



# INSTREAM

Summer '15 Newsletter



Demolition of Fielder Dam. Photo by Scott Wright, River Design Group.

## Stream of Consciousness: Drought, Deconstructed



By John DeVoe, Executive Director

For many Oregonians, drought once existed as an abstraction, something that happened elsewhere, far away. No longer. This summer, Oregon's rivers are suffering some of the lowest streamflows and highest water temperatures in our recorded history. These conditions are triggering tragic kills of salmon, steelhead, trout, and sturgeon in the Columbia, Deschutes, John Day, Clackamas, North Umpqua, and Willamette basins. A stunning quarter-million returning Columbia River sockeye have already perished, and biologists estimate some 80% of the half-million strong run could eventually succumb. Decades-old sturgeon are dying in the Columbia's John Day Pool. Threatened wild spring chinook are dying on the lower Clackamas – even as Oregon officials downplay the importance of the lower river for imperiled fish while green-lighting large new water entitlements to Lake Oswego and neighboring cities.

Are we glimpsing the future for our rivers? It's possible, but there is hope for something better.

(Continued on page 2)

### WHAT'S INSIDE

<i>Top Priority Dam Removal Complete in Rogue Basin.....</i>	<i>3</i>
<i>Water Briefs from Around the State .....</i>	<i>4</i>
<i>WaterWatch in the Community.....</i>	<i>5</i>
<i>WaterWatch Welcomes Jerry Brown .....</i>	<i>6</i>
<i>Appeals Court Victory for Clackamas River.....</i>	<i>8</i>
<i>Judge Affirms Ruling Favoring Wildlife on Klamath Refuges .....</i>	<i>9</i>
<i>2015 Legislative Roundup.....</i>	<i>10</i>



**WATERWATCH**

PROTECTING NATURAL FLOWS IN OREGON RIVERS

Expected climate change impacts include less snowpack, earlier runoff, and longer periods of low streamflows. Combined with higher air temperatures, these conditions can lead to lethal water temperatures for salmon and steelhead. We're seeing all of those impacts now.

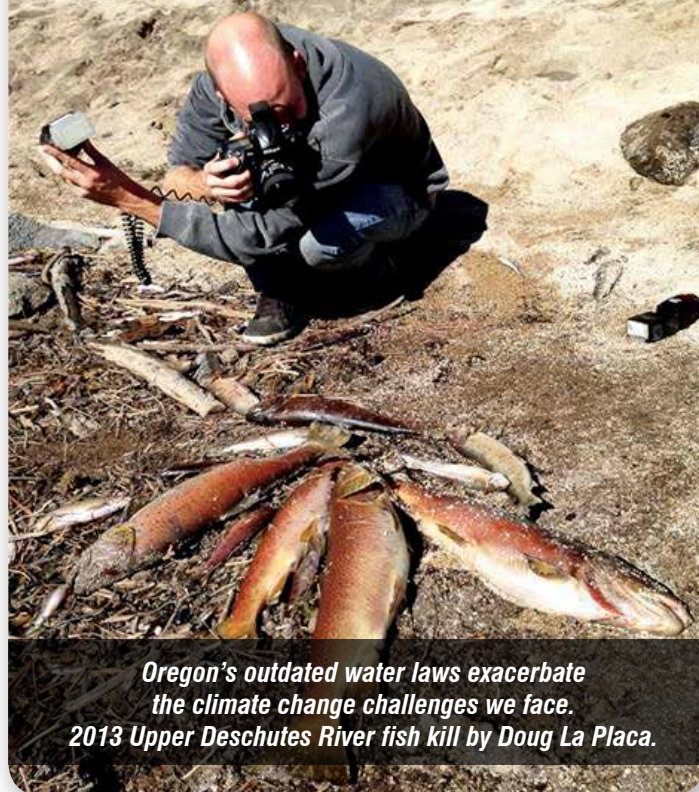
But drought – whether in Oregon or elsewhere in the West – is not simply a function of nature delivering abnormally less water, or precipitation falling as rain rather than snow, or storms coming at the wrong time. In a recent series of insightful reports, ProPublica has examined how “the West’s water crisis is as much a product of human error and hubris as it is of nature.” This statement encapsulates much of what has driven WaterWatch’s advocacy for water management reform over the last three decades.

