



Adult fall Chinook salmon in the Priest Rapids Hatchery.

Photo by Geoff McMichael

# More water for the fish

The idea was simple: Take water from the aquifer at the end of irrigation season and pump it several hundred feet to where it could help fish survive the low stream flows in late summer and early fall.



Don Jenkins/Capital Press

Whatcom County, Wash., raspberry grower Marty Maberry watches Oct. 18 as groundwater flows into Bertrand Creek. The experiment by farmers increased the stream flow to help fish.

By DON JENKINS  
Capital Press

LYNDEN, Wash. — Farmers in the northwest corner of Washington often tap the groundwater to irrigate their berry and potato crops during the dry season. But when that irrigation season ended last summer, they did something that’s never been done before in the state.

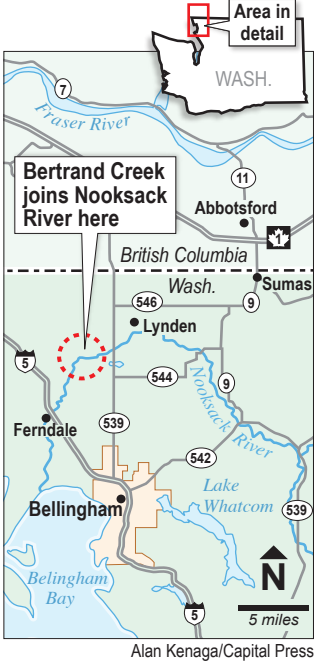
They used the water to “irrigate” the fish in a nearby creek.

Although Whatcom County receives about 50 inches of rain a year, summers are usually dry. By fall, streams and rivers, including Bertrand Creek, are often below the minimum flows for fish that were set by the Washington Department of Ecology.

The Washington Supreme Court has been extremely protective of these minimum flows. For example, earlier this year in the Hirst decision, justices even stopped the drilling of any household well that might impair a nearby stream’s minimum flow.

Meanwhile, Native American tribal treaty rights continue to be litigated in federal court. A case pending before the U.S. Supreme Court, ostensibly over how fast Washington state will replace fish-blocking culverts under roads, will test how far states must go to protect fish.

Since stream flows for the benefit of fish are the issue, farmers in



Alan Kenaga/Capital Press

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# Water rights legal theory unnerves Oregon irrigators

Environmental lawsuit dismissed, but argument could be revived

By MATEUSZ PERKOWSKI  
Capital Press

Time has run out for environmentalists to appeal a ruling with implications for Oregon water rights, but irrigators remain nervous about their underlying legal theory.

In 2013, Central Oregon Landwatch and Waterwatch of Oregon filed a complaint against the U.S. Forest Service for approving the replacement of a water intake in the Deschutes National Forest.

The environmental groups argued the Forest Service inadequately studied the impacts of diverting water from Tumalo Creek, among other allegations.

Although the lawsuit targeted water consumed by the City of Bend, irrigators and other water users intervened in the case because they feared it could set a dangerous precedent regarding water rights on federal land.

Specifically, the plaintiffs claimed the Forest Service shouldn’t allow the creek to fall below the minimum flow



level established under instream water rights owned by the state government.

Under Oregon water law, instream water rights function according to the policy of “first in time, first in right,” meaning they are subordinate to older water rights established by many irrigators.

However, if the minimum

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# Solar developments could prompt new land regulations

By MATEUSZ PERKOWSKI  
Capital Press

PORTLAND — Solar power development on farmland is increasingly raising alarm, potentially leading to new land use restrictions in two Oregon counties.

A growing “cluster” of solar energy sites in Oregon’s Willamette Valley has prompted Yamhill and Marion county governments to consider barring such development on several higher-quality farmland soil classes, said Jim Johnson, land use specialist with the Oregon Department of Agriculture.

The restrictions would go beyond the current rules established by Oregon’s Land Conservation and Development Commission, which limit solar development on prime farmland to 12 acres.

“We’ve got enough concern for two counties to take this on their own and not wait for LCDC,” Johnson said during a Nov. 28 meet-

ing of the Oregon Board of Agriculture, which advises ODA.

New statewide rules for solar development on farmland are also being considered by LCDC, though the agency is reluctant to announce a time frame for taking action, he said.

If LCDC set a deadline to enact stricter regulations for solar power facilities on farmland, it could result in a “land rush” among developers to seek new sites under the more lenient current rules, Johnson said.

With the upcoming 2018 legislative session, the agency also likely feels that it can’t devote resources to new solar rules in the short term, he said.

Wetlands on farmland are also controversial in Oregon agriculture, with Tillamook County considering a new regulatory approach to such developments.

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