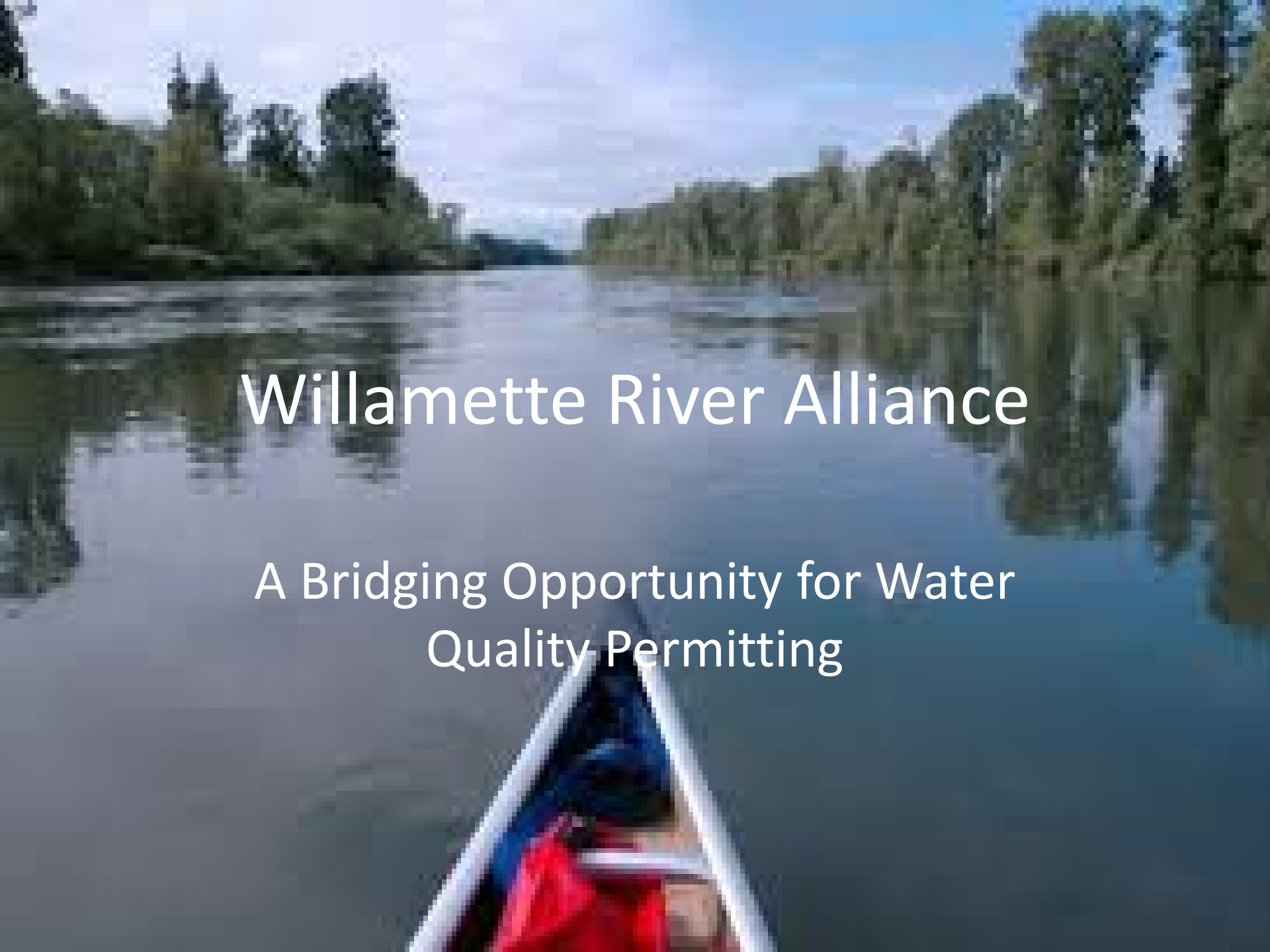


# Willamette River Alliance

## A Bridging Opportunity for Water Quality Permitting

