

# Dissecting the Klamath

*A "sweetheart deal" for agribusiness gives salmon the back seat*

**STEVE PEDERY**

**S**TRETCHING FROM the high desert in southern Oregon to the redwood forests of northern California, the Klamath Basin covers 10 million acres of majestic landscape. The basin once contained more than 350,000 acres of marshes, wet meadows and shallow lakes, major runs of salmon and steelhead, and enormous numbers of migratory birds.

Unfortunately, the development of the Bureau of Reclamation's sprawling Klamath Irrigation Project and a series of fish-killing dams on the Klamath River have led to the loss of many of these natural wonders. Today, the basin lurches from crisis

to crisis, with dry years inevitably sparking political water battles and fish kills. Over the last few years, dam removal has become a serious option for river restoration, but agribusiness groups and their allies are trying to link it to further sacrifices on water and wildlife.

## Good News

THE FOUR LOWER dams on the Klamath River, owned by the giant utility company PacifiCorp, block salmon and steelhead from reaching more than 300 miles of historic spawning habitat. The 50-year license to operate these dams expired in 2006, sparking a major debate over their future.

Conservationists and other salmon advocates want the dams removed, while PacifiCorp fought to keep them. In an effort to resolve the conflict, settlement talks were launched in 2005. These talks included dozens of interests, including conservation groups (including Oregon Wild), Native American tribes, state and federal agencies, and agribusiness interests. The ground rules for the discussions were that they would be neutrally facilitated and consensus-based.

In 2006, just after the mid-term elections, the tenor and tone of the talks changed dramatically. Instead of being one of many participants in the talks, the Bush administration and U.S. Department of the Interior employees became the leaders. Instead of focusing on dams, the talks became a forum for allocating water to irrigators and managing endangered species, including threatened coho salmon.

The underlying principle became "if you want federal government support for removing dams, you must support the Bush administration's priorities on agriculture, water, and development on public lands."

Groups who were not willing to make that trade, including Oregon Wild, were kicked out of the process. In January 2008, after three years of negotiation, the Bush administration publicly released draft 11 of the Klamath Basin Restoration Agreement (KBRA), a document that seeks to permanently link dam removal to Bush administration management priorities in the Klamath Basin.

To its credit, the settlement would dramatically increase spending on salmon restoration in the Klamath Basin through a variety of worthwhile programs. Over a 10-year period, the plan calls for devoting \$322 million dollars to fisheries restoration, and \$117 million in scientific research and monitoring. The agreement also calls for \$45 million for reducing irrigation demand above Upper Klamath Lake by 30,000 acre-feet over 10 years, which is a much-needed first step in bringing water use in the basin back into balance with what the basin's rivers, streams, and wetlands can sustain.

## Harmful Provisions

UNFORTUNATELY, THE FLAWS of the settlement heavily outweigh its benefits. From limits on wetland habitat recovery, to a massive diversion of federal

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The Tule Lake National Wildlife Refuge (above) is part of the Klamath Basin National Wildlife Refuge Complex. It is also heavily used by agricultural interests which grow crops on the former lake bed and use basin water for irrigation.

STEVE PEDERY PHOTO

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tax dollars to already heavily subsidized irrigators, environmental restoration takes a back seat to political expediency in this 50-year agreement.

**Water guarantees.** If implemented, the Klamath settlement would provide guaranteed allocations of water to irrigators who farm within the Klamath Irrigation Project (project irrigators) *without* providing similar water guarantees to ensure the survival of fish in the Klamath River.

In wet years, the settlement would guarantee project irrigators more water than they have historically received. In dry years, project irrigators would be guaranteed more water than they have received since Klamath River coho salmon were protected under the Endangered Species Act (ESA). In fact, the settlement contemplates river levels well below the flows that resulted in the tragic 2002 Klamath River fish kill, where more than 60,000 salmon died due to low river flows.

Simply put, the settlement provides that project irrigators in the basin get their guaranteed allocations of water while the river and fish get what's left over. Independent scientific analyses of the water provisions in the agreement have determined that the settlement will not lead to recovery of Klamath River salmon.