Our rivers’ problems didn’t begin with the lack of snowfall last winter or high air temperatures this summer. Even in a normal water year in Oregon, every basin in the state suffers from water shortages due to choices made by people. For over a century, Oregon and other western states have encouraged people to drain water from our rivers, streams, and aquifers under a system of water laws largely designed for the needs of a different time. This outdated system exacerbates the current problems we face and includes some fundamental glitches that must be addressed.

What are some of the solutions?

First, ecosystems, fish, and the water needs of rivers and streams must be recognized, quantified, and protected. There has been some progress and recognition of these needs, but Oregon law still allows water users to completely dry up a stream. In large parts of the West, streamflow is not recognized as a legal use of water. The environment must obtain a legally enforceable share of water to keep our rivers flowing as competition for limited water resources becomes more intense.

Second, Oregon must do a better job of measuring water use – from both above and below-ground sources – to allow meaningful management of water. Unfortunately, we often lack the necessary data to make science-based, sustainable water management decisions about our surface flows or groundwater. This is intentional ignorance, maintained because it benefits powerful water interests. As a result, more than half the water diverted in



Oregon is not measured. Even when water rights require measurement, compliance is spotty and agency capacity to acquire and process measurement and other data is always on the budget chopping block.

Third, we must incentivize conservation and efficiency. Water is free. And because water is free, sustainable water management is chronically underfunded. A price signal associated with the water itself would incentivize conservation and efficiency while also funding critical management needs. Again, those who benefit from the current system have worked to maintain the unsustainable status quo, but this must change.

Of course, humanity’s ever-expanding greenhouse gas emissions are exacerbating the harm caused by Oregon’s antiquated system of water allocation and management. We must reduce emissions to have any hope of saving our rivers, and our way of life.

Nature is dealing Oregon some tough cards at the moment. But we can have significant influence over this situation – if we choose. It’s time to recognize that the ongoing water crisis – or drought – results as much from our failure to sustainably allocate and manage water as it does from climate. While we can’t promise a healthy snowpack this winter, we can promise that WaterWatch is working overtime to address Oregon’s water crisis. Please join us to ensure that rivers, aquatic species, and sound water policies are well represented.



# Top Priority Dam Removal Completed in Rogue Basin

This summer, work crews demolished Wimer and Fielder dams on Evans Creek to reopen access for native fish on a key spawning tributary of the Rogue River. Thanks to your support, Evans Creek salmon and steelhead have regained access to some 70 miles of quality habitat. These dams are the only barriers from the state's most recent top ten fish passage priorities list to be removed.

WaterWatch previously secured the removal agreements for the dams from the relevant private landowners, which ensured removal at no cost to them. Since then, we partnered with Geos Institute and American Rivers to secure funding for the project. American Rivers secured \$213,000 in grants from the Bureau of Land Management and U.S. Fish & Wildlife Service that were used for match on a \$462,845 restoration grant approved by the Oregon Watershed Enhancement Board in May. Additional funding partners include ODFW, Ecotrust, The Freshwater Trust, Patagonia, the Conservation Alliance, the Laird Norton Family Foundation, the International Federation of Fly

Fishers, the Oregon Council of the Federation of Fly Fishers, the Middle Rogue Steelheaders, and the Rogue Flyfishers. Geos Institute has overseen the contracting for removing the dams, with veteran dam removal engineering firm River Design Group providing survey, design, permitting, and construction oversight services. Staton Companies, who previously undertook North America's largest dam demolition on the Elwha Dam in Washington State, performed the Wimer and Fielder dam demolitions.

