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# Opinion

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## Our View

# The high cost of going broke

Like many readers, we have watched with great interest the story of Washington rancher Cody Easterday's fleeing of Tyson Fresh Meats and the subsequent bankruptcy of Easterday Farms, one of his family's companies.

Easterday has admitted to defrauding Tyson and another company out of \$244 million, billing the companies for buying and feeding cattle that didn't exist. He spent much of the proceeds to cover losses he racked up on commodity futures contracts, according to court records.

He has pleaded guilty to one count of wire fraud, and is scheduled to be sentenced Oct. 5.

As part of the plea, Easterday has promised federal prosecutors he will make restitution.

As the scandal unfolded, Easterday Farms, one of several family companies, filed for Chapter 11 bank-



ruptcy protection. Its assets are being sold to settle creditor claims. Several individual farms, for example, were sold for \$209 million to Farmland Reserve Inc.

The bankruptcy proceedings are interesting on a number of levels, revealing disputes over asset sales and other corporate intrigues. But what has really caught our eye is the squabble over the mounting legal fees associated with the bankruptcy.

It costs a lot of money to go broke.

The fees of the attorneys representing major parties in the bankruptcy are paid from the proceeds from the sale of the company's assets. After the lawyers get their

cut, what remains goes to satisfy creditors.

People who are owed money have a vested interest in how much the lawyers make. The lawyers are arguing among themselves over the definitions of "excessive" and "reasonable" fees.

The Justice Department has objected to Easterday's Los Angeles law firm — Pachulski, Stang, Ziehl and Jones — billing \$3.8 million, an average hourly rate of \$1,053 per hour. The bankruptcy trustee argues that the rates far exceed what local lawyers involved in the case are seeking and are substantially higher than fees attorneys recently collected in a more complicated bankruptcy case in Eastern Washington.

Pachulski, Stang, Ziehl and Jones, in turn, has objected to \$752,042 in legal fees sought by a law firm representing the Prudential Insurance Co., a major creditor.

U.S. Bankruptcy Judge Whitman Holt in Yakima urged lawyers to talk and try to settle remaining legal issues to keep fees to a minimum.

"Sometimes litigating everything all the way to the mat is the worst possible outcome for everyone, and that's particularly true in bankruptcy cases, where there's just not enough pie to go around, which appears to be where we're ending up in this case," Holt said.

We are reminded of Charles Dickens' "Bleak House," where the inheritance case central to the plot, Jarndyce and Jarndyce, has already been litigated for "generations" when the story begins. Eventually, "the whole estate is found to have been absorbed in costs," leaving heirs with nothing.

We have no position on the legitimacy of the fees requested. But maybe Shakespeare sums up our feelings best: "Ill blows the wind that profits nobody."

## Our View



Don Jenkins/Capital Press

Twelve years ago, Clark County, Wash., farmer Bill Zimmerman applied for a water right for his family's 149-year-old operation.

# There's got to be a way

Like so many other stories related to water use in the Northwest, the one about Bill Zimmerman, a farmer in Clark County, Wash., is a head-scratcher.

His farm has been using water from its well for, oh, about 149 years. That's 17 years before Washington became a state.

For most of that time, Zimmerman obtained water informally. That was apparently OK with the powers that be in territorial times and after statehood. In southwest Washington, it rains about 42 inches a year, so irrigation is usually needed only during dry spells in the summer.

Twelve years ago, to guarantee a source of water to grow his crops of berries, corn and other vegetables, Zimmerman applied to the Washington Department of Ecology for a water right. He asked for 120 acre-feet a year for his 94 acres.

Since then, he's been waiting. And waiting.

Which makes us wonder — if a simple water right application remains in limbo for a dozen years, how long should it take? According to the department's Frequently Asked Questions online, "a decision on your water right application may take anywhere from months to years."

It doesn't say anything about decades.

No matter how you look at this case, it doesn't add up.

The farmer is left hanging. He needs the water, which he has been using for nearly a century and a half, yet he can't get an answer. Under a state Supreme Court ruling, he must prove that his water right will

not decrease the flow of a nearby stream, Salmon Creek. That's in spite of the fact that it is still flowing even after 149 years of farming.

You'd think that would be proof enough.

Ecology appears to have developed a case of paralysis by analysis, not telling the farmer where he stands, other than "You're almost to the top of the pile. Anyway, you'll be fine," according to Zimmerman.

And other water right holders in the area wonder how this case could impact them.

It all comes down to a problem with Ecology. By taking an inordinate amount of time to issue decisions on water right applications, it is gumming up the entire process.

Ecology further muddied the water by demanding a mitigation plan that would force him to hire a hydrologist to come up with a plan to offset any water he uses by putting the same amount into the creek. One might assume that if he had that water available, he wouldn't need the new water right.