Fisheries biologist Bill Trush, who conducted an independent analysis of the settlement, concluded, "The most striking aspect of the Settlement Agreement is that the burden of proof and the accompanying risks rest almost entirely on the salmon . . ." (*Testimony of Bill Trush before the Humboldt County, California, Board of Supervisors, January 22, 2008*).

A failure to identify and protect flows needed for listed salmon violates the federal Endangered Species Act. By law, the Klamath Irrigation Project is required to use the best available science to minimize the harm caused to listed species. The settlement violates this responsibility by requiring the Bureau of Reclamation to provide the guaranteed water for project irrigators regardless of the needs of ESA-listed salmon.

**Commercial agriculture.** One of the most tragic flaws in the settlement includes language committing each signatory party, including the U.S. Fish & Wildlife Service (USFWS), to support the continued leasing of 22,000 acres of publicly-owned land on Lower Klamath Lake and Tule Lake

national wildlife refuges for commercial agricultural development for the next 50 years. These refuges are the most important in the Western United States, and restored wetlands on them could serve as natural filters to clean polluted water before it reaches the Klamath River.

At the close of the Clinton administration, the USFWS sought to move the commercial farming lease program off of refuge lands and onto private lands. In 1999, the Clinton administration also initiated a "compatibility determination" process aimed at reducing or eliminating the lease-land farming program.

*"Water is a public resource, and providing public money to a private interest group to manage it with no public oversight is irregular, ill advised, and inconsistent with current laws."*

In 2001, the Bush administration halted these processes. Now the settlement would mandate that future administrations and USFWS biologists continue the lease-land farming program. The settlement language could also be used in court by agribusiness interests to block any future science-based management policies on the wildlife refuges.

Finally, the settlement diverts some of the money raised through the USFWS lease program, and sends it to two irrigation districts whose patrons commercially farm the refuges, and to the Bureau of Reclamation to pay for the capital costs of running the irrigation project.

**Water for wildlife.** A number of provisions in the settlement penalize USFWS refuge managers for restoring wetlands in the upper Klamath Basin. One provision reduces the Lower Klamath National Wildlife

Refuge's water allocation from the Klamath River if the refuge ever obtains other water sources. This limits the refuge's ability to ever do better than the allocation given in the settlement, and therefore limits restoration of valuable water storage and cleansing wetland habitat.

Similarly, the settlement also stipulates that the water allocation for wildlife and wetlands in Tule Lake and Lower Klamath Lake national wildlife refuges will be reduced in dry years, but there are no similar requirements to reduce water deliveries to irrigators enrolled in the lease-land farming program on adjacent lands. Under the settlement, refuge wetlands would go dry during droughts while water use on adjacent commercial agricultural operations on national wildlife refuge lands would not be restricted.

As a final insult, the settlement plans to penalize the USFWS for expanding its "walking wetlands" program. This program, which was celebrated by the Bush administration and some irrigators, creates temporary wetlands as a means of reducing the harm caused by the lease-land farming program. Under the program, some publicly owned lands within Tule Lake National Wildlife Refuge are fallowed for several years and allowed to return to wetlands, then drained and returned to commercial agriculture. While the walking wetlands program is a half measure at best, the draft settlement agreement would penalize refuge managers for expanding it (both on lands within the refuge and on private lands outside) by decreasing the water allocation to Lower Klamath Lake National Wildlife Refuge by one acre foot for each acre of new walking wetlands created.

**Sweetheart deals.** In addition to water guarantees, the settlement also provides project irrigators with \$40 million over six years, by providing below-market electricity rates to cover the costs of operating irrigation pumps, and to develop private electricity production for agricultural interests. Below-market power rates have been shown to encourage wasteful water use and have made it economically viable to drain refuge wetlands for commercial agriculture. The settlement also allows for costs for operation, maintenance, and power of the Klamath Project to be reduced at taxpayer expense.

