



WATERWATCH
Protecting Natural Flows in Oregon Rivers

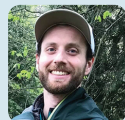
INSTREAM

Summer 2023 Newsletter

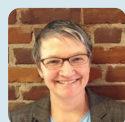
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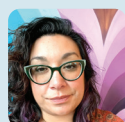
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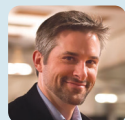
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*WaterWatch's mission
is to protect and restore
streamflows in
Oregon's rivers for fish,
wildlife, and the people
who depend on
healthy rivers.*



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Whitehorse Falls, Umpqua Scenic Byway,
Southern Oregon



McKenzie River down from Sahalie Falls, OR

STREAM OF CONSCIOUSNESS

Neil Brandt



2023 marks the thirty-eighth year that WaterWatch has been proudly standing up for Oregon's rivers and streams.

From winning pivotal court cases that secure river protections to negotiating deals that remove obsolete barriers to fish passage, we've stood up year after year for rivers, streams, lakes, and aquifers all across the state. One venue we have played a large role in since our founding is the Oregon legislature. From our drafting of the groundbreaking 1987 Instream Water Rights, allowing for water rights to protect instream flows, to our work over the decades to prevent literally hundreds of rollbacks of river protections, WaterWatch has been the voice of rivers in Salem.

This year, we continued to stand up in the Oregon legislature, where WaterWatch's recent advocacy has been especially critical for our rivers. By tracking and working on many of the water bills that were introduced in this legislative session (numbering over 120!), we successfully halted many damaging bills that would have resulted in significant rollbacks to existing river protections. We also worked to influence and support several beneficial bills for rivers and flows. When WaterWatch and our allies stand up for rivers in the Oregon legislature, we lend a voice to the fish and wildlife who need healthy

rivers to survive—and to our rivers, lakes, and wetlands themselves.

But solving river and climate issues through advocacy is truly difficult without a functioning democracy. This session, a number of Republican Oregon Senators failed to show up for work in an effort to shut down the state government, despite a clear directive to do so from Oregon voters with 2022's ballot initiative Measure 113 targeted at restricting legislative walkouts. By not appearing for work, these Senators been able to deny the quorum needed to conduct business in the Oregon Senate, and as of this writing, the end result of the 2023 session is still unknown. Key elements of democracy become compromised when legislators don't do their jobs—good government, transparency, accountability, and public participation are all being impacted by the walkouts we've seen this legislative session. The beneficial bills WaterWatch worked hard to tee up for passage are now stalled, as well as important natural resource agency budgets (including the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife). Despite these walkouts, WaterWatch has continued to work hard to champion water policy and keep standing up for rivers, as we've done for so many years.

In this issue, you can go on to read all about this tumultuous legislative session on pages 12

and 13. We also report on the results of years of our advocacy to convert unused hydroelectric rights to instream rights, and you can read about the major improvements for Oregon groundwater management that WaterWatch has worked hard to achieve. Later in the issue, we feature an article on WaterWatch's efforts to address the water impacts of Confined Animal Feeding Operations (CAFOs), and our latest River Defender, Jane Nolan, is profiled for her commitment to WaterWatch. Don't miss the upcoming event at the Portland Patagonia Store on July 13th, or the Save The Date for our 21st Annual Celebration of Oregon Rivers on the back cover of this issue.

In short: we've been tackling river and water issues all over the state, and we'll continue to stand for Oregon's rivers. **My question for you is: will you stand with us?** Your support and membership makes our work possible. Without you, WaterWatch would not be able to keep winning for Oregon's rivers and standing up for river and instream values. When you support this important work by donating and by taking action, you're standing with us to fight for Oregon's river ecosystems—and that's a cause worth fighting for!

For rivers,

Neil Brandt
Executive Director



YEARS OF WATERWATCH ADVOCACY Protects Streamflows after Hydroelectric Projects Shut Down

Hood River below former site of Powerdale Dam

In 1999, the Oregon legislature enacted several new laws related to relicensing and decommissioning of hydroelectric projects in the state. Among them was a simple statute saying, “[f]ive years after the use of water under a hydroelectric water right ceases, or upon expiration of a hydroelectric water right * * * or at any time earlier with the written consent of the holder of the hydroelectric water right,” the hydroelectric water right must be converted to an instream water right for the benefit of fish, wildlife, recreation, and other public uses.

