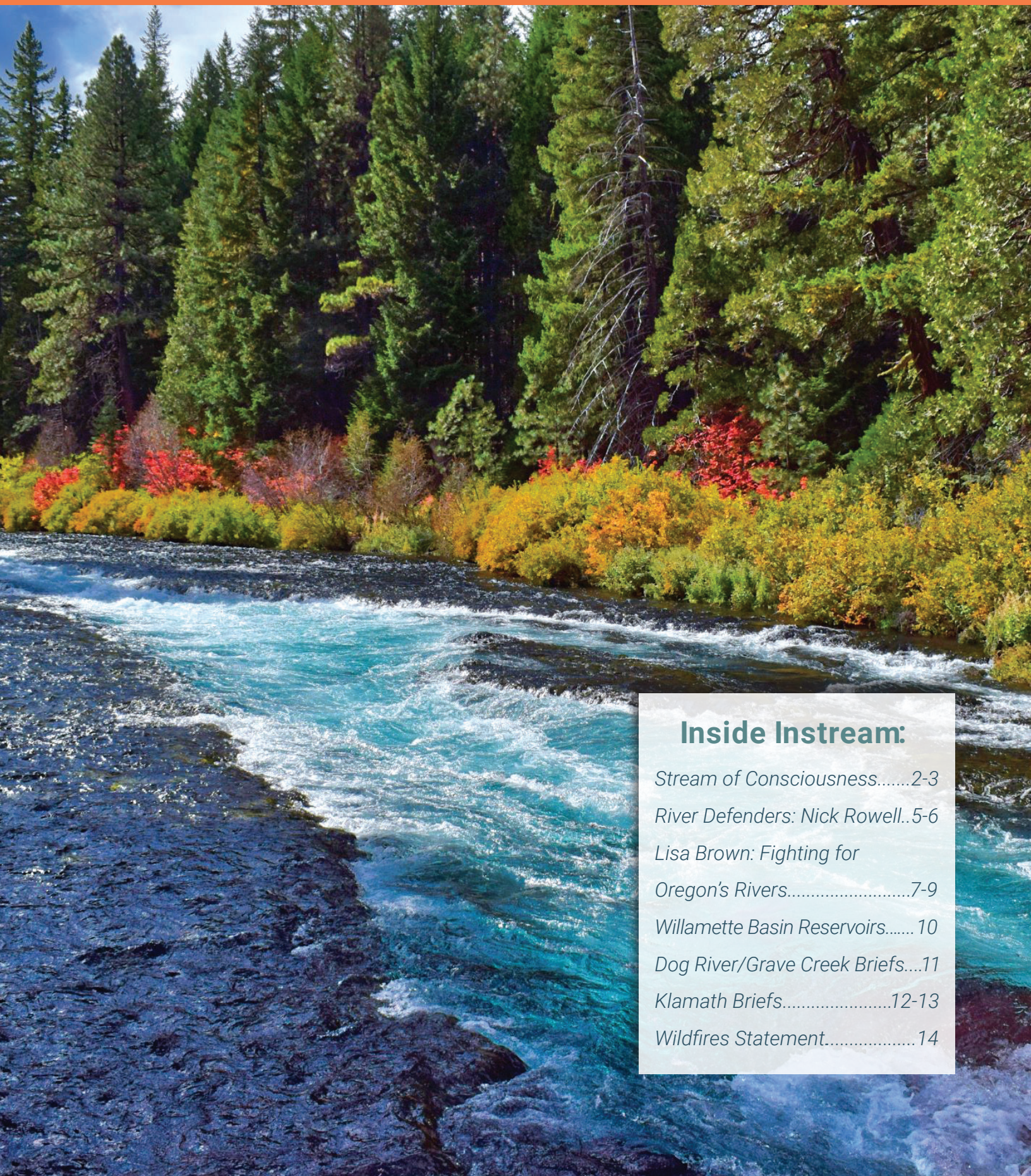
WaterWatch

Protecting Natural Flows in Oregon Rivers

INSTREAM

October 2020 Newsletter



Inside Instream:

STREAM OF CONSCIOUSNESS

The Post Fire Effect on Streamflows and Water

By John DeVoe

Today it's raining, like connecting with an old friend after too much time has passed. From the radar, it looks like the rain is hitting some, but certainly not all of the fires in Oregon. Recently, I spent a frantic day cleaning gutters and removing vegetation near the house. We were spared by the fires but not by the smoke. Many in Oregon and the West were not so lucky, losing lives, homes, property and health to the fires. As Oregonians take stock of the impacts, we at WaterWatch send our sympathies and condolences to all of those who suffered loss in these fires.

History and science show us that forests, fires and ecosystems have evolved together at least since the last Ice Age. The causes and factors behind this year's fires are varied—and some of the most destructive were not forest fires at all. Climate change contributes to more intense and larger scale fires and has changed the timing of precipitation across the year resulting in a longer and drier dry season. Decades of fire suppression policies, industrial forestry, the patterns of human settlement into areas where fire exists naturally and local weather and wind conditions all contributed to this situation.

