the Water Resources Department and then when the Water Policy Review Board became Water Resources Commission, we monitored their actions as well. No one else was doing that. We were trying to remedy the lack of water management and trying to slow down the water allocation machinery. At that time, the state would issue a permit for any and every request for out of stream water use and let the system of priority work out who got actual wet water. This was no way to manage a precious resource.

Q: This was 1985 and 1987. That was a very different atmosphere socially and politically. Could we do what you and Tom and Audrey and others did today?

A: No. Part of what's happened over time is that because WaterWatch was successful, the opposition—water users and agriculture—got better organized and well-funded. They also have developed a heavier, pervasive lobbying presence. The other thing: Whenever we have had success—and we've had a lot over the years—there's been

pressure, in turn, to block our path to further success by our opponents. But to our credit, we've adapted and become even tougher and more strong-willed as well, tactically and strategically. We have always had really good relations with people in the Legislature. But, in the early days, we didn't always have much grassroots support behind us. It forced us to look into growing the organization and getting permanent full-time staff on board and developing membership for support. We're doing that now more aggressively while finding new and inventive ways to influence change and reform, pushing for good agency decisions and helping get legislation beneficial to water, fish, wildlife and those who depend on them.

Q: The removal of Savage Rapids and Gold Ray Dams happened 10 years ago. Which is both a lifetime and not so long, depending on your point of view. What are your thoughts looking back at what is a very historic episode in Oregon?

A: Removing those dams was a testament to a lot of things. One, it was our knowledge of water law and the processes that went on with water rights that gave us the leverage to take on Savage Rapids Dam. The district that owned it was illegally using water and had to prove what its legal right was—it was wasting a lot of water. That gave us the ability to file a protest when they asked for more water than they had a right to operate. That gave us a seat at the table. There's a big lesson here. WaterWatch has had most of its success through negotiation. But you can't successfully negotiate without power. And you get power by enforcing laws, or by being willing to enforce them. That gives you leverage in connection with someone who is standing in the way of doing something beneficial to rivers. That's how you get someone to sit down and solve a problem.

Another defining testament is a characteristic that has guided us in just about every battle we've been involved in: We don't give up. We've been successful because we've been willing to stick with an issue for a long time. It took 21 years to get Savage Rapids Dam out, dating back to when we filed our initial legal challenge to the water rights proposal in the 1980s. That's a very long time. ■

WATERWATCH CONTINUES LONG-RUNNING FIGHT TO SAVE THE LOWER CLACKAMAS RIVER

At Stake Are Four Runs of Threatened Salmon and Steelhead



For more than 12 years, WaterWatch has litigated to require Oregon and certain cities to follow the law and ensure that enough water is left in the Lower Clackamas River for imperiled fish. The river and its fish already won once in the Oregon Court of Appeals. Now WaterWatch is back in the appellate court again defending the river and four runs of threatened salmon and steelhead, including winter steelhead, coho salmon, spring Chinook salmon and fall Chinook salmon.

At issue are several undeveloped or underdeveloped municipal water permits that the cities want the permission to develop. The central question in the litigation is whether the Oregon Water Resources Department (OWRD) has conditioned the development of these old municipal water permits to maintain the persistence of the four imperiled fish species as required by state law. Thanks to many of you who have stepped up over the years to defend this important fish protection standard from attacks by cities, imperiled fish in the Clackamas River—and across the state—have an important safeguard as cities develop old and underdeveloped water rights.

For over 12 years, WaterWatch has been litigating these cases against two private law firms and the state. In 2008, WaterWatch challenged OWRD decisions to allow the cities to divert an additional 150 cubic feet per second from the Lower Clackamas River under eight old water rights, doubling the amount of water that those cities are already allowed to divert from the Lower

Clackamas. The new diversions would take more than one-third of the lower river's dry season flow.

In 2011, after an administrative trial and a decision by OWRD to allow the new water use with wholly inadequate fish protection conditions, WaterWatch went to the Oregon Court of Appeals and won. In an opinion issued on New Year's Eve of 2014, the court rejected OWRD's decision as defective, ruling that OWRD's determination that a statutory fish protection requirement had been satisfied "lacked substantial evidence and substantial reason." The court rejected OWRD's "circular reasoning" and reliance on a one-sentence email from another agency, finding that it did "not pass muster" under Oregon's standards for agency orders and told the agency to go back and redo the decisions. In a head scratcher, the cities, perhaps more concerned with optics than rivers and imperiled fish, oddly declared victory.

