

Testimony in Opposition to SB 1590 by Bert Krages

I oppose SB 1590 because it would set back almost two decades of effort to protect the Newberg Pool from the adverse effects of towed watersports done by heavy wake boats. Morphologically, this section of the Willamette River is characterized by steep, soft shorelines and is about 650 feet wide in most places. The reason this thirty mile stretch is called the Newberg Pool is because it has a low gradient and a near constant water level during July to October. The combination of shoreline soil conditions, static water level, and narrow width render the Newberg Pool highly vulnerable to environmental damage caused by wake boats.

The Newberg Pool After SB 1589 and Prior Legislation

SB 1589, enacted in 2022, prohibits wakesurfing in the Newberg Pool and places limits on the weights of boats that can engage in wakeboarding, tubing, and skiing. The bill was the culmination of legislative efforts beginning in 2018 that sought to protect the nearshore habitat areas of the river, its shorelines, shoreline property, and the ability to be enjoyed by other users.

Prior to the enactment of SB 1589, the nearshore areas were characterized by extremely high levels of turbidity, such as those evidenced by observations made during the 2021 boating season (report attached). Environmental conditions have improved since SB 1589, although the recovery of the Newberg Pool is being hampered by the blatant noncompliance by wake boat dealers and owners. The video linked below describes this problem in more detail.

<https://www.youtube.com/watch?v=wtKs4tt8oj4>

This image, taken from a YouTube video by an Active Water Sports salesperson in 2023, shows a medium-sized wake boat unlawfully using wake-enhancing devices to generate a huge wake in front of the Bernert Landing public boating facilities in West Linn.



Although SB 1589 restricts the heaviest boats on the Newberg Pool, towing remains a popular activity because there are many kinds of boats that can lawfully engage in towed watersports in compliance with SB 1589. The Oregon State Marine Board issued towed watersports certificates to over 1000 boats that were in effect during the 2023 boating season. Most boats other than wakeboats that are suitable for towing weigh less than 3000 pounds and easily meet the weight limits of SB 1589.

Parts of the Newberg Pool that were previously almost devoid of paddlecraft began to see significant use by paddlers after the enactment of SB 1589.¹ Paddling has become the most popular form of boating in Oregon because of its affordability. For example, a person can purchase a paddleboard of reasonable quality, the required personal flotation device, and a whistle for under \$500. Paddlecraft cost nothing to operate. Conversely, a mid-level wake boat costs about \$150,000 and burns over \$100 worth of gasoline during a typical outing.

Large wake boats are still permitted on the Newberg Pool, although they have to go to other nearby water bodies if they want to tow. The hull designs of the newer wake boats inherently generate large wakes, even in unballasted mode, and still present a hazard to other boaters. Active Water Sports even posted on its blog in March 2023 about the danger that large waves present to pontoon boats.² Large wakes also present a risk to tubers, who are vulnerable to head injuries when large wakes cause them to be thrown from tubes.

What would SB 1590 do?

SB 1590 would remove all the statutory protections for the Newberg Pool and permit wake boats of any size to engage in wakesurfing and towed watersports. It would benefit a small segment of Oregon boaters to the detriment of many others. Although wake boat owners comprise less than one percent of the boaters in Oregon, their huge wakes dominate the river when they are on the water. SB 1590 would recreate the conditions that prompted the adoption of SB 1589 in 2022.

SB 1590 would not result in an overall benefit to small businesses and would likely damage many of them. Sales of wakeboats in Oregon actually increased following the passage of SB 1589 until the wakeboat bubble burst in mid-2023, when the national demand for such boats waned and higher interest rates made purchasing boats in the \$100,000 to \$350,000 range less attractive. The 10-Q reports filed with the U.S. Securities and Exchange Commission by the two publicly-traded wakeboat manufacturers verify the decline in sales and the underlying reasons. Furthermore, the small businesses that cater to anglers and owners of boats that do not generate destructive wakes would suffer if the activities that imperil sport fish populations and aquatic

¹ The Oregon State Marine Board estimates there are roughly 320,000 kayaks and paddleboards in the state—about double the number of licensed motorboats. The number of paddlecraft in Oregon is increasing because consumers at almost all income levels can afford them.

² Pontoon boats are much more affordable than wake boats, weigh less than 3000 pounds, and have become very popular with families on the Newberg Pool.

habitat are allowed to resume.

What about the lawsuit?

