

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

U.S. House of Representatives Committee on Resources
Hearing on Water Management and Endangered Species Issues
Klamath Falls, Oregon,
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Testimony of David Solem
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Mr. Chairman and members of the Committee, my name is David Solem. I am

the manager of Klamath Irrigation District and a director of the Klamath Water Users Association. Thank you for the opportunity to testify here today on behalf of the Klamath Water Users Association. Our association represents nearly all of the water districts in the Klamath Irrigation Project.

Words cannot begin to describe the anguish that has befallen our community in the last 70 days. Look in the faces of the people here today - you'll see pain, frustration and disappointment. The Klamath Project, once an unparalleled example of individual accomplishment and western development, has been turned upside down due to being blamed for all of the environmental problems in the Klamath Basin.

The reallocation of water, called for by federal officials, is causing tremendous hardship in our community. And our situation is getting worse by the day. Crops are dying, livestock are running out of water and feed, topsoil is blowing away, and there is no certainty that the three species for which our water has been taken will even benefit from it. Many have been sympathetic about our situation. But sympathy doesn't pay the mortgage, the grocery bills or our kid's education. This mess must be fixed before the damage goes any further.

The reckless and irresponsible implementation of the Endangered Species Act by U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) will have disastrous human and environmental impacts for years to come. I understand the requirement under this law to prepare "reasonable and prudent alternatives" to protect threatened and endangered species. But where does the law say it reasonable and prudent to take water from thousands of families to meet politically motivated goals? Is it reasonable and prudent to devastate an ecosystem that has relied upon agriculture for over 100 years? It is not reasonable and prudent to deprive an irrigation project of its water supply, and to cause property values to drop, jobs to be lost, and families to face bankruptcy. Please tell me how it is reasonable and prudent to operate an irrigation project without water.

Aside from the terrible damage this decision has caused our community, there are significant legal and scientific problems related to the federal effort to protect the Lost River sucker, the shortnose sucker and the coho salmon. The record is clear that these problems include the manipulation of science and the abuse of the scientific process. Many of these problems are described in a report our association prepared earlier this

year; "Protecting The Beneficial Uses Of Waters Of Upper Klamath Lake; A Plan To Accelerate Recovery Of The Lost River And Shortnose Suckers."

There are also serious financial implications from the decision. How ironic is it that we are spending our hard earned dollars to defend ourselves from a bureaucracy that our tax dollars supports? This is insulting.

I believe our situation can be resolved by the Administration. But in the long run, this crisis illustrates all too well why the Endangered Species Act must be amended. The law must require independent peer review of all science. And it should require the U.S. Secretary of Interior must approve any action that will cause severe economic impacts.

In regard to our situation, it seems the agencies are more interested in harming the Klamath Project than protecting the species.

Since the two sucker species were listed in 1988, the Klamath Water Users Association has attempted to work cooperatively with the USFWS to improve habitat for these native fish. In 1993, we prepared a comprehensive recovery plan that the USFWS promptly ignored. Over the years, we supported numerous restoration projects, including the removal of over 20,000 acres of farmland for the purpose of creating wetlands – wetlands the USFWS said would solve water quality problems in Upper Klamath Lake. Each time the USFWS wanted to acquire another parcel, they promised us that particular acquisition would solve the problem, and that it would reduce further regulations. We supported every request. They failed to live up to their promise – each time.

This year, we reviewed the science in their decisions and determined they were implementing steps that could actually harm these two species, and ignoring others that would benefit the suckers. So we prepared a new sucker restoration plan to accelerate the recovery of these fish. The Service ignored it as well.

The situation is equally bewildering in regard to the Klamath River. For over a decade, a disjointed course of federally funded research, dominated by tribal interests, has resulted in politically motivated fishery requirements. The Yurok Tribe describes the Hardy study on the Klamath River as "the most thorough, carefully researched and credible study yet to be produced on the flow needs of anadromous fish in the Klamath River. As such it is the best available science to guide the federal agencies in making this decision."

But what was the purpose of the Hardy study? According to documents provided by the Department of Justice, Dr. Hardy was contracted as an expert witness on behalf of the U.S. for the Yurok Water Rights Adjudication. And for his so called "carefully researched" work he has been paid hundreds of thousands of dollars. To say information prepared for tribal litigation with Department of Justice dollars is pure, unbiased science is outrageous. It's just one example of a process out of control.