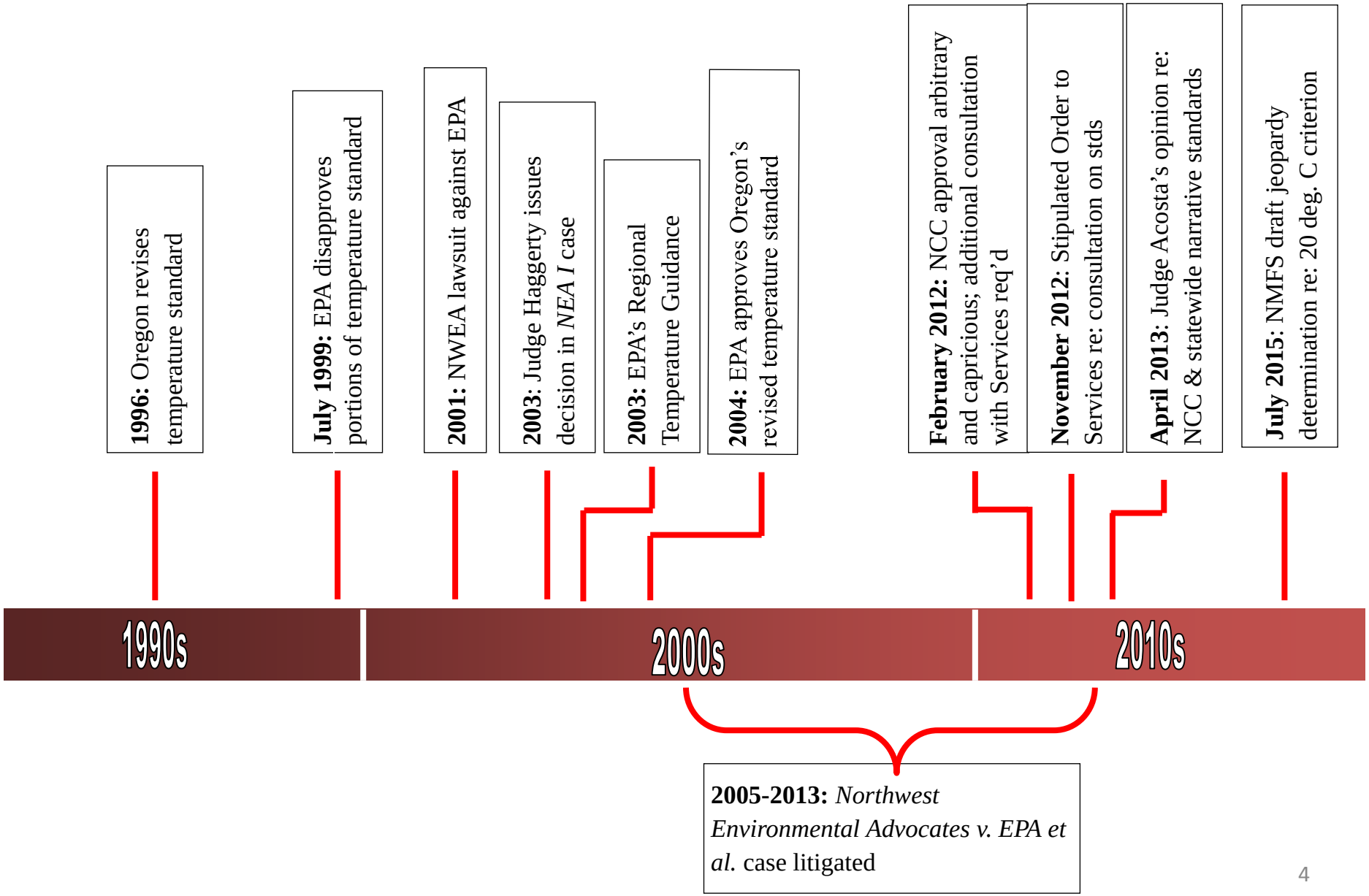
# Speakers

- Dr. Kenneth Williamson
  - Clean Water Services
- Walt Meyer
  - West Yost
  - MWMC Commissioner

