



April 25, 2023

Senator Jeff Golden, Chair
Senator Fred Girod, Vice-Chair
Senate Committee on Natural Resources

Re: Trout Unlimited Supports HB 2929 A

Dear Chair Golden, Vice-Chair Girod, and Members of the Committee,

Trout Unlimited (“TU”) is a non-profit dedicated to conserving cold-water fish (such as trout, salmon, and steelhead) and their habitats. TU has more than 350,000 members and supporters nationwide, including many members in Oregon.

HB 2929 A would authorize the Water Resources Department (“WRD”) to seek temporary or permanent injunctive relief if WRD had information that a person was engaged in activity that constituted a violation of certain water laws.

The bill requires WRD to report to the Legislature on its use of such injunctive authority by September 15, 2028. The injunctive authority described in the bill sunsets on January 2, 2030.

Trout Unlimited supports HB 2929 A for the following reasons:

1. Responding to illegal water use and storage is a time-sensitive matter for fish.

Native fish including trout, salmon, steelhead, and lamprey require abundant cool, clean water to survive. These fish are present in Oregon’s streams at all times of the year.

During the summer irrigation season, streams are typically at their lowest flow and warmest temperatures of the year. At those times, juvenile salmon and steelhead—including Oregon Coast coho salmon, which are listed under the Endangered Species Act—are particularly vulnerable to the effects of illegal water use and storage.

When illegal water use or storage dewater a stream or entrains fish in an off-channel reservoir, those fish will likely perish unless the violation is quickly cured.

For example, if an illegal cannabis operation impounds a small stream and diverts the live flow for irrigating illegal crops, native fish downstream of the impoundment (such as summer steelhead), will likely die within days if they cannot move to other refugia. Oftentimes, that refugia is upstream of the offending diversion structure. In those instances, the illegal diversion will likely serve as a fish passage barrier, and the fish are likely to die in the area immediately downstream of the impoundment.

Likewise, if an illegal cannabis operation constructs and fills an unpermitted off-channel reservoir, native fish are likely to be entrained in the diversion facilities or reservoir. In the storage pond, entrained fish are likely to perish due to lack of food, inhospitable temperatures, predation by birds, or eventual dewatering of the pond.

2. Water quantity is a limiting factor for native fish.

Insufficient water *quantity* is increasingly a “limiting factor” for native fish in Oregon. Historically, streamflows diminished in summer and early fall, but not to the extent that we’ve seen in recent years. This means delays in securing a remedy for illegal water use or storage is a more pressing issue for fish today than it would have been in the past.

With climate change and seasonal drying, biologists are finding that low streamflows are a more frequent bottleneck or constraint for native fish populations statewide. This is particularly true in southwest Oregon, where the effects of summer drought on water quantity are compounded by illegal water use and storage.

3. Illegal water use and storage is an ongoing problem in Oregon.

Illegal water use and storage on a stream system presents the same risks to fish no matter whether the water is ultimately used to irrigate illicit cannabis, legal crops, or pastureland. Illegal water uses can occur just about anywhere, and in connection with just about any type of agricultural production (legal or illegal), without much difference in how fish—or legal water users—are affected. Oregon needs a full complement of enforcement tools to address those extreme water law violations wherever they occur, and whatever the ultimate use of the water.

That said, this issue has been relatively well documented in recent years with regard to cannabis specifically. Accordingly, that sector serves as a useful example of how illegal water use and storage affects fish.

Illegal cannabis operations in Oregon are using and storing significant amounts of water without permits. To do so, illegal cannabis growers illegally dam streams and divert water into illegally constructed reservoirs for use in their operations. The problem is particularly acute in parts of the Rogue, Umpqua, and Illinois River basins, which provide important habitat for wild salmon and steelhead.

