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SALMON STAKES

Last fall's salmon die-off on the Klamath River was an ecological catastrophe born of gross watershed abuse. It was also predictable, avoidable, and utterly typical of White House priorities.

By

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In an effort to appease irate irrigators, the U.S. Bureau of Reclamation (BuRec) had dewatered the Klamath River, which drains a 9,691-square-mile watershed of high desert, woods, and wetlands in southern Oregon and northern California. By July the agency had cut the flow from its Iron Gate Dam from 1,000 cubic feet per second - previously deemed by the administration as the bare minimum necessary to prevent extinction of the system's coho salmon - to about 650 cfs. From July 12 to August 31 more water went down the main diversion canal to irrigators than down the river to salmon.

Meanwhile, farmers were getting - and wasting - so much water that they were flooding highways and disrupting traffic.

State fisheries biologists, commercial fishermen, sport fishermen, Klamath Basin Indian tribes, and environmental groups had repeatedly warned the Bush administration that such dewatering would devastate chinook salmon and steelhead trout populations and perhaps usher cohos into oblivion. After the National Marine Fisheries Service (NMFS) determined that BuRec's plan would indeed jeopardize the existence of coho salmon, the leader of the NMFS team writing the biological opinion (required by the Endangered Species Act when a federal action might

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affect a listed species) says he was ordered to change his finding and that, when he refused, his superiors made the changes themselves.

In mid-September, four months into BuRec's new 10-year water-distribution plan, chinooks, cohos, and steelheads from the icy Pacific hit the low, warm, deoxygenated river and turned belly up. The mortality estimate was 33,000 fish, mostly chinooks. From all reports, it was the largest die-off of adult salmon ever. Bright, robust fish, many over 30 pounds, covered gravel bars, blocking foot traffic, fouling the water, filling the air with a stench you could taste.

The Klamath system was once the nation's third biggest producer of Pacific salmon. All five species flourished there, as did steelhead, green sturgeon, and two species of native mullet known locally as the Lost River sucker and the shortnose sucker. Now chinooks and steelheads are down from their presettlement abundance by something like 90 percent. Sockeye, pink, and chum salmon are extinct in the basin. Cohos are listed as threatened. Until the 1970s the Klamath tribe caught thousands of pounds of mullet; now it takes one fish a year for ceremonial purposes. Both mullet species are endangered, and the green sturgeon is being considered for listing. These fish have been flickering out because BuRec's 95-year-old Klamath Project has replumbed the Klamath system with a network of 6 dams, 185 miles of canals, 516 miles of lateral ditches, and 45 pumping stations. Now water flows everywhere it never belonged.

About 280,000 of the basin's original 350,000 acres of wetlands and shallow lakes have been drained or filled. Still, the Klamath Basin - a.k.a. "Everglades West" - provides refuge for 80 percent of all waterfowl that negotiate the Pacific Flyway. In winter these birds help sustain the largest population of bald eagles in the contiguous states. The U.S. Fish and Wildlife Service operates six national wildlife refuges in the basin. But, like BuRec, the service is part of the Department of the Interior; and, under the Bush administration, it has become part of the problem.

Klamath Basin farms get about 12 inches of rain and 100 growing days a year. Before there were crop surpluses, water shortages, and endangered species, it seemed a dandy idea to make this high desert bloom. These days it's an insane waste of money and resources - like transporting iron ore by air. Until October 31, 2002, when The Wall Street Journal ferreted it out, the Bush administration had been suppressing a peer-reviewed U.S. Geological Survey (USGS) study that found that agriculture in the Klamath Basin generates \$100 million a year compared with the \$800 million generated by recreation, such as camping, boating, rafting, swimming, and fishing, and that restoring water to the river would boost this last figure to \$3 billion. The study also determined that buying out the farms and protecting the land would create \$36 billion in benefits at a cost of \$5 billion. In an internal USGS memo obtained by the Journal, an agency scientist revealed that the regional director "wants to slow [release of the study] down because of high sensitivity in the Dept. right now resulting from the recent fish kill in the Klamath. Suffice it to say that this is not a good time to be handing out this document."

In the Klamath Basin the government gets farmed a lot more than the land. There is scant demand for most of the crops grown; sometimes they're even plowed back into the ground. Originally it cost farmers nothing to get a permanent irrigation hookup to BuRec's public-financed Klamath Project. Now, on top of this, they get electricity to operate irrigation pumps at one-sixteenth of fair market value, a lower rate than their ancestors paid in 1917. During the dry summer and fall of 2001, basin farmers - some irrigating normally with emergency wells drilled at public expense - harvested \$48.6 million in state and federal relief. Many reported their most profitable year ever.

