



Gage Freeman

The Miller Creek Story Applegate Citizens Put the Oregon Salmon Plan into

by Jim
Labbe



Jim Craven, The Medford Mail Tribune

In the spring of 1997, Frank Ferreira, a retired businessman and newcomer to Oregon, decided to plant wine grapes on his forested land zoned for agricultural use. His 75 acres of mature pine, fir and oak straddled Miller Creek, a small fish-bearing tributary of the Applegate River. The river is home to a third of the Rogue River valley's dwindling population of native coho salmon.

In the age-old tradition of axe to plow, Ferreira planned to convert almost all of his land, including the entire riparian area, right down to the banks of the stream, from forest to vineyard. His plans were well-timed. While coho salmon had been listed as threatened in the Rogue Basin in late April 1997, the National Marine Fisheries Service did not file its interim rules governing a take until mid-July of that year. Existing state and local laws, the foundation of the Oregon Coastal Salmon Restoration Initiative (Oregon Salmon Plan), were the coho's and Miller Creek's only protection. Unfortunately, they were not enough.

When the trees began to fall in early June, neighbors on Miller Creek couldn't

believe their eyes. We were dumb-founded. We didn't know who to call first, said Gage Freeman who lives with his wife, Kimberly Sellers, across the creek from Ferreira. I was born and raised in Oregon and believed there were people taking care of these things, Kimberly said. I guess I was naive.

But the real surprise came when Gage and Kimberly and several other neighbors discovered that the Oregon Department of Forestry (ODF) and Josephine County Planning two agencies committed (at least in writing) to the Oregon Salmon Plan had officially approved Ferreira's clearcut on Miller Creek. As written, the permit exempted the clearcut from the Forest Practices Act's (FPA) riparian protection provisions and explicitly stated that the trees along the stream would be removed to help prevent bird predation on the [soon to be planted] grapes.

By July, approximately 1300 feet of the riparian forest along both sides of Miller Creek, including large trees (with trunks greater than 40 inches in diameter) had been cut. This swath substantially eliminated shade to a third of a mile of stream. The Department of Environmental Quality (DEQ) documented a significant rise in water temperatures in the deforested area, which pushed Miller Creek above 64 degrees, a temperature standard used in evaluating the water quality of streams.

Increases in stream temperature and loss of wildlife corridors are among the

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Conservation groups and government agencies responsible for protecting salmon and trout habitat recommend a 50-200 foot wide riparian area of forest or other natural vegetation along rivers and streams. Currently, the agencies charged with regulating land use practices in Oregon (including agriculture, forestry, rural residential, urban and industrial uses) have inconsistent standards for development along streams. Although the Oregon Salmon Plan encourages greater state and local coordination at the watershed scale, cases like Miller Creek suggest that it may not be possible to protect riparian corridors across various land uses and jurisdictions under the existing laws and administrative rules.

Private Forest Land (Oregon Department of Forestry): The Oregon Forest Practices Act's (FPA) administrative rules for protecting riparian areas apply to fish-bearing streams but only where commercial timber harvesting (sale of harvested logs) takes place. Nothing prevents a landowner from cutting riparian vegetation for non-commercial purposes. FPA buffer widths are 100 feet from fish-bearing streams (OAR 629-635-130, January 1997), but the State Forester can approve exemptions in special cases, including a land use conversion (such as converting forest into vineyard along Miller Creek).

Farm Land (Oregon Department of Agriculture): The Healthy Stream Partnership (SB1010), a cornerstone of the Oregon Salmon Plan, was introduced in 1996. It established a planning process designed to provide both site-specific solutions to water quality problems relating to agricultural practices and regulatory standards for extreme non-compliance. The goal of the bill is to improve water quality while supporting farms. It remains to be seen if the Healthy Stream Partnership will provide significant protection for riparian areas in agricultural and rangeland regions. The effective-

immediate impacts associated with streamside logging. Other impacts are spread out over time and space. Higher sediment loads and increased channel instability can degrade stream ecosystems over the years in a cascade effect extending far downstream. Andy Youngstrom and Jeff Teny, two landowners directly downstream from the deforested site on Miller Creek, were particularly concerned about potential debris flows during winter high water, after a large flood during the previous winter caused massive landslides in heavily logged areas.

When we called the County, the DEQ, State Forestry and others, we got the run around, said Kimberly Sellers. No one wanted to deal with it. Everyone referred us to someone else, to some other agency that also told us it wasn't their

much more obvious than the loophole in Oregon law that permitted it. Because the Miller Creek clearcut involved a land conversion, the riparian protection provisions of Oregon's flagship forest practice laws did not apply. Under the Forest Practice Act (FPA) clearing the land is not considered a forest practice, but rather a transition to another use, in this case agriculture. County riparian protection ordinances that apply to building projects provide no protection from cutting down trees with other purposes in mind, such as planting grapes.