Some maps and photos may help demonstrate the scale and prevalence of this problem. In February, the Oregon Water Resources Commission received a staff presentation on cannabis industry enforcement.¹ In Attachment 1, I have provided a map from that presentation that shows

¹ See Oregon Water Resources Department, Commission Staff Reports, February 2023, Item D - Update on Cannabis Industry Enforcement (available at https://apps.wrd.state.or.us/apps/misc/wrd_notice_view/Default.aspx?notice_id=41) (“Senate Bill 5561 staff performed over 2,218 desktop water right investigations of cannabis sites. These investigations revealed 37% of cannabis sites were without water rights. Additionally, staff performed over 677 on-site investigations showing 22% of grow sites were found in violation of Oregon water law.”); Oregon Water Resources Commission Meeting recording, February 23, 2023, at 3:34:25 – 4:15:50 (available at <https://www.youtube.com/live/G0Mrz-lhg->

the location of 811 cannabis grow sites that WRD staff determined did not hold water rights (in 2022). The orange symbols on that map, which represent cannabis operations without water rights, overlap a significant extent of native fish habitat in Oregon. Some of those sites may have been obtaining water from legal sources such as hauled water programs, but on-site investigations by WRD staff found that many were in violation of Oregon water law.² In Attachment 2, I have provided a series of photos that TU obtained from ODFW, which shows the types of water code violations occurring, especially in southwest Oregon.

Conclusion

WRD does not have authority to obtain an injunction against water code violations including illegal use or storage of water. Yet, timely remedies for those violations are increasingly necessary to protect Oregon's native fish species (let alone, the interests of legal water users). HB 2929 A would protect the state's significant investments in fish passage, instream flow restoration, and habitat restoration on private and public lands.

Trout Unlimited supports HB 2929 A.

Thank you for this opportunity to provide comments, and please let me know if you have questions.

Sincerely,

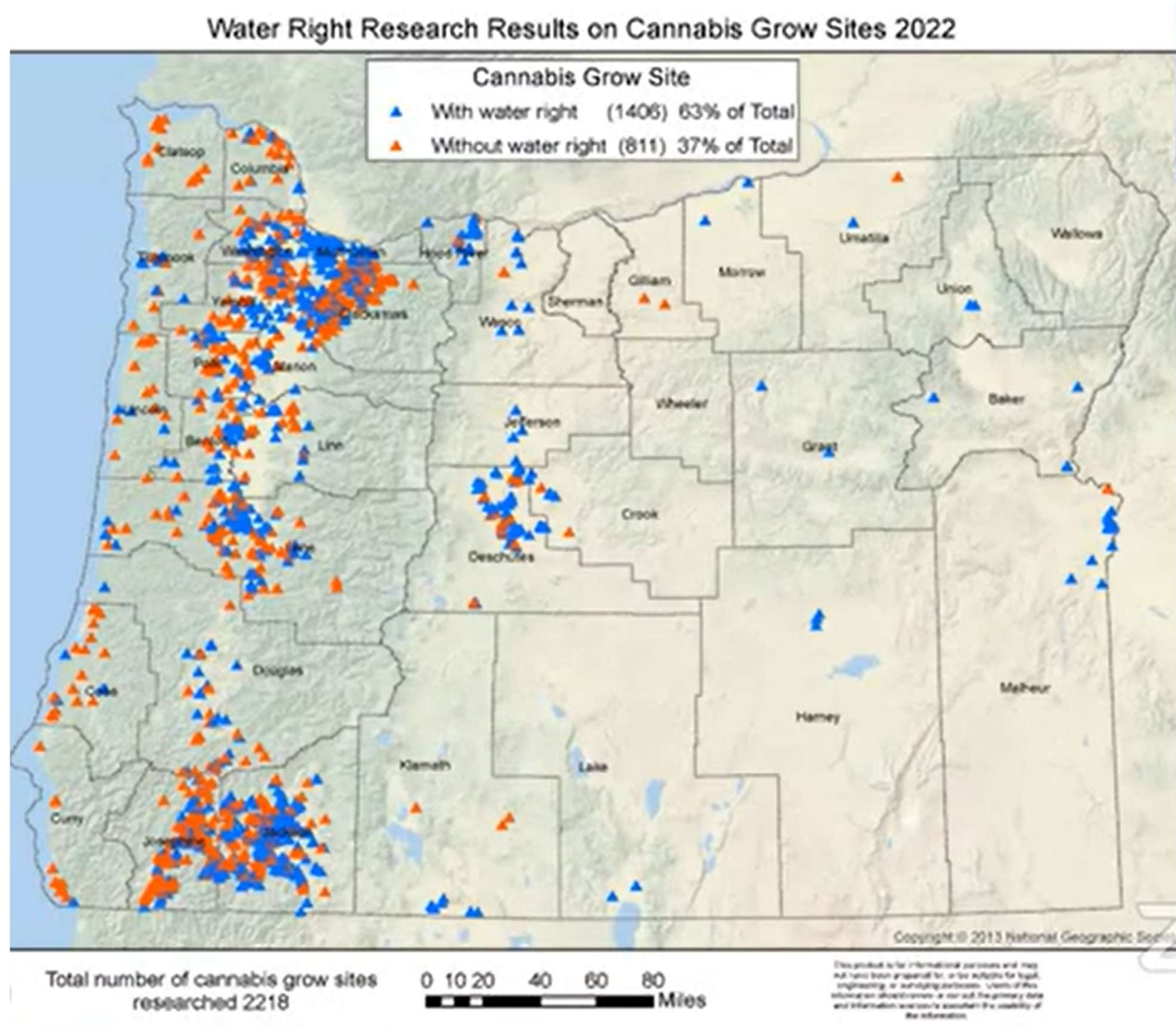
James Fraser
Oregon Policy Advisor
Trout Unlimited
james.fraser@tu.org