## Salmon Homecoming Hootenanny

**Help us commemorate Rogue River salmon and steelhead regaining access to 70 miles of quality habitat!**

**Where:** Eden Vale Winery, Medford

**When:** 5pm, Friday September 18, 2015

For more info and to purchase tickets visit <http://bit.ly/1NripQr>



*Demolition of Wimer Dam. Photo by Scott Wright, River Design Group.*



# Water Briefs From Around the State

## **A Win-Win for the Crooked River**

In December 2014, President Obama signed the Crooked River Collaborative Water Security and Jobs Act of 2014. The legislation could not only help save the Crooked River, its prized redband trout, and its newly reintroduced steelhead— it could also make a major contribution to the region's economy.

This new law marks the end of nearly 40 years of fighting over an untapped water supply behind Bowman Dam. The Act dedicates roughly 80,000 acre feet of water in a normal water year for downstream flows to maximize benefits to fish in the 72 river miles between Bowman Dam and Lake Billy Chinook, including newly reintroduced steelhead. Properly implemented, the Act should result in significant flow increases to the historically parched Crooked River.

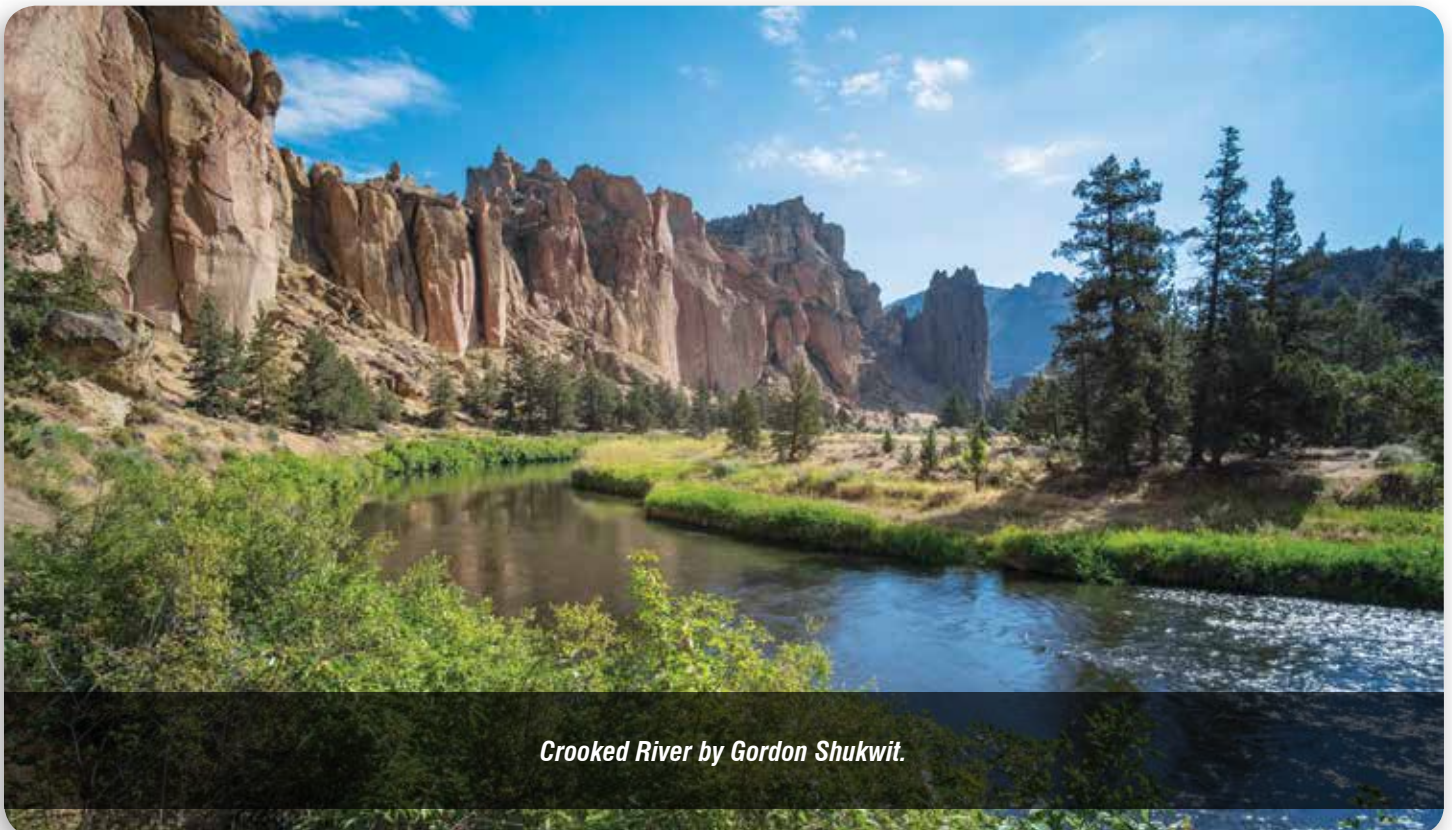
The law also charts a path forward for flow restoration projects on McKay Creek and allows irrigation districts to dedicate even more water instream through leases and conserved water projects.