Thankfully, not all fires burned at the same level of intensity everywhere. Many fires burn in a mosaic pattern, although climate change is increasing the intensity of fires. Low to moderate intensity fires—that likely covered thousands of acres within some of the Oregon fires—can rejuvenate the health of watersheds by restoring a mix of habitats and providing nutrients to streams. Even high flow events after large high intensity fires can help provide woody debris and spawning gravels for long-term stream and fishery health. In Yellowstone Park, for example, scientists have not identified long-term negative effects to watersheds from the 1988 fires, though many of those fires burned quite intensely.

The impacts to people are sobering. Being WaterWatch, we are also concerned about the long-term impacts to our rivers from these fires—and to fish and wildlife. So what can we expect for our rivers from these fires going forward? Part of the answer will depend on how we respond.

In the Pacific Northwest, a literature review on the effects of fires on streamflows shows that the answer to this question is—it depends. Post fire weather, fire intensity and scale, soil types and permeability, elevation, snowpack, ash that reduces the albedo of snowpack, infiltration to groundwater, slope, changes in evapotranspiration, canopy loss, revegetation—these and many other factors all affect post fire streamflows in our rivers.

In some watersheds, we will likely see high flows and flooding and potentially, debris flows—if rainfall is high or if snowpack melts off rapidly. There will likely be watersheds where we see water quality problems associated with increased nutrient loads, sediment, erosion, and possibly heavy metals associated with some fires. We will likely also see increased temperature pollution in some watersheds due to the loss of stream shading vegetation.

But when it comes to streamflows, there is no single answer for what to expect for our rivers and streams. Scientists have identified high variability in the post fire streamflow response in the West generally and no hard and fast trends in streamflow variability after fires in the Pacific Northwest (Saxe et al. 2018). Again, post fire streamflow effects depend on a wide variety of factors that are not all present before, during and after every fire.

Scientists Goeking and Tarbaton (2020) developed a summary of metrics (see chart below) to assess the post disturbance/fire hydrologic response of streams after reviewing 78 existing studies on the subject in an attempt to assess the question: Does water yield or snowpack increase after forest disturbance? They found no single answer.

RESPONSE	TOTAL NO. OF STUDIES	INCREASE	NO CHANGE	DECREASE
Streamflow (annual water yield)	31	26	16	9
Peak flow magnitude	22	19	10	7
Peak flow timing	18	14 (earlier)	7	4 (later)
Low flow magnitude	25	14	9	9
Max. snow water equivalent	42	34	10	10

Numbers don't total 78 because many of the studies found variable or multiple results. Again, the post fire effect on streamflows and water in our watersheds? It depends.

It is also critical for streamflows to consider our responses to fires. An important study discovered that when mature forests are disturbed and replaced with timber plantations, this results in long-term declines in seasonal low streamflows over time (Perry and Jones, 2017). So, our responses to fires matter not only for the forests and people but also for future streamflows and the health of our rivers.

Because of greenhouse gas emissions already in the atmosphere, we are going to have to learn to live with fire even as we await comprehensive climate emissions reduction policies from government. Our rivers, given enough water and time, are resilient, but rivers and salmonids are also already under incredible pressure from diversions, dams and a changing climate. Two important responses to intensifying fires caused by a changing climate are to ensure that rivers have enough water for healthy streamflows and to remove obsolete barriers so that fish and wildlife can move throughout watersheds to adapt to changing conditions—in part caused by fires. WaterWatch will be there on both counts. Our thoughts are with those who have suffered in the fires in Oregon and across the West.■

WATERWATCH
Protecting Natural Flows in Oregon Rivers

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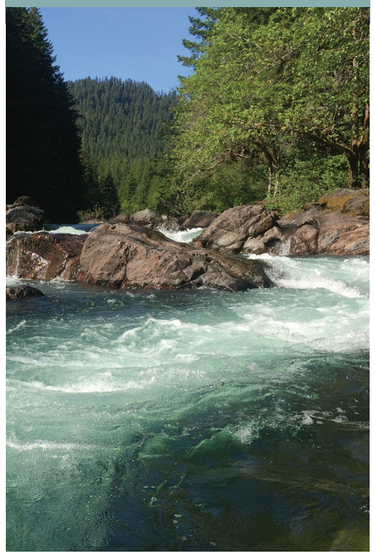
WaterWatch's mission is to protect and restore streamflows in Oregon's rivers for fish, wildlife, and the people who depend on healthy rivers.



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David Row, Editor

WaterWatch River Defenders: NICK ROWELL

Many anglers and WaterWatch auction goers know Nick Rowell as the owner and operator of Anadromous Anglers, a popular fly-fishing guide service specializing in steelhead fishing along Oregon's North Coast. Nick has generously donated his services to our annual "Celebration of Rivers" for several years now. Nick's laid-back, expert guiding trips are highly sought after during the auction's always aggressive bidding.

