Committee on Resources,

Full Committee

- - Rep. James V. Hansen, Chairman
U.S. House of Representatives, Washington, D.C. 20515-6201 - - (202) 225-2761

Witness Statement

Testimony before
U.S. House of Representatives Committee on Resources
Klamath Falls, Oregon, June 16, 2001

Good morning members of Congress, my name is Steve West. I am one of the three full-time commissioners elected to represent the 64,000 residents of Klamath County. Currently, I serve as the 2001 Chairman of the Klamath County Board of Commissioners, and I am pleased to also represent my fellow Commissioners, John Elliott and Al Switzer, here today.

I want to thank you for making time in your busy schedules to hold this hearing today in Klamath Falls. My hope is that after this hearing today, you will have a much better understanding of the challenges we face in the Upper Klamath Basin and will help us in implementing both immediate short-term and long-term solutions.

Water resource issues in Klamath County and the entire Klamath River system are very complex. These issues include: two states, non-adjudicated rights, the Endangered Species Act (ESA) and multiple endangered species that are competing for the same resource, out of basin water transfers, tribal trusts, water quality and quantity issues, flood and drought cycles, federal wildlife refuges, and a hundreds of million dollar annual agriculture industry. To understand the complexity, it takes more than reading a report or a legal brief. To really understand, you must meet and listen to the people whose lives these issues effect.

Water is the lifeblood of Klamath County. It supports wildlife, recreation, tourism, agriculture, and most importantly, it supports people. In 1905, President Theodore Roosevelt recognized the importance of irrigated agriculture in feeding our growing nation and the world by authorizing the Klamath Irrigation Project. Over the next forty-five years, the United States Government invited people to build ranches and farms on the land irrigated by the Klamath Irrigation Project. Much of the land was divided into homesteads and awarded through lotteries to returning veterans home from defending their country during the Second World War. The Klamath Irrigation Project was completed in the 1960's and was paid for by the farmers and ranchers. The project is a great example of American hard work and ingenuity. The Project has become home for generations of well-run family farms and ranches.

The United States Department of Agriculture reports that 1064 families in Klamath County are farmers. These farmers produce over $120,000,000 a year in farm gate sales. This figure is not retail sales, but what the farmer gets for the sale of raw products. If you use a very conservative multiplier of 2 to 2.2, that is a $264,000,000 industry in Klamath County. Agriculture contributes over 40% of the Klamath Basin's economy, makes up over 10% of the region's tax base, and employs over 7% of the region work force. Klamath County and the Upper Klamath Basin is a high desert region with an average annual precipitation of only 10 to 12 inches. Without irrigation there is very little agriculture in this area.

The people of Klamath County and the Upper Klamath Basin are facing an economic disaster of epic proportion. This economic disaster is effecting two states, three counties, one region's economy, and the lives of everyone who has made the Upper Klamath Basin their home. It is both a natural disaster and a regulatory one.

The natural disaster we face is a record drought. Mr. Rob Allerman, the Bureau of Reclamation's Klamath Project hydrologist has estimated that inflows into Upper Klamath Lake from April to September will be less than the record drought of 1992 and similar to the drought of 1977. Total stream flow into the Upper Klamath Lake from all sources is estimated to be at only 29% of normal. These are record low levels.

Mr. Roger Williams, Meteorologist in Charge, National Oceanic and Atmospheric Administration (NOAA), National Weather Service in Medford reports that precipitation measured at Kingsley Field (Klamath Falls Airport) from September 1, 2000 through March 26, 2001 was only 32% of average. NOAA officials also report that the Northwest is the most drought-impacted region in the country and that the Upper Klamath Basin is the driest in the Northwest.

The National Resources Conservation Service (NRCS) reports that the "Snow Water Equivalent" for snow pack in the Upper Klamath Basin as of March 26, 2001 was only 34% of normal. Snowmelt occurred at all elevations one to two months earlier than normal. The Upper Klamath Basin would have had to of received 200% of normal spring rain to get back to a normal water year. The highest spring ever recorded in history in the Basin only produced 143% of normal.

The Upper Klamath Basin has received a D-2 Severe Drought designation. Governor Kitzhaber, at the request of the Klamath County Board of Commissioners and recommendation of the Oregon Drought Council, has signed a State Drought Declaration for Klamath County. Secretary of Agriculture Ann Veneman has declared a U.S. Department of Agriculture (USDA) Drought Disaster Declaration for Klamath County. The Klamath County Board of Commissioners has also requested that Governor Kitzhaber seek a Presidential Disaster Declaration from President Bush.

