CONFLICT IN THE KLAMATH WATERSHED
AND
A RELATIONSHIP BUILDING FRAMEWORK
FOR CONFLICT TRANSFORMATION

by

Judith Y. Messier
A Dissertation
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of
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Conflict Analysis and Resolution

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and 
A Relationship-Building Framework for Conflict Transformation 

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at George Mason University

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DEDICATION

This is dedicated to my sister Barbara and my brother Phil, who are my rock, and to the people of the Klamath, who never cease to inspire me.
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ABSTRACT

CONFLICT IN THE KLAMATH WATERSHED AND A RELATIONSHIP-BUILDING FRAMEWORK FOR CONFLICT TRANSFORMATION

Judith Y. Messier, Ph.D
George Mason University, 2012
Dissertation Chair: Dr. Mark Goodale

This dissertation starts from an interest in protracted environmental conflict in the United States and takes the stance with respect to environmental conflict (1) that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource, and (2) that when multiple ways of life are dependent upon that same resource – and that resource is threatened – and all wish to sustain their ways of life – then the manner in which they all relate to the resource and to each other must be transformed, such that both the resource is restored and the ways of life are sustained. In other words, it is a situation of conflict transformation, rather than of conflict resolution.

From that beginning stance, the unfolding of the dissertation uses a health care analogue to provide both a structure for and a way of thinking about what is presented.

In Volume One, in the role of customary practice is cast conflict resolution as it is customarily practiced in America. It is asserted (1) that mainstream American conflict resolution practice is based upon an ethnoconflict theory and ethnopraxis that flows unerringly from the attitudes, aspirations, expectations that characterize the modern American Metro Middle Class; (2) that the American model would be appropriate within America when everything about the situation and the people involved in the situation was in agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based; and (3) that it would be inappropriate when something about the situation and the people involved in the situation was NOT in agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based. It is proposed that this ‘something’ can be that
the people have a different *ethnoconflict theory* and *ethnopraxis*, and/or that the situation is not about rights, rules, and/or individual interests.

In **Volume Two**, given the stance with respect to environmental conflict that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource, in the **role of the person who is not well** is presented a history of the Klamath ecosystem and the ways of life dependent upon the Klamath watershed from historic times of pristine environmental well-being to the current times of environmental degradation. In **Part One**, the story of the Klamath over the period from 1848 through 2000 is told in such a manner that if (and when) any member of any player group in the Klamath may read this history, they would be able to say “You have heard Our story – not only the events and experiences that We bring together to define Our sense of who We are and have been over time, but also the emotional investment in being who We are and the emotional turmoil We feel when We experience who We are as threatened.”

In **Part Two**, it is asserted (1) that the people of the Klamath watershed have an *ethnoconflict theory* and *ethnopraxis* that understands conflict as a tear in the web of relationships and conflict resolution as the mending of that tear through reconciliation and collaboration; (2) that they initially default to mainstream American conflict resolution practices, but ultimately revert to the practices of reconciliation and collaboration; and (3) that it will take a second-order change to accomplish this transformation of the conflict.

Within this context, in the **role of the history of unsuccessful first-order changes** is presented a history of first-order changes in the customary practice of mainstream conflict resolution, from before 2001 through the chaos of 2001 on up to 2004, just before the Chadwick workshops. In the **role of second-order change** is presented the Chadwick workshops which occurred in the twelve month period of July 2004 through June 2005 and which were the transformative event which enabled people to relinquish the default use of mainstream conflict resolution practices and to take up the practices of reconciliation and collaboration on a watershed-wide basis.

The “patient history” subsequent to the Chadwick workshops recounts a slow and painstaking transformation of the conflict, a turning of a page in the Klamath watershed – from a chapter of conflict more than a century in the making to a chapter of watershed-wide coordinated interaction to both restore the watershed and sustain all ways of life in the watershed.

Finally, an epistemology of the Chadwick conflict resolution practice is constructed and juxtaposed point by point with the epistemology of mainstream American conflict resolution practice constructed in Volume One, illuminating significant differences between the two epistemologies.
In Volume Three, in the *role of alternative practice* is proposed (1) an alternative epistemology and framework for theory, practice, and research, which is characterized as a Relationship-Building epistemology, and then (2) a framework for conflict transformation based upon this Relationship-Building epistemology.

In Part One, (1) the alternative epistemology and framework is proposed and then juxtaposed with the epistemology and framework of the discipline of Conflict Analysis and Resolution, illuminating the differences between the two; (2) the epistemology of customary American conflict resolution practice and the epistemology of the discipline of Conflict Analysis and Resolution are characterized as variants of an overarching Problem-Solving epistemology; (3) the Problem-Solving epistemology is juxtaposed with the Relationship-Building epistemology, finding that they are grounded in very different ways of knowing and working; and finally (4) it is proposed that, while the configuration of people and situation that is appropriate to one is not appropriate to the other, used hand-in-hand, they can cover all configurations of people and situation.

Part Two envisions a framework for conflict transformation based upon the Relationship-Building epistemology. This framework provides opportunity for transforming protracted environmental conflict, for people to build the relationships that could then serve as the foundation upon which they could stand together to set goals and take action towards sustaining both the environment and their ways of life. And it is noted that there is nothing to preclude applying any or all components of this conflict transformation framework to any conflict, domestic or international, environmental or otherwise, protracted or otherwise.

The dissertation concludes with the assertion that, in the spirit of the health care analogue that has given form and position to the dissertation, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, so the Problem-Solving and Relationship-Building epistemologies could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.
Chapter One
Introduction

My interest is protracted environmental conflict in the United States. My stance with respect to environmental conflict is that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource.

When people experience their ways of life – their identities – as threatened, no amount of negotiation or science or law will resolve the conflict if the threat to identity is not addressed. If jeopardized identities are not recognized and reconciled, the environmental conflict will become protracted, escalating and stabilizing at a pattern of conflict interactions comprised of contentious tactics coupled with economic and psychological tolls on all parties. The longer the conflict languishes at a hurting stalemate, the greater the potential detriment to the well-being of both the people and the environment.

When multiple ways of life are dependent upon that same resource – and that resource is threatened – and all wish to sustain their ways of life – then the manner in which they all relate to the resource and to each other must be transformed, such that both the resource is restored and the ways of life are sustained. In other words, it is a situation of conflict transformation, rather than of conflict resolution.

My dissertation will be the unfolding of a journey. This journey can be seen as living very comfortably under the umbrella of grounded theory – not in the sense of following the protocols that Glaser and Strauss and Corbin (Glaser and Strauss 1967; Strauss and Corbin 1990) have variously prescribed, but rather in the sense of that which is being presented having been developed inductively from experience.

Where did this experience begin? Most serendipitously, I quite literally bumped into a situation of a domestic environmental conflict in the Klamath watershed that had been more than a century in the making – a situation in which conflict resolution as it is customarily practiced in America had
been applied and had suffered failure over and over and over – a situation in which a completely different model of conflict resolution was finally applied and enjoyed success.

This experience begot a cascade of questions. Why did the customary model fail? Why did the different model succeed? What was it about the customary model that was not appropriate to the people or the situation in the Klamath? What was it about the different model that was appropriate to the people and the situation in the Klamath? What is the relationship between the customary model and the different model? What is the relationship between these models and the model in the discipline of Conflict Analysis and Resolution? How could all these models work together?

I did not have the answers to these questions when I began. As such, this dissertation is truly the unfolding of a journey, where, like laying stones in the stream in order to cross it, each answer provides the foundation to stand upon for tackling the next question, until I am finally able to answer the final question and step onto the once-distant shore.

I want to position the unfolding of this journey by means of an analogue drawn from health care. Let us say we have a person who says she is not well. In America, the response is to diagnose and treat the person in accord with medicine as it is customarily practiced in America. More often than not, this practice is successful in treating the person for whatever condition she was diagnosed as having. Sometimes however it is not. The customary response in these instances is for medical practitioners to tweak the diagnosis and treatment in order that medicine may get it right and be successful in treating the person. Many times this first order change is successful and the person is cured. Sometimes it is not and the person is not cured. Sometimes a second order change is made, in that an alternative diagnosis and treatment is made in accord with an alternative practice – a practice that looks at the person in a different manner, and diagnoses and treats the person in accord with that different way of looking at the person. Many times this alternative practice is successful where the customary practice is not. And many times the two practices – customary medicine and alternative medicine – work hand in hand and restore the well-being of the person better than either could have accomplished alone.

This health care analogue provides both a structure for what I shall present, as well as a way of thinking about what I shall present.

In the role of customary practice will be conflict resolution as it is routinely practiced in America. In Volume One, I will lay a stepping-stone of understanding with respect to the practice of conflict resolution as it is customarily practiced in the United States (hereinafter referred to as
America\(^1\). I will start with an analysis of American culture, beginning with the most general of \textit{etic} pebbles on the surface, drilling down to a rich vein of \textit{emic} constructions of identity, and then using Census data to “locate” these identities within America.

I will move to an analysis of the epistemology of conflict resolution as it is customarily practiced in America. This analysis will allow me to construct the \textit{ethnoconflict theory} and \textit{ethnopraxis} upon which the American model of conflict resolution is based.

Then I will draw upon the two sets of considerations to draw a conclusion as to which segment of American culture is the source of the \textit{ethnoconflict theory} and \textit{ethnopraxis} upon which the American model of conflict resolution is based, and therefore for which people and for which situations the American model of conflict resolution would be appropriate.

Finally, I will make the case that conflict resolution as it is routinely practiced in America, while completely appropriate for \textit{some} people and for \textit{some} situations in America, is \textit{not} appropriate for \textit{all} people or for \textit{all} situations in America. For \textit{other} people and for \textit{other} situations, \textit{alternative} models of conflict resolution would need to be applied.

\textit{In the role of the person who is not well} will be an environmental conflict in the Klamath ecosystem in southern Oregon and northern California that is more than a century in the making. This history is extremely important not only to the unfolding of the journey but to the making of cases.

\textit{With respect to the unfolding of the journey}, two points. One, not only have I been driven by an unshakeable commitment to the requirement, but I also feel unchangeably honorbound to the requirement, to tell the story of the Klamath in such a manner that if (and when) any member of any player group in the Klamath may read this history, they would be able to say “You have heard Our story – not only the events and experiences that We bring together to define Our sense of who We are and have been over time, but also the emotional investment in being who We are and the emotional turmoil We feel when We experience who We are as threatened.”

Two, without having first drawn the characterizations of segments of American culture, and then without having painstakingly worked my way through the 160 plus years of history in the Klamath watershed, I would not have been able to comprehend the nature of the failure of customary conflict resolution and the nature of the success of the alternative conflict resolution. And I would not have

\(^1\) I know that the word America can be used to refer to a goodly number of places. In this essay, because I am looking at things that pertain specifically to the United States of America and because when we in the USA are talking about this country we commonly refer to it as America, I going to restrict the reference of the word America to the United States of America.
been able to articulate the alternative epistemology and framework and then to make the case for a repertoire of conflict resolution epistemologies working hand in hand.

With respect to the making of cases, the history of conflict and conflict resolution in the Klamath watershed is an instance of the failure of customary conflict resolution and the success of an alternative conflict resolution. The alternative conflict resolution was successful because it is based on the ethnoconflict theory and ethnopraxis of the culture in the Klamath watershed and was appropriate to a situation experienced as a threat to identity. The customary conflict resolution failed because it is not based on the ethnoconflict theory and ethnopraxis of the culture in the Klamath watershed and was not appropriate to a situation experienced as a threat to identity.

If customary conflict resolution were writing the history of conflict and conflict resolution, it would be written in the language of rules (Conley and O'Barr 1990a, 1990b, 1998) – a conflict or situation assessment that provided a succinct compilation of historical data. But if the alternative conflict resolution were writing a history of the conflict in the Klamath watershed – or in other words, if the people of the Klamath were writing a history of the conflict – it would be written in the language of relationships (ibid.), in stories that are embedded in a web of relationships and that drive and are driven by emotions. This yields not only a different history than customary conflict resolution would write, but, truth be told, a longer one. Writing the historical facts takes a lot less space than writing the stories wrapped around the facts, the meanings made about the facts, the emotions invested in the facts.

Ultimately, I take the position that when a history is written of a conflict, it should be written in the language (ibid.) of the ethnoconflict theory and ethnopraxis lived by the people of the conflict.

So, on to **Volume Two**. In **Part One**, I will present a history of the Klamath watershed, from the historic times of pristine environmental well-being to the current times of serious environmental degradation. I will start out with geography to give a sense of the place, especially historically. I will then move to talking about the tribal peoples who lived in the basin prior to the incursion of non-Indians in the early 19th century. Next I will take a trip through the years from the arrival of non-Indians in the basin up to the present, noting those happenings which impacted both the environment and the peoples who lived in the environment. I will finish with a picture of the current status of the ecosystem and the people whose ways of life are indissolubly intertwined with the ecosystem and with each other.
In **Part Two**, I will present a history of conflict resolution in the Klamath watershed. **In the role of the history of unsuccessful first-order changes** will be the lengthy history of customary conflict resolution efforts in the Klamath that were inappropriate to the people and the situation in the Klamath and that failed. And **in the role of second-order change** will be the transformation to the practices of reconciliation and collaboration that were appropriate to the people and the situation in the Klamath and that succeeded.

My goal for Part Two is **not only** to present a history of conflict resolution in the Klamath, **but also** to see whether this history reflects my expectations. I am going to construct an overarching pattern over time that I expect to obtain and then I am going to analyze the history in terms of this expectation.

To construct this overarching pattern, I will first construct three frames of reference: the frame of the Rural Middle Class in the Klamath watershed (brought forward from the analysis of American culture in Volume One); the frame of notions about social identity interwoven with notions about the pattern of conflict from escalation through stalemate to de-escalation; and the frame of conflict transformation.

Drawing upon these three frames of reference, I will construct the **ethnoconflict theory** and **ethnopraxis** of the Klamath watershed. I will present this **ethnoconflict theory** and **ethnopraxis** as an overarching pattern of *talk-boundaries-action-face-and-transformation* that I expect to obtain over time in the Klamath watershed – specifically, a pattern over time of (a) how people talk about themselves and others; (b) how people construct the boundaries of social identity between Us and Them; (c) how people deal with problems and conflict; (d) the public face and the private face of each player group; and (e) how people transform the conflict.

**For the history of first-order changes**, I will look at the years’ worth of conferences, science, litigation, and mediation. I will look at how each was an application of conflict resolution as it is customarily practiced in America, assuming its applicability to the people and the situation in the Klamath. I will look at how whatever changes were made were instances of first-order change, tweaking but not questioning the premise of conflict resolution as it is customarily practiced in America. I will look at the ways in which the customary practice of conflict resolution in America was not appropriate to the people and the situation in the Klamath.

**For the second-order change**, I will look first at the Chadwick workshops which were a transformative event enabling people to set the seed for re-configuring their interactions. I will then look at the ultimate transformation of the conflict subsequent to the Chadwick workshops – the building of a watershed-wide identity, the relinquishing of the use of the customary practices of mainstream
conflict resolution – practices inappropriate to the people and the situation in the Klamath, and the embracing of the practices of reconciliation and collaboration – practices appropriate to the people and the situation in the Klamath, and the construction of a watershed-wide settlement. I will look at the epistemology of the Chadwick process. I will look at the experience of the Chadwick process from the point of view of the participant. And finally I will look at the appropriateness of the Chadwick process to the people and the situation in the Klamath.

And finally in the role of alternative practice will be my proposal in Volume Three for an alternative method of and framework for conflict transformation.

In Part One, drawing inductively upon my experience in the Klamath, I will present a formal articulation of a different epistemology and framework for theory, research and practice. In Chapter Seventeen, I will construct the alternative epistemology and framework of theory, practice, and research, which I will characterize as a Relationship-Building epistemology. In Chapter Eighteen, I will juxtapose this alternative epistemology and framework with the epistemology and framework of the academic discipline of Conflict Analysis and Resolution. In Chapter Nineteen, I will first juxtapose the customary American conflict resolution practice and the epistemology and framework of the discipline of Conflict Analysis and Resolution, and will characterize the two epistemologies as variants of an overarching Problem-Solving epistemology. I will then construct a juxtaposition between customary Problem-Solving epistemology and the alternative Relationship-Building epistemology. And, finally, in the spirit of the health care analogue, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, I will propose a repertoire of customary and alternative epistemologies which could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

In Part Two, building upon the above alternative epistemology and framework for theory, research and practice – and inspired by Lederach’s framework for building peace, the unfolding of the journey will culminate in the articulation of a framework that provides opportunity for transforming protracted environmental conflict, for people to build the relationships that can serve as a foundation upon which they can stand together to set goals and take action towards sustaining both the environment and their ways of life. In Chapter Twenty, I will describe all the components of the Conflict Transformation framework and in Chapter Twenty-One, I will lay out the phases and tracks of the Conflict Transformation framework.
Parenthetically, I would add that while I have developed both this alternative epistemology and the conflict transformation framework with domestic protracted environmental conflicts in mind, there is nothing to preclude applying any or all components to any conflict, domestic or international, environmental or otherwise, protracted or otherwise.

Before we take off on this journey together, I want to take a moment to set some formal parameters for my dissertation.

The Goals for My Dissertation. I have three goals for my dissertation. First, I want to raise awareness that, while for many people in America and for many situations in America, conflict resolution as it is customarily practiced in America is completely appropriate, there are those situations in America and those people in America for which conflict resolution as it is customarily practiced in America is not appropriate. It is not appropriate (1) when the situation is not one with which customary American conflict resolution can deal – such as conflicts about identity, world views, values, and other such non-negotiables; and/or (2) when the people involved in the conflict have a different ethnoconflict theory and ethnopraxis than that upon which customary American conflict resolution is based.

Second, I want to propose an alternative framework for conflict transformation based upon relationship-building, which could be used either when the situation first needed relationships to be built that could then serve as a foundation upon which people could stand together to solve problems, and/or when the people involved in the conflict expressed an ethnoconflict theory and ethnopraxis that was grounded upon the building and mending of relationships.

And finally, I want to position the relationship-building framework with the problem-solving framework in a partnership that could work together hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

Relationship to the Klamath. In 2004, in a course on Community Conflict, I was required to do a term paper that was an analysis of a community conflict. I was very much interested in domestic environmental conflict. I knew of no domestic environmental conflict, so I turned to the internet and bumped into the environmental conflict in the Klamath. Even though I have lived most of my life in California, I had never heard of the Klamath – the place, the river, the watershed, the conflict, anything – prior to bumping into it on the internet in 2004.
**Researcher Ethics.** Life in the Klamath watershed is very much face-to-face, with everyone enmeshed in a web of relationships. Outsiders are held at arm’s length until people get to know them and then weave them into the web of relationships.

In 2005, within the context of an Advanced Practicum course and long before my dissertation topic was even a glimmer in my eye, I was fortunate enough to meet with people throughout the watershed in January as well as to participate in two Chadwick workshops in March and in June.

In 2006, when I proposed my dissertation topic, I decided that there was no way that I could subject anybody in the Klamath to Human Subjects requirements. The people of the Klamath had been kind enough to invite me into their lives. I felt very deeply that for me to turn around and thrust paperwork in their faces would be a betrayal of their trust. I was unshakeably committed to honoring their trust. My application to the Human Subjects Review Board asserted that I would be doing no research involving human participants; given that, the Board concurred that there would be no need for the Board to review my work.

**Research Methodology.** To honor both the trust placed in me by the people of the Klamath and my assertion to the Human Subjects Review Board that I would be doing no research involving human participants, from the inception of my research on my dissertation in July 2007 through the submission of the complete draft of my dissertation in May 2011, I had no contact with anyone in the Klamath. All of my research was archival.

And it was archival in two different ways. In the usual way, it was archival in the sense of gathering and analyzing data from documents. In the unusual way, it was archival in the sense of seeking out the voice of the people of the Klamath and letting them tell their own stories in their own words. I very much wanted to present in their own words, without interference from me, how they talked about themselves and to each other and about each other over time. This was in keeping with my goal of presenting their history as they would have written it of themselves.

I sought archival data from publicly available sites – the library, online databases, and the internet. Everything that I cited in my dissertation was publicly available.\(^2\) This includes the

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\(^2\) With any online source, the reality is that there is always the chance that what was available there one day is no longer available the next day, because someone either took down the website or removed the document from the website. Should you find that to be the case with any of the online references – as I often did in my research – I will happily provide hard copies upon request. (In an instance of this situation – and as I noted in Chapter Twenty-Three References – when one online source transitioned to a new online archive, some of the articles that I had previously downloaded were no longer there in the new archive. I sent pdfs of the now-missing articles to them, so that they would have them.)
collective statements from the five Chadwick workshops and the emails from the KlamathStakeholders Listserve.

The collective statements from the five Chadwick workshops were published by Chadwick's organization Consensus Associates. Printed copies of the collective statements of prior workshops were made available at ensuing workshops to anyone who wanted to take a copy from the stack on the table. They were also available online.

The KlamathStakeholders Listserve was born on March 1, 2005, set up and maintained by the folks at OSU Extension. It continues to exist to this day. It was born out of a desire expressed during the Chadwick workshops prior to that date for a way for folks to deal with the fact that it was hard for information to get disseminated throughout the watershed. It was and is a publicly available listserve available to anyone who wishes to be included on the mailing list, whether they live in the watershed or not. And whatever is sent out on the listserve is meant to be disseminated to the general public, with no restrictions of who sees it or uses it.

And now, the journey begins.
Conflict Resolution as It is Customarily Practiced in America

In the role of customary practice...
Thanks to admonitions long proffered by both John Paul Lederach and Kevin Avruch, it has become routine to counsel (a) that culture must be taken into account when crafting a method of conflict resolution in international circumstances and (b) that the American model of conflict resolution may not be appropriate to export into other countries because of differences in culture. However, when the American model of conflict resolution is used within America, American culture is not examined and the assumption that the American model of conflict resolution is universally appropriate to all of American culture is not questioned.

Avruch asserts that it is imperative that local cultural knowledge of what counts as conflict and thus what counts as conflict resolution practice—what Avruch and Black call *ethnoconflict theories* and *ethnopraxes*—determines the conflict resolution methods that are used in international circumstances (Avruch 1991; Avruch and Black 1991, 1993; Black and Avruch 1989), yet nowhere in the literature can I find any explication of *What is the ethnoconflict theory of American culture*? and *How is the American model of conflict resolution the ethnopraxis of American culture*?

Lederach asserts that the American model claims that it is not culture-bound and thus is universally applicable (for example, see Moore 2003), and that in the American model culture becomes a matter of advanced mediator technique, in the sense that the mediator deals with culture in terms of how to accommodate cultural differences within the model (Lederach 1991, 1995). He contends that this assumption of universal applicability of the American model in international circumstances establishes the third party as expert and the local parties as deficient and in need of the third party’s expertise—thus effectively silencing—discounting as irrelevant—local knowledge about ways of doing and being in their own setting. Echoing Avruch, Lederach advocates an elicitive approach to conflict transformation that is grounded in the local cultural knowledge.

However, when the American model is used in America, it is unquestioningly assumed that the model is universally applicable to all people in America. The notion that there could be cultural differences within America such that the model may not be appropriate to all people in America does not surface as a consideration. Likewise, the notion of eliciting local knowledge and grounding methods upon that local knowledge does not figure in the customary implementation of the American model within America.
In Volume One, I want to ask the questions that have not been asked. Specifically, I want to address the following constellation of questions:

*What is the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based and where does it come from?*

*With whom and in what situations is the American model appropriate within America?*

*With whom and in what situations might it not be appropriate?*

I will begin in Chapter Two by looking at American culture. Then in Chapter Three I will construct a matrix of an ideal-type of customary American conflict resolution practice. Finally in Chapter Four, I will propose answers to the constellation of questions, first drawing upon my look at American culture to locate the ethnoconflict theory and ethnopraxis on which customary American conflict resolution practice is based, and then looking at the people and situations for which the American model would be appropriate and would not be appropriate.
Chapter Two
American Culture

With respect to taking a look at American culture, I will be building my case by means of pursuing two questions: (1) What is the set of characteristics that are considered dominant in American culture? and (2) What is the section of American culture that expresses that set of dominant characteristics paradigmatically? I will start with the most general of etic characterizations, then progressively drill down to increasingly more nuanced etic characterizations, finally arriving at a rich vein of emic constructions of identity. I am completely aware of and share the concerns that etic characterizations of cultures gloss the cultural diversity both within and between groups as well as do not tap into the deep structure of worldviews that informs the characteristics. Done mindfully, however, they provide a useful and informative frame of reference for thinking about American culture and about the origins of the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based.

1. The Value Orientations of American Culture

For the most general of etic characterizations, I will look to the matrix of value-orientation systems that Kluckhohn and Strodtbeck proposed in their 1961 book *Variations in Value Orientations*. The first major assumption they make is that there is an ordered variation in value-orientation systems. They propose five value-orientation systems, each of which is understood as a crucial human problem common to all human groups. Within each value-orientation system, they propose a range of variations in the solutions to that common human problem. Finally they make the assumption that “all alternatives of all solutions are present in all societies at all times but are differentially preferred” at different moments in time (ibid., 10, italics in original). They use the dominant orientations of American culture to illustrate their matrix.

With respect to the question *What is the character of innate human nature?*, they propose that the answers will be based upon “the assumption that the character of human beings is innately either good, evil, a combination of good and evil, or neutral. Human beings also can be assumed to be changeable (mutable) or unchangeable (immutable)” (Gudykunst and Ting-Toomey 1988, 52). With respect to the dominant orientation exhibited by American culture, Kluckhohn and Strodtbeck
assert that “few will disagree that the orientation inherited from Puritan ancestors and still strong among many Americans is that of a basically Evil but perfectible human nature” (1961, 12, italics in original). In clarification, Gudykunst and Ting-Toomey propose that “individuals who believe they are basically evil but mutable will exercise control and discipline of the self to achieve goodness” (1988, 52). Kluckhohn and Strodtbeck also note that some in America may also hold the non-dominant orientation that human nature is a mix of good and evil, which would mean “that although control and effort are certainly needed, lapses can be understood and need not always be severely condemned” (1961, 12).

With respect to the question What is the relation of human to nature?, they propose that the answers will range from a subjugation-to-nature orientation to a harmony-with-nature orientation to a mastery-over-nature orientation (1961). They assert that the dominant orientation exhibited by American culture is the mastery-over-nature position, which holds that nature is there to be overcome and put to the use of humans. “This view in general is that it is the person’s responsibility to overcome obstacles that may stand in his or her way” (Gudykunst and Ting-Toomey 1988, 52). Kluckhohn and Strodtbeck note that Spanish-American culture in the American Southwest held the non-dominant orientation of subjugation-to-nature, which would mean that there is very little that one can do and that one should accept one’s fate. In addition, they draw upon Clyde Kluckhohn’s extensive experience with the Navaho to note that they held the non-dominant orientation of harmony-with-nature, which would mean that they saw “no real separation of man, nature, and supernature. One is simply an extension of the other, and a conception of wholeness derives from their unity” (Kluckhohn and Strodtbeck 1961, 13).

With respect to the question What is the orientation of human life towards time?, they propose that the answers will range from orientation to the Past to orientation to the Present to orientation to the Future (1961). They assert that the dominant orientation exhibited by American culture is an emphasis on the future – “a Future which is anticipated to be ‘bigger and better.’...The ways of the Past are not considered good just because they are Past, and truly dominant (that is, typically middle-class) Americans are seldom content with the Present. This view results in a high evaluation of change, providing the change does not threaten the existing value order – the American way of life” (ibid., 15). Drawing again upon their collective experience in the American Southwest, they note that both the Spanish-American culture and the Navaho culture there held the non-

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1 This represents their characterization as of their publication in 1961 and does not necessarily characterize Spanish-Americans in the American Southwest today.
dominant orientation to the Present, which would mean that little attention was paid to the Past, and that the Future was both vague and unpredictable (ibid.).

With respect to the question *What is the nature of human self-expression in activity?*, they propose that the answers will range from a Being orientation to a Being-in-Becoming orientation to a Doing orientation (1961). They assert that the dominant orientation exhibited by American culture is the Doing orientation. “Its most distinctive feature is a demand for the kind of *activity* which results in accomplishments that are measurable by standards conceived to be external to the acting individual. ... ‘Getting things done’ and ‘let’s do something about it’ are stock American phrases” (ibid., 17, italics in original). They do not present a candidate for a non-dominant orientation in American culture at that time, but Gudykunst and Ting-Toomey, writing more than twenty years after Kluckhohn and Strodtbeck, note that the self-improvement movement of the 1960s and 1970s was an instance of the Being-in-Becoming orientation (1988), which would mean that the emphasis would have been on activity “which has as its goal the development of all aspects of the self as an integrated whole” (Kluckhohn and Strodtbeck 1961, 17).

And finally, with respect to the question *What is the orientation of the relationship of humans to one another?*, they propose that the answers will range from a Lineal group orientation to a Collateral group orientation to an Individualistic orientation (1961). They note that the dominant orientation exhibited by American culture is the Individualistic orientation, which means that the goals of the individual trump the goals of the group. “This does not mean, however, that individuals can selfishly pursue their own goals and disregard the interests of others” (Gudykunst and Ting-Toomey 1988, 43). Rather it means that each individual’s responsibility to the total society and his/her place in it is defined in terms of goals and roles that are autonomous or independent of any particular group (Kluckhohn and Strodtbeck 1961). Drawing upon Clyde Kluckhohn’s experience with the Navaho, they note that the Navaho culture held the non-dominant orientation to a Collateral group orientation, which would mean that the roles and goals of the extended family group for the individual trump those which the individual might have for him/herself.

*To summarize* Kluckhohn and Strodtbeck’s characterization of the dominant orientations exhibited by American culture, Americans think of themselves as having a basically evil but perfectible human nature – think of nature as something to be overcome and put to the use of humans – emphasize the future which is supposed to be bigger and better – value change as long as the change does not threaten their way of life – focus on getting things done and on measuring those accomplishments by standards that are external to the actor – and pursue individual goals that are
independent of allegiance to any group. Parenthetically, they assert that it is typically the middle class that expresses the dominant orientations (ibid.), but that is as far as they go in either characterizing the middle class or in locating the expression of the dominant orientations.

In addition, drawing upon their collective experience in the American Southwest, Kluckhohn and Strodtbeck noted that the Spanish-American culture and the Navaho culture (circa 1961) held value orientations other than those held by the dominant American culture, such as thinking of human nature as a mix of good and evil – of humans as living in harmony with nature – of living in the Present – and of the goals of the extended family group trumping the goals of the individual.

2. America as a Low-Context Individualistic Culture

Drilling down one layer from the most general to something somewhat more nuanced, I will look to the notions of individualistic versus collectivistic cultures as well as of low-context versus high-context communication. The classic citations for these notions are Hofstede (1980) for the former and Hall (1976) for the latter. In their 1988 book *Culture and Interpersonal Communication*, Gudykunst and Ting-Toomey note that Hofstede’s discussion of the norms in individualistic and collectivistic cultures are consistent with Hall’s conceptualization of low- and high-context communication, and, as such, they conflate the notions, subsuming the notion of low- and high-context communication within the notion of individualistic versus collectivistic cultures. Raymond Cohen, in his 1997 book *Negotiating Across Cultures*, drawing upon both Hofstede and Hall as well as others, uses the terms interchangeably.

I, too, shall use the terms interchangeably when I draw extensively upon Raymond Cohen (1997) to present generic characteristics of low-context individualistic and high-context collectivistic cultures.

2.1 Generic Characteristics of a Low-Context Culture

To place this explication in context, both Raymond Cohen (1997) as well as Gudykunst and Ting-Toomey (1988) offer America as the paradigmatic exemplar of an individualistic low-context culture.

In a low-context culture, the emphasis is on the individual. A person’s identity is based upon the individual, and individual needs are defined by individual interest. A person’s self-esteem is based on the individual’s self-approbation. Group affiliation is by personal preference, and an individual is relatively free from group constraints and duties. An individual is considered responsible for his/her own actions. Guilt is the price of the failure of one’s actions.
Equality is the accepted social order, and status and roles are acquired, and rarely inherited. Authority is attached to an office, and although respected, is also freely questioned and challenged.

