Klamath River News

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In December, KRK testified at a public meeting in Weaverville with the Secretary of the Department of Agriculture and asked that they 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 Water 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.

In July, we hosted the first annual Waterkeeper Interest Environmental Law Conference this spring. KRK’s Executive Director traveled to Eugene, OR for the Public Interest Environmental Law Conference this spring. 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 de-commissioning, 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 at the Happy Camp, CA Salmon River Restoration Festival. http://www.salmonriverfestival.com
August 17: Yurok Tribe’s Salmon Festival in Klamath, CA http://www.yuroktribe.org/salmonfestival.htm

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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 2002, when political water management resulted in the largest fish kill in Klamath history. But the game has changed between then and now and the rules have changed too.

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 the fish the water they need to survive the summer. But as drought forecasts for the spring transmuted 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 “abundantly 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 historical 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 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 reprimands 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’) profession that people might resort to violence 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 alfalfas 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 stoke the bully pulp 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 will be pointed squarely at the Klamath County Government building.”

Meanwhile, tribal water monitoring staff have already reported threats of violence. In response to a situation, Oregon appointed an unprec- edented 15-person Klamath Action Team to protect public safety and handle water conflicts. KRB 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-wrecked 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 prepare 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.

KRB 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.”

White 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’ve 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.
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?

FEDERAL EIS: TAKE DOWN THE DAMS! The Department of Interior’s final Environmental Impact Statement (EIS) concludes that dam removal is necessary to protect the Klamath River Basin’s aquatic resources. The EIS creates more than 4,400 long-term jobs and 1,400 short-term jobs, open 420 miles of historic fish habitat, prevent dangerous high river temperatures, increase Chinook salmon production by 81%, and address serious public health threats from toxic algae created by the dams’ reservoirs.

The rally came before a June 20th hearing held by the Senate Committee on Energy and Natural Resources to address water 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.” KRR sent an action alert to supporters, and when the newsletter went to press, comments were streaming in urging Congress to un-dam and restore the Klamath River.

WHAT’S NEXT? While PacifCorp has been on the line to KBB about “abeyance” issues with dam removal, the Senate Energy Committee’s draft legislation, H.R. 3427, has been released. The bill provides for dam removal and incorporates dam removal provisions from H.R. 2012. The legislation also includes provisions to address water issues in the Klamath Basin and creates a new water conservation fund for Klamath Basin stakeholders.

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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 de-molition. While these key findings are another nail in the coffin for JC Boyle, Copco 1 & 2, and Iron Gate dams, the political mechanisms for their removal remain uncertain.

Continuing a fight that began more than a de-cade ago, Klamath River tribal peoples and other stakeholders are pushing hard for a Congressio-nal 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. The rally came before a June 20th hearing held by the Senate Committee on Energy and Natural Resources to address water 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.” KRR sent an action alert to supporters, and when the newsletter went to press, comments were streaming in urging Congress to un-dam and restore the Klamath River.

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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.awwrafting.com