The Act creates a stronger foundation for economic growth and job creation in the region by providing 1.7 billion gallons of water for the City of Prineville to serve as instream mitigation for the impacts of new groundwater pumping and assurances for farmers who currently hold irrigation contracts for Prineville Reservoir water, while allowing hydropower development to proceed on Bowman Dam.

## **Oregon Supreme Court Upholds Ruling Protecting Fish**

In February, the state's rivers and fish won an important victory at the Oregon Supreme Court. The state's highest court let stand a December 2013 ruling by the Oregon Court of Appeals directing Oregon to address imperiled fish and water conservation before allowing additional development of a municipal water right. WaterWatch staff attorney Lisa Brown successfully argued the case, maintaining that the Oregon Water Resources Department (OWRD) improperly issued Cottage Grove a water right certificate without first adding protective conditions for

*(Continued on page 5)*



*Crooked River by Gordon Shukwit.*



struggling salmon, steelhead, and other fish—or conducting basic water conservation planning—as required by a 2005 law. Accordingly, the decision required Oregon to cancel the previously issued but defective certificate issued to Cottage Grove.

Many cities across Oregon are already successfully implementing the law. This decision should help maintain fish populations while allowing cities to meet their reasonable water needs. The decision also underscores the need for many cities to do basic water conservation planning.