Rights and duties are defined normatively by law, which defines relationships between individuals in terms of contractual obligations. Individual rights are of paramount importance. Transactions are conducted within a framework of contracts and rules. Results trump relationships. A common statement characterizing transactions is “Nothing personal. It’s just business.”

Transactions with strangers can be dealt with within the framework of contractual obligations.

Members of a low-context culture are future-oriented, change-oriented, and short-term-oriented. They conceptualize their relationship to their environment as one of instrumental manipulation and are impatient to get things done in order meet a deadline, often a self-imposed one.

Low-context communication makes no assumptions of shared context between interlocutors. Rather the goal of communication is the direct and explicit transmission of information. “Get to the point; I don’t have all day” and “Say what you mean and mean what you say” are common admonitions about communication. Truth trumps considerations of social harmony.

In a low-context culture, conflict is seen as the consequence of the breaking of rules, the abrogation of contractual obligations. Conflict analysis isolates the problem from its interpersonal or intergroup context; people are part of the problem, not the solution.

Conflict resolution is understood as rational problem-solving, in which each problem is solved discretely, using rational cost-benefit analysis. Conflicts are resolved adversarially through the courts, through formal processes of law. Everything is negotiable. Argumentation and confrontation are expected to reveal the truth of the situation. The case will be argued by drawing conclusions based on factual evidence and concrete detail about the particular situation and without philosophical debate about general principles.

The law in a low-context culture privileges rule-oriented accounts – stories about rules, duties, obligations, contractual arrangements (Conley and O’Barr 1990a, 1990b, 1998). The stories emphasize precise facts over emotions, and are based upon universal rules that apply to every person regardless of personal circumstances. The parties to the conflict claim a sense of entitlement based upon broken rules.

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2 Just to clarify: Equality in this sentence refers to the distribution of opportunity – that is, the principle that everyone should have an equal opportunity. The distribution of opportunity and the distribution of rewards may not operate on the same principle. For example, in America, the distribution of rewards operates on the principle of equity, that is, the principle that what an individual puts in determines how much she gets back.

3 I remember so very clearly when as a young woman I first ‘discovered’ that ‘say what you mean and mean what you say’ was a value I held very highly. At the time, I thought I had discovered a truth of the universe. Needless to say it was a tad deflating to discover instead that it simply revealed how deeply enculturated I was!
The law devalues relational accounts – stories about relationships and contexts, which predicate legal entitlement on personal need and social worth. Such relational accounts are considered irrelevant in the low-context legal system because they emphasize emotions over facts, and context over decontextualized concrete details.

2.2 Generic Characteristics of a High-Context Culture

In a high-context culture, the emphasis is on the group. A person’s identity is based upon group affiliation, and individual needs are defined by communal interest. A person’s self esteem is based on group approbation. Group affiliation is acquired by birth, and an individual is constrained by duties to group, to family and community. Honor and face are sacrosanct and guarded with extreme diligence. Shame is the price of loss of honor and loss of face.

Hierarchy is the accepted social order, and status and roles are ascribed. Authority is ascribed by status and/or role in the hierarchy and is neither questioned nor challenged.

Rights and duties are defined normatively by tradition, by custom, which defines the relationships between individuals in terms of their group affiliations. Group well-being and harmony are of paramount importance. Transactions are conducted within the framework of face-to-face personal relationships, group affiliation, and past favor. Relationships trump results. Business is personal. Outsiders are mistrusted. Before a transaction can happen with an outsider, a personal relationship must be built.

Members of a high-context culture are past-oriented, tradition-oriented, and long-term-oriented. They conceptualize their relationship to their environment as one of adjusting themselves to their environment and are willing to be patient as things work themselves out over time.

High-context communication is grounded upon the assumption of shared context between interlocutors. The goal of communication is to preserve and promote social harmony. Communication is indirect and implicit, employing allusion, hinted-at nuances, nonverbal cues, politeness in order to avoid any chance of unpleasantness. Social harmony trumps truth.

In a high-context culture, conflict is seen as the consequence of the disruption of harmonious relationship within and between the groups. Conflict analysis sees the problem as embedded within and inseparable from the interpersonal or intergroup context; both the problem and the solution are about relationships among people.

Conflict resolution is understood as, to coin a phrase, spiritual problem-solving, which stresses the long-term and affective aspects of the relationships between the parties. Conflicts are resolved consensually through community conciliation. While many things are negotiable, some things, such
as, for example, one’s way of life, are absolutely not negotiable. Argumentation and confrontation are to be avoided, as they are disruptive of social harmony. The story of the situation will be told much as a storyteller would tell the story, appealing to general principles which can be applied to particular instances, as well as to emotions.

To summarize, then, for Raymond Cohen, America is the paradigmatic exemplar of an individualistic low-context culture, where the emphasis is on decontextualized individuals who interact with each other within a framework of contracts, rights, and rules. While Cohen’s book on international negotiation treats the characteristics of individualism and low-context communication as distributed uniformly across America, Conley and O’Barr make us aware that the distribution is not uniform – that while many can be so characterized, there are also those in America who exhibit characteristics of a more collectivistic high-context culture, for whom the emphasis is on contextualized persons who interact with each other within a framework of relationships and group affiliations.

To recapitulate what we have covered so far, one can clearly find the dominant value orientations asserted by Kluckhohn and Strodtbeck as exhibited by American culture embedded within the characteristics of the individualistic low-context culture considered by Raymond Cohen as exemplified by America. It is as if the dominant American value orientations were the seeds which blossomed into the characteristics of the individualistic low-context culture of mainstream America. At the same time, the point is also made that there are other ‘seeds’ and other ‘blossoms’ within American culture, meaning that not everyone in America shares the dominant characteristics and dominant value-orientations.

3. Individualism and Class in America

Drilling down yet another layer to something even more nuanced, I will move from looking at universal etic characterizations which cited America as exemplar of certain variations, to looking at an etic characterization focused specifically on American culture.

In their book Habits of the Heart (2008), Bellah et al. give us a way to look at the historical roots of our American individualism by inviting us to look at what it was a response to – in other words, looking first at ‘the way things were’ and then looking at how ‘the way we want things to be’ was constructed in such a way as to be resolutely not ‘the way things were.’ Our country and our culture “emerged out of the struggle against monarchical and aristocratic authority that seemed arbitrary and oppressive to citizens prepared to assert the right to govern themselves” (ibid., 142). ‘The way things
were’ was perceived as absence of individual choice, oppressive conformity of the individual to the
demands of others, unequal individual opportunity, and irrational procedures for judging ends and
means and the relationship between them. It is no surprise, given a consideration of ‘the way things
were,’ that individualism is the characteristic orientation in American culture. And it is no surprise
that ‘the way we want things to be’ embraces the ideals of individual choice, freedom from
conformity to the demands of others, equal individual opportunity, and rational procedures for
judging ends and means and the relationship between them. Bellah et al. name the first three ideals
Success, Freedom, Justice (ibid.), and I add Rationality to the list.

*Success* is understood as the achievement of a good life by means of personal, individual choices
made. The means to achieve individual choice is contingent upon one’s individual economic
progress – in essence, the better off one is, the more choice one has.

*Freedom* “is perhaps the most resonant, deeply held American value” (ibid., 23), yet it turns out to
mean freedom from, that is, “being left alone by others, not having other people’s values, ideas, or
styles of life forced upon one, being free of arbitrary authority in work, family, and political life”
(ibid., 23).

*Justice* is understood as a matter of equal opportunity for every individual to pursue whatever he
or she understands by happiness. Equal opportunities are guaranteed by fair laws and political
procedures – laws and procedures applied in the same way to everyone.

*Rationality* is understood as the application of universal, neutral rules and technical expertise to
the judgment of ends and means and the relationship between them.

The heritage out of which America was born emphasized “the rational individual as the
fundamental moral entity out of which society is composed through individual acts of association.
...American culture is not merely heir to this tradition, but is perhaps its most extreme expression”
(Schneider and Smith 1973, 21). All Americans express this individualistic cultural orientation. All
Americans embrace the ideals of Success, Freedom and Justice, and value Rationality. However, how
individualism has played out has varied in American culture over time and varies within American
culture at any one time.

Bellah et al. present a compelling history of the changes in individualism from our beginnings to
today (2008). The founders of our country, from the Puritans through the founding generation of
the American republic, expressed a **civic individualism**, in that the ideals Success, Freedom, and
Justice were embedded within community – the self-sufficient individual participating in the larger
social context. It was understood that one’s individuality was realized within the context of
community. What Bellah et al. call the ‘representative character’ of the times was a self-employed
producer of goods and services for whom the demands of work, family and community involvement converged in the context of the town (ibid.).

Over time, as our country has expanded westward and has moved from township to metropolis, the connection of individual to community has slowly but surely withered away. **Modern individualism**, with its utilitarian and expressive strands, extracts the ideals of Success, Freedom, and Justice from community and focuses them exclusively on self-achievement by the autonomous individual. ‘Freedom from’ has become an end in itself; fear of loss of autonomy has come to trump the understanding that individuality is realized in community.

Utilitarian individualism seeks to maximize the achievement of individual interests. This individualism obtains at work; its representative characters began with the self-sufficient entrepreneur and moved on to the professional, who is expected to apply technical Rationality to the solution of problems at work and whose success is measured in terms of whether the solution is correct, or even better, innovative.

Expressive individualism arose in reaction to the limitations of work to provide a sense of meaning and seeks to maximize the realization of inner psychic capacities. This individualism obtains at home (where home is understood to represent ‘not at work’); its representative character is the therapist, who is expected to enable the client to realize his or her inner psychic capacities and whose success is measured in terms of the client’s personal satisfaction.4

In the past 100 years or so, individualism – specifically modern individualism with its utilitarian and expressive strands – has been closely linked to middle class status. “The ‘middle class’ that began to emerge in the later part of the nineteenth century differed from the old ‘middling condition.’ In the true sense of the term, the middle class is defined not merely by the desire for [Success]..., but by a conscious, calculating effort to move up the ladder of Success” (ibid., 148).

Bellah et al. drew upon Schneider and Smith’s 1973 book *Class Differences and Sex Roles in American Kinship and Family Structure* for ideal-type characterizations of classes in America. In the interests of an even more detailed presentation of these ideal-types, I turn directly to Schneider and Smith. They assert that the cultural differences between classes are “an expression of the different and varying life experiences of individuals, particularly in relation to the occupational milieu” (Schneider and Smith 1973, 29).

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4 I happened to catch a feature on the CBS Sunday Morning show on 11/11/07 about the entry of the twenty-something generation into the workplace. It seems that they are taking expressive individualism into the workplace – in that they are interested in work that enables them to realize their inner psychic capacities. In response, managers now characterize themselves as therapists in relation to these new employees.
The Middle Class

For the middle class, it is the individual’s responsibility to control the circumstances of his life through the application of technical Rationality.\(^5\) It is the individual’s responsibility to harness her innate human nature through self-sufficiency, self-control, and self-improvement.\(^6\) If the individual is successful, it is deemed to be the result of personal choices the individual made. If the individual does not live up to expectations, it is deemed to be the failure of self-sufficiency, self-control, and self-improvement.

The dominant value for the middle class is not only Success, but calculated, self-disciplined movement up the ladder of Success.\(^7\) The occupational milieu for the middle class is the locus of opportunity for upward mobility. Typically, the middle class person has a career as a professional, usually in a bureaucratic organization. The individual looks to promotion as the path of upward mobility. Most occupations involve the application of the neutral and universal procedures of rational calculation plus technical expertise to the solution of problems. Success is measured not only by the absence of error but also by the extent of innovation (ibid.).

The middle class lays strong emphasis upon the self-sufficiency and solidarity of the nuclear family against all other kinship ties and groupings (ibid.). The individual feels a right to his or her own resources, but not necessarily an obligation to give to others in need, given the overall expectation of others’ responsibility for their own status in life. Middle-class spending is oriented towards family purchases which enhance or maintain the status and prestige of the whole family (ibid.).

The middle class looks to Rationality and technical expertise as authority about what should be done – the ends – and about how it should be done – the means. Concerns about Tradition and Relationships are subordinated to the dictates of technical Rationality.

The Lower Class

For the lower class, the individual is at the mercy of “a world which is [uncertain,] uncontrollable, unpredictable and apparently irrational” (ibid., 56). And similarly the individual is at the mercy of his innate human nature. If the individual is successful, it is thanks to her having adapted to what cannot be changed or avoided, as well as her having received help from her network

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\(^5\) One is reminded of the attribution by Kluckhohn and Strodtbeck of Mastery-over-Nature as the dominant value orientation in American culture (1961).

\(^6\) One is reminded of the value orientation of Being-in-Becoming which Gudykunst and Ting-Toomey ascribe to American culture with the advent of the self-improvement movement in the 1960s and 1970s (1988).

\(^7\) The acronym YUPPIE standing for young, upwardly mobile professional did not arise out of nothing!
of personal relationships. If the individual does not live up to expectations, it is deemed to be the result of either an immutable flaw in his innate human nature, or an essentially uncontrollable concatenation of circumstances (ibid.).

The dominant value for the lower class is Security. The occupational milieu for the lower class is a source of insecurity, rather than Security. Typically, the lower class is vulnerable to unemployment (ibid.); the jobs can be unstable or perhaps seasonal. In addition, the jobs typically range from unskilled manual labor to service work to skilled crafts work (ibid.). There is little orientation to or possibility of promotion beyond the skilled craftsman level (ibid.). The only options available to the lower class person for increasing her income are typically through either overtime or union bargaining to raise the payrate – or holding multiple jobs at the same time. Most jobs involve the performance of simple repetitive tasks requiring neither initiative nor thought (ibid.).

In order to achieve Security, the lower-class individual must not only adapt to what cannot be avoided or changed, but also must attempt to maximize possible sources of help (ibid.). The lower class does not emphasize nuclear family self-sufficiency (ibid.), but rather relies upon a wide network of relationships of reciprocity springing from local community, ethnic, and kinship ties (ibid.). The individual feels both a right to his own resources and an obligation to give to others in need (ibid.).

The lower class looks to concerns about Security, Tradition, and Relationships as authority about what should be done – the ends – and about how it should be done – the means. Concerns about technical Rationality are subordinated to the dictates of Security, Tradition, and Relationships.

The Working Class

With respect to the working class, Schneider and Smith assert that they clearly represent “an intermediate stage between the ideal-type cases of the lower and middle classes. [Even though the working class may refer to itself as lower-middle-class, and even though] the working class is oriented toward mobility of a certain kind, it is mobility towards a state of greater Security” (ibid., 84).

The Upper Class

The upper class looks to concerns about Relationships plus Continuity of the family wealth (understood as Tradition by the upper class) as authority about what should be done – the ends – and about how it should be done – the means. Concerns about technical Rationality are subordinated to the dictates of Relationships and Continuity/Tradition.

Schneider and Smith are forceful in making the point that, while rank-orderings of Income and Consumption also figure into the construction of class, class structure is far more about the rank-
ordering of Rationality, Security, Tradition/Continuity, and Relationships than it is about only Income and Consumption. As they explain it, each class is a category which includes those who have certain attitudes and aspirations and expectations, and shape their actions accordingly (ibid.). For example, there can be people who do not make much money, but adhere strongly to the cultural standards about status mobility associated with the middle class, and conversely there can be those who do make much more money, but adhere strongly to the cultural standards about Security associated with the lower class. Class, then, is a collection of individuals, rather than a group identity. The class takes its identity from the individuals, rather than the individuals take their identity from the class.

Schneider and Smith make three interesting points with respect to the relationship among the classes when looked at from the perspective of society as a whole.

First, while the middle class is calculatedly upwardly mobile, “the lower and the upper classes are at rest, relatively speaking. They do not act as though they seriously believe that they are headed ‘up’ or ‘down’” (ibid., 20). The lower class yearns for an improvement in their physical condition, but whatever mobility they may achieve is in terms of Security, rather than status. The upper class seeks to maintain the status they have already acquired. It is only the middle class that organizes its life around status mobility.

Second, middle class values are dominant in the sense that they are seen by all classes as the driving force of the whole social system (ibid.) and are upheld by all classes whenever those values may come in conflict with other values (ibid.).

And finally, all classes pay symbolic deference to middle-class values (ibid.). “The upper class sees itself as a privileged stratum which really ought to pay deference to middle-class values because they are the driving force of the whole social system” (ibid., 27). While the upper class realize that their particular orientations are privileged and would not be good for everybody, they staunchly uphold the norms of Rationality and achievement – for others (ibid.). The lower class (and the working class) both envy and defer to middle-class values without necessarily embracing them. They explain their inferior position in terms of circumstances which have prevented them from behaving in a middle-class fashion (ibid.) and judge their superordinate norms of Security, Tradition, and Relationships as inferior to the superordinate norm of Rationality held by the middle class (ibid.).

To summarize, then, Bellah et al. have shown us the historical roots of our American individualism in the response of our founding generations to conditions perceived as oppressive. They have also shown us the manner in which our American individualism has changed over time,
from the civic individualism of our earlier days – which understood individuality as realized in community – to the modern utilitarian and expressive individualism of today – which understands individuality as realized separately from community. In essence, Bellah et al.’s history of American individualism is tantamount to the history of the characteristics of America as an individualistic low-context culture.

Schneider and Smith have asserted that the modern American middle class is paradigmatically expressive of modern utilitarian and expressive individualism, with its concerns about Tradition and Relationships subordinated to the dictates of Rationality in the pursuit of movement up the ladder of Success. They have also asserted that, while the lower, working, and upper classes defer to what they judge to be the inherent superiority of middle class values, the lower, working, and upper classes themselves have values and concerns that differ from those of the middle class. For the lower and working classes, concerns about Rationality are subordinated to the dictates of Security, Tradition, and Relationships, while for the upper class, even though freed by wealth from concerns about Security, concerns about Rationality are subordinated to the dictates of Tradition and Relationships.

4. “Individualism and Commitment in American Life” (Bellah et al., 2008)

This section is a continuation of the etic characterization of American culture that I have drawn from Bellah et al. plus Schneider and Smith. While Bellah et al. look extensively at individualism and class, a major focus of their book is the tension in American culture between the claims of individuality and the claims of community – hence my appropriation of their book’s subtitle to characterize this next section.

Bellah et al. make a powerful presentation of the ambiguities that are inherent in the ideals of Success, Freedom, and Justice (ibid.). With respect to Success, while it is very important for us to achieve individual economic progress in order to have choice, there is not clarity on what to choose once we can choose – on a vision of what counts as a good life once we have the means to choose it. With respect to Freedom, while it is very important for us to achieve freedom from conformity with the demands of others, there is not clarity on what to do with the freedom once we have it – on a vision of what counts as a good society together once we have achieved freedom from each other. And with respect to Justice, while it is very important for us to legislate equal opportunity to pursue individual happiness, there is not clarity on what that happiness might look like if individuals had an equal chance to pursue their individual interests – on a vision of what counts as fair rules, fair rewards, and fair society once we all have equal opportunity. In addition, at the heart of American individualism, we live with an ambivalence that juxtaposes “the fear that society may overwhelm the
individual and destroy any chance of autonomy unless he stands against it ...[with] the recognition that it is only in relation to society that the individual can fulfill himself and that if the break with society is too radical, life has no meaning at all” (ibid., 144). As such, we have very little clarity on a joint vision and no practices by means of which to construct such a joint vision.

The language of modern individualism and the practices of separation are the dominant – indeed, the default – language and practice in contemporary American culture. We work very hard to separate ourselves from each other and we “imagine that the differences between us derive largely from a conflict of current interests” (ibid., 27).

Bellah et al. assert that the language of tradition and commitment and the practices of community are a secondary language and practice that are alive in American culture, but more often than not are reduced to whispers from our past that have a hard time being heard over the din of the default language and practice (ibid.).

People use the word ‘community’ to mean many things. Bellah et al. draw some distinctions, and use a strong sense of the word ‘community’ to refer to “a group of people who are socially interdependent, who participate together in discussion and decision making, and who share certain practices...that both define the community and are nurtured by it” (ibid., 333). They also refer to this as a community of memory, in the sense that the members of the community share both history and hope, the past and the future.

This stands in contrast to that which they term a ‘lifestyle enclave,’ referring to “people who share some feature of private life. Members of a lifestyle enclave express their identity through shared patterns of appearance, consumption, and leisure activities, which often serve to differentiate them sharply from those with other lifestyles. They are not interdependent, do not act together politically, and do not share a history” (ibid., 335). In essence, it is a collection of separate individuals who share similar individual interests. Bellah et al. note that many of what are called communities in America are actually mixtures of ‘communities’ in their strong sense and ‘lifestyle enclaves’ (ibid.).

I would extend their distinction even further to ‘communities of interest,’ referring to people who are not even connected by proximity, but only by shared individual interest. The only time that they may actually meet face-to-face is at conventions or gatherings to which they all travel in order to attend. To have an exemplar of a ‘community of interest,’ I have only to remember the deluge of RVs that descended on my neighborhood a few weekends ago, as people came from elsewhere for a gathering of barbecue enthusiasts at Alki Beach.
At this point in this section, I will take the opportunity to reach out and pull in the powerful contributions of Robert Putnam in his 2000 book *Bowling Alone: The Collapse and Revival of American Community*. The echoes resound deafeningly between *Habits of the Heart* and *Bowling Alone*. Bellah et al. talk about the rise of modern individualism and a withering away of the linkage between community and the individual. Putnam tracks this withering away over the course of the last century: “For the first two-thirds of the 20th century a powerful tide bore Americans into ever deeper engagement in the life of their communities, but a few decades ago – silently, without warning – that tide reversed and we were overtaken by a treacherous rip current. Without at first noticing, we have been pulled apart from one another and from our communities over the last third of the century” (Putnam 2000, 27).

When Bellah et al. speak of the *practices of community*, they are, in my opinion, talking about the same sorts of connections that Putnam is talking about when he speaks of *social capital* – “connections among individuals – social networks and the norms of reciprocity and trustworthiness that arise from them” (ibid., 19). Social networks are the webs of connections among people. Generalized reciprocity is the touchstone of social capital – “I'll do this for you now, without expecting anything immediately in return and perhaps without even knowing you, confident that down the road you or someone else will return the favor” (ibid., 134). Trustworthiness is about honesty and social trust. Social trust is trust, not in institutions or government, but in other people, even in people one may not actually ever meet face to face – in other words, in the generalized other. It is the expectation that the generalized other will be honest in their dealings with people and will give most people the benefit of the doubt (ibid.). Putnam asserts that generalized reciprocity, honesty, social trust and civic engagement are mutually reinforcing. While the causal arrows among them “are as tangled as a well-tossed spaghetti,” the correlational linkages among them are well established (ibid.).

Since the mid-1960s, Americans have been dropping out in droves from political, civic, and religious participation. In multiple spheres of American life, we have changed from ‘doing’ culture to ‘consuming’ culture – from participants in life to spectators of life. We are connecting less often with our friends and neighbors. While work-based networks have increased because of the increase in time spent at work and the increase in the emphasis on teamwork, often these networks are “used for instrumental purposes, thus somewhat undercutting their value for community and social purposes” (ibid., 91). In addition, the increase in work that is done away from the worksite by people working alone somewhere offsets whatever increase in social capital might be associated with workplace connections.
Putnam treats us to two interesting counter-instances in relation to this generalized decrease in social capital. First, age makes a difference: the disengagement in political, civic, and religious participation appears tied to generational succession. People born roughly between 1910 and 1940—what Putnam calls the long civic generation—are substantially more engaged in community affairs than people born after 1940—which would include the boomers and subsequent generations (ibid.). For example, there has been a rise in individualized acts of benevolence, such as youth mentoring or reading to a shut-in, but it has been concentrated among the long civic generation (ibid.). Volunteering for community projects that require collective effort, such as refurbishing a neighborhood park, and volunteering that requires a younger constitution, such as fighting fires or giving blood, are down, and the dropouts are drawn disproportionately from the boomers (ibid.). As the long civic generation dies and is replaced by the youngest generation, volunteering and other civic participation will decline precipitously.

Second, size of community makes a difference: He found that civic involvement differed by community type, specifically the smaller the community type, the more the community involvement (ibid.). And he found that it is not that the people who live in these different community types are different in terms of individual characteristics such as age, gender, education, race, marital status, job status, parental status, financial circumstances, homeownership, region of the country (ibid.). When he did statistical analysis holding constant all the individual characteristics and varying only community type, he found that the fact of living in the different community changed the degree of community involvement.

With respect to urban communities, he found that “metropolitans are less engaged because of where they are, not who they are...[and that] living in a major metropolitan agglomeration somehow weakens civic engagement and social capital” (ibid., 206). With respect to small-town communities, he found that social capital and civic involvement were more common there than in big cities (ibid.).

And finally, with respect to suburban communities, he found that urban sprawl “appears to have been a significant contributor to civic disengagement over the last three or four decades for at least three distinct reasons” (ibid., 214). First, commuting. “The car and the commute, however, are demonstrably bad for community life. In round numbers the evidence suggests that each additional ten minutes in daily commuting time cuts involvement in community affairs by 10 percent” (ibid., 213 italics in original). Second, increasing social segregation and social homogeneity. As the sprawl has oozed on out, the suburban community has moved from ethnic and class homogeneity, to lifestyle enclaves segregated by race, class, education, life stage, and so on, and to gated communities in which actual and visible physical barriers supplement the invisible sociological barriers of the lifestyle enclaves.
The privatization of the 1950s in which “suburbanites kept to themselves, asking little of their neighbors and expecting little in return” (ibid., 210) has become more formalized and impersonal, where community associations rather than social connections maintain conformity to the rules. Ultimately, “the greater the social homogeneity of a community, the lower the level of political involvement” (ibid., 210). And finally, third, increasing spatial fragmentation. He found that the greater the separation between work and home and shops, the less the civic engagement.

In the days of yore when civic individualism obtained in America, being involved in community was an obligation which everyone honored. Nowadays, when modern individualism obtains in America, Americans “are not automatically involved in social relationships that impose obligations not of their choosing, and social institutions that are not the product of the voluntary choice of the individuals who constitute them are perceived as illegitimate” (Bellah et al. 2008, 167). People speak of ‘getting involved,’ and see it as an individual choice rather than as an obligation. “Most people say they get involved in social institutions to achieve their self-interests or because they feel an affinity with certain others” (ibid., 167).

The Concerned Citizen arises when lifestyle enclaves feel threatened. The perceived threat to individual interests draws together a coalition of otherwise separate individuals to fight to preserve their interests against Them. Once They have been vanquished, the coalition disbands and individuals slide back into their separate lives.

The Civic-Minded Professional emerges when conflict arises in her community. She “denies that in most cases one can make a valid public judgment about the relative legitimacy of different conceptions of life goals” (ibid., 188), but, drawing upon the toolkit from her utilitarian individualism, she does assume “that such competing claims can be resolved peacefully by the creation of neutral technical solutions that are beyond debate” (ibid., 188). As one of the people in the research conducted by Bellah et al. said, “‘the only way to go is to get different groups involved and to have an honest broker mediating between them; and to have all the groups involved in comprehensive research on the issue, from the economic, sociological, and political points of view’” (ibid., 188). The civic-minded professional asserts that such research enables individuals to know their long-term interests, to know the consequences of different courses of action, and to make a decision in the best interests of each (ibid.).

Bellah et al. call our attention to assumptions hidden in this approach, asserting that success requires that all interests are fundamentally economic and negotiable and that participants must be

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8 The acronym NIMBY, standing for Not In My Back Yard, did not come from nothing!
able to carry out comprehensive scientific research that can produce unambiguous conclusions. As the authors note, often neither is the case.

Finally, Bellah et al. sketch the representative character of the Mythic Individual Hero who stands apart from society so that he can be of service to it. "To serve society, one must be able to stand alone, not needing others, not depending on their judgment, and not submitting to their wishes. ...It's as if the myth says you can be a truly good person, worthy of admiration and love, only if you resist fully joining the group" (ibid., 145-6).

To summarize, then, Bellah et al. speak to the disengagement in political, civic, and religious participation that has come to characterize modern American culture. The dominant or default language and practice in American culture has become the language of modern utilitarian and expressive individualism and the practice of separation. The language of civic individualism and the practices of community are alive in American culture, but secondary or non-dominant, and often finding it hard to be heard over the din of the default or dominant language and practice.

Putnam asserts that disengagement can be found across all classes, but that the distribution of disengagement is not uniform – that size of community and age make a difference. Those who are younger (the boomer and subsequent generations born after 1940) as well as those who live in big cities are characterized by a greater degree of disengagement in political, civic, and religious participation. Those who are older (born before 1940) as well as those who live in small towns are characterized by a lesser degree of disengagement in political, civic, and religious participation.

That said, I need to take a moment here to pull together some strands. In these last four sections, to iterate what I said at the beginning of my discussion of American culture, I have been pursuing two questions: (1) What is the set of characteristics that are considered dominant in American culture? and (2) What is the section of American culture that expresses that set of dominant characteristics paradigmatically?

In the prior three sections, with respect to the first question, we have been presenting progressively more comprehensive depictions of the set of characteristics that are considered dominant in American culture – moving from the value orientations asserted as dominant by Kluckhohn and Strodtbeck, to the individualistic low-context culture asserted as dominant by Raymond Cohen, and finally to the modern utilitarian and expressive individualism asserted as dominant by Bellah et al. and Schneider and Smith. Each subsequent depiction enfolds and expands upon the depiction that preceded it.
And with respect to the second question, we have been progressively parsing American culture to determine who expresses that set of dominant characteristics paradigmatically – moving from the uniform distribution across American culture by Kluckhohn and Strodtbeck and by Raymond Cohen, to the parsing of the modern American middle class as the paradigmatic expression of modern utilitarian and expressive individualism by Bellah et al. and Schneider and Smith.

It is important to remember at this moment the definition of class as proffered by Schneider and Smith – that is, a collection of individuals characterized not only by level of income and consumption but also, and more importantly, by the set of attitudes, expectations, and aspirations by which they shape their lives. The middle class are those individuals who have not only achieved a ‘middling condition’ of income and consumption, but also, and more importantly, who express the full set of characteristics associated with modern utilitarian and expressive individualism, most particularly, the conscious application of the dictates of technical rationality to the calculated, self-disciplined movement up the ladder of success.

Now, when Putnam introduces into the distribution of disengagement the two counter-trends of size of community and age, it gives one pause.

Let’s speak first of the lower and working classes. As defined by Schneider and Smith, they do not express the dominant characteristics of modern individualism. Rather they struggle with a lower and insecure level of income and consumption and they speak the non-dominant language of security, tradition, and relationships and engage in the non-dominant practices of particularized reciprocity. While there may be disengagement exhibited by the lower and working classes, disengagement itself is not central to the definition of the lower and working classes, and so, as such, variation in disengagement by size of community and by age does not challenge the definition of the lower and working classes. So the definition of lower and working classes by Schneider and Smith stands.

Let’s speak secondly of the upper class. As defined by Schneider and Smith, they do not express the dominant characteristics of modern individualism. Rather they enjoy a secure level of income and consumption and they speak the non-dominant language of tradition and relationships and engage in the non-dominant practices of particularized reciprocity. While there may be disengagement exhibited by the upper class, disengagement itself is not central to the definition of the upper class, and so, as such, variation in disengagement by size of community and by age does not challenge the definition of the upper class. So the definition of upper class by Schneider and Smith stands.
Now let’s speak of the middle class. As defined by Schneider and Smith, they do express the dominant characteristics of modern individualism. They have achieved a ‘middling condition’ of income and consumption, and they speak the dominant language of modern utilitarian and expressive individualism and engage in the practices of separation.

Now, here’s the rub. Given that modern individualism engenders disengagement from the community because of its focus on the autonomous individual separate from the community – in other words, that disengagement is central to the definition of the middle class, then to say that in the middle class age and size of community make a difference in degree of disengagement from the community challenges the definition of the middle class by Schneider and Smith as paradigmatically expressing the dominant characteristics of modern individualism.

