

RECEIVED

AUG 13 2010

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

In the Matter of Application: R-87627 (Blair Virl and Sheryl Lynn Nash/Unnamed Stream, North Umpqua	)))	COMMENTS, REQUEST FOR PARTY STATUS AND PUBLIC RECORDS REQUEST
---	-------------	--

WaterWatch of Oregon, Inc. ("WaterWatch") hereby submits the following comments, request for party status and public records request regarding the above referenced application. WaterWatch requests that the Oregon Water Resources Department ("OWRD") share these comments with the Oregon Department of Fish and Wildlife ("ODFW") so that ODFW may consider these comments in preparing ODFW's comments on this application.

COMMENTS

Pursuant ORS 537.409(5), WaterWatch requests that the Department deny the application on grounds the reservoir poses a significant detrimental impact to existing fishery resources.

According to the application, the reservoir would take water from an unnamed tributary to the mainstem North Umpqua River ("River") near Roseburg, Oregon. "The river serves as needed habitat for a variety of resident and anadromous fish species including summer and winter steelhead, fall and spring Chinook, Coho and sea-run cutthroat trout, and is distinguished from other rivers by the large and consistent numbers of native (non-hatchery) fish in the run." (Ex. 1, p. 1). Wild summer steelhead are listed as a threatened species under federal law and as a sensitive species under state law. According to the OWRD maps, the river is protected under the National Marine Fisheries Service's ("NMFS")

Rule 4D, which prevents take. The tributary on which the reservoir is located also supports fish populations downstream from the proposed reservoir.

The reservoir, either alone or cumulatively in combination with other reservoirs, would pose a significant detrimental impact to fishery resources 1) by reducing flows in the tributary and in the River; 2) by contributing to warming of water in the tributary and the River; and 3) by contributing to pollution of the unnamed stream and the tributary through land-use activities typically associated with multi-purpose reservoirs.

The Reservoir would have a negative impact on flow because it would impound five acre-feet of water that would otherwise flow freely into the unnamed tributary and into the River. Even if water is only diverted in the winter, the diversion will reduce high flows, which are important for fishery habitat. This is of particular concern because the unnamed tributary is intermittent.

The Reservoir will also contribute to warming temperatures in the unnamed tributary. Water held in reservoirs typically receives more solar radiation than the surrounding stream and as a result is warmer. (Ex. 3, p. 4-5). When this warmer water is then released into the tributary, particularly during the warmer months, it will exacerbate temperature problems in the tributary and affect water quality.

The Reservoir will also contribute to detrimental impacts on the stream. Typically the creation of reservoirs involves land-use practices that are not conducive to protecting riparian habitat. It often involves removal of vegetation to clear views. (Ex. 3, p. 5). The reduced vegetation may contribute to increased temperatures, through reduced shading. (Ex. 3, 5). In addition, bentonite is often used to seal the reservoir. If it leaks out

AUG 13 2010

WATER RESOURCES DEPT
SALEM, OREGON

of the pond, it may have a detrimental effect on fish habitat. (Ex. 2, p. 5). Finally, the chemicals that are often used to remove weeds may lead to fish kills. (Id.).

Even if a permit for the reservoir is conditioned to allow storage only during cooler weather, the reservoir still will contribute to warming of the tributary and the River because, according to the application, the reservoir is in the stream channel. Thus, even if flows during warmer months are not stored, they will be slowed and exposed to thermal warming as a result of the increased surface area created by the reservoir. Warmer temperatures already threaten fish and the addition of warmer water from the reservoir may affect the resiliency of the River, and ultimately lead to the downfall of the protected species. (Ex. 4).

If the proposed application is not denied, it should be conditioned in several ways. First, any permit should be conditioned to prohibit storage during periods when low flows are a limiting factor for fish and to preserve peak flows important to fish and their habitat. Second, to prevent adverse temperature impacts, the permit should require that the reservoir be located away from the stream channel so that the tributary does not flow through the reservoir during times when storage is not permitted. Third, the permit should prohibit release of water from the reservoir during times when the reservoir water is likely to be warmer than water in the tributary and the River. Fourth, the permit should require measuring devices and reporting sufficient to ensure practical and accurate determination of whether conditions on storage volumes and storage seasons are met.

REQUEST FOR PARTY STATUS.