There were some early (and very significant) successes under the statute. As part of the removal of Marmot dam from the Sandy river, WaterWatch negotiated to convert a 600 cubic foot per second hydroelectric water right to an instream water right to protect streamflows on the Sandy in perpetuity.

In 2009, WaterWatch secured protection of 800 cubic feet per second of streamflows on the mainstem Rogue River when a 1917 hydroelectric water right associated with Savage Rapids Dam was converted to an instream water right during the WaterWatch-led effort to remove that dam. WaterWatch also secured a future commitment from Portland General Electric to convert hydroelectric water rights associated with PGE’s

Clackamas River Hydroelectric Project to instream water rights when the project is decommissioned.

However, creation of other new instream rights under the conversion statute has been slow and faced many obstacles. Holders of hydroelectric water rights, and holders of other water rights concerned about the impact of new instream rights on their rights, have resisted creation of new instream water rights under the statute and found creative ways to forestall it.

In 2010, for example, Pacific Power and Light agreed to have its 500 cfs water right for the Powerdale hydroelectric project on the Hood River converted to an instream right after flooding irreparably damaged the project, but holders of irrigation rights on the



Savage Rapids Dam on the Rogue River



Rock Creek, tributary to the Powder River

system objected to the amount the Water Resources Department proposed to protect instream and the Department put the conversion on hold until it could prepare and adopt new administrative rules on the subject. The irrigators later claimed the hydroelectric right could not be converted because it had been forfeited by non-use, but the Department successfully defended against that claim in court.

On Rock Creek, a small tributary to the Powder River near Baker City, a hydroelectric water right holder that had stopped diverting water for power production in 1995 tried to keep its unused hydroelectric water right from being converted to an instream water right by periodically “leasing” it for instream use and claiming it was therefore not subject to conversion under the statute. Eventually, the water right was sold to a new company that planned to use it to again divert water from the stream for a new hydroelectric project that would fail to meet current standards for fish protection. The Department went along with this strategy and refused to convert the water right to an instream right.

In 2016, WaterWatch sued the Department in state circuit court to force conversion of the hydroelectric water right on Rock Creek. The circuit court and the Oregon Court of Appeals ruled against us, but the Oregon Supreme Court agreed to hear the case and,

two days before Christmas in 2021, agreed with WaterWatch and ruled that the water right must be converted to an instream water right because it had ceased to be used for hydroelectric purposes.

In 2022, the Department finished its process of adopting new administrative rules on conversion of hydroelectric water rights to instream water rights. While the rules are not perfect and may be challenged by WaterWatch on some points in the future, WaterWatch successfully fought off several bad proposals that would have reduced instream flow protections.

Finally, the logjam is beginning to break. Earlier this year, the Department issued a final order to convert the Rock Creek hydroelectric water right to an instream water right. More recently, it did the same for old hydroelectric water rights on the Umatilla River and Odell Creek, a tributary to the Hood River. The Department also is reinitiating its process to convert the Powerdale hydroelectric water right on the Hood River.

The hydroelectric conversion statute is one of several important tools for protecting instream flows in Oregon’s rivers and streams. After years of diligent advocacy by WaterWatch, the statute is beginning to bear more fruit. ■



MAJOR IMPROVEMENTS FOR OREGON GROUNDWATER MANAGEMENT ON THE WAY!!

Groundwater provides approximately 90% of Lower Deschutes River streamflows.

Groundwater provides source water for wetlands relied upon by shorebirds. Photo: Brett Cole

Oregon is in the midst of making major – and urgently needed – improvements to groundwater management. Better groundwater management, though it might seem remote and mysterious, is critical for maintaining many streams, rivers, wetlands, springs, and lakes across Oregon that are fed by this cool, clean water. It is precious resource especially on a warming planet. Addressing over-pumping of groundwater – and avoiding it in the first place – is also vitally important for the many people in rural Oregon who rely on groundwater wells for drinking water.