So, let’s examine that definition. Let’s look at the spectrum of folks in the ‘middling condition’ as the variables of age and of size of community move from one extreme to the other.

Younger Older

Big City Small Town

(Putnam actually presents size of community as a discrete variable with a number of values drawn from the census, from Central City of 1 million or over and Suburb of City 1 million or over, through Central Cities and Suburbs of smaller sizes, and finally to Towns and Rural locations. In the next section, I will explore this. In addition, Putnam does not associate the two variables, but rather considers them separately. In the next section, I will look at whether or not they might be associated. In this section, I will use the phrase ‘and/or’ to indicate that the question of association has not been answered.)

At the far left end of the spectrum, folks in the ‘middling condition’ who are younger and/or who live in big cities can be seen as quintessentially paradigmatic in the language of modern individualism and the practices of separation – and so would reveal a greater degree of disengagement from community.

Putnam says that folks who are older and/or who live in small towns are more engaged with the community, that they speak the language of civic individualism and engage in practices of community. The question then becomes, as we move from left to right on the spectrum, as folks express more and more of the non-dominant characteristics of civic individualism, at what point must we say that they are no longer members of the ideal-type middle class as defined by Schneider.
and Smith? By the time we have reached the far right of the spectrum, we have folks in the ‘middling condition’ who are older and/or who live in small towns who are quintessentially paradigmatic in the language of civic individualism and the practices of community – and so would reveal a lesser degree of disengagement from community.

This leads me to conclude that, while Schneider and Smith’s definitions of ideal-type lower, working, and upper classes stand in the face of the challenge of the distribution of disengagement from community by age and by size of community, their definition of ideal-type middle class succumbs to the challenge and must be reconfigured.

What do we have so far to contribute to this reconfiguration? At the far left end of the spectrum, we have folks of the ‘middling condition’ who are younger and/or who live in big cities, and who express the dominant characteristics of modern individualism. At the far right end of the spectrum, we have folks of the ‘middling condition’ who are older and/or who live in small towns, and who express the non-dominant characteristics of civic individualism.

We need to know more in order to make this a meaningful reconfiguration. To that end, I want to explore who lives where and what difference does it make where they live. After finding answers to these questions, I can construct a more meaningful reconfiguration of Schneider and Smith’s middle class.

5. What is Rural? What is Urban?

In the immediately prior section, the phrases ‘big cities’ and ‘small towns’ were used without examination, with the implicit assumption that we all mean the same thing by those terms. However, I have only to remember that, when I went to my first event in the Klamath, I ran smack into stereotypes that I did not realize I had had about what I called rural – and found that all of them were completely wrong. It was a moment of delicious comeuppance. With that experience in mind, I want to pick up the rocks and see what is crawling around under them.

In this section, I will start with the most etic of characterizations – Census numbers about urban and rural. I will then move to a discussion of problems that not only are unique to a particular location but also that arise when there are radical changes in how many people live where. Finally, I will drill through to a rich vein of emic constructions – the community ideologies that people construct about their own communities of residence.
5.1 Census Numbers

I turned to the Census to see if the numbers might give us a sense of what it might mean to say someone lives in an Urban location or someone lives in a Rural location. I decided I wanted to look at Population Growth and Shift, Population Density, and Age of the Population.

Naively, I thought I would just visit the box of Census numbers, open it, and pick out a few numbers to illustrate the shifts in urban and rural populations over the last few decades. Silly me. Six weeks or so later, I realized I had ripped the top off Pandora’s box and was being chased by a swarm of harpies.

The issues that impact the use of Census numbers are numerous – on the one hand, far more numerous than I want to burden this journey with, yet on the other hand, important enough to deal with briefly in order to provide some understanding of what numbers I am going to use below and how I am going to talk about them.

For here, some abbreviated definitions and but a hint of issues. The Census establishes categories based upon numbers of people and locations of people. There are two major ways of aggregating the numbers and locations.

One way is Metropolitan/Nonmetropolitan and is county-based. The Metropolitan category represents counties with urban areas of a certain size, and the Nonmetropolitan category represents counties with urban areas less than that certain size. Both the Metropolitan and the Nonmetropolitan categories can have both Urban and Rural components.

A Central City is defined as the major city within the Metropolitan Statistical Area. The population count for the Central City extracts numbers from both the Urban and Rural components within the Metropolitan Statistical Area. I have defined Residual Urban as what remains of the Urban Metropolitan population count after shifting a portion of it to the Central City population count, and Residual Rural as what remains of the Rural Metropolitan population count after shifting a portion of it to the Central City population count.

<table>
<thead>
<tr>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central City</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Residual Urban | Central City | Residual Rural |
The definitions of Metropolitan and Nonmetropolitan and Central City have remained sufficiently unchanged over the years that, for example, one can compare 1980, 1990, and 2000 censuses side-by-side.

The other way of aggregating the numbers and locations is **Urban/Rural**. For the 1950-1990 Censuses, a **place-based** definition was used. A place is a location that is either incorporated (like a town or a city) or census-designated (like an Indian reservation). Places with a population of at least a certain number were defined as Urban. Places with a population below that certain number were defined as Rural. In addition, all the population living outside of incorporated and/or census designated places – called Not-In-Place – was defined as Rural.

For the 2000 Census, a **density-based** definition was used – census blocks with at least a certain density were defined as Urban, and everything else was defined as Rural. The implications of this definitional change were quite profound, especially with respect to the Not-in-Place population.

The easiest way to illustrate these implications is by way of a couple of examples. Let’s say I have lived since 1980 in a heavily populated location that is within the county, but outside of any city limits – or in other words, Not-in-Place. By the place-based definition in the 1980 and 1990 censuses, the population in my area would have been considered Rural Not-in-Place. However, by the density-based definition in the 2000 census, the population in my area is considered Urban Not-in-Place.

Now let’s say that I have lived since 1980 in a city of moderate population size spread over a large land area – or in other words, In-Place. By the place-based definition in the 1980 and 1990 censuses, because the total population in my city was greater than the threshold number for Urban, the population in my area would have been considered Urban In-Place. However, by the density-based definition in the 2000 census, because of the large land area, the population in my area is considered Rural In-Place.

<table>
<thead>
<tr>
<th>Place-based definition</th>
<th>In-Place</th>
<th>Not-In-Place</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Urban</strong></td>
<td>( U \equiv \geq # )</td>
<td>( \cdots )</td>
</tr>
<tr>
<td><strong>Rural</strong></td>
<td>( R \equiv &lt; # )</td>
<td>( R )</td>
</tr>
</tbody>
</table>

Because the definition of Urban/Rural was, for all intents and purposes, the same for the 1980 and 1990 Censuses, these two Censuses can be compared side-by-side. However, because of the
definitional change in the 2000 Census, the Urban/Rural population counts of the 2000 Census cannot be directly compared with the Urban/Rural population counts of any prior Censuses. Metropolitan/Nonmetropolitan can be directly compared between 1990 and 2000, but Urban/Rural cannot be directly compared between 1990 and 2000. This presents a real challenge when trying to make any sort of comment about the shifts in Urban and Rural populations. However, I have worked extensively with what IS known about the impact of the definitional shift on the 1990 In-Place and Not-in-Place population counts, and feel I can make a number of comments.

**Population Growth and Shift**

Table 2.1 presents the 1980, 1990, and 2000 censuses side by side. I have presented Metropolitan in terms of Central City, Residual Urban, and Residual Rural, and Nonmetropolitan in terms of Urban and Rural. I have darkened the cells between 1990 and 2000 in certain categories as a visual mnemonic that one cannot directly compare those categories because of the definitional change.

<table>
<thead>
<tr>
<th></th>
<th>1980</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Metropolitan</strong></td>
<td>1980</td>
<td>1990</td>
<td>2000</td>
</tr>
<tr>
<td>Central City</td>
<td>67,584,335</td>
<td>77,843,533</td>
<td>84,725,504</td>
</tr>
<tr>
<td>Residual Urban</td>
<td>77,953,232</td>
<td>88,439,928</td>
<td>115,557,312</td>
</tr>
<tr>
<td>Residual Rural</td>
<td>23,893,056</td>
<td>26,442,280</td>
<td>25,698,863</td>
</tr>
<tr>
<td>Total Metropolitan</td>
<td>169,430,623</td>
<td>192,725,741</td>
<td>225,981,679</td>
</tr>
<tr>
<td>Metropolitan</td>
<td>169,430,623</td>
<td>192,725,741</td>
<td>225,981,679</td>
</tr>
<tr>
<td>Residual Urban</td>
<td>77,953,232</td>
<td>88,439,928</td>
<td>115,557,312</td>
</tr>
<tr>
<td>Residual Rural</td>
<td>23,893,056</td>
<td>26,442,280</td>
<td>25,698,863</td>
</tr>
<tr>
<td>Total Metropolitan</td>
<td>169,430,623</td>
<td>192,725,741</td>
<td>225,981,679</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td>57,115,182</td>
<td>55,984,132</td>
<td>55,440,227</td>
</tr>
<tr>
<td>Urban</td>
<td>21,608,464</td>
<td>20,851,951</td>
<td>22,695,347</td>
</tr>
<tr>
<td>Rural</td>
<td>35,506,718</td>
<td>35,132,181</td>
<td>32,744,880</td>
</tr>
<tr>
<td>Total Nonmetropolitan</td>
<td>57,115,182</td>
<td>55,984,132</td>
<td>55,440,227</td>
</tr>
<tr>
<td>Total Population</td>
<td>226,545,805</td>
<td>248,709,873</td>
<td>281,421,906</td>
</tr>
<tr>
<td>Increase in Total Population</td>
<td>22,164,068</td>
<td>32,712,033</td>
<td></td>
</tr>
<tr>
<td>Percentage increase</td>
<td>10%</td>
<td>13%</td>
<td></td>
</tr>
</tbody>
</table>

Sources: Data adapted from U.S. Census 1980, table 6; 1990, table 8; 2000b, table 9.

A casual glance at the numbers in the Metropolitan categories of Residual Urban and Residual Rural and the Nonmetropolitan categories of Urban and Rural reveals the numbers moving along in similar fashion between 1980 and 1990, and then jumping around in unexpected ways between 1990 and 2000 – a sure sign of the impact of the definitional change.
To analyze population growth and shift from 1980 to 2000, because of the definitional change, I must drill down to levels below the summary level, in order to try to account for the impact of the definitional change.

**Nonmetropolitan Counties.** Table 2.1 shows us that not only has the Total Nonmetropolitan population decreased from 1980 to 2000 by 1,674,955 inhabitants, but its percentage of the Total Population has shrunk from 25% in 1980 to 20% in 2000.

In table 2.2, drilling down to the level of In-Place and Not-in-Place within the Nonmetropolitan category, independently of the definitional shift from Rural Not-In-Place to Urban Not-In-Place within the Nonmetropolitan category, the Total Nonmetropolitan Not-in-Place has remained virtually unchanged from 1980 to 2000 while the Total Nonmetropolitan In-Place has decreased by 1,680,649 from 1980 to 2000.

<table>
<thead>
<tr>
<th>Year</th>
<th>In-Place</th>
<th>Not-In-Place</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>29,203,346</td>
<td>27,911,836</td>
<td>57,115,182</td>
</tr>
<tr>
<td>2000</td>
<td>27,522,697</td>
<td>27,917,530</td>
<td>55,440,227</td>
</tr>
</tbody>
</table>

Change 1980 to 2000: (1,680,649) 5,694 (1,674,955)

*Sources: Data adapted from U.S. Census 1980, table 6; 1990, table 8; 2000b, table 9.*

Given that the Total Nonmetropolitan population has decreased from 1980 to 2000 while at the same time the Total Nonmetropolitan Not-In-Place population has remained virtually unchanged, I think it is reasonable to conclude that, in essence, the relative change shown in table 2.1 in the Urban and Rural components within Nonmetropolitan between 1990 and 2000 can be traced to definitional shift from Rural Not-In-Place to Urban Not-In-Place rather than to population change.

This leads me to conclude that from 1980 to 2000, independently of the definitional shift between Urban and Rural, there has been a slow but steady drain of people from the Nonmetropolitan counties.

**Metropolitan Counties.** Table 2.1 shows us that not only has the Total Metropolitan population increased from 1980 to 2000 by 56,551,056 inhabitants, but also its percentage of the total population has grown from 75% in 1980 to 80% in 2000.
In table 2.3, we can see that between 1990 and 2000, the Total Metropolitan population increased by 33,255,938 inhabitants. The Central City and Residual Urban categories absorbed both the great preponderance of this population change as well as the balance of the definitional shift from Rural Not-In-Place to Urban Not-In-Place. The supposed decrease in Residual Rural actually masks a modest population increase exceeded by the definitional shift from Rural Not-In-Place to Urban Not-In-Place.

<table>
<thead>
<tr>
<th>Metropolitan</th>
<th>1980</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central City</td>
<td>67,584,335</td>
<td>77,843,533</td>
<td>84,725,504</td>
</tr>
<tr>
<td>Residual Urban</td>
<td>77,953,232</td>
<td>88,439,928</td>
<td>115,557,312</td>
</tr>
<tr>
<td>Residual Rural</td>
<td>23,893,056</td>
<td>26,442,280</td>
<td>25,698,863</td>
</tr>
<tr>
<td>Total Metropolitan</td>
<td>169,430,623</td>
<td>192,725,741</td>
<td>225,981,679</td>
</tr>
</tbody>
</table>

Sources: Data adapted from U.S. Census 1980, table 6; 1990, table 8; 2000b, table 9.

Between 1980 and 2000, the population in Metropolitan counties has absorbed virtually all of the population change. Where the Total Population grew by 24% from 1980 to 2000, the Total Metropolitan population grew by 33%. Within the Metropolitan counties, taking into consideration the overstatement of the Residual Rural population and the concomitant understatement of the Residual Urban population by the place-based definition of Urban and Rural, the proportional growth in the Central City category between 1980 and 2000 can be estimated as mirroring that of the Total Population, the proportional growth in the Residual Rural category between 1980 and 2000 can be estimated as less than that of the Total Population, and the proportional growth in the Residual Urban category can be estimated as in the neighborhood of twice that of the Total Population.

\[ \frac{84,725,504 - 67,584,335}{67,584,335} = 0.24 \]
\[ \frac{25,698,863 - 23,893,056}{23,893,056} = 0.08 \]
\[ \frac{225,981,679 - 169,430,623}{169,430,623} 

\[ \frac{115,557,312 - 77,953,232}{77,953,232} = 0.45 \]

9 With respect to Central City, it is not unreasonable to consider that the definitional shift left Central City predominantly unscathed. The proportional growth from 1980 to 2000, as such, is 24%.

10 With respect to Residual Rural, without taking the definitional shift from Rural to Urban into consideration, the proportional growth from 1980 to 2000 is only 8%, but this is misleading, more than likely understated because of the definitional shift in 2000. Making an estimate of a decrease of 2,000,000 as the impact of the definitional shift on 1980 Residual Rural yields an estimate of 17% in proportional growth.

11 With respect to Urban, without taking the definitional shift from Rural to Urban into consideration, the proportional growth from 1980 to 2000 is 48%, but this may be overstated because of the definitional shift in 2000. Making an estimate of an increase of 2,000,000 as the impact of the definitional shift on 1980 Residual Urban yields an estimate of 45% in proportional growth.
To summarize population growth and shift from 1980 to 2000, there has been a slow but steady drain of people from the Nonmetropolitan counties and a metastasis of people in the Metropolitan counties that has absorbed the drain from the Nonmetropolitan as well as all of the increase in Total Population. This exponential increase is centered in the Residual Urban category within the Metropolitan counties.

Age of the Population

Table 2.4 tells us that, for Census 2000, the farther away one goes from the Metropolitan Central City, the older the median age of the population and the greater the percentage of that population that is aged 45 and over. With this information, it does not seem unreasonable to think that the decrease in the Nonmetropolitan In-Place category (see table 2.2), whether from Urban In-Place or from Rural In-Place, could be both from death of an aging resident population as well as immigration to Metropolitan counties.

<table>
<thead>
<tr>
<th></th>
<th>Median Age</th>
<th>% 45 and older</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central City</td>
<td>32.7</td>
<td>31.3%</td>
</tr>
<tr>
<td>Residual Urban</td>
<td>35.7</td>
<td>34.5%</td>
</tr>
<tr>
<td>Residual Rural</td>
<td>37.8</td>
<td>37.2%</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban</td>
<td>35.3</td>
<td>36.2%</td>
</tr>
<tr>
<td>Rural</td>
<td>38.3</td>
<td>39.2%</td>
</tr>
<tr>
<td>Total Population</td>
<td>35.3</td>
<td>34.4%</td>
</tr>
</tbody>
</table>

Source: Data adapted from U.S. Census 2000a.

Population Density

Even with the definitional understatement of Urban and concomitant overstatement of Rural in 1980 and 1990, it is clear from looking at both table 2.1 and table 2.5 that from 1980 to 2000 Urban population has been increasing as a percentage of Total Population while Rural population has been decreasing as a percentage of Total Population.
<table>
<thead>
<tr>
<th>1980 Census</th>
<th>1990 Census</th>
<th>1990 Census</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>former definition</td>
<td>Definitional Shift</td>
</tr>
<tr>
<td>Urban</td>
<td>167,050,992</td>
<td>40%</td>
</tr>
<tr>
<td>Rural</td>
<td>59,494,813</td>
<td>16%</td>
</tr>
<tr>
<td>Total</td>
<td>226,545,805</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Sources:** Data adapted from U.S. Census 1980, table 6; 1990, table 8; 2000b, table 7 and table 9.

**Note:** Not-In-Place showed a shift of 7,646,623 from Rural to Urban, while In-Place showed a net shift of 602,890 from Urban to Rural.

<table>
<thead>
<tr>
<th>Metropolitan</th>
<th>Nonmetropolitan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>77,313.96</td>
<td>15,193.82</td>
</tr>
<tr>
<td>Rural</td>
<td>628,475.62</td>
<td>2,816,455.04</td>
</tr>
<tr>
<td>Total</td>
<td>705,789.58</td>
<td>2,831,648.86</td>
</tr>
</tbody>
</table>

**Source:** Data from U.S. Census 2000b, table 10.

Putting tables 2.5 and 2.6 above together with respect to the 2000 Census means that 79% of the Total Population lives in 3% of the Land Area, while 21% of the Total Population lives in 97% of the Land Area.

And drilling down to the level of In-Place and Not-In-Place within Metropolitan and Nonmetropolitan counties, table 2.7 gives a powerful picture of differences in density depending upon where one lives.

Within the Metropolitan counties, the density in the Central City – 2,710 ppsm – is actually ever so slightly exceeded by the density in the Residual Urbans who live in incorporated and/or census designated places – 2,737 ppsm. Moving out from these loci, the farther one moves out, the lower the density. For the Residual Urban who do not live in such places – as, for example, those who live in the county but not in any particular city – the density decreases to 1,093 ppsm, while for the Residual Rural, the In-Place density decreases to 163 ppsm, and the Not-In-Place density plummets to 36 ppsm.

Within the Nonmetropolitan counties, the density follows a similar pattern, from the high of 1,854 for the Urban Nonmetropolitans who live in incorporated and/or census designated places, to
Table 2.7. 2000 Census Population Density by Metropolitan/Nonmetropolitan

<table>
<thead>
<tr>
<th>Metropolitan</th>
<th>In-Place</th>
<th>Not-in-Place</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central City</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>84,725,504</td>
<td>0</td>
<td>84,725,504</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>31,263.70</td>
<td>0</td>
<td>31,263.70</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>2,710</td>
<td>0</td>
<td>2710</td>
</tr>
<tr>
<td>Residual Urban</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>89,694,268</td>
<td>25,863,044</td>
<td>115,557,312</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>32,772.07</td>
<td>23,654.08</td>
<td>56,426.15</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>2,737</td>
<td>1093</td>
<td>2048</td>
</tr>
<tr>
<td>Residual Rural</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>4,520,098</td>
<td>21,178,765</td>
<td>25,698,863</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>27,682.51</td>
<td>590,417.22</td>
<td>618,099.73</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>163</td>
<td>36</td>
<td>42</td>
</tr>
<tr>
<td><strong>Total Metropolitan</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>178,939,870</td>
<td>47,041,809</td>
<td>225,981,679</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>91,718.28</td>
<td>614,071.30</td>
<td>705,789.58</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>19,760,332</td>
<td>2,935,015</td>
<td>22,695,347</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>10,659.20</td>
<td>4,534.62</td>
<td>15,193.82</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>1,854</td>
<td>647</td>
<td>1494</td>
</tr>
<tr>
<td>Rural</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>7,762,365</td>
<td>24,982,515</td>
<td>32,744,880</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>58,807.52</td>
<td>2,757,647.52</td>
<td>2,816,455.04</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>132</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total Nonmetropolitan</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>27,522,697</td>
<td>27,917,530</td>
<td>55,440,227</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>69,466.72</td>
<td>2,762,182.14</td>
<td>2,831,648.86</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>206,462,567</td>
<td>74,959,339</td>
<td>281,421,906</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>161,185.00</td>
<td>3,376,253.44</td>
<td>3,537,438.44</td>
</tr>
<tr>
<td>Density ppsm</td>
<td>1281</td>
<td>22</td>
<td>80</td>
</tr>
</tbody>
</table>

Sources: Data adapted from U.S. Census 2000b, table 9 and table 10.

a low of 9 ppsm for the Rural Nonmetropolitans who do not live in such places. The category of Rural Nonmetropolitan Not-In-Place is truly the leftover category of the Census, given the definition of Rural as not Urban, Nonmetropolitan as not Metropolitan, and Not-in-Place as not residing in an incorporated and/or census designated place. It is therefore very interesting to note that, while the
population in this leftover category constitutes a mere 9\% of the Total Population, the land area in this leftover category is a whopping 78\% of the Total Land Area.

One has only to drive across America to experience first hand the juxtaposition of mile after mile after mile of open country seemingly without a soul to be found versus the smash of people that crashes over one when one comes to a city. Living in a city does not give one the slightest comprehension of how much space there is in America.

5.2 Summary of Census Numbers and Segue to Problems Associated with Where One Lives

Putting it all together, while I have taken a lot more space than I had intended because of the challenges imposed by the definitional change, I have danced carefully around that seemingly unbridgeable chasm between 2000 and prior censuses, and can now paint a portrait that can illustrate what it might mean to say someone lives in an Urban location or someone lives in a Rural location.

If people live in the Central City of a Metropolitan county in 2000, they are part of 30\% of the Total Population living in 1\% of the Total Land Area, which yields a density of 2,710 ppsm. Their median age is 32.7 which is younger than the national median age of 35.3. The percent of their population that is 45 or older is 31.3\%, which is less than the percent for the nation of 34.4\%. In other words, a lot of generally younger people living tightly packed together in a small space.

From 1980 to 2000, without making any adjustments for the definitional shift, the population of the Central City of a Metropolitan county has increased by 25\%, which is just about equal to the national population growth. Some cities may have had the capacity to expand their land area over the years, while others may have been limited by law and/or geography from doing so. Overall, the density in the Central City will have increased over the years, as would problems that may be associated with increasing density – increasing demands perhaps smashing up against sluggish infrastructure.

If people live in the Residual Urban area of a Metropolitan county in 2000, they are part of 41\% of the Total Population living in 2\% of the Total Land Area, which yields a density ranging from 2,737 ppsm in incorporated and/or census designated places to 1,093 ppsm outside such places. Their median age is 35.7 which is virtually equal to the national median age of 35.3. The percent of their population that is 45 or older is 34.5\%, which is virtually equal to the percent for the nation of 34.4\%. In other words, a lot of median-aged people living in varying degrees of high density in a small space.

From 1980 to 2000, without making any adjustments for the definitional shift, the population of the Residual Urban area of a Metropolitan county has increased by 48\%, which is twice the national
population growth of 24%. As the Residual Urban population has oozed out away from the Central City, it has gobbled up land area, turning what had been Rural into Urban – and generated problems that may be associated with the conversion of Rural to Urban – newcomer demands perhaps smashing up against long-time residents’ demands.

If people live in the **Residual Rural** area of a Metropolitan county in 2000, they are part of 9% of the Total Population living in 17% of the Total Land Area, which yields a density ranging from 163 ppsm in incorporated and/or census designated places to 36 ppsm outside such places. Their median age is 37.8 which is older than the national median age of 35.3. The percent of their population that is 45 or older is 37.2%, which is greater than the percent for the nation of 34.4%. In other words, a modest number of slightly older people living at some distance from each other in a fairly large space.

From 1980 to 2000, without making any adjustments for the definitional shift, the population of the Residual Rural area of a Metropolitan county has increased by 8%, which is significantly less than the national population growth of 24%. As the Residual Urban population has oozed out from the Central City, land area of Residual Rural has decreased, having been converted from Rural to Urban – and generated problems that may be associated with the threat of the influx of population – long-time residents perhaps smashing up against attempts at expansion into their locations.

If people live in the **Urban** area of a Nonmetropolitan county in 2000, they are part of 8% of the Total Population living in 0.4% of the Total Land Area, which yields a density ranging from 1,854 ppsm in incorporated and/or census designated places to 647 ppsm outside such places. Their median age is 35.3 which is exactly equal to the national median age of 35.3. The percent of their population that is 45 or older is 36.2%, which is greater than the percent for the nation of 34.4%. In other words, a modest number of median-aged people living in varying degrees of higher density in a very small space.

From 1980 to 2000, without making any adjustments for the definitional shift, the population of the Urban area of a Nonmetropolitan county has remained virtually constant outside of incorporated and/or census designated places, while slowly, but surely draining away from incorporated and/or census designated places. Problems may be associated with a diminishing and aging population.

If people live in the **Rural** area of a Nonmetropolitan county in 2000, they are part of 12% of the Total Population living in 80% of the Total Land Area, which yields a density ranging from 132 ppsm in incorporated and/or census designated places to 9 ppsm outside such places. Their median age is 38.3 which is older than the national median age of 35.3. The percent of their population that
is 45 or older is 39.2%, which is greater than the percent for the nation of 34.4%. In other words, a modest number of generally older people living in varying degrees of slight density in a vast space.

From 1980 to 2000, without making any adjustments for the definitional shift, the population of the Rural area of a Nonmetropolitan county has remained virtually constant outside of incorporated and/or census designated places, while slowly, but surely draining away from incorporated and/or census designated places. Problems may be associated with a diminishing and aging population living at great distances from each other and from county infrastructure.

5.3 Further Discussion of Problems Associated with Where One Lives

The Census numbers yield a compelling portrait of life circumstances that differ vastly as one moves from Urban to Rural, Metropolitan to Nonmetropolitan, and In-Place to Not-In-Place. Flora and Flora contend that within this portrait there are four patterns that describe an objective portrait of conditions in some small-town and rural communities (2004, 10-13):

1. **Rapid growth based on natural amenities.** When the natural capital of a rural location (the landscape, air, water, soil, and biodiversity of both plants and animals) shifts from resource to recreation and/or disappears under rapid construction of housing developments and parking lots, the rural location undergoes tremendous changes. There are often disagreements over what should be done with respect to all the changes.

2. **Rapid growth based on nearness to urban areas.** When small-town and rural communities within commuting distance of large metropolitan areas are deluged with new Residual Urban population, they face threats to their natural, financial, and social capital. There are often disagreements between newcomers and long-term residents on what constitutes adequate services, given that each often have different expectations of such services – on what constitutes community, given that each often have different expectations of community.

3. **Persistent poverty.** The 2000 census classifies 363 nonmetropolitan counties as persistently poor (ibid.). “Nearly 13.4% of rural people in these counties had income levels below the 2000 poverty level, established as $20,550 for a family of three” (ibid., 12).

4. **Rural and remote location.** These are nonmetropolitan counties that have small populations, may not have an urban area of any size, are far from metropolitan centers, and are often losing population. By way of example, let’s look at two California counties within the Klamath Watershed.

<table>
<thead>
<tr>
<th></th>
<th>1980</th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trinity County</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>11,858</td>
<td>13,063</td>
<td>13,022</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>3178.61</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Density ppsm</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Siskiyou County</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>39,732</td>
<td>43,531</td>
<td>44,301</td>
</tr>
<tr>
<td>Land Area sq. mi.</td>
<td>6286.78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Density ppsm</td>
<td>7</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Sources:* Data from U.S. Census 1995a, 2000c.

Trinity County is a Nonmetropolitan county that has no urban areas. From 1980 to 2000, its population has grown by 10%, which is significantly lower than the national population growth of 24%. Its density is but 4 ppsm, which is even lower than the 9 ppsm of the Rural Nonmetropolitan Not-In-Place category.

Siskiyou County is a Nonmetropolitan county that has a number of small urban clusters clinging to the I-5 corridor that runs north and south through the county. From 1980 to 2000, its population has grown by 11%, which is significantly lower than the national population growth of 24%. Its density is but 7 ppsm, which is even lower than the 9 ppsm of the Rural Nonmetropolitan Not-In-Place category.

As a measure of remoteness, for both counties, the closest Metropolitan area is Medford, OR, and the closest Micropolitan\(^\text{12}\) areas are Klamath Falls, OR and Eureka, CA – all of which are 100-200 miles away over predominantly rural, windy roads, with a minimum of miles driven on any interstate highway – or in other words, a long hard drive both ways.

I would add another pattern which Flora and Flora do not offer. This pattern grows directly out of the combination of the metastasis of people in population growth in general and in urban sprawl in specific, with rising temperatures, drought, waste, and excess (Skoloff 2007) – and that is the competition between urban and rural, not just for natural resources in general, but most especially for water.

\(^{12}\) Subsequent to the 2000 Census, a geographic entity called Micropolitan Statistical Area was extracted from Nonmetropolitan and defined as county or counties containing an Urban Cluster with a population of 10,000 to 49,999.
Just to set the picture of the structural relationship of rural to natural resources, in the 2000 census, 97% of the land area in the United States is considered rural (see table 2.6). This means that the great bulk of America’s natural resources lies in the 97% of the land area that is considered rural.

This also means that 21% of the total population – the total rural population – lives in 97% of the land area – where the natural resources are – and that 79% of the total population – the total urban population – lives in 3% of the land area – where the natural resources aren’t. This disparate structural relationship comes to a head with respect to water. Not only is freshwater supply threatened by conditions that have nothing to do with urban population growth; it is also threatened by urban locations wanting to suck water out of rural locations in order to satisfy urban thirst. This draining can threaten not only the ecological well-being of those rural locations, but also the economic, social, and cultural well-being of the people who live in those rural locations.

I would also add another brushstroke to this portrait of rural conditions – one that is not directly related to the effects of urban population growth, but one that is a fact of everyday life for those who live in the rural portion of America. This fact is that people living in rural locations live day-in-and-day-out in a web of relationships with an overwhelming pantheon of governmental agencies, both federal and state. Not only is land ownership quite literally a checkerboard of private ownership, tribal trust ownership, and government ownership – sometimes down to the level of acre by acre – but also everyday economic activity is entangled with seemingly innumerable government agencies.13 Perhaps only some members of the urban lower class might have some similar understanding of what it means to have one’s life entangled everyday with government agencies. The urban and suburban middle class and upper class probably do not have a clue as to what this might mean to a person who lives with it as an everyday reality.

To summarize our findings so far in this section, a challenging, but informative trip through Census numbers has revealed a number of things. Firstly, the Census numbers have revealed that there has been a slow but steady drain of people from the Nonmetropolitan counties and a metastasis of people in the Metropolitan counties that has absorbed the drain from the Nonmetropolitan as well as all of the increase in Total Population. This exponential increase is centered in the Residual Urban category within the Metropolitan counties.

Secondly, the Census numbers have revealed an association between age of the population and population density. In the last section, I mentioned that Putnam treated age and size of community

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13 By way of illustration, when I last counted in 2011, the number of government agencies involved in the Klamath Watershed was eight federal agencies, three California agencies, and four Oregon agencies, for a total of fifteen agencies entangled with daily life throughout the basin.
as separate variables and set up size of community as a discrete variable. At this point, I think the findings from the Census numbers allow me to do three things:

1) To substitute the continuous variable of population density for the discrete variable of size of community

2) To conclude that age and population density are indeed associated. In table 2.9 (which draws data from tables 2.4 and 2.7 above), one can see that the greater the population density, the lower the proportion of the population 45 years or older, and conversely, that the less the population density, the higher the proportion of the population 45 years or older.