To the extent WaterWatch is not already a "party" that would be "affected" by allowance of the proposed permit, WaterWatch hereby requests to participate before the

Department as a "party" in this matter. WaterWatch will be affected by the proceeding because WaterWatch represents public interests in restoring and protecting instream flows for the benefit of fish, wildlife and recreation. WaterWatch also works to ensure that water allocation decisions, including decisions regarding permits for storage of water in reservoirs, adequately protect fish, wildlife and recreation. WaterWatch has invested time and money in pursuing these purposes and its investment would be harmed by allowance of the proposed permit. WaterWatch also represents the interests of its members, some of whom use and enjoy, and will use and enjoy in the future, the waterways that would be affected by the proposed permit.

PUBLIC RECORDS REQUEST

WaterWatch requests copies of all documents related to the above application, including but not limited to copies of all comments submitted by any other person, organization or agency. Copies should be delivered to the undersigned. The undersigned will pay all reasonable copying charges upon receiving an estimate of such charges from the Department.

DATED: August 8, 2010.

By */s/ Dawn Winalski*

Dawn Winalski
WaterWatch of Oregon Volunteer
P.O. Box 6802
Portland, OR 97228
541-654-3303

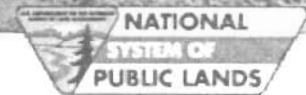
AUG 13 2010

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WATER RESOURCES DEPT.

SALE OF PUBLIC LANDS

Oregon / Washington



North Umpqua Wild & Scenic River

Water Quality and Quantity

The North Umpqua River sustains a dependable flow of high quality water. Several components combine to produce the high water quality of the river. These attributes are: low turbidity (except during peak flow periods), low levels of contaminants and pollutants, cool water temperatures, and stable minimum in stream flows. The water quality and quantity of the North Umpqua River is the foundation for the other outstandingly remarkable values. The North Umpqua River produces a steady flow sufficient for both recreational uses and the maintenance of fish and aquatic life.

Fisheries



Historically, the combination of large summer run steelhead, fly-angling only restriction, and majestic scenery has drawn anglers from all over the world. The river serves as needed habitat for a variety of resident and anadromous fish species including summer and winter steelhead, fall and spring Chinook, Coho and sea-run cutthroat trout, and is distinguished from other rivers by the large and consistent numbers of native (non-hatchery) fish in the run. The North Umpqua summer steelhead fishery is considered to be one of the most outstanding on the West Coast.

Recreation

The area is readily accessible to a broad segment of the population and provides a variety of river-related recreational opportunities such as non-motorized boating activities, fly fishing, developed and dispersed camping, picnicking and swimming, horseback riding, hiking, sightseeing, bicycling, photography, nature study, and scenic driving. The corridor route (Highway 138) serves as the primary access to Diamond Lake Recreation Area and Crater Lake National Park. Visitors from all over the world travel through the North Umpqua River Corridor to enjoy these major destination attractions. This highway has received both national and regional recognition for its exceptional scenic quality and accessibility to a myriad of recreational and interpretive opportunities.



Scenic



This truly distinctive canyon landscape is generally characterized by the combination of clear jade-green rushing water, vertical rock cliffs and spires



within a mosaic of mountain meadows and Douglas-fir/western hemlock forests. Adding to the natural scenic quality of the North Umpqua Wild and Scenic Corridor, are the locations of numerous prominent geologic features of columnar basalt, large basalt rock cliffs, boulders and spires which are currently managed as the Umpqua Rocks Special Geologic Area. Few river systems in the region expose as much of the volcanic and geologic history of the formation of the Cascades in one nearly straight, east-west direction.

Cultural

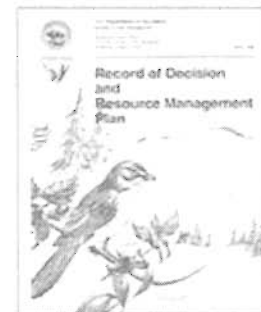
The North Umpqua River area was used by prehistoric peoples for more than 6,000 years. Radiocarbon dating places prehistoric occupation of the North Umpqua River as early as 6,300 years ago, while stratigraphic dating indicates that the occupation may have pre-dated the eruption of Mt. Mazama 6,800 years ago. The presence of the time sensitive artifacts indicates the occupation may go as far back as 8,000 years. This long period of occupation resulted in the formation of a number of sites within the Corridor that have unusual characteristics when compared with other sites in the region.