Nick's support of WaterWatch goes beyond offering generous insider tips on fishing. He's always willing to spread the word about our efforts in the Deschutes and elsewhere. For that we are thankful!

Recently, we chatted with Nick about his support of WaterWatch but also got his thoughts on his approach to helping water conservation and how he got into guiding.

The interview was edited for clarity and conciseness.

Q: How did you first get involved with us as a supporter?

A: It started with my buddy Chris O'Donnell. We've worked together on the Deschutes for the past 10 years up until last summer. We're good friends and we both guide along the North Coast. (WaterWatch Board Member) Lynn Palensky reached out to us one day and asked if we could help with the WaterWatch auction. I knew about WaterWatch from Paul Franklin. Of course, Chris and I wanted to help. Our support first started out with us offering our services for one day on the Coast then it branched into two. And so on. It grew from there. We're both passionate about conservation, helping native fish and keeping water in the rivers. WaterWatch does all of that. Our helping was a no-brainer.

Q: Are there particular policy issues that we champion that really grab you?

A: I would say the fact that you fight, overall, for keeping water in rivers. Obviously, I love anadromous fish and steelhead—a huge component of their livelihood is water and access to habitat. And your core mission is about protecting that.

Q: As someone whose livelihood depends on water, how would you characterize your involvement with the conservation movement.

A: It's a big part of my life. The fact that I spend time with people who may not know how important these things are is crucial, too. To them, what's important is to catch a fish, to go steelhead fishing. To me, what's important is the fact that the fish are there. If I ever have kids, I want to be able to walk them up to a small coastal river and show them spawning salmon and steelhead. That's what I grew up with. I can't imagine living here in Oregon and not having that. They're worth way more than being on the end of your line.

Q: WaterWatch is 35 years old. But there's still a lifetime of work for us left to do. As a supporter, what would you like to see us do next?

A: You know, that's a tough one. There are so many complex hoops in the world of conservation and in the work you do. On stuff going on in the Deschutes, I support the Native Fish Society, Deschutes River Alliance and WaterWatch. But I know that all organizations can't always be on the same page on things. I know there are a lot of different perspectives. Everyone is passionate about things. I'm not privy to things behind the scenes. But, you know, ideally, it would be great to see more collaboration between everyone to achieve a common goal. I know that's a hard thing to do. When you are going up against the state or a big powerful company one group is good, but three or four working together would be more powerful. Again, I don't know if that's doable and I may have missed or overlooked past collaborations. But as a principle, if we can get more people to work together, that'd be great.

Q: You went to Oregon State University, and then after that you started your own business. Tell us about that.

A: I started my business in 2012. I graduated from college in 2008 and worked for my buddy Chris for a few years and went up to Alaska for a few summers. All those things got me into the guiding business. Chris asked me to help him out in the Deschutes—that was the summer of 2008. I bought a drift boat and started working on the Deschutes. Slowly, I built up a clientele from knowing people. It took five years of being poor in the winter, but it was worth it.

Q: You've spent your entire life close to nature—water particularly. As a conservationist, what have you noticed in terms of water and conservation as the years have passed? Have things gotten better or worse?

A: It's gotten better in some ways, worse in others. I grew up fishing the Siletz. Caught a lot of trout there. Logging practices have gotten a little better as far as buffer zones. That's a huge one. There's a lot less of that fine sediment in the river now, which is huge for spawning. I remember when I was younger, always seeing the buffer zones getting blown down since the Siletz is super windy. So, they would leave these super thin buffer zones and they would get knocked down. The sun would beat the river down all summer. But I went back there last spring. The river was in better shape and there was a bigger buffer zone. I think ocean conditions and the fact that there are more people interested in fishing, particularly steelhead, that's a good thing. Overall abundance of fish has probably gone down because of habitat loss and climate change and a lot more people fishing.

Q: Thinking about those changes, big and small, must make you and others appreciate what we do.

A: Well, just going to the auction every year, I know there are more people going there, more people who understand that what you do is important. A big thing for me when I was going to school was, I noticed the amount of politics in fisheries management. Things that weren't good for the fish or their habitat—maybe certain things that are important weren't taken into full consideration because they didn't check a financial box. That disappointed me and pushed me towards guiding. I talked to my advisor about it and thought I can do better and influence people who have more power and sway in the "real" world. If I can help educate those people, make them care, and make them want to give back, that could be my contribution.

As a guide, we tend to take out people who are more wealthy, influential, than us, than a lot of people. I've taken U.S. Senators out on trips. So, if I can get to people like them and make an impact on them and have them move forward in a way I couldn't by collecting data for the Department of Fish and Wildlife, I'm helping out. I'm also helping by contributing to organizations like WaterWatch, trying to get people involved. That's how I try to give back to conservation organizations even though I can't give a lot of money.■

LISA BROWN:
Fighting for Oregon's Rivers

What's it like to work at WaterWatch of Oregon, fighting on behalf of Oregon's rivers, lakes, streams, aquifers and more?

There's no better way to find out than to have one of our longtime attorneys tell you firsthand.