<table>
<thead>
<tr>
<th>Table 2.9. 2000 Census Population Density and Percentage of Population Forty-Five and Older</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan</td>
</tr>
<tr>
<td>Central City Urban</td>
</tr>
<tr>
<td>Population Density</td>
</tr>
<tr>
<td>% of Pop. 45 and older</td>
</tr>
</tbody>
</table>

Sources: Data from tables 2.4 and 2.7 above.

3) To note that there is a real divide between the density and age of the Metropolitan Central City and Residual Urban, and the density and age of Metropolitan Residual Rural and Nonmetropolitan Rural, with the density and age of Nonmetropolitan Urban falling somewhere in the middle.

Finally, in this section, we have also pointed to potential problems that can arise because of where one lives because of the interacting influences of population growth and shift, of age of the population, and of density of the population.

At this point, I am going to wait to crank these findings into my reconfiguration of Schneider and Smith’s middle class until I have pulled together the rest of the information from the remainder of this section.

5.4 Community Ideologies

Flora and Flora, in commenting about the patterns of conditions that they delineate, posit that what make for problems in these situations are not really the conditions themselves, but the differing senses of identity that people bring to bear on the situations (Flora and Flora 2004). For a sense of these identities, I turned to David Hummon’s 1990 book *Commonplaces: Community Ideology and Identity in American Culture*. 
First, Hummon tells us about the myths about communities that exist in American culture and what relationship these myths have borne and bear to realities about communities. At the turn of the 20th century, the majority of Americans still lived in small-town and rural communities. The small-town was idealized as the embodiment of community (Hummon 1990). By 1920, things had changed such that for the first time ever more Americans lived in urban rather than rural communities (ibid.). “By mid-century, the small town had become a marginal form of community in a society dominated by metropolitan cities and suburban satellites” (ibid., 66). By the turn of the 21st century, Total Urban Population had mushroomed to 79% of the total population – and, in Metropolitan counties, for every 450 people in the Residual Urban area, there were 330 in the Central City and but 100 in the Residual Rural area (see table 2.1).

Yet the idealization of the small-town as the embodiment of community remains. However, it also now competes side-by-side with criticisms that grew as urban grew, of the small-town as the embodiment of backwoods provincialism (Hummon 1990). Interestingly, as Brown and Swanson point out, “most Americans form their opinions about rural people and communities from a distance – through literature, art, and music, but not through direct experience. The true nature of rurality – the worldviews of rural people and the conditions of their lives – is often at variance with the typical perception of most Americans” (2003, 2).

As Flora and Flora explain, contrary to the myths cultivated by politicians, lobbyists, and the media,

rural areas embrace ski slopes, mines, manufacturing, farms, retirement communities, American Indian reservations, bedroom communities, and much, much more. On average, in the twenty-first century, rural communities differ more from each other than they do from urban areas. ...In the past, small size and isolation combined to produce relatively homogeneous rural cultures, economies based on natural resources, and a strong sense of local identity. But globalization, connectivity, and lifestyle changes accompanying shifting income distributions have altered the character of rural communities. They are neither as isolated nor as homogeneous as they once were. (Flora and Flora 2004, 3-4)

Thanks to improved transportation systems, plus commuting, plus communication technologies, “rural people have become as literate, informed, and enriched as their urban counterparts” (ibid., 5-6).

On the urban side of the coin, the generalized antiurbanism that grew as urban grew in the 20th century still obtains, even though the realities of urban life have changed. Hummon points out that those with the least direct experience of cities are the most likely to be antiurban. “Many
contemporary Americans are antiurban not because of the realities of city life, not because of their experiences with cities, but because they have learned to think about cities in ways that fundamentally prejudice their feelings about urban life” (Hummon 1990, 93).

This leads us directly to a consideration of the ways that people have learned to think about the places where they live – or what Hummon calls community ideologies. For Hummon, “community ideologies are systems of belief that legitimate the social and psychological interests of community residents through their presentation of community life and people. Like other ideologies, they accomplish these functions through symbolic work: by categorizing, characterizing, and explaining reality in ways that produce and legitimate commitment to a form of community” (ibid., 11-12). “In their imagery, language, and structure, [the community ideologies of each community] identify one form of community with the good life, relegating other forms to inferior modes of human association and social identity” (ibid., 180).

**Small-town Ideology**

Hummon names the proponents of a small-town ideology the Villagers and asserts that “villagers no longer see small-town life as the dominant form of community life in America, but they still claim that it is the best” (ibid., 68). They conceive of the small-town as a place of community, where the ties of tradition and traditional groups still matter – as a haven, a place of escape, specifically from the city, more generally from the problems of American life symbolized by the city – as a simpler world, where life is ordered and safe, direct, personal, and comprehensible. Small-town people are characterized as normal, easygoing, friendly, family-oriented, caring, neighborly, basically honest.

For the Villager, the city is the antithesis of the small-town. The city is characterized as big, crowded, hectic, chaotic, dirty, noisy, and dangerous – as a place that is impersonal and transient, where nobody knows anybody else and nobody cares about anybody else – as a place of moral decline. City people are characterized as self-centered, self-indulgent, rootless, permissive, materialistic, too competitive.

For the Villager, the suburb is a virtual nonentity. The Villager “does not categorize the suburb as a distinct form of community and, as a result, does not provide defining images of suburbia” (ibid., 63). Given their polarized characterizations of small-town and city life, at most, the “suburbs are either portrayed as predominantly urban places – and hence undesirable – or as village-like – and consequently somewhat attractive. Villagers never describe suburbs as combining the ‘best of the small town and the city,’ as is suggested by suburban ideologues, nor are they portrayed as
incorporating the ‘worst of small-town and city life,’ as some urban critics of suburbia maintain” (ibid., 63, italics in original).

**Urban Ideology**

Hummon names the proponents of an urban ideology the Urbanists and asserts that beliefs in cities are embedded in beliefs about towns and suburbs, in the sense that the portrayal of urban life is drawn at the expense of suburban and small-town life. For the Urbanist, city is inherently superior to suburb and town, and suburb and town are inherently inferior to city. Specifically, the city is the center – ‘where it’s at’ – while suburbs and small towns are peripheral places – small towns provincial and behind the times, and suburbs lacking an identity of their own and dependent upon the center. The city is a place of diversity, while towns are places of simplicity and suburbs are places of uniformity. The city is a liberal place, while towns and suburbs are conservative places – small towns excessively traditional and narrow-minded, and suburbs embracing a self-serving uniformity in order to escape the responsibilities of urban life. And finally the city is a place of individuality and personal freedom, while towns and suburbs are places of conformity and constraint – small towns constraining individual expression and fulfillment, and suburbs causing personal alienation “manifested in conformity, competitiveness, and ennui” (ibid., 92).

**Suburban Ideology**

Hummon names the proponents of a suburban ideology the Suburbanists, who assert that the suburb is a quiet, natural, secure place, where life centers on home and family. It brings together the best qualities of city and town, without the liabilities of either – ‘the best of both worlds.’ The small town is a good place to live – attractive for its peace and quiet, but suspect for its simplicity – good for its sense of community, but personally confining – good for its isolation from the city, but too isolated. The city is a locus of cultural amenities as well as problems – to be visited for the cultural amenities, but to be avoided for the problems. The suburb provides access to urban amenities without the difficulties of urban life.

14 While it is not directly on point, I must mention two very good articles about the construction of community in small rural towns. In *Community, Ethnicity, and Class in a Changing Rural California Town*, Chavez presents an excellent case study of competing constructions of community – that of long-term white residents and that of relatively newcomer Latino residents (2005), and in *From Hometown to Nontown: Rural Community Effects of Suburbanization*, Salamon presents three excellent case studies – one of an agrarian town in slow decline, one of a postagrarian town where suburbanization is overwhelming agrarian traits and one of a postagrarian town that is confronting suburbanization challenges (2003).
Hummon wonders whether the elephant in the room may be white flight from the cities, in that Suburbanists may invoke suburban ideology in order to avoid talking about white flight – what they do say they are going to rather than what they don’t say they are going from.

What is particularly interesting to look at in Hummon’s book is Community of Preference versus Community of Residence.

Table 2.10. Where Do Those Who Prefer To Live Elsewhere Than Where They Are Living Actually Want To Live

<table>
<thead>
<tr>
<th>Community of Residence</th>
<th>Total # respondents</th>
<th># preferring to live where they are</th>
<th># preferring to live elsewhere</th>
<th>Community of Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Urban</td>
<td>Suburban</td>
<td>Small Town</td>
</tr>
<tr>
<td>Urban</td>
<td>26</td>
<td>16</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Suburban</td>
<td>26</td>
<td>10</td>
<td>16</td>
<td>4</td>
</tr>
<tr>
<td>Small town</td>
<td>25</td>
<td>10</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>77</td>
<td>36</td>
<td>41</td>
<td></td>
</tr>
</tbody>
</table>

Source: Data adapted from Hummon 1990, tables 1 and 2.

With respect to where people would actually want to live if they would prefer to live elsewhere than where they are currently living, in general, the farther people are from urban, the even farther away they want to go – with the exception of some suburban residents who want to move to the city.

Urbanists are clearly a majority in the city. Small-town residents seem to be both Villagers and those ‘rugged individualist’ country persons whose claims to privacy, independence and self-sufficiency lead them to prefer to live on their own away from town.

Suburban residents are clearly of mixed minds. While there is a suburban ideology, Suburbanists are clearly a minority in the suburb. Suburban Urbanists are reluctant suburbanites – Urbanists who have lived in the city before, have a preference for living in the city, and would live there now if they could, if their life circumstances were different than they are at this moment. Suburban Villagers are people who think of their community as a small town, not as a suburb. They do not have a suburban ideology; rather they have a small-town ideology and apply that ideology to the community where they reside. As such, while an outsider may say that they live in a suburb, they say that they live in a small town.

“As a result [of these mixed minds], suburban residents living in the same place may conceptualize their community as a suburb or a small town and, in doing so, may describe its virtues – or vices – in remarkably different ways” (ibid., 116).
It occurs to me that each ideology has its own take on individualism. Urban ideology is
grounded on the modern individualism of the middle class, with particular focus on the fulfillment of
both personal interests and personal expression. Suburban ideology is grounded as well on the
individualism of the middle class, with particular focus not only on success, but on calculated, self-
disciplined movement up the ladder of success, and on consumption which is oriented towards
family purchases which enhance or maintain the status and prestige of the whole family (Schneider
and Smith 1973). Small-town ideology is about civic individualism – the intertwining of the claims of
individuality and the claims of community. For the country person, individualism is about
independence and self-sufficiency.

Similarly each community has its own take on interconnection. In the city, whatever
interconnection occurs does so within diversity. The urban lower class interconnects through
networks of particularized reciprocity; the urban middle class interconnects through communities of
interest not tied to locus of residence. In the suburbs, whatever interconnection occurs does so
within uniformity of interest and class within lifestyle enclaves and gated communities. In the small
town, whatever interconnection occurs does so through an intertwining of individuality and
community. It seems that the strong sense of community that Bellah defines as well as the social
capital and civic engagement that Putnam defines have the greatest support in the small-town
ideology, and the least support in the urban and suburban ideologies.

6. Reconfiguration of Schneider and Smith’s Ideal-Type Middle Class

In the role of those who express paradigmatically the dominant characteristics of modern
individualism, I offer an ideal-type that I am going to call the **Metro Middle Class**. These are folks
who have achieved a ‘middling condition’ of income and consumption. According to the 2000
Census, they live in the densest of locations – the Metropolitan Central City locus of residence (2710
ppsm) and the Metropolitan Residual Urban locus of residence (2048 ppsm, ranging from 2737 ppsm
In-Place to 1093 ppsm Not-in-Place). They tend to be younger, with median ages ranging from 32.7
in the Central City (which is lower than the 35.3 median age of the total population) to 35.7 in the
Residual Urban locus of residence (which is virtually equal to that of the total population).

In the Central City, their community identity would be Urbanist, which holds that the city is a
place of diversity, individuality, and personal freedom, while the suburbs and the small town are held
to be places of uniformity, conformity, and constraint. Their focus would be on personal interests and personal expression. Their interconnection would be through communities of interest not tied to locus of residence. Problems that could be associated with living in the Central City could be those arising from increasing population and increasing density of population, such as insufficient urban resources and/or sluggish urban infrastructure to meet the demands of the increasing population.

In the Residual Urban locus of residence, their community identity would be either Suburbanist or Suburban Urbanist. The Suburbanist holds that the suburb is the best of both worlds, bringing together the small town focus on home and family with access to urban amenities. The Suburban Urbanists are reluctant suburbanites – Urbanists who have lived in the city before, have a preference for living in the city, and would live there now if they could, if their life circumstances were different than they are at this moment. For both the Suburbanist and the Suburban Urbanist, their focus would be on family and family status. Their interconnection would be within uniformity of interest and class within lifestyle enclaves and gated communities. Problems that could be associated with living in a Residual Urban locus of residence could be those arising from dramatically increasing population (from 1980 to 2000, a 48% increase, which is twice the national population growth of 24%) and increasing density of population, such as insufficient suburban resources and/or sluggish suburban infrastructure to meet the demands of the increasing population, as well as the clash between newcomers’ interests and identities and long-time residents’ concerns and identities that arises when the Residual Urban population oozes out to consume previously Rural locations.

In both the Central City and Residual Urban locations, members of the Metro Middle Class would employ the language of modern individualism and the practices of separation to frame the problem in terms of decontextualized interests and to solve the problem through the application of technical expertise and rationality, in terms of individual rights, contractual rules, and/or rational cost-benefit analysis.

In the role of those who express paradigmatically the non-dominant characteristics of civic individualism, I offer an ideal-type that I am going to call the Rural Middle Class. These are folks who have achieved a ‘middling condition’ of income and consumption. According to the 2000 Census, they live in the least dense of locations – the Metropolitan Residual Rural locus of residence (42 ppsm, ranging from 163 ppsm In-Place to 36 ppsm Not-in-Place) and the Nonmetropolitan Rural locus of residence (12 ppsm, ranging from 132 ppsm In-Place to 9 ppsm Not-in-Place). They tend to be older, with median ages ranging from 37.8 in the Residual Rural location to 38.3 in the
Nonmetropolitan Rural location (both of which median ages are higher than the 35.3 median age of the total population). The proportion of the population that is 45 or older in the Residual Rural location is 37.2% and in the Nonmetropolitan Rural location is 39.2% (both of which proportions are higher than the 34.4% for the total population).

In both the Metropolitan Residual Rural and the Nonmetropolitan Rural locations, their community identity would be Villager, which holds that the small town is a place of community, where the ties of tradition and traditional groups still matter, while the city is held to be a place of moral decline, where nobody knows anybody else and nobody cares about anyone else, and the suburb is held to be a virtual nonentity, being neither city nor small town. Their focus is on tradition and relationships. Their interconnection would be through the intertwining of individuality and community.

Problems that could be associated with living in the Residual Rural location could be those arising from increasing population, such as insufficient resources and/or sluggish infrastructure to meet the demands of the increasing population, the threat of even greater increase of population as the Residual Urban population oozes on out to consume previously Rural locations and the clash between newcomers’ interests and identities and long-time residents’ concerns and identities that arises with the influx of newcomers, and finally the possible shift from natural capital as resource to natural capital as recreation and the clash between recreationists’ interests and identities and long-time residents’ concerns and identities that arises with the influx of recreationists.

Problems that could be associated with living in the Nonmetropolitan Rural location could be those arising from a diminishing and aging population living at a great distance from each other and from county infrastructure, the possible shift from natural capital as resource to natural capital as recreation and the clash between recreationists’ interests and identities and long-time residents’ concerns and identities that arises with the influx of recreationists, and, finally, the attempts by urban and suburban locations to suck natural resources out of the Nonmetropolitan Rural land area in order to service urban demands and the attendant clash between urban interests and identities and rural concerns and identities.

In both the Residual Rural and the Nonmetropolitan Rural locations, members of the Rural Middle Class would employ the language of civic individualism and the practices of community to frame the problem in terms of contextualized relationships rent asunder and to solve the problem through the mending of the tear in the social fabric.
That leaves us with what I am going to call the **Micropolitan Middle Class**. These folks who have achieved the ‘middling condition’ of income and consumption live on the threshold between Urban and Rural. According to the 2000 Census, they live in Nonmetropolitan Urban locations of middling density (1494 ppsm, ranging from 1854 ppsm In-Place to 647 ppsm Not-in-Place). Their median age of 35.3 is exactly equal to the median age of the total population (older than the Metro Middle Class and younger than the Rural Middle Class). The proportion of the population that is 45 or older is 36.2% (more than for the Metro Middle Class and less than for the Rural Middle Class).

I would say that their community identity would depend upon the history of their particular Nonmetropolitan Urban location. If the history is of a Rural town that became Urban in terms of density because more Rural folks moved there, thus pushing the density over the Rural/Urban threshold, then the community identity would probably be Villager – and the members of the Micropolitan Middle Class would fall under the umbrella of the Rural Middle Class.

If the history is of the creation of an Urban town by means of, for example, a brand new housing development on what had been, say, Not-in-Place rangeland or farmland, then the community would probably be Suburbanist and/or Suburban Urbanist – and the members of the Micropolitan Middle Class would fall under the umbrella of the Metro Middle Class.

If the history is of a Rural town that became Urban in terms of density because of the influx of newcomers from the Central City and/or Residual Urban locations, thus pushing the density over the Rural/Urban threshold, then there could be two different outcomes. If the newcomers who came were predominantly Suburban Villagers, then there would be a good deal of concordance between oldtimer and newcomer, and the members of the Micropolitan Middle Class would stand mostly under the umbrella of the Rural Middle Class. However, if the newcomers who came were predominantly Suburbanists and/or Suburban Urbanists, then there would be a clash between the Villager identity of the long-time residents and the Suburbanist and/or Suburban Urbanist identities of the newcomers – and the members of the Micropolitan Middle Class would stand alone in the rain, as the clash played out.

Not all people who live in each of the locations are members of the ideal-type Middle Class that I have associated with each of the locations – as in for example, the lower, working and upper classes wherever they live, cultural groups and tribal nations wherever they live, and the Suburban Villagers who may live in the Residual Urban or Residual Rural locations. At the same time it is interesting to note that, *if* the total population in each location *were* all members of the ideal-type Middle Class associated with each location, then, in terms of the 2000 Census, 71% of the total national
population would be Metro Middle Class – a proportion certainly in accord with their paradigmatic expression of the dominant characteristics of American culture, 21% would be Rural Middle Class – a proportion certainly in accord with their paradigmatic expression of the non-dominant characteristics of American culture, and 8% would be Micropolitan Middle Class – a proportion certainly in accord with their threshold position between urban and rural. I would venture a guess that the actual proportion of each middle class would be in the neighborhood of these estimated proportions.

7. Summary

My look at American culture has been organized around the pursuit of two questions: (1) What is the set of characteristics that are considered dominant in American culture? and (2) What is the section of American culture that expresses that set of dominant characteristics paradigmatically?

Based upon the findings and discussion above, I can now offer answers to these questions.

The **Metro Middle Class** expresses the dominant characteristics of American culture paradigmatically. The dominant characteristics of American culture are the characteristics of modern utilitarian and expressive individualism. The emphasis is on the autonomous individual. A person’s identity is based upon the individual, independent of allegiance to any group. Utilitarian individualism seeks to maximize the achievement of individual interests, and expressive individualism seeks to maximize the realization of inner psychic capacities.

The individual is relatively free from group constraints and duties, and engages in practices meant to ensure his separation from others who might threaten his autonomy. It is the individual’s responsibility to harness her innate human nature through self-sufficiency, self-control, and self-improvement. Success or failure is the result of personal choices the individual makes.

Communication for the Metro Middle Class is the direct and explicit transmission of decontextualized information. Interactions are between decontextualized individuals within a framework of contractual obligations, individual rights, and neutral rules. In one’s interactions, one is future-oriented, change-oriented, and short-term oriented, and impatient to get things done in order to meet a deadline, often a self-imposed one. One’s relationship to the world separate from oneself – nature, the environment – is conceptualized as one of instrumental manipulation.

The dominant goal for the Metro Middle Class is not only success, but calculated, self-disciplined movement up the ladder of success. The occupational milieu is the locus of opportunity for upward mobility. Typically, the individual has a career as a professional, usually in a bureaucratic organization. The individual looks to promotion as the path of upward mobility. Most occupations
involve the application of the neutral and universal procedures of rational calculation plus technical expertise to the solution of problems. In solving problems, the professional is expected to be separate from the problem – from the people as well as from the situation – in order to be of service to the problem.

Concerns about tradition and relationships are subordinated to the dictates of technical rationality. Success is measured by standards external to the individual that look for not only the absence of error, but also the extent of innovation.

Strong emphasis is laid upon the self-sufficiency and solidarity of the nuclear family against all other kinship ties and groupings. Consumption is oriented towards family purchases which enhance or maintain the status and prestige of the individual as well as of the family. The Metro Middle Class lives in urban settings and/or in suburban lifestyle enclaves and/or gated communities.

Conflict is seen as the consequence of the breaking of rules, the abrogation of contractual obligations, the infringement of individual rights, and/or differences in individual interests.

Conflict analysis isolates the problem from its interpersonal or intergroup context; people are part of the problem, not the solution.

Conflict resolution is understood as rational problem-solving, in which each problem is solved separately. Problems can be solved through the adversarial processes of the law, where argumentation and confrontation are expected to reveal the truth of the situation. Problems can also be solved by the application of technical expertise and rationality to create neutral technical solutions that satisfy the interests of all. The civic-minded professional brings her toolkit of rationality and technical expertise to assist those in conflict in her community to know their long-term interests, to know the consequences of different courses of action, and to make a decision in the best interests of each.
Chapter Three
Matrix of Customary American Conflict Resolution Practice

I feel it important to note here that I researched and wrote the following section on the customary practice of conflict resolution in America before I researched and wrote the preceding section on American culture, because I did not want the characterizations of American culture to color the presentation of the customary practice of conflict resolution in America. I wanted the two sections to stand separately from each other, rather than have one appear to have been created as a self-fulfilling straw man for the other. I feel confident that each section stands on its own and that neither can trace its construction to the other.

I will use the following framework of understandings about epistemology to organize the presentation of customary American conflict resolution practice.

I propose to understand epistemology as how one learns, how one knows, how one makes meaning – as in, for example, I learn by doing, I know through my body, I make meaning out of what I physically do. I will understand methodology as what one does in order to learn, to know, to make meaning, given how one learns, knows, makes meaning – as in, I will seek physical activity as a way of learning. Methods are specific activities that one does in order to learn, to know, to make meaning – as in, I will take a martial arts course. I will understand knowledge produced as that which one has learned, one has come to know, the meanings one has made through the activities which one has undertaken – as in, after having taken the martial arts course, I know in my body my own ability to take care of myself physically in the world. I will understand reporting as the presentation of the knowledge produced – as in, I will demonstrate to others what I have learned in the martial arts course. And I will understand criteria for credibility as the criteria for judging the knowledge produced – as in, not only I but others will measure my ability against others who have the same ranking as I in the martial arts course to see if I am doing things correctly and appropriately for my ranking.

I have entitled the matrix the epistemology of customary American third party conflict resolution practice. There are two choices embedded in this title: (1) I have used the word ‘customary’ rather than the word ‘dominant’ because the word ‘dominant’ is shrouded with connotations that I don’t
want to have to deal with because they are not relevant to my interests; and (2) I have added the phrase ‘third party’ to the title because, while there is conflict resolution that is routinely done in America that does not involve third parties – i.e., negotiations – I am interested in those practices that do involve third parties.

Before I begin, I want to take a moment to talk about the characterization of customary American conflict resolution. With the use of the word ‘customary,’ I invoke two senses of ‘customary.’

First, I invoke the notion of the central tendency of a distribution. As such, the categorization ‘customary American conflict resolution practice’ is a prototypical categorization, an ideal-type. I have company in constructing a characterization of a central tendency in American conflict resolution practice. Beyond those whom I have drawn upon in constructing this matrix (such as, for example, Merry and her various colleagues [Harrington and Merry 1988; Merry 1979, 1986, 1990; Merry and Silbey 1984], and Conley and O’Barr 1990a, 1990b, 1998 ), there is also such as Lederach, who characterizes the central tendency of the problem-solving workshop and of the American model of mediation as prescriptive (Lederach 1995). And there are Bush and Folger, who characterize a central tendency of the American model of mediation as pursuing a problem-solving orientation to conflict and mediation (Bush and Folger 1994).

Second, I invoke the perspective of the person on the street in America, as in, what would the person on the street say they were thinking of when they were thinking of conflict resolution in America. Merry asserts that the predominant goal of Americans is to put an end to the conflict – they want the problem to go away and are not interested in working it out together (Merry 1979, 1986, 1990; Merry and Silbey 1984). They turn first to litigation, and then to mediation only if litigation did not work (ibid.). In this sense, I used the words customary and mainstream synonymously.

Given these two senses of the word ‘customary,’ within the fields of the matrix, based upon an extensive review of conflict resolution literature, I construct an ideal-type of the epistemology of customary American conflict resolution practice. It is presented, not as a critique, but as a generalization, a central tendency that reflects what the person on the street would think of as the conflict resolution practice they would look to for the solutions to make their problems go away.

In the footnotes, I present the variations, contentions, controversies that may obtain within the various fields of the matrix – the outliers of the distribution that those who focus on the discipline pay attention to.
Below I have depicted the framework which I have used to fill in the components of the epistemology. You will see that, within the Methods, I will look at multiple arenas of Method, and for each arena, I will look at the conflict theory that obtains in the arena, the methods of conflict resolution that are used in the arena, the disputants in the arena, the role of third parties in the arena, and the strategies employed by the third parties in the arena.

If the reader is interested in going directly to the presentation of a particular field in the matrix, the page number is provided below.

Table 3.1. Guide to Table 3.2 Epistemology Of Customary American Third Party Conflict Resolution Practice

<table>
<thead>
<tr>
<th>Logic</th>
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<td>Epistemology</td>
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<tr>
<td>Methodology</td>
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<tr>
<td>Methods</td>
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<thead>
<tr>
<th>Arenas</th>
<th>Formal Legal System</th>
<th>Informal System</th>
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<tr>
<td></td>
<td></td>
<td>Community, Env'tal,</td>
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<td></td>
<td></td>
<td>Public Policy Mediation</td>
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<tr>
<td></td>
<td></td>
<td>Interpersonal Mediation (ADR)¹</td>
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<tr>
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<td>Report</td>
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<td>Disputants</td>
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<td>Mediation</td>
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<td>Knowledge Produced</td>
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<td>Criteria for Credibility</td>
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</table>

¹ ADR is the acronym for Alternative Dispute Resolution
In constructing this juxtapositional matrix, I have woven together strands culled from an extensive number of references. Some provided specific ideas which have been appropriately cited. Some inspired thoughts, which contribution was critical but is not usually cited. However, I want to give credit where credit is due, so I have chosen to cite here all the references which have contributed to the construction of this matrix, not only those that provided specific ideas but also those that simply inspired other thoughts.

Felstiner, Abel, and Sarat (1980-81) coupled with Coates and Penrod (1980-81) and Miller and Sarat (1980-81) – all articles about naming, blaming, and claiming in a special issue of *Law & Society Review* – contributed strongly to the overarching Methods section.


Table 3.2. Epistemology Of Customary American Third Party Conflict Resolution Practice

<table>
<thead>
<tr>
<th>logic around which epistemology is organized</th>
<th>Logic of problem-solving by means of controlled communication</th>
</tr>
</thead>
<tbody>
<tr>
<td>epistemology</td>
<td>One makes meaning in engagement with a third party in a process constructed and controlled by the third party</td>
</tr>
<tr>
<td>methodology</td>
<td>Third party constructs and controls a process for communication between people in order that a solution to a problem will be reached</td>
</tr>
<tr>
<td>methods</td>
<td>The customary orientation to conflict in mainstream America is that conflict arises when an individual cannot get what she wants in a situation (however situation and want are socially constructed). More specifically, if an individual does not get what she wants in a situation, she names it as a problem. She defines who is to blame for this problem. She makes a claim to the person who is to blame for correction of the problem and satisfaction of her interests. If the person to blame denies the claim, the problem becomes a conflict. The appropriate response is that the problem must be solved. There are multiple arenas for problem-solving. Each arena frames conflict in its own terms and establishes both the process and the product of problem-solving that will obtain in its arena. The third party in each arena frames the particular conflict with which he is dealing in the terms relevant to that arena. The third party establishes and administers rules for communication. The third party in each arena controls the enactment of the process of problem-solving in his arena. The third party controls the construction of the solution to the problem.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Arenas</th>
<th>Formal Legal System</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Litigation</strong> -- from small claims on up through full formal trials.</td>
</tr>
</tbody>
</table>

2 Felstiner, Abel, and Sarat (1980-81) talk about the transformation effects of dispute institutions, which effects Mehan (1990) clarifies when he says that “competing definitions [of the situation] are resolved by imposing institutional definitions on lay persons’ definitions” (160). Each arena in the matrix redefines the definitions of the situation that disputants bring to the arena. The definition of the situation determines the appropriate response to the situation that will be applied by each arena.

3 Technically, legislative decision as well as public appeal to government agencies can be seen as falling in the arena of the formal legal system; however, I am not going to explore these approaches to conflict resolution in this matrix, because they fall outside the scope of my interest.

I see arbitration as straddling the boundary between the formal and the informal systems, depending upon what the third parties and the disputants bring to the approach and upon whether the arbitration is binding or non-binding. As such, I am going to focus on the characteristics of the formal system as represented by litigation and of the informal system as represented by mediation, and trust that any particular instance of arbitration can be found among those characteristics.
Table 3.2 continued

<table>
<thead>
<tr>
<th>methods</th>
<th>Formal Legal System, continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arenas</td>
<td>The legal orientation to conflict has it that conflict consists of the problem of competing</td>
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<td></td>
<td>claims about the denial or infringement of non-negotiable individual rights and/or the</td>
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<tr>
<td></td>
<td>breaking of contractual rules that govern interactions between individuals. When an</td>
</tr>
<tr>
<td></td>
<td>individual brings his conflict to the formal legal system, the third parties of the formal</td>
</tr>
<tr>
<td></td>
<td>legal system (from court clerks through attorneys on up to judges) redefine the individual's</td>
</tr>
<tr>
<td></td>
<td>problem in these terms, which may or may not be the terms in which the individual had</td>
</tr>
<tr>
<td></td>
<td>defined her problem.</td>
</tr>
<tr>
<td></td>
<td>Conflict resolution: The appropriate response to the problem is the solution of a coercive</td>
</tr>
<tr>
<td></td>
<td>decision of who is right and thus who is wrong. Arguments from each party are profferred to</td>
</tr>
<tr>
<td></td>
<td>the third party decision maker by either the disputants themselves or third party advocates</td>
</tr>
<tr>
<td></td>
<td>on their behalf. The decision is rendered by the third party decision-maker who controls the</td>
</tr>
<tr>
<td></td>
<td>process.</td>
</tr>
</tbody>
</table>

4 Conley and O’Barr (1990a, 1990b, 1998) contend that those individuals who are able to present their problem in the rule-oriented terms used by the formal legal system fare much better in the formal legal system than those who present their problem in relationship-oriented terms which are dismissed by the formal legal system as not relevant to the case at hand. In addition, the formal legal system takes a problem embedded in a complex social situation and redefines it as a case of conflict between individuals, separated from the social circumstances from which it arose.