Members of the Oregon State Marine Board are being sued by Scott Putnam (the first person to be convicted of violating SB 1589), his spouse, and a recently-formed LLC consisting of wakesurfers that euphemistically calls itself the Boaters' Rights Association.³ The complaint, filed in federal court in March 2023, seeks to invalidate SB 1589 by claiming that the Federal Aid in Sport Fish Restoration Act, 16 U.S.C. § 777g, creates a right to wakesurf on any water body where a boat ramp was built using funds allocated under the Act. The plaintiffs rely on a 1995 Ninth Circuit case that involved a challenge to a city ordinance that banned personal watercraft (a.k.a. PWCs or jet-skis) from operating on a section of the Sacramento River. The court in that case held that the city could not ban PWCs from the river altogether, but did not hold that PWCs could not be otherwise regulated.

If it seems strange that a federal statute intended to conserve sport fisheries somehow grants boaters a right to engage in activities that damage aquatic habitat, it is because the federal statute grants no such right. Neither the statutory text of the federal statute nor its implementing regulations prohibit states from regulating the manner of operating boats. Furthermore, unlike the city ordinance at issue in the Ninth Circuit case, nothing in SB 1589 prohibits wake boats from accessing and operating on the Newberg Pool.

The case survived an early motion to dismiss filed by the State because the procedural rules the judge was required to follow prohibited him from considering evidence that wake sports on the Newberg Pool were harming the environment, impairing the enjoyment of the river by other users, and damaging shoreline property. This is a very weak case that will surely be dismissed once the judge can consider the evidence underlying the enactment of SB 1589. Nonetheless, the Legislature should allow the case to play out before acting further regarding the Newberg Pool.

Summary

Protective legislation for the Newberg Pool was a long time in coming and was based on science and the well-documented adverse effects of wake sports on the Newberg Pool. There are no compelling reasons to repeal the statutes that protect this vulnerable stretch of the river. Please vote no on SB 1590, which is a poorly-considered and selfish piece of legislation.

Thank you.

³ The Putnams are also litigating against Marion County and Friends of Historic Butteville to shut down a nonmotorized boat access location on the Newberg Pool and to prohibit the installation of a public dock that would enable boating families to visit the historic Butteville Store (a popular place to buy ice cream for kids). The dock has already been purchased with State funds but cannot be installed due to the litigation.

Newberg Pool Observations 2021 Boating Season

Bert Krages

Introduction

This report summarizes the observations I made during the 2021 summer boating season in the Newberg Pool Congested Zone. Under the rules in effect during 2021, wakesurfing is permitted only between river mile 31.8 and river mile 33.2 and between river mile 46 and river mile 47.6. The wakesurfing zones are marked on the river by buoy B at river mile 31.8, buoy C at river mile 33.2, buoy D at river mile 46, and buoy E at river mile 47.6.



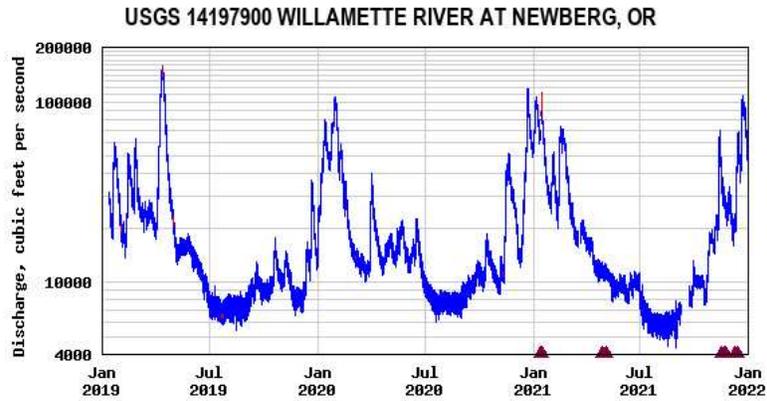
This report focuses on observations in or near the two wakesurfing zones, because some Newberg Pool residents have made dubious claims that the erosion and related problems in the Newberg Pool have been caused by winter storms and residential homeowners. However, the Oregon State Marine Board selected the two wakesurfing zones because they lack residential shorelines and river structures such as docks—factors which are not present in the wakesurfing zones. This report also considers the shoreline in the vicinity of the Champeog State Heritage Area, which borders one of the wakesurfing zones and is likewise free of residential shorelines.