That's why we interviewed Lisa Brown, WaterWatch staff attorney since 2004. In a wide-ranging conversation, Lisa gave an insider's perspective on what it's like—and what it means—to carry out the complex but inspiring in-the-trenches work of a WaterWatch staff attorney.

Lisa has a long history of conservation work in the West. Both before and during her tenure at WaterWatch, she has worked with different conservation groups on watershed, aquatic habitat, and species protection projects. She's also conducted aquatic research for the Pacific Northwest Research Station in Corvallis. At WaterWatch she's earned the distinction of being tenacious, effective, and passionate but always quick to laugh, too. Her work at WaterWatch has crossed and touched the entire state.

Lisa earned her undergraduate degree in Environmental Science from Oregon State University with honors, and then graduated from Lewis and Clark Law School, cum laude, with a certificate in Environmental and Natural Resources Law. She is a member of the Oregon Bar.

The interview has been edited for clarity and concision.

Q: How did you get interested in working on streamflow issues?

A: I've spent a lot of my life both exploring and working to protect many amazing places in the West which gave me an appreciation of the way that streams and rivers tie everything together and are key to supporting fish and wildlife on many landscapes. As to the specifics of water law and policy, it was taking water law and policy classes with Janet Neuman while getting my law degree at Lewis and Clark Law School that got me interested. I had worked on aquatic habitat protection prior to law school and had done a lot of stream surveys across the Pacific Northwest, but that was mainly focused on forest and land management. I had a limited understanding of water rights and water law prior to those classes. Once I better understood those pieces and what it was that this sort of mysterious group WaterWatch was working on, I became intrigued about working on this critical aspect of river conservation. All the pieces of river conservation are important, but without water none of it can be effective.

Q: You started working at WaterWatch in 2004. What has kept you here working on water issues?

A: WaterWatch was the first group in the West to focus exclusively on restoring and protecting water instream. The organization's work has resulted in stronger laws, better management and greater public awareness of the issues facing Oregon's rivers, streams, and groundwater aquifers. This has translated into more water in our rivers for fish and wildlife, and people who enjoy and depend on these waterways. WaterWatch is an extremely effective organization and I feel it's an honor to be able to do this work.

As to specifics, I think a key thing that keeps me—or probably anyone—doing this type of work is making a difference on the ground. Being able to help protect a much-loved river or lake, or a hardly known little stream or wetland, is really the core of it. That can come through working on specific water permit issues, securing better laws or rules, raising awareness so that others can help, or other mechanisms. Whether that protection is temporary or long-term, advancing tangible on-the-ground protections is always a great motivator.

I'd also say that one of the most inspiring things to me is working with people across the state who are trying to solve water issues, protect a stream or curb damaging new water permits.

And even in cases where we don't prevail in the short term, being able to speak up for these places and to advocate for improved water laws and water management—and to help others engage in the process in order to do so—is critical in the long run.

Also, water law is not dull. There's always something new and interesting to work on. And as we are faced with a changing climate and resulting changes in the amounts and timing of streamflow, the issues change and get even more challenging. For example, because the surface water in streams has largely been overallocated across Oregon, we've seen a push for greater use of groundwater, which has highlighted deficiencies in how the state issues new groundwater permits—often doing so when there is no data to show that the use will be sustainable. The result is falling groundwater levels in many parts of the state, which has added another layer to WaterWatch's longstanding work to protect Oregon's waters.

I would also add that because WaterWatch is a small organization, we each do a variety of things, which I like. At any given time we could be writing and delivering legislative testimony, working within a collaborative water planning process in Eastern Oregon, researching a new strategy to advance instream protections, drafting a Court of Appeals brief, or responding to an inquiry from someone trying to understand a water right or how to use the Oregon Water Resources Department's website.

Finally, the staff and board of WaterWatch, and the people we get to work with across the state and beyond, are great to work with. As a conservation group working mostly within Western water law—which can be a bit challenging—I think it's critical to have a fantastic team and to be able to have fun doing it. We have that.

Q: WaterWatch is always willing to challenge bad projects, and we are also willing to go to court to protect streamflows. How does that tool fit into your overall work?

A: I think it's important to first understand that the vast majority of litigation against the Oregon Water Resources Department is by water users, meaning people who want to divert water from streams or pump groundwater and are generally challenging the department's denial, regulation or conditioning of a permit to do that. There is a context of constant litigation pressure on the state from those seeking to divert and pump more water.

WaterWatch's role in strategically challenging decisions is vital to affording Oregon's streams and groundwater aquifers the protections that are written into Oregon's water code. To be sure, the water code falls short of protecting our streams in critical ways and needs modernization in that regard. That's why we have a dual approach of working to improve the standards while also making sure that the protections in place are implemented.