5 Merry, both individually and with her colleague Silbey, has looked extensively at what Americans do to try to resolve their disputes (Merry 1979, 1986, 1990; Merry and Silbey 1984). It was found that the predominant goal of their approaches to conflict resolution was to put an end to the conflict – they want the problem to go away and are not interested in working it out together. It was also found that as individuals change or aspire to change their position on the socioeconomic ladder, the approaches to conflict resolution that they consider appropriate to their actual or desired position on the socioeconomic ladder also change. At the lowest end of the ladder, quite routinely one finds strangers living in rented housing and in dense proximity to one another. The dispute resolution approach of choice is violence, coupled with avoidance of those who cause the problem – usually accomplished by moving away – and/or endurance of those who cause the problem – if they cannot afford to move away. As individuals struggle to rise out of poverty towards the middle class, even though they are routinely still living in rented housing and in dense proximity to strangers, they do not want to resort to violence because it is not considered appropriate to the middle class. They try to use informal third parties, such as police officers or property managers, but regularly these third parties do not resolve the problem. As a last resort, they may file a case with the lower criminal court (where litigants argue on their own behalf before a judge who decides the case). They do so with an expectation that their rights – both personal and property – are absolute and unqualified entitlements, and they are seeking adjudication and, if they win, imposition of consequences on the defendant. If their case is taken up by the court, the plaintiffs find that in actuality their rights are limited and carefully defined and the consequences actually imposed may not be those they had in mind. If the case is not taken up by the court, it is either dropped or may be shunted over to court-annexed mediation, where their case is redefined as an interpersonal problem, as not about rights, but about interests, and as not about coercion, but about collaboration. More often than not, the plaintiffs do not succeed in getting the coercion they wanted, though they do get some degree of social leverage in the implication of coercion that comes from simply filing their complaints. The usual response by this point in the dispute cycle is avoidance of those who cause the problem, usually accomplished by moving away, and/or endurance of those who cause the problem, if they cannot afford to move away.

As individuals move into the middle class towards the ideal of modern American individualism of freedom from the limitations imposed by others, and away from the transience of renting where people live in dense proximity with strangers, towards the permanence of ownership in neighborhoods where people live separated from each other, the social norm becomes that, while it is acceptable to take strangers to court, one should avoid taking one’s neighbors to court. Instead the acceptable approaches to conflict resolution are ignoring the problem, attempting to talk with the people, engaging in self-help (such as building a fence), avoiding the problem, and/or enduring the problem. The one circumstance that seems to be able to trump the middle-
<table>
<thead>
<tr>
<th>methods</th>
<th>Formal Legal System, continued</th>
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</thead>
<tbody>
<tr>
<td><strong>Arenas</strong></td>
<td><strong>disputants</strong></td>
</tr>
<tr>
<td></td>
<td>The people involved in the conflict are defined in terms of the claim to blame, i.e., plaintiffs and defendants. In small claims and lower criminal courts, the litigants appear on their own behalf. In higher courts (including divorce, juvenile, civil), third parties (i.e., attorneys) advocate on their behalf.</td>
</tr>
<tr>
<td><strong>third party role</strong></td>
<td>Third parties play a number of roles in the formal legal system. All third parties participate in redefining the individual’s problem in the terms relevant to the formal legal system, and all may work to shunt those problems which they feel cannot be defined in terms of rights and/or rules out of the formal legal system over to the informal ADR system which defines situations in other terms. Judges are required to be neutral with respect to the substance of the cases before them (and are required to recuse themselves if there is a conflict of interest), but are advocates for the process, in the sense of ensuring that activities follow the rules. Attorneys for the disputants advocate for the position of their clients in the contest to see who wins.</td>
</tr>
<tr>
<td><strong>third party strategies</strong></td>
<td>Given that the solution of the problem is a win-lose decision, disputants and their third party advocates will construct stories meant to hang the evidence together in such a way as to persuade the third party decision-maker to rule in their favor (Bennett and Feldman 1981).</td>
</tr>
</tbody>
</table>

| knowledge produced | The third-party decision-maker renders a decision determining who wins and who loses. In the written decision, the third party decision-maker recapitulates the conflict in the terms in which it has been framed by the court and details his responses to the arguments presented by the litigants (either directly or through third-party advocates), which may include reference to laws, rules, and prior litigation relevant to the decision. |

---

class norm of not taking one’s neighbors to court is when a resource at issue is defined in terms of scarcity (Starr and Yngvesson 1975).

Finally, the higher up the socioeconomic ladder, the more likely that people have become professionals, and as such, have become versed in the rule-oriented language employed in the formal legal system, which increases their likelihood of success when they do go to court.

6 This can be unwanted by disputants who come to the formal legal system wanting adjudication and, if they win, imposition of consequences on the defendants — rather than the consensual problem-solving they will find in the court-annexed ADR. Merry (1990) found that people did not first go to mediation, because they did not want to work the problem out together; they went to court, because they wanted the problem to end. They only went to mediation when their court effort failed.

7 Please reference three footnotes earlier for comments that contend that litigants who present their stories in the rule-oriented language used in the formal legal system fare much better than those who present their stories in relationship-oriented language. Conley and O’Barr (1998) also present many ways in which attorneys control the testimony of witnesses in order to control the story that is constructed — but that consideration is beyond the scope of my interest here.
Table 3.2 continued

<table>
<thead>
<tr>
<th>Arenas</th>
<th>Formal Legal System, continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>reporting</td>
<td>The written decision of a case is published in the public record, becoming a part of case law, where it becomes available as referent and/or ammunition for future cases, including appeals of this case.</td>
</tr>
<tr>
<td>criteria for credibility</td>
<td>The court decision will be judged in terms of whether it followed the rules of rational analysis of the case presented, as well as whether it followed the rules for process in the formal legal system. If it is adjudged that either of these criteria have not been fulfilled, the court's decision can be appealed to a higher court. The higher appeals court must concur that the criteria have been violated and, if they have, the appeals court will return the case to the original lower court to 'do it right this time.'</td>
</tr>
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</table>

The following block of the matrix illustrates that there are two components to the Informal System.

Table 3.2 continued

<table>
<thead>
<tr>
<th>methods</th>
<th>Informal System⁸</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arenas</td>
<td>Interpersonal mediation 'in the shadow of the law' (ADR)</td>
</tr>
<tr>
<td></td>
<td>• Court-annexed mediation programs (which handle court-referred cases)</td>
</tr>
<tr>
<td></td>
<td>• Community mediation programs (which handle predominantly court-referred cases)</td>
</tr>
<tr>
<td></td>
<td>• In-house organizational ADR programs (which handle in-house interpersonal conflicts, in an effort to avoid litigation)</td>
</tr>
<tr>
<td></td>
<td>Community, environmental, and public policy mediation</td>
</tr>
<tr>
<td></td>
<td>• Agency conflict resolution programs for dealing with public policy conflicts that routinely occur for them</td>
</tr>
<tr>
<td></td>
<td>• Stakeholders hiring independent professional mediators to conduct mediation, either on their own volition or in response to the mandate of a court decision.</td>
</tr>
<tr>
<td></td>
<td>• Independent professional mediators directly initiating intervention</td>
</tr>
</tbody>
</table>

⁸ There are other informal approaches besides mediation, such as conciliation, fact-finding, conflict assessment, facilitation and the like, but each of these other approaches expresses characteristics present in mediation, so I will focus on mediation and trust that any other informal approaches can be found in those characteristics.

I am also omitting consideration of negotiation, because I am interested in looking at the role of the third party in the customary American conflict resolution practices.
The following sections are about the Interpersonal Mediation (ADR) component of the Informal System. The Community, Environmental, and Public Policy Mediation component of the Informal System will be presented below the sections about the Interpersonal Mediation component of the Informal System.

Table 3.2 continued

<table>
<thead>
<tr>
<th>methods</th>
<th>Informal System</th>
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<tbody>
<tr>
<td>Arenas</td>
<td>Interpersonal mediation 'in the shadow of the law' (ADR)</td>
</tr>
<tr>
<td>conflict theory</td>
<td>The orientation to conflict in interpersonal mediation has it that conflict consists of a problem of incompatible individual interests. When an individual brings her conflict to the court-referred informal system, the third parties of the informal system redefine the individual's problem in these terms.9 Not only may this not be the terms in which the individual defines her problem; it will also represent a redefinition of the situation from how it was defined in the formal legal system, from non-negotiable rights and rules to negotiable interests.</td>
</tr>
<tr>
<td>conflict resolution</td>
<td>The appropriate response to the problem is the solution of a collaborative construction of a mutually satisfying agreement.10 The third party will frame the conflict in terms of the interests of the disputants. The third party will establish and administer ground rules for collaborative communication between the disputants and will control the communication between the disputants so that it is collaborative. The third party will establish rational cost/benefit analysis as the means for achieving the desired end of an agreement which satisfies both parties' individual interests. The third party will construct the agreement which the parties will review and sign. The third party is sworn to preserve the confidentiality of the mediation session. The typical mediation session takes a number of hours in one day.</td>
</tr>
</tbody>
</table>

9 Similar to what happens in the formal legal system, interpersonal mediation takes a problem embedded in a complex social situation and redefines it as a case of conflict between individuals, separated from the social circumstances from which it arose.

10 A relatively small proportion of programs may assert their goals as personal transformation of the disputants as well as the mediators or social transformation of the context from which the disputes have come, but these programs are constrained in the pursuit of these goals by the fact that the predominant proportion of their caseloads comes from court-referrals, where settlement is the desired goal (Harrington and Merry 1988).
Table 3.2 continued

<table>
<thead>
<tr>
<th>methods</th>
<th>Informal System, continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arenas</td>
<td>Interpersonal mediation ‘in the shadow of the law’ (ADR), continued</td>
</tr>
<tr>
<td>disputants</td>
<td>The people involved in the conflict are defined in terms of the claim to blame, i.e., plaintiffs and defendants, that traveled with the people from the formal legal system to the informal system. The people associated with the case – typically one plaintiff and one defendant – participate directly in the mediation, speaking on their own behalf without the presence of any third party advocates (except perhaps in divorce or juvenile cases).</td>
</tr>
<tr>
<td>third party role</td>
<td>The third party mediator redefines the individual's problem in the terms relevant to the informal system. The third party is required to be neutral with respect to the substance of the cases and an advocate for the process of collaborative communication to produce a mutually satisfying agreement. The mediator is required to preserve the confidentiality of the mediation session.</td>
</tr>
<tr>
<td>third party strategies</td>
<td>Silbey and Merry (1986) characterize the third party role in mediation as hung on the horns of a dilemma – the requirement to achieve settlement versus the requirement to remain neutral with respect to the settlement (see also Merry 1988). Mediators engage in strategies that seek to achieve settlement while still retaining the appearance of neutrality (Jacobs 2002). These strategies range from a bargaining style which focuses communication on rational problem-solving in the service of reaching an agreement, to a therapeutic style which incorporates recognition of emotional and relational issues in the service of reaching an agreement (Silbey and Merry 1986; Taylor 1997). In addition, within court-referred mediation, third parties may remind disputants about the drawbacks associated with the litigation scenario from which they came and to which they could return, should they be unable to reach agreement in mediation.</td>
</tr>
<tr>
<td>knowledge produced</td>
<td>The third party constructs a written agreement that is intended to represent what the disputants have agreed to consensually. The terms of the agreement are supposed to represent the mutual satisfaction of their individual interests. The disputants review, amend if needed, and sign this agreement.</td>
</tr>
<tr>
<td>reporting</td>
<td>Contrary to the perceptions of many disputants, the agreements do not carry the force of law and are not filed with the courts. They reside with the agency, as well as of course with the disputants.</td>
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11 Mediator neutrality is conceptualized as a way of operationalizing the consensual justice of the mediation process. As such, outsider neutrals – people who stand detached, separate from the community – are preferred over insider partisans – people who have close ties to the community (Harrington and Merry 1988).

12 The bargaining style stresses the rational cost/benefit analysis of individual interests, while invoking social norms about relationships as leverage. The therapeutic style stresses the social norms about relationships, while invoking the rational cost/benefit analysis of shared interests (Silbey and Merry 1986). Other names for the two styles are evaluative and facilitative, respectively.

Independently of style, mediators can employ techniques of narrowing and/or expanding the frame of the conflict in order to arrive at something that can be settled (Mather and Yngvesson 1980-81), as well as use questioning and/or summarizing as indirect forms of advocacy for settlement options (Jacobs 2002).
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<th>Arenas</th>
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<td></td>
<td>Interpersonal mediation 'in the shadow of the law' (ADR), continued</td>
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<tr>
<td>criteria for credibility</td>
<td>The agencies evaluate mediators in terms of whether or not they were able to achieve agreement. Disputants are asked to evaluate the process, the outcome, and the mediators in terms of their perceptions of fairness and satisfaction.13</td>
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Table 3.2 continued

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<td>Arena</td>
<td>Community, environmental, and public policy mediation</td>
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<tr>
<td></td>
<td>• Agency conflict resolution programs for dealing with public policy conflicts that routinely occur for them</td>
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<td></td>
<td>• Stakeholders hiring independent professional mediators to conduct mediation, either on their own volition or in response to the mandate of a court decision.</td>
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<td></td>
<td>• Independent professional mediators directly initiating intervention</td>
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<tr>
<td>conflict theory</td>
<td>The orientation to conflict is that conflict consists of a problem of incompatible individual interests. Interests are understood as negotiable, and as such amenable to collaborative rational problem-solving.14 Those conflicts which cannot be framed in terms of negotiable interests (because they are about non-negotiable values, ways of life, ideologies, world views, religions, and the like) are defined as 'intractable' or 'resistant to resolution,' and as such not suitable for mediation.15</td>
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13 Merry (1979) points at a possible ultimate dissatisfaction that court-referred disputants might have if what they wanted was coercion and what they got was collaboration.

14 The third parties will pay attention to issues of values, relationships, data and/or structure in their assessment of the conflict situation. Ultimately the mediation itself distills down to collaborative interest-based bargaining, because interests are negotiable and thus available for rational problem-solving. During the mediation, attention to values, relationships, data and/or structure will be provided by means of advanced mediator techniques (see below in the matrix about third party strategies).

15 In the arena of environmental/public policy mediation, a tractable conflict is defined as one which is amenable to the rational problem-solving of negotiable interests. An intractable conflict is one which is not amenable to the rational problem-solving of negotiable interests. Conflicts which are rooted in non-negotiable issues such as values, ways of life, identity, world views, religion, and the like are seen as intractable or resistant to resolution because they are not amenable to negotiation by means of rational interest-based problem-solving.

The responses of environmental conflict resolution to the intractable conflict seem to cluster under three umbrellas:

1. **Leave it alone.** In her book about the first decade of environmental dispute resolution (1973-1984), Gail Bingham (1986) makes mention of the fact that mediators will do situation assessments of any conflict in which they might intervene, and will only intervene in those conflicts which in their estimation are available to resolution by collaborative interest-based problem-solving because they are or can be framed in terms of negotiable interests. She admits that while her book analyzes the track record of mediation in those situations in which mediators did intervene, there is no measure of the number of situations in which they did not intervene.

2. **Sidestep the non-negotiable issues and problem-solve the negotiable interests.** Burgess and Burgess (1995) prescribe that parties resolve in incremental fashion the muddle of misunderstandings, miscalculated interests, misframed situations, procedural problems that overlay the core conflict. Gray (1997) prescribes reframing the conflict, to find those short-term interests that are negotiable and/or to find a superordinate goal which can supercede the non-negotiable issues. 

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<td>Arenas</td>
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<td><strong>Conflict resolution</strong></td>
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<td>The appropriate response to the problem is the solution of a collaborative construction of a mutually satisfying agreement. The third party will conduct a conflict/situation assessment and will determine whether the conflict can be framed in terms of the negotiable interests of the multiple disputants in the conflict and thus be suitable for the use of collaborative problem-solving to solve the problem. The third party will determine which constituencies of disputants need to be represented at the table (hereinafter referred to as stakeholders, as in, their individual interests have a stake in the resolution of the conflict), and will work to ensure that all are represented. The third party will educate the stakeholders about the issues and about each other’s interests in the conflict. The third party will educate the stakeholders about the processes of collaborative communication (consensus-building) and of rational problem-solving (cost/benefit analysis) as the means for achieving the desired end of an agreement which satisfies all the needs</td>
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(3) **Sidestep the non-negotiable issues and transform the interpersonal relationship among the parties.** Gray (1997) also prescribes that parties exchange information so that they can understand each other’s points of view. Campbell (2003) proposes that conflicts exist on a continuum from intractability to tractability and that the goal is to push the intractable conflict along the continuum until it becomes tractable. To that end, she contends that transformative mediation as espoused by Bush and Folger (1994) encourages disputants to understand each other’s viewpoints, which should enable pushing the intractable conflict further along the continuum towards tractability.

There are others who argue for a different response from environmental conflict resolution: **Transform the definition of the situation.** Dukes (1996) argues “that, while the triad of power, rights, and interests provides a useful conceptual framework, they are ultimately unsustainable ways for settling disputes” (135). “If disputes are more than differences of interests, if their resolution requires more than a balance of power, rights, and interests, then other remedies must be developed” (139). He argues for such public forums as community visioning, public participatory processes like community-based working groups, public dialogue forums, and the like.

Northrup (1989) argues that, on the one hand, changes achieved through settlement that are peripheral to the identities of the parties “tend to have minimal impact on future relations and future disputes if the parties are involved in an intractable conflict” (77), and that, on the other hand, changes in the relationship among the parties, while they may impact how the parties deal with each other in the future, provide “no immediate change in the actual identities of the individual parties” (77). She advocates for redefinition of identities which will have a long-term effect on the entire system – “change in identity results in changes in the relationship, resulting finally in changes in behaviors. This type of change transforms the conflict itself, rather than involving short-term, peripheral, single settlements” (ibid., 78).

Where the transformation proposed by such as Gray and Campbell above represents a first-order change, i.e., changes internal to the definition of the situation as conflict, the transformation proposed by Lederach (1995, 1997, 2003) represents a second-order change, i.e., changes in the definition of the situation itself. Adopting a problem-posing orientation (rather than a problem-solving orientation) and rooted in seeing the people as resources for their own understandings of their own situation (rather than in a deficit model of people as requiring education by an expert), the “transformational metaphor provides an expanded view of time, situates issues and crises within a framework of relationships and social context, and creates a lens to look at both solutions and ongoing changes” (Lederach 2003, 5).
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<td>Arenas</td>
<td>Community, environmental, and public policy mediation, continued</td>
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<tr>
<td>Conflict resolution, continued</td>
<td>stakeholders’ individual interests.16</td>
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The third party and/or the stakeholder representatives will incorporate the services of third party experts to provide scientific data relevant to the solution of the problem.17
The third party and/or the stakeholder representatives will establish and administer ground rules and behavioral guidelines for collaborative communication among the stakeholder representatives, as well as for dealing with the press and with constituencies. The third party and/or the stakeholder representatives will determine whether the mediation will be open or closed to the public, and the ground rules will include rules for maintaining confidentiality, should it have been decided that the intervention will be closed.

During the mediation, the third party will control expressions of emotions through control of communication, providing guidance on appropriate expression of emotions during the mediation. Over the course of the mediation, the third party will ensure that the stakeholder representatives maintain good relationships with their constituencies so that the ultimate agreement satisfies the constituencies and not just their representatives.

The third party and/or the stakeholder representatives will agree upon the issues to be discussed during the mediation and will design a sequence of procedural steps for the intervention. The third party and/or the stakeholder representatives will generate options for settlement, evaluate candidate options for settlement in relation to stakeholders’ individual interests, and assess the costs and benefits of selecting any particular option. The third party and/or the stakeholder representatives will “identify procedural steps to operationalize the agreement[,]... establish an evaluation and monitoring procedure[,] and[,]... create an enforcement and commitment mechanism” (Moore 2003, 69). The third party will construct the written agreement which the stakeholder representatives will review, amend as needed, and sign. The third party may monitor implementation of the agreement.

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16 Often this is characterized as skills-building or capacity-building in the sense of training parties in skills that they can then use to resolve future conflicts.
17 The relationship between science and environmental/public policy conflict resolution is difficult at best, because of the different expectations that scientists and laypersons have about what science can provide. The popular expectation of science is that it provides the truth, definitive answers, incontrovertible facts. Scientists understand that science’s findings represent an intersubjective agreement on a conclusion that is always tentative and available for nullification. As Dietz says, “scientists believe a fact has been established when a number of good studies suggest that the preponderance of evidence points in the same direction and there are no glaring contradictions or evident flaws in the analyses” (Dietz 2001, page unnumbered). And as Crawford-Brown says, scientists understand that science “is a process by which truth is progressively refined and approached, rather than an end-point” (2001, 63). Disputants in environmental and public policy mediation can oftentimes use science as a weapon, each ‘side’ trying to use science to prove the rightness of their position and the wrongness of the ‘other’s’ position. When different scientists come up with different conclusions (which is not unusual and not unexpected by the scientists), disputants often fling fast and furious castigations of ‘bad science’ or ‘junk science’ at the scientists.
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18 Above, I used the phrase “the third party and/or the stakeholder representatives” to capture the spectrum of possible third party involvement in the collaborative problem-solving, which can range from highly directive to highly non-directive. The more directive the third party, the more the third party does for the disputants; the more non-directive the third party, the more the third party tries to get the disputants to do it for themselves. Individual third parties move along the continuum according to their concerns about the fairness and justice of the process and the fairness and justice of the outcome (as fairness and justice are understood by the third party).
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| third party strategies | Silbey and Merry (1986) characterize the third party role in mediation as hung on the horns of a dilemma – the requirement to achieve settlement versus the requirement to remain neutral with respect to the settlement (see also Merry 1988). Mediators engage in strategies that seek to achieve settlement while still retaining the appearance of neutrality (Jacobs 2002). These strategies range from a bargaining style which focuses communication on rational problem-solving in the service of reaching an agreement, to a therapeutic style which incorporates recognition of emotional and relational issues in the service of reaching an agreement (Silbey and Merry 1986; Taylor 1997). Advanced mediator techniques endeavor to accommodate power imbalances and differences associated with culture, values, ways of life, world views, and the like within the frame of collaborative rational problem-solving.

| knowledge produced | The third party constructs a written agreement that is intended to represent what the stakeholder representatives have agreed to consensually. The terms of the agreement are supposed to represent the mutual satisfaction of their individual interests. The stakeholder representatives review, amend if needed, and sign this agreement. |
| reporting | The written agreement may be published at the conclusion of the mediation, thus releasing the seal of confidentiality that may have obtained for the duration of the intervention. In addition, the third party and/or the stakeholder representatives may arrange for press coverage of the publication of the agreement. The third party and/or the stakeholder representatives may present the agreement to relevant outside organizations, such as agencies, governing boards, commissions, and the like. |

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19 The bargaining style stresses the rational cost/benefit analysis of individual interests, while invoking social norms about relationships as leverage. The therapeutic style stresses the social norms about relationships, while invoking the rational cost/benefit analysis of shared interests (Silbey and Merry 1986). Other names for the two styles are evaluative and facilitative, respectively.

Independently of style, mediators can employ techniques of narrowing and/or expanding the frame of the conflict in order to arrive at something that can be settled (Mather and Yngvesson 1980-81), as well as use questioning and/or summarizing as indirect forms of advocacy for settlement options (Jacobs 2002).

20 Lederach (1995) asserts that the North American model of mediation treats culture as technique, in the sense that the model assumes the universality of its mode of rational problem-solving and deals with culture in terms of how to accommodate cultural differences within its mode of rational problem-solving. In the same manner, I would say that the model of customary American environmental and public policy conflict resolution assumes the universality of its mode of rational problem-solving and deals with power imbalances in terms of techniques for balancing power within its mode of rational problem-solving – and deals with culture, values, identities, ways of life and other such non-negotiable issues in terms of how to accommodate such differences within its mode of rational problem-solving.
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<th>Arenas</th>
<th>Informal System, continued</th>
<th>Community, environmental, and public policy mediation, continued</th>
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<tr>
<td>criteria for credibility</td>
<td>The primary goal of this arena of mediation, and thus the criterion for success, is the achievement of settlement. Secondary to the achievement of settlement may be the serendipitous accomplishment of improvement of the relationships between the individuals involved in the mediation, of their capacity to engage in future rational problem solving, and of social capital.21 Because agencies that sponsor their own conflict resolution programs need to justify the program expense and independent mediators need to justify the product they are selling, both will seek to evaluate the outcome, the process, and the mediators in terms of the criteria of perceived fairness and satisfaction and quality of the settlement (O’Leary and Raines 2001). They may also evaluate the outcome, the process, and the mediators in terms of the serendipitous improvement of relationships, skills in rational problem solving, and social capital (d’Estree 2003, d’Estree and Colby 2003). Some may also evaluate the degree of successful implementation of agreements and successful handling of future conflicts by the stakeholder constituencies.</td>
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This matrix, while constructing an ideal-type of the epistemology of customary American third party conflict resolution practice, has also sent many a probe scratching down the depths of the iceberg, presenting the variations, contentions, and controversies that may obtain within the various fields of the framework.

To summarize the matrix, I want to construct a very-tip-of-the-iceberg ideal-type – which I will bring forward later in the journey to juxtapose with other epistemologies in Volume Three. The epistemology of customary American third party conflict resolution practice is organized around a logic of problem-solving by means of controlled communication. Methodologically, one makes meaning in engagement with a third party in a problem-solving process constructed and controlled by the third party. Methods range from litigation in the formal legal system, to interpersonal mediation ‘in the shadow of the law’ (ADR) and community, environmental, and public policy mediation in the informal system. Each method frames conflict in its own terms and establishes both the process and the product of problem-solving that will obtain in its arena. The third party in each method frames the particular conflict with which she is dealing in the terms relevant to that arena, establishes and administers rules for communication in that arena, controls the enactment of the process of problem-solving in that arena, and controls the construction of the solution of the

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21 All mediation interventions are evaluated in terms of the achievement of settlement. Individual interventions may vary in the degree of importance attached to the improvement of stakeholder relationships, capacity-building, and social capital. For some, this improvement is as important as the achievement of settlement, representing for these third parties their contribution to the transformation of community and governance (e.g., Dukes 1996) and their interventions will work to accomplish this improvement while still achieving settlement. For others, achievement of settlement is the primary goal and any other improvement is a serendipitous additional benefit.
problem. The **knowledge produced** is the solution produced by means of the problem-solving process constructed and controlled by the third party, and ranges from court decisions to mediation settlement agreements. The **reporting** is a written statement of the solution produced. The **criteria for credibility** range from, in the formal legal system, evaluation of the third party’s adherence to the rules of process, to, in the informal system, evaluation of the third party’s ability to achieve settlement. Secondarily, in the informal system, disputants may evaluate the process, the outcome and the mediators in terms that can range from perceptions of fairness and satisfaction to perceptions of improvements in relationships, problem-solving capacity, and social capital.
Chapter Four

Answers to the Questions Posed about Customary American Practice

1. What is the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based and where does it come from?

As Kevin Avruch and Peter Black propose the terms, an *ethnoconflict theory* represents what a cultural group constructs as conflict and *ethnopraxis* represents how that cultural group deals with conflict, given how they have constructed it (Avruch 1991; Avruch and Black 1991, 1993; Black and Avruch 1989).

Based on the preceding matrix, let me construct a portrait of the *ethnoconflict theory* and *ethnopraxis* upon which customary American conflict resolution practice is based. The orientation to conflict is that conflict arises when an individual cannot get what she wants in a situation (however situation and want are socially constructed) (Felstiner, Abel, and Sarat 1980-81; Coates and Penrod 1980-81; Miller and Sarat 1980-81). More specifically, if an individual does not get what she wants in a situation, she names it as a problem. She defines who is to blame for this problem. She makes a claim to the person who is to blame for correction of the problem and satisfaction of her interests. If the person to blame denies the claim, the problem becomes a conflict. The appropriate response is that the problem must be solved. There are multiple arenas for problem-solving. Each arena frames conflict in its own terms and establishes both the process and the product of problem-solving that will obtain in its arena.

The orientation to conflict in the formal legal system has it that conflict consists of the problem of competing claims about the denial or infringement of non-negotiable individual rights and/or the breaking of contractual rules that govern interactions between individuals. The appropriate response to the problem is the solution of a coercive decision of who is right and thus who is wrong.

The orientation to conflict in the informal system has it that conflict consists of a problem of incompatible individual interests. Interests are understood as negotiable, and as such amenable to collaborative rational problem-solving. The appropriate response to the problem is the solution of a collaborative construction of a mutually satisfying agreement.

In both the formal and informal systems, the role of the third party as expert is central. The third party in each arena frames the particular conflict with which he is dealing in the terms relevant
to that arena, establishes and administers rules for communication in that arena, controls the enactment of the process of problem-solving in that arena, and controls the construction of the solution to the problem. And in each arena, the third party is expected to be, on the one hand, neutral with respect to the issue at hand, and on the other hand, an advocate for the problem-solving process being used.

When an individual brings his conflict to the formal legal system, the third parties of the formal legal system (from court clerks through attorneys on up to judges) define the individual's problem in terms of the denial or infringement of non-negotiable individual rights and/or the breaking of contractual rules that govern interactions between individuals. Arguments from each party are proffered to the third party decision maker by either the disputants themselves or third party advocates on their behalf. The decision is rendered by the third party decision-maker who controls the process. While third parties may advocate for their clients, the third party decision maker is expected to be neutral with respect to the issue at hand, and all third parties are expected to advocate for adherence to correct legal process.

When an individual brings her conflict to the informal system – be it either interpersonal mediation or community, environmental and public policy mediation – the third parties of the informal system define the conflict in terms of incompatible individual interests. The third party will control the communication between the disputants so that it is collaborative and will establish rational cost/benefit analysis as the means for achieving the desired end of an agreement which satisfies all disputants’ individual interests. The third party mediator is expected to be an outsider impartial, neutral with respect to the outcome, and an advocate for the process.

In both the formal and informal systems, the role of scientific expertise is central. Disputants and third parties expect science to provide the truth, definitive answers, incontrovertible facts, that they can use to determine the rightness and wrongness of their and others’ positions.

Where does this ethnoconflict theory and ethnopraxis come from? In my opinion, the ethnoconflict theory and ethnopraxis on which customary American conflict resolution practice is based flows unerringly from the attitudes, aspirations, expectations that characterize the modern American Metro Middle Class.

Let me bring forward and insert here the portrait I constructed of the modern American Metro Middle Class at the conclusion of the section on American culture.

The Metro Middle Class expresses the dominant characteristics of American culture paradigmatically. The dominant characteristics of American culture are the characteristics of modern
utilitarian and expressive individualism. The emphasis is on the autonomous individual. A person’s identity is based upon the individual, independent of allegiance to any group. Utilitarian individualism seeks to maximize the achievement of individual interests, and expressive individualism seeks to maximize the realization of inner psychic capacities.

The individual is relatively free from group constraints and duties, and engages in practices meant to ensure his separation from others who might threaten his autonomy. It is the individual’s responsibility to harness her innate human nature through self-sufficiency, self-control, and self-improvement. Success or failure is the result of personal choices made by the individual.

Communication for the Metro Middle Class is the direct and explicit transmission of decontextualized information. Interactions are between decontextualized individuals within a framework of contractual obligations, individual rights, and neutral rules. In one’s interactions, one is future-oriented, change-oriented, and short-term oriented, and impatient to get things done in order to meet a deadline, often a self-imposed one. One’s relationship to the world separate from oneself – nature, the environment – is conceptualized as one of instrumental manipulation.

The dominant goal for the Metro Middle Class is not only success, but calculated, self-disciplined movement up the ladder of success. The occupational milieu is the locus of opportunity for upward mobility. Typically, the individual has a career as a professional, usually in a bureaucratic organization. The individual looks to promotion as the path of upward mobility. Most occupations involve the application of the neutral and universal procedures of rational calculation plus technical expertise to the solution of problems. In solving problems, the professional is expected to be separate from the problem – from the people as well as from the situation – in order to be of service to the problem.

Concerns about tradition and relationships are subordinated to the dictates of technical rationality. Success is measured by standards external to the individual that look for not only the absence of error, but also the extent of innovation.

Strong emphasis is laid upon the self-sufficiency and solidarity of the nuclear family against all other kinship ties and groupings. Consumption is oriented towards family purchases which enhance or maintain the status and prestige of the individual as well as of the family. The Metro Middle Class lives in urban settings and/or in suburban lifestyle enclaves and/or gated communities.

