

INSTREAM

Fall 2023 Newsletter





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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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Tommy Hough, editor

Front Cover Photo: Hidden Falls, Happy Valley **Clackamas County**

NEW TO WATERWATCH

Welcome both of WaterWatch's newest staff members and our newest board member.



TOMMY HOUGH, Communications Manager

A graduate of Ohio University and a native of Pittsburgh — a city with no shortage of rivers — Tommy Hough comes to us from San Diego, where he served as a San Diego County Planning Commissioner and made two runs for public office, and was the lead consultant on the ReWild Mission Bay campaign with San Diego Audubon. The founding president of San Diego County Democrats for Environmental Action, a unique hybrid political/environmental organization, Tommy may be best-known for his time on the air in the Seattle and San Diego radio markets, and he was also an on-air host in Portland at 101.9 KINK-FM several years ago while managing communications and media at Oregon Wild.

Growing up in Western Pennsylvania, Tommy first experienced the outdoors sailing with his father on area lakes, and later on backpacking trips in the Laurel Highlands of the Allegheny Mountains. It was here Tommy first experienced the power of the wild Youghiogheny River and its namesake gorge at Ohiopyle State Park, leaving an impression on the power of unimpeded waterways. A lifelong hiker and outdoorsman, Tommy cut his teeth as an environmental advocate and glacier climber while living in Seattle, and counts the North Cascades and Alpine Lakes as favorite destinations.



STEPHANIE HAYES, Staff Attorney

Steph Hayes grew up in New Jersey and studied art history and photography at the University of Pennsylvania, but it was the forests, rivers and mountains of the west that brought her to Lewis and Clark Law School in Portland, where she earned her I.D. After a judicial clerkship in Multnomah County, Steph worked in executive positions in senior care management and with a large nonprofit providing employment opportunities for individuals with disabilities, and used her legal training to ensure compliance with the law, resolve employment issues, write policies and agreements, and negotiate contracts with multiple labor unions. During this time Steph also started a family that saw her deepen her connection to Oregon.

Raising her kids as young environmentalists, Steph began to align her career with a growing desire to contribute to environmental causes. When she returned to Lewis and Clark for its Natural Resources LL.M. program, she took a water law class from WaterWatch's previous staff attorney, Karen Russell, and was hooked. Karen introduced Steph to WaterWatch board member Karl Anuta, whom she has since been assisting with water law projects. Graduating summa cum laude, Steph joins the WaterWatch team ready to put her professional skill and experience to protect and restore water in her adopted home state.



DAVID COOPER, Board Member

An IP attorney at Kolisch Hartwell for over 36 years, David Cooper is no stranger to volunteering with local non-profits, and like many Oregonians treasures his time outdoors hiking, backpacking, cross-country skiing, canoeing, and kayaking with family and friends. His IP work has been both national and international, with an equal mix of helping clients develop patent, trademark, and copyright assets, and helping clients resolve disputes by settlement and contested litigation. A former board chair and committee chair, David served on a variety of public, private, professional, and non-profit boards before coming aboard with the WaterWatch of Oregon Board of Directors this summer.

A resident of Denver and Madison before arriving in Portland, David has been engaged in environmental matters throughout his life, having served an externship during law school at the University of Wisconsin with the Office of the Public Intervenor, and focused on wetlands preservation for a state agency that functioned as a public interest environmental law firm within the Wisconsin Department of Justice. David also served for several years on the board of the National Coast Trails Association, an Oregon-based nonprofit focused on establishing Atlantic and Pacific coast trails from the nation's northern to southern borders.