### **Tumalo Creek Ruling Protects Streams Throughout Oregon**

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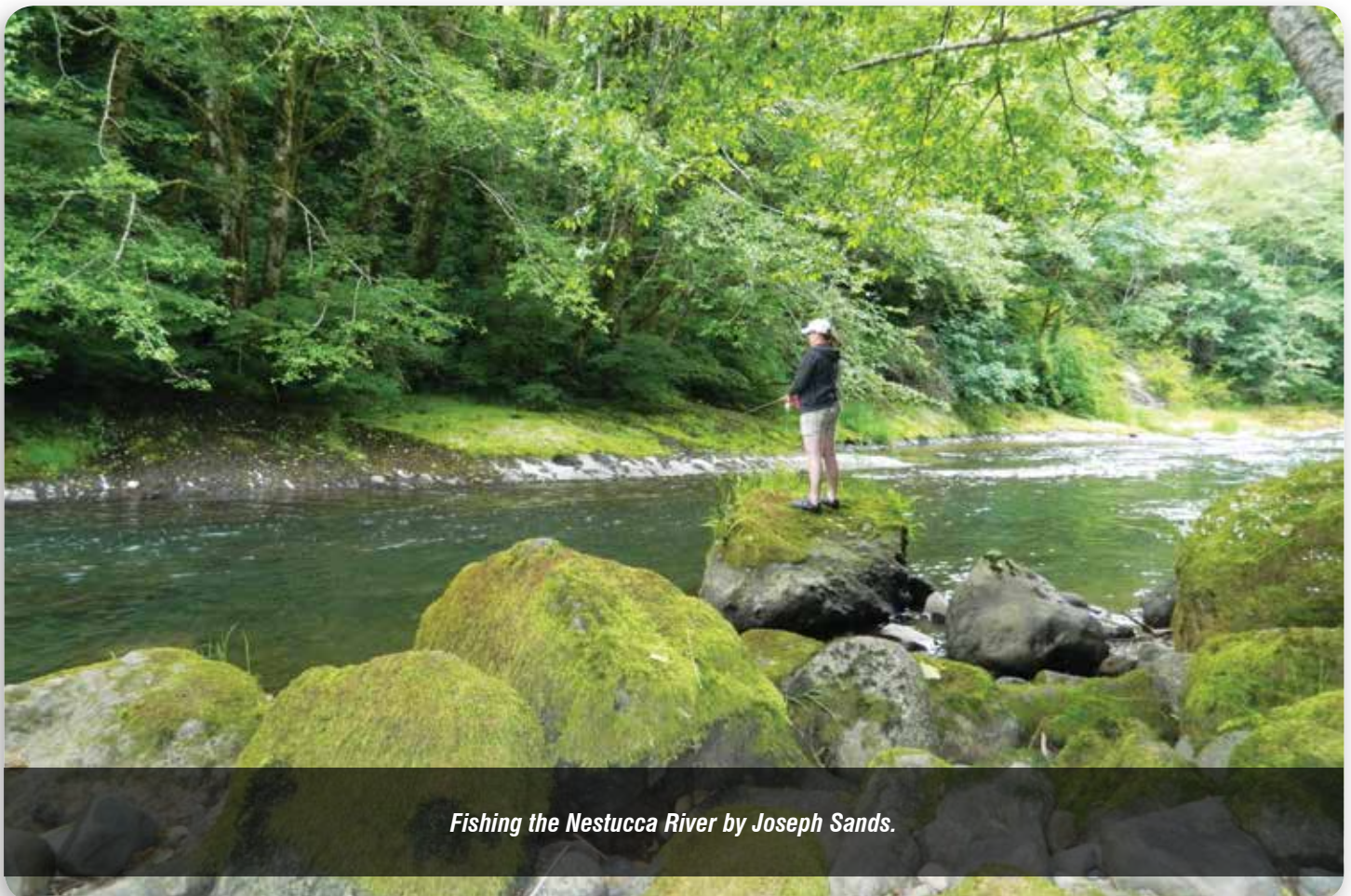
In May, the Oregon Department of Water Resources dealt a blow to a scheme to use scarce Tumalo Creek water to create water-skiing ponds for a luxury home development in the High Desert near Bend. This development, if

successful, could put streams statewide at risk by creating a dangerous loophole allowing new storage projects to proceed without consideration of impacts to struggling fish populations or the public interest.

WaterWatch had opposed the proposed ski ponds, alongside concerned area residents and neighbors along the creek, and hailed the Department's appropriate denial of a key water transfer application.

Before any new reservoir can be approved or built in Oregon, the law requires important environmental reviews. The ski pond developer tried to skirt the law by building a reservoir first, then attempting to swap water rights with Tumalo Irrigation District. While Oregon law allows water transfers to a new use, place of use, or type of use, the law does not allow the building of a new reservoir on the back of an old one.

*(Continued on page 7)*



*Fishing the Nestucca River by Joseph Sands.*



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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*WaterWatch of Oregon publishes  
Instream three times annually.  
Jim McCarthy, Editor*



*Anne and Jerry Brown.*

## WaterWatch Welcomes

WaterWatch is delighted to welcome Jerry Brown to our Board of Directors. Jerry is responsible for all aspects of trading at Becker Capital, a Portland based investment advisory firm. He has a long history working for the conservation of fish and rivers. Jerry volunteered and participated in many activities in the early years of Oregon Trout and is a long time and active member of the Flyfishers Club of Oregon, where he currently serves as the organization's Treasurer.