[4?feature=share&t=12865](#)) (staff report presentation video, including clarification that the 2,218 desktop investigations performed by WRD in 2022 included "all licensed OLCC sites, all ODA registered sites and all illicit sites made known to the team").

² *Id.*

Attachment 1

[Source: Oregon Water Resources Commission Meeting, February 23, 2023, recording at 3:45:38 (available at <https://www.youtube.com/live/GOMrz-lhg-4?feature=share&t=13538>).]

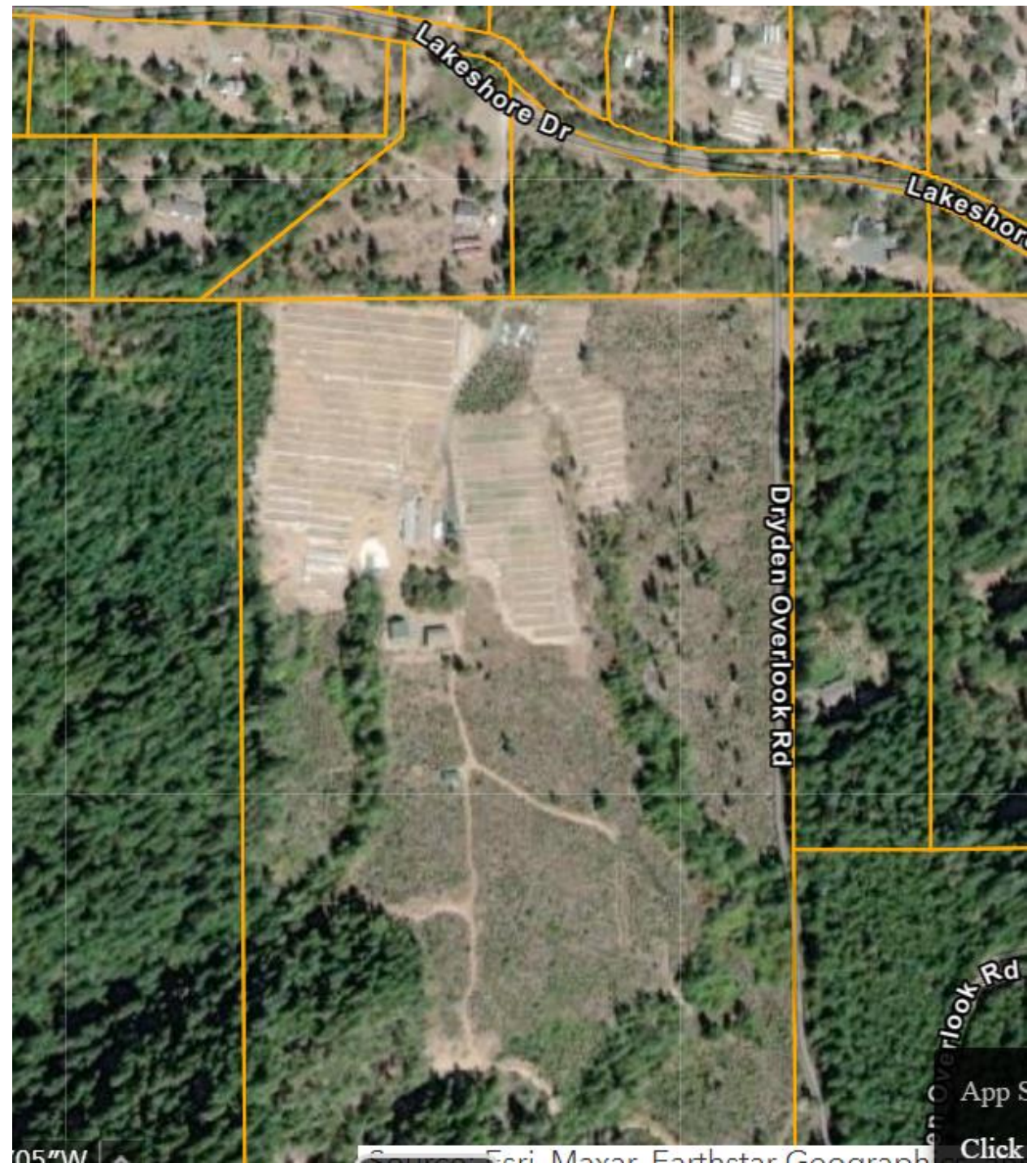


Attachment 2