Those who did best didn't own land; they leased it from the Fish and Wildlife Service at \$1 per acre while reaping a minimum of \$129 per acre in farm subsidies. They farmed the Lower Klamath and Tule Lake refuges, supposedly devoted to waterfowl and (in the case of the latter) bald eagles, which depend on waterfowl. These two refuges, once the flagships of the refuge system, are now national embarrassments. Of America's 540 national wildlife refuges, they are the only two that permit commercial agriculture. The farming program, administered on 25,600 acres, requires about 60,000 acre-feet of Klamath River water per year; pollutes river and wetlands with phosphates and nitrates; and loads land and water with pesticides, including 2 neurotoxins, 14 endocrine disrupters, and 11 carcinogens. When water is scarce, as it usually is in the basin, marshes go dry so farmers can get water. Waterfowl have plummeted from 6 million or 7 million in the 1960s to about 1 million today.

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On both refuges the Fish and Wildlife Service is in gross violation of the National Wildlife Refuge Improvement Act of 1997, which stipulates that permitted activities be "compatible with the major purposes for which such areas were established." The service attempts to justify its farming-first policy with the Kuchel Act of 1964, which permits agriculture in national wildlife refuges. But the statute requires that such agriculture be consistent with fish and wildlife management. After dewatering, polluting, and poisoning marshes and river, farmers produce potatoes and onions and grain - far less nutritious to waterfowl than wetland plants.

For anyone still in doubt, the summer of 2001 proved that there isn't enough water in the Klamath River for fish, waterfowl, and agriculture. Something had to give; that was agriculture and refuges. The river's endangered mullet and threatened coho salmon had first dibs on water. Then came tribal-trust resources - mainly chinook salmon. If there was any water to spare, it could go to agriculture and refuges. That's what state water law and the Endangered Species Act said.

But politics said otherwise. Incited and assisted by property-rights groups, irrigators organized a "bucket brigade." (This was modeled after the Jarbidge Shovel Brigade of Elko County, Nevada, which fantasized that it had "sovereignty" over federal lands and, on July 4, 2000, hacked an illegal road through the Humboldt-Toiyabe National Forest and habitat of the threatened bull trout.) On May 7, 2001, some 15,000 farmers, politicians, and property-rights activists (many bused in by the Farm Bureau) scooped buckets of water from a lake that feeds the Klamath River and passed them hand to hand through downtown Klamath Falls and into an irrigation ditch. The media circus attracted politicians, who puffed and blew about the evils of the Endangered Species Act. Senator Gordon Smith (R-OR) vowed to introduce a bill that would "reform" the act. "We must never feel it's okay to say that sucker fish are more valuable than the farm family," he proclaimed. Representative Wally Herger (R-CA) called the situation a "poster child" for Endangered Species Act reform. And Representative Greg Walden (R-OR) lamented that surgery on the act had to start with another "dust bowl." Later, an organizer of the Jarbidge Shovel Brigade arrived with a 10-foot-tall bucket. The Pioneer Press, a local weekly, started a "virtual bucket brigade" by e-mail, in which 70,000 people expressed support for the irrigators.

On June 29 an irrigation-canal headgate was illegally opened and water released from Upper Klamath Lake. BuRec shut it. Twice more an angry mob, now encamped, opened the gate, and twice more BuRec shut it. On July 4 about 150 demonstrators formed a human chain, shielding vandals who cut off the headgate's new lock with a diamond-bladed chainsaw and a cutting torch. The sheriff announced that he wouldn't bust anyone, because they were only "trying to save their lives." A deputy drove up in his cruiser, lights flashing, removed his hat, and replaced it with a farmer's. With that, he opined that Oregon environmentalists were likely to elicit such violence as "homicides." He even suggested two potential victims: Andy Kerr and Wendell Wood of the Oregon Natural Resources Council. Finally, BuRec called in U.S. marshals.

Two weeks later Senator Smith's amendment to the Interior appropriations bill - it would have required federal agencies operating in the Klamath Basin to ignore the Endangered Species Act, legal obligations to Indian tribes, and the Clean Water Act - failed by a vote of 52 to 48.

On July 24 Interior Secretary Gale Norton divined that there was water to spare in Upper Klamath Lake and ordered 75,000 acre-feet released to farmers. "Unfortunately," she declared, "none of this water will reach the national wildlife refuges because there simply is not enough water to do more than provide a little relief to some desperate farm families during the remainder of this season." She went on to suggest that wintering bald eagles could be artificially fed.