# Overview

- Challenges of water quality permitting for temperature
  - Standards Issues
  - Permitting Issues
- Willamette River Alliance
  - Creates a bridge to future temperature regulation
  - Opens an opportunity for DEQ to have a permitting strategy that focuses on improving river health to protect salmon
  - Provide regulatory certainty to the NPDES permitted community

# Timeline: Oregon's Temperature Standard

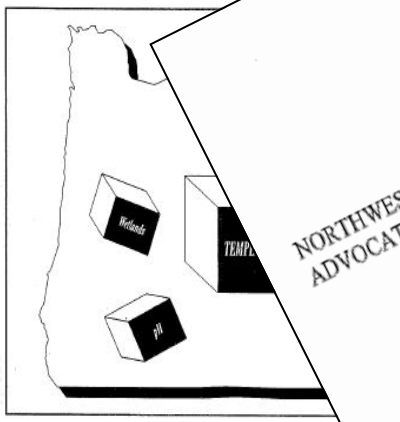


June 1995

FINAL ISSUE PAPER

# Temperature

*1992 – 1994 Water Quali*
*Standards*




*State of Oregon*

**Technical Advisory Commit**
**Policy Advisory Committee**
**Temperature Subcommittee**

**Department of Environmental Quality**
**Standards & Assessment Section**
**811 Sixth Avenue**
**Portland, Oregon 97204**

d States
mental Protection | Region 10
Office of Water | EPA 910-B-03-002
April 2003

# Region 10 Guidance
# cific Northwest State
# al Temperature
# ality Standards

ard

DEQ
State of Oregon
Department of
Environmental
Quality

t Directive

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL ADVOCATES, a non-profit corporation,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, a United States Government Agency; NATIONAL MARINE FISHERIES SERVICE, a part of the National Oceanic and Atmospheric Administration, a part of the United States Department of Commerce; UNITED STATES FISH AND WILDLIFE SERVICE, a part of the United States Department of the Interior,

Defendants,

STATE OF OREGON; and NORTHWEST PULP AND PAPER ASSOCIATION,

Intervenor-Defendants.

Case No. 3:05-cv-01876-AC

OPINION AND ORDER

# Challenges of Standards

- Temperature Standards
  - Use of NCC rejected by Federal judge in 2012, NMFS 'draft' jeopardy for 20$^{o}$C migration criteria in 2015
  - NMFS and EPA need to decide what removes the "draft" jeopardy determination
  - EPA needs to update 2002 EPA Guidance Document
  - DEQ needs to develop and adopt new temperature standards for Oregon, consultation by Services
  - Oregon new standards need to be approved by EPA, survive any NGO litigation