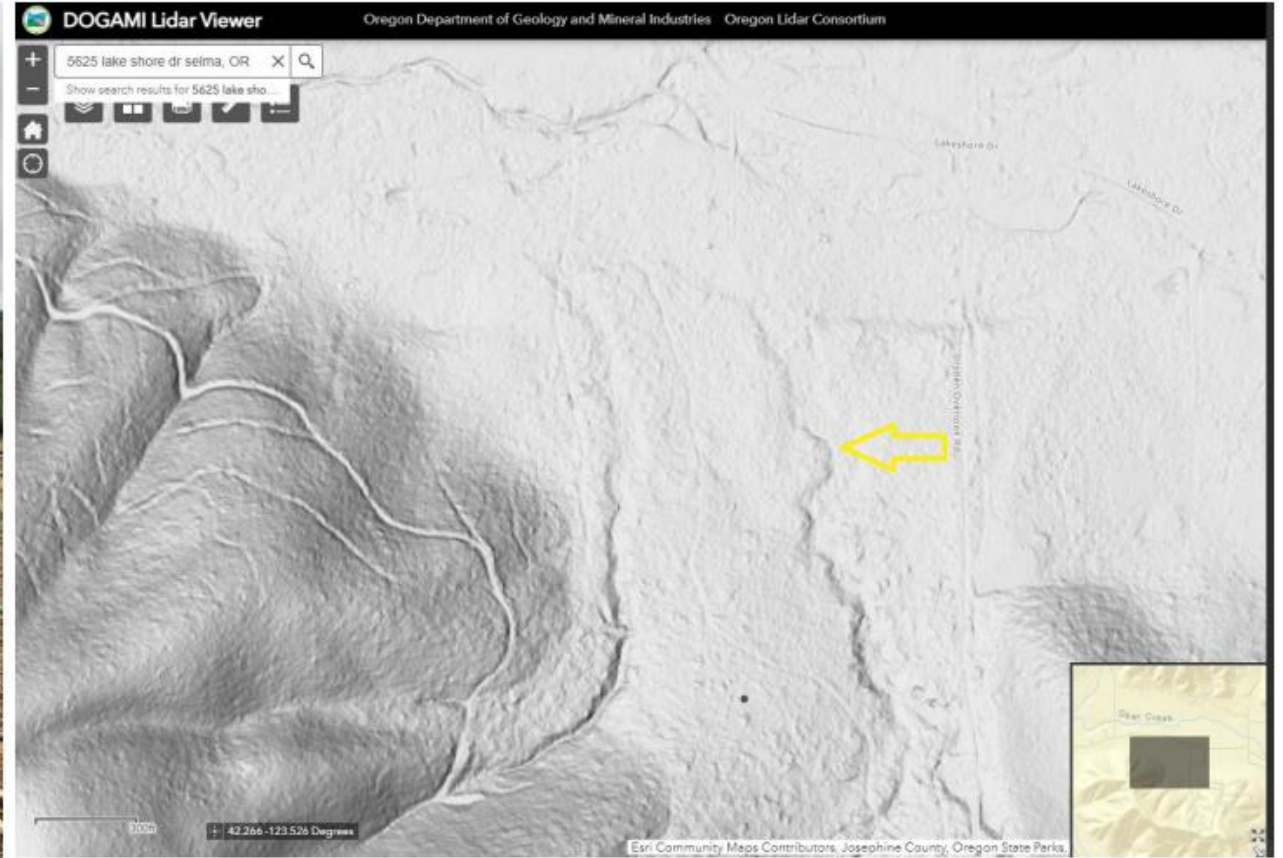
[Note: Trout Unlimited requested and received the following slides from the Oregon Department of Fish & Wildlife last year, in relation to conversations we were having with agency staff about habitat conditions and challenges in areas subject to ODFW's new Rogue-South Coast Multi-Species Conservation and Management Plan. Many of the slides are relevant in this legislative context too, because the images demonstrate the water use and storage issues referenced in TU's testimony on HB 2929.]