Of historical interest is the Steamboat area within the North Umpqua River Corridor. Visitors were initially drawn to the area because of the excellent fishing. The first known fish camp constructed on the river in the 1920's was located in this vicinity. Also found in this area is the historic Mott Bridge, a recognized Oregon Historic Civil Engineering Landmark. Constructed by the Civilian Conservation Corps in 1935-36.

Record of Decision and Resource Management Plan

[URL: ../plans/files/roseburg_rmp.pdf](http://.../plans/files/roseburg_rmp.pdf)

In this Record of Decision we adopt and approve for immediate implementation the following Roseburg District Resource Management Plan (RMP), based on the combination of this office's August 1992 Draft Environmental Impact Statement (DEIS) and the October 1994 Final Environmental Impact Statement (FEIS). It is also supported by and consistent with the July 1993 Draft and February 1994 Final Supplemental Environmental Impact Statement (SEIS) on Management of Habitat of Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl and its associated April 1994 interagency Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD).



Record of Decision and Resource Management Plan [URL: ../plans/files/roseburg_rmp.pdf](http://.../plans/files/roseburg_rmp.pdf) (PDF)

Photo Gallery [URL: gallery.php](http://.../gallery.php)



[URL: gallery.php](http://.../gallery.php)

RECEIVED

AUG 10 2010

WATER RESOURCES DEPT
SALEM, OREGONIN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CHARLES NOBLE, DEBORAH)

NOBLE, and DAVID HILLISON,)

Plaintiffs,)

v.)

No. CV-07-12-0591

OREGON WATER RESOURCES)

DEPARTMENT and ROBERT)

LYTLE,)

Defendants.)

DEPOSITION OF STEVE PRIBYL

October 17, 2008

The Dalles, Oregon

Ex. 3

1 P R O C E E D I N G S

2
3 MR. POSEWITZ: It is October 17th, about ten
4 after 10:00 a.m. We are here for the deposition
5 of Steve Pribyl. Is that --

6 THE WITNESS: Pribyl.

7 MR. POSEWITZ: Pribyl.

8 And will the court reporter please swear the
9 witness.

10
11 STEVE PRIBYL,
12 after having been first duly sworn by the
13 Certified Shorthand Reporter, was examined and
14 testified as follows:

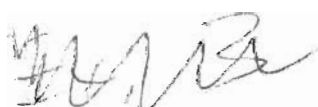
15
16 EXAMINATION

17
18 BY MR. POSEWITZ:

19 Q. Mr. Pribyl, my name is Brian Posewitz. I am an
20 attorney for some parties named Noble and Hillison
21 over in the Portland area, and we are here to take
22 your deposition in a case that I'm representing
23 them on.

24 Are you generally aware of that?

25 A. I'm familiar with that.



RECEIVED

AUG 13 2010

WATER RESOURCES DEPT
SALEM, OREGON

1 Q. Do you understand that oath requires you to tell
2 the truth subject to penalties for perjury?

3 A. Yes.

4 Q. Is there any reason your testimony today might not
5 be accurate? Medication, anything like that?

6 A. No.

7 Q. Just a couple of practical things about
8 depositions. If I ask you a question and you
9 don't understand, you are entitled to tell me
10 that, and I'll do my best to rephrase it. Okay?

11 A. Okay.

12 Q. It is also very important, because Amy, our court
13 reporter here, is trying to take it all down, that
14 you wait until I'm done before you talk.

15 A. Yes.

16 Q. And I'll do my best to wait until you're done
17 before I talk.

18 A. Very good. I understand.

19 Q. And if at some point during the course of the
20 deposition you realize that testimony you gave is
21 inaccurate or should be restated, you are free to
22 tell me that and to do that.

23 A. Okay.

24 Q. What is your current occupation?

25 A. I am currently retired.

1 Q. What was your occupation before you retired?

2 A. I was a fisheries biologist with the Oregon

3 Department of Fish and Wildlife stationed here in

4 The Dalles for a little less than 20 years; and

5 prior to that I was in Ontario, Oregon, for about

6 five years; prior to that, dating back to 1974, a

7 series of temporary and technician level

8 positions, all with Oregon Fish and Wildlife or

9 the previous agencies, The Oregon Wildlife

10 Commission or the Oregon Game Commission.

11 Q. When did you retire?

12 A. I retired July 1st of 2004.

13 Q. So in general terms, before you retired you were a

14 fish biologist.

