

What Klamath Can Teach California about Fish, Good Science and the Endangered Species Act

By Dan Keppen

U.S. Sen. Dianne Feinstein is seeking a high-level scientific review of recent federal restrictions on water deliveries that are a primary cause for the economic devastation in the San Joaquin Valley and the water cutbacks and rationing afflicting hundreds of communities throughout the state.

And she is already getting hammered for daring to suggest such an idea.

The U.S. Department of the Interior agrees that these federal regulatory restrictions have added nearly a third to the water losses caused by natural drought so far this year. But that's only the beginning. Even more severe restrictions are about to take effect. And they will all persist long after the drought is over.

The people who fear the intervention of unbiased scientists into this contentious arena are pointing to a similar report on federal fishery agency water decisions on the Klamath River that was issued by the National Academy of Sciences (NAS) in 2002. I was part of the events in Klamath and there is a lot that California can learn from what happened there.

NAS stepped in after Klamath Irrigation Project supplies from Upper Klamath Lake were cut off by federal biologists. NAS' objective review concluded that there was insufficient evidence to support the biologists' actions, which had led to the near-collapse of our local agricultural community.

In Klamath, the federal regulators looked at only one of the stressors contributing to the fisheries' decline and they focused on only one solution – cutting off water supplies. Likewise, in California today, the same federal agencies have refused to assess the impacts of the many stressors affecting the health of the Delta. And for fifteen years, they have been cutting off water deliveries, even though those fifteen years have conclusively demonstrated that the restrictions have done nothing to prevent the fisheries' decline.

As in California, the effects of the Klamath restrictions were immediate and far-reaching – not just losses to the economy but also the wildlife benefits that were lost with the water. And yet, the federal regulators failed to perform any environmental impact analysis before they ordered the cutbacks in California.

Environmentalists vigorously protested the independent scientific review in Klamath and, sadly, the same thing seems to be happening now. They're reviving an old claim that Dick Cheney was somehow involved in the Klamath case even though an exhaustive review that Congress conducted in 2007 failed to find any support for this allegation.

Concerns about the competence of the federal regulations are not limited to a few narrow interests. Public water agencies serving more than two-thirds of California's residents have filed more than a dozen lawsuits challenging the regulations. The state has

repeatedly asked the feds to reconsider because there is new and better science available. The federal court has already indicated that the regulations adopted for the delta smelt do not meet the requirements of the National Environmental Policy Act. And the rules imposed on behalf of the salmon appear to share the same defects.

The Family Farm Alliance, for the first time in our history, has joined one of those lawsuits. Instead of conducting the independent peer review that the law requires, our suit points out that the federal biologists brought in the same authors of the papers on which the regulations were based. In effect, they were being asked to review the adequacy of their own work. This kind of behavior does not meet the standards set by the Endangered Species Act or the Information Quality Act.

Although the law requires these agencies to use the best available scientific and commercial data, they instead based their rules on an analysis which had not been published and, supposedly, on data which the biologists refused even to disclose. Moreover, it turns out the agency did not actually possess some of the data that it claimed it used to order the cutbacks.

There may be some good news for California in Klamath's example. In retrospect, NAS' intervention not only forced a reconsideration of the regulators' decisions, it also pointed to a better approach for species recovery. The final NAS Klamath report espouses a holistic watershed philosophy that is now embedded in a pending settlement agreement that could lead to improved conditions for the wildlife, tribes, farmers and fishermen that depend on the Klamath River.

The Klamath story and the current struggle in California are one in the same. The intervention by the NAS was beneficial in Klamath – it is needed and will be equally beneficial in California.

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