2 WaterWatch of Oregon WaterWatch of Oregon 3

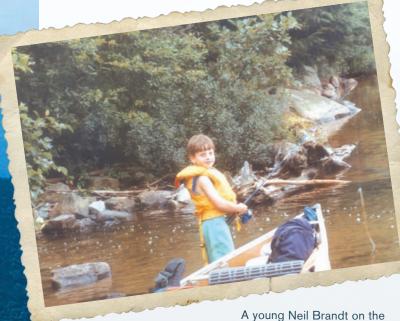
STREAM OF CONSCIOUSNESS



Neil Brandt

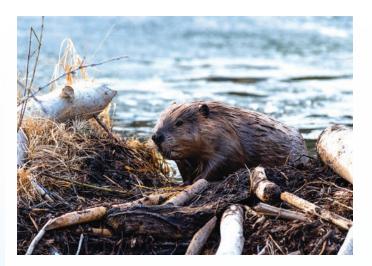
With the arrival of autumn, the seasonal beauty of the changing leaves and crisp temperatures takes our executive director back to his childhood in the Adirondack Mountains.

Years ago, right around the change of seasons from summer to fall, my parents took me on a multi-week canoe trip down the Oswegatchie River in northern New York, one of many canoe and camping expeditions they would plan for my sister and me on the lakes and rivers of the Adirondacks.



A young Neil Brandt on the Oswegatchie River, NY

This trip was particularly memorable because of the challenges that came up. While I did not yet have the appreciation for the important role beavers play in river ecosystems that I do now, the winding Oswegatchie was marked by over a dozen beaver dams, forcing my heroic parents to get out to haul our canoes over them — with me as extra weight in the middle seat. For their efforts, wading and splashing their way through the murky waters, they were rewarded with countless leeches affixed to their legs.



That trip also stands out as the beginning of my enduring love and appreciation for rivers. Over the years the remote, serene beauty of the landscapes we travelled through stuck with me. From paddling through narrow, calm stretches of river adorned with lily pads, to sleeping among the groves of white pine at night, the experience instilled in me an understanding and appreciation that places like the Oswegatchie River are precious and, despite the leeches, worth protecting.

And protection is precisely what our staff has been hard at work on at WaterWatch. This edition of Instream features some of the work and success your support makes possible. In this issue, you'll read about WaterWatch fighting a proposed gravel mine — and proposed compromises to an instream water right — on Grave Creek in Sunny Valley, and our leadership and work on the removal of Takelma Dam in Josephine County and Lovelace Dam on Slate Creek, a key spawning tributary to the Rogue River for native salmon and steelhead.

On page nine you'll read about the WaterWatchled coalition to remove Winchester Dam, and the \$27.3 million fine issued by ODFW to the owners of the dam for their culpability in a massive fish kill during the repairs — the result of WaterWatch's advocacy and efforts to highlight the plight of native fish at the mismanaged repair site. Those who have been involved with these efforts will applaud the rule of law at last beginning to be brought to Winchester Dam.

And if you've been following WaterWatch's many years of work on the Crooked River, don't miss the article on page 11, as WaterWatch's advocacy just helped secure a key government decision that will protect flows on the Crooked into the future.

I'm also thrilled to share that thanks to your support, Team WaterWatch has continued to grow, with the addition of Tommy Hough as our new Communications Manager and Stephanie Hayes as Staff Attorney. The addition of Tommy and Steph gives WaterWatch even greater capacity to protect and restore rivers, remove obsolete dams and secure the water policies and investments Oregon needs in a climate changed world.

Healthy rivers change us, but across Oregon and throughout the nation rivers are under threat. I remain grateful for the eye-opening experience I had on the Oswegatchie years ago. And with your support, WaterWatch will continue to protect and restore rivers here in Oregon so future generations can get to know, love, and care for their local rivers and waterways.

For rivers,

Neil Brandt

Executive Director

21st ANNUAL CELEBRATION OF OREGON RIVERS FUNDRAISING EVENT

The World Forestry Center

Thank you to our sponsors and auction item donors — and thank you for joining us!





























DISASTROUS WINCHESTER DAM REPAIR TRIGGERS MASSIVE FISH KILL, POLLUTION SPILLS

STATE SENATE INQUIRY AND MILLIONS IN PENALTIES



Thanks in no small part to your support that has made years of concerted effort by a WaterWatch-led coalition of river advocates possible, on October 6th the Oregon Department of Fish and Wildlife (ODFW) filed a \$27.6 million damages claim in Douglas County Circuit Court against Winchester Water Control District and its associated contractors TerraFirma Foundation Systems and DOWL Engineering for the preventable loss of at least 550,000 native Pacific lamprey during this summer's botched repairs to the District-owned Winchester Dam on the North Umpqua River near Roseburg.