15 A. Correct. And my actual position title was

16 assistant district fisheries biologist, although

17 at least part of the time in the -- covered by the

18 Patterson matter, I was -- my supervisor had

19 retired, and my title was acting district

20 fisheries biologist.

21 And I didn't notice anywhere in the record

22 where that was necessarily reflected, and I think

23 that may have just been a timing issue between the

24 retirement of my previous supervisor and the

25 hiring of my supervisor whom I retired under.

RECEIVED

AUG 10 2010

WATER RESOURCES DEPT
SALEM, OREGON

44

1 A. Correct.

2 Q. Are there others that I've missed?

3 A. Inherent with on channel storage and even off
4 channel storage has a potential for human caused
5 problems; one is that someone constructs a pond
6 and it leaks. The common remedy for that is using
7 a clay-like material called bentonite, that if it
8 leaks out of the pond there is a potential for it
9 to impact spawning gravels downstream.

10 Every body of standing water in the world is
11 a wet meadow in the making; that is the ecological
12 succession process of standing water. You've seen
13 it; we've all seen it. Which is a complicated way
14 to say that weeds are going to grow in your pond.
15 People don't like weeds in their pond. People
16 want to do something about that. Commonly they
17 apply a chemical to kill the weeds. All of those
18 chemicals are very toxic to aquatic organisms
19 including fish. Fish kills have happened from the
20 misapplication of chemicals in standing waters.

21 Q. How does bentonite impact spawning habitat?

22 A. If it leaches out of its place of application
23 through groundwater or surface water, whatever
24 avenue, it is a very fine clay-like particle that
25 will embed in the spawning gravels and causing

1 what -- the common term is cementing of the
2 gravels together, making it more difficult for
3 fish to dig their redd, deposit their eggs.
4 Potential would exist for the bentonite particles
5 to actually smother the eggs, preventing water
6 from reaching the egg, exchange of oxygen through
7 water membrane, et cetera, et cetera.

8 Q. Now, you mentioned exceptions to that general --
9 what you understood to be a general ODFW policy,
10 and you referred to the exceptions being on high
11 intermittent tributaries in the Deschutes,
12 correct?

13 A. Correct.

14 Q. Why are those locations different?

15 A. Largely owing to the distance downstream from that
16 reservoir to fish -- I guess I'll say meaningful
17 fish habitat, or occupied fish habitat may be a
18 better word. And when I -- and mostly now I'm
19 recalling -- proving I'm not completely burned out
20 from retirement; I'm recalling some of this now,
21 Brian -- we had gone through a series of water
22 right applications for existing on channel
23 structures that are basically cattle watering
24 ponds, way -- the very headwaters of intermittent
25 tributaries to the Deschutes that basically trap a

RECEIVED

1

AUG 13 2010

WATER RESOURCES DEPT
SALEM, OREGONIN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CHARLES and DEBORAH NOBLE,)

Plaintiffs,)

v.)

No. CV-06-070096

OREGON WATER RESOURCES DEPT.,)

and VICTOR and VERA VITYUK,)

Defendants.)

CHARLES and DEBORAH NOBLE,)

and DAVID HILLISON,)

Plaintiffs,)

v.)

No. CV-05-120427

OREGON WATER RESOURCES DEPT.,)

and RAYMOND "TROY" MARTIN,)

Defendants.)

CHARLES and DEBORAH NOBLE,)

and DAVID HILLISON,)

Plaintiffs,)

v.)

No. CV-05-120804

OREGON WATER RESOURCES DEPT.,)

and ROBERT LYTLE,)

Defendants.)

DEPOSITION OF KAREN WILLIAMS

Taken on behalf of Plaintiffs

ET, 4

1 Q. 1992?

2 A. 1992.

3 Q. Okay. And then what?

4 A. And then I went to graduate school at the
5 University of Nevada, Reno; and approximately
6 two and a half years later, received an M.S. in
7 hydrogeology, in April of 1995 -- actually,
8 officially, in May of 1995, but I finished in
9 April of 1995.

