

KLAMATH RIVER NEWS

a publication of

KLAMATH RIVERKEEPER.

Summer 2013

Klamath crisis or Klamath truce?

What the Klamath Tribes' "new" water rights mean for dam removal, the KBRA, and the future of Klamath agriculture

INSIDE

Klamath Justice Coalition rallies in Portland

Suction dredge gold mining update

Scott & Shasta top state de-watered rivers list

Former KRK Executive Director Erica Terence paddles the Klamath with new KRK ED Konrad Fisher.
Photo by Klamath Riverkeeper.



NEW LEADERSHIP, SAME VISION AT KRK

I JOINED THE STAFF OF KLAMATH RIVERKEEPER in 2011 and was honored to become the Executive Director in December 2012. After 15 years conducting public-interest advocacy, my work at Klamath Riverkeeper has been the most inspiring and personal.

While living on the Klamath River in 2001, I witnessed the birth of a truly historic movement for environmental, social, and economic justice. That year, an estimated 60,000 salmon died after the federal government ignored their own scientists' warnings about inadequate flows in the Klamath. Sadness and anger among tribes, conservationists, and fishing communities turned quickly into a coordinated campaign to un-dam and restore the river.

“I am hopeful that I will catch a huge salmon where my great grandparents' lived on the banks of the Wood River – a Klamath River tributary that has not seen salmon since the first dam was built in 1918.”

Just 12 years later – a very short time in advocacy-years – Klamath River advocates today have a very real possibility of implementing the largest dam removal and salmon restoration project in history. We also are progressively reversing the systemic problems that lead to de-watering of rivers and streams, have established strong Clean Water Act standards for the Klamath River, and have stopped the most destructive form of gold mining on California's rivers.

I feel fortunate to direct an organization that is comprised of, and supports the Klamath Basin stakeholders who are making history. While there are thousands of people who are

willing to take action on behalf of the Klamath, most people don't have time to keep up on the never-ending bureaucratic processes that impact the river. Klamath Riverkeeper engages in these processes to ensure that decision-makers hear the voices of people who depend on the river for their food, livelihood, health, recreation, and cultural survival.

Although the problems we face are significant, the passion and dedication of Klamath River advocates gives me hope. I am hopeful that in my lifetime, tribal members will have enough salmon to feed their families and will practice ancient cultural traditions without exposing themselves to toxic algae. I am hopeful that healthy fisheries and cleaner water will revive the recreation and tourism economy on the Klamath River. I am hopeful that in the near future, I won't have to schedule rafting trips and family visits around the late summer months when the river typically turns anti-freeze green. Finally, I am hopeful that I will catch a huge salmon where my great grandparents' lived on the banks of the Wood River – a Klamath River tributary that has not seen salmon since the first dam was built in 1918.

I offer my deepest gratitude to everyone who has contributed to the effort to restore the Klamath River. If you would like to join this effort, please have a look at our website and sign up for our e-mail list so you can stay informed and take simple actions to influence decision-makers. Also, please consider joining Klamath Riverkeeper using the remit envelope in this newsletter or by visiting KlamathRiver.org/join.

For the river and its people,
Konrad Fisher,
Executive Director

Keepin' up with Klamath Riverkeeper...



KRK ON THE ROAD

In December, KRK testified at a public meeting in Weaverville with the **Secretary of the Department of Agriculture** and asked that he enforce the instream water right on the Shasta River held by the **U.S. Forest Service** (part of the Department of Agriculture). In January we had productive meetings with two of the 5 members of the **California State Water Resources Control Board** in San Francisco. We advocated for stronger action to prevent de-watering of streams and rivers and discussed details of Clean Water Act enforcement on the Klamath. In February we joined fellow **Waterkeeper Alliance** members for a two-day strategy meeting in the Bay Area.