The Oregon Water Resources Department is revising its rules for: 1) designating and managing Critical Groundwater Areas where excessive groundwater pumping needs to be addressed; 2) issuing new groundwater permits; and 3) addressing groundwater issues specific to the Harney Basin, where groundwater has been over-allocated by 110,000 acre-feet per year. WaterWatch is participating as a member of the Rules Advisory Committee for each of these rulemaking processes to advocate for improved groundwater management. For nearly a decade, we have been working with others to secure funding for the state to

study groundwater resources across the state, while also sounding the alarm on the department’s unsustainable approach to issuing groundwater permits. We are very encouraged to see the department moving forward to significantly improve groundwater management in Oregon.

While each rulemaking covers a different aspect of the issue, they are all aimed at the same goal – more responsible and sustainable use of Oregon’s groundwater.

The first rulemaking updates the rules for establishing Critical Groundwater Areas (Division 10), where groundwater has been over-allocated, and then implementing corrective control provisions in those designated areas, such as curtailing groundwater pumping. The controlling statute was amended in 1991, but the rules had not been updated, leaving the state without this important tool for addressing areas with declining groundwater levels. The new rules will allow the department to implement corrective control provisions in these areas, which is vitally important for groundwater dependent ecosystems, domestic well owners, and other affected senior groundwater and surface water users. The public comment period on the

draft rules has closed and we hope to see these rules adopted this summer.

The second rulemaking, currently underway, is the Groundwater Allocation Rulemaking, which addresses the standards for when the department will issue a new groundwater permits. The idea here is to avoid further over-allocating Oregon’s groundwater. At the direction of the Oregon Water Resources Commission, and led by a strong team of agency scientists, the department is proposing strategic changes to interconnected rules that would result in much more thoughtful, responsible and sustainable groundwater permitting decisions. The department has analyzed extensive groundwater and groundwater permitting data and scientific literature that highlights specific shortcomings of the current system and the need for major improvements. There will be much work to do on the Rules Advisory Committee to ensure the best result for Oregon.

Last, but certainly not least, is a rulemaking process specific to the Harney Basin. (Division 512). Groundwater in this basin, which encompasses the area around Burns and the Malheur National Wildlife Area, has been over-allocated by 110,000 acre-feet

per year. The clearly excessive over-granting of very large groundwater irrigation permits in this basin, as recently as 2014 and even as groundwater levels plummeted, brought deficiencies in state groundwater management into vivid focus. This rulemaking will update basin specific rules, benefiting from extensive work by a collaborative water planning process, a 2022 USGS-OWRD groundwater study, and the new Critical Groundwater Area rules, to help achieve a better future for this basin.

WaterWatch is encouraged by the movement toward more responsible groundwater. There is still a lot of work to do to achieve the best result possible, but we are optimistic that all of these rulemakings will help Oregon – and its groundwater dependent ecosystems, domestic well owners, and other water senior water users – achieve a more secure future. ■

You can find information about each of these rulemakings on the Oregon Water Resources Department’s website here:

www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/default.aspx

WaterWatch Continues to Address Water Impacts of Large Confined Animal Feeding Operations

WaterWatch continues its efforts to protect Oregon's water resources from the impact of large confined animal feeding operations (CAFOs). A proposed 30,000-cow dairy near Boardman remains unapproved and the Oregon Legislature is at least moving toward a temporary limit on how much water CAFOs can use for "stockwatering" without a permit.

Large CAFOs use lots of water. They use water for industrial operations such as cleaning and running machinery, for animals to drink, and for irrigating crops that are used both to feed the animals and, while the crops are growing, to absorb nitrates in the animal waste. All told, the water use can add up to the water demands of a small- to medium-sized city – often from sensitive sources such as rivers and streams with vulnerable fish populations and aquifers already depleted from overuse. Under current law, CAFOs can use an unlimited amount of water for drinking water for the animals without having to get a permit because the permit requirements, which ensure water is available and that a use is in the public interest, have an exemption for "stockwatering."



WaterWatch has a long history of working to address the water impacts of large CAFOs. In the late 1990s, WaterWatch led the effort to limit the impacts of a large new dairy, Threemile Canyon Farms, on the Columbia River and nearby groundwater near Boardman, Oregon. That resulted in a settlement that set aside land for wildlife habitat and money for transferring other water rights to instream rights.

In 2016, WaterWatch joined other groups raising concerns about a proposed 30,000-cow dairy, Lost Valley Farm, in the same general area. In addition to concerns about water use, the groups raised concerns about impacts to water quality, air quality, family farms and animal welfare.

