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WATER MANAGEMENT AND ENDANGERED SPECIES ISSUES IN THE KLAMATH BASIN

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

June 16, 2001 in Klamath Falls, Oregon

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WATER MANAGEMENT AND ENDANGERED SPECIES ISSUES IN THE KLAMATH BASIN

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

The Committee met, pursuant to call, at 9:20 a.m., at the Klamath County Fairgrounds, 3531 S. 6th Street, Klamath Falls, Oregon, Hon. Richard Pombo presiding.

STATEMENT OF THE HON. RICHARD POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. POMBO. Good morning. I wanted to welcome everybody here this morning. The hearing of the House Committee on Resources will please come to order. Today, the Committee will exercise its oversight jurisdiction with regard to the water management and endangered species issues in the Klamath Basin. I would like to thank everyone here for coming to this important event. I would like to also thank Representative Greg Walden, whose congressional district we are in this morning, as well as my other colleagues present here today. I am grateful for their interest in this important matter.

Let me begin by introducing myself. I am Richard Pombo. I represent the 11th Congressional District in California, which is the home of San Joaquin and Sacramento Counties. I do not want to speak too long because we are here to listen to you. My purpose today is to focus attention on the Klamath Basin problem, find solutions and to assist in any way that we can.

Let me say this, though, after serving as Chairman of the House Resources Committee, Endangered Species Act working group, I have attended numerous hearings throughout the years around the country and heard testimony from people who have lost their homes, their jobs and their dignity due to questionable interpretations of the Act. It is clear to me that ESA has been misused for years by some advocacy groups to threaten the rights of private property owners.

Further, the impacts from environmental lawsuits on businesses and families throughout California and across the nation have been financially and emotionally devastating. We have sacrificed enough. I simply cannot stand by quietly as farmers, ranchers, families and businesses, especially those in the West who depend on natural resources for a living, suffer for no constructive purpose.

It is time to take back our economic and constitutional rights. After all, the human species deserves the most important place in the ESA equation.

I look forward to hearing from the panels of witnesses today, and to explore ways to improve the water management and endangered species issues in the Klamath Basin and across the Nation. Again, I want to thank everyone for being here this morning, and I also want to point something out. It's taken a tremendous amount of work putting this hearing on, and I appreciate the interest that is shown by the number of people who have turned out for the hearing today. Because this is an official congressional hearing as opposed to a town hall meeting, we have to abide by certain rules of the Committee and of the House of Representatives, so we would ask that there be no applause of any kind or any kind of demonstration with regards to the testimony. It is important that we respect the decorum and the rules of the Committee.

At this time I would like to recognize Mr. Walden for any opening statement that he may have at this point.

[The prepared statement of Mr. Pombo follows:]

Statement of The Honorable Richard W. Pombo, a Representative in Congress from the State of California

Good morning. Welcome, everyone. The hearing of the House Committee on Resources will please come to order.

Today, the committee will exercise its oversight jurisdiction with regard to the water management and endangered species issues in the Klamath Basin.

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Let me say this, though, after serving as Chairman of the House Resources Committee Endangered Species Act (ESA) working group, I have attended numerous hearings throughout the years around the country, and heard testimony from people who have lost their homes, their jobs and their dignity due to questionable interpretations of the Act.

It is clear to me that ESA has been misused for years by some advocacy groups to threaten the rights of private property owners. Further, the impacts from environmental lawsuits on businesses and families throughout California and across the nation have been financially and emotionally devastating. We have sacrificed enough.

I simply cannot stand by quietly as farmers, ranchers, families, and businesses, especially those in the West who depend on natural resources for a living, suffer for no constructive purpose.

It is time to take back our economic and constitutional rights. After all, the human species deserves the most important place in the ESA equation.

I look forward to hearing from the panels of witnesses today, and to explore ways to improve the water management and endangered species issues in the Klamath Basin and across the nation.

Again, I want to again thank everyone for being here.

STATEMENT OF THE HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you very much, Mr. Chairman, colleagues. I want to welcome you to the great 2nd District of the State of Or-

egon and the Klamath Basin, ground zero of the Endangered Species Act debate. I very much appreciate you taking your time out of your busy schedules and away from your families and your districts to come here on this Father's Day weekend to hear from the people of this Basin about the problems that they face and the potential solutions to them.

You know, sometimes I feel like the fellow who's speeding along on one of those back country roads, and you come up over the rise and here's a four-way intersection and there's a terrible wreck in the middle of it. There's glass and twisted metal and vehicles and injury, each driver saying he had the right of way when he came to that intersection. In some respects, it's that collision that we're examining today. Tribal interests point to treaty obligations. Fishermen say it's their right to have the water. Environmentalists say, Get the farmers out and give us the water. The farmers point to land grants that I've seen, signed by President Hoover in fact, saying they want water forever. It is this wreck that we've come upon.

For nearly a century these interests sped along their way, and then on April 6th, 2001, the government stepped in and said, No water for the farmers, and there was an extraordinary disaster that's ensued since then.

First, we must do everything we can do to help the economic lives of those who are having their water taken away, their farms dried up and their livelihoods destroyed. We must provide that help. Toward that end, we have gotten the administration to agree to add $20 million into emergency supplemental legislation. That money, approved by the Committee on Thursday, will be voted on by the U.S. House of Representatives next week. Know that that is but a drop in a dry canal in terms of the economic devastation that's in this Basin. We're working on 18 other efforts to help get assistance, and we saw that today with the food bank effort here.

The Committee's focus today is on what happened and why it happened. How did we get to this point? It's on the reliability of science and the openness of that process. It must focus on how the Endangered Species Act works, and how it fails us, and how it should be changed for the better. Our efforts today must also focus on the future of this Basin. What can we do to preserve a farming way of life here while improving water quality and quantity for the other needs, and how rapidly can we do that.

Some farmers simply want out. Frankly, I don't blame them. They're being choked out and they have nowhere to go. They should not be forced to shoulder the entire cost of the Endangered Species Act requirements alone. But with the juicy carrots that are being dangled in front of them, you have to ask, Is this but yet another Federal proposal that will never be carried out, a promise that will not be kept?

These are tragic times and present us with complex and thorny problems that hundreds of thoughtful people have spent years trying to sort out. It's clear to me the time has come for significant Federal reform of the Endangered Species Act. I hope today we will begin to see before us a way to untangle the wreckage, restore the rights and resolve the conflicts in this Basin. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Walden follows:]

Statement of The Honorable Greg Walden, a Representative in Congress from the State of Oregon

Mr. Chairman, colleagues. I welcome you to the Klamath Basin - Ground Zero in the Endangered Species Act debate. I very much appreciate your taking time away from your districts - and on father's day weekend - your families - to come hear from the people of this basin.

Sometimes I feel like the fella who's speeding along a back road for hours without seeing another vehicle, comes up over a rise. Ahead is a four-way intersection of gravel roads. And in the middle is the worst, tangled mess of metal and glass you've ever seen. Each driver saying he had the right of way.

In some respects, it is this collision that we examine today.

Tribal interests point to treaty obligations and argue for habitat restoration and fish recovery beyond ESA levels to harvestable levels.

Pacific Coast Fishermen say the salmon's decline is due to habitat and inadequate stream flows and demand more water.

Environmentalists say let the government buy out farmers and return the land to its pre-settlement state.

Farmers point to land grants signed by President Hoover saying they and their heirs will forever have water rights for mining, agriculture and other uses. And they rely on the solid tenets of the Kuchel Act as well.

For nearly a century these conflicting demands sped along their way and then on April 6, 2001 they collided in the intersection that brings us here today.

First, we must do triage to save the economic lives of the farmers whose ditches are dry, whose fields are turning brown and whose bank accounts are turning red.

Toward that end, I have encountered little objection. Next week the House will vote to support $20 million in emergency disaster aid to farmers. Thursday, I wrote to Secretary Veneman and told her relief must come in the nature of grants - not loans - and that I stand ready to assist if new legislative authority is needed to accomplish this. We all know that time is of the essence.

We're working on 18 other efforts to get help to those in need - from seven semi-truck loads of food for the food bank to working to get livestock feed to ranchers to working on new ways to channel federal forest and range jobs to local residents, we are leaving no stone unturned.

The Committee's focus today is on what happened and why it happened.

It is on the reliability of the science and the openness of the process.

It must focus on how the Endangered Species Act works and how it should be changed to work better.

Our efforts today must also focus on the future for this basin.

What can we do to preserve a farming way of life here while improving water quality, quantity and fish habitat? And how rapidly can we do it"?

Some farmers simply want out and 1 do not blame them. They should not be forced to shoulder the cost of the ESA requirements alone. But will the juicy carrot being dangled in front of those most desperate materialize - or will it become just another unkept federal promise a few years from now?

These are tragic times and they present us with complex and thorny problems that hundreds of thoughtful people have spent years trying to sort out.

It is clear to me that the time has come for significant federal legislative action. 1 hope today we will begin to see before us a way to untangle the wreckage, restore the rights and resolve the conflicts.

Thank you.

Mr. POMBO. Mr. Herger.

STATEMENT OF THE HON. WALLY HERGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HERGER. Thank you, Chairman Pombo, and all my other colleagues for coming. I want to thank you for sharing our strong concerns about the Endangered Species Act and for being witness in our commitment to making the updates in the law that are long overdue.

Ladies and gentlemen, we are at war with the extreme environmentalists. What they have done in the Klamath Basin is nothing short of a tragedy. I have never seen anything like it in my years

of public office. The Endangered Species Act has been invoked to completely destroy an entire local economy under the pretense of saving a non-commercial sucker fish. They used bogus science, misinformation and their political friends in the previous Clinton/Gore administration to bring an entire community to its knees, and nothing in the law prevented it. Nothing in the law required open decision making, public involvement or public review. Nothing in the law required independent review of the science. Nothing in the law required that the needless social and economic suffering that were sure to result would be considered.

There is something fundamentally wrong, and indeed, immoral about this, and it must be changed. Across the West the extremist environmentalists are using the Endangered Species Act to drive farmers, ranchers and land owners from their homes and from the lands that they have worked for generations. Their goal is not to protect the environment. It is to destroy local economies, bankrupt businesses and drive people from the land. This is exactly what is happening in the Klamath Basin. To the extreme environmentalist, there is no balance, there is no middle ground.

Herein lies the challenge. We must use this tragedy to educate the American public. Protecting the environment and promoting economic well-being does not have to be an either/or proposition. We have the experience and technical know-how to do both. Indeed, we must do both, because a healthy environment depends upon a healthy economy. There is no better example of that than the centuries-long relationship between agriculture and wildlife in the wildlife refuges right here in the Klamath Basin.

What I can tell you is that they have only strengthened our resolve, and we are not going to give up. The fact that we are holding this hearing today on the dire need to update the Endangered Species Act is a positive first step. And unlike the last 8 years, we now have a presidential administration in Washington that is willing to listen to our concerns and work with us to ensure that common sense and balance prevail in the implementation of our environmental laws and policies.

I would like to thank Sue Ellen Wooldridge for being here to testify today. She worked extremely hard for us and did her best with the hand she was dealt by the Clinton/Gore administration. We are not here to criticize her efforts, but we are here to ask her help and that of the administration in working to fully undo the political decisions that have devastated this economy. It is extremely unfortunate that the real decision-makers, the Clinton/Gore officials who have either retired or moved on, are not present today to answer for their actions. I will strive to bring those individuals in front of the Congress to be accountable for what they have done.

Today, we must do two things. First, we must thoroughly examine the science, the decision-making and the process by which the biological opinions were developed so that we can uncover the political knots, undo them and rework them, based on, 1) independent peer-reviewed science, 2) actual historical evidence and, 3) balance. Not politics, speculation and guesswork. We must also uncover the specific provisions of the Endangered Species Act that fostered this tragic result so that we can begin developing recommendations for

this Committee on how to restore balance to this misguided law so that people and communities will come first. Thank you.

Mr. POMBO. Mr. Gibbons.

STATEMENT OF THE HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you very much, Mr. Chairman. First of all, I want to join my colleagues in their comments about the Endangered Species Act and its need for reform. And I do believe at this point, Mr. Chairman, that everything that needs to be said, has been said, perhaps not by everybody, but it has been said already.

I want to look out here in the audience and just say thank you. Can you hear me now? About the only thing I can do is swallow this thing. I want to thank this community for your courtesy and your hospitality in hosting us today throughout this trying time. You have been just gracious, friendly and overwhelmingly welcoming to us as we come here. And I want to say as a Committee that we're here to listen, we're here to learn, and we're here to join with you in your effort to help reform the Endangered Species Act, and I believe that is our common goal that we need to be here to do is to learn from you.

It has been said, Mr. Chairman, that World War II veterans were America's greatest generation. In my view, it is America's farmers and ranchers who are America's greatest generation for feeding this country, to keep us free. This battle is the Gettysburg of our nation in a civil war to ensure that our environment and our economy will work together. If the ESA is the Gettysburg of the Civil War right here in Klamath Falls, we will begin this fight here, we will join in this fight, and we will win in this fight to win the reform of the ESA. And if the economy in Klamath Falls were radioactive, the ESA has become a nuclear bomb, so we must win this war, not just for Klamath Falls, but for states like Washington and Oregon, California and Nevada. I want to thank you for having this hearing here today.

Mr. POMBO. Mr. Hastings.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thanks you, Mr. Chairman. I think it's always good to review history, because when the National Reclamation Act was signed into law in 1902, the United States' vision to expand and homestead in the West finally became a reality. The development of irrigation and hydropower projects in the seventeen western states commenced, and not long after, the Klamath Projects in Oregon and California and the other irrigation projects were authorized.

For those of us who live in and represent the regions that encompass the Bureau of Reclamation Projects, we know very well how irrigation and hydropower have developed our regions. Many contractors can go back to their own history, to those who homesteaded the West at the turn of the century. They were seeking a better way of life, a new place to live, and the government's water projects contributed to the development of a robust agricultural economy.

The recent actions in the Klamath Basin, however, run counter to that vision and violate the central promise of western expansion. What we now face is a serious crisis in the relationship between water, people and wildlife. But to a greater extent, we face a serious crisis in the future of Western ideals, philosophies and a way of life most of us have been accustomed to. Actions in the Klamath Basin could have much broader implications and may well lead to the exact opposite goal of transforming the West. That implication could be denying progress, locking up the land and driving people out.

While some might find that these are rather harsh comments, I must remind you that the Klamath Basin is not the only region in the West that has been impacted by the underlying issue at hand—the implementation of the Endangered Species Act and the overzealous targets regarding species recovery. I know this to be true, because a similar experience is occurring in my own district right now.

For 3 years, irrigators in the Medtile Valley in central Washington have been without water. The National Marine Fishery Service, or NMFS, shut the water off in order to save hatchery salmon known as the Carson stock. While simultaneously shutting off the water for farmers and devastating the economy in that valley, only 50-plus miles away, NMFS was clubbing the same Carson stock of hatchery fish. Why? Because NMFS determined that the Carson stock was co-mingling with wild stock in a different tributary, thus degrading the salmon population.

Now, this situation in the Medtile Valley is occurring at the same time that salmon runs, both hatchery and wild, are the largest in the Pacific Northwest since 1938. In addition, the debate over endangered salmon is not over fish in general, but specifically, the amount of wild fish in the system. Now, the only way to distinguish a wild salmon from a hatchery salmon is by a fin that the hatchery workers clip on hatchery bred salmon, but hatchery fish have been spawning with wild stocks for decades. The first hatchery was put into the Columbia system nearly 80 years ago. But most importantly, this has been going on before the passage of the Endangered Species Act.

Now, for those unfamiliar with the implementation of the Endangered Species Act in the West, this story, of course, sounds ludicrous; killing one species for co-mingling with another, bankrupting communities to save endangered species that humans consume, shutting off water that has been available for nearly a hundred years to farmers and ranchers in order to save suckers. As communities, governments and industry and tribal interests continue to discuss and debate the future of endangered species in the West, we need to come to a resolution on one very important issue.

We know that fish need water. That's self-evident. But no Federal agency or entity has ever determined with good science just how much water is enough. We know how much water is necessary for irrigation, for transportation, for power generation, but there is no agreement on how much water fish require. We must be able to quantify what constitutes recovery. Regulations and enforcement should not refer to pre-civilized conditions. How did fish survive when drought occurred before the West was inhabited? Are we to

use pre-civilization alleged fish counts as goals for endangered species recovery? I think not. Due to the decision by the U.S. Government to settle the West, people are here and the landscape has changed, and we must accept that.

Because the lives and futures of people have been subject to extreme actions due to fish, my colleagues and I are seriously committed to amending the Endangered Species Act. Until each of these scenarios related to endangered species recovery is addressed, including the economic impact of listings on local communities, it will be extremely difficult to come to any consensus on salmon recovery.

If the Klamath Basin and the Medtile Valley serve as guidelines for what lengths the Federal bureaucracy will go for endangered species recovery, then to me it is clear that the commonsense approaches are really the endangered species. We must require sound science, we must require economic balance, we must inject reason and leadership into the decision-making, and we must ensure that the Federal Government is not over-stepping its bounds by interpreting the law at levels that seriously harm people and communities.

We cannot turn back the hands of time and assume the Klamath Basin or any other region of the West should operate as it once did. Instead, we must find creative solutions whereby everyone can utilize the water. We know that people here today want these solutions. Unfortunately, there are others, mostly outside of our region, who do not want solutions. They want an issue as a weapon to advance their agenda.

The solutions that we seek must include fish and people. It is not an either/or decision. And we can do this together, provided that we set guidelines that are manageable, attainable and reasonable. I don't think any of us here today would consider ourselves as anti-fish, but we must also recognize that not just fish rely on natural resources for survival.

I'm honored and privileged to be here with my colleagues, and I want to thank my good friends, Greg Walden and Wally Herger, who represent this area, for their efforts on behalf of you. And I also want to congratulate and work with Richard Pombo, who has been the lead in the U.S. Congress in amending the Endangered Species Act, and I pledge to work with them so that we can find a solution to this in the long term. And I thank all of you for being here today.

Mr. POMBO. Mr. Simpson.

STATEMENT OF THE HON. MIKE SIMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SIMPSON. Thank you, Mr. Chairman. I see the microphones are working about as good as the ESA is. I do want to thank Greg for inviting me to your district. It is as beautiful as you've always told me it is down here, and I want to tell you all that I have never seen anybody as active at working on a problem for their constituents as Congressman Walden and Congressman Herger have been in this area, and we owe them all a great deal of thanks for what they have been doing, because they have been up day and night trying to address this problem and solve it for you.

I am very pleased to be here, but I'm sorry that I need to be here. I have come, like the rest of my colleagues here, to listen to these individuals that are going to testify, to see if we can find some solutions to this problem that is facing us.

Many people have seen this train wreck coming for many years. Our Chairman of our hearing today, Mr. Pombo, has warned about this train wreck for years and years, so it comes as no surprise to many of us, but I'm sorry that it happened here first or to the extent that it has here first. My concern is not only for the welfare of you that live here in this Basin, but for the fact that if this action isn't halted, it will spread throughout the entire West. It will effect every district of every Congressman in the entire west, and it needs to be addressed.

Some say that there are no changes necessary to the Endangered Species Act. I would suggest that if there are no changes necessary to the Endangered Species Act then common sense has no place in our laws or their application. I think we need to bring common sense back into the Endangered Species Act, a law that passed overwhelmingly with bipartisan support when it was adopted. I don't think anyone anticipated the extent to which the Endangered Species Act would be misconstrued, as it has been. Today, I doubt we could get the Endangered Species Act through Congress, if we didn't have one, if we knew then what we know now, so we need to look at this, we need to work with our colleagues, some of the individuals who haven't felt the impacts of the Endangered Species Act like we have in the West. So I'm very glad to be here and I look forward to the testimony. Again, I congratulate Mr. Walden and Mr. Herger for the work that they're doing on your behalf. Thank you.

Mr. POMBO. Thank you. I would like to invite our first witness, Sue Ellen Wooldridge, representing the Department of the Interior, to join us at the witness table.

Good morning. I want to thank you for being here this morning. I know that your prepared testimony has been turned in to the Committee already. I would like to ask that you keep your oral testimony to 5 minutes. We will then have questions from the Committee. I will limit my colleagues to 5 minutes each for their questions. All the panels will be run that way here so that we can try to stay on time with the hearing. So thank you very much for being here. If you're ready, you can begin.

STATEMENT OF SUE ELLEN WOOLDRIDGE, DEPARTMENT OF THE INTERIOR

Ms. WOOLDRIDGE. Great, thank you. Thank you very much, Congressman Pombo. I am endeavoring to do my best to keep my remarks to 5 minutes. I will help myself by speaking quickly because I think I do have more than 5 minutes to say. I do want to thank you for the invitation to participate here today. I think I join with Congressman Simpson that I am pleased to be here today, but not happy to be here today.

I have with me representatives of the Bureau of Reclamation, the Bureau of Indian Affairs, Fish and Wildlife Service, U.S. Geological Survey, Secretary's Indian Water Rights Office, and the National Oceanic and Atmospheric Administration, National Marine Fishery

Service, and they are here to assist me, should you have some specific technical questions which are beyond my competence.

Mr. POMBO. Thank you.

Ms. WOOLDRIDGE. Last month I and other administration representatives spent several days and evenings traveling in the Basin. We started about at the peak of the Sprague River and the Sycan River, and we made it all the way down to Arcada. We met with farmers and ranchers from project and non-project areas, leaders from the Klamath Tribes, Yurok, Karuk and Hoopa Tribes, with Federal, State, city and county officials, various environmentalists, commercial fishermen, PacifiCorp which runs the dams on the Klamath, and numerous other interested citizens.

I would like to recognize them now, and also acknowledge the folks who are sitting behind me, for what I perceive as their continued and unfailing politeness and courtesy in dealing with the Federal representatives that were out here at that time, and here today. Their comments were frank, pointed, helpful, and I think will help us fulfill our purpose in coming out here, which was to look for long-term solutions for the problems within the Basin. We were moved, pained, upset by the stories we heard. We're not indifferent to them, by any means, and they are difficult at best to cure. And it is extremely difficult to be part of something that leads to those conclusions.

We heard about farms closing, we heard about fathers moving away from families to find work, businesses laying off workers, a myriad of problems in schools with children who hear their parents discuss their woes in the evening and have to go to school the next day, wondering if they're still going to be in the school district. The stories were endless and compelling. We heard their frustrations. But, again, as I said, we were impressed and want to thank them again for their graciousness.

Secretary Norton speaks regularly of her 4-C approach to managing the Department—Communication, Consultation, Cooperation, all in the service of Conservation. It means that we as the Federal Government, representing the Department of the Interior, must communicate a consistent message, consult with interested and affected parties, cooperate with local regional interests and conserve our cultural and national heritage. Our trip was intended to further these principles.

We were told the basin needs Federal leadership; and quite frankly, that was a little astonishing to those of us who are generally in favor of local control and local interest. What's that?

Mr. POMBO. Just ignore it and keep going.

Ms. WOOLDRIDGE. That's 4 minutes? Okay, I'm sorry. I will go fast.

Mr. POMBO. I'll say this. This is the only time you're ever going to hear me say this. I will be liberal with the time.

Ms. WOOLDRIDGE. Okay. I have no idea where to go from here. I just finished one of my 7 pages.

We were told the basin needed Federal leadership, and it was kind of a shock to us. It was a shock to us, but we are prepared to exercise that leadership and work in cooperation with the locals to try to come up with some solution, and I know that all the Members on the panel are willing to do that as well. And I don't hon-

estly think a Federal crammed-down solution is the answer in the basin, but I know that with good will and a lot of heavy effort and lifting, we can come up and try to help resolve these problems.

The second theme we heard when we were here had to do with drought and financial relief that was needed for the basin. Third, we heard that the scientific basis of the Federal management decisions must be improved. I will speak to that more generally in a moment. And finally, we heard there was a strong desire for this basin-wide solution.

We have severe drought conditions here. I was informed yesterday that we are now in the driest year on record in the basin. We've surpassed the 1977 drought. By law, the Department of the Interior plays rolls in this. As you know, the Bureau of Reclamation operates the project. We have trust responsibilities to the tribes. The Fish and Wildlife Service operates the refuges. And with all of these, we have to obey the law which exercises and determines the priorities for the water in the basin.

As you all know, on April 6th, based on the priorities and the biological opinions of the Fish and Wildlife Service and the National Marine Fishery Service, reclamation announced that it was unable to operate the Upper Klamath Lake this year and to provide Project water for irrigation or the refuges. So what are we doing about that?

Congressman Walden referenced that the administration had requested $20 million in the supplemental budget. I understand the House Appropriations Committee has redirected the request to cover the release of not less than $20 million from available funds from the Commodity Credit Corporation. The preventive planting coverage, I believe, from the Department of Agriculture, which I know has some limitations, is part of the standard crop insurance. USDA has allocated two million to the Basin through Emergency Watershed Protection, and USDA's Farm Service Agency has provided some initial allocations, up to a half million dollars. Reclamation is working on ground water supplies. California's Office of Emergency Service is making available five million dollars to help with ground water development. Reclamation is continuing ground water investigations, both in Oregon and California. The list goes on, and I would go through them all, but I want to try to get to some of the things I know are important to the panel and to the people in the audience.

Interior is continuing to lead an inter-agency group back in Washington and out here on the ground with folks who are out here, trying to come up with ideas for resolving the long-term problems within the Basin, and we will continue that as long as we can and there's good will and interest in having us be involved in that.

Let me turn to the science. One of the things that was a consistent theme, and we've heard it today as well, is that the science underlying the biological opinions which formed the basis for the decision that Project deliveries could not been made was bad science, irresponsible, not credible, you name it. We were told that the science was not exposed to a public process or peer review, and is thus susceptible to these criticisms.

The Endangered Species Act requires that the protection of species be based on the best science available. That is the statutory

mandate. One does not need to agree or disagree about whether that standard was achieved in order to believe that the process of making ESA determinations should be as transparent as possible. It is vital that the Department of the Interior and the other participants base water and fish decisions on sound science and an objective assessment of what we know and don't know.

In our quest for credibility, we cannot ignore the criticisms we receive. We are mindful, for instance, that one set of reviewers in this case commented with respect to our draft biological opinion that it was difficult to evaluate because it was, and I am quoting, Full of—actually, that was an ellipsis full of—now I'm quoting—"Misspelled words, incomplete sentences, apparent word omissions, missing or incomplete citations, repetitive statements, vagueness, illogical conclusions, inconsistent and contradictory statements, often back to back, factual inaccuracies, lack of rigor, and rampant speculation."

While many of these criticisms related to the form in the Fish and Wildlife and NMFS opinions, a number related to their substance, and thus, the quality of the opinions with respect to their being based on the best science available. And while Fish and Wildlife Service made a multitude of changes after those criticisms were leveled, the existence of that type of criticism does not give rise to public confidence in the work of the Department. We agree that not all of the science used for the NMFS opinion for the Coho, or the Fish and Wildlife opinion for the suckers, has been independently peer-reviewed.

And actually, just as an aside, when we first came in to the new administration, laying there waiting for us were letters from a number of you on this panel, pointing out the insufficiencies of that peer review process. Where peer review science was available, the Fish and Wildlife Service and NMFS used it. Where unpublished "gray literature" data was available, they used it. The Services continued to believe that the opinions were reasonable and based on the best science available. Unfortunately, the public does not have the additional opinion of scientists with the appearance of independence to confirm or deny this, and thus, the criticisms are left unanswered and we cannot point to independent peer review to lend credibility.

In order to address these concerns, the Secretary will direct the science upon which the Fish and Wildlife Service's biological opinion is based, and which exists in the administrative record, be subject to an independent scientific review. Such a review is to be conducted by an objective, outside scientific body or group of experts that is widely recognized and has a disciplined scientific review focus. The science underlying the NMFS biological opinion will be subject to similar review. In addition, plans already exist to subject the forthcoming study by Professor Hardy to independent peer review.

At a minimum, the independent science review should be asked to assess the degree to which the opinions used—I'm sorry—the Services use the best scientific information available at the time they prepare their biological opinions to assess how the Services use the science information available to make their management recommendations, identify objective scientific information that has

become available since those opinions were prepared, and identify gaps in the knowledge and scientific information. In addition, the USGS, building on that scientific assessment, will undertake scientific studies focused on the identified knowledge gaps. As a nonregulatory agency with a purely scientific mission, the USGS will direct its science in both the upper and lower basin toward the critical needs of the decision makers as we go forward.

With regard to project operations in the coming years, when we develop future long-term operations plans, we will instruct ourselves to fully review the existing scientific data and seek appropriate public comment as we go forward into the next water years. This concludes my prepared testimony. I'm pleased to answer any questions you may have.

Mr. POMBO. Thank you. Ms. Wooldridge, I'd like to concentrate, if I can, on the science for a little bit. The Endangered Species Act requires that the Services use the best available science. When there is conflicting science, when different groups—different outside groups, the Fish and Wildlife Service, NMFS, and others have done biological surveys, have looked at data and come to different conclusions and there's a difference, how does Fish and Wildlife Service determine which is the best available science?

Ms. WOOLDRIDGE. How, as in what is the legal obligation or process by—.

Mr. POMBO. What do you use? How do you base your decision?

Ms. WOOLDRIDGE. Well, this may be the place where I need to turn to one of the people who are sitting here. I don't know if you wish to have them here. My understanding is very basic, and that is that they take into account those comments and go out to those persons who have made those decisions and discuss them and test them, but I can't answer that question more precisely than that.

Mr. POMBO. If you could prepare an answer to that question and have it for the record of the hearing, I would appreciate it, because I've known a number of cases, when we are looking at listings or habitat designations, there are differing opinions from different biologists and different scientists, and it appears to me that some of that science is ignored.

Ms. WOOLDRIDGE. Well, it does seems to be the case when you deal with these, where you have—the science is all agreed to in the sense of the data, and you have differing conclusions or analyses from that data. I can tell you, as a decision-maker, it's very difficult to decide what the tie breaker is. And the Fish and Wildlife Service has their obligation, and they do what they believe they are required to do by making a judgment as to which is more likely, and they have a statutory obligation to choose the one that is the most conservative in the sense of protecting species. But I can understand that, and I will be happy to provide the answer.

[The prepared statement of Ms. Wooldridge follows:]

Statement of Sue Ellen Wooldridge, Deputy Chief of Staff, Department of the Interior

Thank you for the invitation to participate today in this oversight hearing on the Endangered Species Act and Water Management in the Klamath Basin. I appreciate the opportunity to be here today on behalf of the Department of the Interior. I have with me representatives of the Bureau of Reclamation, the Bureau of Indian Affairs, the Fish and Wildlife Service, the U.S. Geological Survey, and Secretary's Indian

Water Rights Office, and the National Oceanic and Atmospheric Administration within the Department of Commerce. They are here to assist in responding to specific questions you may have. I will make some brief oral comments but I request that my entire written statement be included in the record of this hearing.

MY VISIT TO KLAMATH BASIN AND WHAT WE HAVE LEARNED

Last month, I and other administration representatives spent several days and evenings traveling the length of the Klamath Basin. Our intention was to meet with as many individuals and groups as possible to learn first-hand the circumstances faced by the Basin, the perceived needs of the Basin as understood by the various groups, and the effects, both existing and potential, that the Federal Government has had and will have on the Basin.

We met with farmers and ranchers whose lands are above Upper Klamath Lake, farmers who have lands within the Bureau of Reclamation project area, leaders from the Klamath, Yurok, Hoopa Valley, and Karuk tribes, with Federal, state, city and county agency and elected officials, environmentalists from a myriad of organizations, school administrators, business people, commercial fishermen, management personnel from PacifiCorp (Scottish Power), as well as interested citizens not belonging to any of those groups. Each person or group described for us in vivid detail the impact that current drought, and the Endangered Species Act and other federal legal requirements were having on their businesses, their families, those they serve, or the interests they wish to protect. I would like to recognize and, through this record, thank everyone we met with for their frank and helpful comments.

I was greatly moved by my meetings and pained by stories of the distress of many people here, stories of farms closing operations, fathers moving from families to find work, businesses laying off workers. I was equally moved by a desire to do as much as we can to help and to renew some degree of certainty to lives in this region. I am also painfully aware of limitations brought by a very limited resource and the multiple demands on it, and by the multiple responsibilities of the Department.

Secretary Norton speaks regularly of her 4–C approach to managing the Department of the Interior - COMMUNICATION, CONSULTATION, COOPERATION, and CONSERVATION. To manage resources and our legal responsibilities effectively, we must 1) Communicate a consistent message; 2) Consult with interested and effected parties; 3) cooperate with local and regional interests; and 4) Conserve our natural and cultural heritage. Our trip was intended to further these principles.

We learned many things. While opinions varied as widely as the subject matter, we did hear a number of common themes.

First, we were told that the Basin needs leadership by the Federal Government to address the conflicts at hand. This was relatively surprising to us, and generally inconsistent with our philosophy that local problems are solved best by local solutions. However, it is also understandable, as there seems to be a Basin-wide view that the Federal Government - including Federal law - is largely responsible for the existing conditions.

These conditions are variously described by the differing groups as including overallocation of existing water, broken treaty rights, past favor toward agricultural interests, breach of promise to agricultural interests, bad or corrupt science, inadequate funding of water enhancement projects, poor forest and habitat management, overly conservative interpretation of existing resource data, failure to encourage the State of Oregon to address diversions by upper basin water users and general callousness toward the economic and human impacts of resource management decisions.

The second common theme we heard is that immediate drought and financial relief is needed for farmers and the farming communities. As one local leader (Marshall Staunton) described it, the Federal law-mandated cut-off of water to the Klamath Project is a—major human tragedy in the Upper Klamath River Basin." There are approximately 1,400 farmers in the region, many of them small producers, and agriculture and agriculture-related businesses are a substantial factor in the Basin's economy. However, because of the water shortage, many farmers have not been able to plant crops or maintain livestock herds.

Third, we heard that the scientific basis of Federal management decisions must be improved. While I will address this issue in a few moments, it is beyond question that where Federal resource decisions are made, the scientific basis of those decisions should be unassailable as biased or less than the best available science.

Finally, we heard a strong desire for a basin-wide solution which will provide predictability and certainty. This presents both a quandary and an opportunity. There exists in the Basin a wide variety of groups or mechanisms dedicated to solving some part of the Basin's problems. These include, to name a few, the Upper Klam-

ath Basin (Hatfield) Working Group, the Klamath Watershed Coordination Group, the Oregon Klamath Adjudication Alternative Dispute Resolution process, the Klamath Basin Compact Commission, the Klamath River Basin Fisheries Task Force and most recently, the mediation conducted in conjunction with the Kandra litigation. The quandary is how to utilize these existing forums and groups to achieve solutions. The opportunity is demonstrated by the obvious and overwhelming interest of the people in the Basin to find them.

So, having heard these common themes, what are we doing? First, I will discuss the current situation, then our efforts to date and finally, what we intend to do.

WHERE WE ARE - DROUGHT AND ESA

While in this crisis much focus has been on the Endangered Species Act, it should not be forgotten what local residents already know - severe drought conditions are affecting the Basin. Snow water and precipitation amounts for the water year are well below average. Currently, the basin-wide precipitation is one half of normal. Streamflow forecasts are near record low levels. Projected net-inflow to Upper Klamath Lake for the summer is expected to be less than 35 percent of average. Inflow to Gerber and Clear Lake reservoirs has ceased.

The Federal Government has placed the Klamath Basin in "D3" status, which predicts ". . . damage to crop or pasture losses likely; fire risk very high; water shortages common; water restrictions imposed." The Governors of Oregon and California and the U.S. Secretary of Agriculture have issued drought declarations for Klamath, Modoc, and Siskiyou counties. In short, this is the worst drought since 1977, and potentially the worst on record.

By law, the Department of the Interior plays several roles in the management of resources in the Klamath Basin. The Bureau of Reclamation (Reclamation) operates the Project, which includes the management of water levels in Upper Klamath Lake and Gerber Reservoir (both in Klamath County, Oregon), as well as Clear Lake Reservoir (in Siskiyou County, California). The Project historically provides water to approximately 210,000 acres of irrigated agriculture and two major portions of the Klamath Basin National Wildlife Refuge complex. The Project also affects flows in the Klamath River through an agreement with PacifiCorp, a hydropower company that operates Link River Dam at the south end of Upper Klamath Lake.

The Secretary has a trust obligation to the Native American Tribes. Four federally-recognized tribes reside in the Klamath Basin'the Klamath Tribes of Oregon and the Hoopa Valley Tribe, the Karuk Tribe, and the Yurok Tribe of California. These Tribes have recognized property interests in the Basin which the United States holds in trust for their behalf and which varies with the individual Tribe and its associated ethnological and legal history. Among other interests, the Klamath Tribes have treaty-protected fishing, hunting, and gathering rights, and the Hoopa Valley and Yurok Tribes also have federally reserved fishing rights in the Klamath Basin. The fishing rights entitle the Tribes to harvest for subsistence, ceremonial, and commercial purposes. The Tribes also have water rights in the Basin necessary to support their resources.

The Fish and Wildlife Service (FWS) operates six National Wildlife Refuges in the Klamath Basin National Wildlife Refuge complex, and the FWS carries out consultations for Federal actions under the Endangered Species Act (ESA) for species listed by the Service.

The National Wildlife Refuge (NWR) complex covers more than 150,000 acres. The Lower Klamath NWR is host to the largest fall population of staging waterfowl in the Pacific Flyway (nearly 1.8 million birds), winters the largest concentration of bald eagles (200–900 birds) in the Lower 48 states, and supports 20–30% of the Central Valley population of sandhill cranes during fall migration. In addition, the refuge hosts large numbers of nesting waterbirds and diverse wildlife species. Water for this management program is normally provided through Reclamation facilities.

The Klamath Basin refuge complex annually has over 55,000 visitors for recreation and bird-watching. In addition, there were over 16,000 migratory bird hunters in 1999, a number reduced to 13,000 last year due a short-term water shortage. These visitors provide considerable economic benefits to local businesses. The lack of water this year will force a significant reduction in waterfowl hunting at these refuges, and may lead to a fall-off in other visits as well.

The FWS is also responsible under the Endangered Species Act for the Lost River and shortnose suckers, which occur only in the upper Klamath Basin and are listed as endangered. The National Marine Fisheries Service (NMFS) has the lead ESA responsibility for consultation on the coho salmon which is listed as threatened. These and other fish have supported Tribal fisheries and a large commercial fishery

at the mouth of the river; these fisheries have been greatly diminished in recent years.

Several legal mandates affect the management of Project water to meet these multiple needs. Following a review of the various authorities, the Department has managed the Project for the following purposes: 1) species listed under the ESA; 2) Tribal trust responsibilities, 3) irrigated agriculture, and 4) National Wildlife Refuges. This order of priority was confirmed by the Court in *Klamath Water Users Protective Association v. Patterson.*

Under the ESA, the Bureau of Reclamation must consult with its sister agency the FWS and the NMFS regarding impacts of Project operations on endangered suckers and threatened coho salmon. This has been a long and complex process and the subject of much public discussion. On April 5 and on April 6, 2001, the FWS and the NMFS, respectively, provided Reclamation with final Biological Opinions regarding operation of the Klamath Project for the 2001 water year. Reclamation conformed its operations plan to those opinions.

On April 6, 2001, Reclamation announced that with the exception of delivery of 70,000 acre feet for Project irrigated acres on areas served from Clear Lake and Gerber Reservoir, and a certain amount of water to be delivered to Tule Lake Sump for the protection of suckers, no water would be delivered from Upper Klamath Lake for Project operations. Reclamation is unable to operate Upper Klamath Lake this year to provide project water supply for irrigation or for the refuges.

ASSISTANCE

Since the Committee will not hear directly from the Department of Agriculture, I will address the immediate efforts undertaken by the Administration to provide what relief is available under current authorizations and appropriations. The Administration, Secretary Norton, and Secretary Veneman are committed to working with Congress to ensure these funds are appropriately invested in the region to assist producers during this difficult time

The Administration and the Department of Agriculture

President Bush requested $20 million in his supplemental budget for the Department of Agriculture to make available financial assistance to eligible producers in the Klamath Basin. This $20 million was proposed to supplement existing assistance already available to help farmers and ranchers adversely affected due to limited water availability in the region. I understand that the House Appropriations Committee has just re-directed this request to cover the release of not less than $20 million from available funds of the Commodity Credit Corporation, in the belief that this may be a more efficient means to provide the funds.

Prevented planting coverage is part of the standard crop insurance contract and is available on insurable crops in the impacted counties, except forage production and nursery. For producers with crops ineligible for coverage through the crop insurance program, USDA's Non-insured Assistance Program (NAP) provides compensation similar to that available through crop insurance. Crops covered through NAP in the Klamath area include alfalfa hay, onions, mint, horseradish, rye, forage (grazed), forage (production, Oregon only), and various other minor crops.

Through the Emergency Watershed Protection program USDA has allocated $2 million to the basin area for re-seeding efforts, which will help farmers establish vegetative cover with low moisture requirements on lands that they had laid bare in anticipation of planting, reducing wind erosion.

Additionally, USDA's Farm Service Agency has provided almost $400,000 to help farmers get water for their livestock. Initial allocation for Klamath County, Oregon is $225,000 and $167,000 total for 2 California counties, Modoc and Siskiyou.

Interior

A. Groundwater Supplies:

1. Cooperation with State Programs. The Bureau of Reclamation (Reclamation), in partnership with the Oregon Water Resources Department (ORWD) and the California Department of Water Resources (CDWR) is working to develop groundwater supplies to assist agricultural water users served by the Klamath Project.

Reclamation met with high-level policy makers from CDWR and ORWD on May 11, 2001, to coordinate fast-track groundwater development for this year and to develop a longer-term program to use groundwater for drought contingencies and supply augmentation purposes.

Wells in some locations may have to be drilled to a depth of between 700 and 1,000 feet (or greater) to reach the water-bearing volcanic zone, which may exceed $300,000 per well. The potential yield (short-term and long-term) is unknown.

Groundwater in the Klamath Basin has never been put to such a test, so the amount of yield that may be sustained is unknown at this time.

California's Office of Emergency Service is making available up to $5 million to Tule Lake Irrigation District. Wells are anticipated to be on line this year, to help soften the blow, and Reclamation continues to cooperate with state agencies to facilitate construction of wells.

Reclamation is continuing groundwater investigations in both the Oregon and California portions of the Klamath Basin that began with the October 1997 Klamath Basin Water Supply Initiative. Groundwater development holds potential in this area as a supplemental tool to be included for any long-term water management plan, and Reclamation will continue to coordinate with the State governments to further long-term efforts to use groundwater resources to help supplement dry-year needs in the Klamath Basin. While the effort currently under way may generate some supplemental water supplies later this summer, it will likely not generate a fully-developed dry-year supply.

OWRD and USGS are cooperating on a regional ground water study in the Upper Klamath Basin. The study includes agricultural areas in southern Oregon and northern California. Reclamation has provided logistical and financial support to this effort. This regional ground water study will take 4 to 6 years to complete due to the data collection requirements. This study represents the primary effort to determine the amount of ground water that can be produced on a long-term basis.

2. Reclamation, Groundwater Acquisition. Reclamation has initiated a program to purchase groundwater from willing sellers to augment Klamath Project water supplies during the current irrigation season. Nearly $2.2 million in fiscal year 01 in drought funding will be spent on this endeavor. The emphasis is on supporting preventative planting of cover crops to prevent soil erosion. Reclamation has partnered with OWRD to develop up to 60,000 acre-feet of groundwater during this season for stream flow, water quality, and project supply augmentation.

In addition, funding for lining of canals in California and Oregon district will help water conservation for the short and long term.

B. Groundwater in National Wildlife Refuges:

The Fish and Wildlife Service (FWS) is focusing on groundwater development in the Klamath Basin. It is estimated that in the future, refuges will experience conditions wherein 70 percent of the refuge wetlands will be dry 70 percent of the time during fall waterbird migration. Impacts are likely to be felt throughout the Pacific Flyway. To address this situation in the short term, the FWS has commissioned a groundwater study on the Lower Klamath National Wildlife Refuge in California where eleven test wells have been developed. Nine of these wells adjacent to, or on the refuge show promise. Two wells produced geothermal water. The FWS intends to develop 23,000 acre-feet of groundwater, intended for late summer/early fall use, when refuge water supplies are most critical. It may be possible to get one or two wells on-line in time to meet refuge requirements this fall.

The FWS is also considering purchasing an additional well from a private owner, as well as paying for groundwater pumped from another owner. This water will be applied at a rate of 35 acre-feet/day to keep the largest unit from going dry for a 150-day period starting on June 1. Pumping associated with this program is eligible for Reclamation Project power rates.

C. Agency Coordination

Further, with respect to Interior's efforts, the Secretary has taken the lead in coordinating among Interior, the Department of Agriculture, and the National Oceanic and Atmospheric Administration, and internally, we have formed a working group to explore potential long term solutions and work with the states and with all interested local groups.

SCIENCE

As I stated earlier, we have received much criticism of the science used to support our decisions under the ESA. Specifically, we have been told that the science used was not exposed to a public process nor peer reviewed and thus does not appear credible.

The ESA requires that protection of species be based on the best science available. One does not need to agree or disagree about whether that standard was achieved in order to believe that the process of making ESA determinations should be as transparent as possible. It is vital that Interior and other participants base water and fish decisions on sound science and an objective assessment of what we know and what we don't know.

In our quest for credibility, we cannot ignore the criticisms we receive. In this case, we are mindful that while many of these criticisms relate to the form of the FWS and NMFS Opinions, a number relate to their substance, and thus the quality of the Opinions with respect to their being based on the "best science available." We agree that not all of the science used for the NMFS opinion for the Coho or the FWS opinion on the suckers has been independently peer reviewed. Where peer reviewed science was available, the Services used it. Where unpublished "gray literature" data was available, the Services used it. The Services believe that the opinions are reasonable and based on the best science available. Unfortunately, the public does not have the additional opinions of scientists with the appearance of independence to confirm this.

In order to address the concerns expressed about the scientific basis for management decisions in the Klamath Basin, the Secretary will direct that the science upon which the FWS Biological Opinion is based, and which exists in the Administrative Record, be subject to an independent scientific review. Such a review is to be conducted by an objective outside scientific body that is widely recognized and has a disciplined scientific review focus. The science underlying the NMFS Biological Opinion will be subject to similar review. In addition, plans already exist to subject the forthcoming DOI commissioned study by Professor Hardy, from Utah State University, to independent peer review. At a minimum, the independent science review body should be asked to:

1. assess the degree to which the the determinations made by the FWS and NMFS were based on best existing knowledge and best available scientific information at the time they prepared their biological opinions;
2. assess how the FWS and NMFS used the scientific information available to make management recommendations;
3. identify objective scientific information that has become available since the FWS and NMFS prepared the biological opinions; and
4. identify gaps in the knowledge and scientific information that need to be addressed.

Building on this scientific assessment—as part of Interior's own scientific efforts in the Klamath Basin—USGS will undertake additional scientific studies focused on the identified knowledge gaps. As a non-regulatory agency with a purely scientific mission, USGS will direct its science in both the upper and lower basin toward the critical needs of decision makers.

Additionally, in fiscal year 2001, the FWS began to collect baseline information for a study to assess fish habitat conditions in the Klamath River and its tributaries below Iron Gate Dam. We hope that actions will result from the study that will help recover species, avoid further listings, enhance tribal trust responsibilities, restore recreational fisheries and related local economies, and reduce impacts of conservation efforts on water users.

LOOKING AHEAD

Interior has organized longer term efforts. I can report on very good progress in implementing Public Law 106–498, the Klamath Basin Water Supply Enhancement Act.

As I noted earlier, Reclamation in 1997 entered into a partnership with the States of Oregon and California and the Klamath River Compact Commission to begin a Water Supply Initiative. Based on information collected through sustained public outreach efforts, Reclamation has identified 95 potential projects.

Public Law 106–498 provides Interior important authority and direction to advance efforts begun under the Initiative, and authorizes additional important feasibility studies. Representatives of Oregon and California are very interested in expanding the partnerships initiated with the Water Supply Acquisition Program by participating in the feasibility studies authorized in Public Law 106–498. Reclamation will be working closely with the States over the next few months to develop a comprehensive strategy for full implementation of the Act.

The Act authorized and directed the Secretary of the Interior to study, in consultation with affected State, local and tribal interests, stakeholder groups and the interested public, the feasibility of:

- Increasing the storage capacity and/or yield of the Klamath Project facilities while improving water quality, consistent with the protection of fish and wildlife.
- Developing additional Klamath Basin groundwater supplies; and,
- Finding innovative solutions in the use of existing resources, or market-based approaches, consistent with state law.

Using funding previously provided for the Water Resources Initiative, Reclamation has been able to initiate partial implementation of the Act as follows:

1. Increasing Klamath Project Storage Capacity/Yield: In December 2000, Reclamation released an appraisal level report examining the desirability of raising the Upper Klamath Lake as much as two feet to elevation 4145.3 feet. The report considered two alternatives: 1) construction of new dikes and sea walls, and modification of existing dikes to contain the lake within its current boundaries, and 2) acquisition of lands inundated by raising the lake without structural construction or modification to contain the lake within its current boundaries. Option 1 is estimated to cost $125 million and option 2 is estimated at $129 million; the cost of either option is approximately $800 an acre-foot. A feasibility study would consider environmental impacts and costs and benefits of raising the lake. The study is expected to begin on a limited basis during Fiscal Year 2001, using existing funding from the Water Resources Initiative.

Reclamation also has completed a cursory review of existing information to determine if it is feasible to increase the storage capacity by raising the Gerber Dam. Feasibility of this project is considered likely, and collection of engineering data has begun. A plan of study is in preparation during Fiscal Year 2001, using existing funding from the Water Resources Initiative.

2. Developing Groundwater Supplies: In Fiscal Year 1999, Reclamation entered into a cooperative agreement with the Oregon Water Resources Department to study the potential of obtaining supplemental groundwater supplies in the Klamath and Lost River Basins in Oregon. Preliminary results indicate good potential for high production wells in the aquifer underlying lands irrigated by Shasta View Irrigation District. These wells are anticipated to have a low impact on other wells in the area. In the 2001 irrigation season, an existing well will be pump-tested. If long term pumping appears feasible, a plan of study will be prepared regarding the potential to drill additional test and production wells. This ongoing effort helped to facilitate the emergency relief efforts described above.

Reclamation also entered into a cooperative agreement in Fiscal Year 1999 with the CDWR to examine groundwater in the California portion of the Klamath and Lost River Basins. Since the Fall 1999, CDWR has performed semiannual water level measurements on 35 wells. Data will be collected over a three year period to assess the potential for groundwater augmentation.

In addition, as mentioned above, Reclamation provided funding for a cooperative study by the Oregon Department of Geology and Mineral Industries and the U. S. Geological Survey (USGS) to determine the geologic potential for additional groundwater availability in the Wood, Sprague and Williamson River valleys. Information gained from that study could be used to initiate a full feasibility study.

3. Innovative Solutions: Reclamation recently initiated a one-year pilot Klamath Basin Irrigation Demand Reduction Program to determine irrigators" interest in receiving a payment in lieu of applying surface water to their irrigated lands. This pilot program may aid in development of a long-term demand reduction program. Reclamation received approximately 550 proposals from irrigators willing to forego surface water on their irrigated lands in exchange for a combined total exceeding $20 million. Reclamation's Fiscal Year 2001 budget for implementation of this program is approximately $4 million.

Public Law 106–498 also directed the Secretary to complete ongoing hydrologic surveys in the Klamath Basin conducted by the USGS, mentioned earlier. The study has four phases and is scheduled to be completed in Fiscal Year 2005. The Act also authorized the Secretary to compile information on native fish species in the Upper Klamath River Basin, upstream of Upper Klamath Lake. A compilation of existing information is currently underway, and will be used to determine the necessity of further studies.

We will do our utmost to see that these studies are given very high priority. We fully appreciate the necessity of these and other projects to work toward a sustainable future within the basin—both for those who live and work there and for the wildlife we are pledged to conserve.

With regard to Project Operations for coming years, when the Bureau develops future plans to meet its multiple obligations and other biological assessments are developed in consultation with FWS on such plans, FWS will fully review the existing scientific data and to seek appropriate public comment and peer review.

This concludes my prepared testimony. I am pleased to answer any questions you may have.

Mr. POMBO. Well, this is where I have a real problem—one of the places I have a real problem with the service is because many times I believe they make a political decision, and that's not their

job. Their job is to base their decision on science and not on politics. And if it's a political decision, it's at that time that they should boot it over to Congress, because that's our job, and we have to stand for election. And it shouldn't be—the bureaucracy in general should not be making political decisions. And when you are deciding between competing science, if it never goes out to peer review, if you never have an outside body look at that science, you are making political decisions.

Ms. WOOLDRIDGE. I don't disagree with that.

Mr. POMBO. And I'd like to remind our audience that the decorum of the House requires that you not respond positively or negatively to any of the testimony or the questions that are asked.

As we look at reforming the Endangered Species Act and changing it and trying to make it work better, one of the things that the administration could be extremely helpful on is making suggestions on the science side. What do we need in the Act so that when you come to a decision, we can count on that? I know science is never finished. Things are always being studied. There's always new evidence that comes out. But I don't have confidence in the process as it exists right now, and it would be extremely helpful for any suggestions that the administration would have in terms of, how do we set up a peer review system that I believe we can count on and trust? So I would greatly appreciate that.

At this time, I turn to my colleague, Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. I want to followup on a couple of the comments you made, Sue Ellen. And I want to go back to the Oregon State University analysis of the pre-decision or draft professional scientific review copy, which you read from and cited in your testimony, and I appreciate that because it is a damning indictment of the original work. And the thing that troubles me is this document was put out 6 March of 2001—the OSU review. The decision to turn the water off for farmers came out 6 April, 2001, a month later.

And I know, in making contact with OSU, they say that there were changes made to the biological opinion after their review. But can you explain to me how those changes were made in that short a period of time, when what is listed here, and I'll quote again. "The document is excessively long, the problems are not window-dressing rather than obscure the data and make it very difficult to find validity in the claims. The document has the potential to have a severe negative impact on the Services' public credibility." This is 6 March—the OSU report—and I'm just curious. How do you get from there to 6 April and make the number of changes that had to have been made to satisfy OSU.

Ms. WOOLDRIDGE. I can't answer that directly and I don't want to make a flippant remark. I do have a list of the changes that they made in response to that. I am not aware of whether they were in contact with those professors independently or whether they had some advance notice of what the critique was going to be.

Mr. WALDEN. Well, let me take it another step then, because this is one of the issues I keep hearing about is the need for peer reviewed science. Was there a requirement in the law that the draft opinion be peer reviewed?

Ms. WOOLDRIDGE. No.

Mr. WALDEN. So had OSU not been asked to peer review it, the possibility exists that the original document that they found extraordinary flaws in could have been the basis upon which your decision was made.

Ms. WOOLDRIDGE. Yes. I will say—.

Mr. WALDEN. But what you—.

Ms. WOOLDRIDGE. —that the Fish and Wildlife Service sent it to the American Fisheries Association for them to send it off for these comments.

Mr. WALDEN. Right, and I understand that in this case, but my point is to the bigger issue about why or why not we need to amend the Endangered Species Act, because the potential exists, had the Fish and Wildlife Service not done this, because they're not required by law to send it off—they did it of their own volition—that we could be building the foundation for decisions the magnitude of that in the Klamath Basin based upon non-peer reviewed data.

Ms. WOOLDRIDGE. That's correct.

Mr. WALDEN. And in this case, it has been peer reviewed. And in this case, frankly—and I spoke, or my staff did, with OSU and the people who did the review yesterday, and they said, Yes, these things were cleared up. But I want to read from an e-mail from Professor Douglas Markel to somebody here in reference to this. And he says that, among other things, "No doubt there's uncertainty surrounding a whole bunch of issues in the biological opinion, but the final product is at least a well reasoned document." Then he goes on to write, "It errs on the side of the fish, which may be the position the authors feel is required of them. Personally, I'm somewhat more optimistic about the future of the suckers and would have thought that a different decision could have been reached." That was Thursday, the 14th of June. What do we do when we have scientists that differ in an issue that is as critical as this? What do I tell these people? What do we do? How do we change the law so we don't face this.

Ms. WOOLDRIDGE. I know the question is not rhetorical. I do think that is the benefit of having peer review. And should you, as you mentioned, wish to go that direction and try to explore those, I know the administration would be happy to provide our experience and what we can to help with that.

Mr. WALDEN. Well, and as I understand it—at least one draft or comments I've heard you make, the administration supports peer review.

Ms. WOOLDRIDGE. Yes, it does.

Mr. WALDEN. An outside review.

Ms. WOOLDRIDGE. Yes, it does.

Mr. WALDEN. Let me ask you another question involving the Hardy flow report. Somebody gave me this today, which continues to raise the questions. Hardy flow report flawed. Quote, "We used some incorrect data." And it's a quote from a publication of a subsequent interview, with questions specifically about the Hardy flow report. Loveland stated, quote, "There were problems. We used some incorrect data and that's being looked at now." When asked if it changes the report, Loveland responded, "Yes, it very well could We have to turn it over to the Justice Department to coordi-

nate the efforts of Hardy on the river flow/Coho issue." Is that something you're familiar with in terms of questions—.

Ms. WOOLDRIDGE. I'm not familiar with that e-mail. I do think I have some understanding that there was some changes that were made in some modeling that the Bureau of Reclamation was using, and that they've been working with Professor Hardy to fix those, and that that will inform his determinations as he's going forward. The Hardy II process has not finished.

Mr. WALDEN. Let me ask you another question, because my time is running out. A couple of months ago I wrote to the Secretary regarding the legislation that Senators Smith and Wyden and I got passed last year, calling on the Bureau of Reclamation to do a complete analysis of this Basin to see how we can improve water storage, water quality, water quantity. The initial Bureau of Reclamation response was that it might be several years before they could complete that or even start that study. Can you report back to me now whether or not we can speed that up? We don't have several years to wait.

Ms. WOOLDRIDGE. I do understand that. In that legislation, you asked that we conduct a number of feasibility studies, and I can—and I actually cut it out of my remarks because I was going so slowly—that we have begun a feasibility study on increasing the Klamath Project storage capacity. That is also funded in the next years' budget, in the Secretary's budget. And we will commit to you that we are going to make sure that we are making these high priority as we go through. They are subject to budget constraints and not any lack of interest in trying to bring these to a conclusion as soon as we can.

Mr. WALDEN. But you will do everything possible to—.

Ms. WOOLDRIDGE. Yes, sir.

Mr. WALDEN. And we will work with you, if you need congressional assistance on that.

Ms. WOOLDRIDGE. Thank you very much.

Mr. WALDEN. Thank you. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Gibbons.

Mr. GIBBONS. Thanks you very much, Mr. Chairman. Ms. Wooldridge, we want to welcome you here. We know that you've been in this job something less than 6 months. We're not here to blame you, because we know that you've inherited just one hell of a problem. We're here with the hope that you can help us on all of this, and certainly that's the direction that these questions are being addressed.

Ms. WOOLDRIDGE. Thank you.

Mr. GIBBONS. In my preparation for this hearing today, I looked at the overall view of the Klamath Basin and realized that it has approximately 5,000 square miles to it. There are hundreds of public and private activities throughout the Basin that, in effect, have some sort of impact on this species. I want to ask just one basic question. Why is the Endangered Species Act only being applied to the Klamath Project.

Ms. WOOLDRIDGE. That is a very good question. The Federal project has certain deliveries, at least as described by the project in the biological assessment. The other users of water within the basin are unadjudicated, and that is within the province of the

State of Oregon and in the State of California. And we have been—because the Federal project has these certainties, you can determine jeopardy looking just at that. And, of course, the problem is that that focuses the full burden of the Endangered Species Act on a particular group of people, and that is not right. But from the perspective of somebody who's representing the Department of the Interior, it's a box that's very hard to get out of, because we can't tell the outside of Project uses or users that they are violating the ESA when we don't know what their right is. And so we are hopeful that this long-term solution is going to include trying to look outside the project as well as just at the project, because you can't have a Basin-wide solution that looks solely at these particular people. But it is a conundrum and a problem.

Mr. GIBBONS. Well, I do know that there are other Federal projects, especially in the Upper Klamath region of Klamath Lake, that are also not subject to this restriction, and they are Federal projects. Let me ask just one follow-up question very briefly here in an effort to get through this. What are the most recent timelines for beginning and completing water augmentation studies that were authorized in legislation that was sponsored by Congressman Walden and the two Oregon Senators from the Upper Klamath Basin.

Ms. WOOLDRIDGE. My understanding is that we have begun those studies already, that they are underway. And they originally were on a time frame based on what we assumed were going to be the kinds of appropriations that we might be able to bring to bear on those projects. As I mentioned briefly, we are going to make sure that these are very high priority, they are funded for next year, so that we know that we've got money to continue to get toward those in terms of being included, and we will do what we can to make sure that that happens.

Mr. GIBBONS. Mr. Chairman, in order to move this hearing along, I'll yield back the balance of my time. But I did want to say that it's a pleasure to have an administration that's willing to work with us and not against us.

Ms. WOOLDRIDGE. Thank you.

Mr. POMBO. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. It's good to see you and for you to be here today. And like Congressman Gibbons, I want you to know that you are among friends and we look forward to working with you to try to address this issue and others that face us in the West. One thing I'd like to know is—and I guess maybe I'm a little backwards on this, but it's my belief in that I don't believe there's anything called Federal water. I think it's state water. And I'd like to know if the taking of this water in this project is consistent with Oregon water law, and the use of this water is consistent with Oregon water law.

Ms. WOOLDRIDGE. My belief is the answer is yes.

Mr. SIMPSON. Is there a consistent Federal policy on when and how water can be essentially taken from a project like this? Apparently this was taken without—you know, they just said, We're going to turn off your water. In other areas in Idaho where they've tried to restore salmon with flow augmentation, it's been through a willing seller, willing buyer, for whatever we had—427,000 acre

feet taken for the last several year, to willing sellers. Is there any consistent policy, and why we would have a willing seller/willing buyer in one area, and in another area just say, We're going to turn it off?

