



CASCADE POLICY INSTITUTE

CASCADE COMMENTARY

May 2004

No. 2004-14

Summary

The Klamath Basin conflict between endangered fish and farmers stems from a failure to establish who actually owns the water. The establishment and clarification of ownership rights may help resolve matters. The Property and Environment Research Center hosts a June 8 conference in Klamath Falls to address these issues.

Word count: 713

“The solution lies within the local region, not the federal government.”

Solutions for the Klamath Basin

by Jane S. Shaw

We used to hear the expression “Let George do it” to describe the very human tendency to leave the solution of a problem to someone else. Today, we tend to let the federal government be “George.”

Specifically, some people think that the federal government should fix the conflicts over who owns the water in the Klamath River Basin. Blaine Harden, a *Washington Post* writer, recently pointed out that “local pressure is mounting on federal regulators to somehow find enough water to maintain a system that everyone now agrees has too many users.”

But decades of government intervention have shown that the federal government isn’t up to the task. Indeed, political decision making in the Klamath Basin has been inconsistent. In 2001, the U.S. Interior Department created a firestorm by cutting off water to the Klamath Basin farmers. After severe protests, the Interior Department restored the water, but was unable to come up with assurances of water for the future.

The solution lies within the local region, not the federal government. A few ideas to help Oregonians think constructively about solutions have come from the Property and Environment Research Center (PERC). This nonprofit institute in Bozeman, Montana, seeks to improve environmental quality through property rights and markets. In a 2003 paper, two PERC associates, Roger E. Meiners and Lea-Rachel Kosnik, pointed out that the problem in the Klamath Basin is not simply a conflict between endangered fish and farmers, as the national media tend to portray the problem. Rather, it stems from a long-standing failure to establish and clarify legitimate rights to the Klamath Basin water.

Competing water claims create a grab bag of potential rights and stir up conflict. The conflicting claims stem from the following:

- Oregon (like most other western states) has not formally adjudicated—that is, officially clarified—all claims to water under the prior appropriation doctrine. There are tens of thousands of claims, and the process, which started in 1976, is moving at a slow pace.

-more-

- In 1905, the federal government claimed all available water in the Klamath River and Lost River for the Klamath project. But it wasn't clear at the time how much water was available in 1905—nor is it today.
- American Indians in the Klamath Basin have strong fishing rights through the Winters legal doctrine and other U.S. Supreme Court precedents. But implementation of these claims is difficult because the tribal water rights have not been quantified.
- The federal government claims water for two wildlife refuges in the region. However, the dates of the claims are junior to those of the Bureau of Reclamation project and the Endangered Species Act. The latter gives powerful rights to species protection, which is what actually initiated the 2001 crisis over water: A court had decided that the Bureau of Reclamation had failed to follow appropriate procedures under the Endangered Species Act.

So, clarifying the claims in the Klamath is essential. Once these rights are clear, another process can begin: trading. When people have secure rights, they can usually work out cooperative trade with others. After all, our society is based on exchange.

Trade helped settle a conflict in the Walla Walla Basin near the boarder of Oregon and Washington. There, the Confederated Tribes of the Umatilla had rights to fish in the area. Irrigating farmers were using the water, too. There was enough water until the 1990s, when the federal government said that more water had to stay in streams to protect endangered species. That threat could have meant a cutoff of water to irrigators.

The tribes and the farmers worked out an exchange of water. Now, to protect salmon migrations, at certain times the farmers leave water in the Umatilla, diverting water from the Columbia River instead. This satisfies the federal government and allows the Confederated Tribes to continue to fish in the Umatilla.

Can such trades, or even a water bank that could oversee many trades, work in the Klamath Basin? Maybe so. To discuss these and other ideas, PERC is bringing together state and local experts for a June 8 conference in Klamath Falls. Sitting down with one another, those who have an interest in the future of the Klamath Basin can explore solutions. Markets are likely to be among the solutions.

Jane S. Shaw is an adjunct scholar to Cascade Policy Institute, a Portland, Oregon think tank, and a senior associate at the Property and Environment Research Center in Bozeman, Montana.

“When people have secure rights, they can usually work out cooperative trade with others. After all, our society is based on exchange.”

Attention editors and producers

Cascade Commentaries are provided for reprint in newspapers and other publications, with credit given to author(s) and Cascade. Contact Cascade to arrange print or broadcast interviews on this commentary topic. Electronic text files are available online at www.cascadepolicy.org/cctext/.

Please contact:

Nicole Williams
 Director of Publications
 Cascade Policy Institute
 813 SW Alder Street, Suite 450
 Portland, Oregon 97205

Phone: (503) 242-0900
 Fax: (503) 242-3822

www.cascadepolicy.org
nicole@cascadepolicy.org