In an attempt to deflect criticism of the federal decision some are now blaming the drought for this crisis. Drought is not to blame. There is no question the snow pack is low and water supplies are severely limited. The fact is, however, irrigation of lands in the Klamath Project will be seriously impacted in all but the most extreme wet years due to the demands of the biological opinions issued by the two agencies. These demands require the project to provide more water than is available. Earlier this week, over 1700 cubic feet per second (cfs) was being released from Upper Klamath Lake down the Klamath River. Yet, the inflow to Upper Klamath Lake was roughly 200 cfs. Average inflow to the lake is 1400 cfs.

Is sending over 8 times the inflow of Upper Klamath Lake down the river reasonable and prudent in a drought? It clearly shows that the NMFS is taking water that was stored for project irrigation. Total flows below Iron Gate Dam from April through September in 2001 will be roughly twice the level of flows required in the drought of 1994 and three times as much as the drought of 1992.

Upper Klamath Lake levels required by the USFWS are roughly three feet higher on September 30th than in the drought years of 1992 and 1994. Is it reasonable and prudent to take an additional 200,000 acre-feet of water away from project farms and ranches in a drought? Here again, it's clear the agencies are taking water that was stored for irrigation purposes. If the requirements for the two sucker species and for the coho salmon were relaxed even slightly, there would be water supplies for agricultural purposes, and for the wildlife refuges. So clearly, it is not the drought that has caused this crisis.

Over allocation of water supplies has also been cited as justification for taking Project water. The only over allocation in this basin is the over allocation of water for environmental purposes this year. In an average year, farmers in the Klamath Project use approximately 400,000 to 500,000 acre-feet of water, less than evaporated off these lands prior to the development of the project. The Klamath Basin, however, encompasses over six million acres and produces 10-20 million acre-feet of water. Our water use is but a fraction of the water in the basin. Nonetheless, the two agencies are not restricting any use of water outside the Klamath Project. Why? This is another example of the inequity of the federal decision. If these two agencies are so concerned about these species that they have taken all of our water supplies, why have they then not done anything else? Why have they not required other federal agencies outside the Klamath Project to restrict water use? Doesn't the Endangered Species Act apply to areas outside the project?

Some people also argue that many of these issues were considered in recent litigation. Earlier this year, a federal court in Eugene, Oregon did not issue a preliminary injunction as we sought in this matter. Going into that proceeding, however, we well understood the difficulty facing the court, on such short notice, to throw out the agencies conclusions or to find them arbitrary or capricious. That case continues. A far better policy is for the agencies to confront reality and to be objective over how we move forward in the Klamath Basin.

It is our hope that we'll all first focus on the actions necessary to make this community whole. A critical part of that process is for a thorough review of all of the actions taken to date, and those not taken, to protect the species that need our protection.

I urge this Committee, Congress and the Administration to take the following steps to undo the damage caused by these two federal agencies to our community.

First, farmers, ranchers and the community must be provided adequate financial assistance for the water taken from them this year. I urge Congress to increase the \$20 million now included in the supplemental appropriations bill. While it is appreciated, that amount is inadequate to mitigate all of the financial impacts the federal decision has caused this year. Of course, we would prefer to have our water supplies instead of any federal funds.

Second, the administration must conduct an independent peer review of the science and the process that led to the biological opinions, including a thorough investigation of the Hardy study.

Third, the Department of Interior should complete an Environmental Impact Statement for the Long Range Operations Plan of the Klamath Project. The effort now underway must be withdrawn because it is tied to

the biological opinions and will reflect all of their flaws as well. A new effort worthy of the seriousness of the issues must begin - with Congressional oversight.

Fourth, Congress should appropriate funds for irrigation districts in the Klamath Project to begin on-the-ground restoration measures, such as the completion of a fish screen at the "A" canal. Oxygenation of Upper Klamath Lake and modifications to Chiloquin Dam would be appropriate measures as well.

I believe farming and a healthy environment are compatible in the Klamath Basin. History will show that the people who rely upon this project have fulfilled their commitment to the U.S by working hard to build a successful community and to improve the habitat of these species. Now it's the federal government's turn to fulfill its commitment to us.

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