Ms. WOOLDRIDGE. I am venturing probably beyond my level of competence. My basic understanding is that these issues are governed by state law. This is a federalism issue, and water has always been a matter of the state law that governs it. And I assume that the consistent policy would be that we ensure that those state laws are respected and carried out and are not trumped by some Federal grab of water—Federal water law or something.

Mr. SIMPSON. Fine. I'm glad to hear you say that, and I look forward to working with you to try to make sure that that is the case, because I can tell you that with the variety of Federal agencies, that there are attempted Federal takes of State water law, to override them, whether it's bypass flows in Colorado or whether it's the recent, I guess you could say, order from NMFS for Idaho power, to give up 350,000 acre feet of their water that's stored behind Brownly Dam—Brownly Reservoir, without any other consideration. I see a clear pattern that the Federal Government is trying to take control of State water, and I look forward to working with you to try to make sure that that doesn't happen.

One other area I'd like to ask you just a little bit about, and that is the area in the ESA of listing a delisted species. How do you list one, and then how do you delist one? And as you know, listing is not that difficult anymore. Delisting is almost impossible. Do we need to make reforms in the area of how we list an endangered species? And from what I understand out here, these sucker fish—it would be nice if they were named something differently—but they used to grab them with hooks and pull them out of the river, so many, and then apparently they were listed with only so many estimated population, and then they've had fish kills that were more than what they thought were actually in the lake, so it kind of makes me wonder about the ease with which we list. And if there's that many, why is it so difficult to delist them?

Ms. WOOLDRIDGE. Boy, that's one of those where you say that's a mystery wrapped in a conundrum. I have asked the same questions. I won't pretend to be an expert on this either. My understanding, at least with respect to the suckers, is that the Fish and Wildlife Service is concerned because there isn't recruitment or new fish being born into particular year classes that you would see in a natural system, and that rather than seeing a spike in a population for every several years, that's not happening. And so while the absolute number is an estimate, but larger than when it was listed, the concern is that it's not—that it is still susceptible because it's not recruiting itself, you know, in those years.

Mr. SIMPSON. Well, I appreciate the testimony. I look forward to working with the administration to address some of these concerns that we have with the Endangered Species Act—not to repeal it, not to have less concern for those species that need protection, but to actually bring some common sense back into the Endangered Species Act with the realization that humans beings are part of our environment also.

Ms. WOOLDRIDGE. Thank you.

Mr. SIMPSON. Thank you.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. And again, I want to join in welcoming you, Ms. Wooldridge. I don't envy the position that you're in, coming in in a new administration. You're inheriting what is probably one of the greatest tragedies I've ever seen take place. But if I could ask, it would appear that the actual historical evidence indicates that the die-offs of the sucker fish actually occurred in years in which water levels in the Upper Klamath Lake where high, and not low, and that is supported by a study done by the Klamath Water Users Association. It seems to me that what the U.S. Fish and Wildlife Service is saying here would actually be harmful for these fish.

And getting back to—you've talked about it a little bit and certainly the questions that have been directed to you come down to peer review. We have what would appear to be historical evidence that, if anything, these sucker fish are healthier when the water levels are lower than they are when they're high. We have some who we would feel are on a political, extreme environmental jihad here. I hate to put it in those terms, but I don't know any other way you could look at it. It would appear that they are looking for—in the scientists, or at least the biologists who have looked at this have almost picked out what they could to ensure that there is not a mesh with our environment and with the economy of our area. And again, that might seem like harsh terms, but I see that, not only in the Northern California part of the Klamath Basin that I represent, but I see it in an area in the southern part of my district where we're trying for put a highway in where there's been, just yesterday, the 148th death, fatality on a road that because of a meadowfoam and a garter snake, they can't improve the highway, or where we had a levee that broke where 6 years before the Corp of Engineers said it would break, but they found a beetle there that supposedly was endangered.

Again, it would seem that we are not having peer review. We've heard this come up about peer review, and I'd like to have you comment on this and whether or not—you mentioned it's not in the law. Do you feel it should be in the law, and if it's not in the law, can we still implement it? And I'm even going to go one step further than that. I'm concerned of where we have those of like minds that seem to be part of this extreme environmental movement who, basically, they want to run people off the land, whether it be here as farmers, or whether it be out in the Chico area that I represent, where again the 148th fatality from about Marysville to Chico have taken place in the last 10 years.

But again, this peer review is very important. We put men on the Moon more than 3 decades ago. I'm convinced that we can both protect our environment, and as my colleague, Mr. Simpson, said, I don't think there's any of us who want to see us do away with the Endangered Species Act, but certainly we want to see it implemented in a proper way, in a balanced way, in a way where we utilize the best science, not just a very biased interpretation of science that we seem to go getting. So my question is, getting around—it's not in the law. Can we still utilize it because it makes sense, because it's the right thing to do, and even to go one step forward,

extend that just a step, and that is, can we ensure that we have independent peer review of scientists outside of this closed block of Fish and Wildlife and NMFS and some of those others who seem to have this bias in the wrong way? Is there something that we can do in the administration here?

Ms. WOOLDRIDGE. Well, let me answer that this way. I think that peer review does two things. It helps us to know, as decision makers, that our judgments are reasonable. And often in these cases, you don't know absolutely where something is true or false, but if you know that what you've done is reasonable, that is helpful, because it adds to the credibility of what is being done. So it helps because it helps you know that your judgments are correct, and it helps so that those who are affected by it can have confidence that it wasn't a product of a political decision.

As you did say, the ESA does not necessarily require this, or does not require this. And my brief here today was not to talk about what the administration thought should be done to modify or reinterpret or make modifications to the Endangered Species Act. Our focus in the 5 months that we've been there has been to use what administrative or administrative kinds of things that we could do to help make sure that these decisions were implemented properly, in accordance with the law. So the answer is yes, and I think we can, as in this case, as we have said, as we go forward with this, that we will subject this to peer review and we will use independent peer review. That is not to say that within that, that we are going to—they've got to talk to somebody, and they will need to know from our biologists what is the data and how it was gathered, and those sorts of things, but in terms of the actual review, yes.

Mr. HERGER. Thank you. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman. I want to add my voice to those that welcome you and recognize that you are inheriting things that you're trying to deal with with the best that you have. I would just kind of—being last to ask questions, a lot of those questions have already been asked by my colleagues, but I would like to wrap it up in this sense, because there is a common thread that all of us I think were saying and all of us have been concerned about in dealing with the Endangered Species Act. And, obviously, it talks about the good science and peer review. And it all revolves around, to me, and I think especially for people that are impacted—people here in the Klamath Basin, certainly people in the Medtile Valley in my area—and that is, they want a solution. They don't want an issue. And you can get to a solution if you can get people together and somehow arrive at a common ground. But what is missing in all of this—and I can see it from my constituents, and I certainly sense it listening to what has been going on here—is a lack of interaction, and you said you were going to correct that, in your testimony. But it deals around science and good science and so forth.

I am reminded of former Governor Dixie Lee Ray of Washington. I was in the legislature when she was Governor. She has since passed on. She wrote two books, "Trashing the Planet" and "Environmental Over-kill." And in both of those books, while Governor

Ray was—at least, the extreme environmentalists didn't like her very much because she was exposing, I think, what they were all about. She never said that an issue was wrong. She just said, Prove it. That's all she said was "prove it." And her basis, coming from a scientific background, was to have good science that is peer reviewed, and I think that's all people are asking. So I guess I would ask you go a step further, to take back to the Department of the Interior—and I would certainly hope that the Committee would agree with me, but if not, at least for any own satisfaction—I would like to know what specific steps, since the Department of Interior is in favor of peer review—what specific steps will you be taking in the short-term to try to answer some of the questions that were brought up about Dr. Hardy's report, for example? I mean, if there are holes in this thing, how are we going to correct that? What steps are going to be done and how the Department of the Interior is going to handle that here with the Klamath Basin, but with other issues that are no doubt going to come up in your four or 8 years that you will be in office. Could I ask you to get something for the Committee—and if not for the Committee, certainly for me, and I will share with the Committee—on what you're going to do?

Ms. WOOLDRIDGE. I would be happy to do that in writing. I do think it is going to call for us to make some judgments in terms—we do thousands of biological opinions, for instance, a year. And it may well be that we need to make a kind of a standard or judgment with regards to which of those, and how often, and that kind of thing—because peer review, as you can imagine, is very costly—but where you have decisions which are equally costly to people, I think it is only reasonable that we then maybe make that kind of a cut. Where we have fairly dreadful impacts on people, that we make sure that our decisions are as correct as we can make them.

Mr. HASTINGS. Well, I would hope that—because, again, the common thread that we are all asking about is what is the basis? What is the basis, based on science, peer review, whatever the case may be? Prove it, in other words, if you're going to make a decision that's going to affect so many people. And I would just ask the Department, this administration—and I'd be willing to work with them—to put this in place as soon as possible so that it's easier for us then to go back and tell our constituents that it was done in a manner that is responsible, but probably more important, a manner that is seeking to find a solution rather than to maintain an issue, as so many people outside our region want to have. Thank you for your testimony.

Ms. WOOLDRIDGE. Very well.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Just very quickly, and if I could, just cutting to the chase. What will it take to reopen the consultation on the existing biological opinion.

Ms. WOOLDRIDGE. I believe that our view of it is that the consultation is ongoing.

Mr. HERGER. So it's ongoing. Would you like to go further? Is it possible then—again, it would appear that there's more information here. It would appear that we have not had an adequate, if at all, independent peer review. We're looking at again the bank-

ruptcy of communities. Is there any commitment, or is it possible to get an indication of the Department of Interior's—.

Ms. WOOLDRIDGE. Well, Congressman, let me answer it this way. I'm not quite sure I'm following exactly what you're asking, but let me— We're moving into the next years' operation, and these folks back here in the community have to have a certain amount of certainty, to the extent possible, of about what is going to be happening with them. And we have two, 1-year biological opinions. We need to have the long-term opinion. We need to do an EIS-NEPA on the operations of the project. Those things, to me, seem pretty clear that we need to have those. And as we continue to consult with the services on the operation of the project, what we said today is that we will make sure that there is an independent review of the science which forms the basis of these opinions.

Mr. HERGER. Thank you.

Mr. HASTINGS. I would go back, but you took all my time.

Mr. POMBO. Well, before I excuse you, Ms. Wooldridge, I'd just say that science is probably, in my mind, one of the most important issues that we have to face in terms of reforming the act, the Endangered Species Act. But one of the other things that really gets to me is the Act is not enforced equally in all parts of the country. There is a difference between the way that it is implemented in the West versus the way it is implemented in the East—there's a big difference. And just to maybe balance things out a little bit, it's come to my attention—I've been told that the Potomac River near Washington D.C. is home of an endangered sturgeon, and that the drinking water process—the purification process that Washington D.C. goes through—as part of that process, they dump alum into the Potomac. And from what the biologist has told me is that that kills the eggs of the sturgeon. So maybe if we shut off the drinking water for Washington D.C., it would gain the kind of attention to this problem that we need, that we may be able to make some changes. So I would suggest to you that as part of your ongoing review, that maybe we can look at that as well.

But I want to thank you very much for your testimony. I know that there are several questions that were asked of you that you will be answering for the record. If you could get those to us on a timely basis so that we can include them, I would appreciate it.

Ms. WOOLDRIDGE. I'd be happy to do that. Thank you very much.

Mr. POMBO. Thank you. I'd like to call up our second panel of witnesses. We have the Honorable Steven West, John Crawford, Sharron Molder, the Honorable Dell Raybould, and Dave Vogel. If you would join us at the witness stand, please—the witness table.

STATEMENTS OF THE HONORABLE M. STEVEN WEST, COMMISSIONER OF KLAMATH COUNTY, OREGON; JOHN CRAWFORD, KLAMATH BASIN FARMER; SHARRON MOLDER, TULELAKE HIGH SCHOOL PRINCIPAL, TULELAKE, CALIFORNIA; THE HONORABLE DELL RAYBOULD, IDAHO STATE REPRESENTATIVE; DAVE VOGEL, PRESIDENT, NATURAL RESOURCE SCIENTISTS, INC.

Mr. POMBO. Thank you very much for joining us here today. I'm going to begin with Mr. West, who is the commissioner of Klamath County, Oregon. Mr. West, you may begin.

STATEMENT OF M. STEVEN WEST

Mr. WEST. Thank you, Congressman. As the current Chairman of the Board of Commissioners, it's also my privilege today to represent my fellow Commissioners, John Elliot and Al Switzer.

Water is the life blood of Klamath County. In 1905 President Theodore Roosevelt recognized the importance of irrigated agriculture by authorizing the Klamath Irritation Project. The United States Government invited people to build ranches and farms on the irrigated land, and much of that land was divided into homesteads and awarded to returning veterans of the First and Second World Wars.

The United States Department of Agriculture reports that 1,064 families in Klamath County are farmers, and these farmers produce over a $120 million a year in farm gate sales. Using a conservative multiplier, that's a $264 million industry in Klamath County. Agriculture contributes 40 percent of the region's economy, makes up over 10 percent of the region's tax base, and employs over 7 percent of the region's workforce.

The people of the Upper Basin are facing an economic disaster of epic proportions. It is both a natural and a regulatory disaster. The natural disaster is a record drought. The basin has received a D-2 Severe Drought designation. Secretary of Agriculture Ann Veneman has declared a USDA Drought Disaster Declaration, and President Bush has been requested to issue a Presidential Disaster.

The regulatory disaster is the result of management decisions made by the United States Bureau of Reclamation, based on biological opinions from the United States Fish and Wildlife Service and National Marine Fisheries. These biological opinions started as memos from the agencies on January 19th, the last day of the Clinton administration. The biological opinions were implemented by the bureau on the 6th of April.

During previous drought years, all interests in the basin worked together to minimize the loss of the impact. The Bureau was allowed flexibility in the operation of the Project to minimize negative impact to agriculture and endangered species. This year that common sense flexibility is gone. These biological opinions have received little or no review, and it appears that what little peer review that has been done has largely been ignored. In light of the pervasive flaws in the biological opinion, it's ludicrous to base such a far-reaching decision on what is at least very questionable work. Why should Federal agencies, as stewards of public resources, be allowed to base decisions of this magnitude on such questionable information?

The decision to not deliver water to the Klamath Irrigation Project is having a huge negative economic consequence. The dollars from agriculture are spent and re-spent here in the basin. Hundreds of families are facing bankruptcy and the loss of land that's been in their families for generations. Every business, family, and individual in Klamath County is going to feel the impact. There will also be significant loss of revenue for local government services at a time when the demand for those services has never been higher.

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 at only $28 per acre without irrigation water. The tax loss has been estimated at $640,000. 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 the others." The people of the Basin understand that challenge and have been committed to producing local, balanced, common sense solutions. Their cooperative efforts have restored riparian zones, created over 20,000 acres of wetlands, enhanced existing wetlands, and installed fish streams.

Independent studies show that these projects are all working or contributing significantly to improving water quality in the Upper Klamath Lake. But all the cooperative and collaborative efforts were not given any credit in the biological opinions. Because of the heavy-handed management practices of these agencies, future local efforts are threatened. The agencies have created a huge breach of trust. 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 Federal Government has not been able to keep its promise for water in the Klamath River system. Now they are making the irrigators of the Klamath Irrigation Project and the people of the Upper Klamath Basin pay the cost for the government's broken promises.

So what are the solutions? There are equally important immediate and long-term actions that need to be taken. The immediate actions: Pass the $20 million emergency Federal package that's in President Bush's supplemental budget and get it to the affected people without a lot of agency red tape. Next, find additional Federal funding that is proportional to the Federal Government's responsibility for the current crisis. Next, open the biological opinions to peer review which allows for full participation by local stakeholders. Require and empower Federal agency managers to participate in the development and implementation of local consensus-based cooperative solutions that are based on common sense. And the Federal Government must acknowledge its responsibility and obligations made to the Klamath Irrigation Project.

The long-term solutions are, first, develop a multi-year Federal economic safety net for agriculture, similar in concept to Senate Bill 1608, that would give time for long-term solutions to be implemented, including amending the Endangered Species Act to consider economic impact. Next, guaranty an annual amount of water to agriculture in early spring that will allow crop decisions to be made. Next, the Federal Government must provide financial resources for restoration that are proportionate to the size of the problem. Next, develop the best opportunities for additional water storage in the Klamath River system with a guaranteed amount of water dedicated to irrigated agriculture. Stop all out of Basin transfers and develop other sources of water to replace water to those who have received, historically, these out of Basin transfers. And finally, the Federal Government must level the international economic playing field for United States agriculture.

It's time for the Federal Government to become part of the solution, not just part of the problem. There's no room for partisanship

or political agendas when the stakes are this high. Again, thank you for allowing me to testify before you today, and I'd be happy to answer any questions.

Mr. POMBO. Thank you. Mr. Crawford.

[The prepared statement of Mr. West follows:]

Statement of M. Steven West, 2001 Chairman, Klamath County Board of Commissioners

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.
>
> 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. . .
>
> . . . 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.
>
> 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 econ-

omy. 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.

STATEMENT OF JOHN CRAWFORD

Mr. CRAWFORD. Thank you, Mr. Chairman and members of the Committee. My name is John Crawford. I'm a Klamath Project farmer. As part of my testimony today, I have the humbling re-

sponsibility of representing Klamath Project agriculture, including the veterans and the Hispanic members of our community. Klamath Project irrigators are often accused by environmental extremists of being highly subsidized and having not paid our portion of the construction costs of the Klamath Project. In fact we have repaid every penny of our obligation to the Klamath Project, and the following statement will provide insight as to past accomplishments of the agricultural community.

Through the half century since the Klamath Project was completed, the Federal Government has invested about $14.7 million in the construction of the Project. Federal tax collections alone, since 1940, have reached a cumulative total of about $95 million, or more than six times the project's cost.

Two hundred thousand acres of fertile land have been reclaimed from swamp and arid prairie. More than 1,600 farm families and scores of merchants and tradesmen derive an excellent livelihood from this reclamation project. About 44,000 acres of the 200,000 acres reclaimed were originally in the public domain. These public lands have been dedicated to the most worthy purpose of assisting our war veterans. I can think of no finer program. Since 1922, settlement opportunities have been provided to more than 600 veterans of World Wars I and II.

Although the accomplishments in the Klamath Project area in the past half century have been great, there is sill room for expansion, and even greater accomplishments are in store for this area in the future if the full development of the water and land resource potential is effectively achieved.

"I believe that you will find this a very interesting study and another example showing that expenditures for our reclamation program constitute one of the nation's wisest investments.".

Those are the words of Clair Engle, the chairman of this very committee, spoken on May 16th of 1957. That wise investment has provided over six billion dollars in farm products, based on the value of today's dollar.

Words cannot begin to describe the pain being experienced in our communities. Farm families have lost income. Long-term commodity supply contracts have been terminated. Debts will not be paid. Dreams are being shattered. The loss is not only economic. It is a loss of our identity. There is no separation between our work and the rest of our lives. We are farmers and ranchers.

Recently, I've seen Tom Hanks of "Saving Private Ryan" fame soliciting support for the World War II memorial in Washington D.C. As a life member of the Veterans of Foreign Wars, I fully support this effort, but believe there no better place to recognize the admiration and respect earned by our World War II veterans than here in the Klamath Basin. This can be accomplished if our government honors its commitment to the veterans who homesteaded the Tulelake area of the basin.

With the Chairman's permission, I would like to submit the written testimony of over 20 of these veterans who homesteaded in the Tulelake area.

Mr. POMBO. Without objection, it will be included in the record.

[The information referred to is located at the end of this hearing:]

Mr. CRAWFORD. The vast majority of the basin's Hispanic people are permanent residents of the area. These proud leaders and valued members of our community are inexorably linked to Basin agriculture. No water has equated to loss of jobs, and some of the men have already been forced to leave the area in search of work. Now that the school year has ended, this exodus will continue and escalate. It is tragic that we may lose our friends and neighbors that make up the Hispanic community.

How have we arrived at this deplorable and devastating outcome that destroys our communities and provides no recognizable benefit for any of the endangered species? This outcome is the product of a corrupted scientific process and a disproportionate focus on the Klamath Project.

Instead of having applicant status in both Section 7 consultations for suckers and Coho salmon as we held in the development of the 1992 opinion for suckers, we have been excluded from the salmon consultation and relegated to commenting on the sucker biological opinion after the fact. The Department of the Interior has ignored two different sucker restoration plans developed by the Klamath Water Users Association in their preparation of biological assessments and opinions. They have ignored credible peer review, including that of Oregon State, which has already been discussed. We would like to formally request that applicant status of Project irrigators be reinstated for both the section 7 consultations for suckers and for Coho.

Members of Congress and stakeholders continually ask the same questions, but honest answers never seem to materialize. If all of the fish kills in Upper Klamath Lake have occurred at high water levels, why is the average fish kill elevation the same as that prescribed as the minimum level in the biological opinion? If no fish kills have occurred at low levels, why is the concern so heavily weighted that they may occur in the future? If the only viable year class of suckers recruited in the last 10 years, 1991, occurred in a low water elevation of 4138, why is that not recognized? If the healthiest sucker population with the most year classes occurs in Clear Lake where virtually no emergent vegetation exists, why does the U.S. Fish and Wildlife Service insist that the relationship between emergent vegetation and lake levels in Upper Klamath Lake is so important?

If fish kills on the Klamath River, including Coho, occurred in August of '94, May and June of 2000, and May of 2001, when releases were being substantially augmented with water from Upper Klamath Lake and the temperature of that water was toxic to fish, why does the National Marine Fisheries Service insist that more water, regardless of its quality, is better? Since fish returns, particularly Coho, were excellent in 1995 and 1996, following the lowest flows since Link River Dam was constructed, why don't the agencies acknowledge that other factors may have more influence than flows in the main stem Klamath below Iron Gate Dam?

The demand that the Klamath Project must shoulder all of the responsibility for providing lake levels, river flows and any other needs that the agencies can dream up goes well beyond unfair and borders on the ridiculous. There are two other Federal irrigation projects, thousands of acres above Upper Klamath Lake, thousands

of acres irrigated from the Shasta and Scott rivers. The Federal Government does not have the courage or creativity to deal with this inequity. The Klamath Project has simply been chosen as an easy target.

The perception shared by the tribes and some environmental groups that all of the water stored for irrigation, plus all of the inflow for the year, is still not enough to protect resources, even with no deliveries to agriculture and the refuges, is completely counterproductive to attaining agriculture's cooperation for any endeavor. The resentment that this attitude has instilled in the community will result in long-term harm to agriculture's support for restoration projects and activities.

We have initiated or supported the creation of nearly 25,000 acres of wetlands that have changed from productive agricultural lands in private ownership to Federal or conservancy ownership. We have supported appropriations for the refuges and collaborated with the California Waterfowl Association and Ducks Unlimited to improve wetland habitats. Unlike others, we have never demanded all the water and never will. We support our fellow food producers in the commercial fishing industry and have focused our restoration efforts on improving water quality. We think that these improvements, which have been well documented, provide the most positive impact on the fisheries relied upon by the commercial fleet, and also improve conditions for endangered suckers and the trust resources of the downstream tribes as well.

It has been stated by Glen Spain of the Pacific Coast Federation of Fisherman's Association that market conditions in the Klamath Basin may make agriculture's future an effort in futility. Like the fishing industry, we have fought through tough times before and survived. We can prosper again, but only with an adequate supply of water. The unfortunate truth for both fishermen and farmers is that the cheapest meal I can think of today consists of a big baked potato and a fillet of pen-raised Chilean Coho available at Safeway in Klamath Falls for $1.89 a pound.

The devastated condition of this basin not only includes a $250 million loss of farm gate revenue and the risk to public safety related to wind and soil erosion that continues to occur, but the horrible degradation of 200,000 acres of habitat for hundreds of species living in the Klamath Project. How can we justify the elimination of this habitat in the name of single species management up in Upper Klamath Lake when that management will probably not benefit the endangered suckers?

If an adequate economic relief package is not forthcoming, the long-term harm and damage may be so severe that the people and resources of this community cannot survive. Existing disaster and drought relief programs provided by the U.S. Department of Agriculture cannot be modified or adapted to provide for these circumstances. Economic relief must be crafted to accommodate the tremendous need based on what has occurred in this basin.

The California community wants to thank Governor Gray Davis for taking quick, decisive action and providing immediate relief in the form of five million dollars for the drilling of wells to augment our non-existent allocation of water.

The primary concern that I have regarding this entire issue is that I cannot identify a single action taken by the Department of the Interior that will prevent us from being in this identical situation next year. I don't believe that any type of long-term solution has been addressed by the Federal agencies. Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Crawford follows:]

Statement of John Crawford, Klamath Project Farmer and Member of Tulelake Irrigation District Board of Directors

Mr. Chairman and members of the committee:

My name is John Crawford and I am a Klamath Project farmer. I have lived in the Klamath Basin my entire life. I am a member of the Tulelake Irrigation District Board of Directors, past president of the Klamath Water Users Association, member of the Board of Trustees of the Nature Conservancy of Oregon, a member of the Upper Klamath Basin Working Group and the Klamath Basin Ecosystem Foundation.

As part of my testimony today I have the humbling responsibility of representing Klamath Project agriculture including the veterans and the Hispanic members of our community. Klamath Project irrigators are often accused by environmental extremists of being highly subsidized and having not paid our portion of the construction costs of the Klamath Project. In fact we have repaid every penny of our obligation to the Klamath Project and the following statement will provide insight to other accomplishments of the agricultural community:"Through the half century since the Klamath Project was completed, the Federal Government has invested about $14.7 million in construction of the project. During that same period the project has produced crops having a gross value of more than $350 million. During the last 10 years alone, project lands have produced 67 million bushels of potatoes valued at $80 million, and 42 million bushels of barley valued at $62 million. Federal tax collections alone since 1940 have reached a cumulative total of about $95 million, or more than 6 times the project's cost.

Two hundred thousand acres of fertile land have been reclaimed from swamp and arid prairie. More than 1,600 farm families and scores of merchants and tradesmen derive an excellent livelihood from this reclamation project. About 44,000 acres of the 200,000 acres reclaimed were originally in the public domain. These public lands have been dedicated to the most worthy purpose of assisting our war veterans. I can think of no finer program. Since 1922 settlement opportunities have been provided to more than 600 veterans of World Wars I and II.

Although the accomplishments in the Klamath project area in the past half century have been great, there is still room for expansion, and even greater accomplishments are in store for this area in the future if full development of the water and land resource potential is effectively achieved.

I believe that you will find this a very interesting study and another example showing that expenditures for our reclamation program constitute one of the nation's wisest investments."

The above is an excerpt of the statement of Clair Engle, the Chairman, to the members of the House Interior and Insular Affairs Committee dated May 16, 1957.

That wise investment has provided over 6 billion dollars in farm products based on the value of today's dollar.

Words cannot begin to describe the pain being experienced in our communities. Farm families have lost income. Long-term commodity supply contracts have been terminated. Debts will not be paid. Dreams are being shattered. The loss is not only economic. It is a loss of our identity. There is no separation between our work and the rest of our lives. We are farmers and ranchers.

Recently, I have seen Tom Hanks of "Saving Private Ryan" fame soliciting support for the World War II memorial in Washington D.C. As a life member of the Veterans of Foreign Wars I fully support this effort, but believe there is no better place to recognize the admiration and respect earned by our World War II veterans than here in the Klamath Basin. This can be accomplished if our government honors its commitment to the veterans who homesteaded the Tulelake area of the Basin.

The vast majority of the Basin's Hispanic people are permanent residents of the area. These proud leaders and valued members of our community are inexorably linked to Basin agriculture. No water has equated to loss of jobs and some of the men have already been forced to leave the area in search of work. Now that the

school year has ended this exodus will continue and escalate. It is tragic that we may lose our friends and neighbors that make up the Hispanic community.

How have we arrived at this deplorable and devastating outcome that destroys our communities and provides no recognizable benefit for any of the endangered species? This outcome is the product of a corrupted scientific process and a disproportionate focus on the Klamath Project.

Instead of having applicant status in both the Section 7 consultations for suckers and Coho salmon as we held in the development of the 1992 opinion for suckers we have been excluded from the salmon consultation and relegated to commenting on the sucker biological opinion after the fact. The Department of Interior has ignored two different sucker restoration plans developed by the Klamath Water Users Association in their preparation of biological assessments and opinions. They have ignored credible peer review including Oregon State University's assessment of the sucker biological opinion that said the opinion was comprised of "illogical conclusions", "inconsistent and contradictory statements", "factual inaccuracies and rampant speculation". The review also stated that the document had the potential to severely damage the public credibility of U.S. Fish and Wildlife Service (USF&WS).

Members of Congress and stakeholders continually ask the same questions, but honest answers never seem to materialize. If all the fish kills in Upper Klamath Lake have occurred at high water levels why is the average fish kill elevation the same as that prescribed as the minimum level in the biological opinion. If no fish kills have occurred at low levels why is the concern so heavily weighted that they may occur in the future? If the only viable year class of suckers recruited in the last ten years (1991) occurred in a low water year elevation 4138 why is that not recognized? If the healthiest sucker population with the most year classes occurs in Clear Lake where virtually no emergent vegetation exists why does the USF&WS insist that the relationship between emergent vegetation and lake levels in Upper Klamath Lake is so important? If fish kills on the Klamath River (including Coho) occurred in August of 1994, May and June of 2000 and May of 2001 when releases were being substantially augmented with water from Upper Klamath Lake and the temperature of that water was toxic to fish why does the National Marine Fisheries Service insist that more water regardless of its quality is better? Since fish returns (particularly Coho) were excellent in 1995 and 1996 following the lowest flows since Link River Dam was constructed why won't the agencies acknowledge that other factors may have more influence than flows in the main stem Klamath below Iron Gate Dam?

The demand that the Klamath Project must shoulder all of the responsibility for providing lake levels, river flows and any other needs the agencies can dream up goes well beyond unfair and borders on the ridiculous. There are two other federal irrigation projects, thousands of acres above Upper Klamath Lake, thousands of acres irrigated from the Shasta and Scott rivers. The federal government does not have the courage or creativity to deal with this iniquity. It has simply been chosen as easy target.

The perception shared by the tribes and some environmental groups that all of the water stored for irrigation plus all of the inflow for the year is still not enough to protect resources even with no deliveries to agriculture and the refuges is completely counter productive to attaining agriculture's cooperation for any endeavor. The resentment that this attitude has instilled in the community will result in long-term harm to agriculture's support for restoration projects and activities. We have initiated or supported the creation of nearly 25,000 acres of wetlands that have changed from productive agricultural lands in private ownership to federal or conservancy ownership. We have supported appropriations for the refuges and collaborated with the California Waterfowl Association and Ducks Unlimited to improve wetland habitats. Unlike others we have never demanded all the water and never will. We support our fellow food producers in the commercial fishing industry and have focused our restoration efforts on improving water quality. We think that these improvements, which have been well documented, provide the most positive impact on the fisheries relied upon by the commercial fleet and also improve conditions for endangered suckers and the trust resources of the downstream tribes as well. It has been stated by Glen Spain of the Pacific Coast Federation of Fishermen's Associations, that market conditions in the Klamath Basin may make agriculture's future an effort in futility. Like the fishing industry we have fought through tough times before and survived. We can prosper again, but only with an adequate supply of water. The unfortunate truth for both fisherman and farmers is that the cheapest meal I can think of today consists of a big baked potato and a fillet of pen raised Chilean "Coho" available at Safeway in Klamath Falls for $1.89 per pound.

The devastated condition of this Basin not only includes a $250 million loss of farm gate revenue and the risk of public safety related to wind and soil erosion that

continues to occur, but the horrible degradation of 200,000 acres of habitat for hundreds of species living in the Klamath Project. How can we justify the elimination of this habitat in the name of single species management in Upper Klamath Lake when that management will probably not benefit the endangered suckers.

If an adequate economic relief package is not forthcoming the long-term harm and damage may be so severe that the people of this community cannot survive. Existing disaster and drought relief programs provided by the U.S. Department of Agriculture can probably not be modified or adapted to provide for these circumstances. Economic relief must be crafted to accommodate the tremendous need based on what has occurred in this Basin.

The California community wants to thank Governor Gray Davis for taking quick, decisive action and providing immediate relief in the form of 5 million dollars for the drilling of wells to augment our non-existent allocation of water.

The primary concern that I have regarding this entire issue is that I cannot identify a single action taken by the Department of Interior that will prevent us from being in this identical situation next year. I don't believe that any type of long-term solution has been addressed by the federal agencies.

Mr. POMBO. Ms. Molder.

STATEMENT OF SHARRON MOLDER

Ms. MOLDER. Mr. Chairman, members of the Committee, thank you for the opportunity to testify today. My name is Sharron Molder. I'm the Principal of Tulelake High School, and I depend on farming for my daily existence just as you do.

I want to thank you on behalf of all the students, parents, teachers, and staff members of the Tulelake Basin School District and our neighboring schools located within the Klamath Basin for coming to Klamath Falls to learn more about the crisis we are now facing. In fact, with no objection, I would like to invite all current and former students from Tulelake, Merrill and Malin to please stand up so you can see the people I represent here today. We are not a small group.

I have been asked to give my opinion on what caused the current water crisis. If you come to Tulelake High School and walk through the foyer where a tradition of graduating classes have been displayed since 1934, you will understand. The veterans of World War I and World War II who came to farm in the Klamath Project believed that a written promise for water forever made by the government that sent them to war, and signed by Franklin Delano Roosevelt, Herbert Hoover or Ulysses S. Grant, was meant to last longer than 50 years. These are the people who created the backbone of this community. Out of 135 families, today in the Tulelake School District, 18 children at the high school are third generation, 18 are fourth generation and two are from fifth generation farming families.

What caused this crisis? Greed and hidden agendas by environmental zealots who are not much different than the carpetbaggers who rampaged the South after the Civil War devastated our communities. Indifference to social and economic conditions has begun to destroy not only our rural communities, but also 430 native species of wildlife as well.

We don't just raise potatoes, horseradish and onions. We grow kids. The valedictorian for the class of 2001, Brianna Byrne, is a member of a local family who has farmed here for a century. At a hearing before the California State Assembly, Water, Parks and Wildlife Committee in May, Brianna stated, "How can I and other

members of my chapter of Future Farmers feel any sense of security in pursuing agriculture as a career when the government of the strongest nation on earth takes away the core of our history and community based on unproven and speculative science?"

The Tulelake community has tried to repair the situation by communicating the news of this devastating crisis through the media and a massive letter writing campaign to all government representatives. I'd like to share excerpts of some journal writings by students at Tulelake High School in hopes that you will have some insight into the people that are affected by this callous decision accepted as necessary by some branches of our government. Dozens of testimonies make a clear statement that our young people are losing there faith in government, and I believe that should concern you, Mr. Chairman and Committee members.

Our students wrote, "The citizens of the area are looked upon as pawns of their own government—the American government. The government totally turned their backs on the people of this Basin. They took away their livelihood. There once was a strong belief in this community for the American government, but that has now been destroyed."

Mr. Chairman, I ask that you please include this information in the official record.

Mr. POMBO. Without objection.

[The information referred to has been retained in the Committee's official files:]

Ms. MOLDER. The Tulelake School District provides education for children from preschool through 12th grade. As of March, 2001, the student enrollment in the district was 574; 55 percent of our student population is Hispanic, approximately 80 percent of these students qualify under Federal guidelines as economically disadvantaged and therefore receive free or reduced lunches and other benefits. Based on a poll preparing the district's operating plan and budget for 2001/2002, we could lose approximately 200 students, 30 to 40 percent of our student population, and approximately one million dollars in lost revenue. I know a lot about school administration, but I don't know how to administrate a school with no children.

Our schools are recognized by the State of California as high performance schools. Our technology is second to none in Northern California. We are a very successful school district. Our success is particularly notable when you consider that many of our students come from homes that are at or below the poverty level, and Spanish is the primary language spoken in the homes. A government official in Sacramento told me that instead of destroying our schools, the Federal agencies should be up here studying them.

Many of the students' recent writings and actions indicate even more significant adverse impacts to the school community. Our recent 4th quarter grade reports show a significant increase in D's and F's. This time frame parallels the news of the water crisis. These are students who emotionally gave up. We expect our SAT 9 scores to drop district-wide.

Many of the families in our schools have participated for years in the successful agricultural business community, and are now unemployed or are employers who have not only been forced to lay off

long-term employees, but face the prospect of financial ruin themselves. The emotional pain and stress felt by the parents is recognized and transmitted to the students. As hope for a rapid solution fell, referrals and problems increased. I am concerned that facing a summer with no jobs for high school students, problems will continue to increase. We usually process about 100 student work permits, and we have processed six.

Modoc and Siskiyou Counties have been declared a "special disaster area." A Local Assistance Center has been set up. However, some of our community members are undocumented immigrants who will not be eligible for assistance. They have put down roots. Some are third-generation now. But without financial aid, they must move on. Others who will need our services but will not accept them are senior citizens in need, but too proud to accept a government handout.

It is troubling to hear from people who don't live here, but who suggest that we should all just accept a government buyout and move on. Unfortunately, discrimination is still prevalent in our society, as these remarks sadly show. Our schools will reopen in August, but who will still be here? Our summer school enrollment has dropped from 220 students last year to 170 this year. Our staff is frustrated and deeply hurt by the possibility that our efforts to build an excellent learning community are at risk because of the loss of irrigation water to the farms that support this school district. We still have children in this Basin to raise and educate.

I share the words of Ross Macy who said, "As an FFA officer, I have been taught the importance of farming and leadership. I have ambitions to gain the highest honor that the FFA has to award, the American Farmer Degree, and to accomplish this in my home town and in my high school. However, because of this destructive decision, I may not be able to reach this goal, and neither will future generations." Above all, the greatest country in the world needs to have the greatest government in the world so that a government "of the people, by the people and for the people shall not perish from this earth." Abraham Lincoln.

My daughter Jennifer is a sophomore at Cal Poly, San Luis Obispo, majoring in production agriculture, a 1999 graduate of Tulelake High School and a member of FFA. In October we traveled to Kentucky where she received her American Farmer Degree from the largest youth organization in American. I pray that she will not be the last. How can this problem be prevented in the future?

Our government in an emergency is reactive, not proactive. As Thomas Jefferson said, "It is more honorable to repair a wrong than to persist in it." You could still open the gates and turn on the water. Some say it is too late to turn on the water this year, but as long as it can help any person or any species in the Basin, it is not too late. We teach our children, if you make a mistake you admit it, correct it and move on. Congress should also financially reimburse those businesses and workers who have suffered because of the loss of water supplies. The science that led to these decisions must be reviewed. Economic impact studies should be conducted before decisions are made. It is the people in this Basin who are endangered and worth saving.

To close, I choose the words of sophomore, Lupita Aguilar: "We need to find an answer to all of this. Please find a way in which both fish, farmers and ranchers get water. I'm sure there is a solution because there is one to everything. We just have to work together and find the one that will benefit all sides." Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Ms. Molder follows:]

Statement of Sharron Molder, Principal, Tulelake High School, Tulelake Basin Joint Unified School District, Tulelake, California

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today. My name is Sharron Molder. I am the principal of Tulelake High School and I depend on farming for my daily existence, just as you do.

I want to thank you on behalf of the students, parents, teachers, and staff members of the Tulelake Basin School District and our neighboring schools located within the Klamath Basin, for coming to Klamath Falls to learn more about the tragedy unfolding before us.

I have been asked to give my opinion on what caused the current water crisis. If you came to Tulelake High School and walked through the foyer where a tradition of graduating classes have been displayed since 1934, you would know the answer. The Veterans of WWI and WWII who came to farm in the Klamath Project, created by the Bureau of Reclamation believed that a written promise for water forever, made by the government that sent them to war, and signed by Franklin D. Roosevelt, Herbert Hoover, or Ulysses S. Grant was meant to last longer than 50 years. These are the people who created the backbone of this community. Their pictures, on display from 1934 to the present honor the generations that followed these brave families. Who is affected by the loss of water in the Tulelake Basin? Out of 135 families in the high school we have 18 families with third generation children, 18 who are fourth generation and two who are fifth generation farming families. Some of these same veterans now face a severe loss in income because their land cannot be leased for farming providing retirement income. These proud Americans never saw the crisis coming. What caused this crisis? Greed and hidden agendas by environmental zealots who are not much different than the carpetbaggers who rampaged the south after the civil war devastated our communities. Indifference to social and economic conditions has begun to destroy not only our rural communities but also 430 native species of wildlife as well.

My daughter, Jennifer wants to be a farmer. She is a sophomore at Cal Poly, San Luis Obispo, majoring in Production Agriculture, a 1999 graduate of Tulelake High School and a member of FFA. She has earned her American FFA degree, the highest national honor in the Future Farmers

Organization, still the largest youth organization in America. I share with you excerpts from the FFA Creed written by E.M. Tiffany

I believe in the future of agriculture. I believe that American agriculture can and will hold true to the best traditions of our national life and that I can exert an influence in my home and community which will stand solid for my part in that inspiring task.

Jennifer is one of Tulelake's children. We don't just raise up potatoes, horseradish and onions. We also grow kids. Another student, our valedictorian for the class of 2001, Brianna Byrne, is on her way to Santa Clara University. She is a member of a Klamath Basin family, in farming for a century. At a hearing before the California State Assembly, Water, Parks and Wildlife Committee on May 22, 2001 Brianna stated "How can I and the other members of my chapter of Future Farmers feel any sense of security in pursuing agriculture as a career when the government of the strongest nation on earth takes away the core of our history and community based upon unproven and speculative science?"

The Tulelake community has tried to repair the situation by communicating the news of this devastating crisis through the print media, television and a massive letter writing campaign to our government representatives. A sophomore took photographs during a sandstorm, when the dirt blew so hard you couldn't see the end of your car on the highway, a common occurrence these days. Students and staff prepared a reception at Tulelake High School for Congressman Wally Herger, with mere 24 hours notice. The previous day the high school took busses to the rally at The Event Center in Klamath Falls to hear the governor of Oregon address the crowd of 6000. Columbia Plywood in Oregon gave the high school 30 sheets of plywood to advertise our plight along highway 139 to passing motorists. The students

painted messages on both sides: "Give us our slice of the pie", "In preschool we were taught to share", "Save our ecosystem, fish, rancher, and farmer" and "Call 911! Some Sucker stole our water!" But still, the tap is dry. I liken the feeling to the "rolling power blackouts" that areas of California have been experiencing. Imagine that the lights are switched off, but they do not go back on in an hour, or a day. You do not know if the switch will ever go back on, ever. So it is with our irrigation water.

The Tulelake community has tried to repair the situation by communicating the news of this devastating crisis through the media and a massive letter writing campaign to our government representatives. I'd like to share excerpts of some journal writings by students at Tulelake High School in hopes that you will have some insight into the real people that are affected by this speculative science accepted as truth by some branches of our government. Dozens of statements make a clear statement that our young people are losing their faith in government and I believe that should concern you Mr. Chairman and committee members.

Ross: The citizens of the area are looked upon as pawns to their own government, and not just any government, but the American government. I feel as if the government believes that some fish in a river are more important than the livelihoods of thousands. Is this how the American government was set up? Absolutely not. It just goes to show how unimportant the government believes the small farmer is. We do all we can to produce the food the world needs, maintain the environment, and sustain our own lives. There is no farmer in the world that has to put up with more regulations and strict standards than the American small farmer. However, we still hold on, believing that these regulations are helping to produce a superior product, and we are helping to give the world the food it needs. And then the government takes it all away. The government has set a standard, and now little bits of land can be taken away throughout the entire United States, and soon we will be abolishing the American small farmer all together.

Wes: On Friday, the 6th of April, our government decided that they were not going to give any water, as in none at all, to the farmers of the Klamath Basin. They decided that they were going to let all the water run down river just because there might be a possibility that the fish population would deplete. There was no evidence guaranteeing that the fish population would go down. They still decided that the lives of fish were more important than the lives of countless farmers. The government totally turned their backs on the people of this Basin. They took away something that was truly important to the people here; they took away their livelihood. Our government, at the turn of the century, invited homesteaders to come and settle here and start new lives. Now, that very same government is taking away what they once had supported. The farmers of this area use only two percent of the water in Klamath Lake. They only want 6 inches of the lake water so that they can provide food for their families and thousands of other families in the US. Everything that goes on in Tulelake is in one way or another linked to agriculture. My dad works for a fertilizer corporation whose business comes from the farmers. Every friend that I have here is also linked to farming. To most of them farming is all they know, its what they have done for their whole lives, its what they have taught their children to do. What are they going to do when they are suddenly out of a job? All because the Government believes that the lives of fish are more important than the lives of your people. What kind of Government is that?

Angela: Our FFA chapter earns most of its money by our school farm. Without water we will not be able to farm this summer and we are unsure how we will be able to pay for chapter contests and educational conferences for next year. The saddest thing to think about is that my FFA jacket maybe useless next year because there doesn't seem to be a future for the farmers in this area.

Alejandra: The water crisis means a lot to me because of my parents. They don't have a good education to get a different job, so they can only work out in the fields or in the packing sheds.

Amanda: What about the businesses, the schools, the churches, the youth groups, school sports, and also the wildlife? What do the farmers and ranchers do now? Move from their homes and take their children out of the schools where they grew up with all their classmates and built strong relationships? Our towns will become ghost towns because there is no work. Tulelake, Merrill, and Malin are based on farming and when that gets taken away the towns become nothing. All the money the farmers and workers put into their houses and businesses will have all gone to waste for the sake of Sucker Fish! To me, this seems outrageous.

Jose Antonio: Our community revolves around agriculture. Many families have started moving, looking for jobs. The farmers don't have the money to have the workers work for them. I have been really worried that my family will want to move. I'm sixteen years old and I've lived in Tulelake for eleven years. All my

friends have known me for most of my life and I don't want to be separated from them. I'm asking anybody that reads this or hears this to help us.

Laura: The water decision in this basin is a tragedy. So many families will be leaving and so many friends. It is very strange that we are having a recession in the economy and we are putting people out of jobs. Isn't it supposed to be the other way around?

Jerry: When people would eliminate people over fish, there is something wrong. If people would rather see a sucker fish prosper, than see a whole community survive, something is erroneous. This issue is more than being able to stay in Tulelake, it is the fact that people can get away with catastrophic devastation to smaller communities, for unimaginable wants. If it starts here, it won't stop. Other communities will be struck with this, If we don't get any water and the protection agencies win, then they will have the power to do it over and over again.

Juan: The water crisis is a very big problem at this point in my life. I have many other problems and this is one that has to be resolved fast. Please make our suffering end this month.

Wes: There isn't much work so there isn't much money coming in. Times are very rough. It is hard for our family to pay the bills each month. My mom and dad are stressed out all the time. What's worse is that there is nothing I can do about it.

Agustin: My parents don't want to move because they like this peaceful community and good schools. My father is going to move away and send us money so we won't have to leave here. He will return when the situation is better.

Amanda: I worry about moving and leaving my small school. Small schools are special because you get to know other students real well and most of us have relationships with our teachers.

Matt: Turning off the water has taken away my dream to go to college and play basketball. I don't know now how I can pay for it.

Rebecca: As human beings we should try everything in our power to sustain wildlife, but at what cost? In Tulelake, by refusing water to the basin's farmers there is the idea that a fish's life is worth more then many farmers and their families" lives. This is a ridiculous idea. There isn't any person who would sacrifice the life of themselves or their children for the life of a fish. So why are farmers in Tulelake being asked to do so? These farmers have made their livelihood out of farming. They have built on the American Dream, the American Dream to produce and flourish. The dream that with every drop of sweat that falls and with every trickle of blood spilled, at the end of the day they can be proud of their toil. This crisis does not only affect farmers and the Tulelake Basin. By supporting the fish's life, you are supporting the basin's business degradation. There once was a strong belief in this community for the American Government; but that has now been destroyed. Please help us to regain some of that belief, and support the Tulelake Farmers.

Cecilia: Immigrants once came to this country to escape this type of tyrannical government and gave their lives for the freedoms we all enjoy. Why now does the government have the right to tell us how we are to make our living and where we are to live?

Our students feel betrayed. We all feel betrayed.

The Tulelake School District provides education for children from preschool through 12th grade. As of March 2001, the student enrollment in the District was 574. Approximately 80% of the said students qualify under federal guidelines as economically disadvantaged and, therefore, receive free or reduced lunches and other benefits. As of said date, approximately 55% of our student population was Hispanic. We are currently involved in preparing the District's operating plan and budget for the 2001–2002 school year. In order to determine the impact of the cutoff of water on our school population we began polling the students in our schools. Based on our poll, we could lose approximately 200 students, 30 - 40% of our total student population by the beginning of the next school year. The estimated loss of revenue will be approximately 1 million dollars.

Our schools are recognized by the state of California as High Performing Schools. Our schools are recognized by the state of California as High Performing Schools. Tulelake Basin Elementary School raised their API from 545 to 659, an increase of 114 points. Tulelake High School, already a high performing school, raised our API 53 points, the second largest increase in the north state. This phenomenal growth far exceeded the accountability targets set by the state of California. Our technology is second to none in Northern California. Our student to computer ratio is 1:2. We have a video-conferencing lab for students and community members to take courses from College of the Siskiyous. Next fall we will begin a yearlong course for Cisco Networking Certification as well as a semester course in A+ Certification as part of our technology path. We are part of the University of California College Prep Initiative, offering 7 online AP courses and 4 honors courses next year. We are also

expanding AVID to three grades, 8th, 9th and 10th to increase opportunities for college path education to more students. We have been a part of the KRIS Project (Klamath Resource Information System) collecting water quality data from tributaries to Klamath Lake. We understand the problem. What we do not understand is being excluded from the solution. We also have a working school farm which supports our agricultural program offering hands on experience to future farmers. We cannot farm either this year without water. We cannot water our football fields, soccer fields or our parks. A governmental official in Sacramento told me that instead of destroying our schools you should be up here studying them!

Many of the students" recent writings and actions indicate even more significant adverse impacts to the school community. Based on my years of experience in education I recognize and understand the emotional and behavioral impacts of stress on the school population. Our recent 4th quarter grade reports show a significant increase in D's and F's. This time frame parallels the news of the water crisis. There are students who emotionally gave up. We expect our SAT 9 scores to drop District wide. It was very hard to motivate many of our students to focus beyond the crisis. The children in our schools are well aware of the financial and emotional health of their families. Many of the families in our schools have participated for years in the successful agricultural business community. Many of the parents of our students are now unemployed or are employers who have not only been forced to lay off long-term employees, but face the prospect of financial ruin themselves. The emotional pain and stress felt by the parents is recognized and transmitted to the students. As hope for a rapid solution fell, referrals and problems increased. I began to deal with behaviors I had not witnessed in three years. We are concerned that facing a summer with no jobs for high school students, the problems could continue to increase. We usually process about 100 student work permits, mostly for field workers. We have processed six.

California Governor Gray Davis signed a bill declaring Modoc and Siskiyou counties within the Klamath Reclamation Project a "special disaster area". Two million dollars will come to our non-profit, Tulelake Community Partnership to set up a Local Assistance Center. We hope it is soon enough and direct enough to help all of our people. Some of our community members are undocumented immigrants, former migrant workers, who will not be eligible. They have put down roots; some are third generation now, but without assistance they must move on. Others who will need our services but will not accept them are senior citizens, too proud to accept "a government handout". Mr. Wendall Wood commented that the government can write a check to our farmers but not to a bald eagle. Mr. Wood needs to remember who signs the check.

The schools will open in late August, but who will still be here? How do we plan? Our summer school enrollment has dropped from 220 last year to 170 this year K—8. Our staff is frustrated and deeply hurt by the possibility that our efforts to build an excellent learning community are at risk of destruction because of the loss of irrigation water to the farms that support this school district. We are committed to keeping our certificated and classified staffs intact. We are a very tenacious and proud community and we will find a way to maintain our way of life for the children we have yet to raise and educate.

I share the words of Ross Macy : "I am an officer in the Future Farmers of America. This organization has taught me the importance of farming, and of leadership. I have ambitions to gain the highest honor that the FFA has to award, the American Farmer Degree and to accomplish this in my hometown, and in my own high school. However, because of this destructive decision I might not be able to reach this goal, and neither will future generations. This is terrible. Above all, the greatest country in the world needs to have the greatest government in the world. "So that a government of the people, by the people, and FOR the people, shall not perish from the earth." Abraham Lincoln.

Farmers are truly the Keepers of the Earth. If the ESA is not amended there will always be a lawsuit on the horizon. There was a combination of factors that came together during this drought year. Unfortunately, the land itself, which sustains this agricultural community, became a commodity.

How can the problem be prevented in the future? Our government in an emergency is reactive not proactive. As Thomas Jefferson said, "It is more honorable to repair a wrong than to persist in it." You could still open the gates and turn on the water. Some say it is too late to turn water on this year but as long as it can help any person, or any species in the Basin, it is not too late. We teach our children if you make a mistake you admit it, correct it and move on. Congress should also financially reimburse those businesses and workers who have suffered because of the loss of water supplies. The science that led to these decisions must be reviewed.

Economic impact studies need to be conducted prior to the impact, as is required by your laws.

It is the people in this Basin who are endangered and worth saving. To close, I choose the words of sophomore, Lupita Aguilar : "We need to find an answer to all this. Please find a way in which both fish, farmers, and ranchers get water. I'm sure there is a solution because there is one to everything. We just have to work together and find the right one that will benefit all sides."

Thank you.

Mr. POMBO. Mr. Raybould.

STATEMENT OF DELL RAYBOULD

Mr. RAYBOULD. Thank you, Mr. Chairman. I appreciate the opportunity of coming to Oregon to testify before this Committee. My name is Dell Raybould and I am from Rexburg, Idaho. I am here today representing a number of water, farming and agricultural interests in the State of Idaho, including the Committee of Nine, which is the governing board of Water District Number 1 in the State of Idaho, The Idaho Water Users Association, and the Idaho Farm Bureau Federation.

I've been a farmer and a businessman in eastern Idaho for over 50 years. I have served in water management as the Director of Canal Companies, a private reservoir company, and an irrigation district. I am also a current member of the Idaho State House of Representatives, in which I serve on the Resources and Conservation Committee.

I believe that there is a basic lack of understanding and respect regarding the commitment that the Federal Government made to encourage settlers to establish agriculture in the arid West. The Federal Government has a contractual as well as a moral obligation to protect this essential industry, which the Federal Government itself fostered and encouraged.

Mr. Chairman, there are three points that I would like to make today. First, the Federal Government should never allow the constitutional protections of this nation to be ignored or made subservient to actions of Congress. The issue here is fundamentally a property rights issue and the constitutional guarantee that the government will never take private property without just compensation. Secondly, the Federal Government needs to adopt and maintain a consistent policy west-wide regarding the acquisition and use of water for the Endangered Species Act purposes. And, third, sound science must guide any decision to use water for the Endangered Species Act purposes. Flow targets must be demonstrated by credible, peer reviewed scientific evidence, not models or untested theories.

The issue of whether and how water should be acquired for the Endangered Species Act purposes is not a new one for us. We are very familiar with it in the Upper Snake River Basin in Idaho. During 1994, Senator Larry Craig secured a written pledge, signed by the Commissioner of the Bureau of Reclamation, that water for Endangered Species Act purposes would only be acquired from willing sellers and within state law providing for water leases in the Upper Snake River Basin, and that there would be no taking of water.

The willing seller within State law and with the lease provisions policy announced in 1994 remains the case today in Idaho. With the willing seller leases and state law policy so firmly entrenched in the Upper Snake River Basin, the question must be asked, what happened in the Klamath Basin? Why was water, held under contract, taken from the irrigators? Is there no consistent policy regarding the acquisition of water for ESA purposes? Apparently not. This needs to change. We believe that the right to own private property is one of the fundamental and defining characteristics of this Republic. It would indeed be troubling if the erosion of private property rights is not as troubling to this Committee as it is to us.

The water users of the Klamath Basin must be compensated for their loss. I applaud the Bush administration for including $20 million in disaster assistance for the Klamath Basin in its supplemental appropriation request. I understand that other financial assistance is also being arranged. While this will certainly aid those in need, this money should be recognized for what it is: a Band-Aid to temporarily alleviate the pain of a much larger wound.

Reclamation project benefits established almost a century ago should not been brushed aside in the name of the Endangered Species Act. These projects have been paid for by the water users, and whole communities have grown up around the projects as a result of the promises made by the Federal Government. It is my experience that the willing seller, lease, and state law policy have worked well in the Upper Snake River Basin. I believe it could work in the Klamath Basin and other parts of the arid West. Mr. Chairman and Committee Members, I therefore request that you help see that it is adopted.

In conclusion, I find the entire episode in the Columbia (sic) Basin this year to be appalling. Time honored contracts between water users in the United States have been thrown aside in the name of the ESA and junk science. For this, the local economy and a way of life have been sacrificed. Mr. Chairman, today is the day. Now is the time to amend the Endangered Species Act by passing legislation to exempt irritation water from Endangered Species Act jurisdiction. We encourage you to do what you can to see that order and sanity are restored in the Klamath Basin. If there is anything we can do to help, we will. Mr. Chairman, I again appreciate the opportunity to testify, and would welcome any questions that you may have. Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Raybould follows:]

Statement of Dell Raybould, Representing the Committee of Nine, Water District 1, State of Idaho, The Idaho Water Users Association, Inc., and the Idaho Farm Bureau Federation

Mr. Chairman and Members of the Committee, my name is Dell Raybould, from Rexburg, Idaho. I'm here today representing a number of water, farming and agricultural interests in the State of Idaho, including the Committee of Nine, which is the governing board of Water District 1 in the State of Idaho, the Idaho Water Users Association, and the Idaho Farm Bureau Federation.

I appreciate the opportunity to testify before you regarding the situation here in the Klamath Basin and across the West. In particular, I would like to acknowledge my Congressman, Mike Simpson, as well as Representative Butch Otter, for their role in providing me with the opportunity to testify.

I have been a farmer and a businessman in Eastern Idaho for 53 years. I have served in water management as the director of canal companies, a private reservoir

company, and an irrigation district. I am also a current member of the Idaho State House of Representatives, in which I serve on the Resources and Conservation Committee.

This hearing is important not just for the people of the Klamath Basin, but also for those people living in Idaho and throughout the West that are dependent upon irrigated agriculture.

There is a basic lack of understanding and respect regarding the role that irrigation has played in the settlement of the West and the commitments that the federal government made to encourage settlers to bring the deserts of the arid West into production.

Agriculture and ranching is still the most important industry in the West and the federal government has a contractual, as well as a moral, obligation to protect this essential industry which the federal government itself fostered and encouraged through direct Congressional action.

Mr. Chairman, there are three general points that I would like to make today:

(1) The federal government should never allow the constitutional protections of this nation to be ignored or made subservient to actions of Congress. The issue here is fundamentally a property rights issue and the constitutional guarantee that the government will never take private property without just compensation, and even then, only when there are not alternatives.

(2) The federal government needs to adopt and maintain a consistent policy westwide regarding the acquisition and use of water for Endangered Species Act purposes. Such acquisitions should be from willing sellers only and the water should be used consistent with state law. Water should not be taken from irrigators against their will or used in a way that is contrary to state law.

(3) Sound science must guide any decision to use water for Endangered Species Act purposes. The need for minimum reservoir pools or downstream flow targets must be demonstrated by credible, peer reviewed scientific evidence, not models or untested theories. Known factors of mortality such as harvest, predators, and ocean conditions must receive renewed focus.

We are here today because more than 1,500 farmers and ranchers in the Klamath Basin have had their water taken from them when they need it most - during a drought - in the name of the Endangered Species Act. At least ninety percent of the 200,000 acres of farmland under the Klamath Project will be without water this year. Not because of a drought, but because of the federal government's implementation of the Endangered Species Act. It is a wrong-headed policy that has resulted in this catastrophe and one that needs to be changed.

The issue of whether, and how, water should be acquired for Endangered Species Act purposes is not a new one. We are very familiar with it in the Upper Snake River Basin in Idaho.

In response to the listing of Snake River salmon under the ESA in 1991 and 1992, the National Marine Fisheries Service (NMFS) requested that the U.S. Bureau of Reclamation provide up to 427,000 acre feet of water from the Upper Snake River Basin for the purpose of assisting in the downstream migration of the salmon.

NMFS has required the delivery of water from Idaho for flow augmentation in Biological Opinions issued during 1995, 1998, 1999 and, most recently, on May 2, 2001.

During 1993, the Pacific Northwest Regional Director of the Bureau of Reclamation, John Keys, was provided with written guidance from Dan Beard, the Commissioner of the U.S. Bureau of Reclamation, regarding the acquisition of water by the Bureau to aid in the recovery of threatened and endangered salmon.

The July 19, 1993 memorandum from Dan Beard is attached to my written testimony.

In his memorandum, Commissioner Dan Beard concluded that there were four options "available and legally authorized" to secure water for flow augmentation. They were: (1) releasing water stored but not under contract; (2) releasing water covered by existing spaceholder contracts; (3) participating in rental water banks to acquire water; and (4) buying back already committed space in the reservoirs.

It was option number 2 on this list - "releasing water covered by existing spaceholder contracts"—that raised the fundamental issue of whether the federal government would respect or ignore the United States Constitution. More specifically, the question was whether water would be acquired on a willing seller-willing buyer basis, or whether water would be taken by the federal government without regard to private property rights and the contractual obligations of the Bureau.

Through his memo, Commissioner Beard signaled the intent of the Clinton Administration to take water away from irrigators.

Commissioner Beard's memo was met with heavy criticism by the entire western water community, and especially by Idaho interests. As just one example, Beard was

peppered with questions at the National Water Resources Association's annual conference in San Diego during the fall of 1993.

During 1994, on the eve of NMFS adopting a new Biological Opinion that would govern the flow augmentation program, Idaho's Congressional delegation, led by Senator Larry Craig, secured a written pledge, signed by Commissioner Dan Beard and Rolland Schmitten, Assistant Administrator for Fisheries, NMFS, Department of Commerce, that water for ESA purposes would only be acquired from willing sellers in the Upper Snake River Basin and that there would be no taking of water. A copy of this April 1, 1994 letter addressed to Senator Craig and a related press release from Senator Craig's office, dated April 4, 1994, are attached to my testimony. The Bureau's Regional Director, John Keys, was also instrumental in forging the willing seller policy of the federal government.