The drought was much less severe in 2002. Still, with great fanfare, the Bush administration cut off minimum flows to fish, tribes, and refuges in order to provide irrigators with full deliveries. On March 29 the headgate at Klamath Falls was again opened - this time by Agriculture Secretary Ann Veneman and Interior Secretary Gale Norton, who were on hand to emcee the ceremony. Veneman spoke of the administration's "commitment to help farmers and ranchers recover from losses suffered last year." Norton gushed about how nice it was to be "providing water to farmers."

Diverting so much of the Klamath for irrigation required brand-new science. Under the mandate of the Endangered Species Act (ESA), the NMFS had issued a biological opinion that such dewatering would jeopardize coho salmon, and the U.S. Fish and Wildlife Service had issued a biological opinion that it would jeopardize the mullet. So Norton asked the National Research Council (an offshoot of the National Academy of Sciences) to review the two

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documents. In February 2002, after just three months, the NRC panel hatched an interim draft report, alleging that the biological opinions weren't supported by enough science. Armed with this opinion, the president's Klamath advisory team (consisting of the secretaries of Interior, Commerce, and Agriculture, and the chairman of the President's Council on Environmental Quality) ordered new findings from the NMFS and the Fish and Wildlife Service.

On October 28, 2002, Michael Kelly, the NMFS biologist assigned to write the biological opinion, filed a federal whistle-blower disclosure with the U.S. Office of Special Counsel, charging that the team's recommendations for minimum flows were twice rejected under "political pressure." His main complaint was that the required analysis for the Reasonable and Prudent Alternative - the part of a biological opinion that tells an agency (in this case, BuRec) what it should do to avoid jeopardizing a listed species and which, in this case, had been suggested by BuRec - was intentionally not carried out, and that a specific risk to coho salmon that he and his colleagues had identified had been intentionally ignored.

A month after his disclosure, in his first interview with the media, Kelly told me this: "We were ordered to interpret the NRC report as recommending that the Bureau of Reclamation could avoid jeopardy by operating as it had for the previous 10 years. But simple logic and a basic understanding of the Endangered Species Act regulations can demonstrate that any 'recommendation' in the NRC report does not make sense in an ESA context. One of the problems we have with the NRC report is that the panel never defined what kind of confidence they wanted. We biologists felt like they were a bunch of Ph.D.'s accustomed to reviewing peer-reviewed scientific-journal articles that require a very high level of confidence. A biological opinion is not that kind of document. The regulations say you use the best information available. You have to make a conclusion. And when you're unsure, you give the benefit of the doubt to the species."

Most whistle-blowers put up with lawbreaking until late in their careers, when they haven't got much to lose. But Kelly is only 37 and has a young family to support. When the Public Employees for Environmental Responsibility came to his defense, it warned him that if he blew the whistle, he might get lucky and hang on to his job, but that he should pretty much expect to lose it. I asked Kelly if blowing the whistle had been worth the risk. "They [his team's superiors] did a masterful job of forcing us to the point where I just couldn't participate any longer," he said. "The only way for me to continue would have been to violate the Endangered Species Act. I just couldn't do that. I wouldn't want to be continually participating in such egregious rule breaking and mismanagement of resources. In the past there was always subtle political pressure. I'd hear a supervisor say, 'Well, we can't recommend that under this administration.' It was de facto pressure. But this was finally something that was so blatant I had to say something."

Since Kelly's disclosure, two Oregon State University researchers who had been investigating the NRC document - fisheries professor Douglas Markle and graduate student Michael Cooperman - have reported that it is riddled with errors, such as incorrect water-quality data, faulty fish-population models, selective use of data to support "a conclusion they had already reached," and even reference to nonexistent species.

Enemies of the ESA and the press framed the controversy as a choice between fish and farmers. "The Bush administration knew exactly what side they wanted to be on - the side of the farmers," says Mike Daulton, Audubon's assistant director of government relations. "So, dismissing the opinion of the NMFS and others and disregarding the downstream tribal fishermen, they decided to put on paper this 10-year plan to basically guarantee flows to irrigators."

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There is only one solution to the Klamath water crisis: End lease farming on the refuges and buy farms and water rights from willing sellers. Before the summer of 2002 the federal government was committed to just this. But it gave up when it ran into fierce resistance from business interests that profit from farming, such as pesticide and fertilizer distributors, and from farmers who lease land cheaply on the refuges and therefore profit from subsidies. In an October 23, 2001, letter to Representative Wally Herger, the Tulelake Growers Association tried to get Phil Norton, who was then manager of the Klamath refuges, disciplined for alleged violations of the Hatch Act, which proscribes lobbying by federal employees. As evidence the association cited comments attributed by the media to Phil Norton, such as: "We are trying to fix the system so that it works again, but there's a lot of land that, frankly, never should have been put into agriculture production."