With such laws and regulations, Ecology has tied itself into a knot. It apparently can't say yes, and it can't say no to the water right.

Olympia is chock-full of really smart people. They have college and graduate degrees and all sorts of resources that a lone farmer could never afford.

Our hope is that all of those smart people would be able to put their heads together and help that farmer keep doing what he and his family have been doing for 149 years.

That's not asking too much.

# Salmon migrated past Klamath falls before dams

A recent opinion piece argues that salmon were unable to migrate upstream of the Klamath River dams due to a natural barrier. This matter is raised in order to question the rationale behind plans to remove the lower four Klamath dams.

While I will avoid discussing the merits of dam removal, I can address the matter of historic fish migrations.

I authored several peer-reviewed publications on the topic. I will attempt to set the record straight by reviewing the most compelling evidence, which indicates salmon historically migrated well past the site of the dams.

Note that while I have identified scores of relevant primary sources of information, only 3 suggest that runs of salmon beyond the area of Iron Gate Dam were meager; the rest indicate there were abundant runs of salmon beyond Iron Gate Dam as far as the Sprague River above Upper Klamath Lake.

The first accounts of the presence of salmon in the Upper Klamath Basin came from John C. Fremont. In 1846, Fremont recorded in his journal that he obtained salmon from one of the Indians at the outlet of Upper Klamath Lake. Fremont noted, "Up this river the salmon crowd in great numbers to the lake (Upper Klamath Lake), which is more than four thousand feet above the sea."

He was the first but not the only early non-Indian explorer to the area to document salmon in the Upper Basin. Other accounts also come from newspapers in the area. In 1884, the Linkville Star reported that, "The lake (Upper Klamath Lake) abounds in both salmon and trout, a source of pleasure and profit to our citizens, and especially to Poor Lo (Indians), who take them out in the spring by the wagon load, and pile them up like cordwood to dry in the sun for his winter's food."

Another example comes from the Medford Mail Tribune, which reported in 1914 that, "For years the (Klamath) Indians have spent much of the spring, summer, and fall months catching salmon and drying them for winter food, and it is said that during the last winter some of them actually suffered because they did not have this supply."

Additional accounts come from federal agents, Indians, naturalists, biologists and ethnographers.

More recently, geneticists contributed to the story. Salmon bones found in archeological sites in the Upper Basin at known Klamath Tribes fishing sites were analyzed. The samples

## GUEST VIEW

John Hamilton

## ARTICLES ON KLAMATH SALMON

• John B. Hamilton, Dennis W. Rondorff, William R. Tinniswood, Ryan J. Leary, Tim Mayer, Charleen Gavete, and Lynne A. Casal (2016) The Persistence and Characteristics of Chinook Salmon Migrations to the Upper Klamath River Prior to Exclusion by Dams, The Oregon Historical Society Quarterly, v117 Number 3. <https://bit.ly/37TEqqh>

• John B. Hamilton, Gary L. Curtis, Scott M. Snedaker & David K. White (2005) Distribution of Anadromous Fishes in the Upper Klamath River Watershed Prior to Hydropower Dams — A Synthesis of the Historical Evidence, Fisheries, 30:4, 10-20, DOI: 10.1577/1548-8446(2005)30[10:DO-AFIT]2.0.CO;2 <https://bit.ly/3mdh1Zi>

ranged in age from post European contact to over 5,000 years old. DNA sequencing revealed the presence of both spring and fall chinook. This supports the assertion that not only did salmon make it to the Upper Klamath Basin, multiple seasonal runs made it.

Legally, the question was resolved in 2006. PacifiCorp challenged federal agencies' mandate requiring fish passage beyond the dams for any new dam license. Tribes, agencies, and the company provided written and verbal testimony. The judge found that chinook salmon (both spring and fall run) were abundant above the dams including the tributaries of Upper Klamath Lake. Thus, as a legal matter, this issue is settled.

The opinion piece is based solely on sketches of an ancient lava flow made by Copco dam engineers. In reviewing the cited sources, it is clear that early engineers indeed deduced the geologic history of Ward's Canyon as the site of an ancient lava flow; however, the river eroded the formation thousands of years ago. This has little bearing on the question as to whether salmon were present upstream at the time of dam construction.

I invite skeptics to review the publications I cited. Each includes photographs provided by a range of sources that clearly reveal that residents of the Upper Klamath Basin enjoyed abundant runs of salmon until the construction of the Klamath River dams.

John Hamilton is a retired biologist with the U.S. Fish and Wildlife Service. He is the primary author of two peer-reviewed publications on salmon in the Klamath River.