The willing seller policy announced in 1994, coupled with deference to state law, was subsequently reflected in the Biological Assessments and Biological Opinions issued by the Bureau and NMFS. This remains the case today.

With the "willing seller" and "state law" policy so firmly entrenched in the Upper Snake River Basin, the question must be asked: What happened in the Klamath Basin? Why was water held under contract taken from irrigators? Is there no consistent policy even within the Snake/Columbia Basin regarding the acquisition of water for ESA purposes? Apparently not. This needs to change.

We believe that the right to own private property is one of the fundamental and defining characteristics of this republic. It would indeed be troubling if the erosion of private property rights is not as troubling to this Committee as it is to us.

In the short term, the water users of the Klamath Basin must be compensated for their losses. Their livelihoods have been taken by the federal government and must be returned to them, in tact. The Endangered Species Act is an obligation of all of the people of the United States - not just those that reside in this basin. It is a matter of basic fairness that just compensation be provided from the U.S. Treasury for the losses that have been sustained.

The recent Court of Federal Claims decision in *Tulare Lake Basin Water Storage District v. United States* (April 30, 2001) requires NMFS and the U.S. Fish & Wildlife Service to compensate water users for reduced water deliveries that resulted from ESA compliance in the Central Valley of California. So, too, should the water users of the Klamath Basin be compensated for water shortages caused by the federal government.

It has been reported that the economic losses in the area this year are likely to exceed $200 million. I applaud the Bush Administration for including $20 million in disaster assistance for the Klamath Basin in its Supplemental Appropriations request to Congress, as urged by Senator Gordon Smith and Representative Greg Walden. I understand that other financial assistance is also being arranged. While this will certainly aid those in need, this money should be recognized for what it is: a band-aid to temporarily alleviate the pain of a much larger wound.

To fix the problem for the long term, the Bush Administration must take the existing willing seller/state law policy in the Upper Snake River Basin and apply it westwide.

Reclamation project benefits, established almost a century ago, should not be brushed aside in the name of the Endangered Species Act. These projects have been paid for by water users and whole communities have grown up around the projects as a result of the promises made by the federal government.

The United States should not take this water from the farmers and ranchers of the Klamath Basin. If the United States desires water for ESA purposes, it should be required to purchase the water from willing sellers in the basin. The use of the water must also be consistent with state law.

It is my experience that this federal policy has worked well in the Upper Snake River Basin. I believe it could work in the Klamath Basin and other parts of the arid west. Mr. Chairman and Committee Members, I therefore request that you help see that it is adopted.

Of course, before any water is purchased, there must first be a demonstrated, scientifically-based need for the water.

Water users in Idaho have relentlessly challenged the scientific basis for NMFS' flow augmentation program. A key part of this program is the establishment of downstream flow targets. We challenge the flow targets as being inconsistent with actual hydrologic data maintained for the past 80 years.

Similar questions must be asked in the Klamath Basin regarding the downstream flow targets for the coho salmon, as well as the minimum pool levels established for the suckers. Are these thresholds based on observed data, or are they based on computer models and unproven theories?

Have the studies relied upon by the federal agencies been adequately peer reviewed by credible scientists? Have biological studies done by independent scientists been disregarded by the federal agencies?

The answers to these and other tough scientific questions - and not politics—should dictate whether, and how much, water is required to meet the needs of the species. Credible, peer reviewed data, and the consideration of all available scientific information is a must. Decisions to take water from irrigators should not be guided by junk science.

In the Upper Snake River Basin, water users and the State of Idaho have been able to debunk the myth that flow augmentation will recover the salmon. Other factors are at play which threaten the fish. I understand that ocean conditions are improving and, if so, this should significantly increase salmon runs. Predators and harvest are also major sources of mortality - ones that can and should be controlled. These factors must be taken into account when looking at the Klamath Basin.

In conclusion, I find the entire episode in the Klamath Basin this year to be appalling. And I am not alone in my assessment. Irrigators in Idaho and throughout the West are keenly aware of the plight here in the Klamath Basin. Time-honored contracts between water users and the United States have been thrown aside in the name of the ESA and junk science. For this, the local economy and a way of life have been sacrificed.

We encourage you to do what you can to see that order and sanity are restored in the Klamath Basin. If there is anything we can do to help, we will.

Mr. Chairman, again I appreciate the opportunity to testify and I would welcome any questions that you may have.

[Attachments to Mr. Raybould's statement follow:]

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

IN REPLY REFER TO:

JUL 19 1993

MEMORANDUM

To: Regional Director, Boise, Idaho

From: Daniel P. Beard
Commissioner

Subject: Securing Water to Aid in Recovery of Threatened and Endangered Salmon (Fish and Wildlife)

I appreciate our recent discussions regarding recovery efforts for threatened and endangered salmon in the Pacific Northwest. Our development of a long-term strategy for Reclamation's role in this effort is hampered by lack of the recovery plan which is expected later this year. In the interim, we have cooperated with the Corps of Engineers and Bonneville Power Administration in annual consultations with the National Marine Fisheries Service (NMFS) on the coordinated plan of operation for the Federal Columbia River Power System (FCRPS).

The NMFS biological opinion for the 1993 FCRPS operation includes as a key measure the maintenance of flows in the lower Snake and Columbia Rivers to aid salmon migration. Federal facilities that are managed as part of the FCRPS coordinated operation, including Reclamation's Grand Coulee and Hungry Horse Projects, have the potential to affect the listed species. The NMFS biological opinion directs that the action agencies incorporate measures in the coordinated operation to avoid jeopardizing salmon survival targets. Reclamation is presently operating its facilities to aid in meeting flow targets. The biological assessment prepared by Reclamation, the Corps of Engineers and Bonneville, which was considered by NMFS in developing its biological opinion, recognized that Reclamation's irrigation water storage projects located upstream of the salmon migration corridor have the potential to significantly enhance streamflows to the extent water is available.

You have asked for concurrence in your plans to operate Reclamation FCRPS facilities and, as necessary, to secure storage water from Reclamation irrigation storage facilities, to help meet 1993 streamflow targets for the lower Snake and Columbia Rivers. Taking such actions this year is appropriate because the forthcoming recovery plan is expected to include flow maintenance as a measure and the salmon management plan adopted by the Northwest Power Planning Council includes flow maintenance as a strategy.

I have been in communication with the Solicitor regarding Reclamation's responsibilities under the Endangered Species Act and our authorities with respect to securing stored water for recovery purposes. We are in agreement on key points, and the following guidance is provided to you as you proceed with implementing the FCRPS operational steps set out in the biological opinion and as you consider possibilities of augmenting flows from upper Snake River basin irrigation storage projects.

Under the Endangered Species Act, Reclamation has a mandatory duty to insure that it is not authorizing, funding, or carrying out any action that is likely to jeopardize the continued existence of any listed species, including the endangered and threatened populations of Snake River salmon.

Further, I expect Reclamation to take all reasonable and prudent actions within the full range of our discretionary authorities to assist in maintaining streamflows identified by the NMFS in its recovery program. There are four options available and legally authorized for your consideration in securing storage water for flow augmentation from upper Snake River basin reservoirs. These options are: (1) releasing water stored, but not under contract; (2) releasing water covered by existing spaceholder contracts; (3) participating in rental water banks to acquire water; and (4) buying back already committed space in the reservoirs.

Each of the above four options has associated legal implications and as you proceed, I want to discuss implications of the particular alternatives with you. We have discussed your immediate plans to release stored water not under contract and power head water, and I concur that this is reasonable and prudent.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest Region
7600 Sand Point Way N.E.
BIN C15700 Bldg. 1
Seattle, Washington 98115

April 1, 1994

The Honorable Larry Craig
United States Senate
Washington, D.C. 20510

Dear Senator Craig:

This letter is to clarify the purpose of the biological opinion that the National Marine Fisheries Service (NMFS) issued pursuant to the Endangered Species Act (ESA) on March 16, 1994, regarding the five-year operation of the Federal Columbia River Power System (FCRPS)

Regarding your concerns for water rights, the Federal Government will not condemn water rights to carry-out the biological opinion in the Columbia and Snake River basins. The flows outlined in the biological opinion are target flows to be met in four out of five years by taking the actions outlined in the biological opinion. If the water to meet these flows is not available on a willing buyer/willing seller basis, consultation will be reinitiated and NMFS, the Bureau of Reclamation, and the other action agencies will work together to find alternatives to minimize impacts to listed salmon.

The biological opinion for operation of the FCRPS is the result of intensive, close cooperation between the action agencies and NMFS and included the unprecedented participation of state and tribal entities in the ESA consultation process. NMFS considered a wide range of information, including, the scientific literature, the measures outlined in the Northwest Power Planning Council's "Strategy for Salmon," the Snake River Salmon Draft Recovery Plan Recommendations, and the technical comments on the draft biological opinion provided by the affected states and tribes.

We hope that this addresses your concerns.

Sincerely,

Daniel P. Beard
Commissioner
Bureau of Reclamation

Rolland A. Schmitten
Assistant Administrator
for Fisheries

UNITED STATES SENATOR • IDAHO

LARRY CRAIG

NEWS RELEASE

April 4, 1994

David Fish
(202) 224-2752

CRAIG RECEIVES FEDERAL WATER GUARANTEE

"No taking" of water pledged

BOISE -- Idaho Senator Larry Craig heads to the Lewiston area Tuesday aiming to keep the state united in its concern over what he has termed the federal government's "Idaho water fetish.

He does so having obtained official assurance late Friday from the Bureau of Reclamation and National Marine Fisheries Service that Idaho water rights will not be violated by the federal 'taking' of water for salmon recovery. He says it should bind the government, whatever the outcome of last week's Marsh decision calling for the creation of a new federal salmon plan.

Signed by Daniel Beard, Commissioner of the Bureau and Rolland Schmitten, head of NMFS, the Idaho senator says the letter offers Idahoans some good news.

Craig asked for the written assurance during a meeting he hosted with federal officials in Washington, D.C. on March 26 to discuss Idaho's part in salmon recovery measures on the Snake and Columbia river systems under the Endangered Species Act. He also requested the guarantee during a meeting with White House officials the week before.

Both Sen. Dirk Kempthorne and Second District Rep. Mike Crapo attended the March 26 meeting.

"The federal government has pledged water will be obtained from willing sellers only," Craig said. "Now we've got to hold them to it. An over reliance on Idaho water would hurt all regions of the state without any real promise of saving fish."

The letter was written to clarify questions many in Idaho have had about the biological opinion NMFS issued in mid-March regarding operation of the river system over the next five years.

"Regarding your concerns for water rights, the Federal Government will not condemn water rights to carry out the biological opinion in the Columbia and Snake River basins," reads the letter to Craig. "The flows outlined in the biological opinion are target flows to be met in four out of five years by taking the actions outlined in the biological opinion. If the water to meet these flows is not available on a willing buyer/willing seller basis, consultation will be reinitiated and NMFS, the Bureau of Reclamation, and the other action agencies will work together to find alternatives to minimize impacts to listed salmon."

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Mr. POMBO. Mr. Vogel.

STATEMENT OF DAVID VOGEL

Mr. VOGEL. Mr. Chairman and members of the Committee, thank you for the opportunity to be here to testify. My name is David Vogel. I'm here to provide you with important information concerning the science, or more aptly stated, the lack of science behind the artificially created regulatory crisis that has been imposed in the Klamath Basin, and to recommend solutions to this major problem. I'm a fishery scientist with 26 years of experience. I have authored many technical reports, including restoration of Klamath Basin fishery resources. I have performed research on Coho salmon and the endangered suckers as well as many other fish species throughout the western United States.

Mr. Chairman, I offer your Committee several reasons why this regulatory crisis did not have to occur, and how it can be avoided in the future. My written testimony provides more details. I will simply summarize the main points here.

My first point pertains to how the decision making process went awry. In my entire professional career of nearly three decades, I have never been involved in a process that was as closed, segregated, and as unjust as we now have in the Klamath Basin. The constructive science-based processes I have experienced elsewhere used an honest and open dialogue. Hypotheses are developed and then tested against empirical evidence. Such are the accepted standards of science, but they have not been applied here.

My second point pertains to the distortion of facts and the lack of science associated with the suckers and Coho salmon. The two sucker species exhibit far greater numbers over a much broader geographic range, and with greater reproduction than reported by the agency more than a decade ago. These facts call into serious question if the fish really are endangered. This year's crisis was caused by a demand for high lake levels, and is a major step backwards for practical natural resource management. Forcing higher than normal lake levels is likely to be detrimental, not beneficial for the suckers.

As you can see from Figure 1 of my testimony, huge fish kills occurred when the lake was near average or above average levels, but not at low levels. In fact one of the worst fish kills on record occurred during 1971 when the lake was nearly full. This is not a professional opinion, but is a fact extensively documented, yet ignored by the Fish and Wildlife Service.

The National Marine Fisheries Service added to the regulatory crisis by demanding higher than historical flow rates from Iron Gate Dam. As you can see from Figure 2 in my testimony, and the poster to my left, numerically and proportionally, few Coho are present in the mainstem river channel in the area most influenced by the Klamath Project. Instead, NMFS chose to focus on the Klamath Project in the Upper Basin to rectify for the failures in the tributaries of the Lower Basin where most Coho reside. This misguided scientifically deficient approach will not succeed. In short, scientific bases for the agency's actions are lacking. Further scrutiny will reveal these deficiencies. Tragically, for the Upper Basin and for the fish, warm water is being dumped in the wrong

place, at the wrong time, and for all the wrong reasons. The purported biological benefits to the fish will not been realized.

My last point is that there are solutions to avoid such problems in the future. There are enormous opportunities to do good things for ecosystem restoration. There are numerous on the ground actions that could be undertaken to improve the existing situation and provide greater flexibility and balance for resource management. It's time to take a new approach. To this end, the water users have adopted an unprecedented, proactive strategy for restoration. They have promoted actions ranging from improving fish access to the Sprague River, to physical habitat and water quality improvements. The major impediments to taking action appear to be those individuals afraid of taking calculated risks, and those unwilling to seek a balanced approach to natural resource management. I submit that these attitudes will lead to continual conflict and controversy, and they will not solve the problems.

Mistakes made by these two agencies can be prevented through a proper peer review, much like Sue Ellen Wooldridge mentioned. However, this peer review should be performed outside of the Departments of Interior and Commerce to avoid the problems encountered this year. Data must be examined with clear scientific objectivity, using widely accepted scientific principles. To be objective, agency policies and positions do not belong in the scientific process. Good science will lead to good policies. And if the agencies are willing, there is a great opportunity to accomplish restoration goals without doing the kind of harm that is being experienced now. Thank you.

[The prepared statement of Mr. Vogel follows:]

Statement of David A. Vogel, President, Natural Resource Scientists, Inc.

Mr. Chairman and members of the Committee, thank you for the opportunity to testify at this important hearing. My name is David Vogel. I am a fisheries scientist who has worked in this discipline for the past 26 years. I earned a Master of Science degree in Natural Resources (Fisheries) from the University of Michigan in 1979 and a Bachelor of Science degree in Biology from Bowling Green State University in 1974. I previously worked in the Fishery Research and Fishery Resources Divisions of the U.S. Fish and Wildlife Service (USFWS) for 14 years and the National Marine Fisheries Service (NMFS) for one year. During my tenure with the federal government, I received numerous superior and outstanding achievement awards and commendations, including Fisheries Management Biologist of the Year Award for six western states. For the last 10 years I have worked as a consulting fisheries scientist on a variety of projects on behalf of federal, state, and county governments, Indian tribes, and numerous other public and private groups. During the past decade, I have advised the Klamath Water Users Association (KWUA) on Klamath River basin fishery resource issues. I was the principal author of the 1993 "Initial Ecosystem Restoration Plan for the Upper Klamath River Basin" and was one of the primary contributing authors to the Upper Basin Amendment to the Klamath River fishery restoration program. I was a principal contributor of information for the 1992 Biological Assessment on Long–Term Operations of the Klamath Project. More recently, I was a contributor to technical portions of the March 2001 document, "Protecting the Beneficial Uses of Waters of Upper Klamath Lake: A Plan to Accelerate Recovery of the Lost River and Shortnose Suckers". This plan was also authored by Dr. Alex Horne and I have attached his March 21, 2001 testimony before the Senate Subcommittee on Water and Power. I have performed research projects on coho salmon and the endangered suckers, as well as many other species.

Today, I am providing your Committee with important information concerning the science, or more aptly stated, lack of rigorous science, behind the artificially created regulatory crisis that has been imposed on the Upper Klamath basin. These topics relate to the sucker fish, which the USFWS has focused on to regulate higher-than-normal lake elevations in Upper Klamath Lake, and coho salmon, which NMFS has

focused on to demand higher-than-normal flows below Iron Gate Dam on the Klamath River. And lastly, I am providing your Committee with recommendations to avoid the regulatory crisis that has been created in the Klamath Basin.

DECISION–MAKING PROCESS

In my entire professional career, I have never been involved in a decision-making process that was as closed, segregated, and poor as we now have in the Klamath basin. The constructive science-based processes I have been involved in elsewhere have involved an honest and open dialogue among people having scientific expertise. Hypotheses are developed, then rigorously tested against empirical evidence.

None of those elements of good science characterize the decision-making process for the Klamath Project. At one time, several years ago, the agencies would interact with all interests who had expertise or a stake in the decisions. Recently, my role has been to receive completed analyses (usually without supporting data) and mail in comments. Often, the timeline is such that it is virtually impossible to comment and certainly impossible for the agencies to consider the comments objectively and meaningfully. The overriding sense I have is that the goal is to dismiss what we have to offer. A scientist that I work with has had the experience of being invited to a technical meeting, then literally turned away. Additionally, we have been invited to attend recent meetings related to downstream flow studies, but our presence was requested at the end of the process, after key assumptions had been developed.

I provide examples below of the kinds of information that have not, in my opinion, received objective consideration or open discussion. I also include alternative actions and recommendations.

KLAMATH BASIN SUCKERS

Endangered Species Status

Disturbingly, I have learned from an extensive review of the relevant Administrative Record that the information used by the USFWS to list the two sucker species as endangered in 1988 under the Endangered Species Act (ESA) is now very much in question. The USFWS so selectively reported the available information that it can only be considered a distorted view of information available to the agency at that time. The dominant reason that the USFWS listed the species was an apparent precipitous decline in both populations in the mid–1980s and the lack of successful reproduction (recruitment) for 18 years. Documents selectively used by the Service to support the listing portrayed an alarmist tone indicating that the species were on the brink of extinction. Because of information in the Administrative Record and scientific data developed since the listing, major questions are now posed calling into question the integrity of the original listing decision.

Due to extensive research performed on the Lost River and shortnose sucker populations in recent years, relative population abundance estimates are available for both species. Although there are differences in the manner by which each estimate was computed and some estimates have broad confidence intervals, the numbers represent the best available information that was used by the USFWS to list and monitor the species. A comparison of estimates developed prior to and after the listing demonstrates a remarkable change in the species" status (Table 1). Recent data demonstrates that the sucker populations exceeded the original estimates used to justify listings by an order of magnitude.

It is now evident that either:

1) The estimates of the sucker populations in the 1980s were in error and did not, in fact, demonstrate a precipitous decline (*i.e.,* the populations were much larger than assumed), or

2) The estimates of the sucker populations in the 1980s were reasonably accurate and the suckers have demonstrated an enormous boom in the period since the listing and no longer exhibit "endangered" status.

Furthermore, in contrast to the lack of recruitment described in 1988, it is now very evident that the Upper Klamath Lake sucker populations have experienced substantial recruitment in recent years and also exhibit recruitment every year. Only three years after the sucker listing, it also became apparent that the assumptions concerning the status of shortnose suckers and Lost River suckers in the Lost River/Clear Lake watershed were in error. Surveys performed just after the sucker listing found substantial populations of suckers in Clear Lake (reported as "common") exhibiting a biologically desirable diverse age distribution. Within California, the USFWS surveyors considered populations of both species as "relatively abundant, particularly shortnose, and exist in mixed age populations, indicating successful reproduction". Recent population estimates for suckers in the Lost River/Clear

Lake watershed indicate their populations are substantial, and that hybridization is no longer considered as "rampant" as portrayed by the USFWS in 1988. Tens of thousands of shortnose suckers, exhibiting good recruitment are now known to exist in Gerber Reservoir. In 1994 the Clear Lake populations of Lost River suckers and shortnose suckers were estimated at 22,000 and 70,000, respectively, with both populations increasing in recent years exhibiting good recruitment and a diverse age distribution (Buettner 1999). Unlike the information provided by the USFWS in the 1988 ESA listing, it is now obvious that the species' habitats were sufficiently good to provide suitable conditions for these populations. Additionally, the geographic range in which the suckers are found in the watershed is now known to be much larger than believed at the time of listing. The shortnose populations in the lower Klamath River reservoirs (J.C. Boyle, Copco, and Iron Gate), previously believed to be small or essentially non-existent at the time of the listing, are more abundant and widespread than assumed in 1988 (Markle et al. 1999).

In summary, although the species had obviously declined from their historic population levels in the early to mid–1900s, the surmised status of the species was not as severe as assumed in the mid- to late–1980s. The two fish species presently exhibit far greater numbers, over a much larger geographic range, and with greater recruitment than assumed more than a decade ago. "Remnant" populations postulated in 1988 are now known to be abundant. "Severe" hybridization among the species assumed in 1988 is now known not to be as problematic. In the mid–1990s, Upper Klamath Lake sucker populations were found to exist on an order of magnitude greater than believed in the mid–1980s. And it is now clear that widespread recruitment of both species regularly occurs.

This all leads to an important, albeit an awkward, question for the USFWS and is one that the agency cannot, or will not, answer. Which assumption is correct: that posed by the agency in 1988 or that of the present day? The species were either inappropriately listed as endangered because of incorrect or incomplete information or the species have rebounded to such a great extent that the fish no longer warrant the "endangered" status.

Upper Klamath Lake Elevations

I believe the USFWS's recent Biological Opinion on the Operations of the Klamath Project has artificially created a regulatory crisis that did not have to occur. This circumstance was caused by the USFWS's focus on Upper Klamath Lake elevations and is a major step in the wrong direction for practical natural resource management. The USFWS rationale for imposing high reservoir levels ranges from keeping the levels high early in the season to allow sucker spawning access to one small lakeshore spring, to keeping the lake high for presumed water quality improvements. This measure of artificially maintaining higher-than-historical lake elevations is likely to be detrimental, not beneficial, for sucker populations. The data do not show a relationship between lake elevations and sucker populations, and to maintain higher-than-normal lake elevations can promote fish kills in water bodies such as Upper Klamath Lake.

During the mid–1990s, I predicted that fish kills could occur if the Upper Klamath Lake elevations were maintained at higher-than-historical levels. Subsequently, those fish kills did occur. The USFWS recent Biological Opinion dismissed or ignored the biological lessons from fish kills that occurred in 1971, 1986, 1995, 1996, and 1997 and, instead, selectively reported only information to support the agency's concept of higher lake levels. All the empirical evidence and material demonstrate that huge fish kills have occurred when Upper Klamath Lake was near average or above average elevations, but not at low elevations (Figure 1). This is not an opinion but a fact extensively documented in the Administrative Record and subsequently ignored by the USFWS.

A good indicator that Upper Klamath Lake elevations do not create a "population-limiting factor" for the suckers is a comparison of historical seasonal lake elevations with sucker year class strength that may or may not result from those lake elevations. Sucker year class strengths for some years are now available because suckers killed during die-offs in 1995, 1996, and 1997 were examined to determine the age of the fish. This allows a determination of the year the fish were hatched and, because sufficient numbers of fish were collected, the relative "strength" of one year class compared to other years. Using this new analysis of the best available scientific information, it is evident the sucker populations do not experience a population-limiting condition from lower lake elevations as incorrectly postulated by the USFWS. In fact, one of the strongest year classes of suckers occurred during a drought year in 1991 when lake levels were lower than average. These data demonstrate that there are no clear relationships between Upper Klamath Lake elevations and sucker year-class strength. Additionally, the data now demonstrate that

the two species did not suffer "total year-class failures" during the drought years in the late 1980s and early 1990s as was commonly speculated at that time. It is particularly noteworthy that the strong 1991 class of suckers experienced extremely low lake elevations during the severe drought of 1992 but nevertheless remained the dominant year class observed in 1995, 1996, and 1997. Also, based on the age structure of suckers determined from the 1997 fish kill, it was readily apparent that many older-aged suckers were in the population; from the early 1990s until 1997, it had been surmised that the age structure of the sucker populations were almost entirely younger fish. This new evidence indicates that environmental conditions resulting from the drought, including low lake elevations, did not have the adverse impacts on the sucker populations assumed by the USFWS. The USFWS Biological Opinion notably ignored extremely relevant scientific data and information that was contrary to the agency's premise in the Biological Opinion. The USFWS failed to point out empirical evidence the agency could have provided in the Biological Opinion which demonstrates that Upper Klamath Lake levels lower than demanded in the Biological Opinion will not harm (and may actually benefit) the sucker species.

KLAMATH COHO SALMON

In my opinion, the National Marine Fisheries Service (NMFS) significantly and inappropriately added to the regulatory crisis in the Klamath Basin by calling for higher-than-normal releases from Iron Gate Dam under the auspices of protecting the coho salmon, a "threatened" species, from extinction.

Primary Factors Affecting Coho are in the Tributaries, Not the Mainstem

Coho salmon, as a species, prefer smaller tributary habitats, as compared to larger mainstem river habitats. This extremely important biological fact was not incorporated into the rationale NMFS used to assess Klamath Project effects on coho. Fry and juvenile coho normally occupy small shallow streams where there are more structurally complex habitats (*e.g.,* woody debris) than are found in larger, mainstream river systems; this fact is amply described in the scientific literature. NMFS ignored the fact that proportionally and numerically only small numbers of fry use the reach most affected by the Klamath Project as compared to the entire basin. NMFS has notably failed to reconcile this critical piece of biologically relevant information. NMFS avoided using an excellent source of information that would demonstrate this fact. A 1985 U.S. Department of Interior document entitled: "Klamath River Basin: Fisheries Resource Plan" thoroughly describes and graphically shows the distribution of coho in the Klamath Basin. That voluminous, peer-reviewed document clearly demonstrates that the upper Klamath River, in proportion to the entire Klamath River basin, is a geographically minor area of coho presence. This fact is evident from the attached Figure 2 adapted from the Klamath River Basin Restoration Plan. Instead of acknowledging this indisputable information, NMFS has singularly focused on demanding dramatically increased, higher-than-historical flows from Iron Gate Dam to "protect" coho from extinction. In so doing, NMFS has inappropriately suggested that coho habitats should somehow be re-created in the large river channel downstream of Iron Gate Dam to serve as a surrogate for the lost or degraded habitats in Klamath basin tributaries. This misguided, scientifically deficient approach is unlikely to succeed.

I thoroughly reviewed thousands of pages of documents in detail to determine whether the available scientific data and information suggest that the recent historical flow regime in the mainstem Klamath River below Iron Gate has been a significant factor affecting Klamath River fishery resources. These documents included scientific peer-reviewed literature, state and federal agency documents and reports, and investigations encompassing many decades of research on the Klamath River. This extensive review revealed that numerous factors other than the recent historical mainstem flow regime at Iron Gate Dam are overwhelmingly documented to have affected Klamath River fishery resources. There are many other documented factors that have affected salmon runs in the Klamath River; I compiled a comprehensive listing of those factors in March 1997 and provided that list to NMFS. None of the documents I have reviewed provided any supporting scientific information or data suggesting that the historical mainstem flow regime at Iron Gate Dam is a significant factor adversely affecting coho salmon. To the contrary, the available information provides compelling evidence that other factors are far more important in affecting fish populations than the recent historical Iron Gate Dam flow regime.

It is particularly noteworthy that the multi-million dollar, multi-agency Long–Range Plan for restoring Klamath River anadromous fish (the principal document guiding salmon restoration in the basin) addresses the issue of Iron Gate Dam releases and potential effects on salmonids in an almost passing manner (Klamath River Basin Fisheries Task Force 1991). Nearly the entire discussion in the Long–

Range Plan on the topic of salmon production focuses on the tributaries in the lower Basin. This is instructive because, despite all the efforts and research accomplished to date on the Klamath River, no entity has developed any scientific data to support the premise that specific Iron Gate releases over the past several decades has been a significant factor limiting Klamath River salmonids.

Probably the strongest indicator demonstrating that the recent historical Iron Gate Dam flow regime is not a primary factor affecting lower Klamath River fish is the response of the fish populations. There are no apparent cause-and-effect relationships between historical flow levels at Iron Gate Dam and resulting production of coho salmon. Clearly, there are other well documented factors that have an influence on the Klamath River salmon runs than the flow regime alone (*e.g.,* harvest, hatchery production, tributary habitats).

The following are highly relevant facts ignored by NMFS in the agency's Biological Opinion:

- Fry rearing habitat in the upper mainstem Klamath River is not as quantitatively or qualitatively important to the species as is rearing habitat in the Klamath River tributaries.
- Numerically and proportionally, very small numbers of coho fry rear in the mainstem downstream of Iron Gate Dam in the reach most influenced by the Klamath Project.
- The indirect effects of variable Iron Gate flow on adult coho populations in the Klamath basin is minuscule when compared to other direct factors such as incidental ocean harvest and other harvest of adult fish.

NMFS relied on a closed process to formulate the agency's recommendations for Klamath River instream flows. Individuals involved with this process purposefully excluded scientific experts that could have provided meaningful input to the process. This exclusionary process is contrary to scientific and procedural processes employed elsewhere in the United States, particularly in California.

In summary, sound scientific bases for the NMFS Biological Opinion are lacking. NMFS relied on an incorrectly applied and incomplete computer modeling exercise to support the agency's conclusions of the effects of the Klamath Project operations on coho. A close examination of the NMFS Biological Opinion demonstrates that it does not empirically describe how Klamath Project operations affect coho populations in the Klamath River basin. Instead, the agency's action resulted in too much warm water dumped in the wrong place at the wrong time and for all the wrong reasons. The purported biological benefits to coho salmon will not be realized.

THE NEED FOR ALTERNATIVES USING A PRO–ACTIVE/ADAPTIVE MANAGEMENT APPROACH

Implement Meaningful Restoration Actions

New data and analyses indicate that regulatory measures and some research implemented over the past decade, although perhaps well intended, misdirected resources away from other more beneficial actions. Also, unfortunately, to the extent recovery or restoration efforts have been undertaken over the past 13 years since the listing, they have not been effective. The USFWS has contended that maintaining high reservoir elevations is the only feasible short-term measure that can be implemented to benefit the sucker populations; this is incorrect. Alternatives are available to benefit the species/ecosystem and have been presented to the agency. These alternatives could have prevented the crisis we are in today.

There are fundamental changes that have occurred in Upper Klamath Lake that cannot be ignored. As an example, the fact that non-native fish were introduced into the lake and are now proliferating is a change that is absolute. Such changes have permanently altered the ecosystem. Despite the emotional rhetoric one may hear about "Nature healing herself", there is no turning back to a so-called "pristine" ecosystem. These non-native fish prey on and compete with suckers and will never be extirpated from the lake. However, there are numerous on-the-ground actions that could be undertaken to improve the existing situation and provide greater flexibility and balance for resource management. The Upper Klamath Basin is in a situation where millions of dollars have been spent on "ecosystem restoration" (primarily land acquisition) under the auspices of sucker recovery; unfortunately, the site-specific linkages to sucker recovery are highly debatable and unclear. These benefits have not been forthcoming. It is time to take a new approach.

Several recovery projects first identified in the early 1990s hold promise for increasing the sucker populations. To this end, the KWUA recently developed a document entitled "Protecting the Beneficial Uses of Waters of Upper Klamath Lake: A Plan to Accelerate Recovery of the Lost River and Shortnose Suckers" (Plan) to promote timely implementation of biologically innovative action-, and results-oriented restoration projects. This Plan was presented to the Senate Subcommittee on Water

and Power in March 2001. Some of the projects in the Plan are embodied in the 1993 USFWS Sucker Recovery Plan, but have not been pursued. The Plan focuses on implementation of specific actions to accelerate the recovery of the endangered suckers while minimizing conflicts among competing uses for common resources. This Plan's use of cooperative efforts between local interests and those individuals and groups sharing common goals is considered preferable to traditional fragmented plans which result in tragic conflicts for limited resources we are seeing in the basin today. The Plan recommends actions such as improving access of suckers in the Sprague River to physical and water quality improvement projects in Upper Klamath Lake.

As with the suckers in the Upper Klamath Basin, there are viable alternatives and opportunities to increase coho populations in the Lower Klamath Basin, particularly in the tributaries. However, until NMFS changes its singular and misdirected focus on higher-than-historical flows from Iron Gate Dam, restoration opportunities using the agency's approach are unlikely to succeed. Unfortunately, whatever the existing lower basin programs may have accomplished to date, fishery restoration does not appear to be one of them. Although many millions of dollars have been spent on the lower basin programs, benefits to fish have not been evident. A new strategy of embracing a more holistic watershed approach and cooperative partnerships in the tributaries, instead of the traditional adversarial approach is needed.

Implement Independent Peer Review

Many of the mistakes made by the USFWS and NMFS during this year could have been avoided through a proper peer review of the agencies' actions. It is imperative that the peer review not be a facade of "like-minded" individuals or agencies promoting or protecting their policies or positions. To prevent the flawed process that occurred this year, it will be necessary to ensure that a peer review be performed by individuals without a vested interest in the suckers and coho remaining listed species under the ESA; to do otherwise undermines the integrity of the scientific process. For example, it is clearly inappropriate to have so-called peer review by some stakeholders demanding water rights, including high lake levels. Likewise, researchers dependent on the ESA controversy for funding may have a clear conflict with objective review. Individuals that would use the threatened or endangered status as "leverage" to promote their positions should also be excluded from the process. Additionally, the peer review should be a "blind" review process to allow reviewers to be anonymous; this will ensure that "peer pressure", instead of peer review, does not occur. The peer review of the agencies' Biological Opinions should be performed outside the Departments of Interior and Commerce to avoid the problems we have observed in the Klamath basin crisis. Data must be examined with clear, scientific objectivity using widely accepted scientific principles. To be objective, agency policies and positions do not belong in this scientific process. Good science will lead to good policy. And, if the agencies are willing to do so, there is a great opportunity to accomplish restoration goals without doing the kind of harm that is being experienced now.

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Mr. POMBO. Thank you. I'd like to begin this round of questioning with Mr. Hastings.

Mr. HASTINGS. Thank you for your consideration, Mr. Chairman. I appreciate that. I appreciate all of you coming here today and taking your time to testify in front of this Committee.

Mr. West, let me start with you, or Commissioner West, I should say, because I have the greatest admiration for local elected officials.

Mr. WEST. Thank you.

Mr. HASTINGS. In fact, I think your job is really a lot harder than ours. I say it in this context; there's no politics in a pothole—just fix it. And so you're in a situation now—a very difficult situation of trying to balance all the needs that arise from this decision not made by you. You're familiar with the Oregon Natural Resources Counsel proposal. I guess that we'll hear this later on, because I was reading it in the prepared testimony that is coming later on, about the notion to buy up this land from willing sellers, and so forth. Tell me if there is any impact on you, and if so, what is that impact on this county.

Mr. WEST. Thank you, Congressman. First, I would ask the question, what is a willing seller? If I, as a property owner, through no fault of my own, have had all the value taken away from my property, and someone now offers me an unusually large sum of money for my property, am I a willing seller or am I a hostage? The county that I represent is over 57 percent publicly owned. I'm not sure we can afford anymore publicly owned land. You gentlemen are all from western states. You realize that in reality PILT, Payment in Lieu of Taxes, is really a misnomer. The actual funding that comes through Payment in Lieu of Taxes is only a fraction of the tax revenue that would be paid if those lands were privately held.

In the State of Oregon it's very simple. State government runs on income tax, county governments run on property tax. So any additional loss to our tax base would continue to have devastating effects on Klamath County, so I question the premise of willing seller, and I am concerned about the additional impacts to the county tax base.

Mr. HASTINGS. Okay, Thank you very much, Mr. West.

Mr. WEST. Yes, sir.

Mr. HASTINGS. Representative Raybould—I guess that's the correct way to say it. In your testimony, you talked about the agreement that Senator Craig had reached with the Bureau of Reclamation and National Marine Fisheries back, according to this, in 1994. Have they lived up to the terms of that agreement?

Mr. RAYBOULD. Yes. In Idaho we have statutes that allow irrigation districts to establish rental pools, and the rental pools that are established allow an irrigator, if he has excess storage water in any given year, to contribute that water to the rental pool, and then he is paid for it out of the rental pool. The Rental Pool Committee then rents that water to other irrigators for other needs for water, out of the pool, but agriculture has first priority on any water that is consigned to the rental pool, so that puts agriculture first. When all of agriculture's requests are satisfied, then power interests, or in the case of the Bureau of Reclamation, they can purchase water from the rental pool. This is a 1-year deal. I don't mean, in any sense of the word, to indicated that Idaho farmers are selling their water rights or selling their land—only this lease of water. And it

comes under the willing buyer/willing seller doctrine. That has worked very well up until this year. This year we're in extreme drought. There is very little water in the rental pool.

The Endangered Species Act is not going to get water for flow augmentation from Idaho farmers this year. The biological opinion that has come out is still requesting 427,000 acre feet of water from the Upper Snake. It isn't there. We are right now jockeying to see how that's going to work out, but at this point in time they have lived up to their commitment to not take water other than from our rental pool, from a willing consignor, a willing seller.

Mr. HASTINGS. Thank you very much.

Mr. Vogel, as a scientist, you made a number of points in your written testimony. What I'd like to ask you—because you have heard us, and you'll probably hear us later on—all of us on this panel are concerned about good science and so forth. Could you give us an idea, from your perspective, what we should be incorporating into the amendments that need to be made to the Endangered Species Act as it relates to good science? How would we go about that, from a legislative standpoint, to accomplish what we all want to do?

Mr. VOGEL. Sure, thank you. Actually, I do know quite a bit about the Endangered Species Act. I worked for 15 years previously for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. That was more than a decade ago. So I have a lot of background experience working for the agency in terms of how the Act is administered. In fact when I was in the Fish and Wildlife Service I was involved with some listings of fish in California.

First of all, probably one of the most important things is to point out that it's extremely easy to get a species listed. And I'll be real blunt—a child could do it. It's that easy. I have kids. I've even thought about having them do it as a test case, if it didn't result in harm to people, like we have right now. The problem is it's almost impossible to get a species delisted. There is not a real good mechanism within the ESA to figure out how to do it, and it's very, very tough. I've struggled with it, tried to figure out how agencies can do it, and it's almost impossible. So clearly, there has to be a very clear articulation on procedure to make it as easy to delist as it is to list.

The other is that the act does not allow the ability to take calculated risks, for the lack of a better phrase. It doesn't allow for any mistakes. There are a lot of very practical ways in resource management where you can do good things for fish and wildlife, but the Act doesn't provide that flexibility or creativity. That has to be written into the Act, because there's a lot of good things that landowners, as an example, can do good things for the fish and wildlife habitats. They're not allowed to do it right now, the way the act was written.

The other thing we talked about was peer review. There's a very clear mechanism I think for peer review. It's being very grossly abused right now. It's not really peer review. I call it peer pressure biology, in that if you don't agree with the agencies' policies and position, you're chastised because you're not abiding by what they believe. It has to be a blind peer review process. And by that, I

mean, the author does not know who's critiquing his work, and the person critiquing the work doesn't know who wrote the work. That's true peer review, and the act doesn't allow for that.

The last is accountability of civil servants. I was a civil servant for 15 years. I took it very, very seriously and I was very proud to say I was a civil servant. And I had a handbook that identified exactly what it means to be held accountable as a government employee. Something got lost, I'd say in the last decade, that eliminated that personal accountability of employees that would abuse the act. I'll be real blunt. Some of these Federal biologists have become intoxicated by the power provided by the Endangered Species Act, and that has to be eliminated.

Mr. HASTINGS. Thank you very much, Mr. Vogel. And, Mr. Chairman, thank you for your consideration. I appreciate it.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

Mr. Vogel, I want to thank you. I want to thank each of you. And as you pointed out, you've actually spent time working with the, quote, Fish and Wildlife.

Mr. VOGEL. Yes.

Mr. HERGER. And with NMFS. I understand, 14 years with Fish and Wildlife and a year with NMFS. And I want to thank you for your very strong and stirring testimony of just how serious this problem is. I was just wondering, you have also—and you're a biologist; is that correct?

Mr. VOGEL. Yes.

Mr. HERGER. A scientist. And you've reviewed the biological opinions.

Mr. VOGEL. Yes, both of them.

Mr. HERGER. And could you indicate to us if you've seen any instances that these opinions were driven not by on the ground science, but perhaps—perhaps driven by political decision-makers who wanted to reach a predetermined outcome.

Mr. VOGEL. Yes. I don't have a quick answer for that, unfortunately, because it's so embodied within many, many meetings that were held in secret over many months in this last year. There was a lot of evidence of data that was ignored, that was contrary to the positions of the agencies. We know what that data is. We know where they ignored it. We know how they misapplied the data that they did have. But there was a very closed process we saw this last year. I'll point out that almost 10 years ago we had a very open dialogue, a very constructive dialogue with the agencies. They put their data on the table. We put our data on the table. We'd have honest, frank debate about it. Sometimes heads got knocked, and so forth, but at least we all talked about it. It was open, it was honest, and it was very efficient. And it worked well during the drought years, in '92 and '94, as an example. And we got through this crisis using that type of open scientific dialogue.

This last year, the door was slammed shut, and that was one of the biggest problems we encountered this year is that we could never get to the point of contributing what we believed was very valuable information that could have avoided this regulatory crisis. That, in itself, can never be allowed to happen again. That door

needs to be opened once again to allow the scientific scrutiny to occur on all the data.

Mr. HERGER. Thank you, Mr. Vogel. So in other words, you have a concern—I don't want to put words in your mouth, but it would appear that you have a strong concern that the decision that finally came down that allowed the farmers of the Klamath Basin basically to get zero water, perhaps could have had a predetermined political outcome that—.

Mr. VOGEL. Yes.

Mr. HERGER. —could have been avoided had we had all the data, all the scientific data explored and considered.

Mr. VOGEL. Absolutely.

Mr. HERGER. Thank you very much.

And just as a follow-up to what Mr. Vogel was saying, Mr. Crawford, you were involved in the last administration, I understand, during the '92, '94 drought that Mr. Vogel spoke of. And I understand that during that time that the water users were afforded what was called applicant status, which enabled them to be a participant in the process of developing the biological opinions. But then under the 8 years of the Clinton/Gore administration that status was taken away. Are you able to explain that process to us, and can you explain how and why you lost that applicant status?

Mr. CRAWFORD. Thank you, Mr. Congressman. Absolutely. In 1992 we had such a severe lack of information regarding the suckers that what very little was known was so very important in making a good decision that would be—result in a biological opinion that we could live with. We were at the table and our information was considered, as was everybody else's information considered. It was weighted carefully as the best available science, and we ended up with a biological opinion for suckers in 1992 that allowed us the flexibility to get through those serious drought years of 1992 and 1994.

Unfortunately, as the process changed through administrative mandate and enforcement and policy regarding the Endangered Species Act, biological opinions that were forthcoming after—or more importantly, in 1995 the Klamath Project went to annual operations plans that superceded those biological opinions. Lake levels were established on an annual basis, in 1995 and in 1996 and in 1997, that far exceeded the levels identified in the '92 opinion. There were no fish kills in '92 and none in '94, but there were substantial fish kills that occurred in '95, '96 and '97 under those annual operating plans that held Upper Klamath Lake at the highest level it had been held since Link River Dam was built.

That's an example of how removal of our applicant status as irrigators in the Klamath Project has harmed, not only our ability to exist as an irrigation community, but the livelihoods of the suckers are very well at risk because of that same action. And the same applies on the river. We have been completely excluded from Dr. Hardy's process and from having the ability to have input to that process, and we are formally asking that our applicant status for that section 7 consultation be reinstated.

Mr. HERGER. Thank you very much, Mr. Crawford. Mr. Chairman, and without objection, if this Committee could request from the Interior Department about the applicant status and why it was

lost, and why the Department—and whether the Department would commit to restoring it.

Mr. POMBO. Without objection, that will be added to the list of questions for the Interior Department.

Mr. HERGER. Thank you very much.

Mr. POMBO. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. We never know where you're going to go next.

Mr. POMBO. You're right.

Mr. SIMPSON. I appreciate that.

Representative Raybould, I appreciate you coming over here all the way from Idaho. I know it's a long drive, 50 miles, or 40 miles; but it's a very long drive, and I want to thank you for coming over to show that these people are not alone in this issue, that the people of Idaho care about what's going on here and the impacts that the potential outcome could have on the rest of the West.

You mentioned the 427,000 acre feet that the legislature has appropriated on a willing seller/willing buyer basis over the last several years in order for flow augmentation for salmon. Do we have any results on the effects of flow augmentation as they pertain to the effectiveness of returning salmon and flushing salmon.

Mr. RAYBOULD. Thank you, Mr. Chairman, Congressman Simpson. The legislature authorized 427,000 acre feet to be taken out of the State of Idaho under the idea that water had to be used within the State on its way out. The only way to do that was with power production. It's against state law to remove water from outside the state without it being put to beneficial use in the State.

This was done on a test basis. I believe you were in the legislature when the initial legislation was passed to do this. It was to be on a test basis and the National Marine Fisheries was to report back to the State of Idaho on the results of this test, whether flow augmentation did any good or not. We have yet to receive a report from National Marine Fisheries. There are theories that have been debunked in the past two or 3 years in as much as more salmon are coming back now, with less flow augmentation, than there were before.

It is obvious to us that ocean conditions, the lowering of the sea surface temperature in the ocean, has had may more to do with salmon recovery than any meager thing that we could do with a few hundred—a thousand acre feet of water, when you figure that 20 or 30 million acre feet of water flow down the Snake and the Columbia each year. So, yes, we believe, through the studies that our Department of Water Resources has done, flow augmentation has done absolutely nothing to help recover salmon.

Mr. SIMPSON. Thank you. And again, thank you for coming over here. I appreciate it very much.

Mr. Crawford, let me ask you, is there any idea, of the $20 million in emergency founding, how is that going to be spent to help agriculture? Do you have any plans for how it's going to be divided up? Is it going to go solely to agricultural producers? Could you give me some idea? And let me tell you, first, that I do believe that that will be approved by Congress, because it was in the President's request, and I applaud him for that, and I believe—you know, not knowing exactly what Congress will ever do, I do believe

that it will probably be approved. But do we have a plan for how it's going to be spent?

Mr. CRAWFORD. Certainly, not only the water users and basic community are struggling with that very issue, but I think that the Congress is going to end up struggling with it as well. I think, as was stated before, that that $20 million is very greatly appreciated, but it's a very small Band-Aid on very large wound. The $250 million annual hit for this year, that I identified, is a very real thing. So if we try to get that money—the 20 million—on the ground to producers, and we try to share that with the farm workers in the community, we try to share that with the businesses that have suffered because of the taking that has occurred, it is going to be a very difficult task to distribute what is such a minute percentage of the hurt experienced here this year.

Mr. SIMPSON. Well, I appreciate that. It seems like, if you're looking at the 250 million—I've heard 250 million or 350 million dollar economic impact that this could have on this community. And we're talking, what, 10 percent or less than 10 percent—8 percent of the total impact being in this emergency appropriation? Everybody sees the impact that this is having on the farmer that's not going to be able to plant a crop or anything else like that.

A lot of people don't understand that in communities like this, when the farming industry is not doing well, neither is the farmer doing well, neither is the auto mechanic or the auto salesman or the dentist or the doctor or anyone else doing very well. I always told people in my dental practice that I could tell what the price of potatoes were every year by going back and looking at my appointment book, and you can do that. People don't understand how this impacts not just the farmer, but every business in the community, and as Ms. Molder said, how it impacts every school in this district and how it is going to impact the children in this district. The impacts go far beyond just the individual that isn't able to plant a crop out there, so I appreciate the testimony of all of you and look forward to working with you, because this is a band-aid to a solution that needs to be addressed.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman, and to all of you again, welcome. I'm very impressed with your testimony here today and your open and candid remarks about the problems that this has created. I think one of the things that I've learned here just from listening to you is that anytime there's a decision to be made by the Federal Government on issues like endangered species, what we need to do is put a few farmers and ranchers on the Fish and Wildlife Service to make that decision for us.

Mr. West, I was tremendously impressed with your comments about the economic safety net needed throughout that and the early decision to be made with water delivery rates so that you can make some crop decisions in planting. Those are very important as well. With regard to counties and the part you made about, when you remove property from the tax base. Believe me, I come from a state that has the highest percentage of its state boundary and geography owned and regulated by the Federal Government. In fact several of our counties are 10,000, 12,000 square miles, 98 per-

cent owned by the Federal Government. And you're right. PILT comes no where near being able to support their infrastructure, their schools, their highways, hospitals, law enforcement throughout the county, when you have a county that size.

What I want to talk to you about is, if you lose 40 percent of your population, as projected by the implication of this Endangered Species Act on the sucker fish, what are some of the numbers that you see in terms of your ability to provide services to families, to seniors, hospital care? Has your county looked at those numbers and made any determination at this point whether you're going to have to close facilities and reduce activity, reduce services? Has your county looked at those yet.

Mr. WEST. Mr. Chairman and Congressman Gibbons, we are very definitely impacted by this and have just concluded our annual budget process, and in that budget process we saw requests that we did fund for an additional $45,000 for the Swell Water Conservation District, an additional $50,000 for senior citizens' food programs, and I'm very pleased to say and proud that the elected officials of Klamath County stood together and turned down our cost of living rates, and that money, approximately $19,000, is being put into a special fund to help us meet some of the additional costs that we're facing because of this regulatory disaster. And we're already seeing an increase on the need for those services.

If I might just quickly read a couple of sentences from the director of our Mental Health Department to one of my colleagues. "Men and women accustomed to hardship, who have worked and fought their way through all the challenges nature and the economy have handed them for generations, cannot help themselves now. Their children are watching their friends disappear abruptly from their classrooms, and seeing their parents' dread, fear and outrage. Nightmares, anxiety and depression are new experiences that are taxing already overwhelmed family coping skills."

In our county Mental Health Department, pre-commitment investigation is up 67 percent, crisis services are up 64 percent, mental health medical services are up 32 percent. That's for March, April and May, when compared directly against last year, so we are seeing an increase in needs. Obviously, you gentlemen participated with the food coming in which was so generously donated by businesses. So there's a huge demand on our food bank, and we're going to see more and more increases in demands for county services. We did not enjoy the benefits of the economic recovery in the 1990's here, and our unemployment is still over 10 percent.

Mr. GIBBONS. Thank you.

And I want to address Mr. Crawford here for a minute, if I may. Mr. Crawford, picking up from what my colleague in Washington, Representative Hastings, asked earlier about the proposal to buy—from the Oregon Natural Resource Council, to buy farmland—I hope you're familiar with that in this brief question here. So if a farmer were to sell, what would be the tax implications? What would be the long range implications? Is it a plan that has met with reality, or is it just a short term fix for this problem?

Mr. CRAWFORD. Mr. Chairman and Congressman Gibbons, I'm going to use some strong words regarding that proposed action. And I am going to define some impacts from the perspectives of the

people who fully intend to stay in this Basin, in that farming is their future and the future of their children. There are three basic flaws with the idea that any conservancy group is going to go out and buy willing seller farmland, and particularly in the Tulelake area. They're proposing to spend about $100 million to accomplish that. The rights of those private land owners to sell to anyone they choose are the kind of rights that I hold as dear as anyone else as long as there are no impacts on their neighbors, or in this case, on the National Wildlife Refuge that is present there.

They're talking about eliminating commercial farming on 15,000 acres of Federal lease land as a part of this proposal. Therefore, this proposal is predicated on a lie. The net loss of 15,000 acres of prime farm land to the irrigation district that supplies the water, and to the farmers who depend on the income from those acres, is just as important as any other aspect of that acquisition. When any conservancy group is reimbursed at $110 million for the land that they paid for from willing sellers, whether it—they've contended that it's going into some sort of a farming trust to be administered by the irrigation district or the Growers Association. The truth is they are going to be reimbursed at 110 percent for their expenditure. At that point in time, the only way that it is legal to make that happen is for that land to go into the hands of the Federal Government. It would be a net loss of whatever acres—$110 million—from what the Federal Government can buy.

The other problem is their vision for that 15,000 acres of wildlife refuge. They envision it as a created and maintained wetland or as a storage facility to provide water for other areas of the refuge. Today that land has a 1905 irritation water right. If they are to create and maintain a wetland, it's going to be a 1928 reserve right, because that's when the refuge was created, so the water will not be available to accomplish that goal. If water is to be stored there as part of a storage project, they're going to have to get a right from the State of California to store water, dated 2001, and that water has to belong initially to the State of Oregon, so that stored water will be junior to any other water use in the entire Klamath Basin and will not be served in any year. That will be the net result of what's been proposed.

Mr. GIBBONS. Now, Mr. Chairman, if I may make just one final question here. I know my time is up, but I did want to go to Mr. Crawford, because this is an important part.

Mr. Crawford, you and your farmers in their association as water users have been paying, as you stated in your testimony, for the diversionary works to get that water to them. Let me ask you a question right now, and you can help answer this for us and the Federal Government. If you are not getting your water, are you being relieved of your obligation to pay for the O and M on that works?

Mr. CRAWFORD. Not only are we not being relieved of the responsibility of paying for that water—not that water; that O and M on the facilities that deliver that water—but there are 21 irrigation districts represented within the Klamath Project, and what is the faith of those folks that are going to be called upon next year, if we can rectify this disaster? We have to have the infrastructure and the people prepared to deliver that same water next year, so

we recognize our obligation to pay for that. Unfortunately, we have to recognize some income to see that that happens and that in the future, the facilities that we need are there, are manned, and the services that they supply are available to us as irrigators.

Mr. GIBBONS. Thank you. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. Congressman Gibbons, I appreciate your raising that issue. I have before me the O and M costs to the reserve works here, and have already talked to the Department of Interior about that very point. Why should you have to pay for something you're not going to get? And that's the point here, and we need to do something about that.

Mr. Crawford, later, in the next panel, we'll hear from a number of people who have some rather strong comments to make, as we've heard from other members of this panel and others that have strong comments. But I want to ask you a question, because of the testimony that I've read from Mr. Kerr, where he makes some comments that are pretty strong. And you're representing the farmers, so I want to ask you. One of the things he writes is, "Locally, potatoes are being raised more for the government subsidies than the market."

Could you explain to me any subsidies you're aware of being paid to potato growers in this market?

Mr. CRAWFORD. Congressman Walden, first of all potatoes happen to be a nonprogram crop through the FSA program.

Mr. WALDEN. I'm aware of that.

Mr. CRAWFORD. The idea that potato farmers are being heavily subsidized—and I think a portion of what Mr. Kerr refers to is the production of potatoes, onions, sugar beets, on that 15,000 acres of leased land that has been referred to—and not only are those crops on those acres not subsidized, but the Kiekel Act in 1964 said that those acres would be comprised of 75 percent cereal grain production for the benefit of waterfowl. And that Kiekel Act has never—we have never approached the 25 percent that is allowed to be in row crop since the Kiekel Act was written so—.

Mr. WALDEN. So you're following the law.

Mr. CRAWFORD. We're following the law. We are following everything.

Mr. WALDEN. —which mandates what you grow there. He goes on to say, "Klamath Basin farming is in trouble, but in reality the Endangered Species Act is the least of their problems." Do you happen to concur with that?

Mr. CRAWFORD. You know, I referred earlier to the cheap meal of a baked potato and a Chilean pen-raised Coho. The unfortunate reality for this Spring is that we're seeing a potential turn-around in the fresh market potato industry. And I think everybody realizes that this may indeed be the first year in a very long cycle of troublesome markets for fresh market potatoes. We have no fresh market potatoes planted out there on these farms and ranches who have gone through this long siege of poor market conditions, so we will not be able to take advantage of the changes in those trends this year to make ourselves whole again. The potato industry is very cyclical and always has been, and if we lose the opportunity to produce this year, we may never recover, and that is based sole-

ly on the idea that, for whatever reason, we have a zero allocation of water.

Mr. WALDEN. He also says it's marginal farmland. Do you agree with that or not ?

Mr. CRAWFORD. You know, when we go in to prove up yields in the FSA, it's amazing the productivity that occurs in this Klamath Basin. It is the most suited area in the world for the production of potatoes. Cool nights and warm days are what some of our row crops thrive on. Our grain yields are unparalleled, unparalleled anyplace else in this country, and good practice of rotational crops is what makes that all a viable thing.

Mr. WALDEN. I asked you those questions for a very important purpose, because we get testimony like this that then becomes part of the official record, that sometimes people have no opportunity to rebut, and it becomes believed and the truth. And I have real trouble accepting that, so I appreciate your comments on that.

Mr. CRAWFORD. Congressman, I might also say that this hundred million dollars that's been proposed to buy private lands and turn them into public lands, it is the contention of the irrigators that that hundred million dollars could instead be used to implement a sub-rotation program on the lease lands down there, or to do a myriad of restoration work that would provide benefit for all of the environmental resources as well as agriculture in the Klamath Basin.

Mr. WALDEN. I'll tell you, Mr. Crawford, if I could get a hundred million dollars, that's where I'd put it after I took care of the economic disaster here, and that's what we ought to get, and that's what this Federal Government ought to deliver. We ought to go to work to get more water in this basin, storage available for agriculture and for fish, but to satisfy both needs. If there's an extra hundred million floating around in Washington, we're going to put our hands on it, but it's going to be for a more productive purpose.

Mr. Vogel, I'd like to ask you a question.

Mr. VOGEL. Yes.

Mr. WALDEN. You've reviewed these biological opinions. You probably heard my reference to Mr. Markel's e-mail of Thursday, June 14th, where he said "maybe their sound science might have come to a different conclusion." What do you see as the biggest scientific flaw in the biological opinions?

Mr. VOGEL. In both opinions?

Mr. WALDEN. You take either one or both.

Mr. VOGEL. Okay. Well, there's no question it's the single minded approach that more water is always better for fish. There's a mind set there that cannot be shaken. It happened somewhere. I'm not sure what it is. And I get chastised for even suggesting that anything less than the maximum possible flows or the maximum possible lake levels will be good for fish. We've seen it demonstrated. We've heard it over and over. Very high lake levels— we've seen it in the past—they kill fish. Low lake levels are not killing fish.

The same with the Klamath River. They treat Upper Klamath Lake as though it's the Shasta Reservoir. They have this concept that there's this enormous, four and a half million acre reservoir with very cold, clear water, and somehow it's going to save all the problems of the Lower Klamath River Basin, and it will not work.

Upper Klamath Lake is very warm, very eutrophic and very shallow, and it's about 60 miles from there down to Iron Gate Dam. They're dumping more water today to try to mitigate for the failures of habitat restoration programs in the tributaries, and that really has to be shaken loose. I mean, the further scrutiny of this peer review will reveal those deficiencies.

Mr. WALDEN. Do you believe that the habitat improvement is what's needed most? If you could do one thing—if we could do one thing, two things, what would it be that would get to the heart of these problems we're facing today?

Mr. VOGEL. There's absolutely no question. The number one thing is we've got to start some projects—on the ground projects. I've never seen a place anywhere in the western United States where people will not allow on the ground projects to be initiated. They're saying, "No, don't do anything. Let nature heal herself. Just simply buy up the land, get all the water, and somehow, through mechanisms we don't understand, everything will be okay." And it will not occur. There's no turning back the clock to make a pristine ecosystem. Those days are gone. The idea is to come up with practical, real-world, on the ground projects to begin restoration activities.

Mr. WALDEN. Thank you, Mr. Vogel. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Simpson.

Mr. SIMPSON. Mr. Walden pointed out how sometimes statements become part of the record and then people start quoting them, and I just wanted to make sure that Mr. Crawford, when he was bragging about potato production here and he said this is the greatest place to grow potatoes in the world, what he meant was— I'm coming from Idaho and I do have to put this in the record is that, what he meant to say is this is almost the greatest place in the world to grow potatoes.

Mr. HASTINGS. Mr. Chairman, could I lend my voice to talking about the quality of the potatoes grown in the Columbia Basin Project as being maybe something that would compete with this area.

Mr. GIBBONS. Mr. Chairman, I also want to add that Nevada's Winemucca potatoes to that same item.

Mr. POMBO. Well, all I'll say is that since I am chairing this hearing and I happen to represent the San Joaquin Valley of California, we're going to come to a conclusion about the best place to raise potatoes.

Mr. Vogel, there's something that you just said about a pristine environment, and I think that—and I don't want anybody to get the wrong idea about what your comment meant. It's my understanding that in this so-called pristine environment, that the Klamath Lake was a much shallower lake than it is today, and yet the fish survived in that setting. How was that possible?

Mr. VOGEL. Well, it's possible because we're talking about sucker fish, in all honesty, there's this image that people are inappropriately portraying, that sucker fish are like salmon or they're like trout, and they're not. They thrive very well in muddy water, muddy conditions, shallow water. You see them all over the watershed now. We see them in habitats where these fish were never believed to be known. In fact I know ranchers and farmers right in

this Basin that know they have suckers on their property, and there's no way in the world they're going to tell anybody about it, for obvious reasons. So this is not a—this isn't rocket science. It's very, very straightforward, very simple. And the Fish and Wildlife Service is trying to ram a square peg into a round hole with these lake level issues, and we have to shake them away from that mind set.

Mr. POMBO. Well, you heard before, on the previous panel and on this panel—a lot has been talked about in terms of science and how we come to the conclusions that we do. And as a former civil servant yourself, I think it's important that the agencies, the outside groups, no matter what side of the issue they're on, come up with the best science that they are able to develop, and all of that to be presented to the agency to make their decision based upon science.