In March, we returned to the **Public Interest Environmental Law Conference** in Eugene, Oregon to staff our booth and find more allies. This is arguably the largest environmental gathering in the nation. In April, we returned to the **Whole Earth and Watershed Festival** in Redding, CA to meet and educate fellow conservation-minded people and recruit them to lend a hand to the Klamath. In May we participated in and had a booth at the **California 100** - a paddle from Redding to Chico organized by our allies at **Rivers For Change**. Also in May, we helped organize a rally in Portland to urge Senator Ron Wyden to help un-dam and restore the Klamath. In June we hosted a booth at the **Yurok Tribe's Spring Fling**.



Univ. of Colorado law students toured the basin with Klamath Riverkeeper.

LAW STUDENTS TOUR THE BASIN

This March, KRK hosted a group of 17 law students and their professor, **Charles Wilkinson**, a renowned scholar of Indian Law, for an educational tour of the Lower Klamath River. In just two days, the students received presentations from a Karuk Tribal Elder and staff of the **Karuk Tribe Department of Natural Resources, Mid Klamath Watershed Council, Salmon River Restoration Council, and US Forest Service**.

The meetings covered a suite of on-the-ground research and restoration that occurs in the lower-Klamath Basin including fisheries, fire-ecology, water quality monitoring, road decommissioning, and invasive weed management. KRK's presentations addressed advocacy campaigns to un-dam the Klamath and uphold laws against de-watering rivers. The tour was part of an Advanced Natural Resources Law Seminar at the **University of Colorado** that focuses on a different watershed every year.

MEET KRK THIS SUMMER!

June 29: **Rockin' the Klamath** in Happy Camp, CA <http://www.happycampchamber.org/rockin-the-klamath.php>

July 27: **Klamath River Paddle & Party** in Orleans, CA <http://www.klamathriver.org/paddleparty/>

August 17: Yurok Tribe's **Salmon Festival** in Klamath, CA <http://www.yuroktribe.org/salmonfestival.htm>



KRK's Executive Director traveled to Eugene, OR for the Public Interest Environmental Law Conference this spring.

THANK YOU!



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Klamath supporters rallying outside Senator Wyden's office May 30th, 2013. Photo by Klamath Riverkeeper.

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MISSION
Klamath Riverkeeper restores water quality and fisheries throughout the Klamath River and its tributaries, bringing vitality and abundance back to the river and its people.

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The Klamath River News is printed on 100% PCR paper.



Klamath Riverkeeper is a local organization affiliated with the international Waterkeeper Alliance. A grassroots advocacy network with over 200 members, Waterkeeper Alliance connects and supports local Waterkeepers to provide a voice for waterways and their communities worldwide.

Klamath crisis or Klamath truce?

What the Klamath Tribes' "new" water rights mean for dam removal, the KBRA, and the future of Klamath agriculture

A DRY SPRING HAS SET THE STAGE in the upper Klamath Basin for a drought-fueled showdown similar to the Klamath crisis of 2001, when political water management resulted in the largest fish kill in Klamath history. But the game has changed between then and now, and the new rules mean new winners and new losers when it comes to who gets the Klamath's over-allocated water this summer.

This year, for the first time in history, the Klamath Tribes' senior water rights are enforceable. And now that some of the Upper Klamath irrigation community is refusing the "carrot" of negotiated settlement, the Tribes are gearing up to use the "stick" of senior water rights to get fish the water they need to survive the summer. But as drought forecasting intensified this spring, so did thinly veiled threats of aggression from Tea Party-affiliated Klamath County Commissioners - the very folks who publicly withdrew from the deal designed to prevent this exact crisis by guaranteeing irrigators flows in drought years.

KLAMATH TRIBES' WATER RIGHTS NOW ENFORCEABLE

The Klamath Tribes' senior water rights were confirmed in federal court in 1983 (the "Adair decision"). They couldn't be enforced, however, until the Oregon Water Resources Board organized all the water claims in a lengthy adjudication process. The first phase of Klamath adjudication wrapped up in March of 2013, confirming the Klamath Tribes' senior

water rights dating from "time immemorial," and sending shock waves around a basin accustomed to giving priority rights to irrigators, not fish and wildlife.