The filing is one of the largest damages claims for illegal killing of wildlife in Oregon's history, and seeks reparation for the loss of invaluable public resources, as well as for the state's costs to mount an emergency lamprey rescue operation at the dam.

The state's actions are a great credit to the efforts of the region's Native American Tribes, which have worked for years to raise awareness about the importance and value of Pacific lamprey, and to restore their populations in the Pacific Northwest.

Advocates welcomed another win on October 26th, when the Oregon Department of Environmental Quality (DEQ) announced a total of \$134,378 in fines against Winchester Water Control District and TerraFirma for water quality violations during repairs this summer to the 133-year-old Winchester Dam, which lies just 50 feet upstream of the City of Roseburg's public drinking water intake.

Specifically, DEQ fined the District \$106,778 for violating at least 10 conditions of its 401 Water Quality Certification for repair work on the dam, which required certain conditions be met during the dam repair project to ensure protection of state water quality standards.

The violations include discharging concrete into the river, placing "biologically harmful" tire mats into the river, and failing to provide passage for migrating native fish.

The DEQ also fined TerraFirma \$27,600 for polluting waters of the state by discharging concrete into the North Umpqua and the tire mat use. TerraFirma is a building foundation repair company owned by the president of Winchester Water Control District, which served as the primary contractor for the 2023 dam repairs.

These latest wins in our campaign to end the harm caused by Winchester Dam came after months of relentless, hard work. This summer, river advocates in our coalition organized to monitor the repairs, document and report violations, and urge regulatory agencies to quickly address the situation. Advocates from WaterWatch, Native Fish Society, Umpqua Watersheds, the North Umpqua Foundation, and Steamboaters spent weeks working in the heat and wildfire smoke, documenting and reporting one ecological disaster after another. The situation soon garnered intense media scrutiny and public outcry.

Following the repairs, the Oregon State Senate Interim Committee on Natural Resources and Wildfire, led by Committee chair state Senator Jeff Golden (D-Ashland) and committee member Senator Floyd Prozanski (D-Springfield), grilled state agency leaders during an informational hearing on the widespread public perception of the agencies' indifference to reported serial violations of state law and regulation committed at the dam this summer and during previous years.

After the hearing, members of the coalition and public expressed appreciation to the Senators and welcomed the increased scrutiny of the infamously outlaw Winchester Dam. Just a few months before

the hearing, ODFW officials had declined to even answer river advocates' formal request that the agency use its authority to require a less harmful repair alternative to maintain reservoir levels and upstream fish migration—this only weeks before collapsing summer steelhead numbers spurred ODFW to shut all angling in the North Umpqua from August through November.

The disintegrating, 17-foot-high, 450-foot-wide Winchester Dam is maintained solely to create a private waterski lake for surrounding landowners, but it kills, injures, or delays salmon and steelhead trying to access 160 miles of high-quality habitat upstream. Impacted species include spring Chinook, fall Chinook, summer steelhead, winter steelhead, cutthroat trout, and Pacific Lamprey, as well as threatened Oregon Coast Coho listed under the federal Endangered Species Act.

Senator Golden invited state agency representatives in writing to return to his Committee to offer follow-up testimony as early as November 6th. Senators Golden and Prozanski's leadership, and state agency actions, have bolstered hope for accountability and progress at Winchester Dam after so much needless harm to the North Umpqua was witnessed during the repairs.

Unfortunately, although federal agencies such as NOAA Fisheries and the U.S. Army Corps of Engineers have also repeatedly failed to hold the owners of Winchester Dam accountable, Oregon's U.S. Senator Ron Wyden, U.S. Senator Jeff Merkley, and U.S. Representative Val Hoyle have stayed silent - even after other elected leaders have publicly called for accountability. Readers who care about the North Umpqua should contact our federal elected leaders' offices now, and ask them to publicly stand up for our irreplaceable heritage in the Umpqua.