And currently, the way the system works, that doesn't happen, because I have heard complaints from those in the environmental community that their science has not been listened to. I have heard people from agriculture and building industries saying that the science that they put together was not listened to. And if we are ever going to have science that we can depend on, the entire system has to be changed from where we currently are. But I think that it's important that you and everybody else realize of this, that people being here—you know, a hundred plus years of people farming in this valley has changed the environment, and unless you are going to go in and remove any sign of human activity, including any dam, any person, any school, any city—just take it all out—and then somehow think that it's going to return to what it was before, it's not going to happen. So the solution has to be, how do you have a balance between protecting fish and wildlife and the people who live here, and how do the people that live here become part of the solution instead of those who pay the price, and I think that that's the solution that we have to come to.

I want to thank this panel and invite our third panel to come up. The Committee is going to take a very, very short break. But I do invite our third panel to take their seats, and we will be back very shortly.

[Recess.]

Mr. POMBO. I'm going to call the hearing back to order. We have our third panel here.

STATEMENTS OF ALLEN FOREMAN, CHAIRMAN OF THE KLAMATH TRIBES; TROY FLETCHER, YUROK TRIBE; FRANKLIN M. BISHOP, PRESIDENT AND CEO, INTERMOUNTAIN FARM CREDIT; ANDY KERR, SENIOR COUNSELOR, OREGON NATURAL RESOURCES COUNCIL; DAVE SOLEM, MANAGER, KLAMATH IRRIGATION DISTRICT

Mr. POMBO. I'm going to start with Mr. Foreman, if you're ready to begin.

STATEMENT OF ALLEN FOREMAN

Mr. FOREMAN. Congressmen, member of the Committee, I appreciate the opportunity to present the Klamath Tribe's views on the water problems in the Klamath Basin. Most of what has been said

here today, thus far, I agree with. The tribes have been saying the same thing for years. We have suffered from the empty promises of the government also.

I appear before you today representing not only a constituent base, but also as a leader of a sovereign nation, a nation that's recognized by the United States. I'm here not merely as another interest group or an interested party. I would like to remind the Committee that the United States has a legal and moral obligation to preserve and protect the trust responsibility to the tribes. The Constitution of the United States refers to its treaties as the supreme law of the land. It is in this context that I direct my remarks to you, on a government-to-government basis.

Our livelihoods are also as important as any others in the basin. The land and the other resources that we depend upon has been lost. Restoration is a necessary part of the solution in the basin. In order to understand the problems, it's important to understand its historical roots.

From the beginning of time, we owned all of the land in the Upper Klamath Basin and all of its resources, including the water. As a result of the Treaty of 1864, the tribes gave up 20 million acres of land, but still retained ownership of the remaining land an its resources. In the 1950's the land was lost due to a flawed termination policy, which President Nixon later declared to be immoral. We still retained the resources, including the water. The courts have upheld that those rights exist today, and I know of no agreed upon document in existence today that changes that fact.

Later, when the Government invited the farmers and the veterans of World Wars I and II to move into the Basin and suggested that the water would be available, the Government did not take into consideration or tell the farmers about the tribal water rights. The Link River Dam was put into place, that actually lowered the Klamath Lake from its historical levels. This began to diminish our resources.

To further compound the problem, for nearly a century the U.S. Has allowed the State of Oregon to issue water permits without regard for Tribal water rights, and until recently, without regard for the natural health of the rivers, lakes and marshes, causing virtually all of the Basin's streams to be listed on the 303 list as having severe water quality problems, and a further decline to our treaty resources.

The Government's own agencies—the Forest Service, the National Parks, the U.S. Fish and Wildlife Service—claim the same water, again without regard to the Tribal water rights or the tribe's needs. Today the problems are a cumulative result of nearly a century of extended promises for the available water.

Recently, the tribes have been victims of unwarranted and unjustified attacks on both our public imagine and our character. Unfortunately, there have been personal attacks as well. The most grievous of these are the attacks on our children in the public schools, many of whom live and attend schools within the farming communities.

With the water shortage this year, it's hard for anyone to think about a future when the present looks so hopeless. We know that livelihoods are at risk in the farming community. I want to make

one thing perfectly clear. It is not now, nor has it ever been, in the interest of the Klamath Tribes to shut down or destroy agriculture in the Klamath Basin.

It's both incorrect and unfair to blame the Tribes for the current water shortage. The real problem is that demand for water in the Klamath Basin has been allowed to exceed the supply. I hope that everyone can understand why the Tribes continue to defend our water rights in the same way everyone else in the Basin seeks to reinforce their own rights and claims. I would like to remind you that over use of the water has already severely damaged the livelihoods of our own families.

We also believe that the Federal Government has a responsibility to the farm families who, like the Klamath Tribes, now depend on a water system that is simply not capable of meeting the current demands. We, as a people who have for years felt the pain of being unable to meet the demands and needs of our families and communities, do not want to see our friends and neighbors in the agricultural community suffer. Sharing the benefits of nature's bounty is one thing, but now we must also share the adversity caused by decades of over-allocation and ineffective resource management. Today, we all need to focus on the present problem. The Tribes have been a leader in the search for an effective solution to the water problems.

Concerning the biological opinion, if a peer review is going to happen, which appears to be likely, it should review both the science that supports the withdrawal from the natural system as well as the science that supports keeping the water in the system, should be reviewed equally. First, we believe that the biological opinion incorporates the best available science. Second, we're concerned about the objectivity of any review simply because many influential people have already committed to a negative position. A review would involve a great deal of time and resources on a matter that the courts have already reviewed.

Doing away with or revising the Endangered Species Act or the biological opinion simply will not change the Tribal trust responsibilities, nor will it fix the problems that exist today. What will work? The current situation is correctable with strong, even-handed and focused leadership to get beyond the squabbles among agencies, between water interests and between the U.S. And the State of Oregon.

The goal must be restoring and sustaining a healthy and functioning ecosystem to support multiple uses. The Upper Basin watershed currently cannot provide a reliable foundation for either the Tribe or the agricultural community. Correcting this will allow the Tribes and agriculture to become stable and healthy. We need to reduce demand on the system through a program that fairly rewards the agricultural community for retiring land, so the remaining lands can be farmed with a certainty. This will stabilize the future for agriculture in the Basin. Next, a sustainable livelihood for the Tribal community must be part of the equation. This depends on the restoration of the Tribe's ownership of their homelands, which contains a significant portion of the watershed. We will then be able to restore the health of the forests, streams and springs

that nurture our water supply, and restore our much needed subsistence base.

The basin will not regain its health by treating the symptoms while avoiding the causes of the water shortage. We need to restore nature's productive capacity in the Klamath Basin, like the Creator intended, otherwise we'll be facing problems just like this one for years to come. Those of us who must face the consequences of those empty promises cannot build a future by turning on each other. The fisheries, the farming communities, the Klamath Tribe's culture and economy are all at risk. We need high level Federal policy makers to provide the leadership so that all of us who live in the Klamath Basin can work together on a lasting solution, not an inadequate quick fix. Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Foreman follows:]

Statement of Allen Foreman, Chairman, The Klamath Tribes of Oregon

Congressmen, members of the committee, I appreciate the opportunity to present the Tribes views on the water problems in the Klamath Basin.

I appear before you here today representing not only a constituent base but also as a leader of a sovereign nation, recognized by the United States,. I am not here merely as another interest group or an interested party. I would like to remind you that the United States has a legal and moral obligation to preserve and protect their trust responsibility to us. The constitution of the United States refers to its treaties as the supreme law of the land. It is in this context that I direct my remarks to you, on a government-to-government basis.

In order to understand this problem appropriately it is important to understand its historical roots.

*From the beginning of time we owned all the land in the Klamath Basin and all of it's resources, including the water.

*As a result of the Treaty of 1864, the Tribes have given up twenty million acres of land but still retained ownership of the remaining land and its' resources. In the 1950's the land was lost due to a flawed termination policy, which President Nixon later declared to be immoral, we still retained the resources including the water. The courts have upheld that those rights exist today. I know of no agreed upon document in existence today that changes that fact.

*Later when the government invited farmers and veterans of world wars I and II, to move into the Basin and suggested that water would be available, the government did not tell the farmers about Tribal water rights. The Link River Dam was put into place that actually lowered the Klamath Lake from its historical levels. This began to diminish our resources.

*To further compound the problem for nearly a century the U.S. has allowed the State of Oregon to issue water permits without regard for Tribal water rights, and until recently, without regard for the natural health of the rivers, lakes and marshes. Causing a further decline to those Treaty resources.

*The governments own agencies, the Forest Service, National Park, and the U.S. Fish and Wildlife claim the same water, again without regard to the Tribes water rights or needs.

Today's problems are a cumulative result of nearly a century of extended promises to others for our water.

Recently the Tribes have been the victims of unwarranted and unjustified attacks on both our public image and our character. Unfortunately there have been personal attacks as well. The most grievous of these is the attacks on our children in the public school system, many of whom live and attend schools within the farming communities.

With the water shortage this year it is hard for anyone to think about the future when the present looks hopeless. We know that livelihoods are at risk in the farming community. I want to make one thing perfectly clear, it is not now, nor has it ever been, the intent of the Tribes to shut down or destroy agriculture in the Klamath Basin.

It is both incorrect and unfair to blame the Tribes for the current water shortage. The real problem is that the demand for water in the Klamath Basin has been allowed to exceed the supply. I hope that everyone can understand why the Tribes continue to defend our water rights, in the same way everyone else in the Basin seeks to reinforce their own rights and claims.

We also believe the federal government has a responsibility to the farm families who, like the Klamath Tribes, now depend on a water system that is simply not capable of meeting current demands. We as a people, who for years have felt the pain of being unable to meet the needs of our families and communities, do not want to see our friends and neighbors in the agriculture community suffer.

Sharing the benefits of nature's bounty is one thing but now we must also share the adversity caused by decades of over allocation and ineffective resource management.

Today we all need to focus on the present problem. The Tribes have been a leader in the search for an effective solution to the water problems.

The following is a list of things that we know that will and will not work:

Will not work:
Concerning the BO.

1. We believe that the current BO is the best available science.
2. A review is unnecessary because the courts have already ruled upholding the science.
3. We are concerned about the objectivity of any review simply because many influential people have already committed to a negative position.
4. A review would involve a great deal of time and resources.

Doing away with or revising the ESA and BO simply will not change the Tribal trust responsibility nor will this fix the problems that exist today.

What will work:
The current situation is correctable with strong, even-handed and focused leadership, to get beyond the squabbles among agencies, between water interests, and between the US and the Sate of Oregon.

*The goal must be restoring and sustaining a health and functioning ecosystem to support multiple uses. The upper basin watershed currently cannot provide a reliable foundation for either the tribal or the agricultural communities, correcting this will allow the Tribes and agriculture to become stable and healthy.

*We need to reduce demand on the system through a program that fairly rewards the agricultural community for retiring land, so the remaining lands can be farmed with certainty. This will stabilize the future for agriculture in the Basin.

*A sustainable livelihood for the tribal community depends on the restoration of the Tribes' ownership of our homelands, which contains a significant portion of the watershed so that we can restore the health of the forest, streams, and springs that nurture our water supply, and so that we will be able to restore our much needed subsistence base.

The Basin will not regain its health by treating symptoms while avoiding the causes of our water shortage. We need to restore nature's productive capacity in the Klamath Basin. Otherwise we will be facing problems like this one for years to come.

Those of us who must face the consequences of those empty promises cannot build a future by turning on each other. The fisheries, the farming communities, the Klamath Tribes culture and economy are all at risk.

We need high-level Federal policy makers to provide leadership so that all of us who live in the Klamath Basin can work together on a lasting solution, not an inadequate quick fix.

EXECUTIVE SUMMARY

The current situation in the Klamath Basin offers a unique opportunity to develop a policy showing that economic and environmental concerns can be productively balanced, and that the honor of the U.S. can be upheld in its dealings with both indigenous peoples and its other citizens. The situation is not some sort of obscure scientific controversy, but rather a problem of community instability on three fronts.

These fronts are interdependent, so any real solution to Basin problems must address all three, or the problems will persist.

- The Klamath Tribes currently lack crucial elements required for their societal and community stability; as this is corrected the Tribes will become a stabilizing element in the Basin.
- The agricultural community is undergoing economic difficulty and uncertainty in water supplies that make it unstable; as this is corrected that community will become a stabilizing element in the Basin.
- The Upper Basin watershed is in a devastated condition and cannot provide a reliable foundation for either the tribal or the agricultural communities; correcting this will allow the Tribes and agriculture to become stable and healthy.

The situation is correctable with strong, even-handed and focused leadership by the Administration to get beyond the squabbles among agencies, between water interests, and between the United States and the State of Oregon which have characterized the situation in recent years. In this document the Klamath Tribes discuss three fundamental problems and offer the broad outlines of a prescription for solutions.

Ecosystem repair: Basin rivers, lakes, wetlands and forests are degraded to the point that the health and stability of all Basin communities are undermined. Large-scale restoration oriented toward long-term ecosystem functions can solve this problem. Research into agricultural improvements will enhance prosperity of agricultural operations, an essential component of achieving necessary restoration on private lands.

Solving over-appropriation: Federal and state promises have created a demand for water that exceeds what Nature provides. Administration leadership is needed to lay the foundation for restoring the balance.

Returning the tribal homeland: A sustainable livelihood for the tribal community depends on the Tribes' recovery of certain lands now in federal ownership. These lands were taken from the Tribes as part of the now discredited Termination policy; the Administration can further the process of their return.

The Basin is at a critical juncture. It can be the centerpiece of a federal policy balancing nature and the economy, or it can be left to descend into decades of divisive litigation and strife.

A STRATEGIC APPROACH TO ACHIEVING ECONOMIC AND ECOLOGICAL HEALTH IN THE KLAMATH BASIN

THE KLAMATH TRIBES - JUNE, 2001

The events of 2001 in the Klamath Basin are the inevitable consequence of long-standing, unresolved conflicts. With all Klamath Basin residents suffering economic hardship brought on by decades of the federal and state governments' mismanagement of the region's water resources, only leadership from the highest levels of the United States government can restore a sustainable economy based on rationally managed natural resources. The Klamath Tribes have been and will be here always, so we have been intimately involved in all of the issues that must be addressed to achieve stability and prosperity for the Basin as a whole.

The Klamath Tribes are uniquely positioned to play a central role in resolving Basin problems to the benefit of all, and we are very serious about doing so. Therefore, instead of focusing on past hurts and inequities, we are focused on the future, on finding solutions that can work for everyone. In this spirit, we offer the following outline of our strategic approach to achieving economic and ecological health in the Klamath Basin. Our intent here is not to provide a greatly detailed strategy, but rather to facilitate a basic understanding of the problems driving the present conflicts and crises, and then to offer the key elements of viable long-term solutions.

We believe that our strategy provides a strong foundation for the development of an effective U.S. policy which can resonate throughout the nation, and perhaps the world. We envision a policy showing that economic and environmental concerns can be productively balanced, and that the honor of the U.S. can be upheld in its dealings with both indigenous peoples and its other citizens. While we firmly believe that successful policy can be built on the foundations we offer here, we are not naive about the challenges involved. Strong, even-handed, responsive leadership from the highest levels of the U.S. government will be the pivotal element in determining the success or failure of efforts to bring health and stability to the Klamath Basin.

Background and Description of Problems

It is our intent to approach the issues at hand in a positive, solution-oriented manner. However, it is crucial for policy-makers to understand the perspective from

which the Klamath Tribes approach the present situation, so we must briefly detail some history. Social and ecological problems experienced here in the Klamath Basin are complex and have a 140+ year history. We refrain here from providing great detail, focusing instead upon the fundamental problems, which have brought us to the present situation; problems which must be resolved to achieve health and stability. We stand ready and able to provide detailed explanations and analyses of any component, and will await requests for further information to do so.

In the Treaty of 1864, the Klamath Tribes reserved hunting, fishing, and gathering rights on 2.2 million acres of land, essentially encompassing the entire Upper Klamath River Basin above Upper Klamath Lake. Over time, reservation boundaries were resurveyed and changed until in 1954 the reservation was reduced to 1.1 million acres. The Termination Act of 1954 led to the loss of federally recognized tribal status as well as the conversion of a major portion of our ancestral lands into the Winema and Fremont National Forests. Termination precipitated a time of severe economic and social devastation from which we are struggling to recover. In 1986 the US acknowledged the failure of the termination era policies by restoring our federally recognized tribal status. While this step restored some capability and authority to influence resource management, it was not accompanied by the return of our ancestral lands, and so was insufficient to overcome the legacy of devastation wrought on the landscape during the termination era.

It is vital to understand that the Klamath, Modoc, and Yahooskin peoples have been on this land for hundreds of generations, thousands of years before the ancestors of the American pioneers had any idea that the North American continent even existed. When we go out into the land, we can literally feel the permanent presence of our people throughout history, a sense of belonging that cannot really be described or fully understood by outsiders. Our land was taken from us in stages from 1864 to 1954, until we were left with none. Since 1864 we watched as enormous changes were made across the landscape; we watched Upper Klamath Lake turn into a cesspool, the streams and rivers degraded, the marshes plowed under, the salmon disappear, the sucker fishery plummet, the deer herds decline to all-time lows, sacred places trampled and pillaged, and the forests completely changed in character.

Many decades of industrial forestry, agricultural development, and other changes led to a complete transformation of our landscape, and resulted in the decimation of natural resources vitally important to the spiritual, cultural and economic livelihoods of the tribal community. Radical changes in forest structure and composition contributed to tremendous declines in our mule deer herds. Places sacred to our people have been trampled and pillaged. Road development has cris-crossed our ancestral lands with an amazingly dense road network. What little old growth forest remains occurs in small isolated patches.

Over the past century, the most beneficial use of water was considered to be taking water away from fisheries in order to create more irrigated agriculture. Accordingly, vast tracts of wetlands and even lakes were diked, drained, and transformed to farmland. Floodplains of our major river systems were developed as well, resulting in extensive loss of important riparian ecosystems and the commensurate impairment of floodplain function. Profound changes in the geomorphology (that is, the shape and physical characteristics) of our rivers degraded both fish habitat and water quality. Diversions of water from our rivers annually draw them far below natural base flows. Diversions of water from Upper Klamath Lake cause annual lake level fluctuations far in excess of the natural condition. Cumulative effects of these and other transformations of the watershed contributed greatly to the hypereutrophication of Upper Klamath Lake, impairing water quality so severely that some of the toughest and most abundant fish species, the suckers, have been pushed to the brink of extinction. Effects of these terrible conditions are felt by everyone, causing problems for other fisheries and water users far downstream of Upper Klamath Lake.

The direct consequences of this severely degraded watershed are being felt by all in the present water crisis. As all parties battle over who gets how much water, the fundamental problems which underlie the entire situation are not being addressed. Everyone living here can fight about water quantity forever, and no matter who wins or loses the terrible problems we face will remain, until we properly address the central problem of extreme ecosystem degradation. A healthy Basin economy depends on being able to squarely address ecosystem restoration at an appropriate scale. Unless we do this, we simply doom ourselves to continued instability, strife, and economic depression.

So far we have described the devastated condition of both our ecosystem and the tribal economy, but another important piece of the puzzle remains, the health and stability of the agricultural economy. The recent shutoff of irrigation water to part

of the Klamath Project has obviously hurt that portion of the agricultural economy. Such events further de-stabilize the basin, resulting in extreme polarization of the very groups which must come together to achieve long-term solutions. Agriculture needs something which it does not have: a stable water supply. Instability of the agricultural water supply results from decreased wetland and floodplain storage as well as from ESA-related regulatory actions, both of which originate from impaired ecosystem functions, and from uncontrolled development of water demand which now far exceeds the supply Nature provides.

In the present crisis we are watching our agricultural neighbors experience in part what has happened to the Tribes over and over: promises ignored, trust betrayed, severe personal economic damage, terrible pain, anguish, fear, and anger with no productive outlet. We do not revel in their misery, and did not try to engineer their demise. However, we cannot let their agony and anger obscure the pathway to successful resolution of our problems. We want what is best for all Klamath Basin residents, a healthy ecosystem with stable and prosperous economies for all. Thus the crucial question is this: can we devise an effective strategy to restore health and stability to the Klamath Basin ecosystems as well as to the Tribal and agricultural economies? We firmly believe that the answer is yes, a successful approach can be devised, and that the success or failure of such a strategy rests in the willingness of the highest levels of the US government to engage the situation with strong leadership, wise policy, and adequate resources.

The Pathway to Stability: Three Key Elements

A central theme of these problems is instability, which will persist until the foundational problems we face are addressed at the appropriate basin-wide spatial scale and a long-term temporal scale. We are not facing some sort of scientific controversy here, but rather a problem of extreme social instability. The instability occurs on three fronts, each of which must be addressed by real solutions.

- As long as the Klamath Tribes lack crucial elements to regain stability, our social and economic pain will be a destabilizing element in the Basin.
- As long as the agricultural community undergoes the uncertainty and economic difficulties it has been experiencing, it will be a destabilizing element in the Basin.
- As long as the watershed in the Upper Basin remains in its present devastated condition, there is no possibility that either the Tribes or agriculture will become stable and healthy.

Critical ecosystem functions must be restored, recognized, and valued by all. Agriculture must own their land and have an assured water supply. The Klamath Tribes must own our land, manage it to meet our needs and the needs of our neighbors in the Klamath Basin, and have an assured water supply. A sustained and prosperous society in the Upper Klamath Basin cannot be achieved without adequately addressing these three foundational elements.

ECOSYSTEM RESTORATION

Four main components require restoration in the Upper Klamath Basin ecosystem: rivers, lakes, wetlands, and forests. The Klamath Tribes have been researching and managing these ecosystems for a long time, and we have concluded that repair of the following structural and functional components is crucial to regain ecological health in the Basin. It is critical to consider the scale of both the problems and their solutions. Ecological problems in the Upper Basin have been 100+ years in the making and occur across a large portion of this watershed. To be successful we must recognize that repairing this Basin will take time; a century of abuse cannot be erased in a moment. We can guarantee failure by approaching restoration with a small-scale, short-term mind set, expecting that a few years of restoration actions will immediately realize benefits sufficient to free up water supplies and allow a quick return to the status quo. Alternatively, we can guarantee success by recognizing the landscape scale of restoration needs, and by focusing our goals on the long-term benefits to restoring critical ecosystem functions.

Rivers and streams need to be re-shaped, re-positioned, and adequately watered.

Early on, riparian communities were removed, which destabilized the riverbanks, causing rivers to widen, straighten, and incise into their floodplains, lowering the local water tables and drying out the floodplains. As a result of these structural changes, nutrients are no longer stored appropriately either in the river channel or in the riparian ecosystem. Instead, nutrients free-flow down the river systems, which greatly contributes to the eutrophication of our lakes. Like nutrients, water is no longer stored appropriately in wetlands and floodplains, so summer base-flows are reduced, and then are further reduced by water withdrawals. All of these effects

are reflected in the greatly impaired physical habitat and water quality conditions we now have in our rivers.

Our rivers need to be narrower, deeper, more sinuous, and they need to be placed back into the proper contact with their floodplains. Dense, diverse riparian systems need to once again flourish along our river corridors, and sufficient water must remain in the rivers to maintain healthy aquatic life and healthy riparian plant communities. We firmly believe that landowners will see benefits from these improvements as their fields and pastures in the flood plains are reconnected with the water table. They will embrace, not resist, these improvements once the benefits are demonstrated. A program of substantial pilot projects to illustrate these benefits would be an appropriate next step.

Implementing these restoration actions from the top down in the Basin watershed makes a lot of sense. As the watershed above Upper Klamath Lake heals, summer inflows to the lake will increase and nutrient inflows will decrease, with obvious benefits to all beneficial uses downstream from the lake.

The Upper Klamath Lake system needs a more natural hydrology, with functional tributaries and peripheral marshes.

Just as Upper Klamath Lake has been a focal point of the present water controversy, it remains a vital ecosystem component because it provides the main habitat for endangered suckers, the main water source for the Klamath River where threatened salmon dwell, and the primary irrigation storage for the Klamath Project. Competition among these uses has been greatly intensified by the terrible water quality problems in Upper Klamath Lake, so solutions to the water quality problems have been and must continue to be a centerpiece for management in the Basin.

Two major components need to be addressed in Lake management and restoration. First, annual draw-down of the Upper Klamath Lake system far in excess of natural levels must stop. Both water quality and physical habitat for fish are impaired by the extreme fluctuations in lake elevation, which have occurred annually since 1921. Second, peripheral wetlands need to be reconnected to the lakes, providing fish habitat and water quality benefits. Major projects are already underway at the Wood River Ranch (BLM) and the Lower Williamson River Delta Preserve (TNC), and have already provided significant benefits. Both projects are located on major lake tributaries that are crucial locations for the restoration of appropriate morphology and connectivity between the rivers, their delta wetlands, and the lakes. In addition, marshes are becoming re-established on the Agency Lake Ranch (BOR), and options for its management are being developed. More opportunities exist for major wetland restoration around the edges of the Upper Klamath Lake system.

Upper basin wetlands need to be restored.

Large, unique wetlands exist in the Upper Basin, and they are in need of extensive restoration. The Klamath Marsh (FWS) and the Sycan Marsh (TNC) are huge wetlands that are vitally important components of the rivers on which they occur. Both were extensively drained and modified for grazing uses, and require large-scale actions to restore their many important ecosystem functions. Of particular importance is the restoration of their hydrology, which has far-reaching influences on both the marshes themselves and flows in the downstream river systems. They also both perform important functions for the river systems upstream, exerting profound geomorphological influences on the river channels and providing important habitat for large, migratory fish like Redband trout and the threatened bull trout. The many ecological benefits realized by restoring these unique wetlands are too numerous to list here. Suffice it to say that in these critical areas the restoration efforts already underway, which are greatly limited by funding, need to be redoubled.

Forests need to be re-structured.

Many decades of industrial forestry have radically altered the forests in the Basin. Forests, which once were structurally complex with trees of diverse species and ages, have been transformed into young stands with low species diversity. These simple forest types now dominate the landscape, which profoundly affects many things. Mature forest stands are rare and occur in isolated patches, and animals relying on them have suffered steep declines. Mule deer herds are at all time lows, due in large part to the poor habitat provided by these simplified forests. Road networks are amazingly dense, a legacy of intensive harvest activities. Hydrological functions of the forest lands have been altered in complex ways not fully understood, but which likely affect the timing and magnitude of spring runoff and influence the perennial nature of many small streams. We need to embark on a long-term approach to restore complex forest types across the landscape through careful, selective harvest and other innovative forestry practices.

Agricultural research and enhancement.

Agricultural lands occupy large portions of our most sensitive landscapes—floodplains and historic wetlands. As such they represent crucial components of our present-day ecosystems. It is very important that farmers and ranchers be supported by significant research into appropriate topics like water conveyance and application efficiencies, innovative crop selection and marketing strategies, and innovative grazing strategies. Much of the ecosystem restoration we all need must happen on private lands, and we believe the best way to make it happen is to help agriculture to prosper. Marginal operations cannot afford to be interested in restoration—prosperous operations can. Solid research can point the way to more profitable agricultural strategies. However, applying the results of such research will likely involve infrastructure changes with which financial assistance will be needed. It is imperative that changes to agricultural operations be facilitated in ways that make operational changes and ecosystem restoration both desirable and profitable for producers.

SOLVING OVER–APPROPRIATION PROBLEMS IS PART OF THE SOLUTION

Basin goals must include developing a sustainable agricultural component of the Klamath Basin economy.

* We do not have that now. Now it is fragile, dependent on regular government relief, and entangled in constant conflict with its neighbors.

Some farmers try to describe (and demand of public officials) an ideal that has never existed, i.e., uninterrupted water supply at current demand levels.

* In fact, even the farmers do not really believe it is possible.

Project Irrigators (below Upper Klamath Lake) in Kandra v. U.S. demand that the United States and the State of Oregon reduce Upper Basin (above Upper Klamath Lake) irrigators' water use.

Upper Basin irrigators in the Klamath Basin Adjudication challenge the validity of Project Irrigators' water rights and water use. And vice versa Project Irrigators challenge the validity of Upper Basin users' uses and rights.

It is unlikely that the congressional delegations can do the right thing on this issue.

* Politically no elected official from Oregon feels safe in being the first to say the real problem is over-commitment of limited resources.
* But if the Administration puts the issue on the table, elected officials and all other interests will have to respond. Everyone is learning that what's being asked of them by the farmers is (a) impossible to deliver and (b) not really believed by the farmers themselves, *i.e.,* each farming interest asks for its water to by guaranteed while asserting that other farmers should be cut off. The delegations know the status quo is unsustainable; they need to respond to Administration leadership on the issue.

Demand reduction concepts should look Basin-wide, not just at the Project. There is more bang for the buck the farther up the watershed one looks.

* Water quality and temperature improvements higher in the system have more far- reaching beneficial effects.
* Water savings higher in the system provide more management options over a larger territory than similar savings lower in the system.

RETURNING TRIBAL LANDS NOW IN FEDERAL OWNERSHIP AND CONTROL IS PART OF THE SOLUTION

The Klamath Tribes managed the territory of their homeland on a sustainable basis for thousands of years. We continue to have significant property rights in the form of hunting, fishing and gathering rights and the water rights to support these activities on the former reservation. As a result we have, over the past thirty years, been involved in and gathered significant information about the management of these lands and the related wildlife and water needs. We are intimately familiar with what the land needs in order to restore the stability of the natural systems on which the Basin economies depend.

Solutions to Basin ecosystem and economic problems should include the return to Tribal ownership of approximately 690,000 acres of certain lands now owned and managed by the federal government. The following points should be kept in mind when considering this aspect of resolving the current situation in the Klamath Basin.

- The Tribes are the only government in the Basin that can provide a long-term commitment to the management of these lands consistent with an articulated set of management principles that will NOT be subject to amendment by a successor administration. This is one way to guarantee that these lands will be managed over the long term consistent with watershed rehabilitation and restoration of watershed capability.
- The Tribes have a vision and proposal for how to accomplish the restoration of the lands, the watershed, and the wildlife habitat for generations to come.
- A restored watershed will return appropriate hydrologic functions to the Basin.
- Restoration of riparian areas will improve water quality and fish habitat, increase base flows, make flood plain agriculture more productive, and improve lake and river conditions far downstream.
- Returning out of Basin diversions that once naturally flowed into the Klamath watershed would add 30 to 40 thousand acre-feet to the system.
- Using more efficient irrigation methods would reduce substantial losses to the system.
- Enforcement measures should be mandated to protect legitimate water users. Currently there is little or no enforcement against illegal use.
- Major forest management changes are necessary to enhance the damaged watershed.
- Substantial reduction of both natural and artificial pollutants would greatly improve water quality.
- A serious reduction in out of stream demand above Klamath Lake would greatly enhance the entire system.
- Ground water augmentation is feasible only to the extent that it is based on sound hydrological data and does not impair the surface water supply.
- The Tribes can commit to the delivery of the harvest of timber to the local economy, thereby securing to the Basin economy a reliable and sustainable economic base for that sector.
- The lands were taken from the Tribes as a result of the disastrously flawed and now discredited federal policy of Termination, which the Tribes resisted unsuccessfully. Therefore the honor of the US is manifest in the extent to which serious consideration is given to return of the Tribes' homeland.
- The Tribes' stability depends on our ability to obtain a sustainable livelihood in the Basin. This, in turn, depends on our having a land base whose management is keyed to tribal values and long-term sustainability rather than to shifting federal priorities.

** *Establishment of a subsistence base for the Tribes.* We know from the past that this land is capable of providing for the needs of our people. The Tribes have a 100-year restoration plan to heal the land, "When we heal the land, we also heal the people".

** *Restore our full Tribal identity.* "Our culture is strongly linked to the land. It is impossible to talk about one without the other."

** *Provide employment and income opportunities for tribal members.* "We will protect our resource while generating a sound economy and commerce. Most important is not to take more than the land can endure."

** *Protect and preserve our spiritual sites and cultural resources.* "Our people have been on this land from the beginning of time, the spirit of our ancestors walk this land to this day."

** *The stability and economic well being of the Tribes is beneficial for the entire community.*

HISTORY, BACKGROUND AND STATISTICS

Klamath County, Oregon contains 6151 square miles on the California border in south central Oregon. The county is located between the foothills of the Cascade Range and the Great Basin desert. Klamath County comprises approximately one-third of the area drained by the 254-mile long Klamath River, which empties into the Pacific Ocean. The larger region known as the Klamath Basin, covers more than 10 million acres including most of Klamath County, Oregon and portions of three other Oregon counties and five counties in California.

This region once contained some 350,000 acres of lakes, freshwater marshes, wet meadows, and seasonally flooded basins. Salmon once traveled the length of the Klamath River into the Klamath Lake and its tributaries, the Wood, Williamson, and the Sprague Rivers. Lakes and streams in the upper basin also contained great populations of C'wam and Qupto. These fish provided a major food source for the

Klamath Tribes. Early white explorers to the Klamath Basin were astounded by the great concentrations of ducks, gees, swans, pelicans and other birds. Early trappers in the area harvested beaver, otter and other fur-bearing animals here.

Historically, the Klamath, Modoc and Yahooskin Band of the Snake Indians lived in the major portion of the upper Klamath Basin as separate Tribes. Today the three Tribes are recognized collectively as The Klamath Tribes. Other Tribes residing in the lower portion of the Klamath Basin include the Hoopa, Karuk, and Yurok.

Damming and diversions of rivers, and draining of wetlands in the upper river basin have taken a large toll on the region's ecology and wildlife. Over 75 percent of the Klamath Basin's wetlands have been drained and converted to agriculture. Over logging and other factors have also impacted the area's ecology dramatically, significantly altering the hydrology and degrading the water quality. The C'wam and Qupto are now listed as endangered species, and the Coho salmon are a threatened species.

In the Treaty of 1864 the United States government on behalf of the American people guaranteed the continuance of The Klamath Tribes' pre-existing right to hunt, fish, gather and trap on the Tribes' reservation, along with sufficient water to protect the resources necessary to these activities. The Tribes in turn ceded in excess of 20 million acres of surrounding lands. These mutual promises are still in force today.

In 1905 the United States government authorized the Bureau of Reclamation's Klamath Project without regard to water that was guaranteed to the Tribes in 1864. Later the United States government allowed the State of Oregon to issue certificates for the same water on the Oregon side of the basin, again without regard to the Tribes pre-existing rights. Later the U.S. Park service and the USFWF were allowed to claim the same water. As a result, there is a drastic over allocation of the existing water supply.

The statistical background of the local community offers important insights into the current situation and possible solutions.

- The population of Klamath County has increased 26 percent from 1970 to 63,185 people in1997. The most significant change is that both the number and percent of Klamath County residents 65 years old and older have doubled during that same time period.
- Nearly two-thirds of the growth in personal income over the last 28 years has come from non-labor sources: dividends, interest, rent, and transfer payments (such as retirement and medical benefits).
- Services surpassed manufacturing and government as the largest source of earnings in the early 1990s. Health services comprise about half of total service income.
- Income from farming declined 93 percent (in real terms) between 1969 and 1997 and represents two-tenths of one percent of total personal income. Agricultural services accounted for six-tenths of one percent of income in 1997, a decrease since 1969.
- Total employment in Klamath County has increased 44 percent since 1969 to 32,065. The largest gain was an 82 percent increase in the number of people who own their own business. Farm employment declined one percent since 1969.
- Income from state and local government jobs has increased 98 percent since 1969 to $106 million. State and local government now represent nearly three-fourths of government sector income.

Source: US Department of Commerce. 1999. Regional Economic Information System (REIS) 1969–1997

Mr. POMBO. Mr. Fletcher.

STATEMENT OF TROY FLETCHER

Mr. FLETCHER. Thank you, Mr. Chairman and Congressmen. My name is Troy Fletcher. I'm a member and Executive Director of the Yurok Tribe. The Yurok Reservation is located at the mouth of the Klamath River and extends 44 miles upstream. Whatever happens in the Klamath Basin, whether it's on the Trinity, the Shasta, the Scott or in the Upper Klamath Basin, is of direct interest to the Yurok Tribe. The Klamath Basin is a big basin. It's 10,000 square

miles, plus, and we have a large interest in anything that happens, specifically directed toward fishery interests.

I'd like to start by making a few points that briefly summarize my written testimony. First off, I want to underscore and stress the willingness, the desire of the Yurok Tribe to continue to work toward resolution of the issues in the Basin. These are difficult, large issues that will require the dedication and the participation of a number of different interests. For any of this to be productive—any of the discussions to be productive, for any of the resolutions to be meaningful, there needs to be an acknowledgment that our interests are legitimate as well as the interests of others, and we acknowledge the legitimate interests of all the parties in the Basin that are dealing with this tough issue.

We understand what the constituents in the Klamath Project are going through. The Yurok Tribe, as the Klamath Tribe has mentioned, Chairman Allen mentioned, has been going through the same thing for decades. It's an ongoing impact. Our fishery resources have declined from, not only historic levels, but even the levels that were there over the past few decades. We're not only interested in Coho flows in the river, from our perspective, it needs to not only focus on Coho salmon. There are other issues out there.

When it comes to the discussion on ESA and the reform of ESA, I'd like to stress, as Chairman Allen also stressed, that there's Tribal trust issues right behind that. A lot of the discussion that occurred this year, of course, was focused on the Coho salmon or the endangered species in the lake, but those other species also are part of the equation. They are part of our discussions that we've had with the Department of Interior, the National Fishery Service and others, and they've been part of our ongoing concern.

I'd like to say a few words about the science. There was a lot of discussion here about science. There's a lot of debate about whose science is better than the other person's science. And I too agree that if we're going to stress peer review, as we should, then I believe sincerely that all parties need to be at the table. There needs to be open, candid, frank, lively debate over the science that goes into our decision making processes, but it's got to go two ways.

And I do have to make a few comments on some of the comments Mr. Vogel made earlier. I've been a member of the Klamath River Task Force, or was a member of the Klamath River Task Force up until last year. The Klamath River Task Force started looking at these flow issues in '96 and '97. At that time the Task Force Commission was scoping to look at the in-stream flow issues in the Klamath Basin, and we stressed the need to have a number of parties—all parties participate in that discussion, even parties who weren't members to the Task Force, like the groups on the Shasta and the Scott River, attended those scoping meetings. Those scoping meetings were the beginnings of the Hardy, phase two and phase one, flow studies.

I, personally—and it's in the minutes of the Klamath Task Force—have asked that the Klamath County representative and their technical work group person, who happens to be Mr. Vogel's partner, attend those meetings. We've stressed the need at the technical work group for everybody to attend those meetings. For financial or other considerations, that participation wasn't there,

and it was sorely needed, and now I think you're seeing the result of a lack of participation.

There's questions being raised, there's issues that are thrown out, there's criticisms of the science that we do have. Some of that criticism, some of those issues I think could have been addressed if people would fully participate to the best of their abilities. And they should be there. They have to be there. If they're not there then we're not going to have any reasonable solutions, as I said earlier, so we're open to that and we think it should happen.

I would also like to add that because of the breadth of the scientific issues, they're not easy issues. There are times of year, there are differences of opinion in the amounts of flow, and there are all kinds of issues on the table. I think it would be good to convene a several day workshop, a several day forum, to fully go through the issues that are under debate in the scientific realm. I think that would benefit everybody. It would be good to see some of you there, and let's all get a good understanding of what we're each talking about when we're talking about science. After all, usually the proof in science boils down to a courtroom, and we need to try to avoid that. Let's try to get on the same page.

When it comes to solutions for the basin, we too believe that there's just too much demand for the limited amount supplied. We believe and we know that fish, the salmon species, need more water. We also, though, hear what the Klamath Project users are saying, and we agree that it's not fair to single out the Klamath Project. The irrigators that are above the lake need to be held accountable. The States of Oregon and California need to be accountable. Irrigators in the Shasta and the Scott River need to be accountable. This is going to be a Basin wide issue. It's going to require Basin-wide solutions and resolutions, and it's not fair to focus in on one group. We fully think that that's a fair criticism. With that, thank you for this opportunity.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Fletcher follows:]

Statement of Troy Fletcher, Executive Director, Yurok Tribe

Thank you for the opportunity to appear before you today to provide the perspective of the Yurok Tribe on the problems of water scarcity in the Klamath Basin. I am the Executive Director of the Yurok Tribe, the largest Indian tribe in California, with a population of approximately 4,000. We appreciate your interest in finding acceptable and permanent solutions to the water crisis facing the Klamath Basin.

It is an unfortunate fact that today there is insufficient water available in the Klamath Basin to satisfy the demands of irrigators, tribes, and wildlife refuges. The Yurok Tribe feels the effect of these shortages in an especially acute way. Our reservation is bisected by the last 45 miles of the Klamath River as it makes its way to the Pacific Ocean. Our people and our culture are tied to the Klamath River in ways that are sometimes difficult for outsiders to understand. We rely on the River for the anadromous fish it supplies for our food, for the spiritual meaning that comes from ceremonies based on the River, and for the ultimate cultural significance as Yurok people. As one of our elders put it, the Klamath River is our identity as Yurok people. This has been true since time immemorial.

The United States created our reservation in 1855 so that our people would have a permanent place to practice a culture centered on the Klamath River. We see that as a promise made to us that the United States must honor today. This fact has led the Department of the Interior, and many federal and state courts to conclude that we have fishing rights that are protected by federal law. And, because a fishing right without water would be largely meaningless, we also have a right to adequate amounts of water to satisfy our fishing needs. Although our water right has not been formally quantified by the courts, law and morality require that federal agen-

cies, such as the Bureau of Reclamation, must operate their projects in ways that respect our water and fishing rights.

The federal government has undertaken a trust responsibility for the lands and resources of Indian tribes. The courts have ruled time and again that the Bureau of Reclamation has a legally-enforceable trust obligation to satisfy the fishing and water rights of the tribes in the Klamath Basin, including the Yurok Tribe. We believe as well that as a legal matter the tribes in the Klamath Basin should have the first priority to scarce supplies of water.

We continue to be frustrated by the failure to resolve the water problems in the Klamath Basin. In contrast to the farmers in the Klamath Irrigation Project, who typically have received full contract deliveries of water, the Yurok Tribe has rarely received sufficient instream flows to support the restoration and maintenance of the Tribe's fishery. The diversion of water by the Klamath Project for irrigation is one of the primary reasons for the deteriorating condition of our fishery. We understand that other factors contribute as well, but the simple fact is that salmon and other anadromous fish cannot survive without a natural streamflow of adequate amounts, depths and velocities at critical times in the spawning and rearing cycles.

The Klamath River anadromous fishery is in deep trouble, with population levels at historic lows. As you know, coho salmon are listed as threatened under the Endangered Species Act. These actions show that some species of the Klamath fishery are facing extinction. Spring chinook and summer steelhead salmon populations are presently at levels that represent a small fraction of their historic abundance. Eulachon are nearly extirpated from the Basin, and anecdotal information shows that lamprey and sturgeon populations are also declining. The decline of our fishery has decimated our community, increasing unemployment, destroying the social cohesion of our reservation and degrading our cultural practices.

The failure to provide adequate instream flows has harmed and continues to harm the Yurok Tribe. Our culture is degraded and our economy suffers. Without the ability to rely and subsist on our fishery, our people are forced to leave the reservation for employment. Our unemployment rate therefore is very high. The Tribe's commercial fishery, which operates only occasionally at minimal levels, is one of the few economic enterprises we have. Last year, there was a fish kill in the Klamath River of an estimated 100,000 to 300,000 juvenile steelhead, chinook and coho salmon that will undoubtedly affect the health of future fish runs. We need a viable, sustainable fishery to support our people, and to have that, we need enough water in the River. The impact on our people and our fishery will likely be especially harsh this year, because of the extremely low amounts of rainfall and snowpack in the Klamath Basin.

We have spent considerable sums of the Tribe's scarce money and devoted enormous amounts of staff time to this problem, but we fear that our voice is not being heard. The Tribe's Department of Fisheries, the largest department of the Tribe, commits millions of dollars each year to fish management, habitat restoration, law enforcement, and fishery monitoring. Restoring the fishery is our highest priority. Yet each year it seems that we bear a disproportionate share of the burden that water shortages impose on all water users.

We see many challenges to progress toward resolving the water crisis in the Klamath Basin. We appreciate the fact that there must be a sound biological basis for planning and water management in the Basin, particularly as to the water and habitat needs of salmon and other fish. The Yurok Tribe for many years has been engaged in developing that strong scientific basis. However, rather than join with us to develop a consensus about the biological needs of the species, the Klamath Project Irrigators have attacked each and every report on the flow needs of anadromous fish as "advocacy science." Similarly, in the recent suit brought to overturn the BOR 2001 Annual Operations Plan, the biological opinion of the National Marine Fisheries Service, which determined the instream flows necessary to avoid jeopardy to coho salmon, was attacked as arbitrary and capricious. The federal judge in the case rejected this argument, finding that NMFS considered all of the available facts and reached a reasonable and supportable conclusion. We hear a constant refrain that our carefully designed studies, conducted in conjunction with experts from other agencies, are "junk science" and that the needs of the fish are greatly exaggerated. We categorically reject this characterization. These unfounded attacks make cooperative efforts at long-term solutions difficult. This is not the place to debate the merits of these biological determinations, but we raise this to show our frustration with the failure to develop cooperative relationships to work on this problem. Our objective has been, and continues to be, to develop credible, unbiased science to use when making important decisions about scarce Klamath Basin water resources.

No one involved with the water problems in the Klamath Basin believes that the annual operations plans of the Bureau of Reclamation is the best way to manage the Project. The Yurok Tribe shares that view, because of the chaotic nature of the decision-making process, the rush to consult at the eleventh hour, and the uncertainty of not knowing how much water will be available for our fishery. Some of these problems could be alleviated if the work on the long-term environmental impact statement were completed. We have urged completion of this process for years and we renew our call to finish this work. We believe this document could serve as the basis for a long-term operations plan that would avoid the unsatisfactory process we go through every year.

We are willing to work with the tribal, state, local and federal governments, as well as the citizens of the Klamath Basin, to develop solutions that will engender support among all the interests in the Klamath Basin. We are concerned, however, that solutions that may be developed in the upper portion of the Basin are not always properly assessed for their impact, whether adverse or beneficial, on the instream flow requirements of the Yurok Tribe. From our perspective, the key question to ask about all of these proposals is whether they will result in sufficient water quality and quantity for downstream uses on the Yurok Reservation and surrounding area. Solutions that make up for deficiencies in deliveries to irrigators, but do not address the health of the Klamath Basin ecosystem, including appropriate Klamath River flows, are not real solutions to the problem. In other words, we believe federal agencies and Congress need to take a basin-wide view of the problem.

The Yurok Tribe is committed to joining with our neighbors in the upper basin to find common ground and workable solutions. The Tribe is fully participating in the mediation in the Kandra litigation ordered by federal Judge Aiken. For many years, we have taken a leadership role in finding solutions through our participation in various restoration and water fora. We intend to continue those efforts. The fate of our tribal people depends on the success of those efforts.

Let me outline a number of factors that we believe could help overcome the current obstacles to long-term solutions to the water crisis. First, blaming the legal requirements of the Endangered Species Act and the federal tribal trust obligation for the current crisis is not a constructive beginning point for finding common ground. The courts have carefully and fairly applied the law in legal challenges brought by the Project Irrigators, and proposals to radically change this legal regime are not calculated to lead to mutually acceptable solutions.

Second, any solution to the water crisis must be founded on the principle that each stakeholder recognizes the legitimate interests of others in obtaining water for their needs. The Yurok Tribe recognizes that the Project Irrigators have legitimate needs, and we are sympathetic to the economic suffering they have experienced this year. In turn, we expect a corresponding recognition and respect for the Tribe's legitimate needs for adequate instream flows.

Third, solutions must address the fact that the basin is overappropriated. There is complete agreement that demand outstrips supply in most years. Although we believe that supplies could potentially be increased through groundwater development and other measures, no solution will work in the long run unless agricultural demand for water is reduced.

Finally, we believe that solutions to the current crisis must include both short-term and long-term measures. The planning process for the 2002 water year will begin soon, but we should be cognizant of the fact that devising a better way to allocate scarce water supplies on an annual basis leaves unanswered many of the important questions about long-term solutions. The Yurok Tribe is interested in permanent fishery and watershed restoration, which may take years to implement. These long-term measures will contribute as much to permanent solutions as proposals focused on the upcoming water year.

We appreciate the opportunity to appear before you today. We would be pleased to answer any questions you may have.

Thank you.

Mr. POMBO. Mr. Bishop.

STATEMENT OF FRANKLIN M. BISHOP

Mr. BISHOP. Mr. Chairman and distinguished Committee, I'm Franklin Bishop, President and CEO of Intermountain Federal Land Credit Association and Production Credit Association. I have served the associations as Joint-President for over 13 years. These

two farm credit institutions are part of the nationwide farm credit system which was established by Congress in 1916 to provide a dependable source of credit to farmers and ranchers across this great nation. We provide 800 loans for $180 million to 550 farmers and ranchers in the seven northeastern California counties in the State of Nevada.

Intermountain Federal Land Credit Association provides 49 loans to 35 borrowers for over seven million dollars in the Tulelake Basin south of the Oregon border. We make and service these loans from an office in Tulelake, and have local representation on our Board of Directors by Jim Boyd, a potato and grain farmer from Tulelake who has served on Intermountain FLCA board for 13 years.

I am well acquainted with the agricultural and economic conditions impacting the Klamath and Tulelake Basins. I have never seen a situation in which the forces of mother nature have combined with the Federal Government—in this case the Bureau of Reclamation, the Fish and Wildlife Service, the National Marine Fishery Service and the Endangered Species Act—to create the perfect storm. Perhaps no one could see the economic storm clouds and ensuing devastation that has been set in motion by the recent drought conditions that limited water supplies to levels that have been artificially set by government agencies at elevations to ensure the survival of two species of fish at the peril of three or four generations of American family farmers.

I am here today to testify on behalf of the farm credit system and the banking community as to the devastating financial impact that lack of water will force upon some 1,500 farming and ranching families. Many of the farmers are already financially stressed due to 6 years of below break-even potato prices, the loss of sugar beets as a cash crop, and the low prices received for grains and other rotational crops. All lenders must evaluate each borrower's financial situation to determine if continued financing is possible, or what alternative plans and servicing actions are available to provide financing on a responsible and sound basis, with reasonable levels of risk.

Farm Credit System Associations, such as ours, have a congressional mandate to provide financing on a sound basis through times of financial stress when many other lenders are no longer willing or able to take the risk associated with riding out the storm. I am sure that all agricultural lenders from this area are working to prevent a worst case scenario in which borrowers are unable to make loan payments because they had little or no farm income as a result of conditions beyond their control, whether natural or man-made.

One of the tools to help avoid this worst case scenario is the loan guaranty program provided by the Farm Service Agency or FSA. Our associations have had a long and beneficial relationship with FSA, spanning the last 13 years. We currently have 60 loans for 5.7 million dollars outstanding guaranteed by that agency. The guaranty program provides the credit enhancements necessary to allow lenders to provide continued financing or restructuring opportunities for farmers experiencing financial stress. The program has been available to lenders for over 20 years, providing a tremendous service to farmers and ranchers across the Nation.

We understand, however, that FSA may condition loan guarantees for restructured loans based on the Tulelake and Klamath Basin farmers receiving full water allocations for 2002. Never before have the loan guarantees provided by FSA been conditioned in this manner. We have no information that tells us farmers will be unable to obtain water for the next year's crop. We have to assume that we will get average snow pack and that water will be available for farming operations next year. FSA's own regulations tell the agency to assume normal conditions when analyzing a loan. The agency cannot assume a drought, and so it should not assume the Federal Government will again withhold water from these farmers.

FSA guarantees are critical to helping Tulelake and Klamath farm families and their communities survive. If lenders are forced to discontinue financing and initiate foreclosure proceedings, not only will farm families lose their homes and livelihoods, but land values will plummet, farm machinery and equipment values will be reduced to 25 cents on the dollar, and area businesses will be ruined. The government can help lenders stay with our customers by providing certainty to these farm families, and soon.

Today, we do not know if the Federal Government will provide direct assistance. We do not know if FSA will provide loan guarantees. We need full cooperation and coordination from all government agencies. Without these, lenders will likely be unable to resume lending, even though water may be eventually restored. In the worst case scenario where water from the Bureau is not forthcoming next year and land owners are faced with selling property, there will be no interested investors to purchase the land, purchase the businesses or purchase the farm and ranch assets that will be left behind.

Without the certainty of a return of economic stability to the area, how can any plans be formulated by outside parties to limit the destruction? Moreover, those farmers who may have avoided much of the financial distress in their operations to this point may be left without lenders, only to suffer the longer term consequences of financial ruin because of a "Cherynobl effect" that precludes any interest in the area from outside businesses.

Farmers who borrow money today may find that they have no borrowing capacity tomorrow. It's just that simple. This is not sensationalism, but rather a very realistic view of what can and will happen if lenders are forced to leave the community. Therefore, I am asking this Committee, all Congressional Representatives and all Federal agencies, ensure that existing programs be available as part of many, many tools that can be used to avoid disaster and restore long-term economic viability and stability to this vitally important agricultural community.

Having reviewed the causes and implications of the current water crisis and what I believe can be done to repair the situation, I'd like to express an opinion on what we can do to prevent this problem from occurring in the future. In the short-term, we urge the Federal Government, in conjunction with local representatives of the agricultural and rural businesses communities, to provide temporary economic assistance to maintain the economic value and asset base of the community. This will promote harmony and sus-

tain a sense of well-being to the Tulelake and Klamath communities.

We also urge Congress to establish policies for these types of unanticipated emergency situations in the long-term. Changes to the Endangered Species Act, for example, to avoid disastrous impact and economic loss where conflicts of a monumental size and nature such as this has occurred are in order. Compensation for farmers and local businesses for losses sustained as a consequence of no water resulting from the Endangered Species Act, which the courts have ruled "trump" all other laws and regulations and conflict what the Act itself, warrant full consideration.

Finally, all Federal agencies should be directed to cooperate in an effort to minimize economic and emotional damage to the community, while maintaining viability, not only in economic terms but in terms of the human spirit. Thank you for allowing me to testify today.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Bishop follows:]

Statement of Franklin M. Bishop, President and Chief Executive Officer, Intermountain Federal Land Bank Association, FLCA, Intermountain Production Credit Association

Good Morning.

I am Franklin M. Bishop, President and CEO of Intermountain Federal Land Bank Association, FLCA and Intermountain Production Credit Association. I have served the Associations as joint President for over 13 years. These two Farm Credit institutions are part of the nationwide Farm Credit System which was established by Congress in 1916 to provide a dependable source of long-term credit to farmers and ranchers.

Under the Farm Credit Act of 1971, as amended, the Farm Credit System provides $85 billion dollars of loans to farmers and ranchers, agricultural cooperatives, farm-related businesses, marketing and processing facilities, and part-time farmers, as well as young, beginning, small, and minority farmers and ranchers. For 85 years the Farm Credit System has been mandated by Congress and the Farm Credit System regulator, the Farm Credit Administration, to serve the short-, intermediate-, and long-term needs of American farmers and their cooperatives. The Farm Credit System accesses its funding through a fiscal agent in New York by selling bonds on the New York money markets through a series of brokerages. It enjoys the highest levels of confidence by private, institutional, and the investing public.

The Farm Credit System is privately owned by its borrowers who are required to own stock in the Farm Credit Institutions from which they borrow to provide capitalization and participate in governance at the local level. The Farm Credit System is a government sponsored enterprise, serving a critically unique public policy role by providing financing to America's farmers and ranchers at competitive interest rates during good and bad times alike.

The Intermountain Farm Credit Associations provide nearly 800 loans for $180 million to 550 farmers and ranchers in the seven northeastern California counties and the state of Nevada. The Intermountain Federal Land Credit Association provides 49 loans to 35 borrowers for $7.2 million in the Tulelake Basin south of the California/Oregon border. We make and service these loans from an office in Tulelake, California, and have local representation on our Board of Directors by Jim Boyd, a potato and grain farmer from Tulelake who has served on the Intermountain FLCA Board for 14 years.

I have worked in the Farm Credit System for over 26 years in various capacities as a credit analyst, loan officer, field representative, branch manager, regional supervisor, appraiser, vice president of review and audit, senior vice president of credit, and president–CEO and co–CEO of Intermountain FLCA and PCA headquartered in Reno, Nevada, and Ag Credit of California FLCA and PCA, located in Stockton, California.

I am well acquainted with the agricultural and economic conditions impacting the Klamath and Tulelake Basins. I have never seen a situation in which the forces of Mother Nature have combined with the Federal Government, in this case, the Bu-

reau of Reclamation, the Fish and Wildlife Service, the National Marine Fisheries Service, and the Endangered Species Act to create the "Perfect Storm".

Perhaps no one could see the economic storm clouds and ensuing devastation that has been set in motion by the recent drought conditions that limited water supplies to levels that have been artificially set by government agencies at elevations to ensure the survival of two species of fish at the peril of two or three generations of American family farmers.

The loss of approximately 210,000 acres of irrigated field and row crop farm ground caused by the decision to "shut-off" water from the Bureau of Reclamation to the Tulelake Irrigation District will result in an economic calamity and financial ruin to farmers, ranchers, farm-related businesses, community services, merchants, and many area businesses that rely on the income generated from this highly productive farming community to sustain their businesses.

There will be plenty of testimony as to the economic impacts at the local, county and state levels here today, so I will not direct my comments to that particular subject. I am here today to testify on behalf of the Farm Credit System and the banking community as to the devastating financial impact that lack of water will force upon approximately 1,500 farming and ranching families.

Many of the farmers are already financially stressed due to six years of below breakeven potato prices, the loss of sugar beets as a cash crop, and the low prices received for grains and other rotational crops. All lenders must evaluate each borrowers financial situation to determine if continued financing is possible or what alternative plans and servicing actions are available to provide financing on a responsible and sound basis with reasonable levels of risk.

Farm Credit System Associations such as ours have a Congressional mandate to provide financing on a sound basis through times of financial stress when many other lenders are no longer willing or able to take the risk associated with "riding out the storm". I am sure that all agricultural lenders from this area are working to prevent a "worst case" scenario in which borrowers are unable to make loan payments because they had little or no farm income as a result of conditions beyond their control—whether natural or manmade.

One of the tools to help avoid this worst case scenario is the loan guarantee program provided by the Farm Service Agency (FSA). Our Associations have had a long and beneficial relationship with FSA spanning the last thirteen years. We currently have 60 loans for $5.7 million outstanding guaranteed by FSA. The FSA loan guarantee program provides the credit enhancements necessary to allow lenders to provide continued financing or restructuring opportunities for farmers experiencing financial stress. The guarantee program has been available to lenders for twenty years, providing a tremendous service to farmers and ranchers across the nation.

We understand, however, that FSA may condition loan guarantees for restructured loans based on the Tulelake and Klamath Basin farmers receiving full water allocations for 2002. Never before have the loan guarantees provided by FSA been conditioned in this manner. We have no information that tells us our farmers will be unable to obtain water for the 2002 crop year. We have to assume that we will get average rainfall and that water will be available for farming operations next year. FSA's own regulations tell the agency to assume "normal" conditions when analyzing a loan. The agency cannot assume a drought, and so it should not assume that the federal government will again withhold water from these farmers.

FSA guarantees are critical to helping Tulelake and Klamath farm families and their communities survive. We hope that Congress will encourage all government agencies to cooperate in an effort to bring about the needed loan restructures that can prevent widespread economic disaster. Lenders and farmers alike need this guarantee program now to ensure that they have every chance to develop plans for dealing with this tragic situation over which they have had little to say.

If lenders are forced to discontinue financing and initiate foreclosure proceedings, not only will farm families lose their homes and livelihoods, but land values will plummet, farm machinery and equipment values will be reduced to 25 cents on the dollar, and area businesses will be ruined. The government can help lenders stay with our customers by providing certainty to these farm families soon. Today, we do not know if the federal government will provide direct assistance. We do not know if FSA will provide loan guarantees. We need full cooperation and coordination from all government agencies. Without these, lenders likely will be unable to resume lending even though water may eventually be restored. In the worst case scenario where water from the Bureau is not forthcoming in 2002, and land owners are faced with selling property, there will be no interested investors to purchase the land, purchase the businesses, or purchase the farm and ranch assets that will be left behind.

Without the certainty of a return of economic stability to the area, how can any plans be formulated by outside parties to limit the destruction? Moreover, those farmers who may have avoided much of the financial distress in their operations to this point, may be left without lenders, only to suffer the longer term consequences of financial ruin because of a "Chernobyl effect" that precludes any interest in the area from outside businesses.

Farmers who borrow money today may find that they have no borrowing capacity tomorrow. It's that simple. This is not sensationalism, but rather a very realistic view of what can and will happen if lenders are forced to leave the community.

Therefore, I am asking that this committee, all congressional representatives, and all federal agencies ensure that existing programs be available as part of many, many tools that can be used to avoid disaster and restore long-term economic viability and stability to this vitally important agricultural community.

Having reviewed the causes and implications of the current water crisis, and what I believe can be done to repair the situation, I'd like to express an opinion on what we can do to prevent this problem from occurring in the future. In the short-term, we urge the federal government, in conjunction with local representatives of the agricultural and rural business communities, to provide temporary economic assistance to maintain the economic value and asset base of the community. This will promote harmony and sustain the sense of well-being to the Tulelake and Klamath communities.

We also urge Congress to establish policies for these types of unanticipated emergency situations in the long-term. Changes to the Endangered Species Act, for example, to avoid the disastrous impact and economic loss where conflicts of a monumental size and nature such as this has occurred are in order. Compensation for farmers and local businesses for losses sustained as a consequence of no water resulting from the Endangered Species Act which the courts have ruled "trump" all other laws and regulations in conflict with the Act itself, warrant full consideration. Finally, all federal agencies should be directed to cooperate in an effort to minimize economic and emotional damage to the community, while maintaining viability, not only in economic terms, but in terms of the human spirit.

