



**WATERWATCH**  
*Protecting Natural Flows in Oregon Rivers*

**INSTREAM**

Spring 2024 Newsletter

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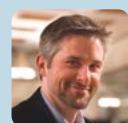
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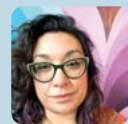
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*WaterWatch's mission  
is to protect and restore  
streamflows in  
Oregon's rivers for fish,  
wildlife, and the people  
who depend on  
healthy rivers.*



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Monet Hampson, design and layout  
Tommy Hough, editor

Front Cover Photo:  
Imnaha River runs through Imnaha  
Canyon before a storm, by Sandy Woods.

## NEW TO WATERWATCH



### Welcome to WaterWatch's newest board member **KAITLIN LOVELL**

A graduate of Bucknell University's environmental science program and Cornell Law School, Kaitlin Lovell is the newest member of the WaterWatch Board of Directors, and works in the public sector to restore watershed health and wild salmon to some of Oregon's most degraded and damaged aquatic habitats.

A scientist with legal expertise in the federal Clean Water Act and Endangered Species Act, Kaitlin has advanced the field of urban ecology and nature-based solutions by bringing together law, science, policy, environmental justice, and conservation finance applications. She previously served as an environmental attorney for Trout Unlimited and Cornell University in Ithaca, New York, and served in numerous leadership roles on nonprofit boards.

Kaitlin enjoys attending her son's soccer games, running, or spending time on her hobby farm where she owns the oldest water right on Mill Creek, a Molalla River headwater stream, and has restored two streams and rewilded five acres of wetlands on her property by encouraging beavers to recolonize.



Willamette River

## WILLAMETTE THERMAL TRADING TRIAL UPDATE

WaterWatch was prepared to go to trial in mid-January to challenge an Oregon Department of Environmental Quality (DEQ) decision to approve a thermal trading plan for a large water withdrawal from the Willamette River. However, winter storms closed the Multnomah County courthouse for a week and our trial was delayed until sometime later this year, meaning WaterWatch must cool its heels a few months longer before its day in court.

Thermal trading involves "trading" projects expected to reduce water temperatures in rivers and streams, such as planting trees to increase streamside shading, in exchange for regulatory approval of activities expected to increase water temperatures in rivers and streams — typically wastewater discharges, but also water withdrawals that reduce flow and make the water left in the rivers and streams more susceptible to warming from the sun and other sources of heat. The trading is allowed as an alternative to preventing increases in water temperature, which are harmful to salmon and trout.

The thermal trading plan at the center of our case is part of a large public works project by the Willamette Water Supply System (WWSS), an intergovernmental entity formed by the Tualatin Valley Water District and the cities of Beaverton and Hillsboro.

WWSS is building a new water treatment plant and distribution system to serve a significant chunk of Washington County. It plans to fill that system with water from the Willamette River using an intake near Wilsonville.

By 2085, withdrawals at the intake are expected to reach 150 million gallons per day. For perspective, Portland uses an average of about 100 million gallons a day. The withdrawals will increase summer water temperatures in the Willamette River, which already gets too warm to meet water quality standards set to protect fish.

DEQ required WWSS to offset the water-temperature impact of the water withdrawals and allowed WWSS to do so with a thermal trading plan. The plan WWSS came up with drastically underestimates the water-temperature impacts and fails to adequately describe projects intended to offset those impacts, but DEQ approved the plan anyway. After unsuccessfully asking DEQ to reconsider its approval, WaterWatch challenged the approval in court.

We will continue to update you on the status of our trial as it approaches in WaterWatch's biweekly *Currents* online news digest, and in further editions of *Instream*.

# STREAM OF CONSCIOUSNESS



Neil Brandt  
Executive Director

As I write this, the sky is filled with abundant sunshine and it's the fourth day in a row with temperatures reaching over 70 degrees. Magnolia and sand cherry trees are in full bloom, and it certainly feels like spring has arrived early. While cooler temperatures and rain are, of course, also a part of spring in Oregon, the unseasonably warm stretch of weather this March is a tangible reminder we live in a climate-changed Oregon.

