

# Appeals court: eight years too long for salmon to wait

(AP) - An appeals court last week tossed out a key part of the federal government's plan for balancing water between farms and threatened coho salmon in the Klamath Basin, putting the Bush administration on the spot over how to provide water to farmers who need it for irrigation while also meeting Endangered Species Act obligations.

The government's decision to take eight years to provide the full amount of water needed for coho survival in the water-scarce basin was arbitrary and capricious, and not backed up by science, the 9th U.S. Circuit Court of Appeals in San Francisco ruled.

"The agency (NOAA Fisheries) essentially asks that we take its word that the species will be protected if its plans are followed," Judge D.W. Nelson wrote in the opinion. "If this were sufficient, (NOAA Fisheries) could simply assert that its decisions were protective and so withstand all scrutiny."

"If there is insufficient water to sustain the coho during this period, they will not complete their life cycle, with the consequence that there will be no coho at the end of the eight

years. If that happens, all the water in the world in 2010 and 2011 will not protect the coho, for there will be none to protect."

The appeals court sent the case back to the U.S. District Court in Oakland to sort out where the extra water will come from.

Earthjustice attorney Kristin Boyles said she would ask Judge Sandra Armstrong to order the U.S. Bureau of Reclamation to provide the full amount of water called for in 2010 from the Klamath Reclamation Project, which irrigates 180,000 acres straddling the Oregon-California border in the high desert east of the Cascade Range. Irrigation was cut off to most of the project in 2001 to protect threatened coho, then restored the next year.

Glen Spain, spokesman for the Pacific Coast Federation of Fishermen's Associations, a commercial fishing group and lead plaintiff in the appeal, said the ruling was an important step in providing balance in the continuing fight over water in the Klamath Basin.

"It comes at a time when because of past Klamath water problems and fish kills the West

Coast fishing industry is suffering enormous losses," Spain said.

Bob Gasser, a fertilizer and pesticide dealer, said it was a terrible ruling for Klamath farmers, but they would survive.

"People are trying to solve 100 percent of the salmon problems on the back of the Klamath project," he said.

Greg Addington, executive director of the Klamath Water Users Association, which represents farmers, said the irrigation project would have a hard time coming up with the water the ruling demands.

"That's going to be a difficult thing unless we have a whole lot of snow," Addington said.

NOAA Fisheries spokesman Jim Middlebury said the agency was reviewing the ruling, and had no immediate comment.

After the irrigation shutoff in 2001, NOAA Fisheries, the federal agency responsible for protecting salmon, came up with a plan to phase in over eight years the full amount of water needed for coho in the Klamath. As part of the plan, the Bureau of Reclamation created a water bank, paying farmers \$7.6 million this year for extra water for fish.

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# Salmon to test Upper Klamath Lake

KLAMATH FALLS (AP) - Scientists placed chinook salmon in the waters of Williamson River and Upper Klamath Lake last week to see how they respond, perhaps setting the stage for the eventual return of the sea-running fish to the Klamath Basin.

The year-old salmon were confined to 2-foot submerged cubical mesh cages submerged in the water by the U.S. Fish and Wildlife Service.

"Essentially are captives,"

said Phillip Detrich, field supervisor for the agency's Yreka, Calif., office.

The scientists will evaluate how the water quality affects the salmon as they grow into smolts, young fish ready to go from fresh water to salt water.

They also hope to see if there is enough spawning habitat for salmon in the rivers that feed into Upper Klamath Lake.

Trout and salmon can usually co-exist, but they might compete for resources if there is limited habitat.

The tests, which will be repeated in spring, are being conducted as federal officials decide whether PacifiCorp, which has a series of dams on the Klamath River, should be required to install ways for salmon to get around the dams as part of a new 50-year license. Detrich said the agency has a long-standing interest in returning the fish to the Basin, where they haven't been since the first power dam was built on the river in 1918.

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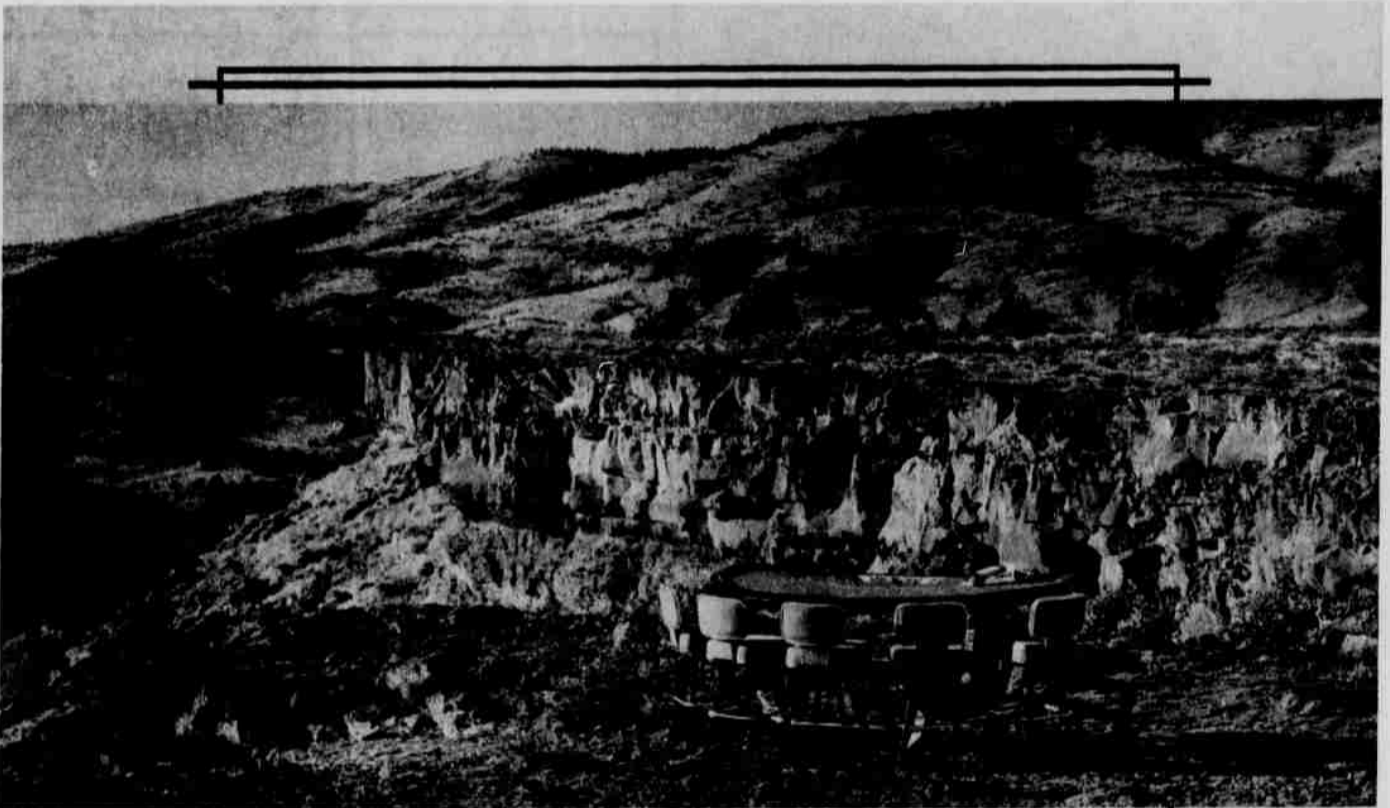
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