10 Q. Okay.

11 A. Then I went back to work in environmental
12 consulting at the same company, although they
13 were no longer called RZA; they were called
14 AGRA Earth and Environmental at that time,
15 A-G-R-A. And I worked there until November of
16 1998, when I came to the department -- the
17 state Oregon -- the Oregon State Department of
18 Environmental Quality in the laboratory
19 division. And my work there was as the
20 volunteer monitoring coordinator in the water
21 quality monitoring section; and in that
22 capacity, I worked with watershed councils,
23 soil and water conservation districts, and
24 other entities that wanted and needed training
25 in water quality monitoring.

2

RECEIVED

AUG 10 2010

WATER RESOURCES DEPT
SALEM, OREGON

1 And then approximately in the summer of --
2 let's see, '92 -- in 2002, I believe, the
3 summer of 2002, I changed jobs, still at the
4 Department of Environmental Quality, and began
5 working in the northwest region of DEQ as a
6 natural resource specialist. And my work there
7 primarily involved implementation of what we
8 called total maximum daily loads, which are
9 essentially water quality plans for basins.

10 And just in October of this year, this
11 month, I was promoted to a Natural Resource
12 Specialist 4, and my work now involves
13 developing those water quality plans, the
14 TMDLs, for the Molalla-Pudding Basin.

15 Q. You said you received an M.S. in hydrogeology;
16 correct?

17 A. Correct.

18 Q. What is that?

19 A. What is hydrogeology? It is the study of water
20 and soil or rock interactions, very generally
21 speaking; the movement of soil through
22 subsurface media -- sorry -- movement of water
23 through subsurface media.

24 Q. Okay. Does hydrogeology deal with water
25 quality issues?

1 deep and it covers an acre; right?

2 A. That's right.

3 Q. Okay. Can reservoirs of that size, let's say,
4 3 acre-feet or less, can they affect the
5 temperature of the water in a water body?

6 A. The temperature in the reservoir or the
7 temperature in the stream that they are --

8 Q. Well, let's say -- let's say the temperature in
9 the stream -- Well, let's talk about the
10 temperature of the water of the reservoir. Can
11 they affect the temperature of the water in the
12 reservoir?

13 A. Yes.

14 Q. And does that affect the temperature of the
15 water downstream from the reservoir?

16 A. It can.

17 Q. And how does it do that?

18 A. Because a larger amount of surface area is
19 exposed to solar radiation, so it absorbs more
20 heat.

21 Q. Does it have to do also with how long the water
22 stays in one place?

23 A. Yes.

24 Q. How does that impact temperature?

25 A. Because the water is, again, able to absorb

if

1 more solar radiation because it's moving more
2 slowly or not moving at all.

3 Q. Does it also increase the likelihood that the
4 water -- I'm sorry. Does it -- Do reservoirs
5 of that sort also decrease the likelihood that
6 the water will be shaded from streamside
7 vegetation?

8 A. I suppose it could.

9 Q. Just because it's a bigger surface area; right?

10 A. Sure. Sure.

11 Q. So you need taller vegetation to shade the
12 stuff in the middle; right?

13 A. Correct. Right.

14 Q. Okay. And if you reduce shading, that
15 increases the temperature as well; right?

16 A. If you reduce the shading, it can increase the
17 temperature, sure.

18 Q. Okay. Wouldn't it always increase the
19 temperature?

20 A. Well, they're -- not -- generally speaking,
21 yes, it would.

22 Q. Okay.

23 A. There may be other factors that would affect
24 it. If you had a large amount of ground water
25 influx at a cooler temperature, you may

RECEIVED

AUG 13 2010

WATER RESOURCES DEPT
SALEM, OREGON

5

Donate

Umpqua River

Status: YELLOW ALERT

Length: 112 miles

Basin area: approximately 5,000 square miles

Almost the entire length of the Umpqua River has high water temperatures and bacteria contamination.



photo by Gary Sharp

One of the principal rivers of the Oregon coast, the Umpqua drains an expansive network of valleys west of the Cascade Range and south of the Willamette Valley. It is one of only two Oregon rivers (the Rogue is the other one) that begin in the Cascades and cut through the Coast Range to the Pacific Ocean. The Umpqua Basin is a timber-producing area, and 90% of the basin is federal, state and private forestland. "Umpqua" is the native name for the country around the river and it became used as a word for both the river and local tribes. The river provides habitat for a number of species of anadromous fish, including coho salmon, fall and spring chinook salmon, summer and winter steelhead, and seagoing and resident cutthroat trout. A major tributary, the North Umpqua River, is world-famous for salmon fishing.