Conflict is seen as the consequence of the breaking of rules, the abrogation of contractual obligations, the infringement of individual rights, and/or differences in individual interests.

Conflict analysis isolates the problem from its interpersonal or intergroup context; people are part of the problem, not the solution.
Conflict resolution is understood as rational problem-solving, in which each problem is solved separately. Problems can be solved through the adversarial processes of the law, where argumentation and confrontation are expected to reveal the truth of the situation. Problems can also be solved by the application of technical expertise and rationality to create neutral technical solutions that satisfy the interests of all. The civic-minded professional brings her toolkit of rationality and technical expertise to assist those in conflict in her community to know their long-term interests, to know the consequences of different courses of action, and to make a decision in the best interests of each.

Both the *ethnoconflict theory* and *ethnopraxis* upon which customary American conflict resolution practice is based and the modern Metro Middle Class culture:

- are focused on the individual, on individual interests, on individual rights
- conceptualize the identity of an individual as decontextualized – isolated from the individual’s interpersonal or intergroup context
- conceptualize interactions between individuals in terms of rules, individual rights, contracts and/or individual interests
- frame conflict in terms of the breaking of rules, the infringement of individual rights, the abrogation of contractual obligations, and/or differences in individual interests between decontextualized individuals – individuals isolated from their interpersonal or intergroup context
- understand conflict as a problem to be solved through the application of scientific expertise and technical rationality
- understand the solution to be either the revelation of truth about the rules, rights, and/or contracts at issue through argumentation and confrontation or the creation of neutral technical solutions for the satisfaction of the interests at issue through science and rationality
- subordinate concerns about relationships to the dictates of rationality
- expect any professional involved in the solution of a problem to be an outsider to the problem, the people, and the situation, and impartial to the solution

In essence, the modern Metro Middle Class expresses certain theories about what counts as conflict – and these theories are the theories expressed in the *ethnoconflict theory* upon which customary American conflict resolution practice is based. And modern Metro Middle Class expresses
preferences for how to deal with conflict – and these preferences are the methods expressed in the *ethnopraxis* upon which customary American conflict resolution practice is based.

**In summary, then,** my answer to the question *What is the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based and where does it come from?* is that, in my opinion, customary American conflict resolution practice flows unerringly from the attitudes, aspirations, expectations that characterize the modern American Metro Middle Class. Put another way, the modern American Metro Middle Class culture is the source of the construction of the *ethnoconflict theory* and *ethnopraxis* that is the basis of customary American conflict resolution practice.

2. **With whom and in what situations is the American model appropriate within America?**

When considering the answer to this question, I am immediately reminded of Lewis Coser. In his 1956 book *The Functions of Social Conflict*, he defines realistic conflict as conflict that takes place within a context of shared core values – within the status quo – and nonrealistic conflict as conflict that challenges the core values – challenges the status quo.

In the spirit of Coser, I would say that the American model would be appropriate within America when everything about the situation and the people involved in the situation is in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based. This would mean that the situation would be one which could be successfully decontextualized, in the sense of being constructed as being about rights, rules, contracts, and/or individual interests, rather than as being about the web of social relationships that is the context from which the situation has been extracted. It would mean that the people who are involved in the conflict conceptualize conflict resolution as something achieved through the application of rationality supplemented by scientific expertise, as needed. And it would mean that the people who are involved in the conflict accept the role of outsider impartial third party experts in the process of conflict resolution.

**Talking first about the people,** the quintessentially appropriate disputants would be Metro Middle Class professionals, who, by definition, are skilled in, automatically apply, and grant authority to technical rationality and scientific expertise for the solution of problems.

**Talking next about the situation,** as exemplars of quintessentially appropriate situations, one has only to look at Regulatory Negotiations (known in the mediation ‘biz’ as “RegNeg”) in which third parties mediate lawyers representing clients talking with lawyers representing the government about problems associated with the formulation of public policy regulations. Or one can look at the US Environmental Protection Agency ADR programs in which third parties mediate lawyers
representing clients talking with lawyers representing the government about settlement of enforcement actions concerning the lawyers’ clients’ financial responsibility associated with hazardous waste sites.

**Putting together people and situations,** one can look at some of the potential problems identified in the prior section on American culture – perhaps disputes among Metro Middle Class Urbanists about intra-urban problems associated with increasing population, increasing density, and concomitantly sluggish urban infrastructure – perhaps disputes among Metro Middle Class Suburbanists and/or Suburban Urbanists about intra-suburban problems similarly associated with increasing population, increasing density, and concomitantly sluggish suburban infrastructure – and perhaps disputes between Metro Middle Class Urbanists, Suburbanists and/or Suburban Urbanists about problems associated with the allocation of scarce resources between Central City and Residual Urban locations.

3. **With whom and in what situations might it not be appropriate within America?**

If the American model would be appropriate within America when everything about the situation and the people involved in the situation is in agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based, then it would be inappropriate when something about the situation and the people involved in the situation is not in agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based. This ‘something’ can be that the people involved in the situation have a different ethnoconflict theory and ethnopraxis. It can also be that, even if the people involved in the situation happen to share the ethnoconflict theory and ethnopraxis upon which the American model is based, the situation is not about rights, rules, and/or individual interests, and so as such not appropriate for the American model.

**Talking first about the people,** looking back at my discussion of American culture, there are certainly multiple candidates for who might have a different ethnoconflict theory and ethnopraxis and for what those differences might be.

With respect to class, even while the lower class, working class, and upper class pay symbolic deference to Metro Middle Class values, other concerns — such as security, tradition/continuity of wealth, relationships — trump rationality as authority to determine what should be done and how it should be done.

The Rural Middle Class would employ the language of civic individualism and the practices of community to frame the problem in terms of contextualized relationships rent asunder and to solve the problem through the mending of the tear in the social fabric.
With respect to community ideologies, non-Metro-Middle-Class Urbanists, Suburbanists, and Suburban Urbanists as well as Suburban Villagers, Small-Town Villagers, and Country Folks would have different ways of constructing what counts as conflict and how to deal with it.

With respect to age, whatever class they are in, wherever people live, whatever their community ideologies, while the focus of younger generations – from 1940 on – on individual personal interests will find ready resonance in customary American conflict resolution practice, older generations – prior to 1940 – who routinely focus on civic interests might have different ways of constructing what counts as conflict and how to deal with it.

With respect to culture, cultural groups within American culture that are high-context collectivistic would have different ways of constructing what counts as conflict and how to deal with it. Cultural groups within American culture that have non-dominant value orientations – such as, for example, thinking of their human nature as immutable and out of their control, thinking of nature as something to live in harmony with, living only in the present because the past is past and the future is vague and unpredictable, living only in the moment, pursuing group goals rather than individual goals – would have different ways of constructing what counts as conflict and how to deal with it.

People who have a different ethnoconflict theory and ethnopraxis will have different understandings about the situation and about the people involved in the situation. For example, the situation may be understood as embedded within and not separable from the web of relationships which form its context. Conflict may be understood as a tear in the web of relationships and conflict resolution as the mending of the tear.

The situation may be understood as a conflict, not about rights, rules, or individual interests, but about differences in identities, in world views, in ways of life, in value orientations, and other such non-negotiable issues that are not amenable to the rational problem-solving of litigation and/or mediation.

And the situation may not be understood as a problem or a conflict at all. Given that the labeling of a situation as a problem or a conflict invokes a culturally constructed script of who does what with whom, some may resist labeling the situation as either a problem or a conflict, in order to not invoke the associated scripts and to open up other possibilities for dealing with the situation.

People involved in the situation may have different takes on rational problem-solving. Some may grant authority to rationality to determine what should be done and how it should be done, but may have measures other than economic for valuation of cost and benefit. Some may have concerns – such as, for example, security, tradition, relationships – that trump rationality as authority to
determine what should be done and how it should be done. And some may have ways of knowing other than rationality for determining what should be done and how it should be done.

With respect to third parties, some people may distrust outsiders – disconnected from them and their situation – and trust insiders – connected to them and their situation.

Talking next about the situation, it can be the case that, even if the people involved in the situation happen to share the ethnoconflict theory and ethnopraxis upon which the American model is based, the situation is not about rights, rules, and/or individual interests, and so as such not appropriate for the American model.

In my opinion, this occurs routinely in situations in which something has been perceived as a threat by people whose lives are intertwined in a web of relationships. It can be an instance of a threat to a resource that all are dependent upon. It can be an instance of new people moving in to a locus where others already live. It can be an instance of having to do something about the hazardous waste site around which they all live. In all these instances (and of course many others of similar stripe), the perceived threat ultimately requires that people rewrite who they are in relationship to each other and how they live together. However, routinely, the response is to parse the situation, not as a threat to identity, but as a threat to a resource, to a right, to a rule, to an individual interest – and to turn to litigation and/or mediation. And routinely litigation and/or mediation is not able to resolve the situation, because, even if it can adjudicate rights and rules or settle interests, it cannot tell people how to live together.

Putting together people and situations, one can look at some of the potential problems identified in the prior section on American culture – perhaps disputes between newcomers’ interests and identities and long-time residents’ concerns and identities that arise when the Central City and/or Residual Urban population emigrates to Residual Rural, Nonmetropolitan Urban, and/or Nonmetropolitan Rural locations or to Nonmetropolitan Urban locations with a Rural history – perhaps disputes between recreationists’ interests and identities and residents’ concerns and identities that arise when there is a shift in Rural locations from natural capital as resource to natural capital as recreation and an attendant influx of recreationists into the Rural locations – and perhaps disputes between urban/suburban interests and identities and rural concerns and identities that arise when there are attempts by urban and suburban locations to suck natural resources out of the Nonmetropolitan Rural land area in order to service urban demands.

Customarily, the American model deals with the instances in which the model doesn’t fit the people or the situation by a series of first-order changes, i.e., changes that tweak the model without questioning the model. For example, the formal legal system routinely shunts problems that they
consider interpersonal and as such inappropriate for litigation, from the formal system to the court- 
annexed mediation system. In mediation, third parties train disputants in collaborative interest-based 
rational problem-solving. Third parties learn advanced mediator techniques for accommodating 
differences among disputants – such as power, class, culture, identity, ways of life, values – within the 
process of collaborative interest-based rational problem-solving. Third parties may choose not to 
intervene in situations that they determine cannot be framed in terms of negotiable interests. If they 
do choose to intervene in conflicts which are rooted in non-negotiable issues such as values, ways of 
life, identity, world views, religion, they may sidestep the non-negotiable issues and either problem-
solve the negotiable interests, try to find a superordinate goal that supercedes the non-negotiable 
issues, or transform the interpersonal relationship among the parties.
Summary of Volume One

We have come to the end of Volume One, so let me take a moment to pull it all together. In the health care analogue that structures this journey, I cast in the role of customary practice, conflict resolution as it is customarily practiced in America. To learn about this customary practice, I posed a number of questions. In order to answer these questions, I looked extensively at American culture and at conflict resolution as it is customarily practiced in America.

In answer to the question *What is the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based and where does it come from?*, I asserted that customary American conflict resolution practice flows unerringly from the attitudes, aspirations, expectations that characterize the modern American Metro Middle Class. Put another way, the modern American Metro Middle Class culture is the source of the construction of the *ethnoconflict theory* and *ethnopraxis* that is the basis of customary American conflict resolution practice.

In answer to the question *With whom and in what situations is the American model appropriate within America?*, I asserted that the American model would be appropriate within America when everything about the situation and the people involved in the situation was in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based. I proposed the Metro Middle Class professional as the quintessentially appropriate disputant, and proposed situations that involved claims that Metro Middle Class professionals could deal with by means of technical rationality and scientific expertise as candidates for quintessentially appropriate situations.

And finally, in answer to the question *With whom and in what situations might it not be appropriate?*, I asserted that it would be inappropriate when something about the situation and the people involved in the situation was *not* in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based. I proposed that this ‘something’ could be that the people involved in the situation had a different *ethnoconflict theory* and *ethnopraxis*. I also proposed that it could be that, even if the people involved in the situation happened to share the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based, the situation was not about rights, rules, and/or individual interests, and so as such not appropriate for the American model. I provided multiple candidates for both the people and the situations for which the customary practice of conflict resolution in America might be inappropriate. And lastly, I characterized the manner in which the American model
customarily deals with instances in which the model doesn’t fit the people or the situation as a series of first-order changes, i.e., changes that tweak the model without questioning the model.

Moving on within the health care analogue that structures this journey, it is time to move on to Volume Two and that which I cast in the role of the person who is not well – the environmental conflict in the Klamath ecosystem in southern Oregon and northern California that is more than a century in the making.
VOLUME TWO

Conflict and Conflict Resolution in the Klamath Watershed
Introduction to Volume Two

In Part One, in the role of the person who is not well, I will present a history of the Klamath watershed, from the historic times of pristine environmental well-being to the current times of serious environmental degradation. I will start out with geography to give a sense of the place, especially historically. I will then move to talking about the tribal peoples who lived in the basin prior to the incursion of non-Indians in the early 19th century. Next I will take a trip through the years from the arrival of non-Indians in the basin up to the present, noting those happenings which impacted both the environment and the peoples who lived in the environment. I will finish with a picture of the current status of the ecosystem and the people whose ways of life are indissolubly intertwined with the ecosystem and with each other. ¹

In Part Two, I will present a history of conflict resolution in the Klamath watershed. In the role of the history of unsuccessful first-order changes will be the lengthy history of customary conflict resolution efforts in the Klamath that were inappropriate to the people and the situation in the Klamath and that failed. And in the role of second-order change will be the transformation to the practices of reconciliation and collaboration that were appropriate to the people and the situation in the Klamath and that succeeded. I will look at the Chadwick workshops which were a transformative event enabling people to set the seed for re-configuring their interactions. I will then look at the ultimate transformation of the conflict subsequent to the Chadwick workshops: the building of a watershed-wide identity; the relinquishing of the use of the customary practices of mainstream conflict resolution – practices inappropriate to the people and the situation in the

¹ There is the chance that someone might characterize the conflict in the Klamath as an indigenous conflict because there are tribal nations involved in the conflict. In my opinion, the characterization ‘indigenous conflict’ implies either that there are extra-tribal conflicts that consist of others trying to impose something upon tribal nations or that there are intra-tribal and/or inter-tribal conflicts that consist of problems within and/or between tribal nations. None of these characterization applies to the conflict in the Klamath.

In the Klamath watershed, there are multiple ways of life dependent upon the Klamath ecosystem. The Klamath ecosystem is seriously degraded and the threat to this resource was experienced as a threat to the multiple identities dependent upon this resource. The multiple ways of life, the multiple identities, include agriculture, mining, timber, coastal salmon fishing, Upper Basin fishing, environmental activists, and tribal nations. For years upon years, each way of life fought against all of the other ways of life, in an effort to preserve its way of life against what was experienced as a threat to its way of life. Even though there were tribal nations involved in the conflict, the conflict was about far more than just the involvement of the tribal nations in the conflict. They were but one way of life among many ways of life in conflict with each other.
Klamath; the embracing of the practices of reconciliation and collaboration – practices appropriate to the people and the situation in the Klamath; and the construction of a watershed-wide settlement. I will look at the epistemology of the Chadwick process. I will look at the experience of the Chadwick process from the point of view of the participant. And finally I will look at the appropriateness of the Chadwick process to the people and the situation in the Klamath.
PART ONE

History of Environmental Conflict in the Klamath Watershed

In the role of the person who is not well...
Introduction to Part One

In Part One, I will present a history of the Klamath watershed, from the historic times of pristine environmental well-being to the current times of serious environmental degradation. I will start out with geography to give a sense of the place, especially historically. I will then move to talking about the tribal peoples who lived in the basin prior to the incursion of non-Indians in the early 19th century. Next I will take a trip through the years from the arrival of non-Indians in the basin up to the present, noting those happenings which impacted both the environment and the peoples who lived in the environment. I will finish with a picture of the current status of the ecosystem and the people whose ways of life are indissolubly intertwined with the ecosystem and with each other.
Chapter Five
From Time Immemorial

1. Geography

The Klamath River, at 265 miles long, is the third largest river on the West Coast, surpassed only by the Columbia River in Oregon and the Sacramento River in California. Based upon data from the Natural Resources Conservation Service (U.S. NRCS 2002), the Klamath Watershed is 10,040,355 acres or 15,688 square miles\(^2\) (U.S. NRCS 2002).\(^3\) By way of comparison, it takes adding together the land areas of the four Eastern states of Massachusetts, Connecticut, Rhode Island, and Delaware to equal the land area of the Klamath watershed – no small place.\(^4\)

Geography divides the watershed into two regions of similar size but of vastly different terrain.

1.1 The Upper Basin

Based upon NRCS data, the land area of the Upper Basin is 8,060 square miles or 51\% of the total watershed land area.\(^5\) The Upper Basin can be found in Klamath, Lake, and Jackson counties in Oregon and in Modoc and Siskiyou counties in California. Iron Gate Dam at river mile 192 in Siskiyou county in California is commonly pointed to as the end of the Upper Basin on the Klamath River because it sits at a point of significant geologic change (Gannett et al. 2007).

Historically, the Upper Basin was a vast system of interconnected shallow lakes and wetlands surrounded by high desert terrain. This terrain is in turn surrounded by densely forested mountains on the West and North that range from at least 4,300 feet to Mt. Thielsen at 9,182 feet and by “sagebrush- and juniper-covered fault blocks and ridges” (Hathaway and Welch 2002, 32) on the

\(^2\) There are 640 acres in a square mile.
\(^3\) The land area of the Klamath watershed is the sum of the land area of the 12 sub-watersheds within the Klamath watershed.
\(^4\) The land areas of Massachusetts (7,840.02 mi\(^2\)), Connecticut (4,844.80 mi\(^2\)), Rhode Island (1,044.93 mi\(^2\)), and Delaware (1,953.56 mi\(^2\)) sum up to a total land area (15,683.31 mi\(^2\)) that is equivalent to the land area of the Klamath Watershed (15,688 mi\(^2\)) (U.S. Bureau of the Census 2000f, 2000g, 2000h, 2000j).
\(^5\) The line of demarcation between the Upper and Lower Basins is Iron Gate Dam which is within the Upper Klamath River sub-watershed and essentially bisects the land area of the sub-watershed between Upper and Lower Basins. The Upper Basin is comprised of the Williamson, Sprague, Upper Klamath Lake, Lost and Butte sub-watersheds plus 651 mi\(^2\) of the Upper Klamath River East sub-watershed.
Figure 5.1. Map of Klamath Basin

On December 26, 2007, Tom.Share@ca.usda.gov emailed me the above printable pdf file of the map that can be found at http://www.nrcs.usda.gov/feature/klamath/klamdata.html.
East and South that achieve elevations up to at least 4,500 feet. The central terrain hovers around an elevation of at least 4,000 feet.

The headwaters of the Klamath River are born in the ice packs of Crater Lake and the peaks which surround it in the Cascade Mountains in Oregon – at elevations starting from around 6,000 feet and capped by Mt. Hood by Crater Lake at 8,929 feet. The melt from the ice packs flows into springs from which arises Wood River which flows into Agency Lake, which in turn flows into Upper Klamath Lake. In addition, the Sycan River feeds into the Sprague River which in turn feeds into the Williamson River, which ultimately feeds into the Upper Klamath Lake just below Agency Lake.

To get a visual sense of the Upper Basin, think of a bowl, such that anything that pours over the sides of the bowl puddles in the center. And to get a visual sense of the bottom of the ‘bowl,’ think of a flat and shallow baking sheet, tilted, so that everything that comes in the top flows towards the bottom. See figure 5.2 below for a representation of the Upper Basin ‘bowl’ and ‘baking sheet.’ To get a sense of the degree of ‘tilt,’ the town of Chemult in the northernmost reaches of the watershed sits at an elevation of 4,760 feet in the skirts of dense forest. Sliding on down the ‘tilt,’ the town of Chiloquin just north of Upper Klamath Lake at the confluence of the Sprague and the Williamson Rivers has an elevation of 4,179 feet. Historically, Upper Klamath Lake water levels ranged from about 4,140 feet to 4,143 feet (U.S. BOR 2002). The city of Klamath Falls at the southern tip of Upper Klamath Lake sits at 4,094 feet.

![Figure 5.2. Graphic Representation of the Upper Basin – bowl, baking sheet, and puddles.!!](image)

Water flowed out of the lake at the south end, through Lake Ewauna, and the Klamath River began. In wet seasons, the water overflowed the channel of the Klamath River below Lake Ewauna.
and poured south and east into Lower Klamath Lake, which historically ranged from the Klamath River to more than twenty miles southeast across the border into California. On a 1905 map, Lower Klamath Lake was given an elevation of 4,086 feet, and, as its cousin in Oregon, historically, was shallow and surrounded by extensive wetlands.

The Lost River Basin is south and east of Upper Klamath Lake. Historically, it was a completely separate basin. Lost River was so called because it had no egress to the ocean, but rather flowed from Clear Lake in California in a big northerly loop into Oregon and then back down to Tule Lake in California. On that same 1905 map, Tule Lake was given an elevation of 4,056 feet. Historically, Tule Lake, like its neighbor Lower Klamath Lake to the west, was shallow and surrounded by extensive wetlands.

The terrain immediately south of Tule Lake is volcanic in origin – lava ridges, lava beds, lava tubes. The elevation rises gently from about 4,000 feet at its northern edge by historic Tule Lake (which could overflow onto the lava beds), to 5,700 feet at its southern edge. “The terrain can be be interpreted as high desert with grasslands in the northern portions, juniper in the central region and pine forest dominating the southern terrain” (Interactive Outdoors Inc. 1995-2005). To complete the ‘bowl,’ the terrain south of Lower Klamath Lake, Tule Lake, and the lava beds rises to an elevation of at least 6,000 feet.

At the bottom of the ‘bowl,’ the ‘baking sheet’ has tilted down from a high of 4,760 feet at Chemult at the northernmost tip of the watershed to the low of 4,056 feet, the historic high-stage elevation of Tule Lake – a downhill slide of just about 700 feet – and a classic case of ‘water flows downhill’ into ‘puddles’ – the vast network of shallow lakes and wetlands that historically characterized the Upper Basin (see figure 5.2 above). Bureau of Reclamation (BOR) estimates that there were approximately 111,000 acres of lake and marsh habitat around Upper Klamath Lake at maximum pre-development elevation (U.S. BOR 2002). The USGS cites that the lake-marsh complex of Lower Klamath Lake was historically approximately 88,000 acres and of Tule Lake was historically at least 96,000 acres (Gannett et al. 2007). This totals up to approximately 295,000 acres of historic lake and marsh habitat in the Upper Basin.

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Figure 5.3. Elevation and Average Annual Rainfall in the Klamath Watershed
Throughout the Upper Basin, the average annual rainfall varies widely depending upon where you are in the ‘bowl.’ At Crater Lake, the source of the Klamath waters, the average annual rainfall is 66 inches. For the region that is north and east of the Upper Klamath Lake, the average annual rainfall is 16 inches. For the region that is south and east of Upper Klamath Lake, the average annual rainfall is a mere 12 inches. Average annual rainfall in the lava beds area is 15 inches. See figure 3.3 for a graphic representation of the dramatic changes in elevation and rainfall from the headwaters to the coastal waters of the Klamath watershed.

“Historically, Lost River and shortnose suckers occupied four lakes – Clear Lake, Tule Lake, Upper Klamath Lake, and Lower Klamath Lake – and their associated tributaries in the Upper Klamath Basin” (U.S. BOR 2002, 21). Upper Klamath Lake was also populated with waterfowl and rainbow trout (Moore, Harty, and Woodrow 2001). The wetlands of Lower Klamath Lake and Tule Lake provided wintering spots on the Pacific flyway for millions of an astonishing variety of birds.

1.2 The Lower Basin

Based upon NRCS data, the land area of the Lower Basin is 7,628 square miles or 49% of the total watershed land area. The Lower Basin can be found in Josephine and Jackson counties in Oregon and in Siskiyou, Del Norte, Trinity and Humboldt counties in California.

The Klamath River cuts through first the Cascade Mountains, then the Klamath Mountains, and finally the North Coast Range on its way to the Pacific Ocean at Requa, CA, slicing a path between

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8 All rainfall data is from the Western Regional Climate Center at http://www.wrcc.dri.edu, accessed December 17, 2007.
9 The average of the average annual rainfall in Chiloquin (19.91 inches), Sprague River (16.49 inches), Bly (14.15 inches), and Klamath Falls (13.72 inches) is 16.07 inches.
10 The average of the average annual rainfall in Mt. Hebron (12.98 inches), Malin (12.43 inches), Merrill (11.88 inches), and Tulelake (10.89 inches) is 12.05 inches.
11 By way of comparison, Palm Springs, CA gets on average 5 inches, and San Francisco, CA 20 inches.
12 Data for figure 5.3:

<table>
<thead>
<tr>
<th>Location</th>
<th>Elevation</th>
<th>Average Annual Rainfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemult, OR</td>
<td>4760 ft.</td>
<td>25.07 in.</td>
</tr>
<tr>
<td>Chiloquin, OR</td>
<td>4200 ft.</td>
<td>19.91 in.</td>
</tr>
<tr>
<td>Klamath Falls, OR</td>
<td>4094 ft.</td>
<td>13.72 in.</td>
</tr>
<tr>
<td>Iron Gate Dam, CA</td>
<td>2500 ft.</td>
<td>19.54 in.</td>
</tr>
<tr>
<td>Yreka, CA</td>
<td>----------</td>
<td>19.54 in.</td>
</tr>
<tr>
<td>Klamath River, CA</td>
<td>1651 ft.</td>
<td>24.91 in.</td>
</tr>
<tr>
<td>Scott Bar, CA</td>
<td>1640 ft.</td>
<td>19.54 in.</td>
</tr>
<tr>
<td>Happy Camp, CA</td>
<td>1080 ft.</td>
<td>19.54 in.</td>
</tr>
<tr>
<td>Somes Bar, CA</td>
<td>527 ft.</td>
<td>19.54 in.</td>
</tr>
<tr>
<td>Klamath, CA</td>
<td>0 ft.</td>
<td>80.09 in.</td>
</tr>
</tbody>
</table>

13 The line of demarcation between the Upper and Lower Basins is Iron Gate Dam which is within the Upper Klamath River sub-watershed and essentially bisects the land area of the sub-watershed between Upper and Lower Basins. The Lower Basin is comprised of the Shasta, Salmon, Lower Klamath River, Scott, Trinity and South Fork Trinity sub-watersheds plus 765 mi² of the Upper Klamath River West sub-watershed.
steep timber-covered slopes and mountainous wilderness areas and finally temperate rainforest at its mouth. There is very little of the Lower Basin that is not steeply mountainous and densely forested.

While the Upper Basin waters slide down a gentle 700 foot elevation change over ninety or so miles as the crow flies north to south, the Klamath River waters tumble down a steep 4,100 elevation change over 265 miles as the river flows from Upper Klamath Lake to the Pacific Ocean.

The river is fed by four sizeable tributaries on its journey through the Lower Basin – the Shasta River, the Scott River, the Salmon River, and the Trinity River – turning the initial trickle out of Upper Klamath Lake into a formidable expanse by the time it reaches the ocean. It is also fed by average annual rainfall that increases with every mile of river and every foot of elevation change. Where Klamath Falls has an average annual rainfall of 14 inches at an elevation of around 4,100 feet, almost immediately in the Upper Klamath River East sub-watershed in the Upper Basin, the elevation descends to around 2,500 feet at its western edge and the average annual rainfall increases to 20 inches. In the Upper Klamath River West sub-watershed in the Lower Basin, the elevation descends to around 1,400 feet and the average annual rainfall increases to 25 inches. In the Lower Klamath River sub-watershed, the elevation descends to around 500 feet and the average annual rainfall increases to 53 inches. And at sea-level at the mouth of the Klamath River, the average annual rainfall increases to a whopping 80 inches.

The Shasta River and Scott River valleys are somewhat dryer than the Upper Klamath River mainstem into which they flow, averaging around 20 inches of annual rainfall in the Shasta River valley and 21 inches in the Scott River valley. The Salmon River valley has a somewhat lower average annual rainfall than the Lower Klamath River mainstem into which it flows – an average of 46 inches on the North Fork and 37 inches on the South Fork. The closer the Trinity River is to its confluence with the Klamath River, the higher the average annual rainfall – from 37 inches about halfway to its headwaters on up to 53 inches at the confluence.

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14 Again all rainfall data is from the Western Regional Climate Center at [http://www.wrccll.edu](http://www.wrccll.edu), accessed December 17, 2007. The average of the average annual rainfall in Keno, OR (19.61 inches) and at Copco I dam, CA (20.03 inches) is 19.82 inches.

15 The average annual rainfall at Oak Knoll Ranger Station at Klamath River, CA is 24.91 inches.

16 The average of the average annual rainfall in Happy Camp, CA (51.73 inches), Somes Bar, CA (55.26 inches), and Orleans, CA (53.28 inches) is 53.42 inches.

17 The average annual rainfall at Klamath, CA is 80.09 inches.

18 The average annual rainfall in Yreka, CA is 19.54 inches. The average of the average annual rainfall in Fort Jones, CA (20.62 inches) and Callahan, CA (21.47 inches) is 21.05 inches.

19 The average of the average annual rainfall in Forks of Salmon, CA (45.30 inches) and Sawyers Bar, CA (46.00 inches) is 45.65 inches. The average annual rainfall in Cecilville, CA is 36.75 inches.

20 The average annual rainfall at Hoopa, CA is 53.45 inches. The average annual rainfall at Trinity Dam is 36.79 inches.
It is, as such, not surprising to note that, where the Upper Basin contributes only 12% of the total runoff from the Klamath watershed, the Lower Basin contributes a hefty 88% of the total runoff (NRC 2004, 52).

Historically the Klamath River watershed was one of the biggest salmon fisheries in the United States, behind only the Columbia and the Sacramento. In addition to other fish species in the rivers, the environment historically was abundant with flora and fauna – deer, waterfowl, acorns, and the like – that could sustain those who relied upon them.

1.3 Floods and Droughts

The Klamath Basin has been and continues to be characterized by a pattern of extreme floods and droughts (see, for example, Bearss 1982a; KRBFTF 1991; NRC 2004). Blistering droughts in the spring and summer can scorch the Upper Basin, diminishing the extent and depth of the vast network of shallow lakes and wetlands, though it doesn’t seem that historically this devastated the flora and fauna of the environment that sustained those who relied upon them.

At the opposite extreme, in wet years, thunderous winter floods could rampage the entire course of the Klamath River, ripping away anything and everything in its path. Historically, Lower Klamath Lake, Tule Lake, and Lost River basin served as natural flood control in the Upper Basin, and beaver ponds on all the rivers dissipated the erosive power of the floods.

2. “Before The Whiteman Came”

2.1 The World Within the Watershed

Native Americans have lived in the Klamath watershed a very, very long time. The Klamath Tribes say they have lived there for at least 14,000 years (Klamath Tribes 1999-2001b). Norton says that the “Indians of Northern California have occupied their lands for approximately ten thousand years” (1979, 25). And the U.S. courts say that they have lived there since time immemorial. At that time frame, it is really unimportant which ‘number’ is ‘right’ – they have been there a very long time.

Native Americans were the only human inhabitants in the Klamath watershed until the early 19th century. All the tribes of the Klamath watershed depended for their sustenance upon the particular combination of wild plants and animals in their respective territories, and as such were intimately

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21 For example, in the 20th century, the Highway 101 bridge at the mouth of the river was ripped away by a flood – twice!
22 For example, see Adair I in which the court ruled that the water rights of the Klamath Tribes enjoyed a time immemorial priority date (Klamath Tribes 1999-2001a).
familiar with the ecology of the food resources in their territories. All actively manipulated their environment in order to enhance its stability and productivity – through judicious use of controlled fire, pruning, and harvesting techniques. Each of the tribes lived well within the carrying capacity of its respective territory, such that both they and their environments were sustained for millennia (Bearss 1982a; Beckman 1998a; Benzinger et al. 1995; McEvoy 1986; Most 2006; NRC 2004; Norton 1979).