Lost Valley Farm opened in 2017 but closed in bankruptcy in 2019 after numerous water-quality permit violations, water-supply problems, and misconduct by its owner, Greg te Velde, who was arrested for patronizing a prostitute and possessing methamphetamine.

Another dairy of similar size, Easterday Dairy, has been proposed to take the place of Lost Valley Farm, but has also run into problems with its water supply

plan, violations of its water quality permit for cleanup of the site, and the conduct of one of its (now former) owners, Cody Easterday, who pleaded guilty in 2022 to defrauding customers in connection with another family business. Still, the Easterday proposal remains pending with the Oregon Department of Agriculture and the Oregon Department of Environmental Quality.

WaterWatch and its coalition partners remain committed to stopping the Easterday Dairy and to preventing other large CAFOs from having unacceptable impacts on Oregon's water resources and other public interests.

WaterWatch and the coalition also have been active in the 2023 Oregon Legislature, seeking a limit on the stockwatering exemption from water-use permit requirements and a moratorium on new large CAFOs until adequate regulations are in place to protect public interests. Those proposals attracted significant public support but were ultimately replaced with a modest reform proposal, SB 85-7, that will at least require large CAFOs to have a detailed water supply plan and put a temporary limit on the stockwatering exemption for new CAFOs. At the time of publication, that proposal remained pending. ■

THE 2023 OREGON LEGISLATURE: Another One for the Ages

What is going on in the Oregon Legislature you might ask? In a nutshell, the Republican led “walkout” upended Oregon’s democratic process for passing bills and budgets.

Even before the walkout, the 2023 session was already challenging given new leadership, a bevy of new legislators, over 3000 introduced bills and an uncertain revenue forecast through the first half of the session. Then in May, as bills were working their way through the Oregon Legislature, progress came to a screeching halt with the Republican led walkout, which prevented the senate from having a quorum needed to conduct business. Recall, in November 2023, Oregon voters approved Measure 113, which amended the constitution so a lawmaker with ten or more unexcused absences in a legislative session would be ineligible to run for reelection for the Oregon House or Senate in the following election. As of this writing, ten senators have passed the ten-day threshold of unexcused absences.

Because of the walkout, we cannot report with certainty how the session will end, but we can provide the following updates. Following multiple

years of drought, water issues were getting a lot of attention before the walkout. Over 120 water bills were introduced, and WaterWatch was heavily involved in working many of these. As of the first chamber deadline to move bills forward, results were mixed with a few good bills moving forward, some very bad bills dying, some compromises still in the works, and some troublesome ideas kept alive for further discussion.

While the final tally for the session is unknown as we go to press, WaterWatch is pleased to report that our efforts and yours (thank you for responding to action alerts!) helped keep some of the worst of the worst policy bills from advancing to the next chamber, including bills that would have stopped Oregon from seeking new instream water rights after 2024 (HB 3368), gutted Oregon’s fish passage laws (HB 2164, HB 2165, and HB 2930), allowed unpermitted ponds across the landscape without any environmental review (HB 3023), limited the state’s ability to regulate groundwater (SB 710) and allowed unpermitted storage of diffuse waters that would otherwise make it to a stream (SB 713). Thanks to heavy lifting by you, WaterWatch and our allies these extremely damaging bills are now dead.

Also a positive, split season instream leasing (HB 3164), championed by conservation groups and farmers alike, which allows water use permit to be split between irrigation and instream over the course of a year, passed both Chambers and is awaiting the Governor’s signature. Unfortunately, several other beneficial bills that WaterWatch and other conservation groups worked to influence and tee up for passage made it out of second chamber committees but are now in limbo in the senate because of the walkout. These include a bill that will expand the Oregon Water Resources Department’s water management toolbox by allowing for injunctive relief for illegal use of water (HB 2929) and a bill that will remove beavers from Oregon’s predator list (HB 3464).