2023 Legislative Update

As the voice for Oregon's rivers and waterways, WaterWatch goes before the legislature in Salem year after year to advocate for policy reform, promote funding packages, and to preserve native fish and wildlife, groundwater, river flows, instream water rights, and hold agencies and elected officials accountable.

The 2023 legislative session was, of course, extraordinary not just because of the Republican Senate walkout that upended the state's business, but for the volume of successes WaterWatch was able to play a role in implementing despite the dysfunction and drama.

This year also built on the work of previous sessions to address the chronic underfunding of state agencies needed to responsibly manage water at a moment when we are only beginning to feel the impact of our warming climate. A number of these gains came about as the result of the bipartisan drought package, which funneled \$174 million to a variety of programs and projects to build resiliency for rivers, farmers, and fish.

Several commonsense proposals that had been stalled for years were also passed into law, including new state capacities for smarter and more sustainable water management. And WaterWatch played an outsized role in stopping a number of bills that threatened Oregon's iconic rivers or smart, responsible water management.

Policy Wins for Oregon Rivers and Streams

Injunctive Relief — HB 2929 A new addition to the state's enforcement toolbox that should result in better enforcement of Oregon's water laws and water rights, in part by stopping illegal water use more quickly than in the past.

Water Use Reporting — HB 2010, Section 26 A big win for smart water management as the state's new water use reporting authority will allow it to require reporting of water diversions that otherwise have to measure use.

CAFO Limitations — **SB 85** A new law that requires a water supply plan for concentrated animal feeding operations (CAFOs) that will ensure legal access.

Lake Abert — **HB 3099** A critical ecosystem for both local and migratory birds on the Pacific Flyway, this funds a collaborative effort tasked with addressing the ecological needs of Lake Abert and the Chewaucan River basin.

Split Season Water Leasing — HB 3164 This makes permanent a program allowing split season instream leasing of water rights, allowing an irrigator or other water user to lease their water right for instream use for part of a season.

Addressing Harmful Algal Blooms (HAB) — HB 2467 Declares HABs to be a threat to safe drinking water and a menace to public health, and directs agencies to identify susceptible water bodies and algal sources.

Beavers — **HB 3464** A new law that removes beavers from Oregon's "predatory" animal classification and gives the Oregon Department of Fish and Wildlife (ODFW) more control over how beaver populations are managed on private lands.

Harmful Proposals That Died

In addition to our work to advance good bills and robust agency budgets, WaterWatch also played an outsized role in stopping bills that threatened Oregon's iconic rivers or responsible water management.

HB 3368 Among other things, this bill would have stopped Oregon agencies from applying for new instream water rights after 2024.

HB 2164, HB 2165, and HB 2930 Any one of these bills would have gutted Oregon's fish passage laws.

HB 3023 This bill would have allowed the building of unpermitted, human-made ponds across the landscape without any environmental review.

SB 710 A bill intended to limit the state's ability to regulate our rapidly dwindling groundwater resources.

SB 713 Would have allowed unpermitted storage of diffuse waters that would otherwise make it to a stream or other

HB 3580 This bill could have been used to upend water transfer laws in the Klamath Basin, one of WaterWatch's key

HB 2765 Another special interest bill that would have enabled an end-run around reclaimed water statutes in the Klamath Basin.

HB 3365 This bill was specifically intended to allow an "enlargement" of irrigation water rights in the Deschutes Basin.

Thank you again to all our Water Watch of Oregon members, friends and supporters who wrote their legislators and helped defeat these destructive proposals. None of our recent successes in Salem and elsewhere would have been possible without your involvement and support!

Protections for Flows and Fish Secured on the Crooked River

After a decade of advocacy to restore and protect the flows of the Crooked River in Central Oregon, long-awaited legal protection for flows released from Prineville Reservoir for downstream fish and wildlife has at last been approved.