The year 2023 was the Earth's hottest year by a significant margin, and the 10 warmest years on record since 1850 have all occurred in the past decade. The impacts of climate change are already affecting the world we live in, along with the iconic river environments we love. If we want future generations to enjoy healthy, free-flowing rivers, we must work now to increase climate resiliency and adaptability in Oregon's freshwater and aquatic ecosystems.

Building climate resilience in Oregon's rivers, streams, lakes, and wetlands is at the core of what WaterWatch does. For nearly 40 years, WaterWatch has worked to ensure the flows of Oregon's rivers have enough water to support critical and endangered species like salmon and steelhead. From creating a legal mechanism to protect water flowing instream by drafting the Instream Water Rights Act in 1987, to removing many of Oregon's highest priority barriers to fish passage (with more on the way) and watchdogging Oregon's water allocation decisions over the years, our efforts continue to be in alignment with what scientists have confirmed builds climate-resilient and adaptable river ecosystems: maintaining flows in rivers and connectivity between surface water and groundwater.

While many of WaterWatch's programs directly address surface water flows and fish passage in Oregon's rivers, a key component of maintaining these flows and of climate adaptation is sustainable management of groundwater resources. Groundwater exists in underground aquifers that, in some places, recharge over eons, and provide cold, clean inputs to streams,

wetlands, springs, and lakes across Oregon. Across our state, surface water and groundwater have a high level of connectivity — so managing groundwater withdrawals is critical to keeping enough water in our rivers for the fish and wildlife that rely upon them for survival.

Beginning on page six of this issue of *Instream*, you'll find news about a major shift in how Oregon's Water Resources Department (OWRD) will allocate Oregon's groundwaters into the future. If adopted, these rule updates will affect new groundwater permits, but will not impact new exempt uses like domestic wells.

While the 1955 Ground Water Act charges the agency with managing groundwater resources sustainably, for decades the state has "defaulted to yes" in giving out new groundwater permits, even when they lacked the data to determine if groundwater was actually available. This spendthrift approach has led us into crisis, as numerous aquifers have declined precipitously throughout the state, so much so that in areas like the Harney Basin domestic well owners are seeing their drinking water wells dry up entirely.

WaterWatch has long advocated for the state to stop indiscriminately issuing new groundwater permits that run afoul of sustainability requirements. We have advocated for a data-driven approach to groundwater allocation in Oregon, and helped secure critically important funding for groundwater studies. Just this month, OWRD released a draft set of newly-revised rules that would incorporate more data and science into the groundwater allocation process and bring the agency's practice into alignment with the 1955 statute requiring sustainable management of Oregon's groundwaters.

Under the proposed rules, new groundwater permits would be issued only if groundwater levels are "reasonably stable," as newly-defined in the rules, meaning that pumping would not interfere with surface water flows and senior surface water rights — including Instream Water Rights — and the aquifer is capable of

producing the water at the requested amount. And in a critically important sea change, if data is *not* available to inform a decision, the agency would default to "no" on a new permit application.

In a climate-changed Oregon, determining the right path forward on groundwater is essential, and these proposed rules, long overdue, will bring a needed change to OWRD's approach to groundwater management focused on sustainable and science-based decision making.

Of course, the rules are not final yet, and OWRD is seeking public input through May 31st. The best way to get involved and support this process is to subscribe to WaterWatch's River Action Alerts, attend and make comments at one of the OWRD public meetings this spring, and submit remarks to the OWRD. There's more on how to do so at [WaterWatch.org](http://WaterWatch.org), or use the QR code on page seven to be directed to the OWRD website.