There are countless places across Oregon that wouldn't be what they are today without WaterWatch being willing to oppose a bad project. For a water permit decision that would harm a river, once we file an administrative challenge with the Oregon Water Resources Department there is often a way to work out a mutually agreeable solution that, for example, protects streamflows needed for fish while providing adequate water for a proposed out of stream use, without the issue proceeding to court. We strive to do that, but it's not always successful. A good example is the Oregon Water Resources Department's proposed issuance of a large new water permit to a private water company to divert 22 million gallons a day from the McKenzie River for what amounted to speculation in Oregon's water, which belongs to the public. That permit would have been issued had WaterWatch not challenged it, then prevailed at the administrative trial and then defended the win at the Oregon Court of Appeals.

Q: Is there a case or issue that stands out during your time at WaterWatch? And if so, why?

A: One that stands out for me is what happened at a place called Rivers End Ranch, which is located along the Chewaucan River just upstream from where it flows into Lake Abert. Lake Abert is a terminal lake and it's saline. Like other well-known saline lakes, such as the Great Salt Lake and Mono Lake, it's a critical resource for birds migrating on the Pacific Flyway. In simple terms, because of its salinity and the fact that it's not habitable for fish, it's incredibly flush with brine shrimp and brine flies that birds feast on and really depend on for their long journeys. To support those resources, however, the lake needs a certain amount of freshwater inflow because it cannot do so if it achieves too much salinity. Lake Abert is an internationally significant and rare ecosystem recognized for its importance to birds.

But, in the early 1990's, the U.S. Fish and Wildlife Service, various state agencies, Ducks Unlimited and others spearheaded a project using public money to build a channel spanning dam across the Chewaucan River, just upstream from where it flows into Lake Abert. Purportedly, the idea was to have a freshwater reservoir for birds. Oregon Department of Fish and Wildlife even allowed the ranch to submerge public land under this reservoir. Long story short: A bypass flow requirement that would have provided flow to Lake Abert was supposed to be added to the state water permits and an agreement with the U.S. Fish and Wildlife Service and a water quality certification issued by Oregon Department of Environmental Quality did include provisions to protect Lake Abert. But when it was discovered that the ranch had disturbed significant Native American Indian cultural resources when constructing the dam, all of the agencies just dropped the ball and abandoned the protections intended for Lake Abert, leaving behind this trail of destruction and leaving the ranch with the reservoir.

Basically, all of this public money was spent but instead of having a cooperatively managed public-private project that benefits wildlife, you have a private channel spanning dam across the Chewaucan River that creates a private reservoir lacking any bypass conditions to protect Lake Abert. To me, this long string of events where multiple state and federal agencies did not do their jobs of protecting tribal resources or Lake Abert is so bad that it would be unbelievable had it not actually occurred.

On the bright side, there are many fantastic people working on Lake Abert issues with a lot of great ideas and energy. So hopefully, collectively, we can generate significant positive change for this rare, internationally significant lake.

Q: There is a lifetime of work left to do here. What do you look forward to pursuing? What things would you like to see accomplished in, say, the next 15 years?

A: I would like to see Oregon's water management system achieve a reasonable level of modernization. By that I mean that at a minimum, all water use should be measured and reported in real time to the state. A much more robust system of stream and lake level gauges should be implemented so we know how much water we have in our streams and lakes. The saying "you can't manage what you don't measure" means that Oregon can't manage a lot of its water. It's irresponsible—and absurd—that for water, which is critical for supporting life, the environment, and the economy, we largely do not require measurement of its use. Nor do we have adequate gauging and monitoring to know how much is in our streams, rivers, and lakes. It's reckless that the Oregon Legislature and related agencies are not requiring and funding more responsible water management, even as the state continues to issue new water use permits. Our lack of basic data is just going to make things harder as we face water challenges from climate change.

Another priority would be progress on protecting and restoring inflows to Lake Abert in whatever form that may come in—probably a combination of things.

Improving how Oregon manages groundwater will also be key especially as climate change drives requests for new groundwater permits. For example, right now, if the state lacks the data to determine that a groundwater aquifer is over-allocated, it just continues to issue new groundwater permits. That needs to be changed to a default decision that denies new groundwater permits unless we know there is groundwater available to support that use. Otherwise, you will end up with more situations like the Harney Basin, where the state over-allocated the groundwater by more than 100,000 acre-feet.

Across the state, it's critical to continue to see new instream water rights established and an increased ability through funding and other programs to ensure that streamflows identified in the instream rights are met. Instream water rights are held by the Oregon Water Resources Department in trust for all Oregonians. Instream water rights are basically the equivalent of public lands for water—they belong to all of us. I think we can and should be better at ensuring that all streams are protected by an instream water right.