A Closer Look

Temperature and fecal coliform bacteria are the primary water quality problems on the Umpqua River. High stream temperatures typically occur during mid to late summer. The removal of streamside vegetation in some areas contributes to warmer temperatures. In addition, stream flow has been modified by straightening, diking, and constriction due to management and diversion structures. Studies by DEQ indicate that sources of fecal coliform bacteria in the Umpqua may include wildlife, livestock wastes, failing residential septic systems, wastewater treatment plant malfunctions, and stormwater runoff.

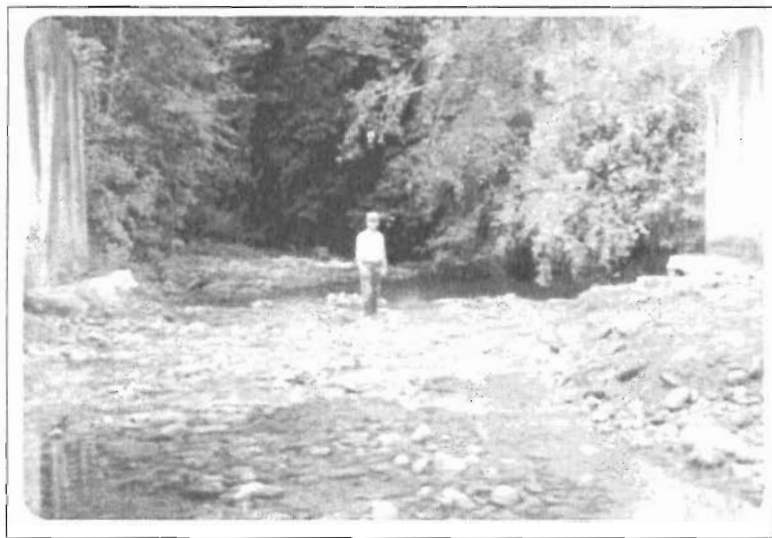
While the Umpqua's water quality is fairly good, its tributaries - the North and South Umpqua rivers, Elk Creek and Calapooya Creek - have more water quality problems. For example, the Umpqua Basin is home to the abandoned Formosa and Bonanza mines, which leach mercury and arsenic into tributary creeks and create fish-killing acidic waters. Additional pollution problems in the tributaries include sediment, phosphorous, chlorine, chlorophyll, weeds and algae, plus fecal coliform and temperature. The Department of Environmental Quality (DEQ) is currently developing a Total Maximum Daily Load (TMDL) plan to reduce pollution in the Umpqua Basin.

Water for Fish and Farms

In 2000, a diversion structure was removed from South Myrtle Creek, a tributary of the South Umpqua River, allowing passage of salmon and trout to a stream that had been blocked for nearly a century. The dam spanned the entire creek and was fourteen feet high in the summer, diverting water into a 2-1/2 mile irrigation ditch. It contributed to the creek's high stream temperatures and low flows.

The project was initiated by a landowner who contacted the Oregon Water Resources Department and recruited all the other landowners who used water from the diversion. The Umpqua Basin Watershed Council received funding for the project from numerous sources including DEQ, Oregon Watershed Enhancement Board, U.S. Fish & Wildlife Service and the Umpqua Fisheries Enhancement Derby. All the landowners contributed to the project, donating services and supplies. They worked with the watershed council to remove the dam, install a more efficient sprinkler system with individual pumps drawing from the stream instead of the ditch, and plant vegetation alongside the stream. The improved irrigation efficiency removes less water from the creek during the summer, which helps with flows and water temperatures.

The landowners discovered that by working together and mobilizing available resources, they were able to restore their local creek, improve water quality and fish habitat, and continue to irrigate their lands.



RECEIVED
AUG 10 2010
WATER RESOURCES DEPT
SALEM, OREGON

Mike Danielle, landowner of the site, stands proudly on the spot where a local irrigation dam had once blocked South Myrtle Creek. © Partnership for the Umpqua Rivers. © Partnership for the Umpqua Rivers.

Browse Oregon's other major rivers:

1. Columbia
1. Deschutes
2. Grande Ronde
3. John Day
4. Malheur
5. Owyhee
6. Rogue
7. Snake
8. Willamette