With the administrative phase of adjudication complete this spring, the Tribes' water rights are officially enforceable during the second phase of adjudication now underway, the judicial review. However, a party can request a suspension of enforcement during phase two by posting a bond that would cover any damages due to the suspension if the suspended rights are ultimately upheld in court. Challengers to the Tribes' water rights filed such a request in May, listing what the Klamath Tribes consider an "absurdly low" bond amount, which the Tribes have said they will "adamantly oppose".

Though the Water Resources Board confined the Klamath Tribes adjudicated rights to the boundaries of their historic reservation, the Klamath Tribes consider the adjudication process thus far a victory. Despite having treaty rights to hunt, fish, gather, and trap, the 3700 members of the Klamath Tribes haven't been able to fulfill these rights when fish populations were decimated by

lack of water. The Klamath Tribes Water Team notes, "it will take time for these resources to recover, but at least they will have the water they need."

As drought loomed this spring, the national spotlight focused on the new water dynamic in the upper Klamath basin. Richard Whitman, a

"A lot of people's water could be shut off, and that has huge implications and it affects peoples' livelihoods to the core. But I also look at our fishery on the brink of extinction. We have a responsibility to protect that resource, and we'll do what we need to do to make sure the fish survive."

natural resources advisor to Oregon's governor, told the Associated Press in May, "Now if there are shortages of water in the basin, people can request that... junior water rights are shut off so older water rights can be satisfied."

With Lost River and Shortnose Suckers on the endangered species list, the Tribes could cut water to irrigators this summer. "A lot of people's water could be shut off, and that has huge implications and it affects peoples' livelihoods to the core," tribal council member Jeff Mitchell told the LA Times. "But I also look at our fishery that is on the brink of extinction. We have a responsibility to protect that resource, and we'll do what we need to do to make sure that the fish survive."

In a written statement, the Tribes' Water Team puts this summer's events in context. "This will be characterized by opponents of the Tribes as inappropriately disruptive of the established order, but of course this outcome has been in the works for decades."

TEA PARTY THREATENS VIOLENCE

Originally supportive of water rights adjudication, Tea Party leaders in the Upper Klamath now aggressively oppose the Tribes' newly adjudicated water rights. Klamath County Commissioner Tom Mallams told the Wall Street Journal in April "they shut water off here, there could be some violence." He then told the AP in a story printed around the country, "I hope that nothing bad happens here. But if something bad happens, I am going to point the finger at the state Water Resources Department and state leadership as the cause of it."

Mallams' statements were outrageous enough to prompt reprimand from other Klamath irrigators. On May 16th, Gary Derry and Luke Robison printed a letter in the Medford Mail Tribune calling Mallams' allusions to violence "irresponsible and ironic". The farmers went on: "[Mallams'] professed concern about 'something bad' happening feels more like a thinly veiled threat and, worse, a justification for violence. He certainly said nothing to discourage 'something bad' from happening. Responsible elected officials just don't act that way."

Derry and Robison, who raise alfalfa and other grains on small farms,

added, "Some of us held out hope that, once in office, Mallams would take the high road and look to be a statesman; instead he is choosing to use the bully pulpit to further divide our community. If 'something bad happens' this year, the blame won't be on those upholding a century-old water law, or those exercising a legally enforceable senior water right. The blame should be pointed squarely at the Klamath County Government building."

Meanwhile, tribal water monitoring staff have already reported threats of violence. In response to the situation, Oregon appointed an unprecedented 15-person Klamath Action Team to protect public safety and handle water conflicts. KRK included the issue in a comment letter we encouraged our supporters to send to members of a Congressional hearing on Klamath issues (June 20th, see page 6). Hundreds of people responded supporting the Tribes' rights, and asked the federal government to officially condemn Mallams' threats.