Finally, related to the points above, we need to clean up the "money in politics" problems that we have in Oregon. I think we should all re-read the 2019 award-winning article "Polluted by Money" by Rob Davis of The Oregonian at least once a year as a refresher and motivator. I think the problem is woven into—one way or another—pretty much every aspect of state natural resource management. If we can't fix it then we'll have a heck of time holding the line, let alone advancing better water management and protections. ■

A longer version of this interview can be found on our website at: https://waterwatch.org/category/blog/

WILLAMETTE BASIN RESERVOIRS REALLOCATION PLAN:
Litigation Paused after Securing New Requirements in Proposed Federal Legislation

WaterWatch has been participating in a years-long and complex process to reallocate 1.6 million-acre feet of water storage in 13 reservoirs on major tributaries to the Willamette River. As reported in the June newsletter, the plan proposed too little water for fish and too much for agricultural irrigation and cities. Also as reported, WaterWatch sued to keep the Army Corps of Engineers from moving forward with its plan. However, new promises in pending federal legislation, requiring the Corps to follow certain requirements under the Endangered Species Act and also retain authority to make future changes in the plan to help meet the flow needs of fish, have made the plan more acceptable.

The Corps owns the 13 reservoirs, which includes 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. Currently, all but about five percent of the 1.6 million-acre feet of water (which is under contract for irrigation) is available to help 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.

The Corps had been moving forward with a plan, which ultimately must be approved by Congress, that would give cities and irrigators all the water they claim to need (through overstated projections) for the next half century, while threatened fish would be allotted only what's leftover—about half of the stored water that even the Corps' own modeling said was necessary to always meet minimum flows for the fish. 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.

In June of 2019, the National Marine Fisheries Service released a "biological opinion" on the Corps' reallocation plan. The opinion said the plan would "jeopardize" threatened fish without several measures, including: the Corps retain authority to reallocate the water later without going back to Congress; and the Corps prioritize flows for fish in years when the reservoirs didn't fill. The Corps nonetheless asked Congress to approve its plan without incorporating the two critical recommendations by the Fisheries Service.

Meanwhile, in March 2020, WaterWatch joined with WildEarth Guardians and Northwest Environmental Defense Center (all represented by Advocates for the West) to challenge the Corps' reallocation plan in federal court on grounds it should wait for completion of an ongoing consultation with the Fisheries Service on overall operation of the Corps' Willamette Basin dams.

While our litigation was pending, WaterWatch and others negotiated with U.S. Congressional staff—primarily staff for the House Committee on Transportation and Infrastructure, which is chaired by Oregon Rep. Peter DeFazio—for language in the Water Resources Development Act (WRDA) to authorize the plan only if : 1) The Corps retain discretion to reallocate 10 percent of the reservoir storage later depending on consultations with the Fisheries Service; and 2) the Corps otherwise follow the biological opinion from the Fisheries Services.

Based on the inclusion of these provisions in WRDA, and passage of the bill by the full House of Representatives, we asked the court to pause the litigation, which it did.

Thank you to our members and supporters who provided comments—to the Corps and Congress—and have supported our work throughout this process. We will provide further updates as legal proceedings or the legislation move forward! ■

U.S. FOREST SERVICE DECISION WOULD ALLOW DEWATERING OF DOG RIVER

Flowing off the Northeast side of Mt. Hood, the Dog River feeds the East Fork Hood River and the imperiled salmon and steelhead—listed under the Endangered Species Act—that call the system home. The Dog River also supports the City of The Dalles, which has an 1870 water right that grants the city "all the water in the stream" for municipal use. However, while this 1870 water right technically gives the city access to all the river's flow (something that would not be allowed today), for the past 100 years the city's pipe has allowed only a maximum diversion of 12.3 cubic feet per second (cfs).

The Dalles' 100-year-old pipe is old and leaky, so the city is embarking on a self-proclaimed "pipeline replacement" project to upgrade its system. However, rather than being a true replacement project that would limit diversions to what they are today, the city's new pipe will allow more than double the diversion capacity—from 12.3 cfs to 26.3 cfs. While The Dalles holds a state water right, the diversion is on U.S. Forest Service (USFS) land so the project is subject to National Environmental Protection Act (NEPA) review. Unfortunately, the USFS failed to take a hard look at the expanded water use possible with the new pipe and the resulting impacts of dewatering the river on imperiled fish.

The USFS ignored concerns raised by conservation groups and the Confederated Tribes of the Warm Springs Reservation that the new pipe will allow The Dalles to dewater the Dog River nine months of the year. The simplistic and narrow analysis by the USFS ignored the fact that The Dalles holds a storage right in hand that will allow it to triple current reservoir capacity, and is also doing a test run of aquifer storage and recovery project that would divert over 16 cfs alone. In other words, The Dalles has concrete plans to increase water use—and this new pipe will make those uses possible.

In July, WaterWatch and Oregon Wild filed joint objections to the USFS decision. We requested the USFS back its representations that the city will not take more than 12.3 cfs with conditions on the Special Use Permit that ensure just that—a cap of 12.3 cfs. We also asked the USFS to set minimum bypass flows for the whole of the year so imperiled fish can survive. Final determination on the issue should arrive in the coming months. In the meantime, we encourage you to hike the Dog River Trail outside of Hood River to see firsthand what is at risk ■

NEW MINING PROPOSAL DEVELOPMENTS THREATEN IMPORTANT ROGUE RIVER TRIBUTARY

WaterWatch has worked for many years alongside local groups and residents to protect instream flows critical for fish by stopping numerous water permits for an aggregate mine proposed by Sunny Valley Sand and Gravel alongside the Rogue River Basin's Grave Creek. This creek, which enters the Rogue at the start of its cherished Wild and Scenic stretch, supports threatened Coho salmon as well as fall chinook salmon, Pacific lamprey, and other native fish. The proposed mine's owners have tried to secure many water permits during this time, but work by WaterWatch and our allies ensured that only two, off channel reservoir permits were issued—and that those included strong seasonal protections for fish and streamflows, including requirements for fully lined reservoirs to avoid groundwater capture that would deprive Grave Creek of cold, clean water.

