

9-1-2008

Holly Doremus & A. Dan Tarlock, Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics

Roberta Kennedy

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

Custom Citation

Roberta Kennedy, Book Note, Holly Doremus & A. Dan Tarlock, Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics, 12 U. Denv. Water L. Rev. 255 (2008).

This Book Notes is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

BOOK NOTE

Holly Doremus & A. Dan Tarlock, *Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics*, Island Press, Washington, D.C. (2008); 261 pp; \$30.00; ISBN 978-1-59726-394-8, paperback.

Water War in the Klamath Basin: Macho Law, Combat Biology, and Dirty Politics tells the story of the impact of listing three fish species under the Endangered Species Act on farmers, environmentalists, Indians, and government agencies in the Klamath Basin. According to the authors, “[t]he title tries to capture the most salient features of events in the Klamath Basin from the late 1990s through 2007.” First, “war,” describes the conflict over Klamath water between farmers, environmentalists, Indian tribes, and government agencies. Second, “macho law,” refers to prior appropriation and the Endangered Species Act, which are winner-take-all legal regimes directly opposed to one another. Third, “combat biology,” describes how each side in the conflict used science to bolster its position and attack the opposition. Finally, “dirty politics,” describes improper political interference in the conflict over Klamath water. The media described this conflict as farmers versus fish; however, the authors delve deeper, explaining the historical roots of the conflict and the various parties involved.

The book consists of eight chapters, a preface, and an afterword. The authors start with an overview of the Klamath crisis in the Preface and in Chapter 1. Chapters 2 through 4 provide background on the history, geography, ecology, and economy of the Klamath Basin. Chapter 5 explains the Endangered Species Act and its application in the Klamath Basin. Chapter 6 explores the role of science in the Klamath conflict. Chapter 7 explains the lessons learned from the conflict. Chapter 8 discusses solutions to the Klamath water war and to conflicts in western water basins, generally. The afterword provides an update on the Klamath Basin as of December 2007, including information about a complex settlement that could help resolve the conflict.

The *Preface* provides background information on the Klamath Basin and the events that led to the conflict. Specifically, the listing of three fish species under the Endangered Species Act forced the Bureau of Reclamation to close the headgates to the Klamath Project in 2001. This was the first time that the Bureau of Reclamation shut down a federal reclamation project due to environmental concerns. The Klamath Project is one of the oldest reclamation projects in the country, which farmers in the region rely on to irrigate their crops. The Bureau of Reclamation’s closure of the Klamath Project headgates meant far-

mers could not access Klamath water and exercise their water rights. The closure of the Klamath Project headgates led to the Klamath water war between farmers, environmentalists, Indian tribes, and government agencies.

Chapter 1, *A Water Crisis Exposes Political Fault Lines*, explains how the closing of the Klamath Project headgates exacerbated existing conflicts between farmers, fishermen, Indian tribes, environmentalists, and government agencies. According to the authors, the Klamath Basin offers lessons for other western basins. The authors explain the “Klamath conflict illustrates four general themes fundamental to understanding conflicts over natural resources anywhere: the historic entrenchment of resource entitlements granted without recognition of competing interests; the clash of fundamental values closely intertwined with natural resource use; pervasive uncertainty; and a ‘problem shed’ extending across political and other boundaries.” Furthermore, the authors offer some basic principles to resolve natural resource conflicts, including requiring a workable vision of a sustainable landscape based on carrying capacity to achieve a satisfactory resolution.

Chapter 2, *A Remote, Upside-Down Watershed*, explores how the geography and economy of the Upper and Lower Klamath Basins led to the water wars. The Upper Klamath Basin is a high desert area prone to periodic droughts. Even though the Upper Klamath Basin is an arid region, the economy of this region relies on irrigated farming. In contrast, the Lower Klamath Basin is wet and forested with an economy based on recreation and commercial fishing. These differences in both geography and economy of the Upper and Lower Basins contributed to the conflict. Specifically, farmers in the more arid Upper Basin need water for irrigation, while fishermen and recreational users in the Lower Klamath Basin need water to sustain fishing and recreation activities. These uses are not compatible, particularly in drought years like 2001. These incompatible uses led to the Klamath water war.

The Upper and Lower Klamath Basins have different species of fish because of ecosystem differences and dams that prevent fish migration between the Upper and Lower Basins. The Upper Basin supports Lost River and Shortnose suckers while the Lower Basin supports several species of salmon, including Coho salmon. Federal agencies listed the Lost River and Shortnose suckers and Coho salmon under the Endangered Species Act. These listings led the Bureau of Reclamation to keep additional water in Klamath Lake in the Upper Basin for the suckers, and also led to additional releases of water into the Lower Basin system for the salmon. Thus, area farmers had less water available to appropriate for irrigation purposes.