Thank you for allowing me to testify today.

MR. POMBO. Mr. Kerr.

STATEMENT OF ANDY KERR

Mr. KERR. I am here today to suggest a different course than the one of endless litigation and listings of endangered species. Instead, I offer a proposal that was developed by conservation and farming interests in the Klamath Basin. This joint proposal balances farming and conservation. Specifically, it would, 1) acquire land or interest in water from willing sellers for fish and wildlife purposes or for the establishment of replacement lease land so commercial farming can end on the national wildlife refuges. 2) it would provide for the acquisition from willing sellers to re-reclaim the lakes, wetlands and streams for natural water storage and cleansing. The third point is that it would ensure the Federal funding of local governmental units as maintained. And fourth, it would provide for economic transition assistance grants for local governmental units.

It is proposed that in addition to the payment of fair market value for the land, that a transition payment also be made, both of which would total $4,000 per acre. To put this in perspective, before the water was cut off in this severe drought year by a combination of an act of God and an act of Congress, such lands were worth perhaps $2,500 per acre. Prices have plummeted since then; $4,000 an acre is 60 percent above the former market value. Precedent exists for such compensation. The Federal Government has bought down commercial fishing fleets. It is considering paying tobacco farmers to get out of tobacco farming.

The benefits to the remaining farmers in the basin of this joint proposal would be immense. With the reduction of water demand by reducing the amount of irrigated agriculture and the concurrent increase of natural storage by the re-reclamation of reclaimed and abused lands, irrigated water supplies will be much more reliable, perhaps even enough to cope with a severe drought.

Conservationists negotiated this proposal with local land owners, most with roots that go back generations. They are ready to sell their lands to the Federal Government, if for no other reason than that there is no other buyer. Of course, $4,000 an acre is not enough to compensate for the loss of a lifestyle. However, it is enough for most to get clear of the bank and have something left for retirement or for the kids' college fund. This $4,000 per acre figure can be justified to the taxpayers as a saving over the current system of farm subsidies for these lands. Most importantly, it is the right thing to do.

Many land owners would have sold out years ago, before the water was cut off this year, had there been a market. Some are old, others are tired of losing money, others are tired of the uncertainty of farming. I'm sorry to have to note that these willing sellers have been verbally abused and threatened for their stance by some of their neighbors. One would have thought that one of the most basic property rights is the right to sell it.

This joint proposal is ecologically rational, economically efficient, fiscally prudent, it is socially just, and it is politically pragmatic. The conservation community would use all of its powers of persuasion and political influence to see this proposal or something like it enacted into law. There is only one specter on the horizon that could diminish our capacity to work for this joint proposal. It is if the conservation community instead has to use its resources to yet again defeat another attack on the Endangered Species Act. If that happens, our ability to advocate for such a just proposal will be diminished.

The Klamath Basin is the Everglades of the West. The Federal and State governments have committed tens of billions of dollars to restore the Everglades. It can find a billion for the Klamath River Basin. We are not such a poor nation that we must destroy species and ecosystems, nor are we rich enough that we can afford to. We are a rich enough nation to fairly compensate those who are adversely affected by changes in government policies pertaining to Native American tribal rights, the conservation of fish and wildlife, and the globalization of trade. Thank you for the opportunity to testify.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Kerr follows:]

Statement of Andy Kerr, Senior Counselor, Oregon Natural Resources Council

My name is Andy Kerr. I am Senior Counselor to the Oregon Natural Resources Council. ONRC has been involved in conservation issues in the Klamath River Basin for a quarter century. I have been involved as long, serving as a field representative, conservation director, executive director and now senior counselor.

I won't talk today about the causes of the water crisis, other than to quote Oregon Governor John Kitzhaber:

The current water crisis in the Klamath Basin has been 150 years in the making and serves as a reminder to us all that we are stretching our natural resources

beyond their limits. Even in a normal year, the water in the Klamath Basin cannot meet the current, and growing, demands for tribal, agricultural, industrial, municipal and fish and wildlife needs.

Agriculture was in trouble long before the combination of record drought and the Endangered Species Act came into play.

Implementation of the government's official biological opinions—on Klamath Project operations and their affect on the federally listed coho salmon, bald eagle, and two species of mullet—are projected to result in water conflicts between agriculture and endangered species, an average of six years out of ten. Not all years will be this bad with had a snowpack less than one-quarter of average.

These biological opinions detail the minimum amount of water necessary in the lake and the river to prevent the extinction of these species. They do not specify the water levels and flows—and the water quality—necessary to recover the species so the protections of the Endangered Species Act are no longer necessary, let alone the level to return salmon and mullet to healthy harvestable surpluses.

The State of Klamath Basin Agriculture

I do want to touch on the causes of the farm crisis in the Klamath Basin. First, it's marginal as farmland. It's at 4,000-feet elevation where frosts stay late and come early. Second, it's heavily subsidized farming, more so than most other farmlands in this nation. Besides the plethora of farm subsidy programs, both deliveries of the water and the electricity to pump it are heavily subsidized by taxpayers and ratepayers.

Currently project farmers are paying 0.6 cent/kilowatt hour. I'm currently paying ten times that at my home and anticipate a rise in October of around 50%. When the contract for electricity expires in 2006, project farmers electricity costs will increase by a factor of ten to thirty.

The North American Free Trade Agreement, the General Agreement on Tariffs and Trade and the World Trade Association have caused more damage to Klamath Basin agriculture than the Endangered Species Act ever could. Farming is in decline in the basin due to market conditions—not a shortage of water, whether due to drought or the Endangered Species Act. Processing plants for sugar beets and horseradish have closed. Canadian potatoes, Chinese onions, and Mexican sugar are flooding into this country. With Congress poised to approve the Free Trade Agreement for the Americas, it will be NAFTA times two. The globalization of trade may be beneficial to the nation's economy as a whole, but it has been mostly disastrous to farming in the Klamath Basin.

As it has been practiced in the Klamath Basin, farming is not economically, let alone environmentally sustainable. Nationally, 48% of farm income is coming from the federal taxpayers. Locally, potatoes are being raised more for the government subsidies than the market. Klamath Basin farming is in trouble; but in reality, the Endangered Species Act (ESA) is the least of their problems.

The Wrong Path: Attacking the Endangered Species Act

Attacking the Endangered Species Act is a poor strategy for the "give-me-water-or-give-me-death" crowd. First, as noted previously, it would be more on target to attack the North American Free Trade Agreement.

Second, seeking to invoke the Endangered Species Committee (the so-called "God Squad") is a bad idea. I was involved in the last time the God Squad was invoked by George Bush the elder. It did not work out well for either the timber industry or the Administration. In that case, large amounts of old-growth logging profits were involved. In this case, any "profits" are derived only from the result of massive federal subsidies. In that case, it was "timber jobs versus the spotted owl." In this case, the political debate will be framed as subsidized federal farmers raising crops at a price above market value, versus commercial fishers, Native Americans, endangered Pacific salmon, and the nation's national bird, the bald eagle. To win an exemption from the Endangered Species Act, the God Squad would have to find that the harmful activity economically imperative and no alternatives exist. Our attorneys are salivating at the prospect of the invoking the God Squad in this case.

Third, the God Squad cannot override tribal rights, the Clean Water Act, the National Environmental Policy Act or other federal law.

Fourth, it would be a futile political effort to gut the Endangered Species Act. It has been tried numerous times by opponents with a much better set of legal and political facts than in this case. Unfortunately, each time controversy arises about enforcement of the Endangered Species Act; aggrieved parties always fancy themselves as the ones who will be the "poster children" that succeed in gutting the ESA. It has not yet worked.

Fourth, attacking the underlying science supporting the biological opinions of the federal fish and wildlife agencies is probably flawed strategy as well. Every Secretary of the Interior that I've known since the Ford Administration has tried to substitute politics for science. The ESA is crystal clear on that point. The Secretary must follow the law by following the science. This is not a case is not bad science, but of science taken badly.

Even assuming that farm prices are going to increase soon and that magically the ESA was no longer an issue—exercises in irrational exuberance—, the environmental issues of the basin do not go away. Poor farming and other management practices have resulted in not only a severe lack of water quantity for fish and wildlife, but atrocious quality. In the late summer, the pH in parts of Upper Klamath Lake can be comparable to that of dishwashing detergent. The water that returns to the Klamath River is high in nitrogen and phospherous carried in from fields ladened with pesticides. The need for enforcement of state water quality rules under the federal Clean Water Act is undeniable.

The Right Path: Just Compensation

Having said this, I am here today to suggest a difference course than the one of endless litigation and listings. Instead I offer a proposal that was developed by conservation and farming interests in the Klamath Basin. This joint-proposal balances farming and conservation (see A Voluntary Demand Reduction and Resource Enhancement Program for the USBR Klamath Project, attached). Specifically it would:

1. Acquire lands or interests in water from willing sellers for fish and wildlife purposes, or for the establishment of replacement lease lands, so commercial farming can end on the national wildlife refuges.
2. Provide for the acquisition from willing sellers to re-reclaim lake, wetlands and streams for natural water storage and cleansing.
3. Ensure that federal funding of local governmental units is maintained.
4. Provide for economic transition assistance grants for local governmental units.

It is proposed—in addition to the payment of fair market value for the land'that a transition payment also be made, both of which would total $4,000/acre. To put this in perspective, before the water was cut off in this severe drought year by a combination of an Act of God and an Act of Congress, such lands were worth perhaps $2,500/acre. Prices have plummeted since then. $4,000/acre is 60% above the former market value.

Precedent for such compensation exists. The federal government has bought down commercial fishing fleets. It is considering paying tobacco farmers to get out of tobacco farming.

The benefits to remaining farmers of this joint proposal would be immense. With the reduction of water demand by reducing the amount of irrigated agriculture and the concurrent increase of natural storage by the re-reclamation of reclaimed and abused lands, irrigated water supplies will be much more reliable than today—perhaps even enough to cope with a severe drought year like this one.

Conservationists negotiated this proposal will local landowners; most with roots that go back generations. They are ready to sell their lands to the federal government; there is no other buyer).

Of course, $4,000/acre is not enough to compensate for the loss of a lifestyle. However, it is enough for most to get clear of the bank and have something left for retirement or for the kids college fund. This $4,000/acre figure can be justified to taxpayers as a savings over the current system of farm subsidies for these lands. More importantly, it is the right thing to do.

Some of the landowners we worked with to negotiate this deal asked to testify today, but were told the witness list was already full. Others are afraid to speak up publicly about their desire to sell. Many would have sold years ago if their had been any market. Some are old, others are tired of losing money, others are tired of the uncertainty of farming these days. I'm sorry to have to note that these willing sellers have been verbally abused and threatened for their stance by some of their neighbors. One would have thought that one of the most basic of property rights is the right to sell it.

Conclusion

This joint proposal is ecologically rational, economically efficient, fiscally prudent, socially just and politically pragmatic. It has both the broad and deep support of the conservation community. I believe it to be a breakthrough in the thinking of conservation organizations. I hope that it will be a model to avoid or solve conflicts elsewhere.

For it to be successful, this joint proposal must first gain the open support of the landowners that wish to have the option to sell their land. It is necessary for such

landowners to ban together against bullies who would deny them their property rights and their future.

My friend and Western writer, Terry Tempest Williams has stated that environmentalists must be "both fierce and compassionate—at once." The Oregon Natural Resources Council is strongly committed to this proposal with its:

- just compensation for affected landowners;
- commitment for community economic transition assistance; and
- maintaining federal contributions to the revenues of local governmental units.

The conservation community will use all of our powers of persuasion and political influence to see it enacted into law. There is only one specter on the horizon that could diminish our capacity to work for this joint proposal. If the conservation community has to instead use its resources to defeat yet another attack on the Endangered Species Act, our ability to advocate for this proposal will be diminished.

For this proposal to be enacted, it must pass Congress. It is up to the Oregon and California congressional delegations to lead the way.

The conservation community sees the Klamath River Basin as the "Everglades of the West". (see The Klamath Basin's Wildlife Abundance, attached). The federal and state governments have committed tens of billions of dollars to restore the Everglades. It can find a billion for the Klamath River Basin. The joint-proposal I am offering today is an important component to conserve and restore this great natural wonder and also provide economic justice to those affected by changing government policies. (See Blueprint for Restoration of the Klamath Basin, attached.)

We are not such a poor nation that we must destroy species and ecosystems, nor are we so rich that we can afford to. We are a rich enough nation to fairly compensate those who are adversely affected by changes in government policies pertaining to Native American tribal rights, the conservation of fish and wildlife, and the globalization of trade. Thank you for this opportunity to testify.

A Voluntary Demand Reduction and Resource Enhancement Program for the USBR Klamath Project

This proposal was jointly created by an ad hoc committee of environmental, community, economic and landowner interests during a series of meetings in the Klamath Basin.

Below are conceptual elements for a voluntary land and/or water use sale program for landowners being served by the United States Bureau of Reclamation's Klamath Project in Oregon and California. This proposal would also provide for the voluntary acquisition of lands, water rights and/or federal grazing privileges in the Klamath River Basin. Details would be filled in during consideration of the proposal by Congress.

1. The federal government, through the USDA Farm Services Agency, would offer to purchase irrigated farmland or a non-irrigation conservation easement in the US Bureau of Reclamation's Klamath Project from willing sellers at appraised value. For efficiency, individual appraisal of each eligible parcel will not be required. Rather the US Government would conduct statistically representative sample appraisals and apply the results to all lands within the project area. A similar process would be used to determine the value of the non-irrigation conservation easement, using January 1, 2001 as a reference date.

a. Voluntary Land Sale. This voluntary land sale program would apply to deeded acreage directly associated with irrigated farmlands in the Klamath Irrigation Project. It would not include homes or other buildings, improvements or equipment.

b. Voluntary Sale of Non–Irrigation Conservation Easement. The easement would apply to irrigation of the land by any means, and not limited to the use of project water. A landowner choosing to sell a non-irrigation conservation easement would be compensated in the amount of the difference between the market value of the land with a reliable source of irrigation water and comparable land without irrigation water.

2. The closing date opting into the voluntary sale program will be 90 days after enactment of the law. The USDA Farm Services Agency would regularly publish information pertaining to participation in the program, including publication in a local newspaper and on a web page. Due to the potential interest in the voluntary sale program and limits on the amounts of funds appropriated by Congress each year, it may be necessary to implement the program over a several-year period. Priority for acquisition would be based on dire financial need as determined by criteria developed by the FSA. For the period between when participating landowners opt into the program and the transaction is completed, annual compensatory payments will be made to landowners to not irrigate their lands.

3. The sellers of lands in this willing seller program outlined in provision 1(a) will also receive an economic transition payment in the amount of $4,000/acre minus the appraised value of the land. The transition payment would only be available for those farmlands that are thereafter used in a manner that precludes their future eligibility for all United States Department of Agriculture programs, now in effect or later established, except for those lands specified under provision 6(a).

4. Landowners eligible for this program must have been the owner of record on January 1, 2001. The eligibility date is necessary to preclude lending institutions or speculators from benefitting from the recent financial misfortunes of others.

5. Those parcels of lands purchased by the federal government that are appropriate for inclusion into a unit of the National Wildlife Refuge System shall become part of the Tule Lake, Lower Klamath units or new refuges established for this purpose. Such holdings must generally meet criteria for inclusion in the National Wildlife Refuge System.

6. Those parcels of lands purchased by the federal government that are not appropriate for inclusion into a unit of the National Wildlife Refuge System shall either:

(a) Be granted to an appropriate local governmental body for the purposes of replacing lease farming lands on the Tule Lake and Lower Klamath National Wildlife Refuges. Operational control and the revenue stream therefrom will be granted to appropriate local governmental bodies. Revenues from the lease program will first go to offset tax revenues comparable to those currently generated by refuge lease lands. Additional revenues may be used by the appropriate local governmental body to offset management costs. The amount of land to be used for this purpose is equal the amount of lease farm lands currently on the refuges. In the event that farming does not occur on a parcel of land for five years, operational control of that parcel shall revert to the United States. The acreage limit for this new lease lands is equal to the acreage currently being leased for commercial farming on the national wildlife refuges. Water interests associated with new lease lands shall retain the same legal status as when privately held.

(b) Be administered in a custodial state to minimize soil erosion, pending final disposition. After the acreage of lands in provision 6(a) have been met, the remaining lands may be used by the US Fish and Wildlife Service to either: (1) exchange for other lands owned by willing parties; or (2) sell with the proceeds being devoted to acquiring other lands from willing sellers. In either case, such lands would be included in the National Wildlife Refuge System within the Klamath River Basin of Oregon and California.

7. The Kuchel Act pertaining to the management of the Lower Klamath and Tule Lake National Wildlife Refuges would be repealed. The refuges would be managed just as other units of the National Wildlife Refuge System. The water rights associated with the lease lands within the refuges will remain with the land and be used for the purposes for which the refuges were established. The water rights shall be transferred to refuge purposes in such a manner as to maintain the 1905 priority date and the US Bureau of Reclamation shall give the same preference to the refuges as it previously gave to irrigation contracts covering said lands.

8. Except for the new lease lands described in Section 6, the water rights now attached (or that may become attached as a result of adjudication) to the parcels, or non-irrigation conservation easements in this voluntary land sale program, would be transferred to the US Fish and Wildlife Service which will be used to meet the purposes of refuges and for the benefit threatened or endangered species in the Klamath River Basin. These species include the northern bald eagle, coho salmon, the Qapdo ("kup-tu", or shortnosed sucker), C'wam ("tshuam", or Lost River sucker) and other species that may be listed in the future. This includes lands that are added to the National Wildlife Refuge System or those managed in a custodial state pending final disposition.

9. $100,000,000 would be made available for the acquisition from willing sellers of appropriate lands and/or water rights from lands in the headwaters of the Klamath River Watershed, excluding the Klamath Project, or in the Scott and Shasta Valleys. This would include lands and interests in lands around Upper Klamath Lake, Klamath Marsh and tributaries to the lake and marsh that are suitable for re-reclamation as lake and/or wetlands, riparian restoration and for instream flow and lake and marsh level enhancement. It would also include appropriate lands in the Scott and Shasta Valleys in California. Such funds could also be used for the voluntary retirement of federal grazing permits. The result of such acquisitions would be to both increase the storage capacity and improve the water quality of the lake and marsh, and help meet tribal reserved water rights from instream flows in the tributaries and the lake and marsh. Doing so will increase the amount of water available for endangered species and tribal trust obligations, thereby increasing the

probability of adequate water being available to landowners who choose not to elect to participate in the Voluntary Land Sale Program.

10. Tax revenues to local jurisdictions lost by participation in the voluntary sale program will be replaced by the federal government. Revenues from those lands that become part of the National Wildlife Refuge System will be mitigated via the Refuge Revenue Sharing Act in a way that fully funds the program. For those lands temporarily held by the US Bureau of Reclamation, the federal government would pay an amount to local taxing districts equivalent to what was being paid on January 1, 2001.

11. Federal transition assistance grants will be made to affected and eligible local government units. Such grants could be used for mitigating the impacts of the results of the voluntary sale program and/or to assist communities in preparing for the post-sale program period. The amount available for such grants will be specified in the legislation after consultation with local government units. The administering agency would be the USDA Farm Services Agency.

It is mutually understood that this is a proposal to Congress to help resolve both the chronic and acute crises affecting farming and fish and wildlife in the Klamath Basin. For a voluntary land sale program to become law, Congress must develop a final package that it finds to be in the national interest. Changes to this proposal are inevitable. The greater degree of participation by project landowners, and the greater the support by local government and other community interests, the greater the possibility that this proposal—or something close to it—will be enacted into law.

Finalized this 9th day of June, 2001.

Endorsers
Concerned Klamath Project Landowners
Oregon Natural Resources Council
Water Watch
Northcoast Environmental Center
World Wildlife Fund (Klamath–Siskiyou Ecoregion Project)
Siskiyou Regional Education Project
Kalmiopsis Audubon Society
Lane County Audubon Society
Oregon Watersheds
Audubon Society of Corvallis
Salem Audubon Society
Golden Gate Audubon Society
Rogue Valley Audubon Society
Cape Arago Audubon Society
Oregon Natural Desert Association
Rogue Valley Audubon Society
Cape Arago Audubon Society
Soda Mountain Wilderness Council
California Wilderness Coalition
Center for Biological Diversity
Northwest Environmental Advocates
Umpqua Watersheds
Klamath Siskiyou Wildland Center
California Trout, Inc.
Friends of Del Norte County
Concerned Friends of the Winema
Endangered Species Coalition
Northwest Environmental Defense Center
Headwaters Inc.

THE KLAMATH BASIN'S WILDLIFE ABUNDANCE

BY OREGON NATURAL RESOURCES COUNCIL

The statistics of former wildlife abundance (and decline) in the Klamath River/Basin have been well documented and noted in numerous US Fish and Wildlife Service (USFWS) and other agency publications. In 1994, the USFWS office in Klamath Falls wrote, in describing the need for habitat restoration, that "113 out of 410 wildlife species identified in the Klamath Basin are considered to be of concern or at risk." More over, for the entire Klamath/Central Coast Ecoregion there are "197 species that are considered sensitive (*i.e.* federal category species or species which are considered sensitive or species of concern by Oregon and California.)"—

Klamath/Central Pacific Coast Ecoregion Restoration Strategy–USFWS, Volume 4, January 14, 1997.

Much of the reason for these declines is due to habitat loss. Page 1–2 of the July 1995 Wood River Wetland Resource Mgt. Plan, for example notes that particularly in the "upper" Klamath Basin , "wetlands have been reduced from over 350,000 acres prior to 1905 to less than 75,000 acres today due to agricultural conversion...and other human changes to the landscape (USBR 1992)."

Yet, overall, the entire Klamath River/Basin still remains one of the richest biological areas in North America (and elsewhere in much of the world) for two major reasons:

First, the area is geologically very old compared to most of western North America, having been covered continuously by vegetation for at least the last 65 million years (the entire Cenozoic Era). Thus, the basin has been a refugium for species destroyed in other areas by submergence, glaciation, desiccation, or lava flows. For example, the Siskiyou Mountains, in the lower river/basin, has the highest known diversity of conifer species: a 1-square mile area in the Sugar Creek Drainage of the Klamath National Forest has 17 species of conifers.

Second, just to the west of Klamath Falls is a zone where four major bioregions-the Cascadian, Californian, Great Basin and Klamath/Siskiyou Mountains all converge—supporting plant and animal species from all four regions. This meeting of biological regions is very pronounced in the Soda Mountain area located mostly south of Hwy. 66 between Klamath Falls and Ashland. To protect this particular area's superior ecological and scientific values President Clinton last summer designated this area the Cascade Siskiyou National Monument.

Some of the wildlife species we particularly find in the upper basin, such as White-faced Ibis, American White Pelicans, Red-neck Grebes, Snowy Egrets, Least Bittern, Green Heron, Ring-neck Duck, Yellow Rail, Pronghorn Antelope, Western Pond Turtle, Oregon Spotted Frog and others occur in the Klamath Basin and area wildlife refuges at what is generally the western, northern or eastern extremes of their broader breeding range.

Protection of these species in their Klamath Basin wetland habitats is thus important, because individuals and populations at the edge of a species range are important for the viability of the species. Individuals and populations at the edge of a species range often possess the genetic constitution that expands the adaptive capability of the species. This capability affords the species protection from random catastrophic events and enhances its ability to adapt to large-scale disturbance.

As for overall historical abundance, most recently, the USFWS's January 2000, "Programmatic Environmental Assessment of Klamath Basin Ecosystem Restoration Office Projects 2000–2010" quoted E.D. Cope's 1884: "On the fishes of the recent and Pliocene lakes of the western part of the Great Basin" (who was also author of a 1879 American Naturalist article titled: "The fishes of Klamath Lake.") Dr. Cope wrote: that Upper Klamath Lake sustained "a great population of fishes" and "was more prolific in animal life" than any body of water known to him at that time.

In regards to waterfowl, an April 20, 1956 USFWS publication (and report to the Secretary of Interior): "Plan for Wildlife Use of Federal Lands in the Upper Klamath Basin" stated: "About 80 percent of all the waterfowl of the Pacific Flyway funnel through the Upper Klamath River Basin in their annual migrations. In the Fall of 1955, for example, there were at one time upward of 7,000,000 birds on Lower Klamath and Tule Lake National wildlife Refuges in the Basin. This is the greatest concentration of waterfowl in North America and probably in the world."

While no one was counting much before then, it is estimated there were even more birds earlier in that century. Thomas C. Horn, the Klamath Basin National Wildlife Refuge manager in 1957 wrote: "At the time the area was made a refuge, in 1908, literally clouds of birds of many species darkened the sky; the thunder of their wings was like the roar of distant surf, and their voices drowned out all other sounds." Similarly, William Finley wrote in The Condor, 1907, in an article titled: "Among the Pelicans" of Lower Klamath as a "jungle"of tules, an "impenetrable mass" with numerous floating islands supporting a total of "four to nine thousand while pelicans, one of the biggest breeding colonies anywhere."

Despite all that has been lost, the Klamath Basin today still represents the largest interior freshwater wetland west of the Mississippi River, and for that reason can well be termed the "Everglades of the West."

BLUEPRINT FOR RESTORATION OF THE KLAMATH BASIN

PREPARED BY A COALITION FOR THE KLAMATH BASIN

JUNE 16, 2001

A Coalition for the Klamath Basin is an alliance of local, regional, and national organizations dedicated to protecting and restoring the Klamath Basin. Members include Klamath Basin Audubon Society, Klamath Forest Alliance, Oregon Natural Resources Council, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Sierra Club–Oregon Chapter, The Northcoast Environmental Center, The Wilderness Society, and WaterWatch of Oregon.

The Klamath Basin is one of the nation's great ecological treasures. Considered a "western Everglades," this area in southern Oregon and northern California once contained some 350,000 acres of shallow lakes and wetlands (only 75,000 acres of which exist today). The 200-mile long Klamath River was among the most productive salmon and steelhead rivers in the West. The upper basin is home to remarkably large native trout, and once contained thriving populations of spring chinook salmon, steelhead, and Kuptu and Tshuam (Lost River and Shortnose suckers). These fish once provided a major source of food for Native Americans. The Klamath Basin attracts nearly 80% of the birds migrating in the Pacific Flyway and supports the largest seasonal concentration of bald eagles in the lower 48 states.

While water is vital to maintaining the ecological integrity of the Klamath Basin, fishery dependent economies, and tribal trust resources the dominant use of water in the Klamath Basin has historically been irrigated agriculture. To date more than 75% of the Basin's wetlands have been drained and converted to agriculture. Damming and diversion of rivers and draining of wetlands have taken an enormous toll on the Basin's ecology. Hydrology of the Basin has been radically altered and water quality has been severely degraded. These conditions have contributed to the decline of ESA listed species, the failure of streams and lakes to meet water quality and temperature standards, the failure to meet native American hunting and fishing rights, and insufficient water to maintain the wetlands on the basin's national wildlife refuges. Thousands of fishing dependent jobs have been lost as a direct result of salmon declines in the Klamath Basin.

Federal assistance and support will be needed in resolving the numerous issues and conflicts over water in the basin. We need to do what we can to reduce the economic hardships this year's drought has brought on Klamath Basin farmers without sacrificing the incredible resources of Klamath Lake, the Klamath River, and the Klamath Basin Refuges. The Coalition hopes that careful consideration will be given to the actions outlined below so that the ecological wonders of the Klamath Basin will be preserved and restored.

1. Reform Management of the Klamath Project. The Klamath Project should be managed to meet the river flow, lake-level and refuge water requirements as set forth in the applicable biological opinions and ultimately should seek means to meet the full water requirements of the refuges for ducks, geese, eagles and other wildlife, while recovering fish species to harvestable levels.

2. Fund and Implement a Voluntary Demand Reduction Program. Water has been severely over allocated in the Klamath Basin. Any meaningful long-term solution will require considerable downsizing of the Klamath Project and the retirement of many other water rights throughout the basin. There are currently tens of thousands of acres for sale in the Klamath Basin. A voluntary program to give financial assistance to the farmers, who want to sell their lands, by buying their lands at a fair price would be an equitable way to reduce agricultural demand, while giving more security to those who want to stay in business. A federally funded buyout program should be developed and implemented in this regard.

3. Terminate Refuge Lease Land Farming. The lease of 20,000 acres of federal refuge land in the Tule Lake and Lower Klamath National Wildlife Refuges for commercial agriculture should be terminated. This would allow management of these lands for fish and wildlife, eliminate the use of pesticides on the refuges, allow refuge personnel to devote more time to refuge management, help secure a reliable source of water for refuge purposes, and ease the irrigation season water demands on the Klamath Project.

4. Restore Fish and Wildlife Habitats. Although fish and wildlife habitats have been degraded throughout the Klamath Basin, it remains one of the few major river systems in the US where substantial restoration is still possible. Reclaiming and restoring wetlands, especially in the Lower Klamath and Tule Lake Wildlife Refuge areas and around Upper Klamath Lake, are important to obtaining a more natural hydrological regime, improving and increasing fish and wildlife habitat, and improv-

ing water quality. Riparian areas need to be protected and restored. Dams and diversions need to be screened and provided with appropriate fish passage facilities, or removed. The water retention and flow regulation capability of upland forested ecosystems need to be restored through reforestation, canopy retention and work to reduce the impact of extensive unpaved road systems.

5. Meet Water Quality Standards. The Klamath River and several of its tributaries have been listed as water quality "impaired" under the Clean Water Act. Total maximum daily loads (TMDLs) should be established and implemented for the impaired streams and plans should be developed and implemented to meet water quality standards.

6. Implement Water Conservation Measures and Improve Water Management. There should be a thorough analysis of irrigation needs in the basin. Opportunities for improving conveyance system and on farm efficiencies should be carefully assessed, funded, and implemented. Water use measuring and reporting need to be required, and an active enforcement program needs to be implemented.

7. Augment Water Supplies. Every effort should be made to evaluate water supply augmentation possibilities and environmentally sound projects should be funded and implemented.

Mr. POMBO. Mr. Solem.

STATEMENT OF DAVID SOLEM

Mr. SOLEM. Mr. Chairman and members of the Committee, my name is David Solem. I'm the manager of the Klamath Irrigation District and the director of the Klamath Water Users Association. Thank you for the opportunity to testify here today on behalf of the Association. The Association represents nearly all of the water districts in the Klamath Project.

On April 6, the Bureau of Reclamation issued a 4-1/2 page operation plan. Two sentences apply to the project irrigation from Upper Klamath Lake. I'd like to read those. "Due to the requirements of the biological opinions in the ESA and the current drought conditions, only limited deliveries of project water will be made for irrigation. As a result, current conditions indicate water deliveries to farms and refuges within the project service area will be severely limited." That's it. No options, no alternatives, no water.

The reallocation of water as called for by Federal officials is causing tremendous hardship in the community. Farmers and ranchers are scrambling to drill wells or block up drain ditches, just to get the irrigation in order to salvage something from their fields. Their situation is getting worse by the day. Established hay fields and pastures are dying, livestock is running out of water, top soil 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 kids' 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, the National Marine Fishery Service, 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. Is it reasonable and prudent to devastate an ecosystem relying upon agriculture for over 100 years?

It is not reasonable and prudent to deprive an irrigation project of its water supply, to cause property values to drop, to cause jobs to be lost, and to force families into bankruptcy. Please tell me how it is reasonable and prudent to operate an irrigation project without water. I believe our situation can be resolved, but in the long run this crisis illustrates all too well why the Endangered Species Act must be amended. No one should fear an independent peer review of all science.

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. These demands require the Project to provide more water than is available. Earlier this week, over 1,700 cubic feet per second was being released from Upper Klamath Lake down the Klamath River. The inflow to Upper Klamath Lake was roughly 200 cfs. Average inflow to the lake is 1,400 cubic feet per second.

Is sending over eight times the inflow of Upper Klamath Lake down the river reasonable and prudent in a drought? It clearly shows that NMFS is taking water that was stored for project irrigation. Total flows below Iron Gate Dam from April through September this year 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 U.S. Fish and Wildlife Service are roughly 3 feet higher in September 30th this year than in the drought years of 1992 and '94. Is it reasonable and prudent to take an additional 200,000 acre feet 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 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 created 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 for environmental purposes this year. In an average year, farmers in the Klamath Project use approximately 400,000 to 500,000 acre feet, less than evaporated off these lands prior to the development of the Project. The Klamath Basin overall produces 10 to 20 million acre feet of water going to the ocean after irrigation diversions have been taken out. 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 an example of the inequity of the Federal decision. Why have they not required even other Federal agencies outside the Project to restrict water use.

I urge the Committee, Congress, and the administration to take the following steps to undo the damage caused by the two Federal agencies to our communities. First, farmers and ranchers in 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 decisions caused. Of course, we would prefer to have our water supplies instead of any Federal fund.

Second, the administration must conduct an independent peer review of the science, and I think that's been discussed in detail here today. Third, the Department of the Interior should complete an EIS for the long-term operations of the Klamath Project. The effort now underway must be withdrawn or modified, because it is tied to these biological opinions and will reflect all of their flaws as well. A new effort worthy of the seriousness of these issues must begin with congressional oversight. Fourth, Congress should appropriate funds for on the ground restoration measures, such as the "A" canal fish screen. A pilot oxygenation project in Upper Klamath Lake and modifications to Chiloquin Dam would also be good projects.

I believe farming and a healthy environment are compatible in the Klamath Basin. The people who rely on this project have fulfilled their commitment to the U.S. By working hard to build a successful community and to protect the species dependent upon it. Now it's the Federal Government's turn to fulfill its commitment to us.

[The prepared statement of Mr. Solem follows:]

Statement of David Solem, Manager, Klamath Irrigation District

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 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 more 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.

Mr. POMBO. Thank you very much.

Mr. Foreman, Mr. Fletcher, I agree with much of your testimony. I think the greatest mistake that I and many of my friends and neighbors made years ago was we sat by silently when your rights were being violated, and we—I believe all American citizens are paying the price for that now, because we allowed it to happen. At any time anyone's rights are violated in this country, we all need to stand together and fight against that, because once you establish a pattern, once you establish a precedent that the government can do something, they eventually will do it to you, and I think we're all paying the price for that right now. And I appreciate your offer to work with all of us to find a solution, because the solution to this problem is something that is going to involve all of those who have a legitimate right in this situation, so I appreciate your testimony. I thank you for being here today.

And, Mr. Solem, just to follow up a little bit on your testimony. Now, you testified that the annual use was between 400,000

500,000 acre feet of water for irrigation in the valley. Is that accurate?

Mr. SOLEM. That's correct, in the Klamath Project.

Mr. POMBO. Okay. And yet there is about—and I believe what you said—20 million acre feet that are produced out of the watershed.

Mr. SOLEM. Correct, yes. It's a huge watershed, 6 million acres. The USGS reports it's an average of about 13 million acre feet that flow out at the ocean, and it's been as much as 23 million acre feet within the last few years.

Mr. POMBO. And that 13 million acre feet that you're talking about is not developed water. It's not being used.

Mr. SOLEM. That's correct. I mean, the Klamath Project is unique in that the irrigation is on the east side of the mountains and is a river that flows through the Cascade Divide and into the ocean. Most of the water is generated on the west side, farther downstream.

Mr. POMBO. Okay. Can you tell me what the approximate cost of water for farming is in this area?

Mr. SOLEM. I can tell you what the O and M costs are, if that's what you want. In the Klamath Irrigation District, our O and M assessments are $25.50 per acre, per year. We have no construction component to that. Our district paid off the construction costs in 1954.

Mr. POMBO. So it's $25.50 per acre?

Mr. SOLEM. Correct.

Mr. POMBO. Is there a cost per acre foot, or is that just based upon historic water rights?

Mr. SOLEM. It's based on historical water use. The Klamath Project, because of the integral design of the system where water that gets past us becomes another district's source, it doesn't really work in the typical per acre foot type of pricing system.

Mr. POMBO. How would you—if you needed to come up with a value of the water that is being diverted to another use right now, how would you come up with that value?

Mr. SOLEM. The value is really to the producer and the owner of that land that the water is pertinent to. I mean, it's really their property right. The district is just the distributor. I think it's all of the value of the land. And maybe that's not the answer you want, but if we don't have water on this land, it won't produce, period.

Mr. POMBO. Now, maybe I can ask Mr. Bishop this question. You used a number of figures to determine what the agricultural value was in the valley. Would there be a way to somehow come up with a figure as to what that water is actually worth?

Mr. BISHOP. In terms of irrigated property versus non-irrigated property, certainly you could arrive at some kind of a number. We've done studies here in the Tulelake Basin, and land values have declined some over the last 2 years, and values for irrigated property range from somewhere between $2,200 to $3,000 an acre. If you take the water away from it—this is only anybody's guess—but it could be $100 to $500 an acre. I mean, we don't know. We have no sales to back that up. We're trying to figure it out ourselves.

Mr. POMBO. Do any of you know if anyone has sold water or leased water on an annual basis in the recent past, and if so, what they were able to get for that water?

Mr. SOLEM. In Oregon there really isn't a system of marketing like in California, so it isn't really that type of a scenario. Bureau of Reclamation did pay irrigators not to irrigate on an annual basis, and those values ranged greatly, just depending on the crop in a particular farmer's situation. I really don't—.

Mr. POMBO. Was that voluntarily?

Mr. SOLEM. That's correct.

Mr. POMBO. And can you give me a range?

Mr. SOLEM. I think it ranged from somewhere from a hundred dollars to several thousand dollars, because it really—.

Mr. POMBO. Per acre.

Mr. SOLEM. Per acre. But it was more based on crop values than the water values.

Mr. POMBO. And that was the Bureau of Reclamation?

Mr. SOLEM. That's correct.

Mr. POMBO. Okay, thank you. Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. Mr. Fletcher, I want to commend you for your comments today and the spirit with which you offered them, and Mr. Foreman, you as well. You made a comment I wanted to follow-up on, though, Mr. Fletcher, about your belief that—if I heard you right—that other parties should have participated. You would have welcomed—maybe is a better way to say it—other parties participating in the Hardy discussions. Is that an accurate—

Mr. FLETCHER. Well, it's a little different. The Hardy work and the National Marine Fishery Service biological opinion was based on years of different studies, years of discussion, years of efforts. The Klamath Task Force in '96 and '97, of which Klamath County is a representative in that body and can have a technical worker's representative, began scoping on flow issues in the entire Basin. Hardy has extracted some of that. Hardy has shown up to the group on a number of occasions, has offered to share and discuss any and all the information that he has. We do studies, Fish and Game does studies, the Fish and Wildlife Service does studies as well, and that's kind of a sounding group.

Now, I understand that out of the detailed, specific discussions on Hardy, that the irrigators didn't have an opportunity to be there, and that should be corrected, but I—.

Mr. WALDEN. And I guess that's the point I want to make, because one of the things I've learned in this processes is, not only didn't they have an opportunity to participate in those early discussions, they were precluded, prevented by the Federal Advisory Committee Act, FACA.

Mr. FLETCHER. I would have a different opinion, because I sat on the Klamath Task Force. I asked people to show up at these meetings, to have their technical people there. The Hardy study is just one component to what NMFS considered. They considered a Trihey study that the Yurok—.

Mr. WALDEN. But within the context of the Hardy study itself, is it not true that the water users were excluded because of FACA?

I mean, that's what the Department of the Interior has told me. That's what the water users have told me.

Mr. FLETCHER. Well, I know specifically—and you can look at the Task Force minutes where Dr. Hardy briefs the Klamath Task Force about both Phase 1 and Phase 2, and he actually says, "I'll be around all day. Anybody that has any questions, come ask me," those type of things.

Mr. WALDEN. But the tribes were specifically included, because you are a separate nation, right? Under the trust responsibilities of the Department of Interior, you had an absolute right—.

Mr. FLETCHER. Yeah.

Mr. WALDEN. —as you should, to participate. But I believe that the case is that, with the waters users, they were—this came up at a March 21 hearing back in Washington where I took the questions I got from the water users, saying, How come we can't sit in and participate? And it gets to the point, I think—some of us are concerned about—you spoke about the need to have this science out on the table throughout the process so you can participate and they can. Isn't that really the same case, Chairman Foreman, in terms of the science—the scientific underpinnings of the biological opinion on the suckers really originated through the Department of Interior and the BIA for use for the Klamath Tribe in adjudication, isn't that correct? And then was shared with Fish and Wildlife at that point?

Mr. FOREMAN. Yeah, and I'm not fully aware of the process that was used at that point. But we do agree that everyone should participate.

Mr. WALDEN. And I guess that's—if we're going to make decisions of this magnitude, you can see where people get very concerned about having the feeling they've been shut out, either by a Federal law, FACA, the Federal Advisory Committee Act, or some trust responsibility the department has. But be that as it may, it raises credibility issues, frankly, do you agree? Yeah, Mr. Fletcher.

Mr. FLETCHER. The bottom line is, I too want a crack at the science that is on the opposing side, and I think that everybody needs to be at the table and we need to hash that out. It's only going to benefit the end product. I know the FACA concerns, but I think you need to appreciate, Hardy wasn't the only thing looked at in NMFS' decision. There was a collective body of information.

Mr. WALDEN. But it was a considerable piece of it, wasn't it?

Mr. FLETCHER. It was a considerable piece that used additional information that was available to everybody.

Mr. WALDEN. But as you well know, there are lots of questions about Hardy and the Hardy study still circulating out there.

Mr. FLETCHER. Yes.

Mr. WALDEN. And I think that raises another issue about using the—I don't remember the exact terminology—the best available science, or commercially something or other science. Those are issues that are coming up. What does that really mean? Whose do you take? I appreciated Mr. Vogel's comments about the need to have a blind peer review process, if you're going to have one. I can see where, you know, you can end up with problems absent that.

Mr. Solem, if I could quickly go to you before my time expires. I appreciate your comments, as well as some others, about the dif-

ferent projects we can go do to improve habitat and all, and I want to raise the issue about oxygenation above the Klamath Lake and modification of potentially to Chiloquin Dam, or at least a fish passage and mitigation efforts. If we move forward, as the Bureau of Reclamation is doing, and initially, as I've encouraged, to look at oxygenation in the lake, do you have a concern that if that proves to be beneficial to the suckers, that there is a very difficult ability or an inability to determine whether it was the higher lake level or oxygenation that produced the improvement? Because I don't want to go do something that produces improvement in the suckers' viability and have it credited to some other thing, like the higher lake level.

Mr. SOLEM. I understand your concern. I think we will have to look at the design of the experiment just to see how that would work. We are looking at doing it in deeper water as compared to shallower water. There are short-term and long-term restoration activities and we want to be able to look at both, because in order for us to operate there has to be short-term restoration things that we look at and that can benefit fish and their habitat.

Mr. WALDEN. Thank you. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman.

First of all, I'd direct my question to Mr. Solem. And you indicated in your testimony today that the water irrigation district for the Klamath area has fully paid for the cost of the diversion works to the Bureau of Reclamation in, I think you said, what was that, 1934.

Mr. SOLEM. Our district paid off in 1954.

Mr. GIBBONS. '54, thank you. Since that time, have there been any actions with regard to the Federal Government in conveying the title to those works to the irrigation district?

Mr. SOLEM. No, sir. The Klamath Project title still is in the Federal Government—the right of ways, the facilities—and there hasn't been any decision or movement to transfer those facilities.

Mr. GIBBONS. Has the irrigation district attempted to work with the Bureau of Reclamation on acquiring the title to those works?

Mr. SOLEM. I've been with the district for nearly 20 years, and it's kind of a cyclical thing. We, about every 10 years, seem to bring up the issue. We are currently looking at that situation again and the possibility of transfer.

Mr. GIBBONS. Well, it would seem natural that once you've paid for something, you want to receive the title to it. I think that's probably the premise under which it was constructed. The other issue I have is in knowing that they are not delivering their water to you, have they approached you in any fashion to offer you relief from the expense of O and M on this project?

Mr. SOLEM. No, we have— I know that certain districts have paid their O and M to the Bureau already this year. You know, we have a contractual obligation, that we don't want to violate our contracts, but up to this point, the $325,000 of annual O and M, the bills have gone out from the Bureau to be paid.

Mr. GIBBONS. It seems to me that their breach of their contract to deliver the water to you should relieve your obligation to pay the O and M for this structure.

Mr. SOLEM. I would agree.

Mr. GIBBONS. I have a question also, if you could help me. Obviously, there's some things that can be done, that you talked about earlier, from the Bureau of Reclamation—the 10 to 15 million dollar project, including fish screens to keep fish out of the irrigation canals. Where does that project lie? What's its current status right now? Is the Bureau of Reclamation coming up with the required money, since it's their project, obviously, to fund that program.

Mr. SOLEM. That's a very good question, because it's a requirement, a reasonable and prudent alternative on the funding, it's necessary that the funding goes along with it. To this point, there is some money in 2002. I believe it's 3.5 million in the Bureau of Reclamation's budget, so I mean, it's clear that that's inadequate to construct these facilities. The problem is that the district is going to be held to a deadline for construction of those facilities. We have paid out of our pocket for the preliminary engineering design and are more than ready to move forward on the final design and get construction going, but Reclamation at this point has not been really too forwarded in getting funding.

Mr. GIBBONS. Mr. Chairman, I would suggest that when the Bureau of Reclamation comes before us in Washington, that we do take this issue up and make that a very pointed consideration for our efforts back in Washington.

I want to just briefly talk with Mr. Bishop here for a second, because America probably has a very small idea of how much family farmers put at risk on a day-to-day basis, whether it's planting seed in the ground and hoping that something becomes of it, to taking out a loan through your institution to help defray the costs. Can you help us, in the brief time that I have remaining here, talk a little bit about the risks and the costs of an average farmer, what they have to go through, what they have to invest in? Why do they come to you to get this loan, and then why are we so concerned because of the outstanding indebtedness of a farm or a ranch, or something like that, when we start talking about shutting off the water? Obviously, they've got a debt that has to be paid, just as the obligation we talked about with Mr. Solem. Would you help us with something like that?

Mr. BISHOP. We are a farmer-owned cooperative system that was established, as I said earlier, in 1916, through the wisdom of Congress, to provide a dependable, short, intermediate and long-term source of financing to farmers and ranchers through bad times as well as the good times. And because we are farmer/borrower owned and they own stock in our organization, they have something to say about the direction of the organization and participate in governance of our organization.

They come to our organization to borrow operating funds, to buy the seed and pay for the operating costs, to buy equipment and machinery, and to buy real estate. And we provide a very important role, public policy role to America through being that lender that, in the good times and bad times, can be depended upon to be here. We have extensively used the FSA guarantees that I referred to earlier to help us to work with farmers through times of distress. It's very important that that program continue to function, and that they're not allowed to put additional conditions on those loan

guarantees, that they've never before put on those loan guarantees, that will enable us to stick with the farmers, restructure their loans, perhaps re-amortize their loans, so that they won't have to face another payment, which would have been paid from the 2001 crops that obviously aren't going to be there to make that installment, to allow them the time necessary to do some of the things that have been referred to by some of the previous witnesses here today. That's what farm credit is all about. We are very concerned about the farming and ranching families here. We want to do everything we can to support them.

Mr. GIBBONS. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Simpson.

Mr. SIMPSON. Mr. Chairman and Mr. Bishop, I want to follow that up just a little bit. You're conditioning their loan reorganization, and so forth, based on a full water allocation for 2002? Do I understand that to be the case?

Mr. BISHOP. Yes. We've been told that while normally the FSA guarantee loan program would be based on normal conditions, that perhaps this year they would be conditioned on the full water allocation, yes, sir.

Mr. SIMPSON. How can you do that when you don't know what the water's going to be, what the snow's going to be, you know, what the conditions are going to be in 2002? So who's going to give that guarantee of a full water allocation? I mean, have we conditioned it on something that we can't promise.

Mr. BISHOP. Yes, Congressman. That's exactly my point is that by the agency placing that condition on the loan guarantees to provide the credit enhancement that we need, the farmers don't have the certainty that we will re-amortize their loans. We need to start that process immediately, so there is certainty that they're not going to have to pay the next installment from a crop that's going to be nonexistent. And that's where we need the congressional support to work with that agency to ask them to follow their own policy and regulations when issuing these guarantees to our loans so that we can work with the farm families.

Mr. SIMPSON. Thank you.

Mr. Solem, in the testimony that I was reading of the Pacific Coast Federation of Fishermen's Association, there's a statement that I'd like you to clear up, because we've talked a little bit about whether the irrigation district paid for their project, and so forth. They say in here, "The Project users have not paid more than about 30 percent of the total cost of the Project since 1905, and not even a 70 percent tax payer subsidy." Which seems to be a little bit in conflict with what you were saying. Could you explain that difference or what it means?

Mr. SOLEM. The project debt was paid off in a variety of ways, and there were other things that happened with this project beginning in 1905. We went through a depression. There were times that there were some payments actually dropped during that period of time. We had land—the Klamath City Airport was actually land within the district. That land was excluded. They didn't require that land to pay their construction obligation for that number of acres. I think that—you know, the other part of it is that it's kind of a complicated formula for Tulelake Irrigation District and

they went through an inability to pay. Construction payments were paid with lease revenue from those lease lands and the agricultural production on them. But the bottom line is those obligations have been paid, period. There was no subsidy. And again, I think Mr. Crawford read something that, actually in the mid-fifties, it was already generating tax revenues way in excess, from those lands, of any investment that the government made.

Mr. SIMPSON. So to put it clearly, they have paid their obligation.

Mr. SOLEM. Absolutely.

Mr. SIMPSON. And I was interested in why, once those obligations—we have encouraged, the Congress, those Bureau of Reclamation projects to be transferred to the ownership of the districts, and so forth, and I know that's been a slow process. Why hasn't this one been transferred?

Mr. SOLEM. I think one of the reasons why is the pay outs occurred at different times. Our district, the Klamath Irrigation District, is one of the first districts that paid out. You had a build-up of the project lands. Ours started early, paid off early. Some other lands started the development a little later—their payment. Tulelake's was within the last 5 years—the final payment. We also have a little bit different situation than maybe your districts, is there is a component of reserve works that are actually operated and maintained by the Federal Government, even though those facilities were—there was construction payments made on them by the districts. That's the O and M that we continue to pay. But I think the time is now that we do ask for transfer. But I can tell you, the Bureau of Reclamation here said, You are going to be fighting an uphill battle, just because of the complexities and the issues that we're dealing with here in the Klamath Project.

Mr. SIMPSON. Thank you.

Mr. Fletcher, in your testimony you wrote, "No one involved with the water problems in the Klamath Basin believes that the annual operations plans for the Bureau of Reclamation is the best way to manage the Project." You share that view. What changes would you make in the management plans of the BOR?

Mr. FLETCHER. Well, if I were king of the—first off, the EIS needs to be done—long-term planning. That has got to happen, because we need the same thing that I think Dave and others need. We need certainty. You know, the worst thing is for us on an annual basis to make a migration back to D.C. to plead our case, and then we both live with whatever comes out the back end. We have the same problem that the irrigators do. There needs to be a good look at the science. There needs to be an EIS that's developed for a long-term basis. And the longer we prolong that—because we've been hearing EIS since '95, '96, and every year we need to get to an EIS, but the annual crisis prevents us from getting to an EIS, but it's got to happen.

Concurrent with that, we've got to have negotiations and mediations on a bigger scale. It's not fair, like I said earlier, that the Klamath Project is singled out. I fully agree with that. We need to pick on everybody equally and do what we can to fix these problems in the basin.

Mr. SIMPSON. A better way to put that might be for everyone to share the burden.

Mr. FLETCHER. Okay, there you go. You know, and I can fully appreciate the frustration, because we have the same frustration. We look above the lake and we look in the Shasta and the Scott, and there are problems. The Scott River is dry. It's going to go dry this year. So I don't think we need a peer review—you know, zero water in the channel is not good for fish. I mean, there's certain things that need to be done so—.

Mr. SIMPSON. And I want to echo what the Chairman said at the first of this, that whenever we've seen anybody's rights trampled on, it's spread to everybody's rights. And I do share what he said, as I have studied with Native American tribes in my district, the problems that they've had, and quite frankly, the way they've been treated.

Mr. POMBO. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. And I thank each of our witnesses and everyone who is here today. I really do not have a question, but I would like to make some observations, if I could.

And that is, it would appear to me that really the problem that we have—the major problem we have is not that of the drought and not enough water, in my opinion. We've had droughts before. We have them periodically. The fish have made it, the people have made it. Had it in '92, we've had it in the seventies and the eighties. To me, that's not really the problem.

And I think—Mr. Chairman, I think you hit on it before in an earlier panel when you mentioned something to the extent that the ESA, Endangered Species Act, is not being applied the same way in the East and the West. You gave the example that we've been becoming aware of here in the last few months, on the Potomac River in Washington D.C. where they're literally, every month, dumping huge amounts of toxins in the river, and our good environmental friends aren't saying anything. As a matter of fact, they're ignoring it. And we have even brought it to their attention, and they still ignore it. So we see what is clear, or it would seem clear to me that we're really seeing a war in the west. We're seeing a war on western states, and I think Mr. Kerr summed it up.

The idea is that, as someone mentioned, in this county, 57 percent of your county is federally owned. I have counties in my district that 92 percent are federally owned and 78 percent are federally owned—in the entire State of California, over half of the State. But to our friends in the extreme environmental movement, that's not enough. They want it all.

And so we hear what so bothers me every time I hear it—please excuse me, but this willing seller. I mean, we bankrupt someone, we make it so their property is worth something, and then we force them into either foreclosing to the bank or becoming a willing seller. And again, it seems for some reason we see it in the West, not so much in the East where we have so many of our environmental extreme friends seem to reside. And it's not just here in the Klamath Basin. It's not just with farmers.

At a levee on January 2 of 1997, very close to where I live, down in the southern part of my district near Marysville and Naraboga area—the Corp of Engineers in 1991 came in and said, There will be a loss of life if this levee isn't repaired on the Feather River. Our good friends in the extreme environmental movement sued.

And Mr. Kerr, I have looked through your statement, your testimony that you have printed, and I respectfully feel very resentful how even in your testimony one of your comments is, "Our attorneys are salivating at the prospect," basically of suing, having to do with the God Squad. Salivating. Now, I salivate on chocolate chip cookies, but to think of salivating— It would be humorous if it weren't so tragically serious.

On this levee, 6 years later, 5 years later, three people lost their lives on a levee that the extremists within the endangered species community or the extreme environmental community, they also were salivating to sue, and they did sue, and they sued, and they held it up for 5 years and three people drowned there. And you know what their comments were afterwards? Not that much different than what we're hearing now. "We should never have built those levees. These rivers should meander. That's what they all did. They were built on flood plains." We should all live in the mountains, I guess. It's the only place in the valley that doesn't flood.

Somehow that doesn't make sense, and somehow a country that can put men on the Moon in the 1970's—now, I'm old enough to remember that and I'm also old enough to remember, in the earlier 1960's, just in high school, when John F. Kennedy—we didn't even have air conditioning in our cars at that time, but he made a statement that we were going to not only put men on the moon, but we going to bring them back alive. And we did that in 10 years, and yet somehow we cannot work together to solve what challenge has been going on for thousands of years, of droughts and floods and everything else, so that we can both protect endangered species and homo sapiens, humans, as well? That's wrong. That's tragically wrong, Mr. Kerr. And an even though I respect you, I very much resent— I sincerely respect you, personally, but at least the statements and what you have written here, that rather than working together, that you salivate to sue if we should work together to try to solve this problem, really concerns me and I think really shows us what we're up against. The extreme environmental community, which evidently it would appear that you represent, has declared war on us. And you know, we are not going to cry uncle. We're not going to give up. We're going to stand up for our rights and we're going to win the war.

Mr. POMBO. Mr. Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman. I want to thank the panel also for being here. I want to add my congratulations, I guess, to Mr. Foreman and Mr. Fletcher for the tone in which you said you wanted to work together. And I say that recognizing that there is tension between tribes and people, and that goes on. I have two tribes in my district and there is tension that is always about and will probably never go away. That's part of the challenge of a self-government in the first place. But I think the difference in your tone, and certainly the tribes in part in my district, is that you live here, your families live here, you work here, and you want to find solutions to the problems. That's very hard to come by, but the idea is the willingness to sit down to come to common ground. And I think the trick that we have to do, the chal-

lenge that we all have is to try to find that area, those areas that we have common agreement from the start, and work from there.

One area, for example, in my congressional district, where there is broad agreement with the tribes—probably not unity, but certainly broad agreement—is an issue that hasn't been brought up here, but I know exists here to a certain extent regarding the salmon, with the debate of wild and hatchery salmon. The tribes, for example, in my district, for the most part want to see salmon return and they're not so hung up on the idea of whether they're wild or salmon because I think that they look at the science and they agree there's not a whole lot of difference. And just briefly, do you share that the main concern is to try to get the fish back? Let's not get too hung up on the science. Is there a broad agreement with you on that also? You're more the salmon—.

Mr. FLETCHER. I'm the salmon guy, yes. We need adequate numbers of fish to provide for a robust fishery sufficient to meet a whole host of needs. The issue about natural versus hatchery salmon, that's a big, long debate that there's all kinds of issues on, but we typically support—on the Klamath River, for example, the Klamath Fishery Management Council is a body of commercial, sport, Federal agencies, tribes, and we come up with the best management practices for our respective harvests. We come up with harvest objectives, we come up with escapement objectives. And at present, for fall Chinook, we average for a 66 percent harvest on fall Chinook, natural populations, and we have a floor of 35,000 fall Chinook, natural population. Within that, the population of the hatcheries—the return to the hatcheries will swing up and down. I would say that the natural populations are equally as important as the hatchery fish, and I don't want to say that you can replace those populations with hatchery fish. You just can't do it.

In the Klamath Basin there's still a lot of tributaries that are pristine—the Salmon River, the north fork of the Trinity, the south fork of the Trinity, New River on the Trinity, even the Shasta and the Scott. Those are all natural producing systems that the hatchery can't replace the production from those systems.

Mr. HASTINGS. Yeah, and I wasn't suggesting that, because again on the extreme side, the extreme side says you can't co-mingle whatsoever. And I mentioned in my opening remarks about the clubbing of the fish. Let me suggest that there may be a solution to this that we all ought to be aware of, because the first issue is the one that I addressed earlier about how much water is enough. And I think as we go along, we're going do somehow agree how much water is enough. The minute we do that, we'll find a solution. And we will find a solution, I have no doubt in my mind, which will lead then to the next argument of the debate between wild and hatchery, and I think we'll have to find it out the. But I think it's worth an anecdote in order to illustrate that even that solution is probably at hand.

When I was growing up I heard about the buffalo on the great plains of the United States, and was well aware of when we settled the great plains, we moved out of the natural habitat, the buffalo. And pretty soon, when the wheat country grew up and settled in the great plains, there was no buffalo. But somebody thought that the buffalo was worth saving. Now, I don't know if that person was

down to the last two buffalo or not, but the point is, they thought it was worth saving, and they made that decision before the Endangered Species Act was put into place. And now, of course, we know—I have buffalo in my district, people raise buffalo. Buffalo is a commercial product. Let's just remind ourselves of what we're talking about. They are hatchery buffalo. And so I say that in a sense. If the Klamath Basin has not been faced with this yet, it's coming. Just keep that anecdote in mind.

And then as far as the solutions are concerned, nobody is suggesting that the people in the great plains—Topeka, Lincoln, Wichita—completely move out so that the buffalo can have their wild habitat. Nobody is suggesting that. Yet in the Northwest, when there was discussion about removing the dams on the Lower Snake River, that was precisely what they were asking us to do. Again, it's a double standard that the Chairman pointed out. So I am confident that in the long run, when the people are more and more aware of the issues that are being driven, from my point of view, by the extreme environmental side—we're seeing this in California on power right now, and that awareness is higher. But when the awareness gets higher, people become educated, they ask the right questions, and what do they find at the end of the day for everybody? They find a solution. So I am encouraged about the willingness to work this out. We have to get through this tough time for the people living here this year. That's the challenge that we have. Thank you, Mr. Chairman.

Mr. POMBO. I want to thank this panel for your testimony. I'm going to go ahead and excuse this panel, but if there are any further questions from the Committee, they will be presented to you in writing, and if you could answer those in a timely manner for the Committee, I'd appreciate it. Thank you.

I'd like to call up our fourth panel; Mr. Zeke Grader, Mr. Bill Gaines, and Mr. Robert Gasser.

STATEMENTS OF ZEKE GRADER, EXECUTIVE DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATION; BILL GAINES, DIRECTOR OF GOVERNMENT AFFAIRS, CALIFORNIA WATERFOWL ASSOCIATION; ROBERT GASSER, KLAMATH BASIN BUSINESSMAN

Mr. POMBO. I want to thank this panel for joining us here today. And again, I would remind you that if you can try and limit your oral testimony to 5 minutes—your entire written testimony will appear in the record, but if you can try to limit your oral testimony to 5 minutes, we'd appreciate it. Mr. Grader, if you're ready, you can begin.

STATEMENT OF ZEKE GRADER

Mr. GRADER. Thank you, Congressman Pombo, and thank you Congressman Walden, Congressman Herger, Congressman Hastings and our friends here also from Nevada and Idaho for holding this hearing today. I know this is a very difficult issue.

Mr. POMBO. Would the gentleman suspend for just a minute? If I could have order with the audience, please. I'm even having a difficult time understanding him, so please— Go ahead.

Mr. GRADER. Thank you again for bringing this hearing to Klamath Falls. I would hope that also at some point the Committee could also come out to Eureka to hold a similar hearing and basically get testimony from people on both ends of the Klamath River system. I think it would be very helpful in your deliberation as we seek to bring everybody together to try and find some solutions for these very difficult issues.

My organization represents working men and women in the commercial fishing fleet, mostly in California, but we also have members in Oregon and Washington as well, and probably the bulk of our members are what they call commercial salmon trollers, people who make their living fishing on the ocean. They are food producers, which I need to remind people of now and then. You have a copy of my testimony so what I'd like to do is just briefly talk to you. I know this has been a long day and a long hearing, so let me just try and be brief and just make a few points.