# Legal Outcome of Temperature Litigation

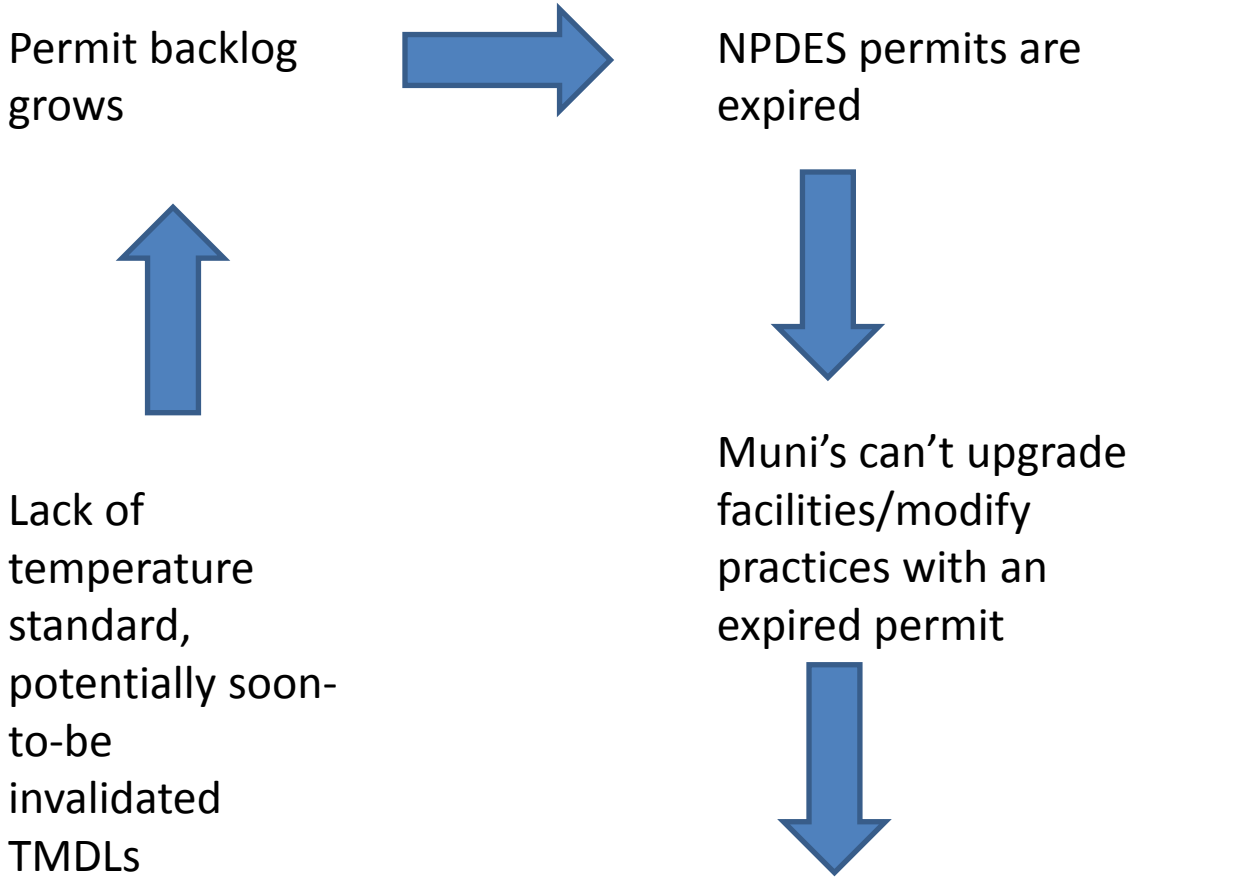
**TMDLs Left Intact with Some Modification**

- Meet existing WLAs from TMDLs plus temperature standards at edge of mixing zone
- Worst of both worlds, would trap many permit holders
- Anti-backsliding issues

**TMDLs Invalidated**

- For short term, meet 18, 16, 14, 13, 12$^{o}$C requirements plus HUA at edge of mixing zone
- Probably forces some kind of cumulative effects analysis
- Leave a large number of permitted facilities without renewals
- For the long term, requirements unknown

# And the permit backlog grows……with consequences



# Options for a Permit Holder

- Go it alone with DEQ help…
  - Seek permit while exceeding numeric standards at the edge of the mixing zone unclear
    - Trade excess load
    - Get a compliance schedule
    - Get a variance

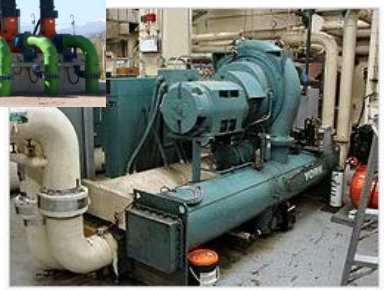
# Trade Excess Thermal Loads

- Trading is difficult, complex
  - CWS, large organization
  - Freshwater Trust, high expertise and competency
- Challenges for defining NPS requirements and background
  - Creating a triangle between DEQ, Dept. of Ag, and farmers about compliance and background
- Municipalities concerned about trading within a compliance schedule
- Only adding shade will address only part of the problem in the Willamette River

# Options for a Permit Holder

- Go it alone with DEQ help…
  - Create individual trading programs
  - Compliance schedules to construct “something stupid”

# Watershed Health vs "Doing Something Stupid"



York International water-cooled chiller.