The regulatory disaster is the result of management decisions made by the United States Bureau of Reclamation (USBoR) based on Biological Opinions (BO) from the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). Memos from the NMFS and USFWS both dated January 19th, the last day of the Clinton administration, were sent to the USBoR. These memos made new recommendations for Upper Klamath Lake levels and Klamath River down stream flows. The USFWS and NMFS memos were followed up with formal Biological Opinions (BO). The Klamath River down stream flows and Upper Klamath Lake levels demanded in these Biological Opinions were implemented by the USBoR on April 6th.

It has been estimated that the Klamath River Down Stream flows and Upper Klamath Lake elevations required by the Biological Opinions will create an average water shortage of 250,000 acre feet in all water year types. (An acre-foot of water is enough water to cover one acre of area, one foot deep).

Drought conditions are nothing new to the Upper Klamath Basin. During the drought years of 1992 and 1994, all interests in the Basin, including agriculture and National Wildlife Refuges, worked together to minimize loss and impacts. USBoR was allowed flexibility in the operation of the Klamath Irrigation Project that minimized negative impacts to agriculture and endangered species. This year, because of the rigid and unreasonable demands of USFWS and NMFS for Upper Klamath Lake levels and Klamath River downstream flows, that common sense flexibility is gone.

USFWS and NMFS Biological Opinions that the USBoR is basing its 2001 Klamath Project Operating Plan on has received little or no peer review. It also appears that what little peer review that was done has been largely ignored by these agencies. A review for the Oregon Chapter of the American Fisheries Society done by Douglas F. Markle, David Simon, Michael S, Cooperman, and Mark Terwilliger of Oregon State University's Department of Fisheries and Wildlife (February 5, 2001 and March 6, 2001) made the following statements:

> *. . . The editorial problems are of such magnitude that they severely influence this review. The misspelled words, incomplete sentences, apparent word omissions, missing or incomplete citations, repetitious statements, vagueness, illogical conclusions, inconsistent and contradictory statements (often back to back), factual inaccuracies, lack of rigor, rampant speculation, format, content, and organizational structure make it very difficult to evaluate this BO.*
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> *We urge, in the strongest possible way, that the Service* (U.S. Fish and Wildlife Service) *re-visit every single sentence for importance, applicability, grammar, spelling, content and internal consistency with other parts of the document. The document is excessively long. The problems are not "window dressing", rather they obscure the data and make it very difficult to find validity in claims. This document has the potential to have a severe negative impact on the Service's* (U.S. Fish and Wildlife Service) *public credibility. . .*
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> *. . . The analytical problem with the system is that the lake level is a seasonally monotonous function of date, so that sequential observations are serially auto-correlated and variables of interest are cross-correlated. For example, low lake level and low temperature do not co-occur because low lake levels happen in late summer or fall and low temperature happens in winter. An important consequence is that lake level cannot be easily separated from cross-correlated physical variables or from seasonal behavior patterns of the fish. Fish responses that are temperature related cannot be easily separated from lake level. A further consequence is that an entire year's worth of observations become a statistical sample of one. The BO does not seem to appreciate this fundamental analytical problem.*
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> *The BO argues that lake elevation is related to water quality and was responsible, in part, for fish kills such as those observed in 1995, 1996, and 1997. The case for a fish kill - lake level relationship rests on weak or inappropriate data, such as the following:*

- *Pg. 27. "In contrast, suckers captured in 1994 - 1996 (years with better water quality and higher lake levels) were substantially more robust".*

This is an instance where thin fish are used as evidence of poor water quality when no such evidence is presented, not even a correlation coefficient. Further on of the years, 1994, had the lowest lake level on record, and directly challenges the premise…

- *Pg. 74. "Lower Lake elevations may increase AFA* (a type of blue-green algae) *and worsen water quality."*

Again, the two lowest water years, 1992 and 1994, are not explained. This discussion describes a complex, non-linear system that either implicates intermediate lake levels or suggests that almost any

lake level can be associated with poor water quality. The data implicate intermediate, not lower, lake levels because 1.) historical data have been interpreted to indicate that fish kills were common prior to Link River Dam, 2.) the pre-dam minimum elevation was 4139.93 and therefore all historical fish kills took place at higher lake elevations, and 3) no die off has ever been documented when elevations were below the historical minimum (pg.46). . .

. . . In summary, the argument for a fish kill - lake level relationship is complex, but does not account for observation that extremely low lake elevations in 1992 and 1994 did not produce fish kills. Further, the BO suggest that 1995-1999, the most heavily managed years in the lake's history, were higher water years, yet fish kills occurred in three of the five years. The data presented give little support for the contention that low summer lake level is related to fish kills. If anything the data support the notion that intermediate summer levels are dangerous. . .