The Klamath Basin, as you know, historically was the third major salmon producing Basin in the lower 48 States. It was a tremendous system, probably a million or so fish at one time, second only to the Columbia system and the Sacramento, San Joaquin system. Myself, I grew up in the fishing industry in a place called Fort Bragg on the north coast. Some of you may be familiar with it. Up until about 15 years ago, that port was the largest ocean salmon port along the Pacific coast. More fish caught in the ocean were landed in that port than any other place along the coast. That was then. Today is now. Today we have a fraction of the fish going there, mostly because of closures that have been imposed to protect Klamath River Salmon.

The history of our salmon is not something new. In 1971 the California legislature, a couple years before, had put together something known as the California Advisory Committee on salmon, steelhead, trout. And in 1971 it issued its first report called an Environmental Tragedy. Now, 30 years ago most people didn't even know what the word environmental meant, and it was at least a year or two before the passage of the ESA, the Clean Water Act, the National Environmental Policy Act. But these people, made up of commercial and sport fishermen, I believe a tribal member, as well as fishery biologists, pointed out then some of the ongoing problems that we're looking at in the salmon fishery, and particularly the diversions in the Trinity River system. Of course, the Trinity goes into the Klamath system. That was being diverted to another Federal water project, the Central Valley Project. There were also problems identified full well with some of the land use practices that were going on, as well as the diversions, and the threats that were being made to the salmon populations.

Fast forward now 7 years to 1978. At that time the Bureau of Indian Affairs came out to California and said that we have to begin restricting ocean fishing of Klamath stocks to provide for the Indian tribal rights there, particularly for the Yurok and the Hoopa Tribes. That's fine, except that in the 1950's this very same Bureau of Indian Affairs and Department of Interior were saying that there were no such rights, and the fishing industry based their production, gearing up, building new boats, on the fact that pretty much they had clear rights to these fish in the ocean. In fact it was

the same Department of Interior at that time that the Federal Fishery Agency was under, known then as the Bureau of Commercial Fisheries, the precursor to out modern National Marine Fishery Service.

We had fishing vessel guaranty programs, tax programs for fishermen to be able to set aside money to build new boats. Indeed, Production Credit Association, who we heard from in the last panel, was lending money to the fishing fleet to buy new boats, so we were being told by another Interior agency, Go ahead, build up your fleet, these fish will be there. At the same time, as we well know, the Bureau of Reclamation, yet a third agency of the Department of the Interior, were telling farmers, both in this Basin as well as those serviced by the Federal Central Valley Project, that there would be plenty of water for them.

Well, I think that's where we are today. We've got a situation where we had the Federal Government promising much that it could not deliver on, often times in conflict, apparently not talking to one another. The situation is that in my hometown now there virtually is no commercial salmon fishery left. There isn't along much of the California coast. In fact from San Francisco all the way to about the mid-coast of the point of Oregon, much of that is closed for all or a good part of the season to protect Klamath stocks—to try and protect them. This year, even with the predicted abundance of our Sacramento fall run Chinook, we cannot get to those fish because, whoops, the fish moved north this year. They're not being found off the central valley coast, and this happens in nature. They follow the feed, they follow current patterns. So right now we have a fleet that's pretty much tied up along the California coast because they cannot access the fish because they have implemented to try and protect those remnant stocks.

The situation, of course, with Coho salmon, which was what brought on part of the crisis we're faced with here today, or caused at least the bi op and the order to restrict the water—I should remind everybody that we have not had a Coho fishery since 1994. So it's obviously not a problem in the ocean of fishermen taking them. We have not been able to fish them, so I just want to make that issue clear.

Now, there have been many here today that have said, Well, the problem is the Endangered Species Act. I would respectfully disagree. I think the Endangered Species Act, while it may not have always been implemented correctly, is more so than anything a messenger, and going after the ESA, in many respects, is like trying to kill the messenger. There have also been some that have said, Well, it's the fish. Well, you know, it doesn't take a lot of rocket science to know that fish gotta swim. In fact I think that was Oscar Hammerstein that said that, and we've heard that today from some panel members. We do know that fish have to have water, unless we develop some genetic engineering that allows them to grow legs and lungs. Right now, today, the way fish are, they've got to have water.

And, third, people have said, Well, it's those greedy fishermen that have caused the problem. Again, I would disagree. I think that the problem has been that what we're left with in the fishing industry is we're just trying to save what remnant populations we

currently have. We're trying to restore some of them, but we don't have any illusions about bringing them back to their historic levels, but we would like to save some of them so our people can continue working, can continue producing fish.

Now, I think there are some solutions here, and I think we heard some today. I think one is, despite what we heard from some of the crowd, is that for those people that do want to get out, that they be offered just compensation. This is no different than what we're proposing right now for our ground fish fleet. Senator Wyden has a bill that would help buy out the ground fish fleet. There again, the government promised fish that weren't there, and we're trying now to give some of those people a way out so that we can provide stability for those that remain.

Second, I think, obviously, we do need to have some immediate disaster relief. What the growers in this area experienced here was no different than what we experienced in the fishing fleet when we had the severe El Ninos, what ordinarily occurs when we have floods and hurricanes. This was a natural disaster. You've had an extreme drought. They ought to get some money and they ought to be compensated so we can keep these communities alive.

Finally, I think we do need to provide some Federal assistance in helping develop some of the ground water basins here, to take a look, so you're not entirely dependent on surface water, so you have this mix so that in drought years you have other sources of water to access.

Finally, I think we need to come up with a good restoration plan. I think I would agreed with my friend Troy Fletcher and some others. We need to get everybody in this Basin together. I know I've learned a lot here today from listing to various people and what they say, and I think that probably the best solution we can have is to bring everybody together. We started that under the Klamath Restoration Program in the 1986 legislation by then Congressman Doug Bosco, and I think we need to continue on that process. I think we've got everybody's attention now. I won't quote Lyndon Johnson, but I do think that we need to bring everybody together and see if we can't work out some ways to where—I think we need some good restoration programs on that might then free up some additional water that could then be used in this basin. Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Grader follows:]

Statement of William F. "Zeke" Grader, Jr., Executive Director, Pacific Coast Federation of Fishermen's Associations

Good morning. I am the Executive Director of the Pacific Coast Federation of Fishermen's Associations (PCFFA), the west coast's largest organization of commercial fishing families. PCFFA represents thousands of working men and women of the west coast commercial fishing industry and has member fishermen's associations and individual members in ports from San Diego to Alaska.

We are a major west coast industry, generating many billions of dollars annually to the region's economy, and supporting tens of thousands of jobs in coastal communities as well as providing high quality seafood for America's tables and for export. However, it is no exaggeration to say that many of those coastal fishing-dependent economies are now in economic crisis as fisheries have declined coastwide. This is particularly true for salmon fishermen, who have suffered enormously from the loss of salmon habitat and the de-watering of many of our most productive salmon-bearing rivers and streams. This impact has hit especially hard in the Klamath Basin. Now the Klamath River suffers from major fish kills as a result of low flows to such

an extent that we now have several basin species listed under the federal Endangered Species Act (ESA), including once abundant coho salmon.

The Klamath Basin (9,691 sq. miles) was once the third most important salmon producing river system in the nation, producing an estimated 660,000 to 1,100,000 million adult fish annually. Now river conditions are so bad that most of these runs are either gone or so reduced in numbers as to be nearing extinction. At present, the "recovery" goal for this system is to return at least 97,500 natural spawners to the system each year, a very modest goal that has still never been met. Even if met, this still means a total reduction of Klamath salmon populations by 89%. As a result, commercial fishing is almost non-existent throughout the ocean area in which Klamath salmon most frequently travel, the "Klamath Management Zone (KMZ)."

A big part of the problem for downriver salmon is reduced water quality and quantity from upper river sources because of the Klamath Project. The Klamath Basin works as a hydrological whole, and what affects water quality in the upper basin has a huge impact downriver.

Unfortunately, diversion of natural waterways and draining of wetlands has taken an enormous toll on the Klamath Basin's ecology and wildlife. More than 75 percent of the Upper Basin's wetlands have been drained and converted to agriculture, down from 350,000 acres to about 75,000 acres. Each acre of wetlands represents an enormous natural storage sink for water to buffer dry seasons and drought, as well as nature's most efficient water filtration system to keep water quality up. As a result of the loss of both water storage and water quality filtration of wetlands, fish and wildlife populations have declined dramatically. Klamath River Coho salmon are now listed as a federally threatened species and all species of salmon are now extinct above Irongate Dam because that structure provides no passage for fish. C'wam and qadpo (*i.e.,* the Lost River and short-nosed suckers but originally called "mullet"), once widely abundant and a mainstay in the diet of the Klamath Tribes as well as a major and valuable recreational fishery for the Upper Basin, are now also on the endangered species list.

The Klamath Irrigation Project and other development in the upper Klamath Basin has had three major impacts: 1) wildlife habitat has been destroyed; 2) water quality has been degraded; and 3) the natural water storage capacity of native wetlands and other habitats has been lost. The hydrology of the Klamath River has been greatly altered, both reducing the overall storage capacity of the system as well as compounding the competition for water that is the impetus for this hearing.

A number of restoration projects are underway in the Klamath Basin, but without real change in overall water and land management, the current state of affairs is simply unsustainable. According to the U.S. Fish and Wildlife Service, for example, if water management proposals now under consideration by the Bureau of Reclamation are implemented, 12,000 to 18,000 acres of the 23,000 acres of wetlands on the Lower Klamath National Wildlife Refuge will go dry during the fall waterbird migration in half of all future years. Smaller but still significant impacts would occur in an additional 28 percent of future years. This year, for instance, the refuges may go dry entirely, devastating protected bird populations from all over the west coast who use the Pacific Flyway.

In recent years, water quality from the upper Klamath Basin has been so poor that massive salmon die-offs have resulted far downstream. In 2000, more than 300,000 salmon deaths were recorded in the lower river, directly attributable to elevated temperatures caused by too little flow. Even the Iron Gate Hatchery cannot operate with water conditions so poor as they have been in many recent years.

Crucial Economic Importance of the Klamath Basin to West Coast Fisheries

Both Oregon and Northern California coastal communities are directly affected economically by the environmental degradation that has been allowed to occur within the upper Klamath Basin by the operations of the Klamath Project.

First off, Iron Gate Dam in Northern California (just south of the Oregon border) is the end of the line for Pacific salmon, since it was originally built with absolutely no fish passage, and all salmon runs above that dam are now extinct. More important for this discussion, however, is the diminished water quality and quantity flowing through Iron Gate Dam, coming directly from the Klamath Irrigation Project. Water released by the Klamath Project has for many years been of such poor quality, and such minimal quantity, that Iron Gate Hatchery (the largest and most important salmon hatchery in the basin) functions only very poorly or not at all. Iron Gate Hatchery uses river water for its operations. Whenever river water is too hot, too polluted or just too little in flow, that hatchery fails! Even if some juvenile fish do emerge from that hatchery, in many years in-river hot water temperatures and

pollutants are so bad that water conditions kill them quickly.[1] Furthermore, declining water quality and nitrate pollution coming out of Iron Gate Dam[2] lead to downriver water quality problems that extend for many miles downriver, which also disrupts natural production of wild salmonids.

It is not just hatchery fish that suffer, but many wild runs as well. Salmon must have cool, clear and abundant water just to survive. The extremely high volume irrigation diversions managed by the Upper Klamath Irrigation Project have, as a disastrous side effect, literally de-watered several key salmon spawning grounds in the Klamath River below Iron Gate Dam for parts of most years. It is not uncommon to loose 25% or more of all salmon nests to dewatering, in spite of all efforts to save them, amounting to a huge economic loss to coastal salmon fisheries and triggering major fisheries closures.

Even the water that is released from the Klamath Project is often filled with agricultural fertilizers, pesticide residues and waste from runoff in the fields. These pollutants in and of themselves can kill of much of the aquatic life below the dam. Young salmon and salmon eggs are much more sensitive to toxic chemicals than fully mature adults, and scientists have already documented many long-term and debilitating problems, including developmental deformities, as a result of chronic pesticide exposures in even very small amounts well below current expose standards.[3]

In essence, the lower river system has been engineered to be, and is often treated as, nothing more than a huge drain for the Upper Klamath Basin. However, the Klamath is not a drain, it is a river, and its ecological needs must be respected. This means that adequate water quality and quantity must be released from the Klamath Project sufficient to support salmon spawning and rearing, which in turn supports coastal salmon-dependent economies and communities.

Unfortunately, the way the Klamath Irrigation Project is currently managed has greatly changed both the amount and nature of natural river flows we get downriver. Prior to Project construction, the Upper Klamath contributed as much as 35% of the total flow of the whole Klamath River at its mouth in a typical August. Today as much as 90% of that amount of water is captured by the Klamath Irrigation Project, particularly in a dry year, with the remaining 10% released below Iron Gate Dam essentially agricultural waste water of such low quality that it routinely triggers major downriver salmon fish kills.[4] In other words, the total impact of Project operations has been an order of magnitude reduction in total flows below Iron Gate Dam, a complete change away from natural seasonal flow characteristics, and highly degraded water conditions for what remains and is released. These highly degraded conditions are clearly major contributing factors in overall salmon declines in the lower Klamath Basin, often resulting in major fish kills.

Klamath River salmon, once they reach the ocean, swim both north and south where some portion of them are then available for harvest. In the past, roughly 30% of all fall chinook landed between Coos Bay, OR and Fort Bragg, CA, for instance, were Klamath River stocks in origin (See Table 1). Thus when these fish decline, as we have seen in recent years, major fishing ports from Ft. Bragg, CA to Coos Bay and Florence, OR are severely impacted economically. Currently, all ocean and recreational salmon harvests within this "Klamath Management Zone (KMZ)" is specially restricted by the Klamath Fisheries Management Council or by state agencies to promote recovery of these severely depressed fish. As a result, when stocks

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[1] Salmon are cold-water fish and need cold water or their eggs will not hatch. Mortality of incubating salmonid eggs greatly increases as water temperatures rise from 56 F. (13.3 C.) to 60 F. (15.6 C.), which is usually considered the lethal limit. Water temperatures downstream from just below Iron Gate Dam downstream routinely exceed this lethal limit through mid–October. Spring-run chinook spawn from mid–August to mid–October, and fall-run chinook spawn from mid–September through early–December. High water temperatures at Iron Gate have thus greatly narrowed the spawning windows for both these subspecies and also greatly reduced the range of ESA-listed coho salmon by blocking access to cold water tributaries.

[2] Nitrate laden runoff from agricultural fertilizers creates algae blooms which steal dissolved oxygen from the water that fish need to breath. The fish die of suffocation.

[3] See for instance, Diminishing Returns: Salmon Decline and Pesticides, a publication co-sponsored by the Institute for Fisheries Resources, available on the Internet at: http://www.pond.net/?fish1ifr/salpest.htm.

[4] Figures from Initial Assessment of Pre- and Post–Klamath Project Hydrology on the Klamath River and Impacts of the Project on Instream Flows and Fishery Habitat, Balance Hydrologics, Inc. (4 March, 1996) prepared for the Yurok Tribe. There is a fiction being espoused by upper river irrigation interests that the original flows above Iron Gate dam were only 2% of total Klamath river flows at its mouth, but this number is patently incorrect. The actual percentage varied seasonally, but peaked at about 35% in a typical August according to 1911–1913 pre–Project flow records and was generally above 25% from July—October when those flows were most important.

are low (as we have seen for many years) most commercial fishing in the KMZ area is either closed or severely restricted, resulting in tens of millions of dollars in losses.

The Klamath stocks are also key indicator species for harvest levels all the way from central California to the Canadian border. All of our ocean salmon fisheries are now managed on a "weak stock management" basis. This means that the weakest stock becomes the limiting factor on ALL OTHER FISHERIES, regardless of how abundant those other stocks might be. The requirement to avoid catching any severely depressed Klamath chinook stocks, or any ESA-listed coho, therefore limits harvest opportunities on all the otherwise abundant (hatchery origin) fish populations from the California Central Valley well into areas above Oregon.

In other words, it costs fishermen tens of millions of dollars in lost economic opportunities just in order to reduce fishing impacts to a minimum on all these severely depressed Klamath River stocks. Klamath-driven closures and restrictions thus result in lost fishing opportunities for ports as far south as Monterey Bay and as far north as to the Canadian border.

Restoration of the Klamath Basin's salmon production is thus critical to the future of salmon fisheries over much of the west coast north of central California.

OVER–ALLOCATION OF KLAMATH PROJECT IRRIGATION WATER HAS DEVASTATED WATER DEPENDENT COASTAL COMMUNITIES

To be blunt, the Klamath Project has simply over-allocated the available water. As a direct result, there is too little water for downriver salmon production (and ESA listings there), too little water to maintain fish in the upper Klamath lakes (and ESA listings there) and too little water provided to the national wildlife refuges (and major bird kills there). The Klamath Project is simply using more than its fair share, leaving far too little water to maintain overall aquatic health.

The fact that there are several species of Klamath Basin fish already on the Endangered Species Act list, serious problems with Iron Gate Hatchery operations, and major downriver fish kills nearly every year now should tell us that something is seriously wrong. What has gone wrong is that there are too many acres now irrigated in what has historically always been a very dry and water-limited basin. We will face increasing water conflicts unless the Project either reallocates and conserves the water it now has, including making sure we have adequate instream flows for fish and wildlife and to the refuges, or more water storage is developed quickly. Frankly, things are so bad now that we must do both.

The fate of downriver and ocean salmon fisheries are directly tied to the quality and quantity of water released by the Bureau or Reclamation through Iron Gate Dam. In spite of our arbitrary political boundaries, the whole basin is hydrologically interconnected. Thus, as we have seen, whatever happens in the Upper Klamath Basin dramatically impacts downriver fishing-dependent communities and their allied businesses. In past years, as water released past Iron Gate Dam has been reduced in total flow and become more and more saturated with nitrate-laced runoff, sediment and agricultural chemicals, these downriver impacts, particularly on fishing-dependent communities, have accumulated to the level of an economic disaster.

Downriver economic losses have already been staggering. Roughly 3,780 family wage jobs have already been lost in these downriver fishing-based economies (representing a net loss of economic impacts of $75.6 million/year) by the failure to protect and restore salmon within the Klamath Basin, and several thousand remaining jobs are now at risk.[5] While Klamath Project operations have not been the sole factor leading to recent major in-river fish kills, poor water quality, nitrate pollutants and too little in-river flows directly related to over-appropriation of water by the Klamath Project for agriculture have certainly been a major factor.

Every dead salmon in the lower river is another fish that can never be harvested, and will never provide income to hard-working downriver salmon fishermen. Right now very little fishing is allowed in the Klamath Management Zone for just that reason, because the fish are simply not surviving increasingly hostile river conditions.

We support the right of upper Klamath farmers to a fair share of the water, but the irrigators are not entitled to take it all. Sufficient water must be reserved for salmon production for our industries and our families as well, both for sound biological as well as sound economic reasons.

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[5] These are estimates done by the Institute for Fisheries Resources (IFR) for an as yet unpublished report, The Cost of Doing Nothing: The Economic Burden of Salmon Declines in the Klamath Basin, based on reconstructions of historic salmon runs and using standard, well accepted economic analysis.

Water left in the river has just as much economic value to coastal Oregon and Northern California ports as it does used on the ground for Klamath Falls agriculture. A fishermen's job is no less valuable than a farmers, a fishermen's family no less deserving.

Millions in federal funding is now going toward salmon restoration in the Klamath. It does no good to pour millions of dollars into ecosystem restoration when federal funds are also simultaneously used to de-water rivers we are trying to save. It is much cheaper to prevent disasters than to fix them once they have occurred.

WATER PLANNING MUST BE ON A BASIN–WIDE BASIS, INCLUDING BOTH STATES AND ALL INTERESTS

It is all too often forgotten in Oregon, my home state, that roughly two thirds of the Klamath Basin lies in California. Thus the Klamath Irrigation Project, which over the years has reduced the total flows from the upper Klamath River to California by nearly an order of magnitude and polluted the whole upper river, has had tremendous impacts over the border in California. In a real sense, Oregon has simply exported its pollution to California.

Any solution to Klamath Basin water issues MUST involve elected officials as well as the agencies of both states. Any solution MUST also involve the full range of stakeholders, including the downriver Northern California coastal communities that have seen their fisheries-based economies systematically strangled, and also including the lower river Tribes whose cultures have been violated and whose fishing rights have been rendered all but meaningless.

Unfortunately, the Bureau of Reclamation has long managed the Klamath Project simply to provide as much water to irrigators as possible, but without regard to the environmental consequences or to other downriver and coastal economic sectors. The consequence has been to create unnecessary conflict between Tribal rights, fisheries and wildlife on the one side with Klamath Falls farmers on the other, a conflict that is unnecessary and ultimately counterproductive. In a wet year, these conflicts were apparent and pervasive but largely ignored by the Bureau and therefore unresolved. Now, in this extremely dry year, these conflicts have reached crisis.

FARMERS SHOULD STOP BLAMING THE ESA AND GET TO WORK SOLVING THEIR REAL PROBLEMS

As small-scale family food providers, commercial fishing families are very similar to, and generally very sympathetic to, the plight of upper basin farmers who may be facing a year with no water because of forces over which they have no control. However, we must also inject a note of reality into the current near-panic. The problems facing upper Klamath Basin agriculture are not primarily driven by either water shortages (except on a short term basis) nor the increasing need to protect flows for fish and wildlife. Nor can the blame be ascribed, as some would have it, to the Endangered Species Act, which is after all only the messenger. Upper Klamath Basin farmer's problems are much more pervasive and systemic, including:

1. Climate and Location of the Klamath Basin Is Not Ideal for Agriculture: The high elevation of the upper Klamath in and around Klamath Falls (in excess of 4100 feet), and the resulting short growing season with both late and early frosts, has made it difficult to grow a wide variety of crops. Reliance on traditional temperature-hardy crops such as onions, sugar beets and potatoes, however, has created problems in itself because these commodities are in oversupply in both US and world markets.

Likewise, Klamath Falls is not near any major transportation hubs of the region, and so farmers there have more difficulty and expense in shipping their produce to world markets than farmers in many other regions. These problems add to their total production costs.

2. Many Upper Klamath Farming Operations Can No Longer Compete in World Markets: Because of the additional transportation costs, short growing seasons, and other added costs of Klamath Falls agriculture, many growers can no longer compete in the world markets. Some Upper Klamath Basin potato farmers, for instance, chose last year to plow their potatoes into the ground because they would have lost money competing on saturated and depressed world markets. Many of these crops have been declared as "surplus" and their growing operations are supported not by a healthy market, but by federal surplus crop payments from the federal Treasury. Klamath Basin cannot even compete cost effectively with potato production in Idaho, much less foreign markets, and the same is true for many of its products.
3. Processing Capacity Has Left the Basin: Secondary or value-added processing is one major ways agriculture remains profitable and serves a variety of mar-

kets. However, potato and sugar beet processors and other processing plants have left the basin, largely because of the first two factors mentioned. It is no longer economically feasible for major processors to remain in the basin because of transportation costs, limited and uncertain production, and oversupplied world markets.

4. Conflicting Uses: Some 20,000 acres of the national wildlife refuges (public lands) is now leased out to private parties for row crop farming. Oddly, these lease lands have first call on water that would otherwise go to the refuge. In other words, even when the refuge wetlands themselves are threatened with drying up, the farms on the refuge continue to receive full water! Additionally, those farms are allowed to use pesticides and agricultural fertilizers that are well known to damage wildlife in the refuges. Lease land farming on the refuges is clearly a conflicting use, and should be phased out by nonrenewal of these leases, which are on five-year renewable terms. In order to keep those farmers whole, there are a number of opportunities at present to simply move lease holders to farmland now for sale outside the refuges on a willing seller—willing buyer basis, and this would be a good use of federal funds, freeing up additional water for the refuges as well as allowing those farmers who wished to continue in operation to do so.

Most of these problems have little or nothing to do with ESA listed species, but rather with the costs of production, conflicting uses, global gluts and an increasingly volatile and interconnected world market. Klamath Basin farmers are far more oppressed by world trade agreements and increased global competition than by any endangered species.

Fortunately the Klamath County economy has been swiftly diversifying in recent years, and the farming sector now accounts for only about 6 percent of total county employment. Most new jobs in recent years, and those projected over the next several years, will be in other sectors as the economy matures. The Klamath County economy will survive, and even thrive in the long run, if traditional agriculture within the county is cut back to more sustainable, and ultimately more profitable, levels.

WORKING TOWARD LONG–TERM SOLUTIONS

However, there are several things that can be done in the long term to prevent future water conflicts, and to move the upper Klamath Basin toward an agricultural base that is truly sustainable. At present there is not enough water to meet Project needs in 6 out of 10 water years, and as the drought this year clearly shows the present water allocation system is not sustainable. The following are some suggested short term and long term actions that should be considered for addressing the current drought situation, for restoring a healthy, naturally diverse, and productive Klamath Basin ecosystem and for meeting future water supply needs:

1. Emergency Relief for the Crisis. The Klamath Basin is in the middle of what appears to be the most severe drought in recorded history for the region, with less than 21% of rain inflow to the Upper Klamath Lake in a region that normally gets less than 12 inches of rain a year. Because of the severity of this water emergency, disaster relief funds should be made available to farmers in the Klamath Basin similar to the support other farmers nationwide receive when they suffer form natural disasters. However, the drought is not caused by the ESA or any other statute. The drought is caused by lack of rainfall. No amount of lawsuits, protests or politicians can make more rain.

Because this is a natural disaster, all necessary steps should be taken to qualify the Klamath Basin farmers for emergency relief funds and to help the many who are likely to have little or no water this year. PCFFA strongly supports the effort to get disaster relief for affected farmers.

2. Reform the Management of the Klamath Project. Protecting fish and wildlife, as well as maintaining the basin's wildlife refuges, should also be explicit purposes of the Klamath Project, not just the delivery of water for farming. The Project should be explicitly managed to first meet the needs of species listed under the Endangered Species Act. The Bureau of Reclamation should meet the river flow, lake-level and refuge water requirements as set forth in the applicable biological opinions and ultimately should seek means to meet the full water requirements of the refuges and downriver fisheries, while recovering fish species to harvestable levels.

The Bureau of Reclamation should also have a drought contingency plan. Reclamation and the Service should look at ground water development that can be brought on line this year, which includes approximately 30,000 acre-feet of groundwater already purchased by Reclamation this year, and using any carryover water from Clear Lake and Gerber reservoirs. In the long term, the State of Oregon has

said that 200,000 acre-feet of ground water could be made available from a combination of existing ground water pumps as well as new well development. While it will be too late to make much difference in crop cycles this year, this ground water should be developed in any event to prevent future drought disasters of this magnitude.

3. Terminate Lease Land Farming within the Wildlife Refuges and Use Lease Lands Water to Keep the Refuges Viable and for Wetlands Water Storage: Four years ago Congress passed the National Wildlife Refuge System Improvement Act of 1997. That law was intended to improve the health of America's wildlife refuges. It directs the Secretary of the Interior to provide necessary water to national wildlife refuges and to maintain the biological integrity and ecological health of these special places.

The official policy of the Bureau of Reclamation is that the wildlife refuges in the Upper Klamath Basin, among the most important in the country for bird migrations, are in fact last in line for water from the Klamath project with a junior water right to almost everyone else. Even more troublesome is the fact that no water has yet been allocated to the refuges this year even to meet the minimum refuge water needs to support ESA-listed bald eagles as required in the current USFWS biological opinion. A secure source of water needs to be obtained to meet the refuges' water requirements. One immediate action that should be taken to meet the water requirements for the refuges is the termination of the refuge lease land farm program.

Currently 20,000 acres of federal refuge land within the Tule Lake and Lower Klamath Wildlife Refuges are leased for commercial agriculture. Commercial agriculture of these lands is simply not compatible with refuge purposes, especially at a time when there is not enough water to meet refuge needs. Commercial agriculture within the refuges should be eliminated and the lands should be returned to their natural habitat condition as wetlands. The water rights associated with these lands could then be transferred to refuge purposes. This would allow management of these lands in a normative manner that could allow for storage of thousands of acre-feet of water that could be devoted to refuge needs. This would greatly reduce water shortages to refuge wetlands while easing the irrigation season water demands on the Klamath Project. This would also allow the conversion of these lands to habitats more productive for wildlife, eliminate the use of pesticides and fertilizer on the refuges, allow refuge personnel to devote more time to refuge management, and help secure a reliable source of water for refuge purposes.

Many basin farmers now have private land for sale on the open market in areas outside the refuge. There is a proposal to buy these for-sale farmlands using a combination of private land trust funds and federal funds, and then to lease these lands back to the local irrigation district so that the district can sublease those lands to farmers now leasing within the refuges as replacement lands as they are moved off the refuges. This would recapture more wetlands for the refuges (*i.e.,* add more total water storage), eliminate conflicts between farming and the refuges, and give those farmers now leasing lands on the refuge itself replacement land for row crops at a comparable price. It appears to be a win-win solution to these conflicts and should be pursued actively. In the meantime, no new farm leases on refuge lands should be issued and those which can be terminated should be. At present these federal leases have a 5-year rollover period by which approximately 20% will terminate each year.

4. Willing Seller Buyouts. Simply put, the limited water resources in the Upper Klamath Basin has been grossly over-allocated in the Klamath Project. A necessary as part of any solution must be to downsize the Klamath Project and to purchase and retire many water rights in the Upper Basin.

The impacts of global competition have been devastating on Klamath county. Farming is no longer very profitable in the arid Upper Klamath Basin. Real personal income from farming and agricultural services declined 66% between 1969 and 1998 in Klamath County, 57% in Modoc County and 26% in Siskiyou County. Most farm families now have second incomes from work outside the farm, and the farm sector now only employs about 6% of the total workforce in Klamath County, 17% in Modoc County, and 7% in Siskiyou County, according to readily available government economic and census data. Income from farming in Klamath County now represents only two-tens of one percent of total county personal income. Agricultural support services accounted for six-tens of one percent of total income in 1997, only a slight decrease since 1969.[6] This is why so many have recently offered to sell out, well before the current water crisis has hit the region. The reality is that many of

[6] From Economic Profile of Klamath County, Oregon, an economic study by The Wilderness Society (2000), available from The Wilderness Society, 1615 M. Street, Washington, DC 20036 (202)833–2300.

those traditional farming operations in the basin are simply no longer profitable. Most of the crops grown there, with its short growing season and 4100 foot elevation, are now classed as "surplus crops" (potatoes, sugar beets and onions) that can only be grown profitably in today's worldwide glut of these products because of major agricultural subsidies.

There are currently tens of thousands of acres for sale in the Klamath Basin, most of it for sale long before the current drought. Many farmers in the Klamath Basin were financially stressed long before this year's drought, because of global market competition.

A voluntary but targeted buyout program will give financial assistance to the farmers, who want to sell their lands, by buying their lands at a fair price. This would be an equitable way to reduce overall water demand, provide farm families some transition money, and provide more future water security to those who want to stay in the business. A federally funded buyout program should be developed and implemented for this purpose.

Water right acquisitions should be focused on the Klamath Project, and target areas where acquisition of associated land is also a priority for habitat and refuge restoration, areas where acquisitions would help meet tribal and other federal reserved water right claims, areas where acquisitions would improve water quality, and areas where acquisitions would have multiple benefits. In other words, disaster relief payments in the form of buyouts should be targeted to do the most good toward long-term solutions.

5. Restore Fish and Wildlife Habitats. Although fish and wildlife habitats have been degraded throughout the Klamath Basin, it remains one of the few major river systems in the US where substantial restoration is still possible. Reclaiming and restoring wetlands, especially in the Lower Klamath and Tule Lake Wildlife Refuge areas and around Upper Klamath Lake, are important to obtaining a more natural hydrological regime, improving and increasing fish and wildlife habitat, and improving lower river water quality and quantity for salmon restoration, and generally increasing total water storage.[7] The area lying north and west of Lower Klamath National Wildlife Refuge known as the Klamath Straits should be among the highest priorities for purchase and restoration. Riparian areas need to be protected and restored, especially in the Upper Basin tributaries in Oregon and the Shasta and Scott Rivers in California. Dams and diversions need to be screened and provided with appropriate fish passage facilities, or removed. No fish screens have ever been installed by the Klamath Project, in spite of obvious need.

Upland impacts also play an important role in water quality. The water retention and flow regulation capability of upland forested ecosystems need to be restored through reforestation, canopy retention and work to reduce the impact of extensive unpaved road systems, a constant source of excessive silt.

There are existing and effective habitat restoration efforts within the Basin, including those of the Klamath River Basin Fisheries Restortion Task Force, created by P.L.–99–552 (October 27, 1986) as amended by P.L. 102–570 (16 U.S.C. 460ss–3 et. seq.). The Task Force has representation from the whole basin and a well established restoration plan, but pitifully little money with which to accomplish its immense tasks. Providing better funding to the Task Force is certainly one way to assure that Basin habitat restoration efforts continue.

6. Restore Normative Hydrology and Flows: The Upper Basin as a whole has a highly disturbed hydrology, and needs to be brought into more "normative" conditions. That is not to say that pre–Project conditions could ever be re-established, but that the Project could operate in such a way as to roughly emulate or imitate the more biologically important natural hydrological conditions under which the many unique species of the Basin evolved.

a) Instream Flow Protection and Water Right Acquisitions. Meaningful instream and lake level flows need to be established and met throughout the basin. Successful adjudication of federal and tribal reserved water rights needs to be completed, and the water needs that ESA-listed fish need for their recovery should be determined and provided for. An active water right acquisition program to transfer water rights from willing sellers to instream purposes should also be established and funded. Again, such a process would allow compensation to those who wanted to discontinue farming for whatever reason, while providing more water certainty to those who

[7] Wetlands is nature's best water storage system. One acre of wetlands holding one acre-foot of water, for instance, has stored 325,851 gallons of water which would otherwise be lost to evaporation or waste or floods. Wetlands naturally release this water into the system to buffer the effect of droughts and seasonal rainfall. (1 acre-foot = 43,560 cu. ft. x 1,728 cu. in. per cu. ft. = 75,271,680 cu in. of water. One gallon = 231 cu. in. Divide one by the other = 325,851 gallons/acre-ft. of wetlands storage).

continue. Water right acquisitions should be focused on areas where acquisition of the associated land is also a priority for habitat and refuge restoration, where acquisition would help meet Tribal and other federal reserved water right claims, and where the acquisition would have multiple benefits. For instance, acquisitions in the basin above Klamath Lake could assist in meeting Tribal and other federal reserved water right claims in the upper basin, provide needed instream flows in the upper tributaries, assist in maintaining Klamath Lake levels, improve water quality in Klamath Lake, and add to the water supply to meet project water needs, refuge needs and downstream flow needs for the re-establishment of the salmon fishery.

b) Water Conservation and Improved Water Management. Improving water use efficiencies and conserving water can increase water supply at critical times and improve water quality. There should be a thorough analysis of irrigation needs in the basin. Opportunities for improving conveyance system and on farm efficiencies should be carefully assessed, funded, and implemented. Water use efficiency standards and goals should be set. Detailed basin-wide conservation plans, including water conservation plans required of project users under the Reclamation Act of 1982, should be established and implemented to meet the efficiency goals. A full range of other measures should also be considered to reduce irrigation demand, including changing crop types, developing rotation schedules, and fallowing land.

c) Better Water Measurement, Reporting, and Enforcement. Given the demands on the water resource, we can no longer afford to have anyone taking more than their lawful share. This is unfair to other water users and adversely affects instream flow conditions. The States of Oregon and California need to assume greater responsibility in managing and regulating water use. Very little water monitoring or enforcement is actually being done today. Water use measuring and reporting need to be required, and an active enforcement program needs to be implemented. A recent study of water use from the Wood River in Oregon has shown that requiring measuring devices can reduce illegal use and increase streamflow.

d) Reduce Out-of–Basin Transfers. There are approximately 30,000 acre-feet of water transferred each year from the Klamath Basin to the Rogue Basin. Some of this water is managed by the Bureau of Reclamation as part of the Rogue Basin Project. An examination should be made as to how the Rogue Project could be managed differently to help with the situation in the Klamath Basin, and if possible these out-of-basin transfers eliminated at least in low water years.

7. Fully Meet Water Quality Standards. The Klamath River and several of its tributaries have been listed as water quality "impaired" under the Clean Water Act from the headwaters to the ocean. In fact, water in the Klamath River in the Upper Basin is the most polluted in Oregon, and among the most polluted in California. Total maximum daily loads (TMDLs) should be established and implemented for the impaired streams, preferably on a bi-state basis. The U.S.EPA, Oregon DEQ, and California Water Quality Control Board Northwest Region should immediately act to establish and implement interstate TMDLs in the Lost and Klamath Rivers.

8. Implement and Fully Fund P.L. 106–498 to Develop More Water Storage. Since at least July, 1994, when I personally testified on these very same issues before this very same Subcommittee in a field hearing in Klamath Falls, we have been strong supporters of efforts to increase overall storage of water in the Basin. More recently, we supported the Smith–Wyden Bill (S. 2882) in the 106th Congress, now P.L. 106–498, as a good if belated beginning, and we commend both Senators for their efforts in this regard. I also testified in support of full funding for P.L. 106–498 in a hearing before this same Subcommittee on 21 March 2001.

Now once again we urge this Committee and other Members of Congress to fully fund P.L. 106–498 and urge the Administration to support including that funding in the Budget. No good idea is worth much if it cannot be implemented. Inherent in P.L. 106–498 also is language that allows us to look at some creative solutions:

> "Sec 2(3): The potential for further innovations in the use of existing water resources, or market-based approaches, in order to meet growing water needs consistent with State water law."

This means finding creative ways to better conserve and reuse existing water supplies, as well as considering a water marketing system to make more efficient economic use of the supplies we do have. All these are proven methods.

Although the Bureau of Reclamation is using some P.L. 106–498 funds this year to purchase about 30,000 acre-feet of water, conservation, in the short run, is the only option that we have this year to stretch water supplies to their furthest, and even that will be nowhere near enough. However, making more efficient use of a scarce resource always makes sound economic sense. Reduced water demand can also be accomplished in part though aggressive water conservation.

9. Meet all Fish and Wildlife Obligations to the Greatest Extent Possible: Obligations under the ESA to prevent extinction of valuable public resources, and obliga-

tions to Tribes to provide instream flows sufficient to assure fisheries and protect their culture, are primary obligations that the courts have ruled must be satisfied ahead of Bureau obligations to water contractors. Klamath Water Users Assn. vs. Patterson, 204 F. 3d 1206 (9th Cir. 1999), cert. denied, 121 S. Ct. 44 (2000). See also O'Neal vs. United States, 50 F 3d 677 (9th Cir. 1995). This is the law of the land. Though not as clear in the courts, the same policy considerations should also apply to protection of migratory bird species on the national wildlife refuges, which are protected under the Migratory Bird Treaty Act and under international treaties. Bald eagles on the refuges (which support the largest population in the lower 48 states) are also protected under the ESA. Obligations to public resources must be met first, under the law, by public agencies before meeting the needs of private farmers to make a profit using publicly subsidized water.

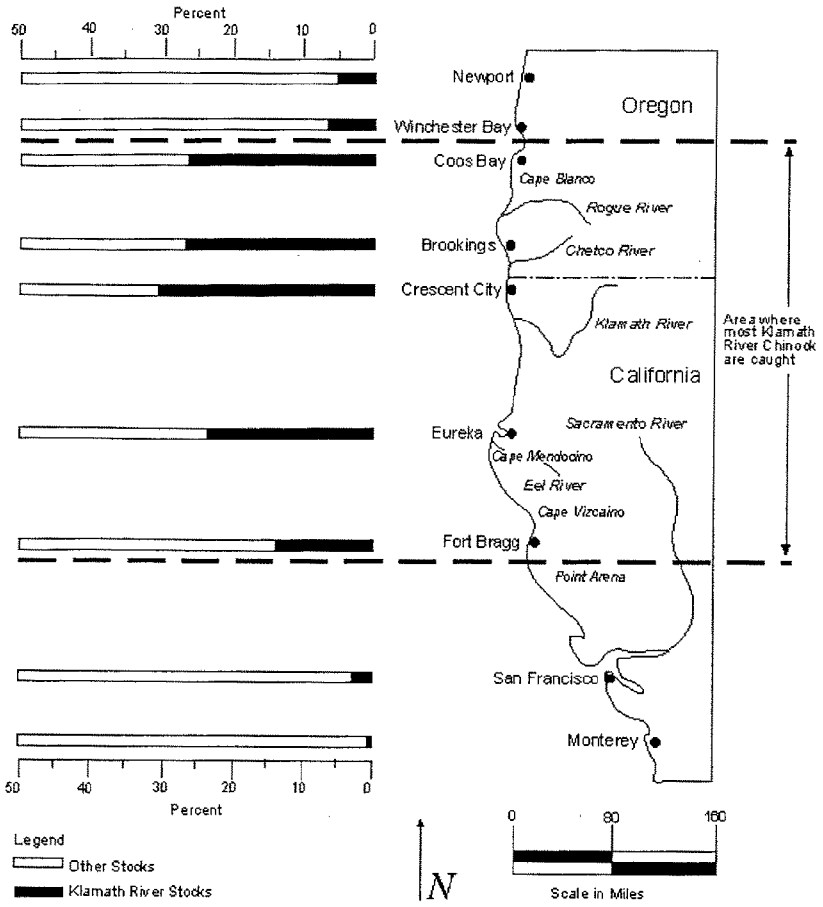
In summary, it is unfortunate that in serious drought years like this one that limited water supplies may create hardships for some farming families. We should seek to do all we can to: (1) avoid such conflicts in the future by increasing the overall water supply and making the most efficient use of the water we do have through conservation and sustainable land use practices, and; (2) where cutbacks on irrigation water do cause hardships, take all reasonable and necessary steps to see that farmers are reasonably compensated for the hardships they must endure through no fault of their own.

Federal financial assistance and support will be needed in resolving the numerous issues and conflicts over water in the basin. This is totally appropriate, in our view, as it was after all the federal government who largely created these problems though gross over-appropriation of limited water as well as years of negligence in dealing with the fundamental biological limits imposed by a limited (and variable) water supply.

We need to do what we can to reduce the economic hardships this year's drought has brought on Klamath Basin farmers without sacrificing the incredible resources of Klamath Lake, the Klamath River, the Klamath Basin Refuges and a large part of the west coast salmon runs. We hope you will give the above suggestions for long-term solutions your careful consideration.

For more information see: http://www.pcffa.org/klamath.htm

Table 1
Contribution of Coded Wire Tagged Klamath Fall Chinook by Port in the 1979–1982 Ocean Fisheries



Source: US Dept. of Interior (1985), "Klamath River Basin Fisheries Resources Plan," prepared by CH2M Hill (February, 1985).

From the Coho BiOp: Temperatures above 15 Centegrade (59 F) are fatal to salmon.

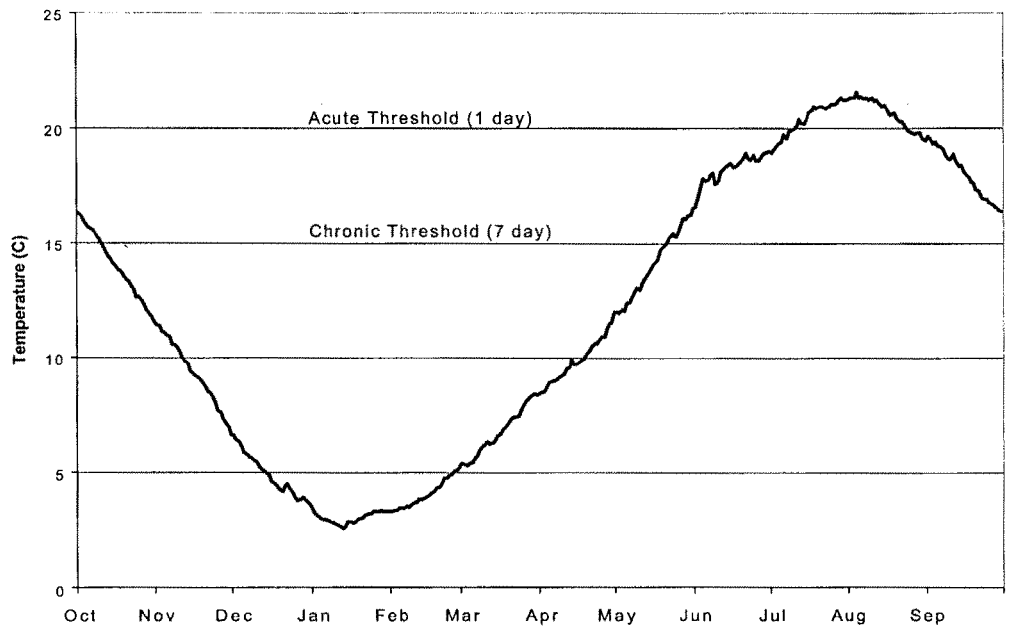


Figure 6. Average daily maximum water temperatures in the Klamath River below Iron Gate Dam (1963-1979). Acute and chronic high temperature thresholds are 1986 Environmental Protection Agency criteria (Campbell 1995). Data are from Hydrosphere Data Products, Inc (1993).

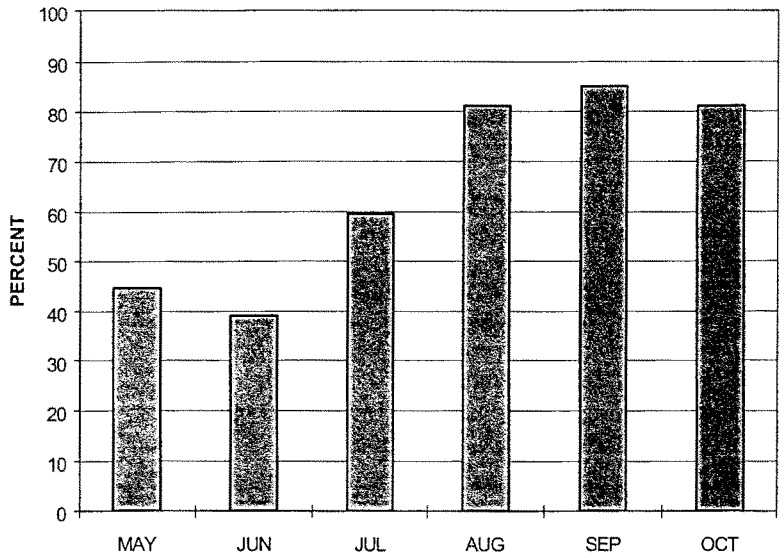


Figure 3. Monthly average Iron Gate Dam contributions to Klamath River flows measured at Seiad (1962-1991). Data are from Hydrosphere Data Products, Inc. (1993).

THE COHO FINAL BIOLOGICAL OPINION ON KLAMATH PROJECT OPERATIONS

http://www.mp.usbr.gov/kbao/esa/38_cohobo_4_6-01.pdf

TABLE 1: Comparison of Phase I Flows to Final BiOp Flow Recommendations and Bureau of Reclamation Proposed Flows at Iron Gate Dam (IGD) (in cfs)

Time Step	Phase I Flows[1]	Final BiOp (IGD)	BuRec Proposed (Dry Year)	BuRec Proposed (Critical Dry Yr)[2]
Oct	1,476		852	904
Nov	1,688		873	909
Dec	2,082		889	914
Jan	2,421		888	1011
Feb	3,008		747	525
Mar 1-15	3,073		725	501
Mar 16-31	3,073		724	521
Apr 1-15	3,307	1,700	728	569
Apr 16-30	3,307	1,700	754	574
May 1-15	3,056	1,700	761	525
May 16-31	3,056	1,700	924	501
June 1-15	2,249	2,100	712	476
June 16-30	2,249	1,700	612	536
July 1-15	1,714	1,000	547	429
July 16-31	1,714	1,000	542	427
Aug	1,346	1,000	647	398
Sep	1,395	1,000	749	538

Table1.doc

[1] Phase I or 'Hardy Study' flows are those recommended for coho salmon recovery by the scientific team doing the current multi-agency flow study in the system, which represents the best available science to date on in-stream flow salmonid requirements. Note that the NMFS recommendations are in all cases well below recommended recovery flows deemed necessary for actual recovery. NMFS acknowledges that their proposed levels are only able to maintain the species at current levels, not to provide for recovery, and that the BiOp 'interim flows' will have to be amended in light of better data later when Phase II of the Hardy flow study is completed.

[2] Klamath County is in a 'critically dry year' at this point in time, and even if it had above average rainfall for the rest of the Spring would probably still be in a dry year. Both flow levels for each type of year are listed for comparison.

THE OREGONIAN EDITORIAL

THE KLAMATH DUST BOWL

Water crisis in the Klamath Basin isn't just about suckers vs. farmers: It's about a century of unresolved problems

Sunday, May 13, 2001

A 3-year-old girl, daughter of one of Klamath Basin's desperate farmers, stood amid 8,000 people at the bucket—brigade protest in Klamath Falls thisweek clutching a sign that read simply "We need water."

The little farm girl, Peyton Hager, her family and hundreds of other families cut off from irrigation water face a bitter summer. But if their farms are to ultimately survive, they need more than a token share of what little water is available in Upper Klamath Lake.

They need immediate drought relief, and they need responsible leadership to resolve a tangle of problems rooted in the basin's history and its dry soil.

So far, all these farmers are getting are cover crops to prevent thousands of acres of dry fields from blowing away in the hot summer wind. That, and the political equivalent of cover crops——big talk, lots of bluster about amending the Endangered Species Act, but no effort to dig deep into all that needs to be done for the people, the land and the wildlife of the Klamath Basin.

The Klamath crisis won't be solved by elected officials who fly into town on borrowed corporate jets to join protests and shout about how farmers are more important than endangered sucker fish. Political hay isn't a cash crop for Southern Oregon farmers.

This crisis is not just about the worst water year in recorded history in the Klamath, and not just about the federal government's decision to use the available water to protect endangered sucker fish and threatened coho salmon.

It is about decades of failure to resolve conflicts over water rights that allow some upstream irrigators to take more water than they are entitled to, while others are left high and dry.

It is about the facing the reality that the government long ago promised settlers and farmers more water than it could deliver without destroying some of the most significant marsh lands, wildlife refuges and wild salmon runs in the nation. There's not enough water, even in years of average rainfall, to sustain all of the farms in the Klamath Basin. The government must work with willing sellers to retire some farmland.

These farmers need water, but they also need federal agencies to stop warring over their particular turf—fish runs, or irrigation delivery, or waterfowl refuges—and begin working in concert to restore wetlands, improve water quality, screen irrigation canals and conserve water.

The Klamath drought is a true crisis, and perhaps a catalyst for a serious reexamination of the Endangered Species Act. Put a picture of that little farm girl with the plaintive sign, "We need water" up against a shot of a slimy sucker fish, and for many people it's not even a close call.

Yet it's not that simple, and nearly everyone close to the Klamath crisis understands that. It's also about the people and communities downstream from the Klamath Basin, the commercial fishermen and their families who have lost their livelihoods, their way of life, because of the way water is diverted, sprinkled and polluted across the arid basin. The Klamath River system once was the third most productive salmon river in the United States. Now it's a warm shadow of what it once was, the Klamath coho is a threatened species and fishermen are out their jobs.

It's about the Klamath refuge system, among the nation's oldest and most important waterfowl refuges. These refuges host 80 percent of the waterfowl that migrate along the Pacific Flyway, and are home to the largest wintering population of bald eagles, yet they are abused. They are last in line for water, behind suckers, salmon and farmers, and what little arrives through myriad dikes and ditches is polluted. This winter, the U.S. Fish and Wildlife Service is worried that as many as 950 bald eagles—it's hard to even imagine that many of the great birds in one basin—will be harmed by the drought.

There is a better way. It must begin with responsible elected officials, a strong local community open to change and a real commitment from the federal and state governments.

It should end with restored wetlands, a lake clean and sufficient enough for fish, a river with enough cool flow for coho salmon, and last but not least, a Klamath Basin with a sustainable level of irrigated family farms.

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A Eugene, Oregon Register–Guard Editorial

May 27, 2001

DON'T BLAME THE FISH: GOVERNMENT POLICIES CREATED KLAMATH BASIN CRISIS

It's tempting oh so tempting - to oversimplify and distort the Klamath Basin water crisis by declaring that it's all about protecting sucker fish and salmon at the expense of farmers.

That's no more accurate than saying, as many did, that the Northwest timber crisis was solely about protecting the spotted owl at the expense of timber workers, an explanation that ignored the government's primary role in allowing decades of overharvesting of national forest lands.

It's that same federal government - and not the suckers and salmon that bears the ultimate responsibility for the Klamath crisis.

It's that same federal government that dug dams, drained marshes and built hundreds of miles of canals and ditches in the early 1900s, and then promised farmers that they would forever have irrigation water to feed crops across the breadth of what once had been an arid basin.

It's that same federal government that for years has ignored its own scientists' warnings about the Klamath Project's devastating impact on the region's fish runs and waterfowl refuges.

It's that same federal government that has failed to craft a cohesive water policy that balances the needs of farmers against those of fish and wildlife - and the Native American tribes, fishing industries and downstream communities that depend on them.

The understanding that it's the federal government - and not the sucker and salmon or those fighting for their survival- that is the true culprit is critical to understanding new developments.

An example is environmentalists' demand last week that the government stop the trickle of water that continues to flow to a few of the more than 1,000 farms served by the Klamath Project. The environmentalists say water is needed to save more than a thousand bald eagles and other waterfowl that depend on wildlife refuges in the Klamath Basin and that were the very reason these refuges were created. Without this water, they say, eagles may perish in the months ahead.

Federal wildlife biologists have issued similar warnings. Yet the federal government, at the insistence of Vice President Dick Cheney, allowed the symbolic diversion of 70,000 acre feet of water to irrigate cattle pastures in the Langell Valley east of Klamath Falls. It was an irresponsible, unscientific and blatantly political decision that could devastate the largest winter population of threatened bald eagles in the lower 48 states.

Ironically, the plight of the eagles could serve a useful purpose. It's harder to blame a beloved national symbol for farmers' predicament than it is to blame the sucker and salmon - and the Endangered Species Act that protects them.

Klamath Basin farmers can make it through this crisis intact, provided the federal government gives them the financial assistance they need and deserve, and moves quickly to develop a long-term strategy that balances the needs of the basin's people, its wildlife and the land itself.

But government grants and low-interest loans won't get the eagles, salmon and sucker fish through the dry months ahead; they must have the water they need to survive.

It was the federal government that laid the groundwork for the Klamath water crisis. Now it's the federal government that must fix this mess.

Source: http://www.registerguard.com/news/20010527/ed.edit.klamath.0527.html

THE OREGONIAN

KLAMATH SOLUTION TAKES COOPERATION BY ALL

There are no easy answers in this drought year or for the future; many interests must negotiate

Friday, June 1, 2001

IN MY OPINION John A. Kitzhaber DEAN ROHRER/NEWSART The current water crisis in the Klamath Basin has been 150 years in the making and serves as a reminder to us all that we are stretching our natural resources beyond their limits.

Even in a normal year, the water in the Klamath Basin cannot meet the current, and growing, demands for tribal, agricultural, industrial, municipal and fish and wildlife needs. And with this year's near-record drought, the consequences of our actions have hit home in a disastrous way.

While we are working hard at the state level to address the short- and long-term impacts of this drought, the history of the Klamath Basin bears some scrutiny so we can understand how we got here in the first place—and can avoid getting here again in the future.

The history of the Klamath Basin includes tribal rights resulting from the 1864 treaty and later settlement of the basin at the urging of the federal government, which offered land and water to veterans of World Wars I and II. The Klamath Basin historically contributed significantly to coastal recreational and commercial fishing—an industry that has lost 7,000 jobs over the past 30 years related to Klamath species decline. Traditional tribal fishing for suckers in the basin stopped in 1986, two years before the Endangered Species Act listing, because of tribal concerns over population declines of these species.

This is the context in which drought has hit. The drought, in conjunction with the need to provide water in Upper Klamath Lake for listed suckers and in the Klamath River for listed coho, resulted in only 70,000 acre-feet of water available for irrigation from the Bureau of Reclamation Klamath Project, versus the usual 500,000 acre-feet. In addition, this year, no water is allocated for wildlife refuges, home to hundreds of bald eagles and a major waterfowl stopover on the Pacific Flyway.

As a state, we have taken a number of steps to try to avoid, minimize or mitigate these impacts. A drought emergency has been declared for Klamath County. At my request, the U.S. Department of Agriculture has also declared a drought disaster. Furthermore, before the final biological opinions were released in early April, I urged the secretaries of Commerce, Interior and Agriculture to exercise maximum flexibility and share the burden, given the severe drought conditions.

At my request, state Attorney General Hardy Meyers asked the U.S. District Court in Eugene to supervise court-ordered mediation of all parties to resolve both the short-term and long-term issues in the basin. Three days of mediation occurred in late April in an attempt to find a compromise for this year. While the state put serious proposals on the table, the parties were unable to reach agreement. However, mediation will resume on the long-term issues in the basin this month. The state is taking the lead in offering the court a proposal on the conduct, scope and timing of continued mediation.

We have learned that many of the traditional federal disaster-assistance programs do not fit the needs in Klamath County. I have asked members of the congressional delegation to make a specific request for the Klamath as part of any supplemental appropriations bill for this fiscal year. I have also asked the federal agencies to return to mediation with a willingness to bring long-term solutions to the table.

Oregon's state agencies already have made available programs, services and assistance to individuals and businesses in need.

Oregon's Water Resources Department has been working to process emergency water permits and limited licenses to tap groundwater sources.

Having heard concerns about the science being used in the basin to make decisions about water allocation, I have asked the Independent Multidisciplinary Science Team, created as part of the Oregon Plan for Salmon and Watersheds, to review the available science and to offer an opinion about the reliability of that information for making decisions that have such critical effects on the basin.

All of these efforts, however, will not solve the underlying problem in the Klamath Basin: A demand for water that exceeds the supply of water.

No court can solve this problem; no one person can solve this problem. It will take all the parties coming to the mediation table—leaving their positions at the door—

ready to roll up their sleeves and design a long-term solution that will sustain the Klamath Basin for the benefit of communities, the economy and the environment.

The recent political rhetoric about amending the Endangered Species Act is just that—political rhetoric, making for good sound bites, but doing nothing to solve the current crisis in Klamath County. I am on record supporting changes to the act that were proposed in Congress a few years ago. It is clear from that experience, however, that there is not the national consensus or will to amend the act. This is even more true of this Congress than the last.

Only the people in the Klamath who care about the future of their watershed, their economy and their communities—working with tribal, state and federal officials—have the tools to meet this challenge. Increased water storage, decreased demand, enhanced conservation, habitat improvements and many more actions can and should be taken to ensure a sustainable future for all species in the Klamath Basin. I will continue to do all I can to bring these actions about.

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Mr. POMBO. Mr. Gaines.

STATEMENT OF BILL GAINES

Mr. GAINES. Thank you, Chairman Pombo, members of the Committee. It's a pleasure to be here today in Klamath Falls to talk with you about the California Waterfowl Association and our concerns with the water allocation decisions that have been made recently, in the last few weeks. My name is Bill Gaines. I'm the director of Government Affairs for the California Waterfowl Association, and on behalf of our 15,000 members throughout the Pacific Flyway, thank you for the opportunity to speak to you today.

The Upper Klamath Basin is the most critical waterfowl staging area in North America. So important is the Klamath Basin to North American waterfowl on their annual migratory trek, that if you look at a Pacific Flyway map, which I happen to have right here—I don't know if you can see this or not—you can easily find the Klamath Basin simply by looking at the big black dot because that's where the apex of the Pacific Flyway funnel is. It's right there, right on the Klamath Basin. We estimate that about 75 to 80 percent of Pacific flyway waterfowl either nest or stage here at some time during their annual migratory trek.

Historically, this Basin contained about 350,000 acres of naturally occurring waterfowl habitat. Today, however, largely due to the construction of the Klamath Reclamation Project, we only have about 25 percent of that historical habitat remaining. Yet each year, as I mentioned, a full 75 to 80 percent of our Pacific Flyway depend upon this Basin's few remaining wetlands to address their habitat needs.

In addition, these birds depend upon wildlife-friendly agriculture for critical staging habitat as well. In addition to waterfowl that depend upon these remaining wetlands—which, by the way, nearly all of which are contained within the Klamath National Wildlife Refuge complex—a documented 430 other wildlife species depend upon this Basin for habitat, including the largest wintering population of bald eagles in the lower 48 States.

Because of the Klamath Reclamation Project and the manner in which it changed the Upper Basin's natural hydrology, nearly all of our remaining wetlands today must now be managed. In other words, they have to be artificially irrigated and intensely managed to maintain marsh conditions. In effect, similar to the farmers that are struggling with the water allocation, the public and private

wetland managers in the Klamath Basin are also. As a result of this condition, the quantity and quality of wetland habitat available in any given year is nearly entirely dependent upon the allocation of water it receives from the Klamath Reclamation Project, local irrigation districts and other sources.

Tragically, the Upper Basin's highly limited surface water supply, combined with the regulatory actions mandated by the two recent biological opinions, will result, as you know, in no water to the refuges this year, and little or no water for wetland habitat in all but the wettest of future years.

Some environmentalists, in their zeal to protect both fish and refuges, have called for the elimination of agriculture in this Basin to free up the water necessary to address listed species concerns. Our Association, as a spokesman for waterfowl and their environments, can assure you that this is not the answer. With only 25 percent of our historic wetland habitat available in this region, it is critical that we manage our remaining habitat to maximize these wetland values and functions. Yet, even if we have sufficient water to maximize the wetland values of our few remaining wetlands, it still is not enough.

These waterfowl depend heavily on the wildlife-friendly agriculture provided by local agricultural production to help meet their nesting and foraging needs. In fact with the agriculture that's going to be eliminated with the lack of water this year, it's going to reduce the normal total wetland food base and the waterfowl food base in this Basin by nearly one-half. That's how much these birds depend upon local agricultural production in addition to the habitat provided on the refuges.