ROTATING CRISIS OR NEGOTIATED SETTLEMENT? The irony in this latest "Klamath crisis" is that it comes at the exact time when Congress could be passing a negotiated settlement designed to prevent the series of "rotating" crises that have gripped the basin for a decade. This irony seems to be lost on ultra-conservatives in the upper basin whose contempt for the

negotiated agreements that would remove the Klamath dams prompted a Tea Party takeover of the Klamath County Commission last year. Formerly a signatory stakeholder in support of restoration, in 2012 Klamath County officially withdrew from the Klamath Basin Restoration Agreement (KBRA) under Mallams' Tea Party-backed leadership.

Problematically for the County, the same agreement they pulled out of could guarantee participating irrigators minimum flows in a drought-wracked summer. Under the KBRA, the Klamath Tribes would agree to withhold enforcement of their water rights as long as reduced diversions, dam removal, restoration, and other activities improved water flows and fish recovery - an outcome that would be highly preferable to the current one for irrigators.

The Klamath Tribes' senior water right is a powerful one, and agreeing to withhold it under the KBRA has been controversial in tribal communities, who do not want to jeopardize rights dating from time immemorial. Yurok, Karuk, and Klamath Tribal negotiators claim that the deal would not remove tribal treaty rights or water rights, and that through "their authority as sovereign Indian nations, and consistent with their senior water rights in the Basin," the participating tribes carefully negotiated the terms under which they would agree to not exercise their rights.

KRK recognizes, along with former Interior Secretary Ken Salazar, that "once again the communities of the Klamath Basin are facing a potentially difficult water year under a status quo that everyone agrees is broken." While Klamath Riverkeeper has remained outside of settlement negotiations in order to retain legal rights against dam owner PacifiCorp, some of our supporters and allies devoted countless hours to forming the KBRA and are rallying now for congressional approval (see page 6). We will continue to push for dam removal by holding PacifiCorp accountable for their Clean Water Act violations. We're also committed to being a strong voice in support of the Klamath Tribes as they prepare to protect fish in their home waters, even in the face of aggressive opposition.

(opposite) The Upper Klamath Basin is a heavily managed system of lakes and water diversions to irrigated farmland. (left) Klamath Tribes Council Member and KRK Board Member Taylor David rallies support for Klamath legislation. (Above) Klamath Tribes Council Chairman Don Gentry.



Klamath Tribes



Klamath Riverkeeper/Lightrowk



Klamath Riverkeeper

Un-Dam the Klamath!



Klamath Riverkeeper

A final federal report recommends removing four dams, and the Klamath Justice Coalition rallies to support dam removal. What's next in the movement to un-dam the Klamath River?

IN THE LARGEST SCIENTIFIC review ever conducted in the Klamath Basin, the federal government released a final report this spring recommending the removal of all four Klamath River dams slated for demolition. While these key findings are another nail in the coffin for JC Boyle, Copco 1 & 2, and Iron Gate Dams, the political mechanism for their removal remains uncertain.

Continuing a fight that began more than a decade ago, Klamath River tribal people and other stakeholders are pushing hard for a Congressional package to take down the dams and restore the Klamath. The Klamath Justice Coalition – a native-led grassroots group – organized a rally in Portland, Oregon on May 30th to put their weight behind the Klamath Basin Restoration Agreements (KBRA), and to send the world the message that Klamath people are still fighting for their river, and their way of life.

FEDERAL EIS: TAKE DOWN THE DAMS!

The Department of Interior's final Environmental Impact Statement (EIS) concludes that dam removal and associated restoration projects will create more than 4,600 long-term jobs and 1,400 short-term jobs, open 420 miles of historic fish habitat, prevent dangerously high river temperatures, increase Chinook salmon production by 81%, and eliminate serious public health threats from toxic algae created by the dams' reservoirs. The report analyzed four alternatives - no action, full removal of four dams, partial dam removal, and no dam removal with fish passage - according to ecological, aesthetic, historic, cultural, economic, social, and health impacts. After fielding more than 4,000 public comments, the Department of Interior concluded that full dam removal was the best of the four alternatives.