### Connect with WaterWatch on the Web!

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



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## WaterWatch Monitors Plan for Fish Passage Mitigation Banking

WaterWatch has begun monitoring the Oregon Department of Fish and Wildlife's work testing mitigation banking for fish passage waivers. Our concerns include whether the program will cause excessive loss of habitat on small but important streams.

Under current law, artificial stream obstructions – such as dams – must provide passage if fish use the stream. The law is triggered when a new obstruction is built or a replacement or permit status change occurs at old obstructions. However, if an obstruction owner can provide mitigation resulting in a net benefit to fish, they can receive a waiver of fish passage requirements.

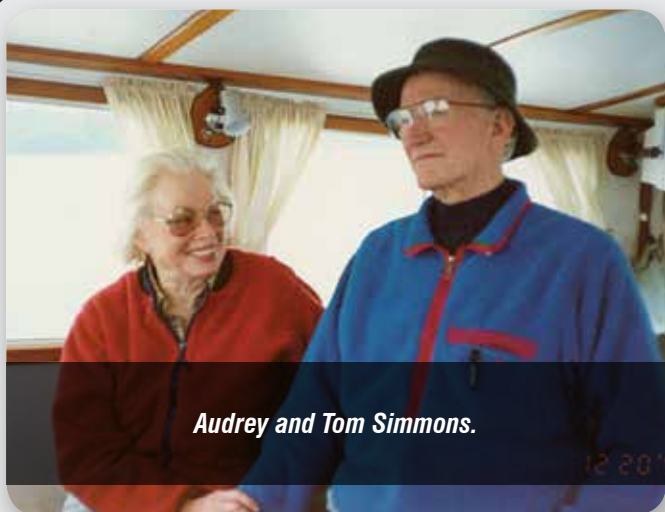
The state Fish and Wildlife Commission recently approved a pilot program in the North Coast Basin, including the Wilson, Trask, Nestucca, Nehalem and Necanicum rivers. Under the program, ODFW will grant the Oregon Department of Transportation up to 12 waivers – mostly at culvert replacements – in exchange for ODOT funding a priority fish passage project at an ODFW hatchery diversion dam on the East Fork of the South Fork of the Trask River. The waivers will be limited to locations with less than one half mile of fish habitat above the barrier. ODFW also will use the exchange to develop a system that could be used in future mitigation banking for fish passage waivers. WaterWatch submitted comments on the program and will monitor its implementation going forward.



## WaterWatch in the Community

WaterWatch...

- ... tabled at the Northwest Fly Tyers Expo, Sandy River Spey Clave, Bend Fly Fishing Festival, Earth Day on the Nike Campus, and Wild Rivers Night at Patagonia Portland.
- ... lectured to classes at Oregon State University and Lewis & Clark College.
- ... hosted a reception for first year Lewis & Clark Law School students.



*Audrey and Tom Simmons.*

## WaterWatch Community Mourns the Passing of a Conservation Visionary - Audrey Simmons

We were saddened to learn that trailblazing Oregon conservationist and WaterWatch founder Audrey Simmons passed away this summer. We will have a full tribute to Audrey and her accomplishments in our next newsletter.



*Dead Clackamas River salmon in July 2015. WaterWatch is working to ensure that municipal water providers don't create a salmon sacrifice zone on the Clackamas. Photo by Molly Whitney.*

## Appeals Court Victory for Clackamas River

On New Year's Eve 2014, the Oregon Court of Appeals delivered a victory for Clackamas River salmon and steelhead by determining that municipal users must leave enough water in the river for imperiled fish. Thanks to your support, WaterWatch originally challenged a state agency decision allowing increased water diversions despite the risks to fish, and now the court has sent this case back to the state for additional proceedings. Conditions on the Clackamas this summer – low streamflows, high water temperatures, and ongoing kills of pre-spawn salmon – demonstrate just how much is at stake in these proceedings.