Newberg Pool Hydrology and Its Relevance to Boat Wakes

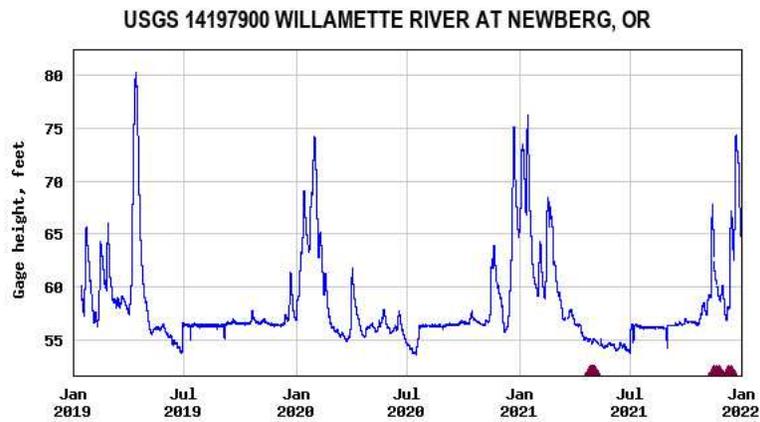
What makes the Newberg Pool vulnerable to damage from high-energy boat wakes is that the water level remains constant during the boating season. This allows wakes to repeatedly engage the same elevation of riverbank from July through September. The Newberg Pool follows an annual pattern in which the peak flows occur in December and January and the lowest flows occur from July to October. During the period from May to October, the flow is sufficiently low that the water level of the Newberg Pool is substantially determined by Willamette Falls.

Each year in early July, Portland General Electric installs flash boards around the lip of the Falls to raise the upper-river water level to improve power production at the hydropower plant at West Linn. This causes the water level of the Newberg Pool to remain nearly constant at a level

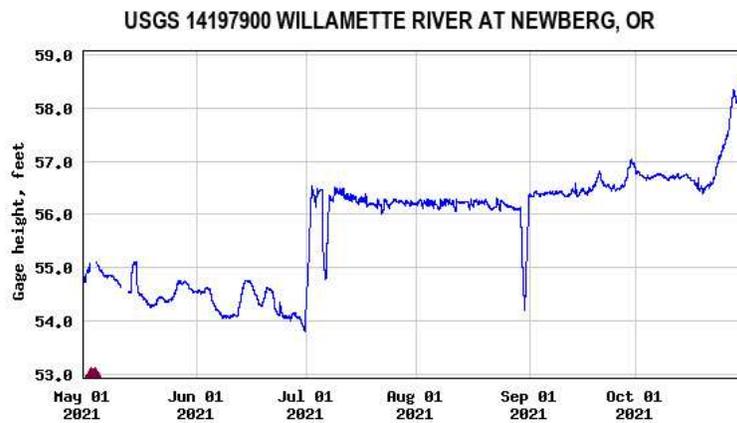
between 56.1 to 56.7 feet from July until October. Because the water level stays within a 7-inch range during the entire boating season, this narrow range of shoreline absorbs the full brunt of the wake energy from boats.



Newberg Pool Flow (2019–2021)



Newberg Pool Gage Height (2019–2021)



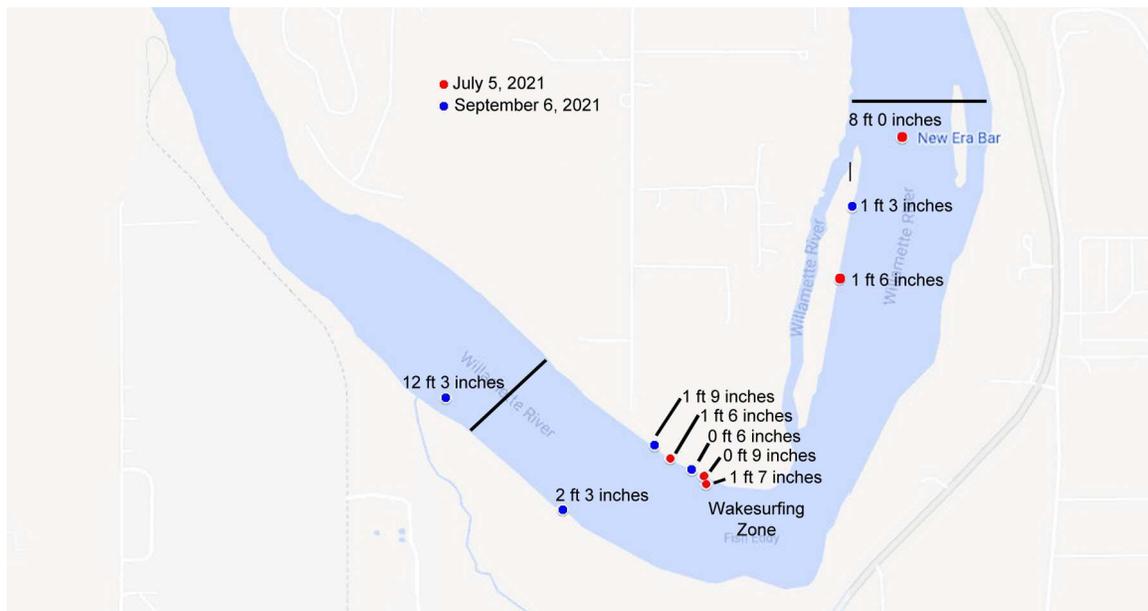
Newberg Pool Gage Height (Summer 2021)

