

## **Can Kempthorne Prevent Another Klamath?**

By Dan Keppen

Newly confirmed Secretary of the Interior Dirk Kempthorne has already been criticized by some environmental groups and urban papers for his unabashed commitment to modify the Endangered Species Act (ESA) through legislative and/or administrative means. Kempthorne played a key role as a senator in the mid-1990s to pass compromise ESA legislation out of committee before running into opposition from both sides. He believes part of his mission is to rekindle the atmosphere of bipartisan conversation on the topic of ESA.

Kempthorne's re-emergence on this issue coincides with the five-year anniversary of what is perhaps the scariest and saddest ESA horror story of them all.

In the summer of 2001, 15,000 people crowded the streets of Klamath Falls, Oregon, to support the Klamath Basin farmers and community members suffering from a federal government decision to withhold irrigation water to farmers.

It was the first time in 95 years that the water stored in Upper Klamath Lake was declared "off-limits" to farmers. Instead, the water was reallocated to meet the alleged needs of three fish species protected by the ESA.

"Fifty nine years ago, we were welcomed home as heroes and asked to feed a hungry world," Marion Palmer, a World War II veteran and Klamath Project farmer, told the crowd in Klamath Falls. "Today, we may be reduced to welfare recipients standing in line for rice and cheese."

That year was a dry one, but definitely not the driest. In the long history of the Klamath Project up to 2001, the water supply has ordinarily been sufficient to meet uses. There have been only a few years when water shortage occurred late in the irrigation season when forecasted supplies did not fully materialize.

The difference in 2001 was the manner in which the ESA was implemented by two different federal agencies. That year, two federal fishery agencies developed independent biological opinions that simply worked against each other, to the ultimate detriment of the Klamath farmers. The U.S. Fish and Wildlife Service established minimum reservoir levels in Upper Klamath Lake to "protect" the endangered sucker fish. At the same time, the National Marine Fisheries Service set unrealistically high downstream flow demands to avoid "jeopardizing" the threatened coho.

The farms and refuges were supposed to get the water that was left over. Unfortunately, given the dry conditions and the combined draconian demands imposed by the fish agencies, the farmers were left with nothing but dust.

I directly witnessed the stress and anxiety that rural families faced in 2001 and the troubling years since, the drain on their finances, and the toll on their health. These farmers – my neighbors and

my friends – were impacted in almost unimaginable ways when their water supplies were curtailed.

In a bittersweet victory for the Klamath irrigators, the process that led to the 2001 action has since led the National Research Council (NRC) to twice conclude that the decisions made by federal agencies that year were not scientifically justified.

Requiring agency biologists to have their decisions peer-reviewed is one way of improving the ESA. This would help clarify when such things as “personal observations” or mere folklore are considered by the agencies to be reliable enough to make decisions with potentially profound effects.

Secretary Kempthorne in no Pollyanna. The path to ESA modernization will not be easy: if it were, something would have been done a long time ago. However, it should be obvious to everyone that if the administration of the ESA has reached such a point that oversight is perceived as critical, the act is clearly not working. It needs to be fixed.

The Klamath peer review underscores the point. That peer review process not only forced a reconsideration of otherwise-unchecked disastrous decisions, it pointed to a better approach for species recovery.

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