In light of the pervasive flaws in the Biological Opinions pointed out in just one limited peer review, it is ludicrous to base such a far reaching decision as the USBoR's 2001 Klamath Irrigation Operation Plan on what is at the very least questionable work. If more exhaustive peer review had been allowed and considered, how many more flaws would have come to light? In the Endangered Species Act (ESA), Biological Opinions are presented, as the best science has to offer. If my fellow County Commissioners and I, as stewards of public resources, made decisions of this magnitude based on such questionable information, we would not long be County Commissioners. If American corporations and industries made decisions of this magnitude based on such questionable information, they would not long be in business. Why should federal agencies, as stewards of public resources, be allowed to base decisions of this magnitude on such questionable information?

The USBoR's decision to not deliver irrigation water to the Klamath Irrigation Project is having huge negative consequences. The economic loss from grain, alfalfa, pasture, livestock, and potato crops, plus the increased feed cost for dairies is estimated in the hundreds of million dollars. Livestock producers who have invested years and countless dollars in breeding programs will suffer losses that will take years to recover from. Even pastures that are not watered will be negatively affected to the point that they will require replanting. These dollars from the agriculture economy are paid in salaries and spent to purchase farm supplies, fuel, equipment, vehicles, food and so on; they are spent and re-spent here in the Upper Klamath Basin. Hundreds of farm and ranch families are facing bankruptcy and the loss of land that has been in their families for generations. Every business, family, and individual in Klamath County is feeling the impact.

There will also be significant loss of revenue for local government services. Beside County Government services the repayment of three public project construction bonds will be negatively impacted. Those bonds are for the Klamath County Courthouse, the Klamath County Government Center, and the Klamath County Fair Grounds Event Center where this hearing is being held today. Also negatively impacted will be the Klamath County Library Service District, two school districts, a community college, four (4) cemetery districts, sixteen (16) fire districts, five (5) park districts, seventeen (17) road districts, five (5) vector control districts, a public transportation district, and the 911 emergency dispatch services.

Klamath County Assessor Reg LeQuieu has estimated that tens of thousands of acres of irrigated farm land currently valued at from $622 to $146 per acre will be valued dry at only $28 per acre without irrigation water. He has estimated the tax revenue loss at $640,000. Eighty percent of the new revenue growth allowed under Oregon Property Tax law will be eliminated.

Klamath County and the Upper Klamath Basin have not enjoyed the economic prosperity of the 1990's.

Economic impacts from loss of timber jobs and the recession of the 1980's are still being felt. Klamath County's current unemployment rate is over 10%. There are outstanding ongoing efforts by Klamath County Economic Development Association (KCEDA) and Team Klamath to diversify the Basin's economy. We are trying to build a healthy diversified economy built on our historic base industries of agriculture and forestry, while adding technology and tourism.

The recent siting of the new manufacturing plant of Electro Scientific Industries, Inc. (ESI) and Escend Software's research and development facility are examples of successful business recruitment. Dr. Martha Ann Dow and her team at Oregon Institute of Technology (OIT) is a vital asset to Klamath County's economic future. The Running Y Ranch Resort, the 2002 Centennial Celebration for Crater Lake National Park, and other destinations in the area are increasing the tourism industry's contribution to economic health. However, all these efforts are for naught if we lose our agricultural economy base. This past year, Collins Plywood closed resulting in the loss of 300 family wage jobs, showing that our economy is still very fragile.

In 1907, at the Deep Waterway Convention in Memphis, Tennessee, President Theodore Roosevelt said, "*The conservation of natural resources is the fundamental problem. Unless we solve that problem it will avail us little to solve all others.*" The people of Klamath County and of the Upper Klamath Basin understand that the challenge that President Roosevelt recognized in 1907 is the same challenge that we face today. They have worked hard to be part of the solution.

There has been a great commitment by the people of the Upper Klamath Basin to produce local, long term, balanced, common sense solutions. Over the last several years, there have been many ongoing local efforts to find solutions. The Klamath Adjudication and Alternate Dispute Resolution (ADR) processes are ongoing projects of the Oregon Water Resources Department. Both, however, in my opinion will simply result in dividing up the drought.

Farmers, ranchers, Soil Conservation District, Watershed Councils, Tribes, consumers and conservationist have worked together cooperatively and collaboratively. They have restored riparian zones, created over 20,000 acres of new wetlands enhanced existing wetlands, and installed fish screens. They are doing these projects and more because they are the right things to do, not because they are being forced to. Studies done for the Oregon Department of Environmental Quality show that these projects are all working and are contributing to improved water quality in Upper Klamath Lake by lowering phosphorous levels.

President Theodore Roosevelt once said, "*I have a perfect horror of words that are not backed up by deeds*". He would find nothing to cause him horror with the people of Klamath County and the Upper Klamath Basin. He would only need to look at their accomplishments to see that their words have been backed up by their deeds. But all these cooperative and collaborative efforts were not given any credit in the USFWS and NMFS Biological Opinions and in the USBoR's 2001 Klamath Irrigation Project Operating Plan that resulted from those opinions.