The Newberg Pool is shielded from strong winds and has very little commercial traffic, so these are not factors in terms of wave generation. In addition, the current is very slow in the Newberg Pool during the boating season, generally between 0.4 to 0.7 knots. In contrast, the current during the peak flow months of December and January will at times exceed 3.5 knots and the water level generally ranges from 60 to 80 feet. This is important because as is discussed later, the wave scarps in the Newberg Pool are seen at the 56 to 57 foot level but not at the higher water levels experienced during the winter and spring.

Secchi Disk Measurements Show Extreme Diminishment of Nearshore Water Clarity

A Secchi disk is an instrument used to measure water clarity consisting of an 8-inch diameter plate with alternating black and white quadrants that is attached to a rope. Measurements are taken by slowly lowering the disk into the water until it is no longer visible. The depth at which the disk is no longer visible is measured and recorded as the Secchi depth.

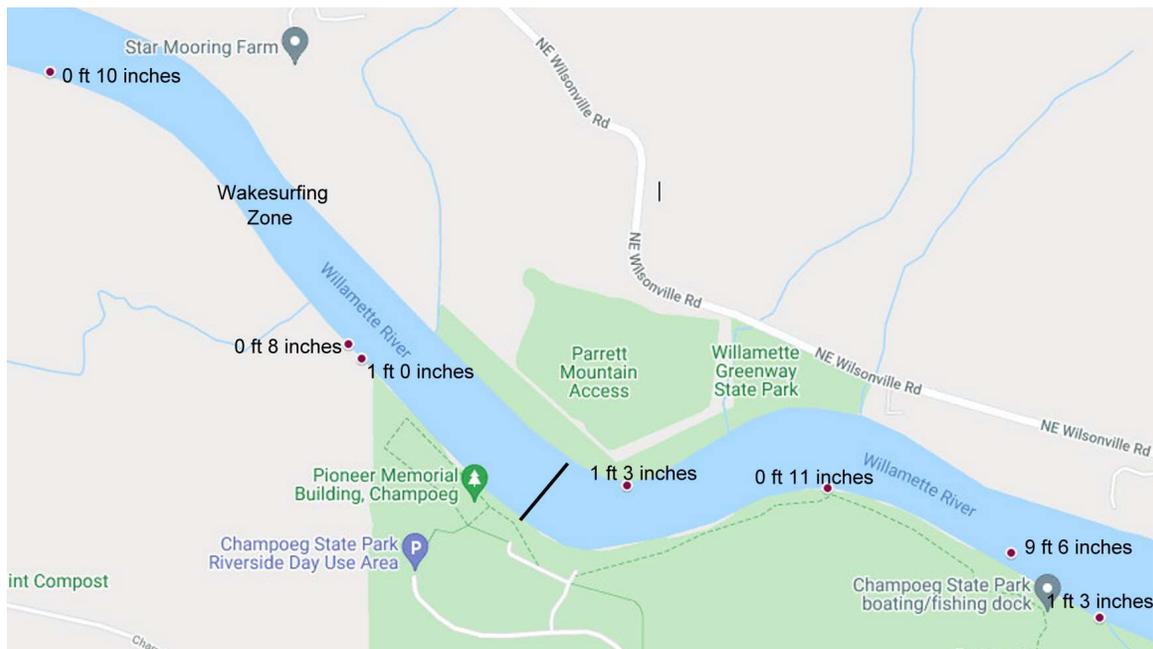
Secchi depth measurements were taken in the wakesurfing zone between buoys B and C during moderate wakesurfing traffic on July 5 and September 6. This area lacks residential development and has riparian habitat that is typical of the Newberg Pool. As the figure below shows, the mid-river Secchi depth in the middle of the river between Willow Island and the New Era Bar was 8 feet on July 5. However, the Secchi depths in the critical nearshore habitat region ranged from 9 inches to 19 inches, which reflects the high levels of turbidity that were readily visible along the shorelines. This is a reduction in water clarity of 9 to 20 percent of the water clarity observed away from the shorelines. The water clarity on September 6 was greater, with a Secchi depth of 12-1/4 feet. The Secchi depths in the nearshore region ranged from 6 to 27 inches, which reflects reductions in nearshore water clarity of 4 to 18 percent.