As we're all well aware, the two biological opinions released in early April have not only shut off the critical water deliveries to the Klamath refuge complex, but also, of course, to the agriculture in the surrounding basin. To make matters worse, because these waterfowl are going to be forced to crowd onto the few remaining wetlands, we are very likely to see significant avian die offs due to avian botulism and cholera as well. The serious stress placed on these birds by the lack of habitat, coupled with the anticipated die-offs due to disease, may mark the beginning of the end for our Pacific Flyway waterfowl resource.

Gentlemen of the Committee, three species of fish are currently holding our Pacific Flyway, the bald eagle, roughly 430 other wildlife species, over 1200 local families, and an entire local economy hostage here in the Upper Klamath Basin. The California Waterfowl Association does not believe that this was Congress's true intent when they passed the Endangered Species Act a few short decades ago. Truly, as our nation becomes more urbanized, conflicts between our fish and wildlife species and our human environment will become more frequent. Today's crisis in the Klamath can only be viewed as the "canary in the mine shaft" for what we can expect in the future should resource agencies continue to be allowed to implement the ESA as they do today.

To address these very real concerns, we ask Congress to join us in seeking a few solutions. First, in the short-term, we call for the U.S. Department of Interior and its agencies to fully consider the impacts and risks to waterfowl and other wildlife and the impor-

tance of wildlife-friendly agriculture before making water allocation decisions based on the current biological opinions.

Secondly, ground water is being talked about as the silver bullet, if you will, to address these concerns. We can assure you that ground water will help address these concerns, but it cannot be viewed as a silver bullet. We must get a ground water management plan in place to assure that the ground water resource will be available over the long-term to assist in meeting our water needs here in the Klamath Basin.

Over the long-term, we ask you to join us in seeking careful common sense amendments to the Endangered Species Act. If there were ever a poster child for the need for Endangered Species Act amendments, it's what we're looking at right now in the Upper Klamath Basin. In addition, we'd like you to work with us in seeking changes in the Migratory Bird Treaty Act, which helps to elevate our internationally shared migratory waterfowl resource to a par with local and regional listed species. We'd also like you to work with us in appropriating Federal funding for projects which could provide incentives to local growers to do wildlife-friendly agriculture on their lands, or maybe even fallow marginal land when necessary, which can also provide upland habitats for a variety of species.

And finally, helping us to call for peer review of future biological opinions. Outside peer review is commonplace before biological opinions, if you will, within the scientific community are accepted as credible. It should also be commonplace when biological opinions have the ramifications of the ones that we're currently looking at up here in the Klamath Basin are also put into play.

In closing, we urge the Committee to recognize that the most important environmental asset of the Klamath Basin, its waterfowl, are also the most costly victims of the current water management decisions. It is important to recognize that waterfowl hunting provides a financial and emotional commitment to the conservation and enhancement of wetlands throughout North America. These habitats directly or indirectly support hundreds of wildlife species as well as more than one-half of our currently listed species in California. Water allocation decisions mandated to address the needs of three listed species in the Klamath Basin are seriously threatening the future health and well-being of the entire Pacific Flyway. Should the flyway be devastated, I can assure you that many thousands of acres of privately managed wetlands throughout California and Oregon will also go away, because there will be no incentive for these people to annually manage those lands, year round, to provide waterfowl habitat or habitat for other species as well.

The California Waterfowl Association appreciates your close attention to this serious crisis and the opportunity to provide testimony today. We believe that we can all work together to find solutions which meet the needs of the local community, the Pacific Flyway, other wildlife and the fish species, and we look forward to working with Congress and all interests in seeking these solutions. Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Gaines follows:]

Testimony of Bill Gaines, Director, Government Affairs, California Waterfowl Association

Good morning. Mr. Chairman and Members of the Committee, my name is Bill Gaines, and I am the Director of Government Affairs for the California Waterfowl Association. On behalf of our Association's 15,000 members, and waterfowl enthusiasts throughout the Pacific Flyway, I would like to thank you for coming to Klamath Falls, and for providing us the opportunity to present our concerns regarding the serious water crisis currently confronting the Upper Klamath Basin.

Founded in 1945, the California Waterfowl Association (CWA) is a private non-profit organization dedicated to the conservation of California's waterfowl, wetlands and our sporting heritage. The California Waterfowl Association effectively pursues this mission through waterfowl research, habitat projects, education and outreach programs, and Government Affairs activities.

The Upper Klamath Basin is the most critical waterfowl staging area in North America. So important is the Klamath Basin to North American waterfowl on their annual migratory trek that the region can be easily located on a flyway map simply by locating the "apex of the Pacific Flyway hourglass."

Historically, this Basin contained over 350,000 acres of naturally occurring seasonal and permanent wetland habitat. Today, however, largely due to the construction of the Klamath Reclamation Project, over 75% of these historic wetlands have been destroyed. Yet, each year, a full 75% of Pacific Flyway waterfowl depend upon this Basin's few remaining wetlands and wildlife-friendly agricultural lands for critical staging habitat. In addition to waterfowl, remaining wetlands in the Basin—nearly all of which are now contained within the Klamath National Wildlife Refuge Complex—also provide critical habitat for many other species. In fact, more than 430 other wildlife species have been documented in the Upper Klamath Basin—including the largest wintering concentration of bald eagles in the lower 48 states.

Recognizing the importance of the Upper Klamath Basin to migratory waterfowl, and the tremendous loss of waterfowl habitat resulting from the construction of the Klamath Reclamation Project in 1906, President Teddy Roosevelt established the Lower Klamath National Wildlife Refuge by Executive Order just two years later. Nearly one hundred years later, the Klamath National Wildlife Refuge Complex remains the most important waterfowl refuge in the entire National Wildlife Refuge System.

Because of the Klamath Reclamation Project, and the manner in which it changed the Upper Basin's natural hydrology, nearly all of the region's wetlands must now be "managed"—artificially irrigated and intensely managed to maintain marsh conditions. In effect, public and private wetland managers in the Klamath Basin must "farm for ducks". As a result of this condition, the quantity and quality of wetland habitat available in any given year—most notably the exceptional habitat available on the Lower Klamath National Wildlife Refuge—is almost entirely dependent upon availability of wetland water supplies from the Klamath Reclamation Project. Tragically, the Upper Basin's highly limited surface water supply, combined with the regulatory actions mandated by the two recent Biological Opinions, will result in no water to the refuges this year, and little or no water for wetland habitat in all but the wettest of future water years.

Some environmentalists, in their zeal to protect both fish and refuges, have called for the elimination of agriculture in this Basin to free up the water necessary to address listed species concerns. Our Association, as a spokesmen for waterfowl and their environments, can assure you that this is not the answer. With only 25% of our historic wetland habitat available in this region, it is critical that we manage our remaining habitats to maximize values and functions for waterfowl and other wetland dependent wildlife. Yet, even if we have sufficient annual water available to maximize the waterfowl values of these few remaining wetlands, we still could not meet the biological needs of the tremendous numbers of waterfowl that depend upon this region. As such, similar to California's Sacramento Valley where rice production provides vitally important surrogate habitat and food for waterfowl, cereal grains and other wildlife-friendly agriculture in the Basin are critical to meeting the needs of Pacific Flyway waterfowl. Removing wildlife-friendly agriculture from the Upper Klamath Basin—regardless of the quantity of water it may free up for refuge use—would gut our Pacific Flyway waterfowl resource by eliminating roughly half of the food base annually available to these birds.

As we all are aware, the two Biological Opinions released in early April have not only shut off critical water deliveries to the Klamath Refuge Complex, but also to the important waterfowl food resources provided by local agriculture. To make matters worse, as waterfowl are forced to crowd onto what little wetland habitat that may remain, there will likely be significant die-offs due to the increased risk of

avian botulism and cholera. The serious stress placed on birds by the lack of habitat, coupled with the anticipated die-offs due to disease, may mark the beginning of the end for our Pacific Flyway waterfowl resource.

Ladies and gentlemen of the Committee, three species of fish are currently holding our Pacific Flyway, the bald eagle, roughly 430 other wildlife species, 1,200 families and the entire local economy hostage in the Upper Klamath Basin. The California Waterfowl Association does not believe that this was Congress" true intent when they passed the Endangered Species Act a few short decades ago. Truly, as our nation becomes more urbanized, conflicts between our fish and wildlife species and our human environment will become more common. Today's crisis in Klamath can be viewed as the "canary in the mineshaft" for what we can expect in the future should resource agencies be allowed to continue to implement the ESA as they do today.

To address these very real concerns, we ask Congress to join our Association in immediately seeking some solutions. First, in the short-term, we ask you to join our Association in:

1. Calling for the U.S. Department of Interior and its agencies to fully consider the impacts and risks to waterfowl, other wildlife and the importance of wildlife-friendly agriculture before making water allocation decisions based upon these Biological Opinions.
2. Calling for a groundwater management plan that will ensure that the groundwater resources used to help address our short-term water supply needs will remain viable over the long-term. It is important to recognize that groundwater is not the "silver bullet" to addressing the Basin's water needs. Groundwater quality must be checked to ensure that it is not harmful to agriculture and wetland plant growth. In addition, the excessive temperature of some groundwater sources could be harmful to waterfowl and other wildlife. Finally, we must fully understand the ramifications of using this resource. Past use of groundwater has reportedly resulted in the drying up of naturally occurring spring fed wetlands.

Finally, over the long-term, we ask for your help in:

1. Seeking changes in the Migratory Bird Treaty Act which elevates our internationally shared migratory waterfowl resource to a par with local or regional listed species.
2. Seeking careful, common sense amendments to the Endangered Species Act. If ever there were a "poster child" for the need to amend the ESA in order to ensure it considers impacts upon other non-listed species and our human environment, it is the current crisis in the Klamath Basin.
3. Appropriating federal funding for projects which serve to increase the surface water annually available to meet the region's water needs. For example, off-stream storage facilities to capture excess flows when available, and tail-water return systems which more effectively utilize available supplies could play a vital role in addressing the region's water woes. In addition, these types of facilities, if properly managed, can also provide additional waterfowl habitat and groundwater recharge benefits.
4. Calling for appropriate "peer review" of future Biological Opinions. Full outside peer review is required throughout the scientific community before any opinion is considered credible.
5. Creating federal programs which provide incentives to encourage for wildlife-friendly farming and ranching practices.

The Upper Klamath Basin is the most important waterfowl staging area in all of North America. Yet only about 25% of the Basin's historic wetland habitat base remains today. With nearly all of these remaining wetlands contained within the Klamath Basin National Wildlife Refuge Complex, it is critical that we allocate sufficient water to address the needs of the waterfowl, bald eagles and hundreds of other species which depend upon this habitat. But we must not stop there. When allocating limited water supplies, we must also consider the vitally important wildlife benefits provided by local agriculture, and, of course, the importance of farming to local families and the community.

In closing, we urge the Committee to recognize that the most important environmental assets of the Klamath Basin—its waterfowl—are also the most costly victims of the current water management decisions. Waterfowl hunting provides a financial and emotional commitment to the conservation, and enhancement of wetlands throughout North America. These habitats directly or indirectly support hundreds of wildlife species, as well more than one-half of our currently listed species. Water allocations mandated to address the needs of three listed species in the Klamath Basin are seriously threatening the future health and well-being of the entire Pacific Flyway. We urge the Committee to reject the current action, and demand water

management strategies to assure that waterfowl, including the farm and ranch food resources, are protected.

The California Waterfowl Association appreciates your close attention to this serious crisis, and the opportunity to provide testimony today. We do not believe there can be only one "winner" in this crisis. We believe that if we all work together we can find solutions which meet the needs of the local community, the Pacific Flyway, other wildlife and the fish species. We look forward to working with Congress and all interests in seeking these solutions.

Mr. POMBO. Mr. Gasser.

STATEMENT OF ROBERT GASSER

Mr. GASSER. Mr. Chairman and members of the Committee, I'm the witness you've been waiting for—the last. Thank you for coming.

My name is Bob Gasser. I'm co-owner of Basin Fertilizer Company, Merrill, Oregon, located on the Oregon/California border in the heart of the Klamath Basin. My great-grandfather, Frank Zumpfe, selected the town site of Malin, and established a Czech settlement there in 1909. The Czechs were drawn here to the area by the Klamath Irrigation Project. My wife and I are both descendants of these Czech settlers.

My partner, Chris Moudry, and I started our company in 1975 when we were both in our early twenties. With the help of our employees, we built Basin Fertilizer into a successful operation that employees 26 people and provides ag-services to over 600 basin-area family farms.

We have a loyal, family oriented company. The average employee worked for us for over 15 years. We have worked hard and built the businesses into the kind of solid, tax paying company that the American dream is built upon. Our company supports 80 individuals, and last year our employees paid over one half million dollars in taxes. These taxes are being used against us to fund agencies like National Marine Fishery Service, the U.S. Fish and Wildlife.

Today, many previously solid Klamath Basin ag-dependent businesses are in serious trouble due to bad decisions that have been made by our government.

The National Marine Fishery Service and the U.S. Fish and Wildlife Service caused the Klamath Basin crisis. These two agencies came up with misguided biological opinions using unproven voodoo science. These opinions handed down under the authority of the ESA have been used to justify the destruction of an entire basin's economy, ecosystem and thousands of lives. Lives are being destroyed.

When the decision was announced on Black Friday, April 6th, 2001, my first thought was, How is my business going to keep afloat? Later that evening a valued employee approached me with tears in his eyes, wondering if he would still have the job that he loves. My focus immediately changed. How can I and the people who helped build this business survive together? From that point on, all my attention has been strictly focused on simple survival.

No one could believe that their country, the United States, land of liberty and justice for all, could actually tear apart the very fabric of their lives based on such unjust, unfounded reasoning. This kind of arbitrary decision making happens in dictatorships, not

here. Most farmers and ranchers felt that surely someone in Washington D.C. would use common sense and rescind this ludicrous order to deliver zero water before it was actually too late to plant. That was not to be. Today, many businesses are in dire straits. My company is projecting a loss of 85 percent of revenue. Other businesses are also taking a severe hit.

I have 17 letters from a variety of ag-dependent businesses. There has been an immediate drop in ag-sales and projected sales ranging from 15 percent at a local restaurant to 95 percent at a Tulelake irrigation business. I'd like to submit these to the Committee. They're all trying to hang on.

Bankers are reluctant to make operating loans. Mortgage payments can't be made. Property and equipment values have plummeted. The labor force is leaving. The value of businesses, including blue-sky, will never again be what it should, due to the fear of this happening again at the whim of some misinformed government agency. The American dream of owning one's own business is shattered. Now that dream is a nightmare and a liability.

In your June 7 memo, you asked me to discuss what I'm doing to help repair the situation. I've had no choice but to step away from my normal business routine and devote my volunteer energy working to solve this crisis. I've been involved in planning community efforts to draw national attention to this crisis, including the tractor rally, the forum with Governor Kitzhaber, the May 7th Klamath Basin Bucket Brigade which drew an estimated 18,000 frustrated people to the streets of Klamath Falls in protest. Where else but in Southern Oregon could 18,000 protestors leave the streets cleaner after the protest, with no vandalism or violence? Klamath Basin people are the backbone of America, but our backs are being broken by our own American Government.

I'm on the Committee that developed the economic impact report to evaluate the damage our community has endured. This report has been submitted to Congress. You can help by urging your colleagues to support this package to mitigate the unjust, regulatory drought. In addition to the Relief Package, Congress is considering a $20 million program in the supplemental appropriations process. While this is a start, it only begins to cover the massive financial impacts of the April 6th taking of our water.

We need your help now. There must be an immediate independent review team to assess the data used in this year's biological opinions for the two sucker species and the Coho salmon. I also urge you to amend the ESA so that people are finally considered along with the needs of fish, wildlife and plants. We must consider people, families and common sense.

My partner and I made a pledge to our people to keep them employed for this 2001 season. To do this we have already cut hours, wages, overtime and health benefits. We're trying to keep our well-trained, licensed employees, even if we have to make no profit and are forced to take out loans to pay them. To lose this valuable work force would surely be the death of our company. Please take a look at those two pages, with pictures I provided for you. These families are hard-working, self-motivated Americans. If you choose not to help the Basin farming and ranching community, I'd like you to choose which page of people I should let go. I'd also like your help

when I have to tell these families that their livelihood is gone. I'm not sure I can deliver that message and ever look at our flag with pride again. Thank you for coming, and thank you in advance for your determination to end this crisis.

Mr. POMBO. Thank you.

[The prepared statement of Mr. Gasser follows:]

Statement of Robert E. Gasser, Owner, Basin Fertilizer Co.

My name is Bob Gasser. I'm co-owner of Basin Fertilizer Co. in Merrill, Oregon; located on the Oregon and California border in the heart of the Klamath Basin. My great-grandfather, Frank Zumpfe, was the scout who selected the town site of Malin, Oregon, and established a Czech settlement there in 1909. The Czechs were drawn to the area by the Klamath Irrigation Project and the opportunity it provided to help hard-working people rise from poverty. My wife and I are both descendants of those Czech settlers and have planned on living here our entire lives, surrounded by friends and family members who also desire a wholesome, family and community oriented, country lifestyle.

My partner, Chris Moudry and I started our company in 1975 when we were both in our early twenties. With the help of our employees, we've built Basin Fertilizer into a successful operation that employs 26 people and provides ag services to over 600 Basin area farm families.

We have a loyal, family oriented company. The average employee has worked over 17 years with us. We have worked hard and built this private business into the kind of solid, tax-paying company that the American dream is built upon. Our company supports eighty individuals and collectively the 26 employees paid a minimum of over ° million dollars in taxes last year. These taxes are being used against us to fund agencies like National Marine Fisheries Service and Fish and Wildlife.

Today, many previously solid Klamath Basin ag-dependent businesses are in serious trouble. We are in trouble not from a natural disaster or any decisions of our own. We are in trouble because of bad decisions that have been made by our government.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service caused the Klamath Basin Crisis. These two agencies came up with misguided Biological Opinions using unproven "voodoo science". These "opinions" handed down under the authority of the Endangered Species Act have been used to justify the destruction of an entire basin's economy, eco-system and thousands of personal lives.

Seriously, gentlemen, lives are being destroyed.

When the decision came on Black Friday, April 6th, 2001, my first thought was—"How is my business going to keep afloat?" Later that evening, a valued employee approached me with tears in his eyes wondering if he'd still have the job he loves. My focus immediately changed. "How can I and the people who helped build this business survive together?" From that point on all my attention has been strictly focused on simple survival. It's hard to believe that this is happening in a productive area that works hard to feed our nation.

For three to four weeks following this devastating decision, I found my customers in denial and disbelief. No one could believe that their county, the United States, land of liberty and justice for all, could actually tear apart the very fabric of their lives based on such unjust, unfounded reasoning. This kind of arbitrary decision making happens in dictatorships or war-torn countries, not here. Most farmers and ranchers felt that surely someone in Washington D.C. would use common sense and rescind this ludicrous order to deliver zero water before it was actually too late to plant. That was not to be.

Today, businesses such as mine are in dire straits. We are projecting a loss of 85% of revenue in the Klamath Project lands that are receiving no water. The 15% remaining business is due to the limited number of ag wells.

How are ag dependent businesses in the Klamath Basin affected?

- Bankers are reluctant to make operating loans.
- There has been an immediate drop in sales ranging from 15% at a local restaurant to 90% loss at a recently closed auto repair shop in Tulelake.
- Mortgage payments can't be made.
- Property & equipment values have plummeted.
- The well-trained labor force is forced to leave the area.
- The value of businesses (including blue-sky) will never again be what it should be due to the fear of this happening again at the whim of some misinformed government agency.

- The American dream of owning one's own business is shattered. Now that dream is a nightmare and a liability.

The business impacts from shutting off our water are far-reaching. Oregon Employment Department reports that in the three counties of Klamath, Siskiyou and Modoc, approximately 2,061 farm labor jobs will be lost for a total of $36 million in lost wages. These figures do not include approximately 880 more farm labor jobs that are not covered by the unemployment insurance program.

- Agricultural Employment in Klamath County represents—35% of total employment countywide
- Agricultural Employment in Siskiyou County represents—58% of total employment countywide
- Agriculture represents 27% of total payroll in Klamath County, 47% in Siskiyou County

This data provides evidence that not only is the agricultural financial infrastructure demolished but also the economic base of all three counties is seriously compromised. This man-made disaster has torn through Northern California and Southern Oregon like a tornado, leaving a wake of financial, physical and mental destruction.

In your June 7th, memo, you asked me to discuss what I'm doing to help repair the situation. When this decision came down, I had no choice but to step away from my normal business routine, and devote my volunteer energy working to solve this crisis. I've been involved in planning a variety of community efforts to draw attention to this crisis, including the tractor rally, Kitzhaber Forum, and the May 7th,Klamath Basin Bucket Brigade which drew an estimated 18,000 frustrated people to the streets of Klamath Falls to protest the zero water allocation. Where else but in Southern Oregon could a mass of 18,000 protestors leave the streets cleaner after the protest with no signs of vandalism or violence. Unlike the radical so-called environmental groups, we don't destroy other's property and lives to further our cause. Klamath Basin People are the backbone of America but our backs are being broken by our own American government.

I'm on the committee that developed the Economic Impact Report. We've submitted this report to Congress. You must provide relief with the Economic Relief Package of $221 million to help mitigate this unjust regulatory drought. Oregon State University Department of Ag & Resource Economics has concurred with the damage amounts suffered by this basin. Recently, President Bush signed a supplemental appropriations package for $20 million. While this is a start, it in no way begins to cover the massive financial impacts of the April 6th taking of our water.

We need your help now. There must be an immediate independent review team to assess the data and scientific method used in this year's biological opinions for the two sucker species and the coho salmon. We believe that the suckerfish were mistakenly listed and should be delisted immediately. No science available can prove their endangered status. History has proven that these unprecedented high lake levels and high stream flows will kill more suckers and salmon, not save them. Undoubtedly, this government decision will kill the fish, wreck our basin eco-system and devastate thousands of people, financially, physically and mentally. The people making these drastic decisions must be held accountable for the destruction of the entire Klamath Basin. We can and we must amend the ESA to prevent future disasters of this nature. We must consider people, families and common sense.

My partner and I made a pledge to our employees to keep them on the job for this 2001 season. To do this, we've already cut hours, wages, overtime and health benefits. We're trying to keep our well-trained, licensed employees even if we make no profit and are forced to take out loans to pay them. To lose this valuable work force would surely be the death of our company. I'd like you to take a look at the two pages of pictures I've provided for you. They're all hard-working, self-motivated, non-subsidized Americans. If this crisis is not solved quickly, I'm going to have a real problem. These people will find their lives ruined when we can no longer provide them with the jobs they depend on. Please take a careful look at these families. If you choose not to help the Basin farming and ranching community, I'd like you to choose which page of people to let go. I'd also like your help when I have to tell these families that their livelihood is gone, maybe forever.

I'm not sure that I can deliver that message and ever look at our flag with pride again.

Thank you for coming, and thank you in advance for your determination to end this crisis.

Mr. POMBO. Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman. And, Mr. Gasser, thank you for that testimony. Before I got into this job, I was a businessman in the Tri-city area at the same time that the public power, the nuclear plants were being terminated. You probably don't recall that, but I saw overnight the revenues drop precipitously, not to the scale that you're going through, but I understand exactly what you're going through, and we will obviously do everything we can to try to alleviate that pain.

Mr. Grader, is it Grader?

Mr. GRADER. Grader.

Mr. HASTINGS. In your oral testimony, you sounded very much like you wanted to find solutions to the problems that are facing us, and you expressed the concern of the fishing industry in general and gave us an historical perspective. But then I read your written testimony and I see what I would consider a bit of an inflammatory sentence here, and I'll quote it. It says, "Farmers should stop blaming the ESA and get to work solving their real problems." And then I read the rest of this, and quite frankly—and then I looked over at Mr. Kerr's testimony and it sounded like it came out of the same playbook.

Now, the concern I have—and I want to give you a chance to make amends here—is that Mr. Crawford, who is a farmer here, in his testimony—in his oral testimony and his written testimony—said very specifically that this is not an either/or situation. He supports the fishing industry recovery, and yet you're representing the fishing industry and you're coming in here with this rather inflammatory statement.

Mr. GRADER. Well, first of all, I don't even know Mr. Kerr. Secondly, I think as far as the ESA goes, it's the same thing I tell my own membership, and we had some very serious problems, as you're probably aware of, on Stellar sea lions in Alaska. They're very serious problems that we have off of California at times where, for example, we've been closed, had our fishing restricted to protect winter run fish. And I go back and tell my members, I said, What is it with the ESA? Well, we're being shut down. And I said, Well, why? Well, because the fish numbers are down. Well, that's the problem.

In this particular instance, I think it's a situation where there is not adequate water. And what water is remaining, to prevent a couple species from going instinct, are being allocated to them right now to prevent their extinction. We can keep the human people here from extinction by some immediate cash relief from the Congress. That will help—.

Mr. HASTINGS. Okay—.

Mr. GRADER. Let me finish, because I think there are some other solutions. That's why I said we need to get everybody together. I think we can find ways between the restoration programs and better use of some of the water. Some of it might be looking at, for example, the removal of Iron Gate Dam, which right now is a heat sump. It's causing a lot of hot water to go down into the Klamath River itself. The removal of that, basically, a dam which regulates water from an upstream hydro-project, is located in the wrong location. It's heating up the water. That may mean, for example, that

we don't have to release as much water then downstream if we can get that water so it has areas where it's kept cool.

There are other things we can do. This is not a lot different—and I know Congressman Herger probably realizes where we were 10 years ago when we had the winter run listed, and what we had to do then. We made some changes and nobody went broke.

Mr. HASTINGS. Well, but my point is—and I know there's solutions to that and I know you take them—I now you're very sincere in your approach. What I'm addressing, though, and I'll just make the final point here, is that in your statement—and your association apparently agrees with this statement or you wouldn't have said it—"Farmers should stop blaming the ESA and get to work solving their real problems."

Mr. GRADER. Exactly, and that's the same thing I tell my own members. Stop blaming the ESA and let's get on with the real problems, and sometimes that's been working to try and bring back winter run salmon—.

Mr. HASTINGS. Right, well—.

Mr. GRADER. —which, let me add, because that's a success story. We listed the winter run salmon. It took 4 years to list them. It didn't happen overnight. People have been saying, Well, you can automatically get these suckers listed. You don't. It took 4 years to get them listed, after the agency was in big-time denial. We had to first get them listed under our state act. After that we had to threaten to sue a number of people changing the Federal Shasta Dam operations to cold water. We then had to change a couple major irrigation districts, their pumping policies, get them to screen their pumps, also fix a dam downstream. We did all those under the ESA, and those fish are coming back now.

Mr. HASTINGS. I appreciate that, but my only point I'm saying—and I understand the sense that you're saying that—but in your testimony here, then you criticize exactly the same way, "Well, you know Mr. Coronada is immaterial," but you simply say this area is not suitable for agriculture, and I think that that is wrong.

Now, my time is up and I'm going to have to leave here very shortly, Mr. Chairman. But what I would like to say in my closing remarks is, number one, to thank everybody for your patience in coming down and hearing what is perhaps your first Congressional testimony or Congressional hearing. I am very pleased to have the privilege of coming down here and being part of this panel, since I don't sit directly on this panel. But this issue interests me so much, because of what I have learned and what I have gone through in my district in Central Washington, that I wanted to come down here today.

And I was very impressed this morning when I saw the grocers come down with the supplies for the food bank. Boy, I have to tell you, that shows what Oregonians are all about, and particularly, Oregonians in rural areas. This is a very compassionate society, and certainly this part of Oregon is very compassionate.

But here is something that I am very concerned about, and this isn't directed to any of you that are sitting here. As a matter of fact, it's directed to the press. I understand that we have national press here. They should be here. This is a huge story. People's lives and livelihoods are potentially cut off with an act of the Federal

Government, with absolutely no time for people to react. But if the only story—if the only story is a story about how compassionate people are in this part of the country, without saying why that compassion has reached this level—namely, the need to amend the Endangered Species Act—then quite frankly, the media will have not gotten the story right.

Now, one of the things that we that are elected should probably not do is to tell the free press what to print, but I'll tell you this. This area is a rural part of America, just like my district is a rural part of America. And the story was always missed, because it did not talk about the root cause that caused these hearings to be held in rural America, and that's the need to amend the Endangered Species Act. I hope that that message gets out to the media that is here today.

Mr. Chairman, I want to thank you very much for the consideration that you've given me and my colleagues. Thank you.

Mr. POMBO. Thank you. Mr. Herger.

Mr. HERGER. Well, Congressman Hastings, I want to thank you again for taking time out from your district on a Saturday morning and afternoon to be here with us. We're very grateful to you. And I just have to also comment too, you know, the greatness of our country is that we can disagree and hopefully not be too disagreeable, unlike China or the former Soviet Union where they would maybe throw you in jail, or worse.

But, Mr. Grader, evidently the Endangered Species Act has been much kinder to your fisherman than they have been to the constituents that I represent, or you would never begin to make the statement that it should not be at least brought up and modernized and updated. And again, let me just allude to three—in addition to what's happening here, where basically zero water is going to these farmers. That's not right. Where we can get extreme environmental groups that can sue because of the way the law is written and be able to stop—a couple biologists, without peer review, can shut off this water, and you can listen to them and not listen to all the other information, that's not right. And a law that's set up that way, I would respectfully say, is in dire need of being reformed.

And I can go on to the three people who drowned on a levee, where they couldn't replace a levee, where they could sue—a highway—and these are all in the district I represent. A highway where just as of yesterday the 149th head-on collision, resulting in a fatality, where they can't widen the road because of a meadow fern. They're fighting it there. Again, my good friends in the extreme environmental community, lawsuits are holding up that highway. And a high school in Chico where they cannot build, or they built it over more than two-thirds for a bond issue to increase, to build a new high school because they're over-crowded—cannot build it because of this. That is wrong and something needs to be done.

And I'm grateful that your people aren't being affected nearly as dramatically as the ones I know, but I would like to urge you to consider the other areas of this. But let me, if I could—and I want to thank you for being here, Mr. Grader. We can work together, I believe. In essence, maybe we have a little bit of disagreements

here or there, but for the most part, I think most of the people here today do want to work and solve the problem.

Mr. GRADER. In fact we have, Congressman Herger, as you know, in your district, in dealing with a lot of the salmon issues, and as a result both farmers and fishermen are doing pretty well now.

Mr. HERGER. Yeah, and one of my good friends, Doug Bosco, former Congressman, we worked very closely on these issues affecting you. And, Mr. Gaines, I want to thank you for being here.

Mr. GAINES. Thank you.

Mr. HERGER. And some of the irony, the tragic irony of the Endangered Species law—one more example why it must be reformed, just for the sake of the environment is, supposedly to save two endangered species, we're endangering I don't know how many countless more. And maybe I'd like to have you respond to that just a little bit. But you indicated in your testimony that the leased land provided important food and habitat for migrating waterfowl, but this year, because there is no water for farming on private lands, on leased lands or for the refuge, there will be no habitat for migrating waterfowl. And I understand that the United States is under a certain obligation to provide habitat for migrating waterfowl, pursuant to the Migratory Bird Treaty. And if you would, if you have any details about this treaty, do you know what kind of impact this zero water decision will have on the United State's obligations under the treaty, and do you know if these impacts were considered on other endangered species.

Mr. GAINES. Congressman, I'm glad you asked me the question about the Migratory Bird Treaty, because that treaty was written about 80 to 90 years ago. It's a treaty that has been signed by the Federal Governments throughout the North American continent, and it is a treaty that simply is outdated. It was largely passed many, many decades ago to deal with the taking of waterfowl, to try to deal with issues such as market hunting and other issues that, you know, we don't really worry about today, but still there is an obligation to help protect and embrace our international migratory waterfowl resource.

Another agreement between the Federal Governments of Canada, Mexico, and the United States that is incredibly important to waterfowl is the North American Waterfowl Management Plan, which is a plan that recognizes that the waterfowl populations have suffered tremendous losses and that we as a continent need to work together to provide habitat to address their needs. The Klamath Basin, again, as far as the Pacific Flyway is concerned, is the most important staging area we've got. It's the most important staging area in all of North America.

You may remember, one of the long-term solutions that I asked for Congress's help in seeking was to strengthen the Migratory Bird Treaty Act so that it can raise waterfowl and the other wetland dependent species that depend upon their habitat to somewhat of a par, if you will, with the suckers and salmon and other listed species.

Another point that I made that I'd like to mention one more time is that the wetlands not only provide habitat for waterfowl, but the Central Valley Habitat Joint Venture, which is a component of the North American Waterfowl Plan down in California's Central Val-

ley, estimates that half of California's listed species are dependent upon the same exact habitat that our waterfowl depend on as well. The single species focus of the current Endangered Species Act just doesn't make any sense. Again, you've got three species holding over 430 species hostage, and that's above and beyond the impact to our human environment and local economy. It just doesn't make sense.

I work for a wildlife organization. You would think that we'd be hanging our hat on the Endangered Species Act. We're not. It causes us as much pain as it does the people here in the Klamath Basin and elsewhere. When we put in a waterfowl project, if we want to take marginal farm ground out of production and restore it to managed waterfowl habitat—habitat that provides benefits for all of those listed species—we might as well go and try to build a Wal-Mart. We have to go through all the same steps that somebody would if they want to put blacktop over the top of it. It just doesn't make any sense. It needs to be amended. It needs to have careful, common sense amendments, and we look forward to working very, very closely with Congress in doing so. Thank you.

Mr. HERGER. Thank you very much. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. And I'm glad to have all of you testifying. And there's a couple questions I want to ask that have absolutely nothing to do with just the basin right here, but the ESA in general.

Mr. Gaines, is it true that—because this affects my district—that the terns on Rice Island, which was created by dredging the mouth of the Columbia River, that they are protected under the Federal Migratory Bird Act?

Mr. GAINES. I'm sorry, the last piece of that question again? I'm sorry.

Mr. SIMPSON. Are those terns protected under the Federal Migratory Bird Act?

Mr. GAINES. All migratory birds? No, The Caspian terns.

Mr. SIMPSON. The Caspian terns, yeah.

Mr. GAINES. If they're migratory. I'm not sure if they're migratory, but if they're migratory, they are, absolutely.

Mr. SIMPSON. So, you know, my constituents in Idaho, my farmers, have a real hard time trying to understand why these Caspian terns that thrive at this banquet of salmon that go down the river and out to the ocean, past a man-made island, a federally protected bird eating a federally protected fish, and they're being asked to give up their water to make this happen. Quite frankly, they just shake their heads and they wonder if there's any common sense left.

And I will ask you, Mr. Grader. There is one other question to ask, by the way. Are there any other listed endangered species that we actually kill?

Mr. GRADER. That we actually kill?

Mr. SIMPSON. Yeah. I'm just asking this —I mean, I like to meet them so I don't mind your industry.

Mr. GRADER. Well, keep in mind—well, let me just add something here. There are none that we have a deliberate plan for killing on. What we do have is there are regulations in place, very se-

vere regulations that have been put in place on the commercial fishing industry to avoid any take of a listed species. Likewise, we also have restricted certain land uses, timber harvest practices, for example, certain water things have all been implemented to try and give some level of protection. The level of take is very marginal right now, and like I say, we cannot get at healthy runs of salmon right now off California, because they've moved into a closed area. And ordinarily those fish are found off the Central California coast where they're available to our fleet, but because of this year's currents and that, they moved into this closed area. We're hoping it's not going to stay that way, but we could very well be seeing a whole fleet of salmon trollers likewise requesting some sort of disaster insurance. At the same time, we understand that we've got to do something to get back some of these wild fish.

Keep in mind, we've also talked about industries being held hostage to the ESA. My industry this last year, or part of it, was held hostage to the Migratory Bird Act. We have a fishery for California halibut off of the Monterey coast and off of the San Luis Obispo area. That fishery was shut down because of incidental take of not an endangered species, but a bird that is under the Migratory Bird Act. Now, we could have gone and I guess come forward to all of you and said, Let's get rid of the Migratory Bird Act or let's reform it so it doesn't apply to us. Instead, what we're trying to do is figure out a way where we can design those nets where we can avoid the take of the birds, and I think that's a better solution.

Mr. SIMPSON. Well, I appreciate your answer, and I don't mean to sound like I'm against your industry. As I said, I enjoy those salmon an awful lot. But it is a question the people of Idaho often ask. You talk about conflicting actions by Federal agencies. They want to bring Grizzly bears back into Idaho at the same time they want to bring salmon back in, but they tell us that they're going to bring Grizzly bears who are herbivores. These won't eat salmon.

Mr. GRADER. Well, I suspect those Grizzly bears would be eating very well. They're probably very healthy, because if they're eating wild salmon they're getting a lot those good Omega 3s, so that means they're probably going to have good hearts, they're probably going to be immune from any type of cancer, and who knows what other health benefits they'll have, so you'll have some very healthy Grizzly bears.

Mr. SIMPSON. Well, I want to make sure that whoever I'm with out in the forest I can out run. But there is right now in the Stanley Basin—and I'll give you an example. You mentioned all the difficulty we have—and farmers face it every day—dealing with different Federal agencies charged with different goals. Right now in the Stanley Basin there is a case going on where several years ago an individual dug an illegal diversion, a canal in the Salmon River. It was illegal. Everybody admits it. It was done probably 15 years ago. Today the Army Corps of Engineers— The land was subsequently sold to an individual that now owns it. Today the Army Corps of Engineers is telling the new land owner to fill back in that diversion. And NMFS is telling him, Well, there's spawning salmon in there so don't fill it back in. We've got a land owner stuck in the middle here, and he's going to lose a ton of money just defending himself one way or another.

You know, last night I heard on television—I got back to my room and I watched this hour long program of what's going on here in this Basin, and I noticed that everyone who supported the farmers not getting their water—maybe that's the wrong way to say it—the environmentalist, or whatever you want to say, that were on the program—expressed a great deal of sympathy and sorrow for the farmers that this had to happen. But I got to tell you, it's sort of like my dad told me one time, you know, "Sorry don't feed the bulldog," and that's kind of the way I look at this. I really hope that in the end that we as a society have the wisdom to save the environment from the environmentalists.

Mr. POMBO. Thank you. Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman. And, gentlemen, thank you for your testimony here today. I know that, like the rest of these fine people sitting in this audience, that it took dedication and time out of your busy day to come here and help us better understand this. And, gentlemen, let me say, as someone who comes from Nevada, which probably is drier than any other state, except for whiskey— Well, whiskey is for drinking. Water is for fighting over. But I'm really troubled. I'm troubled when I hear organizations that say there's a better use for this water than farming. I'm very troubled by that because—I'm troubled because I don't believe that, Mr. Grader, your fishermen in California are any more important than these farmers who are growing food here in the Klamath Basin.

Mr. GRADER. That's exactly right, Congressman, we're not. And we've never said that we were. What we're trying to do, and I think one of the reasons we're concerned is that we have some critters that are probably—and the science we have, and it's the best science available, indicates that they may go over. That is, if they're lost—as the old saying goes, extinction is forever. We've been working ever since 1986 with the passage of the Klamath Restoration Act to try and come up with solutions that would work for everybody, and we're still doing that. And I would readily agree. I think one of the problems we got into the trouble we're in right now is that for a long time people considered somehow fish and fishermen as some sort of lower species, for an awful long time, and that was a sad thing. I think now we're getting on a par—we certainly don't—and I think if you know of my work in California, we're working very hard with the water users, we're working hard with the rice growers. We have worked very hard, and sometimes in the face of a lot of environmentalists who want to take their water, and saying, We've got to protect out food producers. But those food producers also include fishermen.

Mr. GIBBONS. So then you would say that it would be just as fair for the Federal Government to come in here and mandate buying out your fishermen to stop them from fishing.

Mr. GRADER. They're doing it.

Mr. GIBBONS. Well, Mr. Chairman, I know that this hearing has gone on a long time, and what I would like to do in just the brief time remaining that I have is kind of do what our colleague from Washington did, just sort of sum up what I think is important that we have taken away from this hearing. And that, of course, is the hope that all America can understand what the issue is about

today and that the problems that we have here, the problems that these wonderful people, the farmers and ranchers in this area are suffering through, is not about this year's drought and it's not about the agricultural industry being present here today. It's not about the farmers trying to feed this nation. The problem, Mr. Chairman, is about the misapplication and the abuse of the Endangered Species Act, and it's the misapplication and the abuse of science that's gone in to support it. In fact it's been poor science and a reliance on emotion and politics rather than science to support that issue.

And highlighted today, which I think we've all heard that clearly today—and I hope everyone gets this and all America gets this—that it's time to amend the Endangered Species Act. It's time we gave our farmers and the agricultural industry the same access to decisions and the process of those decisions that some of our extreme environmentalists have had over the last several years. We want to give them the same opportunity to be part of the decision process and to put sound science, as I said earlier, and common sense back into the law, back in the front of the decision process, and take the emotion and politics out.

And I think it's time, as we heard also, to begin the restoration projects on the ground here, to get these species into recovery so that we can get them off the list. And any law—this is common sense—any law that can only meet the requirements of the application of justice must be applied fairly and equally. And we can't save every species, and maybe that's the way it should be. And under the current Endangered Species Act, the way it has been misapplied gives me pause to stop and say thank you. Thank you that we don't have dinosaurs roaming around the country today.

Mr. Chairman, I do want to thank you and Mr. Walden and Mr. Herger for bringing this issue to our attention. I'm from Nevada, as I said. It's an important issue that's going to apply not only just to this area, but all across the West, all across America, if we don't stand and fight it today. It is time for us to go to work, time to amend the ESA, and I just want to say thank you for allowing us to be here today, and that's my statement. Thank you.

Mr. POMBO. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I beg to differ with my colleague from Nevada. He says there are no dinosaurs running around today. Actually, they are. They oppose reforming the ESA. They are the dinosaurs.

Mr. Grader, I want to go back—you made a comment that intrigued me how about how back 30 years ago, which would be about 1971, most people didn't even know about the word environment. And it raised a point, because in about the 1971 session of the Oregon Legislature, Oregon passed its landmark Bottle Bill, and that section of the report dealt with Land Use Planning, which is still a controversial topic here, but indeed, it looked at that. It was engaged aggressively in cleaning up a very, very polluted Willamette River, and there's still obviously work to be done there. And it set aside its beaches for the benefit of the general public.

And the reason I say that all that is because the thing that frustrates me the most in the last 2-1/2 years of being in Congress is being told—and I'm not saying you did this today—but this sense

that no matter what we do to improve habitat, to improve water quality and quantity in basin after basin after basin, you never get credit for it. And you see it right here in the mitigation efforts that have been taking place with the false promise that if you take this land out of production it will help you over here on the regulatory side where you get water. And I'm sure your industry has been through this as well, and it's an extraordinarily frustrating thing. When I look at Oregon's history, and the people I've met with and worked with throughout this district, and the projects they've shown me in this Basin, we're making good progress and doing good things. And a lot more needs to be done, obviously, but we need to get some credit for what we're doing too.

When you said, "Going after the ESA is like killing the messenger," if troubles me, because I don't think you heard any of us up here say, Go after and eliminate the ESA, although, there may be that sense. But what you did here today I think is hard to argue against. And the question I would raise for any of you is, Does anybody disagree with the notion of requiring blind peer review of the science, yes or no?

Mr. GRADER. No, they do not.

Mr. WALDEN. You don't disagree with that? Does anybody disagree with that? Does anybody disagree with requiring public access to that science so that everybody has a chance to look at it, yes or no? Do you agree or disagree? Is that a bad thing to but into the act.

Mr. GRADER. No.

Mr. WALDEN. Those are the things I get, coming out of this hearing, that would strengthen the Act and lend credibility to the science by allowing everybody to have a chance to look at it. And you made another comment that intrigues me, about the Chinook runs. And if I heard you right—and correct me if I didn't—but that they have moved north because of the ocean currents. And some of us have argued with NMFS for a long time that the ocean conditions have as much, if not more, to do with salmon survival as what happens upstream.

Mr. GRADER. They both do.

Mr. WALDEN. They both do. The difference is, in the Columbia Basin—and I represent probably as much of the Columbia River as anybody now that Doc Hastings has left the room. It is the farmers and those before us who have had the whole blame laid on them. And I have had NMFS say to me in a hearing, We can't deal with what goes on in the ocean. We can only deal with what goes on up-river, from the mouth, which is where all the focus seems to be.

Now, you've had pressure on harvests and things of that nature, but in effect there are natural occurrences that take place in the ocean environment that are way beyond our control, and yet the penalty and the price is paid by those up-river—in many cases, to their extinction.

Mr. GRADER. Well, yeah, I don't disagree with that, and obviously ocean conditions are critical. We saw that in the Columbia River. We could contrast that with California. In the past few years—.

Mr. WALDEN. About every 10 years—.

Mr. GRADER. Well, in the past few years we've had excellent ocean conditions off California, and off the Columbia Basin they did

not. And we know full well— NMFS is saying it's now—because they've done just about everything they could to our commercial fleet, and then they began looking at some of the upstream causes. And it's a balance, and there are no simple solutions. But, obviously, we do need to have, and I think it's well-known in science, a certain minimal level of water in streams.

Mr. WALDEN. Sure.

Mr. GRADER. We need to protect those watersheds from certain types of activities, and much of this is do-able. The problem is getting people to the table to talk about it, getting them out of denial. And it's no different than what happened in my fleet 30 years ago when we were saying that some of our fishing activities were resulting in over-harvest. It took a while, but finally our guys took a look at the numbers and said, We better correct it, and they went about doing that. But, you know, it's a whole combination of things. I think we are moving out of denial. I think we're moving into acceptance. I think we're going to be able to resolve this issue. It may mean that there may be a few less farms in this district, but it may mean that there's going to be better conditions for Mr. Gaines' waterfowl and it may mean more security for the remaining farmers here as well as providing the water we need here and providing the minimum flows.

Mr. WALDEN. Well, let me make two points. One gets back to this issue of hatchery fish versus wild stocks. And I am told, and I've been told this several times, and I'm going to go get it in writing from somebody, that when it comes to the recovery plan for the east coast—the Atlantic salmon recovery efforts—they count the hatchery fish, and they don't out here. And the only place where we have environmentally sensitive units, or whatever the technical term is for ESU, is in the northwest—Ecologically Significant Units—is in the Pacific Northwest. NMFS does that apply that anywhere else in the country.

Mr. GRADER. The ESUs are applied throughout the West, in California there as well.

Mr. WALDEN. But they're not applied in the East, are they?

Mr. GRADER. Well, let me just add that I think—.

Mr. WALDEN. They are not applied— Yes or no—.

Mr. GRADER. You're right, you're right, no, but that is—that's a big issue with us because—.

Mr. WALDEN. Thank you. That's a bigger issue with us.

Mr. GRADER. Yeah. Because in Maine, for example, we were just appalled at the way that they handled—.

Mr. WALDEN. At their recovery program.

Mr. GRADER. Yeah. There was no recovery program. It's a joke.

Mr. WALDEN. Well, we have reached an agreement here, because it wasn't a joke, because they apply a different standard in Maine than they do in the Pacific Northwest. They count hatchery fish there. They ignore them here. We had one of the biggest runs of Chinook in our history, even preceding construction of the dams in the Columbia River this year, and our farmers are going broke and being shut off from their water up there, and we've shut down our forests.

And let me conclude with one other comment, because I think we all have to gauge and measure our rhetoric, and I realize mine has

gotten hot today on occasion, but I would draw your attention to your comments and those of Pietro Pavarano?

Mr. GRADER. Paravano.

Mr. WALDEN. Thank you. And Glen Spain, from your Fisherman's News Letter of June of this year.

Mr. GRADER. Right.

Mr. WALDEN. And I'm going to quote from it. It says, "However, real water reforms always come at a price for irrigators who have become dependent on bloated and federally subsidized water projects. These growers, who now find themselves with less water for irrigation, are blaming Federal laws and fishermen for stealing water"—and I'm quoting here—"they themselves have stolen from the ecosystem and lower river fisheries over many decades. It's a little like the owners of chop shop and the bad cops they had on their payroll complaining after a bust about the cars and their parts being returned to their rightful owners."

I would suggest that that sort of rhetoric is probably not the kind of conducive verbiage that we need if we're all going to sit at the same table and try to come to a result.

Mr. GRADER. Thank you.

Mr. WALDEN. Mr. Chairman, if I could just take the liberty of introducing into the record a letter from the Horton family here, residents of Klamath County, Oregon, which I'll make it available. And also a letter from United States Senator Gordon Smith in which he explains that he is very supportive in helping to get the 20 million disaster assistance emergency supplemental, and it says if it does not stay in there, he will filibuster the bill until it is in there. Further, he is introducing the Endangered Species Act Reform Bill with Senator Max Bacchus of Montana as a co-sponsor in a bipartisan effort, and other material, so I will put that in the record as well. And on a final note, because I was asked to do, this hearing will be cable cast on Klamath Cable, Channel 3, Sunday at 2:00, for those who want to sit through it a second time. But we do appreciate the Klamath Cable Channel for you being here.

Mr. Chairman, I appreciate your diligence in the way you've conducted this hearing. And to my colleagues, thank you for taking your time to be here. And to the members of all of our panels, we appreciate your taking your time to be here as well. Thank you.

Mr. POMBO. Well, I could go back to Mr. Grader and ask some more question—.

Mr. GRADER. I feel sorry for the other members here who don't share the same popularity I have with all of you.

Mr. POMBO. But I feel he's probably answered enough for right now, and there will be an opportunity in the future to answer some more. But I will tell you that, for you and your organization, that if you want to be part of a constructive solution to the problem then you've got to work for it and you've got to stop throwing bombs.

Mr. GRADER. Well, I'll tell you—thank you, Congressman, but we have, in fact if you look at our track record in California, we have a good record—.

Mr. POMBO. I can look at your track record, and if you want to get into it, we can. Because some of the most abusive testimony I have ever received as a Chairman of a Committee has come from

your organization, and some of the most outrageous testimony I have ever received as a Chairman of this Committee has come from your organization. I want to work with you. I have supported compensating fishermen when we take their private property or destroy the value of their private property by destroying their fishing industry. I have supported that in the past. Your organization has opposed compensation for farmers when the Endangered Species Act takes away their private property.

Mr. GRADER. Congressman, I respectfully disagree. We have never done to that and you must—.

Mr. POMBO. You testified—.

Mr. GRADER. I have never testified to that.

Mr. POMBO. Well, I'll provide it to you. And it wasn't you. It was one of the other gentlemen who was representing your organization at a hearing.

Mr. GRADER. I have never done that nor authorized anybody to do that.

Mr. POMBO. Well, they've done it.

Mr. GRADER. I'd like to see it, because—I mean, I think that's one of the values of these type of hearings, because there's a lot of charges flying around and we're getting at the truth of this. We not only need peer review science. I think perhaps peer reviewing some of the statements that are made, and I guess that's the reason that it's necessary for all of us to get together. But if there are those type of statements, I'd like to find them. Likewise, I've heard other statements here that are, frankly, not true. For example, this is the first time the ESA has ever been used, and this type of thing, and it was not. We saw what happened in the—well, Congressman Herger knows what happened to the growers in the Glen Claus Irrigation District, but we got that resolved, when their water almost got cut off.

Mr. POMBO. This is not the first time the Endangered Species Act has been used to that end, and all I have to do is look at my own district to explain it. And so it's a matter of, if we are going to work toward a constructive solution to this particular problem, everybody needs to put down their swords for a minute and sit down and try to work toward that.

Mr. Gaines and I have worked together for years, and that does not mean we've always agreed. There have been times when we have very vocally disagreed on topics, but no matter what happened, he has always come back on the next issue and we've tried to work it out, and I respect him a great deal for that, because he has always been willing to work with us and try to find a solution. Sometimes my growers, my farmers are at odds with what his organization wants, and we try to work something out on it, and I respect him for always doing that, and I appreciate that.

Mr. Gasser, I don't have a good answer to give you. I wish I did. If I had a good answer to give you to what to tell your employees and what to tell your family, I'd probably tell it to everybody in my district, because I'm going through the same thing. There is not one square inch of my district that is not habitat or potential habitat for something, and we don't do anything unless we check with Wish and Wildlife Service.

In fact I've got a letter sitting on my desk back in Washington that was sent from our local Fish and wildlife Service in Sacramento to the United States Department of Agriculture representative, saying that before the farmers plant this year's crop, they better check with us to see if they have any endangered species problems. And what are we going to do about that? I mean, that's these people's attitude. And, you know, a lot of these guys are in the same boat that a lot of your people are in. They're going broke, through no fault of their own, nothing they did. They are not inefficient. They didn't change their operations. They didn't go out and spend all their money. Government actions killed them. And there's got to be a way for us—for us to sit down with you guys and figure out an answer and come up with some kind of a solution that is good for Fish and Wildlife, but allows human beings to be part of the environment and continue to be there.

I just want to close this hearing by thanking all of you for being here, thanking all of our witnesses, for those of you that took your time to be here today. I've got to tell you that being a witness in front of a Congressional hearing is not the easiest or most comfortable thing in the world to do. Not only are some of them pretty nervous about coming up here, they also know they're going to be up for some abuse when they do, and I appreciate all of our witnesses who did agree to be here and to testify. The hearing would not have been possible without you, so thank you very much for doing that.

I would also like to thank the local peace officers for being here, for helping us keep everything orderly here today. That has meant a great deal to us. I'd like to thank our staffs for coming out here and all the hard work they put in to make this hearing a success. And I would like to also add a special thank you to the security detail from Washington who came out, because many of them are fathers just like us, and they're going to all be running for planes right now, trying to get back home to be with their kids tomorrow, and I appreciate what they did and what our staffs did to make this work. Thank you.

In conclusion, I just want to say, you know, we've got problems in this country. And I get extremely frustrated with things that happen under our government, actions that are taken under our government, mistakes that we've made, mistakes that we will make. And we will continue to work, we will continue to fight, we will continue to argue, we will continue to try to make things better. And our jobs as elected representatives are to try to fix problems and to try to abide by our constitutional ability to fix what is wrong with the way our government is working, and we will continue to do that. Your jobs as citizens are to participate in the political process, and you are doing that by being here today, and I appreciate that.

But at times, especially at times like this, you get extremely mad and frustrated and everything else, but I've got to remind you that you still live in the greatest country on earth. Just a couple of weeks ago we had 14 people who died in the Arizona desert trying to sneak into this country. We are still the only country on earth that employees a full-time police force to keep people out, not to keep people in. You still live in the greatest country on Earth. We

just need to make it better. And I appreciate you all being here, thank you. This hearing is adjourned.

[Whereupon, at 2:55 p.m., the Committee was adjourned.]

[The items listed below were submitted for the record:]

1. Letter from Senator Gordon H. Smith
2. Letter from Patricia L. Horton, et al
3. Statement from Jack Roberts, Oregon Labor Commisioner
4. Miscellaneous pictures and letters submitted for the record

UNITED STATES SENATE

GORDON SMITH

Dear Friends

It is encouraging that so many members of the Committee have traveled to Klamath Falls to examine the crisis you are facing.

It has been over two months since the Bureau of Reclamation announced that no water would be delivered to agriculture in the Basin. In that time, the inequity of your situation has attracted national attention, having been recognized by Fox News, The New York Times and The Wall Street Journal. Congressman Walden and I have taken your cause to the floors of the U.S. House and Senate, to federal agencies and to the President.

President Bush has included $20 million in disaster assistance in the Emergency Supplemental appropriations bill, and I am working to ensure that it will remain there in the Senate version. Otherwise, I intend to filibuster the bill, and will hold it up until the money is restored.

I know that at this time of year you would rather be working your land than attending hearings and worrying about making it through this year. At the Bucket Brigade last month, I promised that I would introduce legislation to amend the Endangered Species Act. My bill, S. 911—which connotes the urgency of the problem - seeks to return objective science to species management, provide more stability for landowners, and allow for locally developed management plans. I am very gratified that Senator Max Baucus of Montana joined me in this bipartisan effort as an original cosponsor of the bill.

I recognize that this will come too late to affect the current situation with the Klamath Project. That is wiry I am encouraged that the Department will undertake an independent scientific review of the science that has been used to develop the current biological opinions. I continue to believe that other reasonable and prudent alternatives can be developed that would allow for much more flexibility in the operation of the project and thereby ensure water deliveries to farmers and ranchers.

Friends, rest assured that I am with you in this fight, and will be until we prevail.

Warm regards,
Gordon H. Smith
United States Senate

To The House Endangered Species Act Working Group,

First let me thank you for taking the time to travel and hold this hearing where people can feel they too have a voice in a very complicated system of government. I would like each of you to know and take back to Congress the knowledge, that the residents of this basin are descendants of pioneers and that makes us much stronger than the average American, we have strong genes in our blood and soles. Knowing that, understand we will fight this fight to the end. Please understand that we are true and good stewards of our land and have held that proud tradition for generations here in The Klamath Basin. Please understand that the dams around here only hold the water longer, they do not and have never raised the "historic" level of the lake. Please know that the Sucker fish do not and have never thrived in high water (too much ammonia). The Original draft of the Biological Opinion

stated this on three pages, but those pages did not find their way into the final draft. Please know that we are going to harm the salmon, when the overly warm water that is being held in Klamath Lake is sent down stream. We will need water from the Trinity to cool the warm water before it kills the fish. What we are urging you to do is stop the destruction of this entire ecosystem. We have 500 other species that are being directly affected by this singular act. What about their well being? What we are urging you to do is to find a compromise between mankind and the environment. Know we too provide much needed habitat for the species that live here and travel through the basin each year. Remember that 20% of the world migratory water fowl travel through here every year. What are they to do this winter when the much needed food for their long journey is not here? Know and remember that we do and have always cared about our lands and environment. We need to stop the junk science for good and it needs to stop right here right now!

Sincerely,
Patricia L Horton
Alice M Horton
Doyle D Horton
Ronald L Horton
Maxwell P Horton
Residents of Klamath County Oregon

Statement of Jack Roberts, Oregon Labor Commissioner

For the record, my name is Jack Roberts and I am commissioner of the Oregon Bureau of Labor and Industries. I would like to thank you for this opportunity to testify before your committee. Because I know there are many people who also want an opportunity to share with you both their insights and their experiences as they relate to the Klamath Basis Water Crisis, I will be brief.

Others will give testimony regarding the human and scientific aspects of this problem. I would like to speak to you about the economic impact, specifically the impact thus situation, and the federal policies which have been prescribed to deal with it, will have on the jobs and the incomes of the people of the Klamath basin.

It is obvious that no water for irrigation means no crops, which means no harvest and therefore no employment for those who work in the fields and harvest the crops. Payments to farmers to compensate them for the loss of their crops, while welcome, will not replace the lost income of those who would have been employed on those farms, or the local merchants and landlords who would have profited by selling or renting to those workers.

In this regard, the Klamath Basin Water Crisis may seem no different than any other crop failure or economic disaster that can befall a community. However, this crisis must be seen against the broader backdrop of what has happened to rural Oregon generally, and to the Klamath basin specifically, in order to appreciate its full import.

On a national basis, unemployment in rural communities is roughly the same as unemployment in urban areas. As recently as 1995, this was also true in Oregon. Since that time, however, while Oregon's urban unemployment rate has been the same as, or lower than, the national rate, unemployment in rural Oregon has soared to 3, 4 or even 5 percentage points higher throughout the last six years. This growing employment gap has corresponded to the adoption of restrictive new federal environmental policies, particularly those virtually banning the harvest of timber on the federal lands that make up most of Oregon's territory.

Unemployment here in Klamath County has been in excess of 10 percent most of this year. In nearby Lake and Harney Counties, employment in recent months has reached 13 and 15 percent, respectively. And these figures are computed on the basis of civilian, nonagricultural employment.

A lack of jobs outside of agriculture is but one half of the cruel equation creating poverty and distress in rural Oregon. The other half is the fact that those who are employed invariably end up working for less money than those in our major cities.

In Oregon, per capita income is just 95 percent of the national average. Yet even this statistic is misleading. Only four of Oregon's 36 counties have an average income that is above the statewide average, and all four of these have incomes above the national average as well. Three of these counties—Multnomah, Clackamas and Washington—form the greater Portland metropolitan area, while the fourth–Benton–is a small county that is home to Oregon State University and a large Hewlett–Packard manufacturing plant.

The other 32 counties all have incomes below our state average, which means they have an income well below the rest of the country. In fact, 22 of Oregon's 36 counties have incomes that are less than 80 percent of the national average. All are rural counties. Klamath county, even before the current water crisis, ranked just 31St out of our 36 counties in income. Its per capita income was less than three-quarters that of the rest of the county, and just 65 percent of the average income earned in by people living in Portland.

This is the economic situation confronting farmers and farmworkers who will be displaced in the current crisis. And who are those workers? More than a fifth, 22 percent, will be Hispanic-nearly three times their percentage of the Klamath county population at large. Another 10 percent will be Native Americans more than twice their share of the population.

Ninety percent of them have no more than a high school education, and 41 percent have never completed high school (double the rate of the total Klamath County population). Only 15 percent are under 21 years of age, the ones who can most easily be educated or retrained for other employment. Nearly a third are 40 years of age or older, the hardest age group to retrain or reeducate. And more than 80 percent of agricultural workers are men, usually the sole or primary support for themselves and their families.

All of these statistics point to a single, irrefutable fact: Denying farmers in the Klamath basin the water they need to irrigate their crops will have a devastating impact on communities and families that are already reeling from the effects of other federal policies that have driven a growing wedge between urban and rural Oregon. Somehow, at some level of government, there must be a recognition that people are part of the environment, too, and that our natural habitat is a growing and productive economy.

[The following pages includes some of the many photographs and letters submitted for the record from residents of the Klamath Basin. All items submitted for the hearing record have been retained in the Committee's files.]

STATEMENT OF SUPPORT
FOR IMPLEMENTATION OF
THE FINAL YOSEMITE VALLEY PLAN

The Natural Resources Defense Council (NRDC), a national environmental advocacy organization with more than 400,000 members and contributors, supports the final Yosemite Valley Plan and urges Congress and the Administration to work with plan supporters to begin implementing it. Yosemite National Park is a place of priceless beauty and natural wonder. For too long, the heart of the Park, Yosemite Valley, and its outstanding natural resources have been threatened by the lack of sound solutions to serious problems. The solutions identified in the final Valley Plan have tremendous public support precisely because they will protect the resources of this incomparable park and improve the experience of those who visit it.