Moreover, state law prohibits counties from regulating agricultural and forest practices. Since no other laws explicitly protect riparian areas adjacent to agriculture and other non-forest lands outside urban growth boundaries, the deforestation of Miller Creek was

“ What, except goodwill and neighborliness, keeps everyone from clearcutting the creek and negating our efforts to restore the watershed?”

problem. But things began to change when a group of neighbors and Applegate Valley residents, including longtime community organizers Jack Shipley and Chris Bratt, established themselves as the Miller Creek Working Group (MCWG). After local newspapers picked up the story, phones started ringing all the way to the governor's office.

In the spirit of the Oregon Salmon Plan, which encourages local coordination of watershed issues, MCWG convened a meeting at Hidden Valley High School and invited local, state and federal agencies and officials, including Josephine County Commissioners and the Governor's Natural Resource Office, along with interested members of the community. The goal was to figure out what happened, what could be done to restore Miller Creek, and how to prevent similar streamside logging scenarios in Oregon. As Jack Shipley explained, We wanted to get everyone to come to the table, to bear witness to what happened, explain what went wrong, and propose some solutions for preventing this kind of thing in the future. Miller Creek is evidence that we may need to plug some holes to make the Oregon Salmon Plan work.

The hole in the riparian corridor was

permitted under Oregon law. As noted in a Medford Mail Tribune editorial commenting on the Miller Creek case, in Oregon, Farmers can clearcut where loggers can't log.

For second-generation cattlemen Neal and Roy Pondelick, who own 170 acres upstream of Ferriera's property, this regulatory gap raises some troubling questions. Neal and Roy are among the 450 landowners that have completed fencing and re-vegetation projects as part of the Applegate River Watershed Council's state-funded program to restore streams. They also spent their own resources through the Stewardship Incentive Plan (a voluntary restoration program) to enhance fish and wildlife values on their property adjacent to Miller Creek. When land use law allows destructive activities like streamside logging, it calls into question the value of public and private investment in recovering salmon habitat. As Roy observed, What, except goodwill and neighborliness, keeps everyone from clear cutting the creek and negating our efforts to restore the watershed? We need standards.

The lack of standards reveals problems with the Oregon Salmon Plan's

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SB1010 depends on local implementation, monitoring and citizen involvement.

Other Non-Urban Lands (County Planning Departments): County land use regulations appear to be the most logical place to establish stream protection standards across all land uses. Most of the comprehensive plans developed by Oregon counties have policies and ordinances for protecting streams that date back to the first statewide land use planning efforts in the 1970s. Unfortunately, these comprehensive plans did not always translate into effective ordinances. For example, according to the Oregon Coastal Salmon Restoration Initiative, the counties in the Rogue Basin including Josephine County, “have the strongest riparian protection measures of any coastal region in the state,” including 20-50 foot setbacks that prohibit vegetation removal on all resource lands. In reality, if local jurisdictions tried to apply these standards across all ownerships and land uses, they would be limited by two state laws that prevent counties from regulating forestry and agriculture activities (ORS 527.777 and ORS 30.934). In recent years, successful lobbying by the agricultural industry has blocked attempts to set statewide stream protection standards for forest and farm lands. Since county land use ordinances are permit-driven, they are of little consequence if the proposed activities don't involve buildings or structures requiring review by local planners. Rarely do county comprehensive plans include “clearing ordinances” to prevent the removal of vegetation along streams and rivers. As a result, rural residential lands, including the hobby farms and vacation homes allowed on marginal farm and forestlands, are left largely unregulated with respect to stream and riparian area protection. Because these land uses are common along Oregon's streams and rivers, this leaves a big gap in state water quality and salmon recovery programs.

Urban Land (City Planning Departments): Stream protection regulations in urban areas vary. In many cities and towns, standards are lower than those for commercial forest lands. New proposals for setbacks now under consideration in the Portland region could require riparian areas of up to 200 feet (with variances for Constitutional “takings”) along all urban streams, as part of the Metropolitan Service District's Regional Functional Plan and the National Marine Fisheries Service's 4(d) rule. In the meantime, a voracious urban land market is gobbling up the riparian areas inside urban growth boundaries.

Public Land (National Forest Service and Bureau of Land Management): Most watersheds in Oregon encompass some land managed by the federal government. These lands include the headwaters of many Oregon streams and rivers, which are under the jurisdiction of the Forest Service or Bureau of Land Management. Since 1993, the Northwest Forest Plan's

reliance on existing state law, voluntary efforts, and state agency coordination. Miller Creek raises a number of questions about state agencies' capacity to step outside their boxes, improve coordination, and encourage responsible stewardship of the land. The Salmon Plan identifies the need to adapt, evolve, and improve, based on information obtained from monitoring, independent scientific review, and from the people putting the Plan to work on the land and in the streams. Whatever the Salmon Plan's shortcomings, a dedication to adaptive management establishes, at least in principle, the opportunity for change and learning by doing in the process of salmon recovery. The efforts of the MCWG to make changes based on the lessons of Miller Creek have put the principles of the Oregon Salmon Plan to the test.