Now the proposed mine's owner is trying to transfer an irrigation water right to mining use and move the diversion point upstream. This would reduce streamflows over a reach of Grave Creek and injure an instream water right established to provide instream flows for fish. Instream water rights are held in trust by Oregon Water Resources Department for the people of Oregon. The state already classifies Grave Creek as in the "highest need of flow restoration," and Oregon Department of Fish and Wildlife has stated for this site that "[a]ny diversion or appropriation of water for storage during the period April through December poses a significant detrimental impact to existing fishery resources." Nevertheless, ODFW's initial recommendation is that OWRD should consent to the injury of the instream water right from changing the point of diversion. ODFW's recommendation was based on various "out of kind" mitigation actions, such as placing large wood in the stream, that do nothing to restore loss of streamflow. Further, the proposed mitigation does not address expected water quantity and quality impacts from allowing water use for mining.

WaterWatch, along with local groups and residents, have opposed this development and requested a public meeting with the agencies. At a virtual public meeting on September 25, WaterWatch and nearly two dozen local groups and residents presented their objections to this proposal. ODFW now may either amend, withdraw, or affirm its recommendation to consent to injury of the instream water right, followed by further OWRD action on the water right transfer. WaterWatch will continue to work with local groups and residents to protect instream flows and the instream water right in Grave Creek. ■

KLAMATH

Another Preventable Die-Off Decimates Klamath Waterfowl

This summer, roughly 40,000 birds died in what federal managers are describing as the largest botulism outbreak in 40 years on Lower Klamath and Tule Lake National Wildlife Refuges. Unfortunately, such catastrophic disease outbreaks have become the norm on these refuges primarily due to a harmful commercial land leasing program which allows agribusiness interests to use publicly-owned refuge water to supply private crops grown on the refuges' lands, even during the most punishing droughts. In response, WaterWatch and our allies have been fighting in court since 2015 to compel the federal government to obey the law and ensure commercial activities on two of America's most important National Wildlife Refuges do not harm wildlife.

Since 2012, tens of thousands of birds on these two refuges have died for lack of water as a result of decisions made within the U.S. Department of Interior to perpetuate this land leasing program, which narrowly benefits a handful of local irrigators at the expense of the millions of migratory birds dependent upon the Klamath Basin National Wildlife Refuge Complex. With few wetland acres available due to lack of water, large numbers of waterfowl pack together during migration periods, leading to lethal disease outbreaks. Refuge staff estimated that some 20,000 birds perished this way in 2014. Similar conditions on these refuges sparked massive waterfowl die-offs in 2012 and 2013.

Every year this lease program—which is unique in the nation and distinct from more well-known cooperative farming programs on many National Wildlife Refuges—annually displaces some 22,000 acres of refuge wetland habitat, allows the use of toxic pesticides, and oversees the wholesale mechanized destruction of baby and adult birds in their nests each spring. Under the law, the federal government could stop accepting new bids on leases and instead phase out the refuge lease program. This would free up some 85,000 acre-feet of water (27.7 billion gallons) under the refuges' senior water rights, enough to provide adequate habitat for migratory and breeding birds and prevent die-offs during drought years.

Our coalition, which includes the Audubon Society of Portland and Oregon Wild, has already scored wins during our ongoing litigation, which centers on the adequacy of the Comprehensive Conservation Plan for the Klamath Basin National Wildlife Refuge Complex. In 2018, a U.S. Magistrate Judge ordered the U.S. Fish and Wildlife Service to release key portions of a heavily-redacted planning document showing that the federal government "cherry-picked legal interpretations" to favor agribusiness interests at the expense of waterfowl and other birds. Thanks to your support, we will continue to argue that wildlife like eagles and geese actually take priority over agribusiness on National Wildlife Refuge lands, and work to end a government program that has contributed to the deaths of some 90,000 birds over less than a decade.■

Potential Death Sentence for Klamath River Draws WaterWatch Challenge

This September, WaterWatch joined with commercial salmon fishermen seeking to challenge an Oregon Circuit Court ruling that would overturn long established protections for rivers, salmon and steelhead, and Native American tribal rights guaranteed by federal law. If allowed to stand, this ruling could devastate Oregon's rivers, fish populations, and scores of salmon-dependent rural communities, as well as severely endangered Southern Resident Killer Whales. WaterWatch and the Pacific Coast Federation of Fishermen's Associations are represented by the public interest law firm Earthjustice.