Last June the Fish and Wildlife Service, which is controlled by the Secretary of the Interior, completely reversed itself, issuing a Finding of No Significant Impact from farming in the Tule Lake National Wildlife Refuge. And despite a 94 percent favorable response in the public-comment period, the service rescinded its 1999 ruling that irrigation on the refuges would be permitted only in years when there was enough water to sustain wetlands. It abandoned its buyout effort. No longer did refuge spokespeople say that lease farming on the refuges "had to go." Instead, they proclaimed that farming was "compatible" with their mission.

The Klamath Water Users Association prevailed on Representative Greg Walden to kill an amendment to the 2002 Farm Bill that would have provided \$175 million to buy farmland from willing sellers in the Klamath Basin. This so infuriated farmers who own land and have long favored a buyout that 50 of them wrote the association as follows: "To prevent this unfortunate situation from reoccurring and to prevent any future legal action, we request that all future association activities purporting to represent Klamath Basin Water Users on any major issues, such as retirement of land, be submitted to a vote of the landowners prior to any public announcement or official position statement."

Among the signers was John Anderson, 50, who runs beef cattle and grows a few crops on 3,500 acres in Tulelake, California. The drought of 2001 hurt him badly, wiping out 100 of 150 acres of peppermint and making him even more determined to get into a business more practical and profitable than trying to make the desert bloom. "The buyout has become an emotional issue that has built on itself," he says. "Logic has been lost. People go around saying, 'By God, we're not going to let the government take it,' and 'These environmentalists are full of bull.' I'd say more than 50 percent of the farmland is available for federal buyout right now." A lot of landowners aren't talking because they've been intimidated by property-rights barkers. Anderson, who is not among them, says he has received death threats by phone in the middle of the night.

On October 2, 2002, after salmon had been dying in the lower river for two weeks, the Pacific Coast Federation of Fishermen's Associations, the Earthjustice Legal Defense Fund, the Wilderness Society, Trout Unlimited, the Yurok tribe, and Representative Mike Thompson (D-CA) held a press conference outside the Interior Department building in Washington, D.C., to announce their lawsuit against BuRec and the NMFS for violating the Endangered Species Act. Thompson had the Yuroks ship out 500 pounds of dead salmon with which he and his fellow plaintiffs festooned the park across from the Interior building. So rancid was the shipment that Federal Express at first refused to deliver it. "It was amazing how quickly the flies found those fish," recalls the Wilderness Society's Pete Rafle. "I now understand why the theory of spontaneous generation held sway. I've got a pair of shoes that I'm going to have to resole or burn. I wasn't expecting puddles."

"I think there's been a real lack of understanding that the salmon are connected with the farming practices," Representative Thompson told me. "Unless you know the area, you don't necessarily know that the two are connected, and that's been a big problem. So it has come down to God-fearing farmers versus hippies and fish. That's not what it's about at all. It's about livelihoods in the lower basin."

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The only people to express surprise at the fish kill worked for the Interior Department. Steve Williams, director of the Fish and Wildlife Service, showed up at the press conference to lament the plaintiffs' "premature rush to judgment" and proclaim that it was "too soon to draw conclusions" about what might have killed the salmon - roughly the equivalent of a parachute manufacturer suggesting that sky divers scraped from asphalt might have died on the way down from food poisoning.

Sue Ellen Wooldridge, Gale Norton's deputy chief of staff, asserted that the government can't release much water from Upper Klamath Lake because of the endangered mullet, failing to mention that if it hadn't diverted the river for full deliveries to irrigators in violation of the Endangered Species Act, there would have been more than enough water for mullet, salmon, and refuges.

Finally, James Connaughton, chairman of the President's Council on Environmental Quality, offered this explanation: "There will always be setbacks because we don't have an ultimate authority on how natural systems work. The trick is to manage risk in a way that minimizes and localizes and creates limited opportunities of time for those setbacks to occur."

In other words, the president's top environmental adviser expects the public to dismiss what's apparently the biggest salmon kill in history as just another bum hand in a game of five-card draw, played with the public's fish and wildlife as the ante. The Klamath tragedy isn't an isolated event. On September 30, when the salmon die-off was at its peak, the administration was giving away federal water a thousand miles east, on the Gunnison River in Colorado, thereby desiccating the Black Canyon of the Gunnison National Park and jeopardizing four endangered fish and a world-famous trout fishery. Earlier in the month Interior declined to appeal a bizarre court ruling that canceled the water right of Deer Flat National Wildlife Refuge in Idaho, a refuge dedicated to waterfowl. Since 1973, when the Endangered Species Act outlawed these kinds of risks, no other administration has been willing to take them. Now they're a habit with the Bush team, and it isn't winning any pots.