In my opinion, future local efforts are all in danger of collapsing because of the current heavy-handed management practices of the USBoR, USFWS, and NMFS. The current management practices of these agencies have created a huge breach of trust. They have also resulted in inner-agency and inter-agency squabbles. As a result of the current situation, I am concerned that the very citizens who have been committed to finding solutions and who have worked the hardest to implement those solutions are giving up on that process. And who could blame them. The current management practices of these agencies threaten to end agriculture in the Upper Klamath Basin. This is an end that we can not allow to happen.

The United States Federal Government made promises for water in treaties with Tribes in the 1860s. The United States Federal Government made promises for water in homestead grants to returning veterans, war heroes, the greatest generation, in the 1920s and 1940s. The United States Federal Government made promises for water in the Endangered Species Act to endangered species in the 1970s. The United States Federal Government has not been able to keep its promises. Now the United States Federal Government is making the irrigators of the Klamath Irrigation Project, the people of Klamath County, and the people of the Upper Klamath Basin pay all the cost of the government's broken promises.

In passing the endangered Species Act legislation, the people's elected federal representatives said that these species were important enough to the people of the United States to pass a powerful law. The Endangered Spices Act is the federal law for all the people of United States. Therefore all the people of the United States should have to shoulder the cost of implementing this law, not just those that make the Upper Klamath Basin their home. The people of Klamath County and the Upper Klamath Basin can not be asked to pay the entire cost of the Endangered Species Act for the entire Klamath River watershed. All the problems of water quality, quantity, and endangered species in the Klamath River System, cannot be solved on the backs of the Klamath Irrigation Project, the people of Klamath County, and the people of the Upper Klamath Basin alone.

We want to work together with all the people of the Klamath River from the headwaters to the Pacific Ocean, but the Klamath Irrigation Project and the Klamath Basin's economy cannot bear the entire cost. So, what are the solutions? Klamath Commissioners John Elliot, Al Switzer, and my self, Modoc County Supervisor Nancy Huffman, Siskiyou County Supervisor Joan Smith, Oregon State Senator Steve Harper, U.S. Representatives Greg Walden, Wally Herger, and their staff's, U.S. Senator Gordon Smith and his staff, have all been working tirelessly to bring help to the people we have been elected to serve. We need your help and we need it now. I believe that there are equally important immediate and long-term actions that need to be taken.

Immediate Action

- The $20 million dollar emergency federal package contained in President Bush's supplemental budget must be passed immediately and gotten to the affected people in the most expedient manner possible and with a minimum amount of agency red-tape.
- Federal funding, in addition to the package in President Bush's supplemental budget, that is proportionate to the Federal Government's responsibility for the current regulatory crisis must be identified and be made available.
- The current USFWS and NMFS biological opinions must be opened to a peer review process that is done in good faith, in an open public forum which allows for full participation by local stake holders.
- Local Federal Agency managers must be required to and empowered to participate in good faith to develop and implement local consensus-based and cooperative solutions without the interference from heavy handed agency bureaucrats in region offices or Washington, D.C.
- The Federal Government must acknowledge its responsibility for historically promoting and encouraging the development of agriculture in the Upper Klamath Basin through homesteads and reclamation projects, and thus it has an obligation to honor the agreements made with agriculture.

Long Term Action

- A multi-year Federal economic safety net must be developed for the Upper Klamath Basin, similar in concept to SB1608, that would give time for long term solutions to be implemented.

- Agriculture must be given a guaranteed quantity of water in early spring (February-March) of each year that will allow decisions on crop production and production financing to be based on.
- The Federal Government must provide financial resources that are proportionate to the size of the problem. The Klamath River System is the third largest river system on the West Coast. The financial resources currently being made available are only a fraction of what is being spent on the restoration of the Columbia River System and the Sacramento-San Joaquin River System.
- All opportunities must be identified for additional water storage in the Klamath River System and adequate funding must be provided to construct the best projects in no more than five years, with a guaranteed amount dedicated for irrigated agriculture.
- All out-of-basin water transfers must be stopped and other sources of water to replace water to those who have historically received the out-of-basin transferred water need to be identified.
- The Federal government must work legislatively to level the international economic playing field for United States agriculture to sell their products and to remedy the unfairness of current trade agreements.

The problems and solutions are large and complex, and time has run out. It is time for the Federal government to become part of the solution, not just part of the problem. These are people's lives we are talking about. There is no room for partisanship or political agendas when the stakes are this high. Again, thank you for allowing me to testify before you today. I am happy to answer any questions you might have.

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