In 2018, after a second administrative trial, OWRD issued a new decision that fails to address the issues identified by the court. Instead of fixing the inadequate proposed permit conditions, OWRD again proposes to allow the cities to drain the river well below the flows the state has identified as needed for the imperiled salmon and steelhead. It's important to note here that the science WaterWatch is relying on to determine the flows needed to maintain the persistence of the imperiled fish in the Lower Clackamas is the state's own science. Oregon generated the science but continues to refuse to do anything to implement it under the fish protection law.

Currently, WaterWatch is completing its briefing for this second trip to the Oregon Court of Appeals. We will keep you posted as the case progresses. We remain hopeful that imperiled migratory fish and the Lower Clackamas River will prevail again and that one day, Oregon will actually implement the fish protection law for these water permits. Thank you for your longstanding support of this work. ■

Sign up now for WaterWatch's River Action Alerts on our website, waterwatch.org, to stay current with developing Lower Clackamas River and other issues.

ADVOCATING FOR FLOW IMPROVEMENTS IN THE DESCHUTES HABITAT CONSERVATION PLAN

As reported in earlier newsletters, a Habitat Conservation Plan (HCP) that will guide river restoration efforts in the Deschutes and Crooked River Basins 30 years into the future is nearing completion.

In December, nearly 1,700 comments were submitted on the draft HCP and Environmental Impact Statement (EIS). Thank you to the many WaterWatch members for making your voices heard! For our part, WaterWatch, joined by the Center for Biological Diversity, submitted extensive comments on the HCP and draft EIS urging that the final HCP be strengthened in order to meet the biological needs of protected species.

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, with critically low flows in the winter and soaring high flows in the summer. This flow regime has decimated the river, and the species that are dependent upon it, most notably the Oregon Spotted Frog, which is currently on the brink of extinction. The HCP fails to ensure that the river will be restored to a level that will provide for the survival of the frog. According to the U.S. Fish and Wildlife Service, the frogs need a minimum of 600 cubic feet per second (cfs) in the Upper Deschutes



Oregon Spotted Frog

to provide overwinter habitat. The HCP only offers 400 cfs—and that after 20 years which may well be too long for many populations of frogs on the Upper Deschutes. Similarly, frog experts have called for a drop in the high summer flows released from storage that currently scour habitat. The HCP does not contemplate a summer cap.

The HCP fails to hit the mark on the Crooked as well. Like the Deschutes, storage and irrigation practices have wreaked havoc on this gem of Central Oregon. While summer flows immediately below the dam are plentiful, just a few miles downstream on the river large irrigation diversions nearly drain the river dry. Rather than commit to flows that would provide adequate habitat for Steelhead, Bull Trout and Chinook from Bowman Dam down to Lake Billy Chinook, the HCP only offers the release of 50 cfs for fish, which does not come close to the biological needs of these species. The HCP also fails to provide that flows released for fish will be protected instream, and not simply be diverted onto fields as they are today.

Again, thank you to the many WaterWatch members who weighed in! While we were expecting a 2020 spring release of the final Deschutes HCP and final Environmental Impact Statement (EIS), this has been postponed until the fall and/or early winter. Stay tuned for updates as documents are released. ■

Sign up now for WaterWatch's River Action Alerts on our website, waterwatch.org, to stay current with developing Deschutes Habitat Conservation Plan and other issues.

KLAMATH BRIEFS

Key Win, and a Setback, for Everglades of West

This April, WaterWatch (ably represented by CRAG Law Group) and our allies Audubon Society of Portland and Oregon Wild scored a decisive win in federal court in our campaign to ensure that the internationally significant Klamath Basin National Wildlife Refuge Complex is managed for the benefit of ducks and geese, not commercial agribusiness and onions. A court rejected an incorrect agribusiness interpretation of the law used for years to defend a unique program that leases 22,000 acres of public refuge lands to commercial agricultural use. This program diverts scarce refuge water supplies to commercial crops with little or no waterfowl benefit.

Instead, the court agreed with WaterWatch, finding that federal law requires the government to prevent commercial activities, including the agribusiness lease land program, from harming refuge fish and wildlife. “[U]nder the plain language of the [Kuchel] Act, if an agricultural use is not consistent with proper waterfowl management, then the Act in fact requires that the Service impose restrictions that ensure proper waterfowl management.” Unfortunately, even with the favorable interpretation of the law, the court was unwilling to declare that the current management of the refuges is inadequate.

The leasing program frequently contributes to Lower Klamath National Wildlife Refuge going dry during the critical spring and fall migrations. Since 2012, tens of thousands of birds on these refuges have died for lack of water resulting from federal government actions and water use by the leasing program. If the status quo continues, such bird kills are expected to continue.