Control temperature

CWA/DEQ

Standards/TMDLs/
WQBEL

NPDES Permits

Forestry/Ag

Compliance, not
watershed health

# Options for a Permit Holder

- Go it alone with DEQ help…
  - Create individual trading programs
  - Compliance schedule
  - Variances for those spending over 2% of the mean annual income

# The Holy Grail of a Variance

- Probably only good for one permit cycle
- Probably only defensible if expenditures are over 2% of MHI, threshold for “substantial and widespread economic and social impact”
- Increase the complexity of the permitting process
  - DEQ has never issued a variance!!
- Litigation likely
- No defined costs – likely expensive
- No defined timeframe for regulatory action

# Just who is going first?????

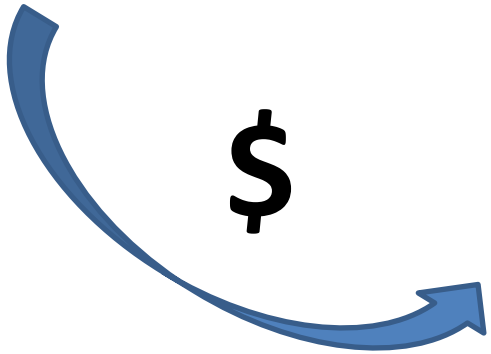
# Willamette River Alliance

NPDES Permit Holders

Excess Thermal Load

Willamette River Alliance, general permit

Make trades
Optimize WQ benefits
Improve watershed health
Reduce transaction costs
Develop collaborations
Provide regulatory certainty



$

# Willamette River Alliance

- General Concept
  - Voluntary participation
  - Participating wastewater & industrial permit holders
    - No impact on non-point sources allocations
    - Apply for coverage under a General Permit for Willamette temperature allocations (ex. SF Hg and PCBs)
    - Alliance would generate credits to ensure compliance
  - Financial contributions
    - Membership basis
    - Compliance obligation relative to needs (ex. Wisconsin phosphorus TMDLs)

# Willamette River Alliance

- Overall focus on  river and ecological health
- Restoration investments in order of river priority
- Incorporate cold water refugia protection
- Coordinated approach
- Attempt to obtain matching funding from additional sources to increase restoration

# Example Restoration Costs

- Example restoration costs
  - Clean Water Services
    - $0.025-0.0375/KCal
  - City of Medford
    - $0.03/KCal
  - MWMC/Springfield
    - $0.05-0.18/KCal