On page eight you'll read about the update to the state's Integrated Water Resources Strategy (IWRS) that's underway now, and you can similarly weigh in on the matter via our River Action Alerts in the coming weeks. Visit the Get Involved page at [WaterWatch.org](http://WaterWatch.org) for more.

WaterWatch's efforts to reform Oregon's groundwater management, protect and restore river flows, and keep rivers free flowing by removing obsolete barriers to fish passage are all key components of our approach to climate resiliency. These programs are indispensable if we want future generations to have access to Oregon's waters the way we do today — and to ensure that healthy, biodiverse rivers that provide for Oregon's fish and wildlife will continue to flourish into the future.

**For rivers,**

*Neil Brandt*

**Executive Director**

Lupine on the banks of the Metolius River

# AT LONG LAST, REVISED GROUNDWATER ALLOCATION RULES FOR OREGON

*After an exhaustive and scientifically rigorous process, the Oregon Water Resources Department has published proposed groundwater allocation rules reliant upon science and data to implement Oregon's forward-looking 1955 Ground Water Act — and put Oregon on a more sustainable path to smart, sensible, environmentally-sound groundwater allocation.*

On March 1st, the Oregon Water Resources Department (OWRD) issued a draft of new and revised rules to bring the state's system for issuing new groundwater permits into alignment with Oregon's landmark 1955 Ground Water Act, implementing a more sustainable path for allocating this vital resource. To be clear, the newly-proposed rules would apply to new groundwater rights – and would not apply, for example, to exempt uses such as domestic wells.

In simple terms, groundwater is water that is underground. However, much of this groundwater naturally emerges at the surface, and when it does it plays an important role in maintaining wetlands, springs, rivers, and lakes across Oregon. As the impacts of climate change grow more severe on snowpack and drought, groundwater will continue to play an increasingly outsized role in providing for these groundwater dependent ecosystems, including river flows and cold water refugia for native fish, including salmon and steelhead runs.

Oregon first adopted a state water code in 1909, but its focus at the time was on visible surface water, not groundwater. So it was something of a revolutionary step in 1955 when the Oregon legislature enacted its forward-looking Ground Water Act (groundwater then being expressed as two words), which required a permit for any “non-exempt uses” like commercial irrigation.

Key to the 1955 Act was a clause that directed the state to only issue a new groundwater permit if the use was determined to “preserve the public welfare, safety and health.” With an eye toward long-term, responsible, sustainable use, key provisions of the 1955 Act included requirements that:

- Groundwater pumping may only be permitted if the pumping is “within the capacity” of the resource.
- The state determines and maintains reasonably stable groundwater levels.
- Adequate and safe supplies of groundwater for human consumption are assured.

Oregon is also required by the 1955 Act to find that water is actually available for the proposed use before a groundwater permit is issued. Oregon may also not issue a new groundwater permit if new pumping would reduce surface water flows in such a way that it injures surface water rights like irrigation, municipal, or Instream Water Rights that exist to protect streamflow for public uses, like supporting fish runs.

Unfortunately, the rules the OWRD has been using for decades to issue new groundwater permits have not conformed to the forward-looking standards laid out in 1955. The state, for instance, has been issuing groundwater permits without fully accounting for their impacts on surface water, and has injured irrigation, municipal, and Instream Water Rights in the process.

In fact, OWRD has long been in the practice of “defaulting to yes,” or issuing new groundwater rights when it lacked the data to know whether it had already over-appropriated groundwater, or whether the proposed new use was within what's called the “capacity of the resource.”

OWRD had also not determined or maintained reasonably stable groundwater levels, evidenced most recently by the over-issuing of groundwater permits in the Harney Basin that have caused water levels to plummet by more than 100 feet in some places. At the same time, OWRD has issued prolific amounts of new irrigation pumping rights that have badly impacted domestic wells that people across rural Oregon rely on for drinking water and household needs.