The Crooked River in Central Oregon is one of Oregon's crown jewels. Winding through farmlands, Smith Rock State Park, and miles of wilderness canyons, the river provides a mixture of intact and compromised habitat for fish and wildlife, including prized Redband trout and imperiled steelhead. And as with most rivers in Oregon, the Crooked brings considerable economic vitality to the region.

Since completion of the Bowman Dam in 1961, most of the Crooked River's flow above the Opal Springs area has been controlled by releases from the federally-owned Bowman Dam, upstream of Prineville. That dam was originally built to supply irrigation water and to control floods, with only minimal provisions to protect streamflows needed for fish.

But while roughly half of the 155,000 acre-feet of water stored behind the dam was claimed by irrigation, the remaining water was untapped -arare happenstance in the West. Fish and river advocates fought for decades for a legal claim to this unallocated water, but it wasn't until the passage of the Crooked River Collaborative Water Security and Jobs Act of 2014 — which WaterWatch helped negotiate, draft and secure — that fish gained formal access to nearly 80,000 acre-feet of water.

A key provision of the Act that WaterWatch helped secure was direction to the Bureau of Reclamation to store, release and use water for downstream fish and wildlife "in accordance with state law." Requiring the Bureau's actions as it related water designated for downstream fish and wildlife to be in accordance with state law meant the Bureau had to ensure that fish water was legally protectable instream against other water right users.

Gaining instream protection was a two-step process. The Bureau needed to both transfer half of its irrigation storage water right to allow storage for downstream fish and wildlife, but also needed to procure a secondary water right to protect the water released from storage for fish instream from the reservoir to Lake Billy Chinook 72 miles downstream.

In 2018, after a year of negotiations and a legal challenge, WaterWatch helped negotiate the Bureau's new water storage right for the previously unallocated stored water behind Bowman Dam that will provide, in a normal water year, for 68,000 acre-feet of the 155,000 acre-feet of water stored for downstream fish, and an additional 10,000 acre-feet that can be used by irrigation or fish and wildlife.

But while the storage right was resolved, the Bureau was slow to apply to the state for a secondary water right to protect released water instream against use by downstream irrigators in the reach between Bowman Dam and Lake Billy Chinook.

After pressures brought by the 2020 Deschutes Basin Habitat Conservation Plan's direction to the Bureau to pursue a secondary water right for fish, as well as legal inquiries by Advocates for the West on behalf of WaterWatch, the Bureau finally applied for a water right in June 2021. ■

Another Win for WaterWatch on the Crooked

In September 2023, the Oregon Water Resources Department issued the final order and secondary water right permit that will protect flows in the Crooked into the future a huge legal victory for the river.

From now into the future all water released from Prineville Reservoir for fish will be protected in the river for the 72-mile stretch from the reservoir to Lake Billy Chinook.

Crooked River in Smith Rock State Park, Deschut

WaterWatch Completes Two Priority Dam Removal Projects in One Year

WaterWatch Continues to Free the Rogue!







Lovelace Dam removal progress photos

This July, work crews finished demolition of an abandoned concrete former mill dam as part of a larger WaterWatch-led collaborative effort to restore access to habitat for native salmon and steelhead in Slate Creek in Josephine County, a key spawning tributary of the Rogue Basin's Applegate River.

Lovelace Dam, listed in Group 2 on the 2019 Statewide Fish Passage Barrier Priority List by the Oregon Department of Fish and Wildlife (ODFW), became the fourth fish-impeding dam to be removed by WaterWatch from Slate Creek in the last three years.

This dam removal significantly improved access to approximately 26 miles of upstream spawning and rearing habitat for salmon and steelhead while reducing flooding risk on the landowner's property.