(Photos on following pages)

- Riparian removal
- Pond created in channel
- Illegal PODs
- Channel filled—see next slide



Grading/fill of channel.



Bear Creek.

Large industrial pump installed without water right.

- First reported to ODFW May 2019.
- Property prepped for a hemp grow; substantial excavation.
- Owners reportedly dug a 100-acre pond in addition to the land clearing.



Thompson Creek.

Resumption of abandoned diversion dam.

- May 2019.
- Dam rebuilt at old diversion site.
- ODFW records indicate the screen was marked “turned out” since 2011, basically means not taking water.



Ninemile Creek.

Large dam on small stream.

Summer 2019

- Coho likely stranded in ditch.
- Only second time BLM biologist has seen creek dry.
- Dry year but not declared drought.

Winter 2022

- Push up dam, diversion remains in place.
- Overtopping fish screen.



Deer Creek 1. Illegal water diversion.

- Pond capturing water from intermittent stream on BLM land.



Deer Creek 2. Illegal water use.

- Illegal cannabis site with illegal water use.
- Dug pond until hit groundwater.
- Pond near creek; fish can enter during floods and get stranded.



Tributary of Waters Creek. Wetland damaged for grow site.

Before:



After: grow site terraced into hillside with no erosion control, no water rights.



Tributary of Althouse Slough. Illegal water storage.

