

KLAMATH FLOWS LITIGATION BACKGROUNDER

PCFFA v. BOR/NMFS, No. 02-2006 SBA (N.D. Cal.)

During fall of 2002, tens of thousands of fat, healthy chinook salmon, coho salmon, and steelhead trout entered the Klamath River, charging upstream to spawn. Before they reached mile 40 of their journey, over 33,000 were dead, wiped out by the river's unnaturally hostile conditions. The salmon—and the communities dependent upon them—were victims of the federal government's lopsided water management policy in the Klamath. Earlier that year, federal officials in charge of the Klamath Irrigation Project, a massive irrigation development in the Klamath's Upper Basin, ignored warnings from their own and outside scientists and provided more water to irrigation ditches than to the drought-parched river. The result was an unprecedented ecological and economic disaster: the largest adult fish kill in recorded Western U.S. history.

2002 was also the first year under the federal government's new 10-year water plan for the Klamath Project. A coalition of commercial fishing and environmental groups, joined by Congressman Mike Thompson, the Yurok Tribe and the Hoopa Valley Tribe, sued the U.S. Bureau of Reclamation and the National Marine Fisheries Service over the legal and biological adequacy of the federal government's 10-year water plan for the Klamath Irrigation Project. The lawsuit raises three major claims.

- While NMFS found that BOR's proposed action would "jeopardize" (i.e., would lead to the extinction of) coho salmon, NMFS only required BOR to meet 57% of the flows necessary to prevent that jeopardy. This internal inconsistency violates the ESA; because BOR's action causes jeopardy, BOR must take all steps necessary to prevent jeopardy.
- For the "missing 43%" of the flows NMFS itself identified as necessary to prevent jeopardy to coho, NMFS relies on uncertain state and private actions to make up the difference, even though the State of California has already told BOR and NMFS that it cannot provide the missing flows.
- Because of these and other failings, BOR cannot legally rely on the NMFS biological opinion to fulfill its ESA duties.

The Yurok and Hoopa Valley Tribes bring their own claims under treaty rights and Indian trust law -- asserting that BOR's failure to provide sufficient flows caused the salmon deaths in fall 2002 in violation of the Tribes' fishing and treaty rights.

The Klamath was once the third mightiest salmon-producing river in the continental US, behind only the Columbia and Sacramento in productivity. The River has since been reduced to a shadow of its former self, largely as a result of the Bureau of Reclamations' re-plumbing of its headwaters to maximize irrigation in the arid upper basin desert. The long-term answer will likely include bringing excessive water demand back into alignment with actual supply, including buying back some of the agricultural land in the Klamath Basin to reduce demand.