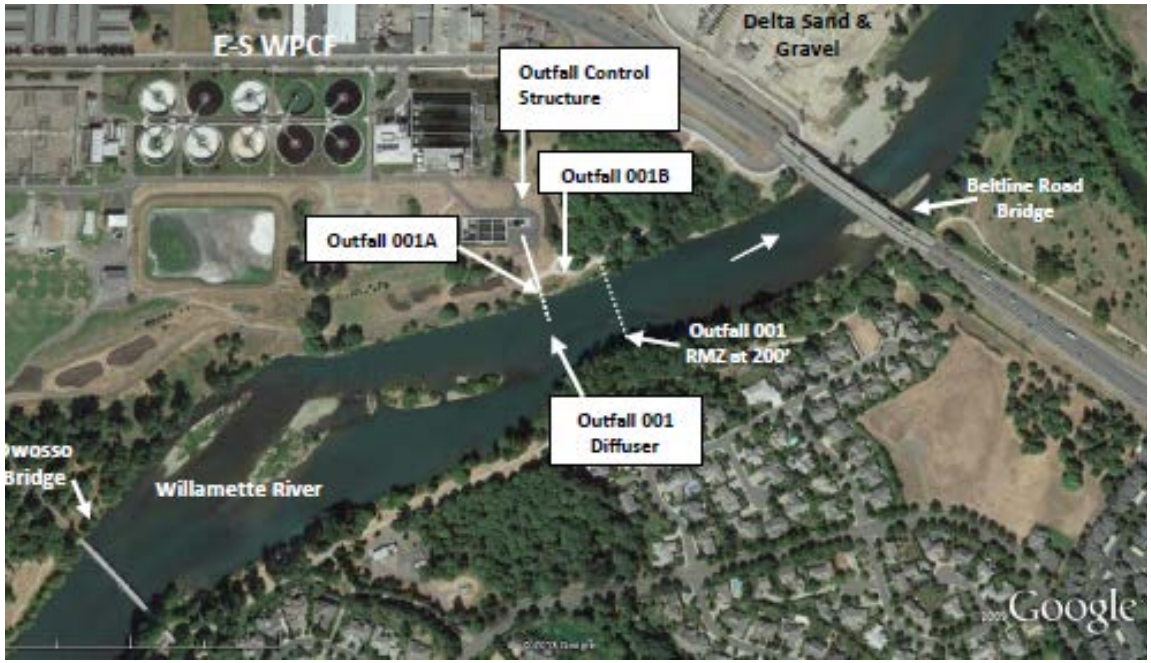
- Potentially could generate several million $s per year for ecological uplift in the Willamette Basin---both shade planting and protection of cold water refugia

# Unknowns for the Willamette River Alliance

- Issues
  - Organization?
    - Use existing organization
    - Need to develop governance system
  - Timing?
  - DEQ support, involvement and oversight????
  - Crafting the general permit?