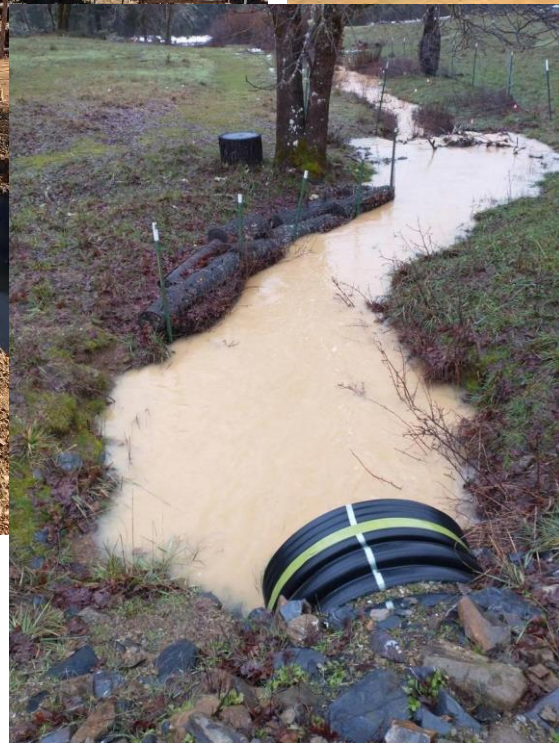
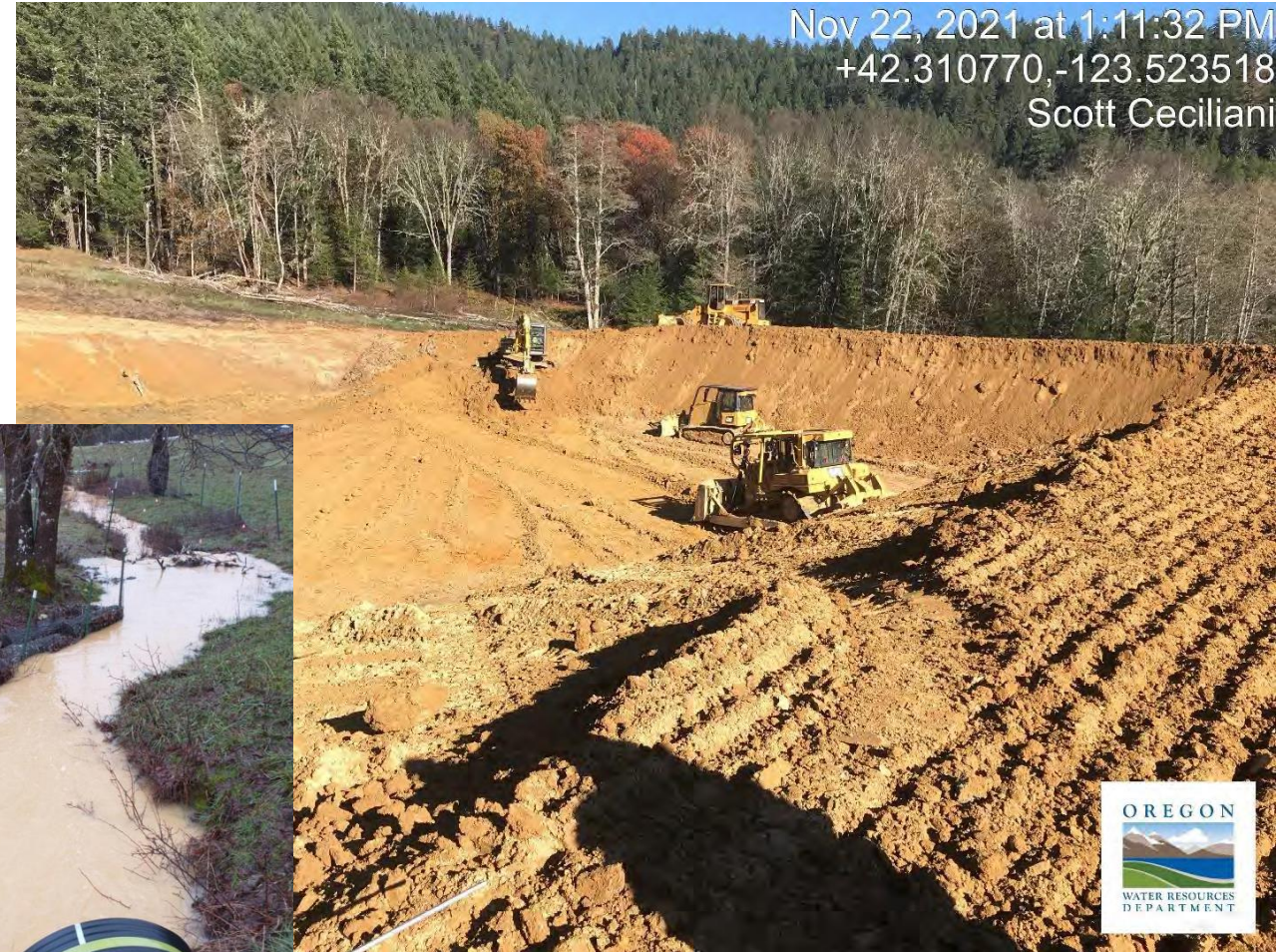
- Enlarged reservoir and illegal water use.
- Natural seasonal streams captured by the Houck & George Ditch. (previously unscreened)

Coho found
here



Tributary of Crooks Creek.