Takelma Dam, pre-removal

Crag Law Center was instrumental in helping WaterWatch achieve the landowner agreement necessary to move the Lovelace project forward. Slate Creek is now entirely freeflowing at the former dam site for the first time in at least a

Later in the summer, work crews finished demolition of a 13-foot high, 70-foot wide concrete diversion dam owned by Siskiyou Field Institute as part of a multifaceted project to restore access to habitat for native salmon and steelhead in Takelma Creek, part of the key spawning subbasin of Deer Creek, itself part of the Illinois River subbasin of the Rogue

Takelma Creek Dam is listed on the 2019 ODFW Barrier Priority List under its former name Squaw Creek Dam. The project opened access to approximately three-and-a-half miles of formerly blocked spawning and rearing habitat for salmon and steelhead, replaced the dam's water diversion function with a fish-friendly, screened, and metered gravity diversion, repaired or partially replaced a leaky water delivery pipe, removed a fish blocking culvert on the Illinois River Road and replaced it with a safer, fish-friendly culvert, removed a fish-blocking logging road culvert and replaced it with a fish friendly low-water crossing, and removed a derelict logging road culvert that had long ago washed away and lodged in the bed of Takelma Creek. Now, for the first time in at least 70 years, Takelma Creek is free-flowing at the former diversion dam site.

The Lovelace Dam removal was the first in the nation to cross the finish line among restoration projects receiving funding from NOAA Fisheries under the federal Bipartisan Infrastructure Law. Both the Lovelace and Takelma projects represent two of the many accelerated restoration projects in Oregon thanks to an ODFW grant awarded out of the \$8 million in drought funds appropriated to fish passage improvement projects during the 2022 legislative session.

Overall, WaterWatch and our partners raised nearly \$1,600,000 in public and private funding in just 16 months to pay for the significant engineering, permitting, contracting, and construction work necessary to complete these barrier removals during summer 2023. WaterWatch secured the removal agreements for the dams from the private landowners in 2022, which ensured removal at no cost to them.

Renowned for its salmon and steelhead runs, whitewater, rugged scenery, and as one of the original eight rivers protected by the federal Wild and Scenic Rivers Act, the Rogue River Basin has been a major WaterWatch focus since our founding in 1985. Since early European-American settlement of the region, instream structures of wood, stone, or concrete have been constructed in almost every Rogue Basin stream. This development significantly impaired Rogue fisheries, water quality, and ecological function.

The removal of several mainstem Rogue dams since 2009 garnered significant public support and attention, but hundreds of other dams on Rogue tributaries remain. These obsolete structures continue to impede migratory aquatic species and impact natural channel processes. Tributary streams, such as Slate and Takelma creeks of our most recent dam removals, provide critical spawning and rearing habitat for native salmon and steelhead.

Thanks to WaterWatch members like you, the ongoing Free the Rogue campaign remains one of the most successful dam removal and river restoration efforts in the nation. Stay connected with WaterWatch for news for our next dam removal project to help restore salmon habitat and natural resiliency in Oregon's incredible rivers.

WATER BRIEFS

Burnt River

In 1992 the Oregon Department of Fish and Wildlife (ODFW) filed applications for instream water rights along the Burnt River in Eastern Oregon. While those applications were quickly challenged by the Burnt River Irrigation District, WaterWatch asked to be included as a party to those cases. After a lengthy, decades-long wait, the state has at last ruled WaterWatch may participate.



Burnt River, Baker County

An important Eastern Oregon waterway, the Burnt River previously harbored runs of salmon and other anadromous fish that return from the sea to spawn in fresh water. While diversions and dams slowly ate away at those runs, portions of the Burnt and its upper forks continue to offer coldwater trout habitat and, potentially, bull trout habitat.

WaterWatch seeks to defend the Burnt River and its native fish populations, and prevent attempts to weaken the state's instream water rights program. We expect the cases to go to trial beginning with a pre-hearing conference in December.

Grave Creek

An important tributary to the Rogue River, Grave Creek supports federally threatened coho salmon, state sensitive summer steelhead and Pacific lamprey, fall Chinook, winter steelhead and coastal cutthroat trout, and marks the upper

limit of the Wild and Scenic River designation of the Rogue River, as well as the beginning of the 40-mile Rogue River National Recreation Trail.