Recognizing the need to modernize its rules, OWRD conducted several public information sessions around the state in the fall of 2022. The agency then embarked on an exhaustive, nearly yearlong process with a Rules Advisory Committee —

in which WaterWatch was an active participant — to develop new rules over the course of eight lengthy, in-depth meetings.

The process relied upon science and data to arrive at a set of proposed rules that will put Oregon on a much more sustainable path to groundwater allocation in the future. Interestingly, an ongoing *New York Times* series on groundwater use around the country continues to demonstrate just how salient and widespread the problem of groundwater over-allocation is.

The newly-proposed OWRD rules align with the 1955 Ground Water Act by:

- Modernizing the approach for defining whether water is available to allow issuance of a new groundwater permit to ensure:
  - Groundwater levels are reasonably stable under a new set of criteria;
  - Pumping under the proposed permit would not interfere with surface water flows and senior surface water rights, including Instream Water Rights;
  - The aquifer can produce the water at the requested amount.
- Defining the level of data needed to support permit issuance, and establishing a system to ensure that if the state lacks the data needed to make the required site-specific determinations, a finding would be made that no water is available for the requested use, and the application would be denied.

While there are a few items we believe could be stronger, WaterWatch is very supportive of the rules package, and we're pleased with what the Oregon Water Resource Department has presented.

So as the comment and approval process for the new draft rules gets underway, we'd like to ask that you consider writing a comment in support of the proposed rules, and if possible, make time to attend one of the ongoing public hearings.

Commercial agricultural and municipal interests are pushing back on the efforts to modernize groundwater rules, so it's important for the state to hear from Oregonians who support sustainable groundwater management. Keep an eye on your inbox and our WaterWatch social media channels as we continue to issue action alerts and related updates as the comment period and public hearings progress. ■

## SUPPORT WATERWATCH AT AN UPCOMING OWRD HEARING ON NEW GROUNDWATER ALLOCATION RULES THIS SPRING

Information sessions run from  
5:30 to 6:30 p.m., followed by  
public hearings from 7 to 9 p.m.

Visit [WaterWatch.org](https://WaterWatch.org) for Zoom  
registration links for the May 21st  
virtual hearing in Salem.

### EASTERN OREGON THURSDAY, APRIL 18TH

Eastern Oregon University  
Hoke Student Union Building,  
Room 339  
1 University Boulevard  
La Grande, OR 97850

### SOUTHERN OREGON THURSDAY, MAY 16TH

Jackson County Auditorium  
7520 Table Rock Rd.  
Central Point, OR 97502

### SALEM (IN-PERSON AND VIRTUAL) TUESDAY, MAY 21ST

Oregon Water Resources Department  
North Mall Office Building, Room 124  
725 Summer St. NE  
Salem, OR 97301

For more on the proposed  
groundwater rule revisions and the  
schedule of public hearings around  
the state, use this QR code to be  
directed to the OWRD website at:  
[oregon.gov/owrd/pages/index.aspx](https://oregon.gov/owrd/pages/index.aspx).



## Update of Oregon's Integrated Water Resources Strategy Falls Short

In 2009 a newly-passed state law tasked the Oregon Water Resources Department (OWRD) with developing a clear strategy for meeting the state's instream and out-of-stream water needs, resulting in the establishment of Oregon's Integrated Water Resources Strategy (IWRS), an interagency blueprint for addressing Oregon's water quantity, quality, and ecosystem needs.

Developed over the course of three years of transparent and inclusive outreach and engagement, the original IWRS in 2012 was influenced by a broad-based Policy Advisory Group that met over a 24-month period. Robust input from the governor's office, tribes, an interagency project team and advisory group, a federal liaison group, and stakeholders also played a role. With nearly a dozen well-attended open houses across the state and a multitude of opportunities for written public comment on numerous drafts of the strategy, the final iteration of the IWRS was a solid and balanced product, heavily vetted with considerable public input.