Despite this grim picture, the Klamath refuges’ wetlands remain some of the most important waterfowl habitat in North America. An estimated 80% of Pacific Flyway waterfowl visit the wetlands during their migrations. The Klamath Wetland Complex once encompassed more than 350,000 acres. Today it has been reduced to 80,000 acres to make way for agriculture. Of these, more than 22,000 refuge acres are leased to agribusiness. Thanks to your support, we will be appealing this order to seek a management standard that does not condemn the Klamath to a future of mass bird die-offs and dwindling waterfowl populations. ■



WATERWATCH FIGHTS TO PROTECT KLAMATH BASIN'S SWAN LAKE

A Delaware corporation has proposed to construct a major new pumped storage hydroelectric project in an area of the Klamath Basin known as Swan Lake. Swan Lake is known as a critical area for migratory birds. United States Fish and Wildlife Service biologists, for example, have identified the Swan Lake area as a “high priority” for “waterfowl habitat protection,” noting that the “extensive open-water and wet-meadow complex . . . is an important area for migrating ducks, geese (cacklers and white-fronts in the spring), swans, and cranes.”

It's important to note that pumped storage is a net energy loser. Pumped storage is basically economic arbitrage, allowing electricity to be generated when rates are high and water to be pumped into elevated storage when rates are low. What these projects really generate is money. Despite the well-documented problems with groundwater declines and scarcity in the Klamath Basin, the project proposes to utilize groundwater for the project. WaterWatch has now filed five rounds of comments to Oregon Water Resources Department (OWRD) detailing why these proposals to obtain groundwater are unlawful.

If and when OWRD issues a proposed order allowing the project, WaterWatch will be reviewing that order for compliance with the law. ■

Sign up now for WaterWatch's River Action Alerts on our website, waterwatch.org, to stay current with developing Swan Lake and other Klamath Basin issues.

BLACK LIVES MATTER

As this issue was going to press, George Floyd was brutally murdered on camera by a Minneapolis police officer for the world to see. We condemn the pervasive and systemic racism that contributed to the murder of George Floyd and many others, and stand in solidarity with the activists who are courageously standing up against police brutality.

The environment and racial justice are connected.

Indigenous communities and people of color are less likely to have access to clean water and clean air and suffer greater health, cultural, economic and other risks and impacts due to systemic racism—the same systemic, institutional racism that causes widespread fear and, as we have seen again and again, results in the killing of people of color at the hands of law enforcement and others recently and across the history of the United States. Racial justice and environmental justice go hand in hand.

We stand among those calling for justice, accountability and an end to the violence and inhumanity. We are committed to action to address the other and older pandemic in the nation. For WaterWatch's full statement, please visit our website here: waterwatch.org/seeking-justice/

We obviously are not the experts here, so we defer to those who are. In support of those groups who are on the front lines of fighting for justice for black, indigenous, and people of color communities in Oregon, we encourage you to engage with and support the following organizations—just a few of the many advocating for justice and an end to the violence:

Black Lives Matter
Black Visions Collective
Coalition of Communities of Color
Democracy Now
Don't Shoot PDX
NAACP Legal Defense Fund
Reclaim the Block
Unite Oregon
Urban League of Portland

FOR RIVERS AND JUSTICE...

—The Staff of WaterWatch of Oregon

Please support WaterWatch and invest in the health of Oregon's rivers, lakes, aquifers, and wetlands!

Mail

Donations may be sent to:

WaterWatch

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

Online

Make a one-time or recurring monthly donation at waterwatch.org/donate

Become a Monthly Member

Giving monthly is a simple way to provide us with consistent and reliable support throughout the year.

Sign up to become a monthly sustaining member at waterwatch.org/donate or via phone at (503) 295-4039 extension 0.

Other Ways to Give

Donate Securities Donating appreciated securities such as stocks, bonds, or mutual funds is an effective and tax-friendly way to support WaterWatch.

Estate Planning You can help secure a legacy of healthy rivers in Oregon by including WaterWatch in your estate plans. We can help you find a plan that meets your needs and benefits Oregon's rivers long into the future.

Workplace Giving Many employers make it easy to support by offering matching payroll contribution programs. Ask your employer 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

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

NONPROFIT
U.S. POSTAGE
PAID
PERMIT NO 110
MEDFORD OR

Printed on 30% post-consumer fiber



Save the Date

**WaterWatch of Oregon 18th Annual
Celebration of Oregon Rivers**

**October 24, 2020
Virtual Event Details TBA**