Illegal water storage *(OWRD photos).*



Anderson Creek.

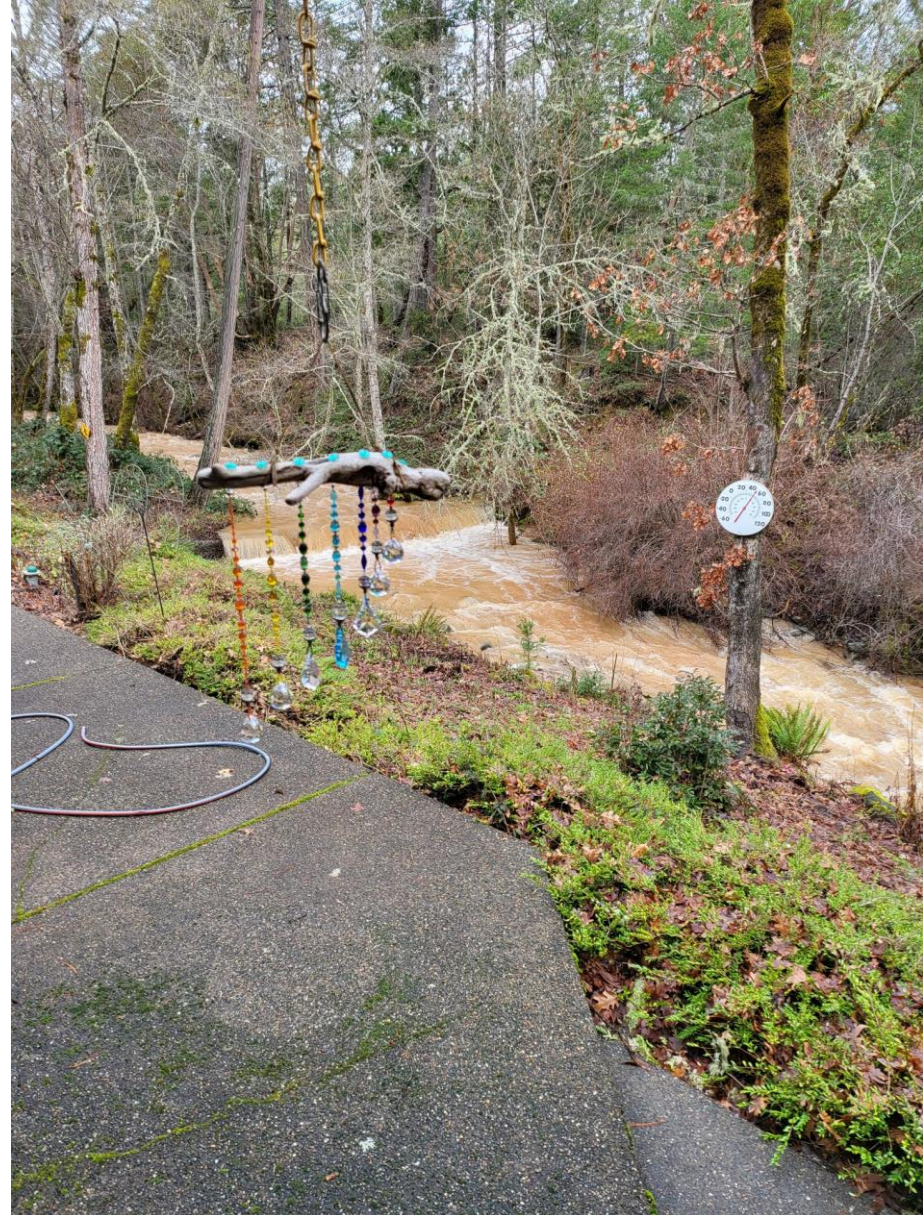
Illegal grow with unscreened diversion.

- Illegal grow.
- Complainant reported juvenile steelhead dead around plants; no screens on pump.



Jackson Cr.

Downstream of known cartel grow. Same day photos, no rain/weather events.



Josephine County Code Enforcement Photos: Unpermitted pumping from streams.