The governing statute requires a review and update of the IWRS every five years, with the intent that updates build upon the original 2012 plan — not completely rework it. To that end, the design of the 2017 edition retained the original goals, objectives, and guiding principles from the 2012 version, and focused on updating information, filling gaps, and strengthening ideas by shoring up or adding newly-recommended actions where needed.

Both the 2012 and 2017 versions of the IWRS provided a clear and understandable framework for moving forward on state water work. Each relevant version has been relied upon by Oregon governors, the legislature, state agencies and stakeholders to guide water data, policy, and funding to produce substantial improvements for Oregon's instream and out-of-stream water future.

The 2024 update offered an opportunity to build upon this solid foundation by expanding the underlying framework and recommended actions to more holistically address issues that were not fully flushed out in earlier iterations, such as groundwater sustainability, climate change resiliency and rigorous water management.

However, instead of convening a broad-based policy advisory group of stakeholders, tribes, agencies, and Governor Kotek's natural resource staff to address these shortcomings in a thoughtful and transparent way, the OWRD has instead

spent its time wholly reorganizing the underlying structure. The result is a draft that removes critical guideposts to ensure every action within the IWRS is geared toward understanding and meeting Oregon's instream and out-of-stream needs, thereby making it more difficult to connect the dots to intended outcomes. Keystone topics such as climate change have also disappeared as designated critical issues, making it hard for readers to know where to locate directives on this vitally important issue.

The 2024 IWRS draft does incorporate a few additional "example actions" under each subheading, but the progress on listing examples does not outweigh the overall structural problems. Should the proposed IWRS reorganization move forward, our assessment is the new framework will be less useful in discussions with legislators, agencies, tribes, stakeholders, and the public in generating support for the policy initiatives and funding needed to ensure Oregon's instream and out-of-stream needs are systematically addressed.

The first draft of the 2024 IWRS was released for public review in March, just as this issue of *Instream* was being written, and the initial public comment deadline arrived just after we went to press. As a result, we were unable to include our full recommendations in this article, but we will have more to add in the coming months, and as we go to press WaterWatch has already issued action alerts to outline our concerns. These can be found at the WaterWatch website.

The good news is we expect a second round of public comments to get underway later this spring or in early summer, so we encourage you, your friends, family, and colleagues to sign up now for WaterWatch's River Action alerts to stay up to date and continue engaging on the IWRS draft process this year. ■

**Please visit [WaterWatch.com](https://www.waterwatch.org) to sign up for WaterWatch of Oregon's River Action alerts.**

## WaterWatch Prevents Damaging New Groundwater Permit

In 2016, the Oregon Water Resources Department (OWRD) proposed to issue a significant new permit that would have allowed pumping of almost 17 cubic feet per second (cfs) of groundwater in the Malheur Lake Basin in Harney County, despite inadequate findings as to whether water was available. The application proposed eight irrigation wells, located between Dry Creek and Roaring Springs Canyon.

WaterWatch challenged the proposed issuance of the permit, asserting that OWRD's determination that water was available for the use was in error, that the use was not within the capacity of the resource, and that the approval was contrary to state water policy. In its initial groundwater availability assessment, OWRD stated it could not determine if groundwater for the proposed use was over appropriated — but proposed to "Default to Yes" and issue the permit. OWRD had not made the required finding as to whether the proposed use was within the capacity of the resource.

In 2023, OWRD scientists performed an updated groundwater availability assessment with available data and found persistent and ongoing groundwater level declines in the area, confirming the new proposed use would not be within the capacity of the resource. OWRD, in turn, issued a superseding decision to deny the new permit.

Ensuring judicious and sustainable use of groundwater is increasingly critical and denial of the permit was the right result. ■

## Water Bills Largely Absent from Oregon's Short Legislative Session



Oregon's short 2024 legislative session was marked by an unusual absence of water policy bills, with most initiatives focused instead on procuring funds through budget-related bills.