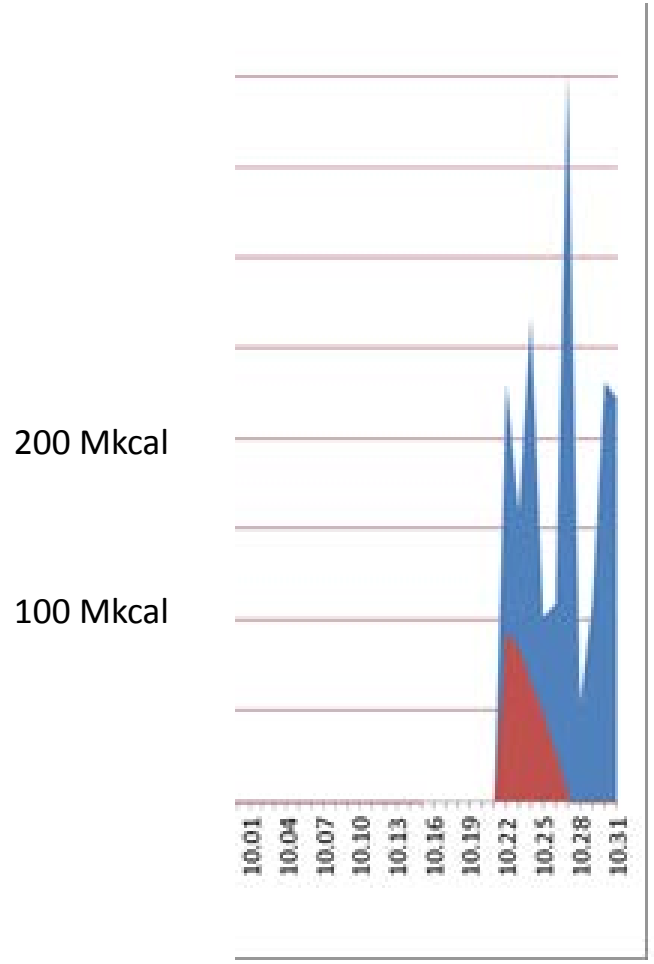
# What does this mean to MWMC

Willamette is designated for rearing in the summer and spawning in the winter



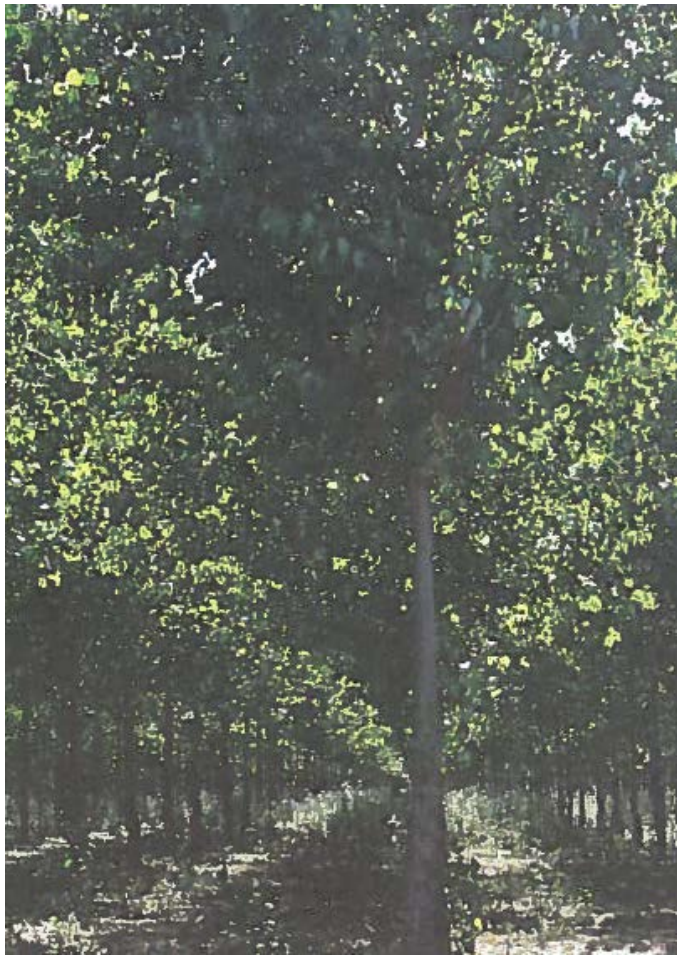
# Uncertain Future Liability

- 100 million Kcal deficit in October with TMDL (red)
- Much higher with numeric criteria (blue)
- Deficit could be year-around



# Multiple Options Approach

- Reuse
- Biosolids Farm
- Trading
- Regulatory Review



# Pilot Project on the Mill Race

# What does 93 Mkcal Mean?

- Willamette has a 7Q10 flow of 1,300 cfs
- Plant average flow is 30 mgd
- 93,000,000 Kcal will raise the river temperature by 0.1 degree C.

# Conclusion

- A watershed approach can save DEQ resources because of not dealing with “permit-by-permit”
- The environmental community can help envision a health river system, not just compliance
- All ACWA members have a stake in this process

# The Ask

- We need:
  - A permitting strategy that works
  - Something besides:
    - Go it along trading
    - Compliance schedules that lead to “stupid” solutions
    - Variances that “kick the can down the road” and increase expenditures
  - A serious discussion:  fact that this will be hard, a lot of work, and cost money cannot be used for inaction

# What do we want?

***A regulatory process (i.e. variance) that would require a tremendous amount of energy/resources, fraught with uncertainty, and with a high likelihood of litigation and even if you are able to successfully navigate this regulatory morass, it would have no effect on watershed health…***

***Compliance schedules that would require investment of significant resources with little environmental outcomes or ecological uplift…***

***OR***

***A collaborative, coordinated effort that would provide compliance plus help to protect fish, restore watershed processes, and improve watershed health.***

# Questions and Thoughts

- We will be here throughout the meeting, would like to hear from you…..
- Specifically we are meeting for breakfast Friday at 7:30am, Board Room,