In 2001, a drought struck the region, resulting in an insufficient supply of water to satisfy the needs of both farmers and of fish. The Bureau of Reclamation closed the irrigation headgates to leave more water in the Klamath Basin for fish. The Bureau believed that it had

no other option but to close the irrigation headgates in order to comply with the Endangered Species Act. Closure of the headgates meant that there was little water for farmers, threatening their livelihood and cultural identity. The headgate closure exacerbated conflicts between those that wanted Klamath water for irrigation and those that wanted water for fishing, recreational, and environmental uses.

Chapter 3, *Reclamation Comes to the Klamath*, explains how appropriative water rights and federal reclamation projects made irrigation possible in the Klamath Basin. First, an appropriative water right system is based on the concept of beneficial use that prioritizes current human use, such as irrigation, over future use or use for the environment. Second, the Klamath Basin Compact, which California and Oregon negotiated and Congress approved in 1957, places irrigation use above all other uses. Third, as discussed in Chapter 2, the Upper Klamath Basin is dry and without the federal reclamation project diverting water from the Klamath River, farming would not be possible in the Upper Klamath Basin. The Klamath Project allowed diversion of most of the Upper Klamath Basin's water for agriculture.

However, in addition to irrigation, the Klamath Project also has a hydroelectric component and a waterfowl protection component. For example, there are five hydropower dams on the Upper Klamath River, which require certain minimum flows. Conflicts arise when there is not enough water to meet the needs for irrigation, hydroelectricity generation, or waterfowl protection. In order to meet these needs and achieve a more sustainable use of Klamath water, the authors believe cuts in irrigation are necessary.

Chapter 4, *Those at the Margins: Indians and Wildlife*, describes the Indian tribes that live in the Klamath Basin, their history, and their water rights. This chapter also describes the wildlife that lives in the Klamath Basin, including the three listed fish species. The authors explain the marginalization of the interests of both the Indian tribes and wildlife in the Klamath Basin.

Chapter 5, *Bringing Marginal Interests toward the Center*, discusses how environmental laws, particularly the Endangered Species Act, address marginalized interests. Specifically, the Endangered Species Act puts wildlife conservation at the center of federal actions, including reclamation. In the Klamath case, the Endangered Species Act put the protection of fish at the center of the controversy. Because the Indian tribes of the Klamath Basin rely on fish as a source of food and income, the listing put their interests at the center of the controversy as well.

Chapter 6, *Water Wars Become Science Wars*, discusses how the Endangered Species Act requires a scientific basis for a listing decision. However, the Klamath conflict illustrates how each side in the conflict turned to science to support its position and attack the opposing view. In addition, the authors explain that while science can inform water management decisions, science cannot determine water allocation de-

cisions, because decision makers must also consider public policy and management priorities.

Chapter 7, *Searching for Solutions*, explains “how the law influences four major institutional responses to the water crisis of 2001—the political process, litigation, the marketplace, and ad hoc stakeholder-driven consensus negotiations.” The authors describe the competition for control over Klamath water between farmers, Indian tribes, environmentalists, and government agencies. Additionally, the authors offer lessons learned from the conflict in the Klamath Basin, including how reliance on litigation and politics led to parties’ negative actions and hampered a sustainable solution to the Klamath crisis.

Chapter 8, *When is a Train Wreck a Good Thing?*, discusses the problem of balancing human and environmental uses of rivers. The authors suggest utilizing bioregionalism and place-based experimentation to address the conflict. Bioregionalism defines the geographic scale of management, then identifies stresses and methods to relive those stresses, and devises institutions to implement those methods. The authors conclude with cautious, but not blind, optimism that we can resolve the Klamath conflict through these methods.

The *Afterword* discusses the latest developments of the Klamath conflict as of December 2007, including a complex proposed settlement between farmers, tribes, fishermen, and government agencies. The settlement would remove four hydroelectric dams and provide for adaptive management and long-term monitoring.

Water War in the Klamath Basin Macho Law, Combat Biology, and Dirty Politics is a useful case study of what happened in the Klamath Basin and the issues other western water basins may face in the future. The analysis of the competing legal regimes and their impact on water resource management is of particular interest to a legal reader. The book provides an informative and interesting story illustrating how history, culture, law, science, economics, and ecology impact water rights that goes beyond the paradigm of farmers versus fish.

Roberta Kennedy