Secchi Depths in Wakesurfing Zone B-C (July 5 and September 6)

Secchi depth measurements were taken on July 31 in the river to the east and west of buoy D during a period of moderate wakesurfing traffic. The area west of buoy D is inside the wakesurfing zone and the area east of buoy D encompasses the shoreline of the Champoeg State Heritage Area. Residential development is absent in this part of the river and the riparian habitat is typical of the Newberg Pool.

As the figure below shows, the Secchi disk measurement in the middle of the river was 9-1/2 feet which indicates healthy water clarity. Conversely, the Secchi disk measurements in the critical nearshore habitat region along the river ranged from 8 inches to 15 inches, which reflected the high levels of turbidity readily visible along the shorelines. In other words, the water clarity was reduced to 7 to 13 percent of the water clarity observed away from the shorelines. What is also notable is the diminishment of the nearshore clarity to the east of the wakesurfing zone. Some of this diminishment may be attributed to boats engaged in wakesurfing outside the wakesurfing zone but some can also be attributed to wakeboarding and tubing, which are currently permissible for ballasted wake boats.



Secchi Depths in Border Region of Wakesurfing Zone D-E (July 31)

Wave Scarps at the 56 to 57 Foot Level Are Evidence of Boat-caused Bank Erosion

Wave scarps are present throughout the length of the Newberg Pool Congested Zone at the 56 to 57 foot elevation that is the predominant river level during July to October. These scarps are formed by waves hitting the face of the riverbank where they scour the space between the bottom and top of the waves. The photos below show scarps that have been cut into the riverbank by boat wakes. Over time, these notches enlarge into overhangs that can eventually result in a slide

once the roof of the overhang is no longer able to support the soil above. The result is a loss of river bank



Scarp in B-C Wakesurfing Zone



Scarp in B-C Wakesurfing Zone



Scarp along Champoeg State Heritage Area



Scarp in D-E Wakesurfing Zone

The turbidity and turbulence from the boat wakes in the nearshore region interfere with critical survival activities of aquatic organisms such as feeding and prey avoidance. The settling of silt onto the nearshore river bottom also adversely affects the benthic organisms that are an important part of the river's ecosystem.

Notably, wave scarps are not seen at the higher river elevations that occur during the winter months, although the flows and currents are much higher than in the summer. If the erosion problem in the Newberg Pool were caused by natural currents, evidence of such erosion would be expected at these higher elevations.

Conclusion

The shoreline of the Newberg Pool has suffered substantial damage as evidenced by the wave scarps present throughout the Newberg Pool Congested Zone. These scarps are formed during July and August when the river is at a near-constant level of 56.5 feet and wake boat activity is at its highest. As evidenced by Secchi disk measurements, erosion of the river banks is clearly occurring during these months and the sole credible cause is high-energy boat wakes. This is further bolstered by the fact that the summer months are a period of low current in the Newberg

Pool when naturally-caused erosion would least be expected. Considering the absence of factors such as significant wind and commercial traffic, as well as reports that erosion problems in the Newberg Pool were uncommon prior to popularity of wake boats, ballasted boats engaged in towed water sports such as wakesurfing are the primary cause of erosion in the Newberg Pool.

Qualifications

B.S. in Environmental Engineering, Northwestern University

M.S. in Environmental Engineering, University of North Carolina at Chapel Hill

Registered Civil Engineer (California)

J.D., University of Oregon

Oregon State Bar Member