The Republican led walkout also stalled important budgets for natural resource agencies, including the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife. Oregon’s positive May revenue forecast provides hope for adequate funding for our natural resource agencies, as well as bills with a budget component. Of note, a bipartisan drought package (HB 3124), which

will provide funding for a number of instream protection, fish passage, water data and management tools is now stuck in the Ways and Means Committee. Another bill pending in the joint budget committee (SB 85) would increase regulation of large, confined animal feeding operations, in part by requiring a water supply plan and a limit on “stockwatering” without a permit at least for new operations (see related article on page 11). However, with the walkout ongoing, the fate of these and other important pieces of legislation remains uncertain. If the AWOL senators continue to refuse to show up for work and the session ends, policy bills that have not made it through both chambers will end up on the cutting room floor and a special session will be needed to approve agency budgets. ■

Please stay tuned for a full wrap up in our next newsletter! And while you’re at it, sign up for RiverAction Alerts here:

[www.waterwatch.org/news/updates/
action-alert-archive/](http://www.waterwatch.org/news/updates/action-alert-archive/)

to keep current on and add your voice to legislative and other matters affecting rivers, water fish and wildlife.

BECOME A WATERWATCH

RIVER DEFENDER



"While I live in the Midwest, I care deeply about Oregon's rivers and western water. Oregon's rivers are treasures of national significance. I want the future to include healthy rivers with abundant fish and wildlife - for generations to come

and for the well-being of the planet. Because I believe in WaterWatch's mission and effectiveness, I have included WaterWatch in my estate planning."

-Jane Nolan

Are you interested in securing a healthy, climate resilient, equitable water future for Oregon's waters, fish, wildlife and people?

You're not alone. WaterWatch's River Defender Program is for people who love our rivers and waters and commit to support WaterWatch through their estate planning. Doing so creates a lasting impact for Oregon's rivers, lakes, wetlands, fish, wildlife and people.

Legacy giving isn't just for those with high net value. Anyone who wants to create a lasting legacy after landing that last trout or paddling that last rapid can participate in this program and provide meaningful future support for the healthy, climate resilient waters we all want for Oregon.

When you take steps to include WaterWatch in your estate, you'll be in good company, joining a community of dedicated visionaries who have taken meaningful steps to ensure Oregon's future includes healthy rivers and climate resilient waters - for fish, wildlife and for people. Your planned gift can make a lasting impact for Oregon's waters and everything they support - now, and into the future - when you commit to becoming a River Defender with WaterWatch.

PLEASE JOIN WATERWATCH'S COMMUNITY OF LEGACY MEMBERS BY BECOMING A RIVER DEFENDER TODAY!

By including WaterWatch in your will or estate planning, you give the gift of healthy, climate resilient waters to fish and wildlife and future generations of Oregonians! You can also direct estate gifts to WaterWatch's endowment fund, which invests in the WaterWatch's future. To learn more about planned giving and the different ways to give through your estate or other planned giving.

Please contact John DeVoe,
our Senior Fundraiser and Advisor:
John@waterwatch.org
or 503-295-4039

WaterWatch UPCOMING EVENT:

Portland Patagonia Store, 1106 W Burnside St.

Join WaterWatch for a presentation at the Portland Patagonia Store. WaterWatch staff will present on river challenges in a climate-changed Oregon and how WaterWatch is working to address them.

This presentation will be catered with food and drinks & there will be a raffle for Patagonia gear and other prizes!

Please mark your calendars and join us!
THURSDAY July 13th at 7:30pm



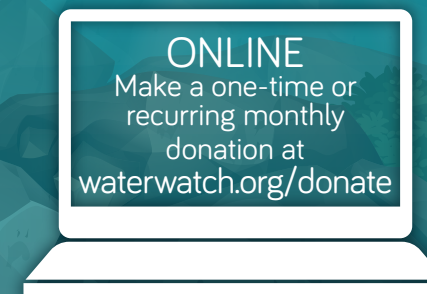
Please Support WaterWatch and invest in the health of Oregon's rivers, lakes, aquifers and wetlands!

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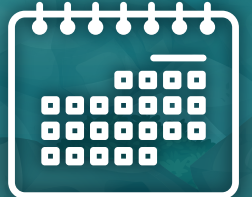


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Giving monthly is a simple way to provide us with consistent and reliable support throughout the year.

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



OTHER WAYS TO GIVE



Donate Securities
Donating appreciated securities such as stocks, bonds or mutual funds is an effective 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.

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≡ Celebration of Oregon Rivers ≡

Saturday, September 23rd



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