While pipes and pumps for cities got a big boost largely through housing-related bills, funding to help fish and wildlife programs also made it through the legislature.

The end of year budget omnibus bill (SB 5701) saw the legislature approve funding for state fish biologists to help with salmon reintroduction efforts tied to the ongoing Klamath Basin dam removals, a groundwater study in the Walla Walla basin, the Oregon Water Resources Department's (OWRD) groundwater well abandonment, replacement and repair program for domestic well owners, and new staff within the Governor's Natural Resources Office to pursue federal funding across the state's 14 natural resource agencies.

A structure for allocating the interest earned on the \$570 million Monsanto Settlement Funds, including monies to state agencies like the Oregon Department of Fish and Wildlife and Department of Environmental Quality to fund restoration and other work related to the settlement also passed (SB 1561) the legislature. Policy and funding direction for OWRD to work with the Confederated Tribes of the Umatilla Indian Reservation and the State of Washington on water management issues similarly made it over the finish line (SB 1567).

Unfortunately, HB 4014, which would have established a funding source for Oregon's "Landowners Living with Beavers" program, failed to pass this session despite the support of 25 conservation organizations, including WaterWatch of Oregon. We are hopeful it will be back in 2025.

As to unwelcome ideas, we're pleased to report all potentially damaging water proposals, including one idea that would have upended a provision of existing law that directs the conversion of unused hydroelectric rights to instream water rights, were successfully stalled. As to troublesome budget initiatives, attempts to fund storage projects outside of the state's Water Project Grant and Loans fund — a program that requires seasonally varying flows be protected in storing water with 25 percent of newly-stored water to be reserved for instream releases — were struck from larger infrastructure funding bills.

However short a session 2024 was, it provided needed funding to programs critical to conservation groups, and stayed the course against attempted rollbacks of important river protection and water management laws. That said, given rumors swirling around the capital, the 2025 session will likely see plethora of water and river bills — some good, and some bad — so stay tuned. ■

CREATE YOUR LEGACY FOR OREGON'S RIVERS AND WATERWAYS  
BECOME A RIVER DEFENDER TODAY.

## 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](mailto:john@waterwatch.org), or at (503) 295-4039 ext.103

## WaterWatch in the COMMUNITY

Pre-PIELC Environmental Communications Panel  
with WaterWatch's Tommy Hough, Feb. 29th



Amy Gulick author presentation, March 5th



### UPCOMING EVENTS

**JULY 9th—Tabling at Oakshire Brewing.** Oakshire Beer Hall  
5013 NE 42nd Ave. Portland, Oregon 97218

**OCTOBER 5th—WaterWatch Annual Celebration of Oregon's Rivers.** World Forestry Center  
4033 SW Canyon Rd. Portland, OR 97221

**To stay in the loop on future events: Visit our website events calendar at [WaterWatch.org](http://WaterWatch.org)**

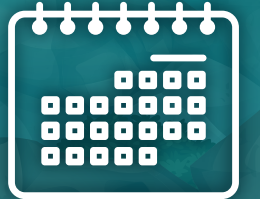
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## Ways to support!



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Portland, OR 97204



### BECOME A MONTHLY MEMBER

Giving monthly is a simple way to provide us with consistent and reliable support throughout the year. Sign up to become a monthly sustaining member at [waterwatch.org/donate](http://waterwatch.org/donate) or via phone at (503) 295-4039 ext. 0



ONLINE  
Make a one-time or recurring monthly donation at [waterwatch.org/donate](http://waterwatch.org/donate)



### 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



**WATERWATCH**  
Protecting Natural Flows in Oregon Rivers

SAVE *the* DATE

The World Forestry Center | 4033 SW Canyon Rd. | Portland, OR 97221



Learn more about our work, become a member, or sign up for RiverAction Alerts at: [WaterWatch.org](http://WaterWatch.org) • [info@waterwatch.org](mailto:info@waterwatch.org)