It's been tremendously frustrating dealing with state and local agencies, many of which would prefer you went away, said Kimberly Sellers. Still, after months of meetings, phone calls and organizing, the efforts of MCWG were having an effect. State agency personnel began to take the Miller Creek case seriously.

Pam Blake, a DEQ non-point source specialist, issued Ferreira a notice of non-compliance under Oregon water quality statute, and required a plan to restore Miller Creek. Perhaps more significantly, action by MCWG provoked state agencies to respond to the policy gaps that allow logging along streams.

One result was the Miller Creek Case Study, a collaborative issue paper drafted by state agencies with DEQ taking the lead, which led to a change in state agency policy for enforcing water quality law. The Oregon Department of Forestry now requires landowners to consult DEQ in situations involving the conversion of forested land to agricultural uses. ODF and the Board of Forestry attempted to codify this policy change with House Bill 2111 during the 1999 Legislature, but they ran into opposition from the Oregon Farm Bureau and Oregon Cattlemen's Association. Nevertheless, the policy change prompted by the Miller Creek incident will make it harder for a state or local agency to issue a permit to clearcut a creek.

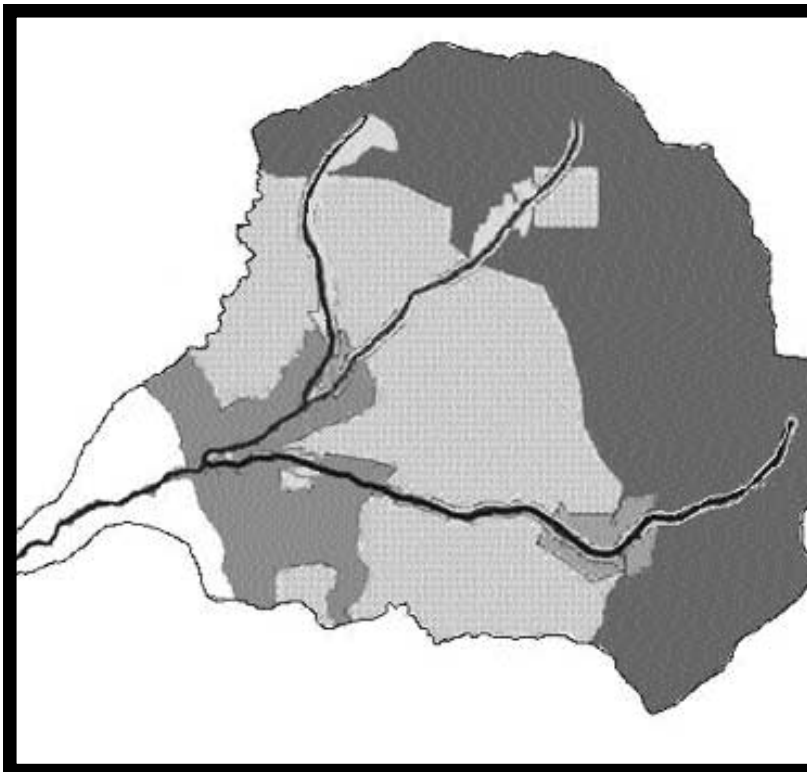
If the Miller Creek story demonstrates some problems with the Oregon Salmon Plan, it also shows the

importance of local citizen action in its evolution. Unfortunately, we cannot rely on government alone to develop intelligent public policy and the level of regulatory standards needed to effectively protect salmon habitat. The success of the Miller Creek Working Group in helping to close the land conversion loophole in state land use policy illustrates that adaptive management and active citizen participation can change public policy in a fair and fish-friendly direction.






A larger challenge remains, one that goes beyond existing law, its administration, and the best intentions of individuals. Under the current regulatory system, a number of different state agencies are responsible for regulating various land uses and ownerships across a patchwork of jurisdictions. The result is a regulatory landscape that fragments stream ecosystems. Streams adjacent to urban and rural residential lands are particularly vulnerable, because of the number of small land parcels owned by individuals with a variety of objectives, and the lack of clear standards for development. Until riparian ecosystems are given adequate protection across all land uses, salmon recovery will be swimming upstream.

The responsibility for preventing another Miller Creek rests on those who are willing to tackle the complexities of salmon recovery. The challenges are Herculean. We must effectively employ a variety of tools to protect and restore freshwater habitat including education, incentives and regulation. In rural areas, we must adapt these tools not only to prevent destructive activities, but to promote sustainable economic development, as well. Oregonians have a long tradition of pragmatic problem solving in the

public interest. If the Miller Creek story



Above: A typical watershed in Oregon where parcelized land use and inconsistent regulations lead to fragmented streams and riparian corridors

-  farm land
-  forest land
-  riparian corridor
-  rural residential
-  urban
-  streams

has a silver lining, it is the proof that this Oregon tradition is still alive and well.

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