In 1980, the National Park Service acknowledged that automobile traffic is "the single greatest threat to enjoyment of the natural and scenic qualities of Yosemite." Since then, the number of cars and visitors to the Park and especially to the Valley has skyrocketed. As the result, far too many visitors experience the Valley while sitting in traffic, driving around looking for parking spaces and standing in long lines for food. In addition, parking lots have replaced meadows, the natural flow of the Merced River has been blocked by bridges and campgrounds, and other unnecessary development has been constructed in the Valley. The Park Service's General Management Plan, completed in 1980, was intended to address these challenges, but few of the strategies it identified were implemented due to lack of political will and needed funds.

Following the major floods that occurred some four years ago, the National Park Service seized the opportunity to -- at long last – achieve the broad vision established in 1980. Virtually as soon as the flooding had stopped, the agency set about developing solutions to the problems threatening Yosemite's world famous resources.

The planning/decision-making process that the National Park Service followed was inclusive, open and honest. Not only did the agency allow for extensive public involvement, but also, as documented in the testimony of Jay Thomas Watson representing The Wilderness Society and other concerned groups, it made major changes in proposed actions as the Valley Plan went from the draft stage to the final. In this process, agency staff revisited assumptions previously made and, in some cases, jettisoned them. Options discarded in the past were re-evaluated in light of changed circumstances. Rather than laboring to justify previous choices, Yosemite's planners repeatedly proved themselves committed to creating alternative solutions to the serious problems threatening the Valley, to identifying the tradeoffs inherent in each, and listening carefully to the public's reactions before deciding what to do.

June 12, 2001

I am Manuel Silva, a Veteran of World War II.

In 1948, I applied for and was awarded a homestead in the Klamath Oregon Project. Several documents were required prior to receiving a homestead.

One document that I signed states: "I agree to the inclusion of my land in an irrigation district, and I agree also to participate in the organization of an irrigation district at the earliest practicable date."

The Tulelake Irrigation District was organized in 1956-57. As required, the repayment of the project construction cost which are allocated to such irrigated land, was started. Payment was an annual charge and payment for all construction cost has been completed. This implied a contract to supply irrigation water to my homestead, which I still own.

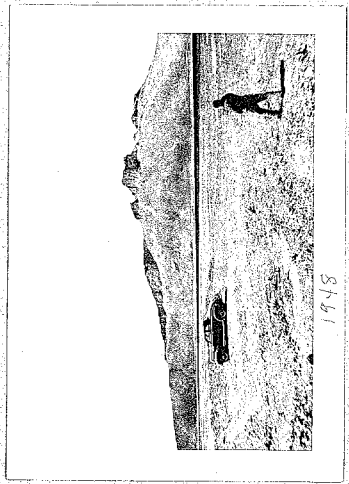
The final document executed was title to my homestead called a "Patent". A part of said Patent states, Congress "Does GIVE AND GRANT to me, Manuel P, Silva, and to his heirs and assigns ***forever***, land and water rights."

There are so few Veterans of World Ward II left who still own their homestead.

Why are we Veterans being treated this way? NO WATER!

Manuel P. Silva

Manuel P. Silva
6319 Ventura Drive
Klamath Falls, OR 97603



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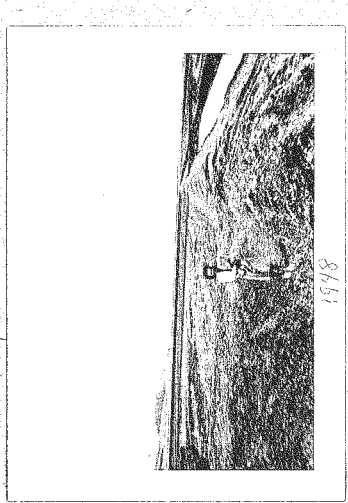

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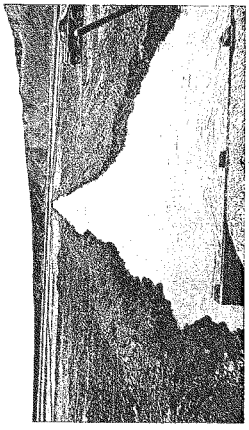

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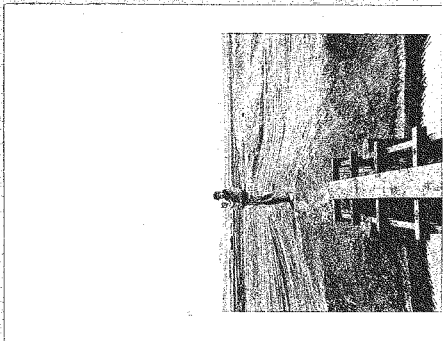


M
MILITARY POLICE

June 12 - 2001

John V. Terry -
I came to Tulelake, Calif. in 1934 -
I'm a World War II Veteran
Date of Enlistment Dec 7, 1941.
Army of the United States Air
Force: Military Policeman.
Serve in Southwest Pacific
Theatre of Operations.
Discharge Nov 20, 1945 - I was in
Reserve Six years.
Come back to Tulelake: Besides I
thought it was the best place in the
world to raise family & farm: I won a
Homestead in 1949, & still live there
51 years: & now I wonder how much
longer can we survive with No.
Water for our fields of Alfalfa: for cattle pasture
Don't for get that our farmers
feed the Nations. With out us
you can't survive. Our pasture
is dying and cattle are starving.

John & Aline Terry
6440 County Rd. 120
Tulelake, CA 96134

June 12, 2001

Herald & News
Letter to Editor

I am a 1949 homesteader. My wife and I have been living on and operating these 100 acres for 52 years. We have had some minor drought years, but never so devastating as this year when our irrigation water was shut off completely.

I am wondering if my 22 years association with the Air Force was all in vain, as our freedoms are being eroded and our economy and way of life is being devastated by some would be "Timothy McVeigh" hiding behind an Endangered Species Act. Wreaking havoc with our society, disrupting whole communities, causing foreclosures and bankruptcy. Farmers unable to make machinery payments cause the debt to revert back to the machinery dealer, which can amount to many millions of dollars.

I implore the House of Representatives Committee or Resource to feel our pain – understand our plight – then go back to Washington D.C. and get behind some understanding legislative people to amend the E.S.A. to the extent that it will release our irrigation water.

I am 84 years old and I praise God every day for my longevity – that I am able to serve Him and my fellow man.

God Bless

Woody Chambers
6424 County Rd 111
Tulelake, CA 96134

June 12, 2001

I am a 1949 homesteader. My wife and I have been living on my 100-acre homestead for 52 years. We have raised three (3) children here and graduated all of them from the University of California at various stations. Marcia has a degree in Entomology and now lives in Topeka, Indiana. She owns and operates her business "Rag Rug Factory", hiring the Amish people to operate her 10 various size looms. Pat is a schoolteacher living in Kelseyville, California where he teaches Biology and Math and coaches several sports. Dennis, our youngest at 46 years old, has a degree in Forensic Science, but came home to farm with me, as I have had 4 by-passes and had a bovine valve inserted in the aorta of my heart.

My wife, Lucille, had a stroke six years ago the 15th of this month. She needs lots of T.L.C. as she is paralyzed on her right side.

My first 24 years were spent in the state of Missouri – the "Show Me" state. No one has proven to me that there are endangered suckerfish. I invite any environmentalist or biologist to come down to my ranch and argue this issue.

I have attended various rally meetings in Klamath Falls, Oregon and Tulelake, California where thousands of farmers and ranchers gathered with a FEW legislators to make our cause known to the government and to the media – that we simply cannot grow a crop of anything (ie: grain, horseradish, alfalfa, potatoes, onions, mint or beets) without water. Water is our lifeblood and without it we CANNOT exist here.

I am enclosing a copy of the patent that came with my homestead. It clearly states that I am entitled to water for my homestead from Upper Klamath Lake, Gerber Dam and Clearlake Reservoir.

After farming in Missouri with horses and mules, I was overjoyed to learn that I had won a homestead near the headwaters where I thought I could never have a water problem. The Tulelake Irrigation system has delivered water to my homestead promptly and upon demand for over 50 years.

There is monetary assistance from both states (Oregon & California) to drill wells to fill the drain ditches from which we may pump water for our irrigation needs. However, I am afraid it is too late for most crops for this year as we only have a 90-day growing season and six weeks of that period has already gone by.

Just take a drive through the Tulelake Basin. Notice most every other farm has become overgrown in weeds! What a drastic turn around from last year. There is a small program offered by a Federal Agency to plant a cover crop, which is to help keep the soil from eroding in the wind. Even that is too late for some. The dust has already partially covered irrigation pipe that was left stacked due to No irrigation water for its use.

I am a born democrat, and I will never forsake my party because of what President Roosevelt did for us farmers after the stock market crashed in 1929 and the ensuing dust bowl and draught period of the 1930's. President Roosevelt and his administration created legislation to bare that brought relief to us horse and mule farmers and made farming a respectable profession.

However, these last 8 years of the democratic administration have not been a government "for the people and by the people" but for the government and for the government. They have spent too much time trying to mediate peace between nations that was to no avail, while letting the home guard down. Allowing evil-minded self proclaimed authorities, hiding behind an Endangered Species Act, devastate whole communities of farmers, whose tax base has provided money for schools, roads and county services. In other words – this community will cease to exist if this water situation is not reversed before another planting season rolls around.

There is apparent pressure to pit one culture against another here in the Klamath Basin. I have Native American Indian Friends from the Hoopa Reservation near the mouth of the Klamath River, that bring me fish and crab. Likewise they stay in my hunting quarters, they shoot geese over decoys in my stubble fields and shoot ducks off the drain ditches in the early mornings. We have had a most enjoyable relationship for over 40 years. There are two dressed out honkers still in my deep-freeze that they planned to pickup. They are still there. I wonder what happened!

Just as I will never forsake my political party, nor will I forsake my faith in God. Jesus Christ is my personal savior and my redeemer. Most every Sunday I sing praises to God, my Father in Heaven. I am remembering he said, "Vengeance is mine". I will not try to correct all the evil that has been done in this Basin personally, but I am praying to God above that His righteousness will prevail.

Even though a shortage of water exists this year, there is enough to go to every faction if only common sense would prevail.

If irrigation water is denied to us homesteaders and ranchers this year, you will be walking on the graves of WWI homesteaders and you will be digging graves for us WWII homesteaders.

Respectfully submitted to the U.S. House of Representatives Committee on Resources Public Hearing Saturday June 16th at Klamath County Fairgrounds, Klamath Falls, Oregon.

I am Woodrow J Chambers
6424 County Road 111
Tulelake, CA 96134

To the House Resources Committee Hearing at Klamath Falls, Oregon
June 16, 2001,

We really appreciate your coming to the Klamath Basin to see our problems and listen to us. As there will be many, many people wanting to testify let me take this avenue, writing, to get the Victorine family's story to you.
Joe is a third generation farmer in the Basin: His Grandfather and Dad (an 18 year old) came to the Basin in 1909 with the Czech settlers who founded the town of Malin, Oregon and started farming in that area, now under the Klamath Irrigation Project.
We farm 300 some acres in the Klamath Irrigation Project, part in California, which Joe obtained thru the veterans' Homestead drawing; the parts in Oregon we bought from his Dad who homesteaded in 1927, and the rest we bought in 1966 , when we saw we would not be able to raise our family on the income from the other places. This was acreage we could handle without hiring help: Joe was raised a farmer, as was Mary, and while the children (four: two boys and two girls) were home everyone helped. As they graduated from college, married and were no longer here to help, we went more heavily into cattle as we could handle them, hay and grain ourselves, just the two of us.
Three of the children moved away from farming but after trying several other occupations David, our second son, decided he wanted to farm. When we retired ten years or so ago, he began buying the Oregon places, leasing the Calif. one and then renting other land as he has four in his family (his second family, his first two sons are grown and gone from home) as prices are so terribly low now it is even harder to make a living on this much ground.
NAFTA has hit our kind of farming very hard: grain market has been almost ruined by importing grain from Canada, beef comes in un-inspected and cheap from Mexico, Argentina and anyplace else thru Canada, alfalfa did pretty good until the potato market became so depressed and everyone put their extra ground into alfalfa. Sugar beet raising came in here about 10 years ago and they did pretty good until the Cuban sugar started coming in under NAFTA and after the price going down the last three years the sugar company just didn't give out any contracts this year, at least here.
So here we sit, just barely making ends meet with a family of eight depending on income from the land. Where Joe and I both farmed all our lives our social security is minimum and so little we can't live on it even owning our own home. Lights, power to pump water for the cows, heat and

gas for the car more than take up our monthly check so we stretch it out by using from the land rent.
We had carried health insurance until this winter when we decided we were just throwing that money away: it just kept going up, we never used it hardly at all and what we did we ended up paying most of the bill anyway.
Insurance and licenses take a big chunk out of a small social security check! This really puts us in the "living from hand to mouth" category so when the decree came that there would be no water for farming this year it hit us a terrible blow. Not only for this year but for our future as well.
We always figured we had the cows, for emergencies, and the value of the place, either rented or sold, for in "our old age" (golly, we are 71 and 74 already!) Now, we are having to sell the cows as the pasture is dying without water, and the hay we had to carry over til they got out on pasture is about gone: nothing to fall back on there, and the day to day living expenses will eat the income from the cows up with no income from hay or grain this year. David has farming expenses, loans, taxes and water that have to be paid no matter what, so the rent will likely be a long time coming.. And just try to sell the place, no market, no price, who would want to buy a dry-ranch in the middle of a dry irrigation project?
We're sure you have heard of the "low interest loans"....what good is a loan when you have no income? A person would be foolish to borrow money that they couldn't expect to pay back. We don't want charity, we just want water so we can farm!
Likely you have heard of the wells being put in? These are not a good thing...they will take the ground water out not only from us but from the north end of the Basin, too. And the farther down the ground water table is the drier the top soil will become. Probably our house wells will go dry before long once they get to pumping out of these big wells. And as they are going to be pumping that water into the drain ditches to be pumped out onto the fields, water will likely go up to about $75 an acre and that will effectively eat up any profit from farm crops. Also, if you aren't near a ditch that the wells will be feeding you will have no water still, and we are in that predicament. (Actually, these wells should have been put in by the Klamath River, or even the Lake, where they could be used to put cold, clean water into the river for the salmon and then they could let the farmers and suckers use that dirty old warm lake water.)
We don't want "government handouts or to go on relief" we just want water so we can farm! Water that we have been promised, have contracted for and we have paid for. We could get by with a little less than what we are entitled

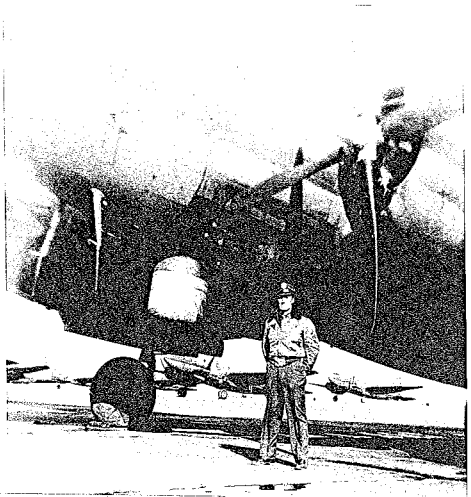
to, we have on other years when the water was low, but we HAVE to have some!

We read where the Klamath County Commissioners could put a stop to the water cut-off but could understand when they refused because that would likely instantly end all government programs coming into the county and they will be short-funded enough from the lessening of taxes and income from no farming. We also read in a review of a California State Assembly Committee on Water, Parks and Wildlife hearing Rep. Aanestad said " If these gentlemen (federal government panelists) here had the courage to admit that the biological opinions they are using to enforce the existing rule are flawed, they could change the decision today and could open the faucet tomorrow." But still the outcome from that hearing was the legislators' determined decision to "take possible actions such as educating urban committee members and writing legislation that focuses on protection for landowners as well as fish". Hurray for them and here we are sitting up here watching our pastures, grain and alfalfa die. This not a "get water in a month or two and it will be an all right kind of thing". Once a crop has died it is gone and has to be replanted. Grain cannot make it here if it is planted this late so that is one crop-year clear lost. Alfalfa and pasture are expensive to replant and it takes a year for alfalfa to produce but pasture is more like two or three years before you can graze it or the cows will pull the little plants up trying to graze them.

We have our taxes paid for this year, but as soon as we get behind, we feel confident the Nature Conservancy or some other government front will move in to buy it up for taxes to sell to the government and then where will we be? Joe says with a brave grimace " we can do either of two choices: rent a very small house and starve or live under a bridge and eat.!" I, Mary, am not that brave, I just cry.

Sincerely,

Joe and Mary Victorine



My husband, Carl B. Voorhees was an instructor and a pilot in the Air Force, and after training as a glider pilot was sent to England and then to France, risking his life each flight into enemy territory with a loaded glider.
After his discharge he stayed in the Reserves and retired as a Major in 1973.

We were married in 1945 in Ca. and he was still in the service until 1947. We bought a home on 20 acres of farmland and he farmed mainly cotton and several leased fields.
We received our homestead in 1949. We sold our place in the San Joaquin Valley and took a giant step back in time! A barracks covered in black tar paper which we had to have moved from Newell, no water - no electricity - so no plumbing - but we did have rattlesnakes! I quickly learned to scan the area and strike before "it" did. We quickly made the barracks into a comfortable home, planted a lawn and planted trees & he planted. Had three children and Carl became mainly an onion farmer and made a good living.
Looking for better weather we sold and moved to our home in Fla. after a year or two - came back to Tulare.
Bought our present home - went back to growing onions. Had 2 sons and a daughter in high school and field help as needed. They went off to school - married - had children. Carl had a few years of failing health and then a serious stroke and died in Aug. '93. I chose to stay in my home because I like it here on my shady corner. But now I am at the age of having to move while I'm still able - and I find a realtor will not even list my home now in this area.
We are talking about a group of people who can go out and do all things again - Our Honeymoon is over and we don't have that Honeymoon feeling. This is the main stress issue - many of us have lived, and mostly because it is out of our control. What I'm wondering is - who is in control? Sincerely Doris B. Voorhees

Tulelake pioneers live their new lives according to the best traditions of our hard-working, home-loving, community-conscious forefathers.

Photo by Ben D. Glaha, Region II

s of Grain"

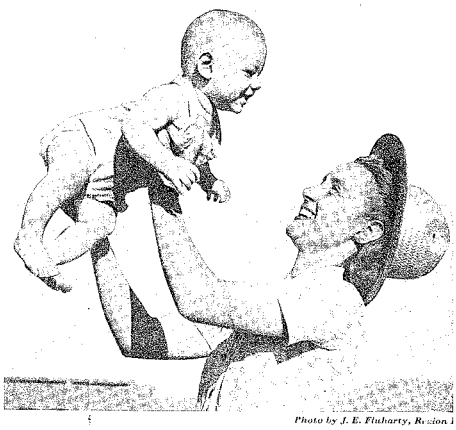
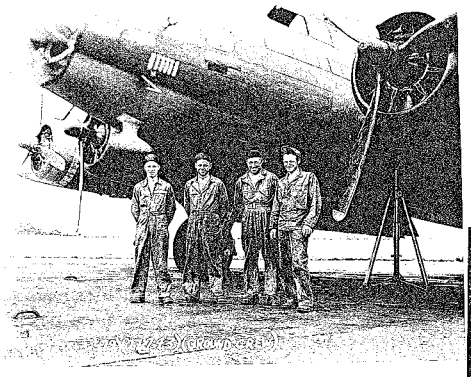


Photo by J. E. Flaherty, Region I

PINT-SIZED *Dennis Oman, whose mother, Mrs. Jennie Oman, with the rest o the settlers is building a community for this and future generations.*



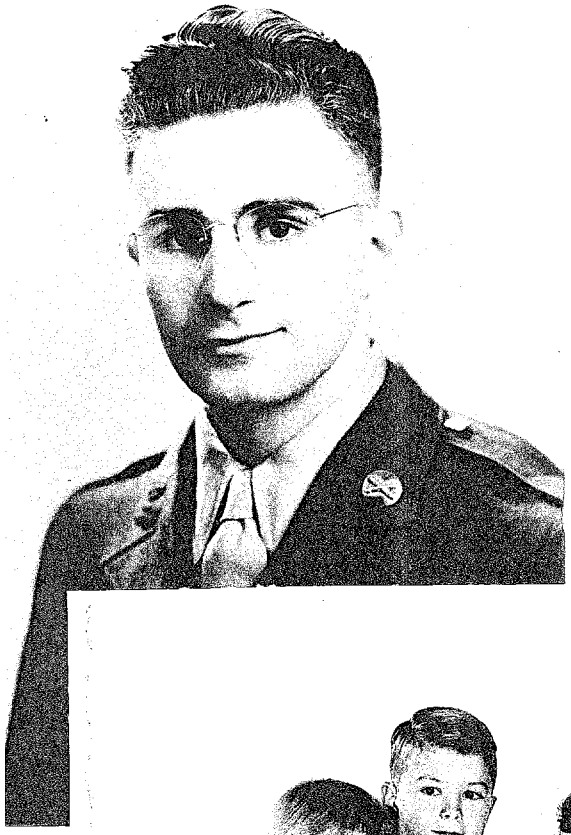
Donald Oman - 8th Air Force 9/41 to 9/45
Master Sgt. Crew Chief Mechanic on B-17's
Stationed at Kimbolton England May 1943 to May 1945
Then transferred to Air Transport Command at
Algiers Africa.

Discharged Sept. 1945 and then worked
for the Navy at Moffet Field, Mt. View, Ca.

I was drawn for a Homestead at
Tulelake, Calif in Dec. 1946 where we
were promised irrigation water by the
Bureau of Reclamation

This was a dream come true to
go back into farming and raise my
sons away from the city.

I never imagined that after
spending so many years farming
that an organization of the Government
could come in and take away my
total income because fish and
other species are more important than
humans. We rely totally on the rent
received from the land to pay our taxes,
insurance and food. What next will our
Government do to the people?



2001

I am a World War II Veterans wife.
We spent our Honeymoon at our new home, the Homestead that my husband had just won at the drawing, a few months earlier.

Now after 54 years, and raising four children, and then giving us eleven grandchildren and five greatgrand children, we are still here.

The event of 2½ months ago, of "No Water", make us very sad and disappointed.

We hope the U.S. House of Representatives Committee on Resources Public Hearing will be of great help.

Lorraine Schwarz
2600 County Rd. 106
Tulelake, Ca. 96134

Herbert J. Schwarz
2600 County Rd 106
Tulelake, Ca. 96134

June 13, 2001

Picture of me, right after basic training, 1942 Fort Sill, Oklahoma.

We were sent out on maneuvers in December in summer gear. Had a couple days of rain and then it turned cold. I had my feet and legs froze and was sent to hospital for three or four days.

When my outfit was sent over seas I was pulled off the boat the day it left.

Won a homestead in 1946. Married Lorraine Maerty April 7th 1947 Have lived here ever since.

Herbert J. Schwarz

MASTER SERGEANT PAUL L ROGERS

To you who answered the call of your country and served in its Armed Forces to bring about the total defeat of the enemy, I extend the heartfelt thanks of a grateful Nation. As one of the Nation's finest, you undertook the most severe task one can be called upon to perform. Because you demonstrated the fortitude, resourcefulness and calm judgment necessary to carry out that task, we now look to you for leadership and example in further exalting our country in peace.

Harry Truman

THE WHITE HOUSE

MAY 22, 2001

'That land isn't worth anything without water'

By PAUL FATTIG
of the Mail Tribune

TULELAKE, Calif. — Paul Rogers was selling insurance in a Medford office when he got the call.

The World War II veteran, one of 2,000 applicants for 80 parcels of land in the Klamath Basin, had won a 113-acre tract in the lottery on Dec. 19, 1946.

He and his wife, Mabel, a 1941 graduate of Talent High School, were about to become pioneer farmers.

"I didn't believe it when they told me," recalled Rogers, now 81 and retired in Tulelake. "I thought maybe they were kidding, or that I was an alternate or something."

They weren't kidding. He was among several Rogue Valley veterans who were given the opportunity to homestead the basin over the years.

To be eligible, participants had to be war veterans, have farming experience and have the seed money to start a farm from scratch.

In April 1938, World War I veteran Ted Fish, of Phoenix, drew No. 13 in the lottery for a homestead. Now deceased, he was one of 69 veterans allotted a homestead that year.

In March 1948, Grants Pass resident John J. Shaw was the only Southern Oregon veteran to receive one of 44 80-acre homestead tracts given out during a lottery drawing. An Army Air Corps veteran of World War II, Shaw, 87, died May 13 in Grants Pass, where he had made and sold fishing reels for years.

Rogers was stationed early in his enlistment at the Army's Camp White, now the Department of Veterans Affairs Domiciliary in White City. He later served in France, Belgium and Germany with Gen. George Patton's forces at the end of the war.

When the Newell Homesteaders' Club formed in the late 1940s, Rogers was elected president. When he wasn't working on the farm, he was lobbying county officials for better roads and services.

Newell is the hamlet formed by homesteaders a half-dozen miles south of Tulelake.

Rogers' homestead was located at the site of the Japanese-American internment camp.

Rogers and his wife were featured in the April 1949 issue of Coronet, a magazine with a national circulation. Described as "bronzed and wiry" in the story, Rogers cleared $6,200 in 1947.

"That was pretty good money back then," Mabel Rogers said, adding, "We have good memories from there. And a lot of good friends. They still are. We were part of the homestead family.

"You know, when we first came over here, I thought, 'No way am I going to live here,'" she added. "Here we are, still here."

The soil is as productive as the characters that homesteaded the basin, her husband observed.

"The soil is terrific down there," he said. "If you have water, you can grow just about anything."

And the Rogers can only shake their heads at the thought of the farms without water.

"It's horrible what's happening to the farmers," she said. "That land isn't worth anything without water."

"Anytime a fish has precedence over a farmer, well, somebody has a screw loose," he said. "It doesn't make sense."

My husband & I were married in April 1943, he was in the Air Force at Chico, Ca. He received a medical discharge later & in 1949 he put his name in for the drawing of a homestead at Tulelake, Ca. We did win a homestead & moved to Tulelake (the end of the world for a City gal). We worked hard, as all the other young families who arrived, made friends, built a community, helped build a church, school etc.

We raised our seven children here, all attended & graduated from Tulelake schools, the sons still live here & have raised their families here — had ten grandchildren attend Tulelake schools & then off to College.

My first husband died at a fairly young age - 55 - & I remarried another veteran of World War II, & also a homesteader, two years later. I am 77 years old still live here & lucky, am able to keep up my home & yard & also enjoy the friends & community I have known for 51 yrs.

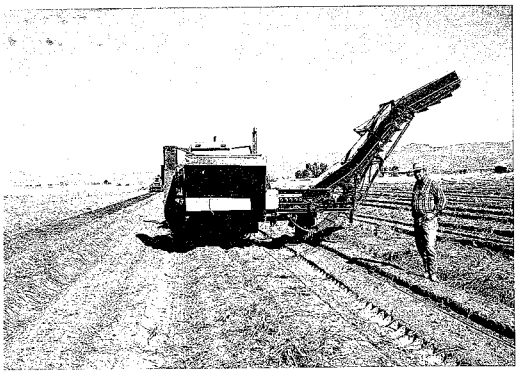
What the government & E.S.A. & all the environmentalist are doing to us is beyond anybody imagination, it could only happen in Russia!!

Two of my sons have a True-Value hdw. store in Tulelake & are about to go broke — after 20 yrs. — because the farmers, sheds, & workers have no income! Another son has the Homestead Bar in town & is in the same position — can't even give it away now because

of the water situation.

Also one of my sons served two years in Vietnam & another ~~[illegible]~~ served in Korea — sure a nice thanks to them!!

Kathleen Todd St. Peter
Box 265
Tulelake, Ca. 96134

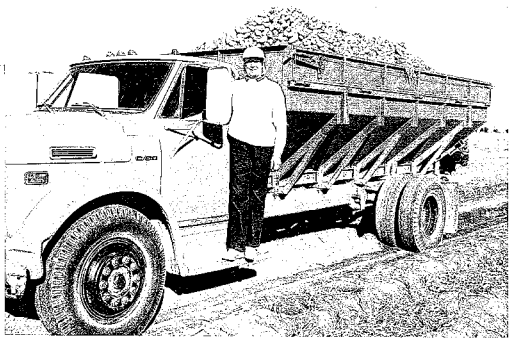


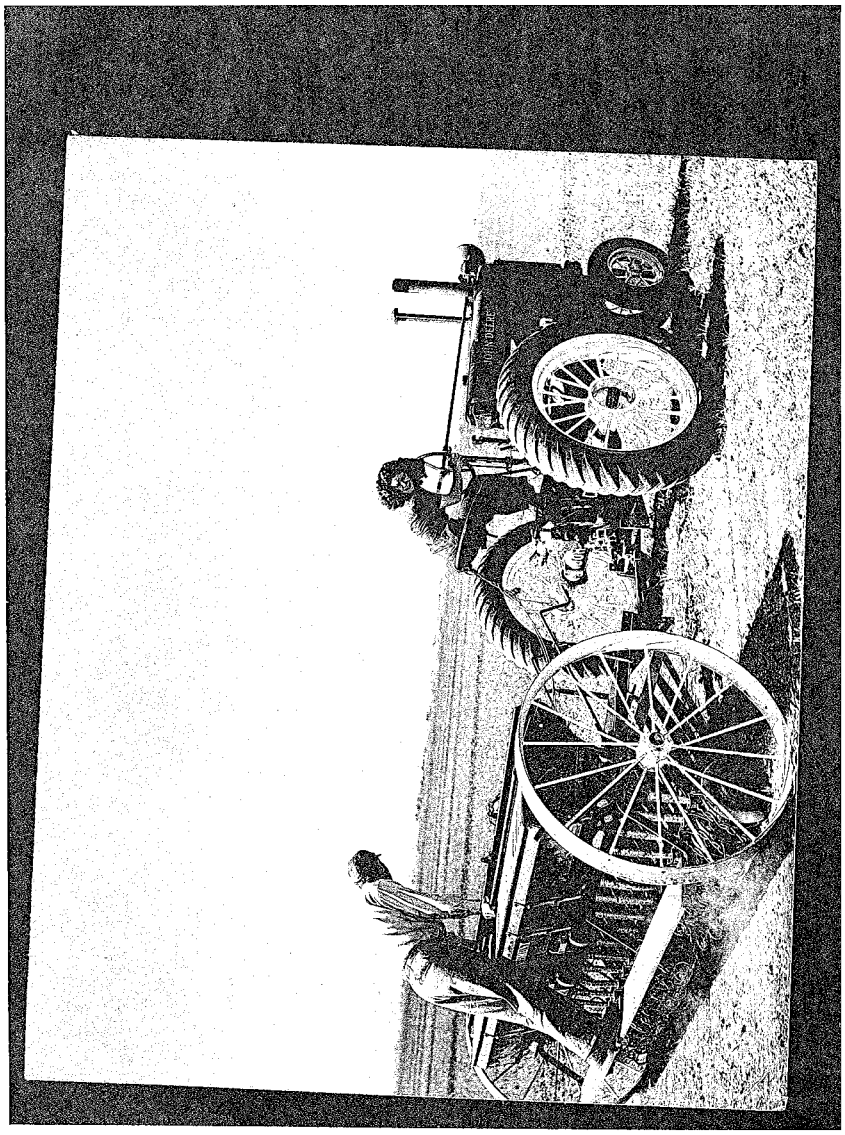
We were Homesteaders, my husband a World War II Veteran, and I. Farming hay, grain and potatoes as a family. Though economic times were tough we managed to purchase another farm and lease some government lands. It was our good fortune to farm along side abundant wildlife and to experience a way of life for the family we raised.

We built schools, were active in community affairs and otherwise enjoyed our neighbors and friends.

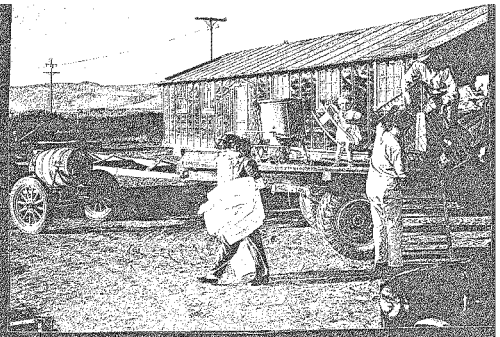
My husband died in 1998 and the lands we own were to be rented to other farmers for a sustaining income. That income is now devastated through this man made disaster. This injustice must be corrected. The ESA has proven poor science and restoration of the water to the farms should be a priority.

Sincerely,
L. Winnie Heiney

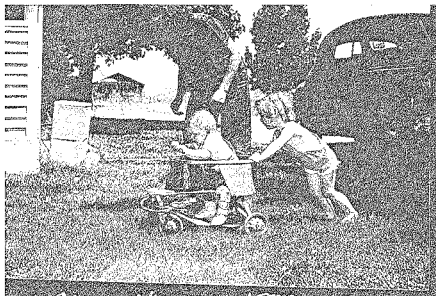




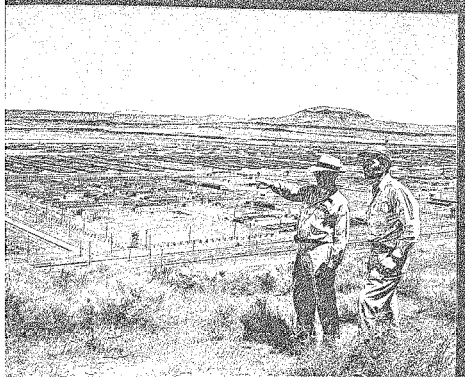
Tulelake Homestead

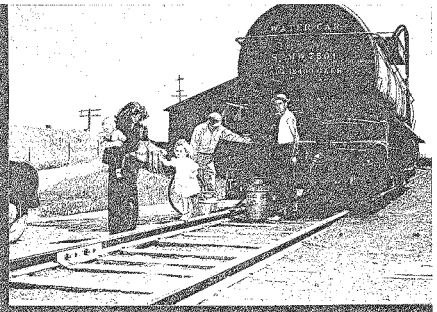


Moving day. Water Barrel in Phil Gard's Dottie. Dance relief in bar.



Philip Carlisle Dorothy Lane
Herbert Schwarz
We got our water from a tank
at Newell, California





WATER CRISIS IN KLAMATH BASIN

PROTECT OUR WATER RIGHTS

Story by Philip Krizo

I have lived in the Klamath Basin all my 82 years of life, except for serving from January, 1942 until November, 1945 in the United States Army Air Corps in a Night Fighter Squadron in Italy and the China-Burma-India Theater, participating in twenty-three missions in World War II.

After finishing Malin High School I graduated National Electronics School in 1941 in Los Angeles. I worked for Lockheed Aircraft in Burbank.

On January 16, 1944 I married Barbara Farris. We had two children, Dorothy and David. Both have a college education.

On November 18, 1946 a dream came true. Mine was one of the 86 names drawn from a total of 1305 for a homestead in Modoc County, near Tulelake, California. I closed my radio shop and moved my family to the farm in April, 1947.

Ther é were hard times and many problems for the 216 families, but we al ways shared the irrigating water, and got by.

Now our son farms our land. The E. P. A. is unfair.

Please help us get our water back. Philip Krizo

Form approved by the Department
July 27, 1922
7-272—Form A
(Reprint Nov., 1922—10m)

OCT 27 1952

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

(Stamp date of receipt)

7300 (Number)

Klamath IRRIGATION PROJECT

APPLICATION FOR PERMANENT WATER RIGHT

(For entries under the reclamation law.)

1. IN PURSUANCE of the provisions of the act of June 17, 1902 (32 S supplementary thereto, especially the act of August 9, 1912 (37 Stat., 265), 686), all herein styled the reclamation law, and the rules and regulations est ..... and subject to the conditions named in this ins UNITED STATES OF AMERICA, herein styled United States, by the UNDI permanent water right for the irrigation of and to be appurtenant to a developed under the above-named project within the tract of land described mined by the Secretary of the Interior.

2. **Description of land.**—The land on account of which a water right is acres, of which 2.02 acres are now classed as irrigable, and is mo Farm Unit "A" of Lots 19 and 20 ..... 21 ..... 46N ..... Section ....., Township ....., Range .....

3. **Description of water right.**—The quantity of water to be furnished h be applied beneficially in accordance with good usage in the irrigation of the That in case of a shortage at any time the amount to be furnished shall be a as practical operations will permit, of the water actually available at the ti the same source of supply, such proportionate share to be determined by the be followed wherever, in the opinion of the project manager, it is practicable. the point of delivery to the Applicant, the amount of water delivered shall be manager. In distributing and apportioning the water the project manager n and necessities of the land. On account of drought, inaccuracy in distributi a shortage in the water supply, and while the United States will use all reas ages, in no event shall any liability accrue against the United States, its offi direct or indirect arising therefrom.

4. **Agreement to pay water charges.**—The Applicant hereby agrees to p... to the United States the charges now and ha... account of said water right, together with any penalties for he regulations, orders, and public notices now or hereafter , such payment to be made in the manner, at the times, and s, orders, and public notice, which charges are as follows: (*a*) ng and maintaining the irrigation system, and (*b*) a construc- ges are assessable against each acre of said land now and here- said land is now subject to public notice described as follows: ary

he purpose of securing payment to the United States of the under the conditions stated in the act of August 9, 1912 (37 s in the amount of the total obligation described in paragraph gable, together with its privileges and appurtenances, includ-

id water right, the Applicant hereby grants, sells, and conveys account thereof, the following rights of way:
gates, and other structures for the delivery of water to said

and across said land for all irrigation, drainage, and power phone, and electric transmission lines and other structures, y of the Interior, for the proper construction and operation the right-of-way act of August 30, 1890 (26 Stat., 391).
eserves the right to collect for use on said project all waste and eases the United States, its officers, agents, and employees from on of the presence of waste or seepage water on said land.
urposes.—Should the irrigable area of said land or any portion ther nonagricultural purpose, then all of the charges described all at once become due and payable, anything hereinbefore to such area shall be eliminated from the irrigable area of the of operation and maintenance charges.
hing in this application contained shall be construed as in any s of any means of enforcing any remedy at law or in equity which it would otherwise have.
en used herein, the terms "Secretary of the Interior" and pective successors of those officials, the term "United States" nd the term "Applicant" shall be construed to include the All of the within terms and conditions, in so far as they relate a the title to same.
o set his hand and seal on the date first above written.

1959

Fairlake, Calif. [SEAL.]

(Post-office address of Applicant.)

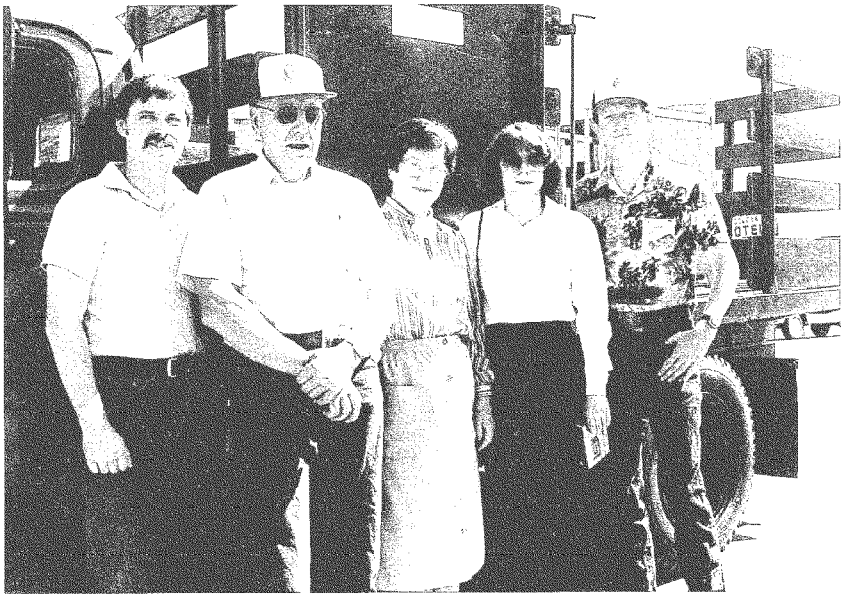
My husband Jack (now deceased) grew up on a farm in Ceres, California. He served in the Army in France and Germany. He was 24 and I was 20 when we homesteaded in Tulelake in 1949.

We loved the lifestyle and it was a good place to raise our children. All of us homesteaders in the Panhandle (Tulelake) stayed together through happy times and sad times. Our 89-acre farm has been in operation for 51 years, employing up to 50 people as we raise organic horseradish.

My husband and I were in on the establishment of Newell Grain and Tulelake Horseradish Growers & Grinders. Over the years four local horseradish growers have built the business up to "all of the horseradish grown this side of the Mississippi River."

Jack died in 1985 after having 3 years of A.L.S. (Lou Gherig's). My son-in-law and daughter and I now farm the homestead. We are here because this is our life. Now without water, we will lose everything because horseradish, once planted, is in for 30 years.

Helen Newkirk



Water cutoff betrays veterans

By PAUL CHRISTY
Guest columnist

America — Why have you abandoned your World War II veteran homesteaders?

We homesteaded in Tulelake, Calif., at the invitation of the United States government, along with World War I homesteaders and pioneer families who have been farming and ranching in the Klamath Basin since the 1800s.

Until now we have all lived together as friends and neighbors — Indians, fishermen, homesteaders and ranchers. If there was a drought, as there have been many times in the past, everyone got a fair share of whatever water was available. No one went without and not one had all they wanted: and everyone and everything survived until water returned — and they were still friends and neighbors.

Nothing like what is taking place now has ever happened here before — and it is inexcusable — that it is happening now. Our homesteaders represent every branch of the service and served in every theater in WWII. Typical were: a young woman who was a machinist mate in the Navy, survivor of the Bataan Death March, a Navy deep sea diver, infantry and artillerymen from every theater, a radar operator on a Black Widow night fighter over Europe, B-24 and other bomber crews from all theaters — two were glider pilots — and on and on for 213 stories.

Back to swamps

It is obvious that the situation we face is that we are the target of an agenda determined to return Tulelake to a primal marsh.

The fact that this would require the destruction of a very special civilization of very special people matters not one whit to the people promoting this end.

The facts are that millions and millions of federal and private dollars and effort have gone into making the Klamath Basin one of God's greatest farming areas. There are hundreds of miles of irrigation canals and drainage ditches finally in place — paid for by the homesteaders.

What has been all those years in planning and development by a generation of experts is now in the process of being destroyed overnight by arrogant government bureaucrats who make decisions while refusing homesteaders and ranchers the right to attend meetings where decisions are made that determine whether they will have water or not — whether they live or die financially and whether they are forced to leave their farms and friends and homes, schools, churches — the entire life they have labored all their working lives to achieve.

The author

PAUL CHRISTY

GUEST COLUMNIST

Paul Christy is a World War II veteran who homesteaded in the Tulelake area after the war and has long been active in civic and business affairs in the area.

Doesn't make sense

The whole thing is preposterous: It is unfair and unnecessary to go to the extreme measures that are being applied here based on a few biased reports by experts of questionable expertise.

The homesteaders and farmers ask only to be treated fairly, the same as the Indians and fishermen. We were promised 2-1/2 acre feet of water: There was never a suggestion that we might be entitled to *nothing*!

Before I applied for a homestead, I visited the Bureau of Reclamation in Klamath Falls and asked if there was ever a water shortage. They only laughed and said, "What you don't understand is that this area is a natural swamp with water draining into it from all sides. The first thing we had to do was pump the water through a tunnel on Sheepy Ridge into the lower Klamath Wildlife Refuge; then from there to the Klamath River. There will never be a water shortage in Klamath/Tulelake basins."

My qualifications to get our homestead were:

Military — Four years active duty in WWII from 10 days after Pearl Harbor, when I started flying school. Eighteen months overseas in Britain, North Africa, Sicily and Italy. I returned home with 271 hours flying fighter combat and accumulated the following awards: Silver Star, Purple Heart, four Air Medals, American Defense Medal for flying.

Air Defense for Los Angeles in August 1942: Intelligence had lost track of the Japanese fleet and thought they were headed for Southern California. Every morning we expected to see Japanese ships off the coast of Los Angeles.

After we got our homestead, I stayed in the Air Reserve for 32 years for a total of 36 years in the Air Force.

After 54 years in Tulelake, we can look back and justify our being here by the following:

Eight years on the original Newell School Board, when we organized the district and built the school.

Eight years on the original Tulelake High School Board, when we organized that district and built most of the new school.

Eight years on the first Tulelake/Butte Valley Fair Board, when we organized the district and started with an alfalfa field and planned the present fairgrounds. Member, Newell Grain Board. Member, Intermountain Research Station Committee. Original member, Tulelake Horseradish Association

Desperate times

I have always sworn never to use any of this information because we are "low profile" people and do not enjoy the limelight. However, these are desperate times for all of us and we are obligated to use any desperate means we have to combat this insane takeover.

The United States government made a solemn promise to all of us and we have lived up to our part of the agreement. What is happening is betrayal of our citizens of historic proportions equal to the Nazis and Communists.

This is exactly the same situation that the colonists faced that brought on the Revolutionary War. Arrogant bureaucrats enacted regulations they were determined to enforce. They were wrong and our arrogant bureaucrats are wrong!

Tom Brokaw, you wrote book about the "Greatest Generation." Tom Brokaw, where are you when we need you?

Francis M. Webb, farmer, and his mother of the Woodla
district. Bee Photo

Okinawa Veteran

A husky red haired Okinawa veteran climbed off his tractor in a field near Knights Landing, Yolo County, and heard his excited mother, Mrs. Frank Webb, break the news with the help of a Bee reporter.

"Well, what do you think of that?" is all Francis Webb could say.

The 22 year old beet farmer was wounded severely by an exploding Japanese mortar shell on Okinawa and discharged because of his wounds. Since his recovery he has been farming with his brother, Jack, 21.

He was born on a farm and while attending the Woodland High School was Yolo County's all star 4-H Club boy one year.

Life on the Lulelake Homestead

My husband Francis M. Webb received his Homestead March 1949 There was a road across the middle which he had to Clean up - quite a mess.
We came up in Sept 1949 to harvest the grain, that he had put in ~~in~~ the Spring.
We had the barrack there, which he fixed to make liveable - Took a while for water & electricity.
He worked hard putting in the crops. Making the ditches and flood irrigating. ~~He~~ fenced for the cattle and later he had sheep.
We raised 3 fine boys, who in later years helped ~~the~~ with the cutting raking and baling hay.

It a crime Not to have water to irrigate the crops. I'm writing this in behalf of my husband passed away Jan 1976
Laurette Webb

Bob & Katherine Lillard

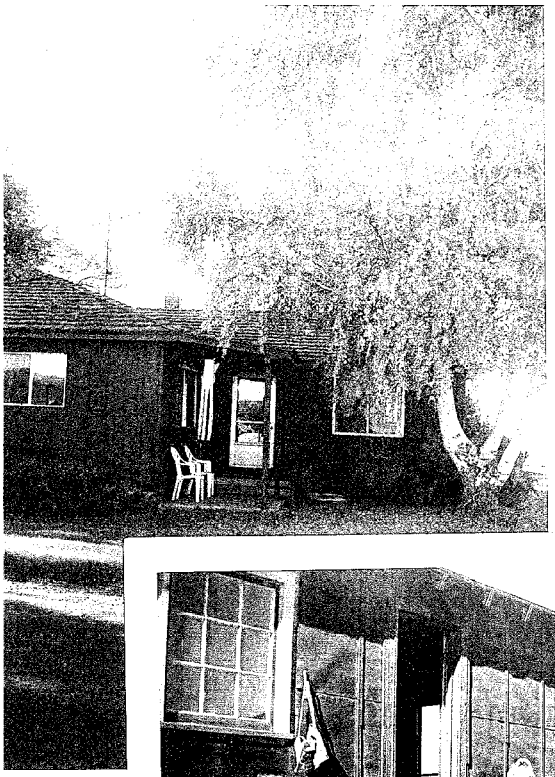
Sgt. US Army 16 Chemical Maint. Co.

He toured all over Europe, landed on Utah Beach, France, NY, Ireland, England, Germany, Belgium. He had been in Europe for 19 months when the war ended.

We came from Baker Oregon and drew our homestead. It was a challenging experience as I had never lived on a farm. We loved it and wouldn't have traded it for anything. We raised our daughter, Jan, on the farm. Bob loved this land so much.

this taking has been devasting as my property can't be farmed

Katherine Lillard
1737 Shasta Ct
Klamath Falls OR.



To the U.S. House Committee on Resources:

June 12, 2001

The day of April 6, 2001, was as infamous to the people in the valley of Tulelake as Dec 7 (Pearl Harbor Day) was to the citizens of the United States. Boldly, and with some arrogance, the Bureau of Reclamation made a flat, unbelievably terse statment: "There will be no irrigation water for the Klamath Basin water users." It has been a devastating ruling. As the days have passed into the month of June, we are still stunned by the ruling which seemed to have "heralded the end of the world" for our community and wonderful farm land.

This land was opened to veterans of the Armed Services for homesteading. My husband, Fred A. Robison, veteran of WWII, won his land in the 1947 homestead drawing (that was a truly exciting day.) Fred's father, Wade T. Robison, veteran of WWI, was awarded his homestead in 1937. Fred and I have lived in Tulelake on our land for 55 years; through the good years and a few not so good years, and always appreciating our good fortune! In addition to raising potatoes, barley, wheat, alfalfa, sugar beets, we raised three children, were blessed with nine grandchildren. The kids all grew up with a love of the land and knowing the purpose of growing food on the land to feed others.

We were provided this wonderful gift of land and water by the Dept of the Interior, Bureau of Reclamation. They were our friends and did much to help us get started. Now these government agencies are our enemies, taking from us what was awarded to us more than 50 years ago, and distroying

the livelihoods of many. It was written in Public Notice No. 43, Klamath Irrigation Project-Oregon. California, Tulelake Division, U.S. Dept of Interior, Bureau of Reclamation, Washington D.C., dated Aug. 1, 1946 – "that water will be available in the irrigation season of 1947, and thereafter." (copy included herein)

This is a good community and it saddens us all to envision what it might become without water. What a waste of good farm land – it could become a dusty, weed covered portion of land turned into a wasteland. I am flying Old Glory at our house – I think she looks a bit tarnished because of all of this turmoil. Where is liberty and justice for all? We have been betrayed by our own government!

Velma and Fred Robison
1947 Tulelake Homestead Winners

S/Sgt. Fred A. Robison
U.S. Air Force
Nov 1942 – Apr. 1946

OUR FRONT COVER

Photo by Ben Glaha, Region 1

FORTUNE SMILED on Fred and Velma Robison. Because we wanted our readers to see that others shared their joy, here is the full picture from which the cover was made. Although Fred had to wait until number 61 was drawn before hearing the good news, you can tell by those big grins that it was well worth it.

Reclamation Era magazine – Feb. 1947

TERA:?L JOHNSON

GERALD L. JOHNSON JOHNSON

Jerry was involvedin farning in Poe Valley Oregon (Klamath Co.) before he went tothe Service. ; The Branch of Service was Chemical Warfare 854 Chenical Co. Air Operations. His Basic training was at Camp Roberts Calif. in the August heat.

Jerry was headed for a grave digging batalion in North Africa when their orders were changed when they were passing through Portland, Ore. Theyn were dropped off at a Camp in Ephata ,Washington. There was very little facilit therebecause they were just building it, they lived in tentsfor 3 months.

Jerry went from there to Merced Calif from there he went to the Reno Air Base before being sh ipped overseas to England, Grafton Underwood Air Force Base. He loaded bombs on B-17's . His outfit was attached to the 8th Air Force. His outfit had the honor of loading the first and the last bombs to go over Germany.

After he was discharged he worked for Stadard Oil delivering gas to the farmers out of Merrill, Oregon on weekends he helped Frances's family on their farm.

In 1947 Jerry won a Homested in Tulelake , Calif.. We have lived here evers since.Along with our fellow verterans we set up housekeeping. We learned to farm together with our neighbors and learned of the mixtue were all nationalities from allover th mid west and west. What a great l life we have had.

We have always been involved in oucommunity, Jerry had a ball team for 16= yeARS. Starting his first team in our pasture at the lower end of our farm Basball took on a new meaning when one of the boys would find a fresh cow pie. It breaks my heart to see what is happening in our Basin. This unneccessary cutoff of the water has caused much ansiety among all of us who are left/ We are retired now, our hearts and lives are much involved in pur community we belong to the Trinity Luthearan Church, Modoc Historical Society Beta Sigma Phi,The LavaBed National History Assoc, and 8th Air Force Histor ical Association.

MY THOUGHTS : WE SETTLED HERE IN GOOD FAITH LIVED UP TO OUR COMMITMENTS AND I beleive that a promise by 'our government should be kept.

A PROMISE TO A VETERAN CAN BE BROKEN WHAT IS THERE FOR US TO BELEAVE IN?

217

During the years 1941-1945 the United States being in a state of war. John Rao Masterson served with the submarine forces of the United States Navy.

After the war in 1948 thru the invitations of the United States Government we got a homestead (30 acres) here in Tulelake, Ca. We have lived and farmed here (Tulelake) for over 50 years and always had enough water for the crops even during drought years.

Under the Klamath Project we were "promised" an opportunity to develop this land with ~~never-failing water~~. An opportunity to make a good living and a place to raise a family with money left to send my children to college.

When we won the Homestead we left family and friends, a new home to come to a place that had nothing. Not even running water or electricity. Many of us were reluctant when we saw what we were up against. No roads and mostly dust.

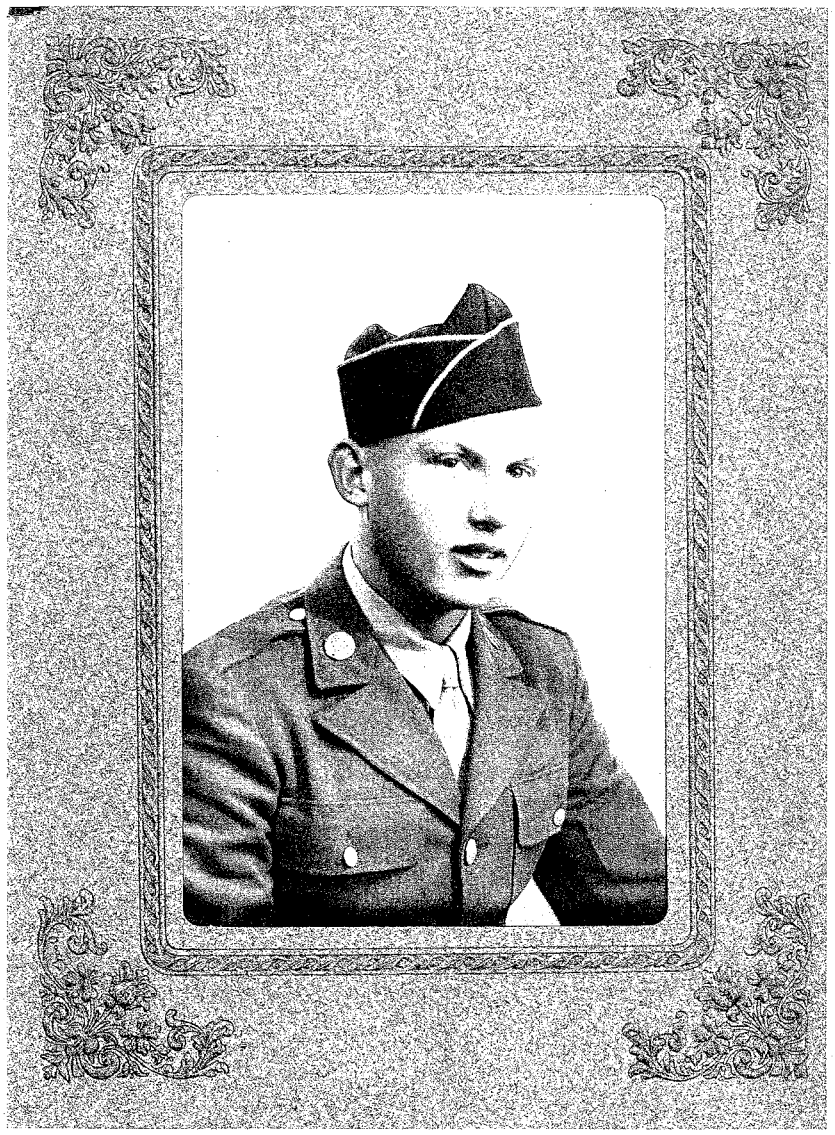
For the next several years of very hard work and long, long hours, we managed to improve our lives and build our property into what is now a beautiful Homestead. Our land has produced wheat, alfalfa, potatoes, sugar beets, onions and clover for over 50 years. We have built a beautiful home with lots of trees. My Children have grown up here and now have moved on. John (my husband) has passed away and I have stayed on the Homestead and have leased the land out, to still be farmed. If John were alive he wouldn't believe after 50 years, what the government once promised and he worked so very hard to obtain

MORE →

what was asked of him and made a good life for his family. He would feel so betrayed and angry, that this could ever happen to a community that once started with nothing!

What we need is the water they took away from us for the livelihood of around 1500 families here in this basin.

Sincerely
Ruth E. Masterson
and family



Marion Palmer

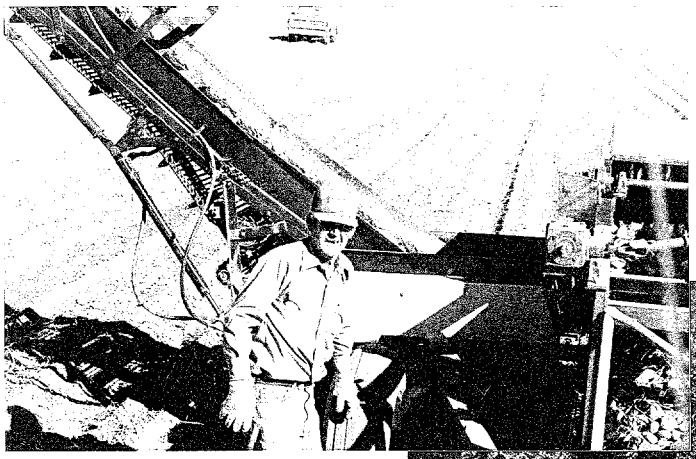
U.S. Army

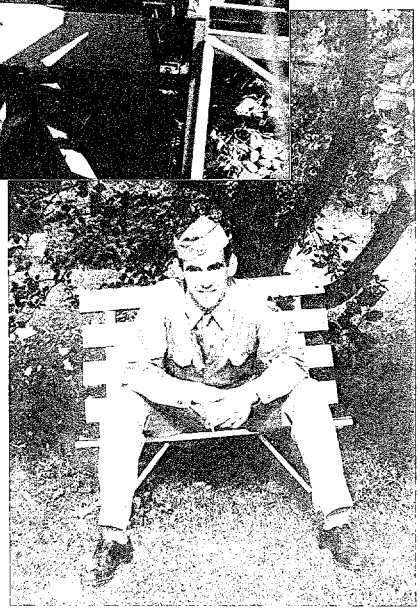
Europe

Homesteaded in 1949

Had no Roads, phones - Elect.
plenty of water to grow Ample
Crops to support families -
Best Neighbors in the World
Now mostly gone.

H^2O Shortage has caused severe
problems for us. Age + bad Knees
causes us to have to try +
rent our ground. With No H^2O,
No one will rent the farms. It
means No Income plus All
the fixed expenses that we
have No control over. -
Taxes, INS., Operation + Maintaince
of A dry Irrigation Dist. Etc.
Suggest Govt. pay for H^2O loss
FOR Crops to Farmers, Due to
Endangered Species Act.





June 13, 2001

Glen was born in Lebanon, MO in 1921. He was a cook, then in Infantry in WW II and he went to France. I was born in Russel Springs Kentucky on a farm in 1923. After the service Glen farmed in ~~Kentucky~~ Missouri until drawing a homestead in 1947.

In Tulelake we farmed and raised our 3 kids. Loosing our water is like taking a baby's milk away. It is terible. With Glen gone, no water, and my son is trying to farm the land with no water.

It is just hard to believe that we stayed with our homestead all this time, then they take away our water. If you went to the faucet and there was no water, what would you do?? This has been our livelihood here. I'm old now.

We'd sure hate to move - I love this place -- It's a good place to live. The Lord has blessed us with 5 generations. Ilene Darrow.

Leonard I. Will
1949 Veteran Homesteader #78 Unit J Area A.

After serving 3yrs in the Navy - (Chief MoMM.) returned home. Married a Merrill girl. (Iva Jane Haskins.) in June 1946. We farmed with my folks two years on a Commercial Orchard, on Grand Island near Dayton, Oregon. In the spring of '48 her Father got us to farm with him on 3 small WWI homesteads.

In the spring of '49 we applied & were drawn for a homestead in area A. in the Tulelake Reclamation Project. We had to level the homestead unit by moving 38,000 cubic yards of soil so we could flood Irrigate. We raised Cattle - Sheep - Hay - Grain & Pasture for 38 years, then turned it over to our Son Wade. Did we do him & his family a favor?

This Reclomation Project was developed to Reclaim & to irrigate this dry lake bed - Salt grass - Sage brush of very little Value desert land, to make it productive. So they gave we returning Veterans an opportunity to work to support & raise a family & Contribute to our Community - city (Tulelake) - (Merrill) (Malin) - Schools & supporter of our County. Served 20yrs Fair Board - 20yr Weed & Pest abatment - Tulelake Grower - Chaired Basin Wool Pool 20yr. - 18yr. Tulelake Rotar.

Now we learn that fish are more important than We who served our country in war, our Country which we loved.

To have them now do this to us (Take our promised Water) is very difficult to understand. We who have subsidised our country for years with cheap food. Is this the appreciation we get for our years of hard labor to make our Basin Productive?