Unfortunately, a large mining project proposed along Grave Creek and its associated water use threatens the creek's fish and instream water right, which the Oregon Water Resources Department (OWRD) holds in trust for all Oregonians to protect streamflows needed to support fish populations. After citing concerns over low streamflows, a lack of available water, and denying multiple water permit applications for the mining operation over the last decade, OWRD — on the recommendation of ODFW — proposed an approval of a water right transfer that will allow the mining operation to divert water during the dry season. Unfortunately, this will injure the creek's instream water right, and at times, may dry up the stream reach entirely.

WaterWatch of Oregon, concerned residents, and area organizations object to the OWRD proposal, including the proposed approval of "mitigation" that doesn't address streamflow impacts. This includes placing large woody debris in the stream and managing riparian vegetation. Scheduled to go to trial in December, WaterWatch seeks to protect Grave Creek, its fish, the integrity of instream water rights, and to ensure Oregon upholds its trust duty with respect to instream water rights.



Grave Creek, Josephine County

12 WaterWatch of Oregon WaterWatch of Oregon 13

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RIVER DEFENDER

As our climate continues to warm and becomes more unpredictable, the stability and health of our rivers and water has become one of our long-standing concerns.

You can help secure a healthy, climate resilient and equitable water future for our Oregon rivers and creeks, native fish populations, wildlife, and communities by pledging to become a WaterWatch River Defender today.

Our River Defender program is for advocates like you who love our rivers and waterways and are committed to supporting WaterWatch through their estate planning.

Legacy giving isn't just for those with high net value. Anyone who loves fishing, rafting, paddle boarding, hiking and camping along our landmark rivers can take part and provide meaningful support for the future of WaterWatch.

Join a community of visionaries committed to healthy rivers and climate resilient waters. Become a River Defender with WaterWatch now.



Give the gift of healthy, climate resilient waters for fish, wildlife, and future generations of Oregonians by including WaterWatch in your will or estate planning. You can also direct estate gifts to WaterWatch's endowment fund, which invests in WaterWatch's future.

To learn more about planned giving and the different options available, contact WaterWatch senior fundraiser and advisor John DeVoe at john@waterwatch.org, or at (503) 295-4039x103

WaterWatch in the COMMUNITY

Flyfishers Club of Oregon, Oct. 12th



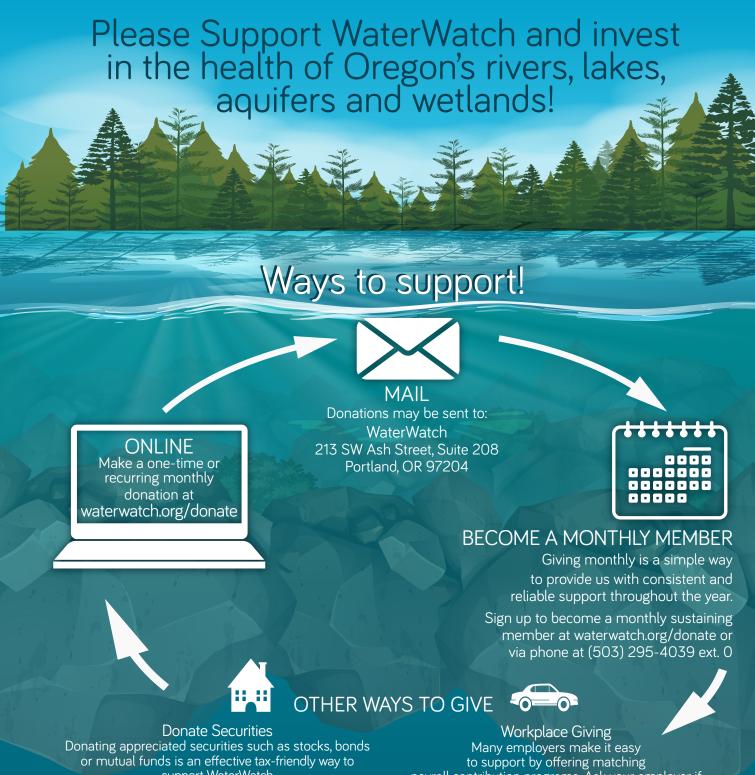
Patagonia Portland Presentation, July 13th





Tabling at Oakshire Brewing, June 14th





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