The decision addresses conditions needed on permits for withdrawals of 100 million gallons of water per day from the lower Clackamas River to supply the City of Lake Oswego, the South Fork Water Board (which serves Oregon City and West Linn), and the North Clackamas County Water Commission (which serves Damascus, Oak Lodge, Happy Valley, and additional unincorporated

areas of Clackamas County). The 100 million gallons of water per day at question would come on top of another 100 million gallons of water per day already diverted for municipal use from this river stretch.

The Court interpreted a law that many Oregon cities are already successfully implementing. The law allows cities to meet their reasonable water needs and develop more water but in ways that protect struggling fish. On the Clackamas, the cities argued that the law only required enough water to ensure that the listed fish do not vanish completely from the affected river stretch. Thankfully, the court rejected this argument.

The permits would reserve water in excess of the permit holders' needs, but under Oregon law this water can be sold to other municipalities. The City of Lake Oswego is doing just this, providing water to Tigard in exchange for funding towards Lake Oswego's massive infrastructure upgrade now under construction.





*Hooded Merganser by Steve Berliner.*

## Judge Affirms Ruling Favoring Wildlife on Klamath Refuges

This spring, WaterWatch and our allies won a court ruling ordering the federal government to complete long overdue “Comprehensive Conservation Plans” for managing the Klamath Basin’s National Wildlife Refuges by August 1, 2016. These plans, mandated by a 1997 law, require the government to ensure that commercial activities on refuge lands do not harm wildlife. While the vast majority of refuges in the United States have completed such plans, five Klamath refuges have tellingly lagged behind.

Many conservationists who have worked for decades in the Klamath believe that the completion and implementation of these plans is the best hope for saving these long-abused refuge lands by ending a harmful commercial farmland leasing program.

This government 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 in favor of agribusiness, regularly consumes nearly all

of the refuges’ available water supply, allows the use of toxic pesticides, and oversees the wholesale mechanized destruction of baby and adult birds in their nests each spring. As a consequence of this program, the federal government declared this spring that it would not provide water to the already parched Klamath refuge wetlands but would instead direct the refuge’s most senior water rights to supply commercial crops grown on the refuges. This shameful decision undermines the established purposes of these refuges and represents a virtual death sentence for thousands of migratory waterfowl.

In the coming months, the public will have the ability to take a stand for some of the Klamath’s last remaining wetland habitats. We urge everyone who cares about these incredible public lands to participate in the process to decide the future of the Klamath refuges. Please stay tuned for more details on how you can join us in making the case that eagles, ducks, and geese must take priority over agribusiness on refuge lands, and help secure a better future for the Klamath’s spectacular wildlife.

# 2015 Legislative Roundup

With the help of WaterWatch members, the 2015 legislative session ended with critical agency funding intact, the defeat of a slew of bad water bills, and the elevation of a number of important policy issues. We could not have done it without you! Your voices were critical to our success this year. Some of our wins from this session include:

## Oregon Department of Fish and Wildlife Budget

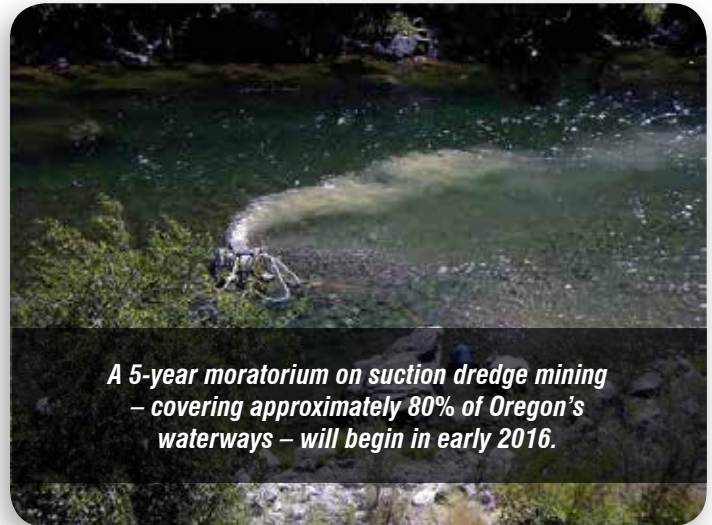
The Oregon Department of Fish and Wildlife faced an unprecedented \$32 million shortfall for the 2015-2017 biennium. With looming cuts to agency fisheries biologists and water program staff who are so important to Oregon's rivers, WaterWatch members went to bat! Legislators heard loud and clear both in Salem and in town halls around the state that you care about Oregon's rivers, and the fish and wildlife they support. As a result, both the water program and fisheries biologists survived the cuts.

## Cities Must Do Their Fair Share for Fish

WaterWatch successfully defended against multiple legislative attacks on our recent appellate court victories protecting imperiled fish. (See Cottage Grove and Clackamas River news on pages 4 and 8.) The League of Oregon Cities and Special Districts Association had gathered support for legislation that would have exempted numerous municipalities from protections for salmon, steelhead, and bull trout. After intense negotiations, most parties reached an acceptable compromise. However, some cities balked, demanding a complete rejection of the court's decision in the Cottage Grove case. This torpedoed the compromise. As a result, the court's decision remains the law.

## Phony Beaver Dam Bill Defeated

This legislation would have created a pilot program in eastern Oregon allowing landowners to build dams exempt from protections for water and fish. With your help, WaterWatch and our allies successfully defeated the bill.



*A 5-year moratorium on suction dredge mining – covering approximately 80% of Oregon's waterways – will begin in early 2016.*

## Suction Dredge Mining Moratorium

In 2013, we helped negotiate a bill seeking better management of this harmful practice which imposed a wide-ranging moratorium on suction dredging – if a compromise was not reached by January 2016. Subsequently, an interim Study Group failed to find consensus. In response, the Governor's office introduced a bill leaving unprotected many threatened streams and waterways of biological significance. WaterWatch and coalition partners were able to make changes in the bill protecting sensitive habitat for steelhead, salmon, bull trout, mollusks, and lamprey. However, the improved bill eventually failed, so a five-year moratorium on suction dredge mining – covering approximately 80% of Oregon's waterways – will begin in early 2016.



*Thanks to WaterWatch members, the 2015 legislative session produced some notable conservation victories. Photo courtesy Oregon Blue Book.*





## Do you appreciate WaterWatch's work? *Please donate now!*

We rely on the support of donors like you to monitor, defend, and restore Oregon's water resources. There are many options for giving and we appreciate donations large and small.

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Portland, OR, 97204

### Telephone

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Our Development Director, Molly, is available at (503) 295-4039 x0 to take a donation by credit card over the phone, or answer any questions.

### Online

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Make a one-time donation at [waterwatch.org](http://waterwatch.org), or opt to spread your donation throughout the year by making monthly donations.

### Become a Monthly Donor

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Monthly donations can be automatically deducted from your checking account or credit card. They keep your membership current and provide consistent and reliable support.

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WaterWatch is proud to be one of the founding member organizations of EarthShare Oregon. EarthShare has worked with many Oregon employers to establish a payroll deduction program that enables employees to make charitable donations. If you aren't sure your company participates, you can check at [earthshare-oregon.org](http://earthshare-oregon.org).

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**Save the Date!**

**Saturday, November 7, 2015**

**Location**

**Tiffany Center, 1410 SW Morrison Street, Portland, Oregon**

**Details & Tickets Available**

Visit [waterwatch.org](http://waterwatch.org) to purchase tickets and learn more!