This conclusion is a huge success for KRK and allies, who mobilized hundreds of public comments and organized testimony and rallies at public hearings on the EIS throughout the basin. As the report was released in April, everyone from then Secretary of the Interior Ken Salazar to the editorial boards of major West Coast newspapers called on Congress to pass legislation. "Congress, local stakeholders, and the public have a comprehensive analysis upon which to develop and enact a legislative solution to the ongoing, complex challenges in the basin," Salazar said. But amid historic levels of political gridlock at the national level, Congress has so far failed to act.

KJC URGES CONGRESS TO TAKE ACTION

The Klamath Justice Coalition and other Klamath allies have never been content to sit back and watch bureaucrats perpetuate the status quo on

the Klamath, and this year is no different. On May 30th, hundreds of tribal people and river advocates again boarded vans and organized carpools for a distant city, this time to voice support for Senator Ron Wyden (D-Or), in Portland, Oregon and to call on Congress to support Klamath legislation. The Klamath contingent marched to Wyden's office from Portland's Holladay Park. "We have an agreement with PacifiCorp that will lead to dam removal if Congress acts," said event organizer Molli White, a member of the Karuk Tribe living downstream from PacifiCorp's Klamath dams. "We're here to let Senator Wyden know that we support his efforts to solve the Klamath crisis. We urge him to introduce legislation to implement the Klamath Restoration Agreements which we view as the best way to balance water use, remove dams, and restore our river and local economies."



Klamath Riverkeeper

(above) Karuk Tribal Council member Crispin McAllister and family. Crispin also did a 50-mile "Spirit Run" in honor of the Klamath earlier this year. (top) Klamath people rally in Portland May 30th.

issues in the Klamath Basin including dam removal and water allocation. As Committee Chair, Senator Wyden invited pre-hearing comments, saying that people "affected by Klamath issues want – and deserve – to have their voices heard on these vital matters." KRK sent an action alert to supporters, and when this newsletter went to press, comments were streaming in urging Congress to un-dam and restore the Klamath River.

WHAT'S NEXT?

While PacifiCorp has been signed on to the KBRA they've been able to continue operating their dams with a Clean Water Act exemption (known as an "abeyance") from the state of California. Although the exemption contains conditions that PacifiCorp considers significant, KRK is concerned that the corporation's Klamath dams continue to release dangerous levels of toxic algae in late summer months. When the dams' Clean Water Act break comes up for renewal KRK will pressure the State Water Resources Control Board and other agencies to ensure that PacifiCorp is held to higher clean water standards. We also will push PacifiCorp to stop using algaecides in the Klamath River reservoirs, particularly during tribal ceremonies. Please join the movement to Un-Dam the Klamath and fight for strong interim Clean Water Act standards for PacifiCorp at www.KlamathRiver.org. You can also sign a one-click petition to Congress at www.UnDam.org.

KLAMATH RIVER CURRENTS news from the basin and beyond...

No matter how you sluice it, suction dredge mining is illegal in California

by Craig Tucker

After two successful legislative efforts and a judge-ordered moratorium, California river advocates won a hard fought reprieve from the harmful effects of recreational suction dredge mining. Or so we thought.

Earlier this year, the suction dredge mining community devised a scheme to exploit what they viewed as a loophole in the **California Department of Fish and Wildlife's (CDFW)** new mining regulations. According to the website of the **New 49ers'** mining club, one could avoid the new state regulations by simply removing the sluice-box from the dredge and sifting through the mined material on the bank. This is because CDFW defines a dredge as having a suction pump, hose, and sluice-box working together. By removing the sluice-box, they claimed the machine no longer meets the legal definition of a dredge.

Indeed, the not so subtle effort by miners to dodge regulations initially left CDFW confounded. New 49ers' President, Dave McCracken: "I am in possession of written communication from a high ranking DFG official, the very person who was in charge of developing the current regulations, which acknowledges that underwa-

ter suction-powered gravel transfer would not be considered "suction dredging" as long as the sluice box is removed from the system."

In response, Klamath Riverkeeper, the Karuk Tribe, Center for Biological Diversity, and others petitioned CDFW to clarify the definition of a dredge and close the loophole. This petition was initially denied in part because there was no evidence at that time that the loophole was actually being exploited. Then the weather warmed up, the river levels dropped, and the miners showed up with their modified dredges.