While each tribe had unique cultural, economic, political, and spiritual systems, all the systems of all the tribes were grounded in the value-orientation of harmony-with-nature (Kluckhohn and Strodtbeck 1961). The spiritual beliefs of each tribe articulated, affirmed, and continuously reminded them of the ineluctable interdependence between themselves and their environment. Rituals of each tribe provided carefully prescribed and closely supervised procedures that both maintained and, as needed, repaired this interdependent relationship. The more central a food resource was to a tribe’s sustenance, the more central a place the relationship between the people and that food resource played in the pantheon of spiritual beliefs and rituals that organized every facet of daily life.

The territory of each tribe provided an abundance of food resources; however, the size of the territory that provided this abundance varied with where the tribe lived within the watershed. From the mouth of the river and the neighboring coast on up to mid-river, abundance was localized in relatively small territories, allowing the three tribes that lived there – the Yurok, the Hupa, and the Karuk – to live in permanent villages dispersed through their respective territories.

The pre-contact population of the **Yuroks** has been estimated at 3,100 (McEvoy 1986, 53, table 3.1). Their 54 villages were scattered primarily along the 42 miles of the Klamath River between the confluence with the Trinity and the estuary at the mouth of the Klamath, as well as additionally along the coast from 7 miles north to 35 miles south of the estuary (Most 2006).

The pre-contact population of the **Hupa** has been estimated at 2,000 (McEvoy 1986, 53, table 3.1). They lived in 13 villages along 7 miles of the Trinity just past its confluence with the Klamath River (NRC 2004).

The pre-contact population of the **Karuk** has been estimated at 2,000 (McEvoy 1986, 53, table 3.1). They lived along the Klamath from its confluence with the Trinity up to approximately mid-river in an ancestral homeland of some 1.4 million acres (NRC 2004; Hillman and Salter 1997).

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Each of the three tribes had its own system of spiritual beliefs, with its own ‘center of the world’ located within its respective territory (Norton 1979). For all three tribes the salmon was central to their belief system – quite literally a spiritual being – and maintaining the proper relationship with this spiritual being was of supreme importance (Beckman 1998a). Salmon returned in both the spring and the fall to spawn in the upper reaches of the Klamath River, and rituals governed everything associated with the taking of the salmon – from when and how weirs were constructed in the river, how the salmon were taken, and finally when and how the weirs were removed after a prescribed number of days to allow the salmon to pass on upstream not only to spawn but also to be available to others who depended upon the salmon for sustenance. The size of the take was equivalent to the size of the take by commercial fishers of modern times, but was done in a manner that allowed the people, the river, and the salmon to thrive for millennia (McEvoy 1986).

Each of the tribes had its own political and economic structures, with “carefully defined private rights to all kinds of tangible and intangible property, and all such rights had monetary values” (ibid., 33). The three tribes developed a sophisticated system of commodities exchange, despite the fact that they spoke three different languages (Norton 1979).

Feuds were frequent both within tribes as well as among the three tribes. After the quarrel was fought, compensation was made by each side to the other, in settlement of damages and loss of life (Bearss 1982a, 2-3). Settlement meetings involved the parties to the conflict (plus translators if needed) plus “a repeater, who made sure that all parties understood what was being said, and a judge who explained the implications of the agreement. ...Then came a reconciliation ceremony [for repairing the rift in the social fabric]” (Most 2006, 78). Ultimately, the three tribes “lived side by side for thousands of years in relative peace and security” (Norton 1979, 9).

Moving from mid-river farther upriver, the abundance was more dispersed; as such, the Shastan peoples who lived in this territory were nomadic and did not occupy permanent villages (NRC 2004, 58). The pre-contact population of the Shasta has been estimated at 2,000 (McEvoy 1986, 53, table 3.1). They lived above Happy Camp on the Klamath as well as on the upper reaches of the Salmon, Scott, Shasta, and McCloud rivers (NRC 2004). They had poorer supplies of salmon but enjoyed better forage resources than the three tribes downriver to them. As a more nomadic tribe, “their traditions were closer to those of the tribes of the upper Klamath basin” (ibid., 58).

Finally, in the Upper Basin, the abundance was dispersed over a vast territory; as such, during the spring, summer, and fall seasons, the three tribes that lived there – the Klamaths, the Modocs, and
the Yahooskin Band of the Snake (Paiute) Indians – ranged over a 22 million acre territory, settling in permanent villages only for the winter (Klamath Tribes 1999-2001b; Oregon WRD 1999a).

The **Klamaths**, estimated to number about 800, were predominantly fisherfolk (Blake, Blake, and Kittredge 2000). They “settled for the winter in villages of subterranean earth lodges...on the Klamath Marsh, along the Williamson River, on the east shores of Agency and Upper Klamath Lakes, and beside the Link River” (Blake, Blake, and Kittredge 2000, 37).

The **Modocs**, estimated to number around 400, were predominantly hunters (Blake, Blake, and Kittredge 2000). They settled for the winter in villages of beehive-shaped houses (u-s-history.com - #2 n.d.), which “lay around Lower Klamath, Tule, and Clear Lakes, as well as alongside the Lost River” (Blake, Blake, and Kittredge 2000, 37).

The **Yahooskin** Band of Snake (Paiute) Indians preferred the arid conditions of the easternmost reaches of the Basin (Oregon WRD 1999a).

For all three tribes, the spiritual aspects of life were vastly more important than property (Blake, Blake, and Kittredge 2000). **C’waam** and **qapdo** – later called suckers or mullet by non-Indians – were central to the physical and spiritual well-being of the tribes (Klamath Tribes 1999-2003b).24 As their world thawed from winter and the **C’waam** and **qapdo** enjoyed their spring runs, the Return of the **C’waam** ceremony ensured that balance was maintained between the people and their environment. In the spring, quite literally tons of suckers and salmon were taken during their spring runs and processed for storage. As the seasons turned and the people followed the bloom of the environment throughout their 22 million acre territory, vegetables were harvested and baked to store for winter; game was hunted; fruit was collected – until the seasons had come full circle and it was time to return to their permanent winter villages and the stores stockpiled throughout the year for winter’s use.

Modocs and Klamaths shared a common language and an ancient bloodstock, but by the time the white people arrived, their relationship was mostly based on trade (Blake, Blake, and Kittredge 2000). “Horses changed the economic life of Klamaths and Modocs alike. ...By the eighteenth century, when horses became available on the Columbia Plateau, Klamaths and Modocs began to conduct raids against other tribes to acquire slaves 25 for trade to acquire horses. ... In addition to trading their own captives, the Klamaths served as middlemen for the Modocs, transporting their slaves to The Dalles [on the Columbia River]. ...Raids to capture slaves made the Modocs, unlike most California tribes, a martial society. ...As the Modoc talent for slave-raiding brought them horses

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24 **C’waam** is pronounced ‘chwam’ and **qapdo** is pronounced ‘kuptu.’

25 Slavery in this context is better characterized as indentured servitude, rather than as the forced labor that characterized slavery in the American South (Most 2006).
and laborers, the range and frequency of their forays increased. In their expeditions to the south, the Modocs met little opposition” (Most 2006, 11-12). Even with the horses, the tribes of the upper basin “seem to have had little contact with the down river cultures of the Yurok, Karok [sic], or Hupa” (Blake, Blake, and Kittredge 2000, 37).

2.2 The World Outside the Watershed

While the tribes of the Klamath watershed lived in harmony with their environments for millennia, they came to be surrounded by peoples living in a far less harmonious relationship with the world. “During the 16th century, European explorers began to investigate the west coast of the Americas in search of riches, colonial power, and new trade” (Dodds and Muckleston 1997-2007, 11). Throughout the 17th and 18th centuries, Great Britain, France, Spain, Russia, and the United States all laid claim to the lands in what we now call the Pacific Northwest. Claimants fell away, until finally in 1818, Great Britain and the United States signed a treaty of joint occupation which remained in effect until 1846.

Cortes claimed California for Spain in 1535. For the period 1769-1821, all of present-day California was a colonial province of Nueva España. In 1821, Mexico gained its independence from Spain and California became Mexican territory. Prior to the opening of the first Spanish mission in California in 1769, the population of California Indians has been estimated at about 310,000 (McEvoy 1986, 53, table 3.1; California OHP 1988a). “The obliteration of Indian subsistence economies in California followed the arrival of Europeans with apocalyptic ferocity” (McEvoy 1986, 41). Under first Spanish and then Mexican rule, epidemic disease, military action, murder, enslavement, massive relocation, and loss of food resources combined to reduce the population of California Indians by half (McEvoy 1986; California OHP 1988a).

Fortunately for the Yurok, the Hupa, the Karuk, the Shasta, the Klamaths, the Modocs and the Yahooskin, with the exception of a Spanish expedition that dipped its toe in Trinidad Bay in 1775 (Most 2006) long enough to leave a residue of ill-will and cruelty behind them (Norton 1979), the inhabitants of the Klamath watershed lived in isolation from the political wranglings, military engagements, and devastating loss of life that surrounded them from the 16th century through the early part of the 19th century.
3. First Contact

3.1 The First Trickle of Intrusion into the Watershed in the 1820s and 1830s

The first non-Indians to venture in the Klamath watershed were the occasional trapper and trader who only wanted to trade and trap and not to create permanent settlements that might have threatened tribal territory.

The Upper Basin

After the War of 1812, the Hudson’s Bay Company of Canada took control of the market for trading and trapping west of the Rockies, from Canada all the way down to San Francisco. “With isolated exceptions, there were no white residents of Oregon Territory except officials and attaches of the Hudson’s Bay Company, or its discharged servants” (Bork 2000-2003,174). “In an attempt to discourage Americans from laying claim to the region, Hudson Bay Company’s written policy was to trap fur-bearing animals from streams south of the Columbia River to extinction” (NRC 2004, 59).

In 1825, Finan McDonald and Thomas McKay, fur trappers in the employ of the Hudson’s Bay Company, came down from the north and became the first white people to enter into the Upper Basin (Most 2006). They trapped for beaver through the winter of 1825-1826 but without success, and finally abandoned their traps, returning north empty-handed (Oregon WRD 1999a).

In September 1826, Peter Skeen Ogden, a chief factor of the Hudson’s Bay Company, left The Dalles on the Columbia River with 43 men, including McKay, and 100 horses and headed south for the Upper Klamath Lake region (Oregon WRD 1999a). They reached the Klamath Marsh in December 1826, where they encountered a Klamath village (Most 2006). Ogden’s encounters with the Klamaths were peaceful but then, as they traveled through the Modoc lands, “[t]he journey would become incredibly brutal” (Oregon WRD 1999a, 12-13). By the time they reached the Pit River in California in February 1827, only eight of the original 43 men still survived (Oregon WRD 1999a).

In addition, while Ogden’s expedition took hundreds of beaver pelts from the Shasta and Scott rivers and from streams that flowed into them, “the scarcity of beaver compared to other hunting grounds within the company’s reach accounts for the lack of trapping expeditions in the Klamath Basin after the mid-1820s” (Most 2006, 14). After Ogden, the Hudson’s Bay Company sent no further expeditions into the Upper Basin. In addition, “[n]o adventurers, explorers, or trappers came from the south either. ...It was not until the 1840s that non-Indians returned to [the Upper Basin]” (ibid., 15).
The Lower Basin

In the Lower Basin, the Russian-American Company had operated along the Humboldt Coast, killing sea otters for their pelts. When the trade in sea otter pelts declined, the company curtailed its operations there. “It was replaced by British and American trappers, who generally operated in the interior valleys, but occasionally transient parties found their way to the coastal region” (Bearss 1982b, 1).

In 1827, fur traders from the Hudson’s Bay Company entered Yurok country and reported seeing “various trading articles from American ships” (Most 2006, 75). In 1828, Jedediah Smith, a partner with the Missouri Fur Company, left the San Jose Mission in California with a party of 20 men and almost 300 horses and mules and headed north. By early spring 1828 they had reached the upper tributaries of the Trinity River. The trail was extremely difficult, winding among steep hills, and the Indians were unfriendly. At the confluence of the Trinity with the Klamath, Smith and his party encountered the Hupa, noting that the Hupa had axes – a sure sign that he and his people were approaching Hudson’s Bay Company territory. Struggling on down the Klamath towards the coast, they encountered the Yurok, who both traded with them, getting beads for giving food, as well as stole from them (Bearss 1982b).

Continuing on north into Oregon Country,26 100 or more Indians attacked them, killing 15 of the 18 whites who had been in the party. Smith, who was one of the 3 survivors, promised the Hudson’s Bay Company chief factor Dr. John McLoughlin that he and his partners of the Missouri Fur Company would hereafter avoid Oregon Country (Bearss 1982b).

“Alerted to the American encroachments by the attack on Smith’s party, the Hudson’s Bay Company took steps to secure the Indian trade of northern California. In the period between the Smith expedition and 1833,...Peter Skeen Ogden...moved down the east front of the Sierras to pinpoint Smith’s trail to California and thus to shortstop any American trappers who might be planning to tap the California trade, via this route” (Bearss 1982c, 1).

By the summer of 1828, Ogden reported that almost every part of the Klamath country was now free of beaver (NRC 2004). “Ironically, it was the removal of beaver by fur trappers that helped create the basis for ranching. When beaver were removed, their dams fell into disrepair and the small wetlands behind the dams were drained and became the fertile meadows that were soon to sustain ranchers’ cattle” (NRC 2004, 59).

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26 Oregon Country was a name given to territory originally claimed by the U.S., Great Britain, France, Russia, and Spain over the period 1818-1846. The territory included present-day British Columbia, Oregon, Washington, and Idaho, as well as parts of Wyoming and Montana.
3.2 The World Outside the Watershed

While the tribes of the Klamath ecosystem were living lives grounded in harmony-with-nature, however, the world outside the Klamath ecosystem was forging an ideology grounded in mastery-over-nature. In 1839, columnist John L. O'Sullivan wrote that “[w]e are the nation of human progress, and who will, what can, set limits to our onward march? Providence is with us, and no earthly power can. ...[To bring freedom and equality to the world] is our high destiny, and in nature’s eternal, inevitable decree of cause and effect we must accomplish it” (O'Sullivan 1839, 427-430).

This expression of faith in the design of Providence captured the fancy of the nation. Politically, it became known the ideology of Manifest Destiny, which claimed that it was America’s destiny to alter land, water, mountains, geography itself, in order to bring progress, democracy, and Christianity to the American continent. It “served in the 1840s to legitimize the immigration to Oregon as well as the Mexican-American War” (Most 2006, 17).

Missionaries blazed the trail to Oregon Country. There they found the tribes less than willing to convert to Christianity and realized that the design of Providence could only be realized with the arrival of white settlers. The Great Migration of 1843 brought immigrants who settled all along the Columbia River.

The United States declared war on Mexico on April 24, 1846, in circumstances considered by some as less than just. “The Mexican-American War finally ended with the Treaty of Guadeloupe Hidalgo on February 2, 1848. Under provisions of the treaty, Mexico received $15,000,000 and the United States became the new owner of California as well as all the other Mexican territories within what is now the continental USA” (Schoenhoff n.d., 3). The territory of California went as far north as the 42nd parallel.

On August 14, 1848, out of the original Oregon Country, Congress organized the Oregon Territory which extended from the 42nd parallel north up to the 49th parallel, and included all of the present day states of Oregon, Washington, and Idaho and parts of Wyoming and Montana.

3.3 Increased Intrusion into the Klamath Watershed in the 1840s.

In the interests of assessing the land’s potential for productive settlement, John Charles Fremont, with Kit Carson as his guide, set out to explore and map western terrains. Their first expedition went between St. Louis and the Rocky Mountains (Most 2006). “The second Fremont expedition brought the Pathfinder to Oregon” (ibid., 18). Upon reaching the Columbia River, he turned his expedition south along the Cascade Range. On December 9, 1843, he came upon Klamath Marsh and a Klamath village across the marsh. “To intimidate them, he fired off the howitzer that he had taken
great trouble to bring with him across many rivers and mountains” (ibid., 20). The inhabitants of the Klamath village initially disappeared, but then returned to invite the strangers to visit their village. Fremont was impressed by how well they had adapted to their location, but felt that agriculture would make it a paradise. “The winter weather impelled Fremont to continue on his return trip with little delay” (ibid., 21).

In the two years between the second and third expeditions, the United States was positioning itself to declare war on Mexico. Some have conjectured that Fremont might have had secret orders to position himself in California in order to be able to support such a war effort. “April 24, 1846, hostilities between American troops and Mexicans on the Rio Grande finally broke out” (ibid., 22). Fremont and his expedition were camped beside Upper Klamath Lake when a courier, Lt. A.J. Gillespie, brought messages to him from Washington, DC. Near dawn of the day after having received the messages, the camp was attacked. “Indians, possibly Modocs who had followed Gillespie north, or possibly Klamath, rushed the camp” (ibid., 22). “Scholars disagree about who exactly raided the Fremont-Gillespie camp that night in April” (ibid., 24). “The next day, in retaliation, Fremont and Carson attacked and burned a Klamath village and killed fourteen men” (ibid., 23). Not long after this, the Pathfinder headed south to advance American interests in California. Where Fremont saw the destruction of the Klamath village as the hand of justice, the Klamaths saw the destruction of their village as injustice against a tribe that did not attack Fremont and his expedition.

The brothers Jesse and Lindsay Applegate forged a new trail that would bring wagon trains up from California through the Upper Basin on up to the Columbia River. In 1847 eighty wagon trains made the trek up the Applegate Trail through the Upper Basin. There were many Indian attacks on the wagon trains. Many, but not all, of the attacks were by the Modocs, earning them a reputation among immigrants of being barbarous and bloodthirsty (Oregon WRD 1999a), but often times as well the Modocs got blamed for attacks by other tribes (Most 2006). Conversely, Modocs and other tribes alike were not eager to have dealings with the white men because they were being ravaged by the smallpox and measles contracted from the white men (ibid.).
Summary of Chapter Five

The Indians of the Klamath watershed had lived in unknowing isolation from the political wranglings, military engagements, and devastating loss of life that surrounded them from the 16th century through the 1810s, but the world finally began to intrude in the 1820s. At first it was but a small trickle of non-Indian trappers and traders who ventured into the Klamath watershed, wanting only to trap and trade, not to establish permanent settlements. But then in 1840s the non-Indians who came marched to the tune of Manifest Destiny, intent upon sweeping aside the native inhabitants and claiming the land for themselves in order to bring progress, democracy, and Christianity to the American continent. And as much of a threat as this intrusion was to the Indians of the Klamath watershed, it came to pale in comparison to that which would be wrought by the discovery of gold in California.
Chapter Six
Gold Rush 1848-1855

“There’s GOLD in them thar hills..!!”

1848. California. Gold..!!

A tsunami of gold diggers crashed into California. If you were a “49-er,” nothing and nobody would get in your way as you ripped at the earth to force it to surrender its gold and make you richer than your wildest dreams.

If you were the earth, you would cry rape as you were being ravaged, and left naked and bleeding.

If you were a California Indian, you would cry genocide as you were being exterminated by disease, by massacre, by slavery, by murder, by starvation.

1. Miners, Settlers, and a Lawless World

On January 24, 1848, James Marshall discovered gold at Sutter’s Mill on the American River in California’s Sierra Nevadas. “Estimates are that at the time of Marshall’s discovery, the state’s non-Indian population was about 14,000” (Schoenhoff n.d., 9). Within a year of Sutter’s discovery, at least 80,000 miners and others had come to California (NRC 2004). “At the start of 1850, [the non-Indian population] was nearly 100,000. By 1852, the number more than doubled to 250,000” (Schoenhoff n.d., 9). While the great majority of immigrants were Americans, descending upon California by both overland and ocean routes, tens of thousands of gold-diggers also came from all around the world. By 1855, it is estimated at least 300,000 gold-seekers, merchants, and other immigrants had arrived in California (Rohrbough 2000). In other words, in the short space of eight years, the non-indigenous population of California had increased by more than 2,000%.

In 1848, gold was discovered in the Klamath watershed along the Upper Trinity River. “By May of 1850, two thousand miners were on the Trinity River, a thousand along its North Fork alone” (Norton 1979, 38). In 1849, 1850, and 1851, gold was discovered at multiple sites along the middle and upper Klamath River as well as in the Salmon, Scott, and Shasta tributaries. “Between 1850 and 1856, when the easy-to-find gold petered out, more than 2,000 miners panned the gravels of the upper Klamath and its tributaries” (Most 2006, 154).
Where there were miners, came farmers, ranchers, merchants, loggers, and others to supply the needs of the miners. Roads, businesses, and towns sprang up in short order near the largest gold mining sites of the period: Weaverville and Sawyers Bar on the North Fork of the Trinity; Orleans on the Klamath between the Trinity and the Salmon; Somes Bar at the confluence of the Klamath and the Salmon; Happy Camp (originally called Murder’s Bar) on the Klamath between the Salmon and the Scott; Cecilville on the South Fork of the Salmon; Hamburg at the confluence of the Klamath and the Scott; Scott Bar on the Scott just below the Klamath; Callahan way up the Scott; Yreka on the Shasta below the Klamath. By 1852, there were enough gold miners and residents to form Siskiyou County (KRBFTF 1991).

To get to the gold fields in the Lower Basin, immigrants came up the Siskiyou Trail from Sacramento as well down the Applegate Trail through the Upper Basin from the Willamette Valley in Oregon. Gold also brought miners and others to the Humboldt and Del Norte coasts in northern California in search of an overland route to the goldfields more convenient than the tedious trails from the north and the south. The sandbar in the estuary at the mouth of the Klamath River discouraged miners from trying to gain access by means of the river. Schooners and other vessels sought anchorage north and south of the mouth of the river. Some anchored at Trinidad south of the river and set out overland from that angle. Others found deep shipping channels in the recently discovered Humboldt Bay. The towns of Eureka and Arcata soon sprang up, with supply lines running from Arcata to the inland gold fields.

On March 16, 1850, settlers claimed 160 acres near the mouth the Klamath, naming it Klamath City. The town mushroomed, based on the hope that ships would anchor outside the mouth the river. But ships did not anchor there and, given that failure coupled with settlers being killed, either by the river or by the Indians, the town became a ghost town overnight (Most 2006).

Logging, farming, and ranching started throughout the Lower Basin as a means of supplying the mining operations and the developing towns. The Scott and Shasta valleys were cleared of trees and brush to provide more farmland. Timber harvesting began in the Scott Valley. By 1854, there were nine sawmills operating on Humboldt Bay (Bearss 1982f).

When the Gold Rush began, California was essentially a lawless place.1 On the day when gold was discovered at Sutter’s Mill, the Mexican-American War was still being waged. Technically,

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1 In the interests of full disclosure, I have to add that I got the ideas about lawlessness in California during the early Gold Rush from a Wikipedia article. Given that Wikipedia is not a legitimate citation, I instead consulted and cited the sources for the Wikipedia article. However, it doesn’t seem completely forthright not to acknowledge that the origin of the idea came from the Wikipedia article, so I will give them their due here.
California was still a part of Mexico, though under American military occupation. When the treaty was signed a mere nine days later, on February 2, 1848, California became a possession of the United States; however, it did not have the status of a formal territory. Rather, for the entire region, there were no governmental institutions and no laws (Holliday 1999; Pisani 1999). There were also no practical enforcement mechanisms, what with only fewer than a thousand U.S. soldiers in California at the beginning of the Gold Rush (Pisani 1999) and several Indian sub-agencies created through the military administration (Beckman 1998b) – just a few people to cover more than 150,000 square miles.

The Federal government had a long-standing relationship with Indians. On the march across the country, the policy had been to remove the Indians to the west. Once California was purchased from Mexico, there was no more west to sweep the Indians to – plus the treaty with Mexico had placed the Federal government in a position of responsibility for the welfare of the Indians. “In consequence, State and Federal relationships with Indians were always at odds, and the Federal role of protection was always difficult to realize across the great distance separating California from Washington” (Beckman 1998b, 2).

Miners and settlers “depended upon Federal troops and Indian agents to cope with the problems that mining generated” (NRC 2004, 60). Local residents operated under a confusing mixture of Mexican rules, American principles, and personal preferences, which meant that either there was no law – or the law was what somebody said it was when they said it was.

After more than two and half years as a lawless region, on September 9, 1850, California became a state. “As constituted, the State of California made no recognition of Indians as citizens with civil rights; nor did the new state treat Indians in any way as sovereign people; indeed, a majority in the State hoped for the early removal of the Indian population. ...[T]he Anglo-Americans viewed their own sweeping displacement of Indians as ‘manifest destiny’ in the inevitable movement of a superior culture” (Beckman 1998b, 1-2). Indians living on land were simply considered as nothing more than bothersome trash to be swept aside, so that the white settler who desired the land could settle on it.

“To the State of California, there were really only two concerns regarding the indigenous people of the state. The foremost concern was protection of white settlers and miners from attack and loss of property. The secondary concern was the regulation of Indians as a labor force. ...In April of 1850, the State’s first legislature passed An Act for the Government and Protection of Indians” (Beckman 1998b, 2). While ostensibly for protection, ultimately, “[i]n effect, all Indians, including (perhaps, especially) children, faced indentured servitude effected through a simple procedure of arrest and assignment through any local justice-of-the-peace. Once indentured, the term limitation [of 16 years]
was easily (and always) exceeded [commonly to 25 years]. The result was a profitable ‘slave trade’ in able-bodied Indian men, women, and children throughout Northern California” (Beckman 1998b, 2).

“It is estimated that about ten thousand Indians may have been indentured (i.e., made slaves) or sold, between [April] 1850 [when the indenture law was passed] and [April] 1863 [when it was repealed]” (Norton 1979, 49).

“With the lure of instant wealth in front of them, the new settlers wanted little to do with the Indians. The American approach to dealing with the Indians was summed up best by California historian Hubert Howe Bancroft” (California OHP 1988b, 1). “That part of the early intercourse between aboriginal Americans and Europeans which belongs to history may be briefly given. For short work was made of it in California. The savages were in the way; the miners and settlers were arrogant and impatient; there were no missionaries or others present with even the poor pretense of soul saving or civilizing. It was one of the last human hunts of civilization, and the basest and most brutal of them all” (Bancroft 1890, 474).2

“It was California’s policy to pay vigilantes for every Indian they could prove they killed” (Most 2006, 27). “Acts of genocide raged statewide but were particularly virulent in northern California” (ibid., 83). “In 1853, the citizens of Orleans voted to kill any armed Indian on sight” (ibid., 155). “In 1854, a Crescent City newspaper reported on a ‘war of extermination’ against the Indians” (ibid., 83). The citizens of Yreka “maintained a fund that paid vigilantes five dollars per scalp taken” (ibid., 201). All in all, a living could be made from the sale of Indian slaves and from the bounty paid for the killing of Indians by the California government and individual towns within California – and organized bands of kidnappers and of vigilantes did just that.

2 Dutschke quoted Bancroft; however, his citation was incomplete, so I went to the source and found that Dutschke had misquoted Bancroft in tiny ways, so I elected to use and cite the original Bancroft source.

2. The Impact of Mining on the Watershed

The gold that was discovered in California and in the Lower Klamath Basin was found as deposits in rivers and streams and creeks. These deposits are called placer deposits and the mining to get the gold is called placer mining. The placer mining that took place during the early days of the Gold Rush involved running the gold-bearing water through sluice boxes, which were constructed to cause the gold to drop out of suspension in the water. Dams were built and ditches were dug in order to divert the water from its natural bed to the sluice boxes. In the later days of the Gold Rush, as the easy-to-find gold petered out, hydraulic mining was developed to excavate gold-bearing placer deposits by using blasts of water to wash away gravel (KRBFTF 1991). Hydraulic mining carved up
river beds as well as demolished land surrounding the river beds, leaving mountains of tailings. The waterborne debris was directed into sluices containing mercury, which captured the gold (NRC 2004). Placer and hydraulic mining effected extensive environmental changes along the Klamath mainstem as well as in the Trinity, Salmon, Scott and Shasta watersheds (NRC 2004).

In addition, valleys were cleared of trees and brush to provide more farmland for livestock, alfalfa hay, potatoes, grains, corn, and other crops. Initially they dry-farmed, meaning that they depended upon rainfall, but irrigation was preferred because it increased yield and therefore profit. In the Scott Valley, the wetlands were drained, the river channelized and diverted by dams and ditches (Benzinger et al. 1995; KRBFTF 1991). As the Gold Rush waned, much of the land cover in the Shasta Valley was converted for agriculture and range (NRC 2004). Wood for equipment and structures, railroad tracks, housing, and fuel was obtained through deforestation, often on steep slopes (NRC 2004).

“[I]n 1850 the Klamath River was so choked by the ‘finny tribe’ that settlers could scarcely induce their horses to ford it” (Oregon WRD 1999a, 24). However, the diversion and pumping of water for use in sluicing and hydraulic operations resulted in increased turbidity and siltation in the river waters, which had a severely detrimental effect on salmon populations and habitats (Benzinger et al. 1995; NRC 2004). Hydraulic mining also resulted in erosion of the land surrounding the rivers. The “deforestation [from logging], often on steep slopes,...caused erosion, flooding, fires and loss of animals. Miners also reduced freshwater resources by overfishing, damming, and diverting streams” (NRC 2004, 60). “In addition, between 1850 and 1890, it is estimated that 26 million pounds of elemental mercury were used, of which much still remains in soils and sediments and in the food chain” (NRC 2004, 61).

“The deleterious effects of mining on salmonid habitat were so rapid and intense that in 1852, only 4 yr [sic] after Sutter’s discovery of gold in the foothills of the Sierra Nevada, California enacted its first salmon statute, which required ‘all good citizens and officers of justice’ to destroy man-made obstructions to salmon migration, except those erected by Indians.’ That statute did little to stem habitat destruction. In the 1880s, all obstructions to salmon migration, including those built by Indians, were banned by state law” (NRC 2004, 62).
3. The Extermination of Indians in California

3.1 Indians throughout California

Prior to the opening of the first Spanish mission in California in 1769, the population of California Indians has been estimated at about 310,000 (McEvoy 1986, 53, table 3.1; California OHP 1988a). Under first Spanish and then Mexican rule, epidemic disease, military action, murder, enslavement, massive relocation, and loss of food resources combined to reduce the population of California Indians to about 150,000 (McEvoy 1986; California OHP 1988a). “The scourge intensified under U.S. dominion as miners and farmers pushed into the most remote parts of the state to seek new livelihoods in ‘virgin’ territory. Between 1845 and 1855 alone, two-thirds of the remaining natives lost their lives. By the time the worst of the gold fever had passed, only 50,000 still lived” (McEvoy 1986, 41). By 1870, it had plummeted to less than 30,000 (Beckman 1998b; NRC 2004). By 1880, the population of California Indians had plummeted still further to about 16,350 – a residual of a mere 5% of the estimated original population of 310,000 prior to 1769 (McEvoy 1986, 53, table 3.1). The slaughter abated after 1880. It would take another generation, for the Indian population to begin to inch its way upward again, to about 20,000 by 1900 (McEvoy 1986; Schoenhoff n.d., citing Moratto 1984).

For comparison’s sake, consider that the indigenous population, starting at an estimate of 150,000 in 1845, plummeted to an estimate of 20,000 in 1900, a decrease of almost 90% in 55 years, while the non-indigenous population, starting at an estimate of 14,000 in 1848, skyrocketed to 1,485,053 by 1900 (California DOF 2007), an increase of more than 10,000% in 52 years. What had been a roughly 10:1 ratio of Indian to non-Indian immediately before the Gold Rush, became in about 50 years, a roughly 1:75 ratio of Indian to non-Indian.