At issue is a finding by a Marion County judge that the U.S. Bureau of Reclamation lacks a water right specifically to release stored water from Upper Klamath Lake into the Klamath River to protect threatened Coho salmon during drought, and instead should deliver this water to agribusiness interests in the Klamath Irrigation District and elsewhere in the massive federal Klamath Project. This would represent a death sentence for the Klamath River and its once great salmon runs. Summer and fall flows, in particular, in the Klamath River are heavily dependent on outflows from what used to be a complex of vast natural lakes and expansive wetlands in the upper basin near present-day Klamath Falls. Heavily subsidized irrigation development over the last century has diked and drained the majority of this lake and wetland complex, and dry season Klamath River flows are now primarily determined by dam releases scheduled by federal officials.

WaterWatch and our allies have petitioned to become a party in this case to argue that this ruling overlooks several critical facts and legal obligations, including that federal law requires the government to release water to protect threatened salmon populations downstream and to fulfill senior tribal water rights supporting abundant tribal fishing in perpetuity. Whatever water rights the Klamath Irrigation District may have are junior to the water rights of the region's tribes, which are the most senior in the Klamath Basin.

We expect agribusiness interests to ask the judge to prevent river and fishing advocates from joining the proceeding. A decision on our petition to intervene is expected sometime in the fall.■

Federal Regulators Deal Blow to Klamath Dam Removal

In a July ruling which could delay or derail the much needed removal of the four lower mainstem Klamath River dams, the Federal Energy Regulatory Commission has required dam owner PacifiCorp to be co-licensee during the proposed removals, rather than fully transferring the structures and associated lands over to the Klamath River Renewal Corporation as officially requested in 2016 by the Warren Buffet-owned public utility.

The ruling came as a surprise because the transfer of dam ownership and liability away from PacifiCorp prior to dam removal is a core provision under a long-touted dam removal deal—known as the Klamath Hydropower Settlement Agreement. Such a transfer has been one of PacifiCorp's key demands since negotiations over the fate of the four obsolete, polluting, and fish-killing structures began around 2005.

Other provisions in the settlement agreement would allow the parties to make an arrangement satisfying this new requirement from federal regulators and proceed to removal, but it remains unclear whether PacifiCorp will agree. In response, WaterWatch is working with our allies to pressure the utility to make a deal.

This ruling allows PacifiCorp the choice to continue to delay removal while operating the dams under their current temporary federal operating license. These licenses renew each year but fail to protect the river, water quality, and struggling salmon runs. The dam removal limbo can occur even though the necessary funding is already in place to undertake this widely supported project. Meanwhile, Klamath salmon and steelhead remain cut off from hundreds of miles of historic habitat, and toxic algae blooms spill from PacifiCorp's reservoirs into the river. Oregon and California's salmon-dependent fishing communities, thousands of fishing-related jobs, and the many Native American Tribes in the Klamath Basin will bear the brunt if PacifiCorp chooses further delay. ■

WaterWatch Statement on the Wildfires Across the West

This year has been one of extraordinary struggle as our nation attempts to confront two pandemics, Covid-19 and systemic racism. Quarantines, marches, and protests fighting against injustice have suffused and shifted our nation's cultural consciousness as well as the awareness of the past and what progress—socially, scientifically, politically, and more—means for the future.

Recently, wildfires also touched most of us in the West and people around the world. These historic wildfires have caused suffering and damage across the Western United States. Lives and livelihoods have been lost, homes have burned wildlife, and air quality has suffered dramatically. We at WaterWatch send our condolences and hopes to everyone affected by these events.

While we're not the experts in fire policy, it seems clear that a changing climate is linked to a longer wildfire season and higher burn intensity and more destructive fire behavior. Those are very troubling developments for people and for watersheds and wildlife and the environment. Any response to these fires must acknowledge the role of a changing climate in these fire events and the effect of greenhouse gas emissions on our climate. Science has illuminated, for quite some time, that anthropogenic emissions of greenhouse gasses can result in conditions that encourage fires and make them more intense. It is well past time for concerted action to reduce greenhouse gas emissions.

While we're long overdue for needed policy changes on climate and greenhouse gas emissions, people and communities around Oregon and the West are in deep and profound need right now. If you want to make cash donations or volunteer in some way, there are dozens of organizations that work expertly and compassionately in the realm of disaster relief. A wonderful place to start is the **Rogue Valley Relief Fund** and the **Oregon Voluntary Organizations Active in Disaster**, which details an exhaustive list of nonprofits working deep in the trenches of disaster relief.

Other organizations to check out: **The American Red Cross, Salvation Army, Wildland Firefighters Fund, Oregon Food Bank, and the Oregon Humane Society.**

Our hearts and sympathies go out to the communities changed by these devastating fires.

-- The Staff of WaterWatch of Oregon

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Thank you, Mountain Rose Herbs, for your long-time sponsorship of our fall event! Your deep commitment to sustainability is very impressive, and we at WaterWatch are extremely grateful for your consistent and generous support!