This is where grassroots action kicked in. Activists up and down the Klamath as well as other parts of the state started photo and video documenting miners in action. Some of this footage can be found on YouTube by searching "illegal dredge mining." Presented with clear evidence that miners were using a legal technicality to defy a court order as well as the state legislature, CDFW acted on our request and moved to close the regulatory loophole in June.

No matter how you sluice it, suction dredge mining is illegal in California, and we urge anyone who observes a dredge mining operation to photo or video document it and email it to us at report@klamathriver.org and call us at **1-530-627-3311**.

Remember to keep a safe distance, miners are sometimes armed, and as the comments on some of the YouTube footage suggests, they

could have a violent reaction to anyone reporting them – so don't do anything that feels unsafe.

Scott & Shasta come in #1 and #2 in CCKA's Top 10 Flow-Impaired Rivers

The **California Coastkeeper Alliance (CCKA)** released a list of the top ten "flow-impaired" rivers to urge decision-makers to regulate flow under the Clean Water Act (CWA). At the top of the list were the Scott (#1) and Shasta (#2) Rivers, both critical Klamath tributaries.

A river must be listed on what's known as a "303d list" of "impaired water bodies" at the state level before it can receive protections through the federal Clean Water Act.

We commend this effort by CCKA and are hopeful that it will support our ongoing work to list the Scott and Shasta Rivers for flow impairment. It may be obvious to some, but we must constantly assert the fact that a river that has been sucked dry does not meet the Clean Water Act mandate of being "fishable and swimmable"! Only two of 136 national CWA listings for flow impairment are from California, despite egregious examples of devastating de-watering in California and the Klamath watershed.

CCKA is an alliance of all 12 Waterkeeper organizations in California. By working together with our allies statewide, our regional work carries more weight at the state level.

What is suction dredge gold mining?

SUCTION DREDGE MINING takes place directly in river and stream channels using a floating, gas-powered vacuum coupled to a sluice box. The miner vacuums up all the gravel, macroinvertebrates, and sediment deep in the river bottom and runs it through a mechanized sluice to separate out gold flakes. The sediment is then spit back into the river in long, murky plumes.

Suction dredging represents a chronic and unnatural disturbance to the river and is known to harm fisheries, aquatic habitat, and degrade water quality. In addition to destroying habitat, it stirs up old mercury pollution from historical mining activity and reintroduces it into the food chain. Before KRK and others stopped suction dredging on the Klamath, ten or more suction dredges could be found in one river mile and several hundred dredges were estimated to be operating within the watershed at one time.

With the moratorium in California, many suction dredge miners have taken their destructive hobby to other states. In response, our neighbors at Rogue Riverkeeper in Oregon are pushing hard for state legislation that would ban dredgers in Oregon's rivers.



Klamath Riverkeeper

A small illegal suction dredge mining operation on the Scott River in the Klamath watershed in 2009. The suction intake can be seen sucking up gravels beneath the water to the left of the dredger. Dredgers can run twice this size powered by two gas motors.



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Klamath River

Paddle & Party July 27, 2013

Join a flotilla of Klamath River fans for a day-long raft trip and a rockin' party to benefit the work of KRK.

Choose to paddle, party, or both!

PADDLE: 10 am on the mid-Klamath River

We'll get you the put-in details after you register. You can bring your own boat or book a spot on one of ours for \$55 online.

PARTY: 6 pm at the Panamnik Building in Orleans, CA.

Enjoy a festive fundraiser with delicious food, music, auctioning, and dancing to the Merve George Band! \$20 includes dinner & music, drinks extra

STAY for the WEEKEND! Hike, raft, get a massage! Info on our website.

All boaters must register with KRK. Register or buy tickets online at:

www.klamathriver.org/paddleparty

Call (530) 627-3311 or email info@klamathriver.org for details

Thanks to our Paddle Party raft guide sponsor - Adventure Whitewater - www.awrafting.com