**Water quality.** Given the significant water quality challenges faced by

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basin residents, tribes, and fish and wildlife due to toxic algae blooms and fish-killing parasites in the Klamath River, it is troubling to find that there are no provisions in the settlement to address the serious water quality problems in the Keno Reservoir where fish kills occur on a regular basis. Likewise, with climate change concerns in the Pacific Northwest, it is equally troubling that this 50-year agreement does not include any significant provisions, amendments, or plans for climate change impacts in the Klamath Basin.

**Reducing oversight.** The settlement would provide project irrigators with \$94 million in federal tax dollars to develop and carry out their own water management plan for the Bureau of Reclamation's Klamath Irrigation Project without appropriate National Environmental Policy Act (NEPA) review and public oversight. Water is a public resource, and providing public money to a private interest group to manage it with no public oversight is irregular, ill advised, and inconsistent with current laws.

In this case, there is a serious risk that this investment would be used to develop unsustainable groundwater pumping facilities. Because surface water and groundwater are essentially one resource in the Klamath, switching surface water diversions to groundwater pumping is a dangerous option.

**Dam removal.** In the fall of 2008, select settlement parties met behind closed doors to produce the long-promised dam removal component of the draft Klamath Basin Restoration Agreement. In November 2008, the states of Oregon and California, former Secretary of the Interior Dirk Kempthorne, and Klamath dams owner PacifiCorp released the AIP, or draft dam removal agreement.

Other interests such as Trout Unlimited, American Rivers, and Yurok and Karuk tribes support it because they say it advances the cause of dam removal. Oregon Wild, The Hoopa Valley Tribe, and the Northcoast Environmental Center (the lower Klamath Basin's local environmental group) oppose it because it allows PacifiCorp to maintain the status quo through 2020.

In fact, it has been described by the Federal Energy Regulatory Committee (FERC) as: ". . . an Agreement in Principle . . . for the continued operation and potential future removal of the Klamath Project's four main stem dams."

In reality, the plan is largely about



*Lower Klamath Lake and Tule Lake—national wildlife refuges owned by the American people—were once vast wetlands that filtered water for downriver steelhead and salmon. For more maps and information on the Klamath Basin see [oregonwild.org](http://oregonwild.org).*

continuing business as usual on the Klamath River for at least another decade. No significant changes will be made to dam operations to address the horrendous water quality problems facing the Klamath River. Dam removal could only occur if a large number of preconditions are met, not least of which are the federal government providing \$1 billion to fund the larger draft KBRA settlement and the State of California providing \$250 million in public funding to help ensure PacifiCorp shareholders do not pay for dam removal. Even then, removal of all four dams is not guaranteed, and the earliest any of the dams could come out is 2020.

## A Balanced Plan

IN FEBRUARY 2009, the Obama administration announced that it was delaying further Klamath meetings in order to more thoroughly evaluate the settlement made under the Bush administration. Unfortunately, this has not stopped PacifiCorp and agribusiness interests from forging ahead in drafting legislation that would make the KBRA the law of the land. Now, more than ever, the Klamath Basin is in desperate need of responsible leaders who will step in and restore a focus on science-based, economically reasonable steps to remove dams and recover salmon and wildlife, without tying them to anti-environmental initiatives.

Given President Obama's speeches

regarding the use of good science and restoring the integrity of the Department of the Interior, the approach taken under the settlement cannot be justified today. A truly balanced plan for restoration of Klamath River salmon runs must start by bringing the demand for irrigation water back into balance with what nature can safely supply.

The Klamath needs a voluntary demand-reduction program that works with farmers to buy back water rights for irrigation and retire them, so that salmon and wildlife can receive the water they need to survive. We must also phase out the practice of leasing land on Tule Lake and Lower Klamath Lake national wildlife refuges for private commercial agricultural operations, both to reduce the demand for water and restore water-cleansing wetlands.

Finally, we need a real plan, not a sweetheart deal, for the removal of the lower four Klamath River dams. It is certainly time for new direction in the Klamath.

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