The Gold Rush wreaked devastation upon California Indians. The direct causes of death were: European diseases to which the aboriginal population had no immunity – malaria, cholera, tuberculosis, measles, smallpox, and venereal diseases, especially syphilis, contracted by women who were raped by miners, soldiers, and others; enslavement via the California indenture law; concerted programs of extermination by massacre and murder; starvation because either their food resources had been environmentally degraded or obliterated, or they had been denied access to their food resources (Beckman 1998b; McEvoy 1986; Norton 1979). “The indirect causes were a greed for gold, a hatred of Indians, and a pervasive lawlessness” (Schoenhoff n.d., p 3). “The brutality of the process was a function of the rapacity with which the new arrivals tore at the region’s natural resources. Most California Indians simply could not get out of the way” (McEvoy 1986, 41-42).
3.2 Indians of the Klamath Watershed

Prior to the Gold Rush, unlike tribes in the rest of California, tribes in the Klamath watershed, beyond the occasional trapper, had little to no contact with the world outside the watershed – they were spared the devastation that befell the other tribes in the rest of California from 1769 forward. The discovery of gold in the Klamath watershed changed all that. “The disintegration of Indian society followed with terrible swiftness as the impatient settlers collided head-on with people whose lives had not yet been touched by Europeans. Vigilantism, kidnapping, and rape fell harder upon the tribes in the Lower Klamath [Basin] than anywhere else in California. ...By 1900 Indian population [there] had declined no further in northwestern California than it had elsewhere but had done so in little more than a generation” (McEvoy 1986, 51).

While all the tribes in the Klamath watershed – both Upper and Lower Basins – suffered devastation during the Gold Rush, the degree of devastation depended upon the degree to which each tribe was in the way between the whites and what they wanted, which was gold first and agricultural land second. There seemed to have been three variables in this equation of devastation: the quantity and quality of gold in a tribe’s territory; the geography of a tribe’s territory – whether it was accessible and whether it had land suitable for agriculture; and the degree to which a tribe had drawn upon the carrying capacity of its territory prior to the Gold Rush invasion.

Let’s follow the gold in looking at what happened to the tribes in the Klamath watershed. The first discovery of gold was along the north fork of the Trinity river. There was a lot of gold of good quality and the location was accessible for pack trains from Sacramento. There were two tribes along the north fork – the Wintu and the Chimariko. The “Wintu people on the upper Trinity River near Weaverville relinquished their lands to miners and soldiers during the ‘Wintoon War’ of 1858-9” (McEvoy 1986, 54, bold added) during which the miners and soldiers starved the Wintu into submission “by driving them back into the hills where they were unable to gather food” (McEvoy 1986, 43). “The Chimariko, a small group living in the richly auriferous Trinity River canyon [south of the Hupa] fought the miners through the early sixties but ... [b]y 1871, the Chimariko were utterly scattered; by the turn of the century, they were extinct” (McEvoy 1986, 54, bold added).

The next discoveries of gold were along the upper reaches of the Klamath River as well as along the Salmon, Scott, and Shasta Rivers. There were two tribes in this area – the Karuk and the Shasta. The Karuk territory included the Klamath River from just above the confluence with the Trinity on up through Orleans to Happy Camp at mid-river between the Salmon and Scott Rivers. From Orleans to Happy Camp, there was gold of good quality; below Orleans, the quality of the gold was of insufficient quality to repay the effort of getting there. The terrain was difficult to reach, and
neither the Klamath River in this area nor the Salmon River valley offered much in the way of land suitable for agriculture. While the Gold Rush raged, not only were the Karuk denied access to their food resources – including being prevented from constructing weirs in the Klamath to catch salmon – but also the placer and hydraulic mining severely damaged the salmon population and habitat on which they relied. The Karuk were also ravaged by diseases that killed half their population within a few years and by violent confrontations with miners and the military. One of the major causes of death among the Karuk during this period was syphilis contracted by the Karuk women raped by the miners and soldiers (Most 2006). To survive, they moved away from the rivers into the surrounding mountains, where they drew upon the heretofore untapped carrying capacity of the remainder of their large territory – what McEvoy calls their “nature-banking” over the centuries, in the sense that pre-contact they had managed the food resources of their territory such that they had not used up all that it had to offer, but rather had left resources untapped, and as such that post-contact they had ‘reserves’ to draw upon (McEvoy 1986). After the supply of gold petered out in their territory and the majority of the intruders left because there was not a lot of land in the Karuk territory suitable for agriculture, the Karuk gradually drifted back to their homes (McEvoy 1986).

The pre-contact population of the Karuk in 1848 has been estimated as 2,700 (McEvoy 1986, 53, table 3.1). The population of the Karuk at 1880 has been estimated at 800 (McEvoy 1986, 53, table 3.1). This represents a loss of 70% of their population in 32 years – leaving a residual population of only 30% of their pre-contact population (McEvoy 1986). By comparison, the 1880 residual population of California Indians as a whole was a mere 5% of their pre-contact population. McEvoy credits the Karuk’s nature-banking for their higher survival rate (ibid.). This can also be coupled with the fact that their territory was not easily accessible as well as that it did not offer agricultural land that miners could turn to after the gold petered out.

The Shasta tribe did not fare as well. The gold was plentiful throughout their territory, plus their territory was replete with land suitable for agriculture and was easily accessible for pack trains. “It was promptly and thoroughly overrun with miners. Thousands were at work within months of the gold discovery there in the spring of 1851, and in October of that year [the Indian sub-agent] found the Shasta starving because sickness had left them too weak to hunt or fish” (McEvoy 1986, 54). As noted above, the citizens of Yreka, a town in the center of Shasta territory, “maintained a

3 Cook estimated the pre-contact population of California Indians as of 1769, before the Spanish invaded California. Because the tribes of the Klamath watershed were not affected by the decimation visited upon the rest of the tribes of California by first the Spanish and then the Mexicans between 1769 and 1848, I am making the assumption that Cook’s estimates of the pre-contact population of the tribes of the Klamath watershed at 1769 would also obtain at 1848.
fund that paid vigilantes five dollars per scalp taken” (Most 2006, 201). In addition, oral history passed down by Shasta families tells of a feast to which the Shasta were invited to celebrate the signing of a treaty in 1851 (see a later section below for further details of this treaty). Jack Norton, a Hupa and an historian, testified in court that “‘There is evidence that the beef that was served to the Indians was laced with strychnine’” (Most 2006, 200). Oral history tells that 3,000 warriors died that day (ibid., 200). “Indians who have established that they are of Shasta descent in the process of seeking federal recognition for their tribe trace their ancestry back to ‘fewer than 40 documented women who were kept by white miners, plus a half dozen or so Native American couples’” (Most 2006, 201, quoting Fiorini-Jenner and Hall 2002, 24).

The pre-contact population of the Shasta in 1848 has been estimated as 5,955 (McEvoy 1986, 53, table 3.1). The population of the Shasta at 1880 has been estimated at 100 (McEvoy 1986, 53, table 3.1). This represents a loss of 98% of their population in 32 years – leaving a residual population of only 2% of their pre-contact population (McEvoy 1986).

From the confluence of the Klamath with the Trinity, on down to the mouth of the Klamath, were two tribes: the Hupa and the Yurok. The Hupa lived at the confluence of the Klamath and the Trinity. No gold was discovered in their territory, and access to their territory from the coast by pack trains headed for Shasta territory was extremely difficult. Attempts to intrude upon their territory were met with resistance, armed and otherwise. They were unimpeded in the construction of weirs for catching salmon. Like their neighbors, the Karuk, the Hupa could draw upon their ‘nature-banking,’ i.e., untapped reserves from the carrying capacity of their territory. This does not mean they escaped unscathed, for sickness and violence took their terrible toll on their population.

The pre-contact population of the Hupa in 1848 has been estimated as 2,000 (McEvoy 1986, 53, table 3.1). The population of the Hupa at 1880 has been estimated at 500 (McEvoy 1986, 53, table 3.1). This represents a loss of 75% of their population in 32 years – leaving a residual population of only 25% of their pre-contact population (McEvoy 1986). McEvoy credits the Hupa’s nature-banking for their higher survival rate (ibid.). This can also be coupled with the fact that no gold was discovered in their territory and access to their territory was extremely difficult.

The Yurok lived along the Klamath from its confluence with the Trinity, as well north and south of the mouth of the river on the coast. No gold was discovered in their territory. In addition, a sandbar in the estuary at the mouth of the river prohibited river access by nothing but the lightest of boats, and the steep canyon walls through which the Klamath cut prohibited passage by pack trains. Finally, none of the land was suitable for agriculture. What the Yurok did have to contend with was people settling on the coast – at Trinidad, at Humboldt Bay, and at the short-lived Klamath City –
and passing through their territory to the goldfields – and preventing the construction of weirs on
the Klamath. “As white settlers, gold-miners and settlers came to this region, the Yurok people lost
more than three-fourths of our population through fatal contact with European diseases and
unprovoked massacres by vigilantes” (California CDSD 2007, 14).

The pre-contact population of the Yurok in 1848 has been estimated as 3,100 (McEvoy 1986, 53,
table 3.1). The population of the Yurok at 1880 has been estimated at 700 (McEvoy 1986, 53, table
3.1). This represents a loss of 78% of their population in 32 years – leaving a residual population of
only 22% of their pre-contact population (McEvoy 1986). As he does with their neighbors the Hupa
and the Karuk, McEvoy credits the Yurok’s nature-banking for their higher survival rate (ibid.). This
can also be coupled with the intersection of no gold + no agricultural land + no accessibility.

The Tolowa lived north of the Yurok on the coast and in the Smith River watershed.
“Newcomers first invaded Tolowa country when a group of them founded Crescent City in 1852 and
others began farming the Smith River valley a year later” (McEvoy 1986, 54). Cholera and measles
took great numbers of the Tolowa. In 1853, at Yontoket on the Smith River, 450 Tolowa were killed
by citizens from Crescent City (Norton 1979). “In 1854, a Crescent City newspaper reported on a
‘war of extermination’ against the Indians” (Most 2006, 83).

The pre-contact population of the Tolowa in 1848 has been estimated at 2,400 (McEvoy 1986,
53, table 3.1). The population of the Tolowa at 1880 has been estimated at 150 (McEvoy 1986, 53,
table 3.1). This represents a loss of 94% of their population in 32 years – leaving a residual
population of only 6% of their pre-contact population (McEvoy 1986).

The Chilula and the Whilkut lived in the territory between the coast and the Hupa. There was
no gold discovered in their territory but they “possessed rich pastures and lay in the path of pack
trains to the Trinity mines. In 1856 these people rose, only to lose a destructive conflict with the
intruders; those who survived scattered” (McEvoy 1986, 54). Their post-contact population was only
about 3% of their pre-contact population (McEvoy 1986, 53, table 3.1).

The territory of the Wiyot surrounded Humboldt Bay. The discovery of Humboldt Bay by
miners and settlers led to an explosion of settlement around the bay. The Wiyot suffered serious
losses from disease and sporadic violence. In 1860, a group of citizens massacred an entire village of
the Wiyots on Gunther Island in Humboldt Bay. After this, the military moved many of the Wiyot
to a reservation at Smith River for their protection (McEvoy 1986). The pre-contact population of
the Wiyot was estimated at 3,300 (McEvoy 1986, 53, table 3.1). The population of the Wiyot at 1880
has been estimated at 100 (McEvoy 1986, 53, table 3.1). This represents a loss of 97% of their
population in 32 years – leaving a residual population of only 3% of their pre-contact population (McEvoy 1986).

In the Upper Klamath Basin, no gold was ever discovered – but that did not absolve the tribes in the Upper Basin from devastation associated with the Gold Rush. “By 1849, the Gold Rush greatly increased traffic along the South Emigrant Road [the Applegate Trail that ran through the Upper Basin]” (Most 2006, 25). Where pack trains went, disease and death for the Indians followed in their wake. In addition, “[d]uring the 1850’s, the [Upper] Klamath Basin was tentatively used for pasturing cattle. Individuals...pastured herds at various times throughout this decade but made no attempt to permanently reside there” (Oregon WRD 1999a, 14). “They put up fences, planted crops, and turned cattle out to graze” (Most 2006, 30). The Klamath tribal members initially helped the newcomers to survive, but soon found themselves lacking food, “having lost access to country where they had hunted game and gathered edible plants” (ibid., 30). I can only imagine that the presence of herds of cattle on the territory of the tribes not only degraded the lands upon which the Klamaths, the Modocs, and the Yahooskin relied but also disrupted the finely tuned rhythm of hunting and gathering around which their lives were organized.

As well, “[t]hose who pursued their fortunes [along the South Emigrant Road] regarded Indians whose territory the southern road crossed, especially the Modocs in California and the aggressive Rogue River Indians in southern Oregon, as intolerable and dangerous obstacles” (Most 2006, 25, bold added). In 1851, gold was discovered on a tributary of the Shasta River on the southwestern edge of Modoc territory, and thousands of miners swarmed into the region. The summer of 1852, Indians attacked wagon trains and killed whites. Whites killed Indians in revenge. It was a war. A band of vigilantes led by Ben Wright camped at Bloody Point in Modoc territory for several months, in order to protect travelers and to avenge the deaths of whites who had been killed. In late November 1852, Wright and his men massacred 41 Modocs at their camp. “In 1853, the [California] state legislature appropriated $23,000 to remunerate them for their services” (Most 2006, 27).
Discussion and Summary of Chapter Six

It would be easy to characterize the Gold Rush and the subsequent years in the Klamath watershed as yet another of the many instances of brutal colonialism in the history of the world – and let it go at that. The pattern fits very, very well.

But such a characterization gives us very little to work with today. It gives us a script of bad guys and good guys – and who plays those roles depends upon whom you are asking – and that’s about it. Even more so, it gives the descendants of colonialism in the Klamath very little to work with today as they struggle to figure out how to live together in a manner that sustains both the ways of life to which they are each bonded and the ecosystem to which they are all indissolubly linked.

For that reason, to look at the history of the Klamath watershed, I am going to look at the Gold Rush as a brutal collision of diametrically different ways of life and at the 160 years between then and now as the playing out of the consequences of that brutal collision on both the ways of life in the Klamath watershed as well as on the Klamath watershed itself.

Below I have created a completely subjective visual depiction of the status of the well-being of the Indian and non-Indian ways of life and of the watershed from the time of the Gold Rush to the present. The notion of ‘well-being,’ the character of the lines, and the character of the relationship among the lines are completely subjective. I understand that probably someone could contest every feature of the visual depiction, but my purpose is not ‘scientific accuracy,’ but rather to give a sense of things over time.

There are three ‘players,’ if you will, in my visual depiction: the ways of life of the tribes in the watershed; the ways of life of everyone other than the tribes who have entered the watershed and made ways of life for themselves in the watershed – which for short and in avoidance of all kinds of minefields, I have called ‘non-Indian;’ and the watershed itself. The watershed itself is a player because all the ways of life are recursively linked to the watershed, meaning that the ways of life within the watershed impact the well-being of the watershed and the watershed impacts the well-being of the ways of life.
With this graphic, I now have a way to approach looking at the history of the people and the environment in the Klamath watershed.

During the Gold Rush, there was a brutal collision between an indigenous way of life that sought to make a life in harmony with nature and the way of life of the American invaders that sought to make a living by conquering nature (McEvoy 1986; Blake, Blake, and Kittredge 2000; Most 2006).

**With respect to the Indian ways of life,** while each tribe had unique cultural, economic, political, and spiritual systems, all the systems of all the tribes were grounded in the value-orientation of harmony-with-nature (Kluckhohn and Strodtbeck 1961). The spiritual beliefs of each tribe articulated, affirmed, and continuously reminded them of the ineluctable interdependence between themselves and their environment. All actively manipulated their environment in order to enhance its stability and productivity. Each of the tribes lived well within the carrying capacity of its respective territory, such that both they and their environments were sustained for millennia (Bearss 1982a; Beckman 1998a; Benzinger et al. 1995; McEvoy 1986; Most 2006; NRC 2004; Norton 1979).

In essence, then, awareness of and adherence to the recursivity of the relationship between themselves and the Klamath watershed were central to the Indian ways of life – and both the tribes and the watershed flourished together for millennia.
When the Gold Rush invaded the Klamath watershed, it wreaked devastation upon the tribes of the Klamath watershed. The invaders experienced the Indians as threats to their way of life and sought to exterminate them. The Indians were decimated by disease, massacre, murder, slavery, and either degradation or outright loss of their food resources.

With respect to the non-Indian ways of life, the Americans who invaded the watershed in their lust for gold claimed the land in the watershed as theirs by right of Manifest Destiny, which proclaimed that it was America’s destiny to alter land, water, mountains, geography itself, in order to bring progress, democracy, and Christianity to the American continent. Nature was to be conquered in the service of profit. Natural resources were there to be used – either to be extracted and sold at a profit, or to be manipulated to produce products to be sold at a profit. No consideration was given to the impact of the resource extraction – mining, logging – and resource manipulation – ranching, farming – on the watershed.

With respect to the watershed, the watershed – in particular the Lower Basin of the watershed, where the gold was found – was seriously degraded by the effects of the wanton resource extraction and manipulation by the non-Indian ways of life. Land, river, habitat, flora and fauna were degraded by mining that demolished land, diverted rivers, and contaminated both with mercury, by logging that was responsible for deforestation and erosion that contaminated the rivers with sediment, by farming and ranching that stripped land, drained wetlands, diverted and dammed rivers.

In summary, then, during the Gold Rush from 1848 to 1855, the well-being of the non-Indian ways of life rose as they conquered the lands they claimed, while the well-being of the Indian ways of life plummeted towards extinction – and the well-being of the watershed was seriously degraded and began a decline that continued over the next 160 years to the present.
Chapter Seven
Consolidation 1856-1899

The period from the end of the Gold Rush to the end of the nineteenth century was a time of consolidation for the white settlers in the Klamath Basin – consolidating their conquest of the lands they claimed by establishing their way of life as the dominant way of life and extinguishing the threat to this way of life that the Indians posed. As the threat from the “Indian problem” decreased, non-Indian ways of life increasingly took root throughout the Basin. Commerce moved from get-rich-quick to resource capitalism. Families were started; homes were built; towns were founded; infrastructure was built, government was instituted, identities were constructed wrapped around bonds to family, home, land, way of life.

Conversely, the Indian tribes throughout the Basin – in the face of concerted efforts to either forcibly relocate, forcibly assimilate, and/or exterminate them – fought to survive and to preserve their ways of life through varying degrees of resistance and of accommodation in the equation of survival.

And the well-being of the environment in the Klamath Basin – as resource capitalism took root, as towns grew, as infrastructure expanded – slid further down the slope of degradation.

1. Attitudes towards the “Indian problem”

During both the Gold Rush and this Consolidation period, there were three different attitudes towards the “Indian problem” in Northern California – the attitude of the Federal government, that of the State of California, and that of the Euro-American population (Olson-Raymer 2003).

1.1 The Federal Government

Tribal Sovereignty, Tribal Trust and the Removal Period

The Federal government had a long-standing relationship with Indian tribes, but the character of this relationship changed over time. Before the American Revolution, the tribes had been treated as independent foreign nations with the sovereignty that was inherent in being a nation. Treaties were made government-to-government and the land which the tribes inhabited was considered theirs. Over time, with the founding and expansion of the United States, Americans hungered not only for
the land that the Indians inhabited, but also for the spread of the American way of life across the continent and the removal of the Indians as threats to that American way of life. Indian removal became the policy of the U.S. government, and the 1830 Indian Removal Act codified that policy. While in theory the policy was supposed to be voluntary, in practice great pressure was put upon tribal leaders to sign removal treaties, by means of which the tribes surrendered their lands in the East in return for lands in the West – out of sight, out of mind, so to speak. The options available to the tribes were grim: to surrender their lands – and to suffer journeys that left many dead and were to lands that were more often than not not adequate to support them; to stay by living as the whiteman wanted them to live – as individuals on individual plots of land; or to stay and go to war.

The U.S. policy of removal, with its legal arm in the 1830 Indian Removal Act, seriously challenged the notion of tribal sovereignty, putting tribes in the position of no longer being independent of the Federal government. In 1831, Chief Justice Marshall, writing the majority opinion in the Supreme Court decision of *Cherokee Nation v. the State of Georgia*, formally clarified the status of the tribes: “They may, more correctly be denominated domestic dependent nations [as opposed to independent foreign nations]. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian” (*Cherokee Nation v. Georgia*, 30 U.S. at 17). This put the Federal government in a trust relationship with Indian nations, meaning that the Federal government is not only the legal titleholder to most Indian lands but also is responsible for protection of Indian interests – assets, lands, water, income from trust property, proprietary treaty rights (Kussel 1996). As such, the Federal government “was bound by its trust relationship with Indian Nations throughout the United States to maintain some degree of safety and well-being among the Indian People” (Olson-Raymer 2003, 1). The Office of Indian Affairs – later called the Bureau of Indian Affairs – is the main government agency entrusted with carrying out the trust relationship between the Indian tribes and the Federal government.

**The Reservation Period (1853 – 1887) as it played out in California**

Washington had no understanding of the Indians in California. In addition, by 1851, they wanted to try an innovation in federal Indian policy, looking to construct treaties that, instead of trying to remove the Indians to elsewhere, “attempted to locate reservations on reduced portions of traditional lands, within the State itself” (Beckman 1998b, 3). In 1851, three federal Indian agents in California were dispatched to make treaties with the Indians there. Interestingly, these agents –
especially Colonel Redick McKee – “had their own ideas about what they should accomplish in the name of the U.S. government. McKee believed that while white Californians would never allow the Indians to keep all of their ancestral land or to roam freely throughout the state, Indians, nonetheless, were entitled to reservations that gave them enough farm and grazing land to labor for their own well being” (Olson-Raymer 2003, 3). By the end of 1851, the three agents had negotiated a total of 18 treaties throughout California that “created reservations on about 11,700 square miles representing 7-1/2 percent of California’s total land; promised various kinds of federal aid – especially schooling, clothing, farming instruction and equipment; and guaranteed rights to maintain traditional hunting and fishing practices” (ibid., 3). In the Klamath Lower Basin, the “Yurok in the Weitchpec area refused to deal with Redick McKee until he paid them for three of their villages that packers had burned that spring and for two of their people who had been shot, but were peaceful and tractable once McKee compensated them” (McEvoy 1986, 57). Finally,

[a] grand council, attended by all the tribes of the area [including the Yurok, the Hupa and the Karuk], was held in October [1851] at Durkee’s Ferry, at the confluence of the Trinity and Klamath rivers. Gifts were distributed to the Indians and after McKee had told the redmen of the vast numbers of white men and their desire for peace, treaties were signed with representatives of the 24 assembled bands. Two tribes, the Chilula and Redwood Creek Indians, boycotted the council. McKee now traveled up the Klamath, distributing food and gifts at the villages and telling the Indians of his desire for peace. Simultaneously, the whites were asked to refrain from mistreating the Indians. ....McKee was understandably pleased with the results of his expedition. (Bearss 1982d, 2)

When the California legislature convened in 1852, the Indian treaties were debated. Many opposed the granting of lands to the Indians as reservations, arguing that “the land reserved was too much and too good for use by indigenous people. The persistent view of Californians was that indigenous people possessed no culture worthy of any claim to habitable land and that they should be disposed of in any convenient way” (Beckman 1998b, 3).

When the treaties were presented to the United States Senate for ratification in July 1852, ratification was denied, based upon the overwhelming strength of opposition coming from the State of California. The Indian tribes, however, were never informed of the Senate’s decision against ratification and the “treaty documents were then placed under an injunction of secrecy until January 18, 1905. Hence, California Indian tribes who had bargained in good faith and signed the treaties were never notified that the treaties were not ratified and further, that the U.S. Treaty Commissioners were not empowered to bind the United States” (U.S. Senate 1994b, 2 of download).

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1 I must take the opportunity to note how quintessentially expressive this is of the ethnopraxis of the Lower Basin tribes that I spelled out in the earlier section “Before the Whitemen Came.”
“California Indian tribes abided by the terms of the treaties and ceded the entire state of California and voluntarily relegated themselves to their reserved lands. In spite of the Senate’s failure to ratify the treaties, lands which had been occupied by tribes were surveyed as public lands and sold” (U.S. Senate 1994b, 3 of download). It was not until 1928 that

an act of Congress allowed Indians to sue the Federal government for the lost compensation involved in the 18 unratified treaties. The basis of compensation would be the reservation lands promised, not the vast amount of lands surrendered. The suit was...settled in 1944 with a total award of $17,053,941. However, the Federal government claimed to have spent $12,029,099 for the protection of California Indians and deducted this amount from the award. In 1950 [ – 99 years after the enactment of the 1851 treaties – ] Congress authorized the payment of $150 to

each person ‘on the corrected and updated roster of California Indians prepared under the original provisions of the act.’ (Beckman 1998b, 3-4, no citation provided for his quote)

Even with no legal treaties in California, the Federal government was still responsible for protecting the indigenous population of California and it was clear that the Indians in California would be exterminated if nothing were done. Thus, it scrapped the previous approach and decided on a new approach for protecting California’s Indians based upon the model of the Spanish missions – forced relocation and labor enslavement (Olson-Raymer 2003).

On March 3, 1853, Congress passed the Indian Appropriations Act which authorized five military reservations in the State of California or in the Territories of Utah and New Mexico bordering California “where Indians could be placed, isolated from contact with Whites, fed, and trained to become farmers and stock growers” (Beckman 1998b, 3). On March 3, 1855, the 1853 Act was amended to add two more military reservations in California, for a total of seven military reservations.

The cultural and legal differences between a treated reservation and a military reservation are enormous. A treaty is grounded upon the notion of tribal sovereignty. It establishes a reservation and names an Indian tribe that will occupy that reservation permanently and will have vested rights to the land in the reservation. “The treated reservation represents an agreement to allow indigenous people to live on a parcel of land and to maintain their cultural ways therein” (Beckman 1998b, 4).

By contrast, in the 1853 act and its 1855 amendment authorizing the establishment of the seven military reservations, no tribes were specified and title to the lands of the military reservations was retained by the United States. Whichever tribes inhabited the military reservations – whether by choice or by forced relocation – did so only by dint of permission granted by the Federal government, and not by dint of vested rights to the lands granted by the Federal government. “In contrast, the military stronghold represents a small holding area where Indians can be physically
protected by the military but in which resumption of cultural life is impossible; hence, it is a place where acculturation to Anglo-European lifeways becomes a necessity” (Beckman 1998b, 4).

Subsequently, Congress passed the Act of April 8, 1864, which superceded the Act of March 3, 1853 and authorized the creation of no more than four military reservations in California, with only one of those to be located in the northern district of California.

It comes as no surprise that the federal policy of forced relocation and assimilation at military reservations coupled with California’s Indian indenture law have been cited as causes of the Indian wars of the 1850s up to the 1870s (for example, Norton 1979; McEvoy 1986).

The Allotment Period (1887 – 1934)

By the 1870s, the Federal government realized that the policies of military reservation, forced relocation, and forced assimilation were failures. Rather than leading the Indians to abandon their native ways, it had only led to wars of resistance (for example, see below about the Upper and Lower Basin tribes). The Federal government switched approaches yet again. “A major tool the government used in trying to assimilate Indians during this time was the General Allotment Act of 1887, also known as the Dawes Act, which appeared to be generally advantageous to Indians. However, the major intent of the act was to break down the role of tribal government” (California OHP 1988b, 2). Prior to this act, the Tribes held their land in communal ownership. By dividing reservation lands into privately-owned parcels, legislators hoped to complete the assimilation process by forcing the deterioration of the communal life-style of the Indian tribes and imposing Western-oriented values of strengthening the nuclear family and values of economic dependency strictly within this small household unit.  

The act provided allotments of land to individual Indians which would be held in trust for 25 years by the Bureau of Indian Affairs. “If all other provisions of the act were met, that is, if the Indians made use of the lands for agriculture and became self-sufficient, then the land would become the property of the individual. ‘Native people understood full well the implications of allotment and offered considerable resistance’ (Heizer 1978a, 117)” (California OHP 1988c, 2). Land in the reservations remaining after allotment to individual Indians was open to settlement by non-Indians. In the 47 years until the allotment policy was ended in 1934 by the Indian Reorganization Act, the

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2 This sentence is taken verbatim from a Wikipedia article on the Dawes Act. The author of the Wikipedia article appends to this sentence a citation for Gibson 1988, but does not give any further information about the source. In my sleuthing, I can only find the following possible candidate for citation: Gibson, Arrell Morgan. 1980. *The American Indian, Prehistory to the Present*. Lexington, MA: D.C. Heath & Co. I was not able to get a hold of the book to validate the citation, so I did not include it in the List of References.
1887 Indian land base in the U.S. decreased by more than 86 million acres from an original land base of around 138 million acres – a loss of about 60% of the original land base (Philp 1983).

The question now is, How did all of these federal policies impact the tribal nations in the Klamath watershed?

**Klamath Lower Basin**

**Resistance and Reservations.** In addition to dealing with decimation by disease, the Yurok, the Karuk, the Hupa all rose in resistance to oppressive policies and citizen massacre.

The **Yurok** rose up in resistance in 1855. In an attempt to bring order to the chaos, on November 16, 1855, an Executive Order was issued establishing the Klamath River Reservation as one of the seven military reservations authorized by the Act of March 3, 1853 (and its 1855 amendment). The reservation extended one mile on each side of the Klamath from its mouth to a point twenty miles upriver. The goal of the Federal government in establishing this reservation was to forcibly relocate multiple tribes to this location as well as “for the Indians to learn to grow crops and otherwise adapt to the civilization that now engulfed them” (Most 2006, 84). The Army established Fort Ter-Waw within the Klamath River Reservation. “Soldiers marched Wiyot, Whilkut, Sikyone, and Chilula Indians there from the coastal mountains, valleys, and flatlands to the south and prevented them from escaping to their homelands” (Most 2006, 84). The Hupa refused to move into the Klamath River Reservation, “warning of consequences if they were removed from their villages by force” (Most 2006, 142). Some tribes who were forcibly relocated there simply returned to their native lands. With respect to the Yurok, even though the Klamath River Reservation comprised a portion of their ancestral territory, “[t]he relocation of Yurok families to unfamiliar lands caused great hardships. The forced removal of our children to U.S. Government boarding schools where they were denied the right to practice their cultural traditions caused the disruption of our heritage” (California CDSD 2007, Chapter 2, 14).

The establishment of the Klamath River Reservation as one of the seven military reservations authorized by the Act of March 3, 1853 (and its 1855 amendment) became the step that set in motion what would become more than a century of wrangling about the status of the Klamath River Reservation as Indian country – and with which I shall deal below.

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3 I must mention the fact that this Executive Order is the most short-winded thing I have ever seen come out of Washington, DC – a total of seven words: “Let the reservation be made, as proposed” (Kappler 1902, 817).
The Karuk also rose up in resistance in 1855, under the leadership of Red Cap, after having been attacked by vigilantes from Orleans, “hiding people in the mountains while waging guerrilla warfare against the whites” that lasted many years (Most 2006, 155). “Eventually, the U.S. Army offered Red Cap [, the Karuk leader,] a truce, and he came down from the mountains to sign a treaty. Instead, he and a number of his men were captured and hanged. Some of the Karuks were moved to Hoopa Valley, where soldiers at Fort Gaston could watch them. Few Karuks stayed for long, their homeland being close by” (Most 2006, 155).

The Karuk essentially lost, and ultimately melted back into their ancestral territory where the inaccessibility of the terrain worked towards their survival. “The Karuk and Shasta, however, never gained legal ownership of their homeland. Most land occupied by the Karuk was claimed by the government with little compensation, and much of it became part of the national forest system” (NRC 2004, 62).

The Hupa rose in resistance as well. In 1858, Fort Gaston was established in Hoopa Valley at the request of white settlers there seeking protection from the Indians, but soldiers were not authorized to remove the Hupa to the Klamath River Reservation. “Not only were they [the Hupa] armed, but the Hupa also had been careful not to give the whites a pretext for their removal. ...[However] [s]oldiers soon alienated some of the Hupa” by attempting to rape a pregnant Hupa woman who in self-defense stabbed one of the two soldiers who attacked her. The soldier later died. Soldiers attacked a village and killed many of the people there. “For the next four years, [the Hupa] waged guerrilla warfare, hiding in the mountains while raiding ranches and attacking soldiers, whenever they could” (Most 2006, 143). “The Hupa, perhaps with some Whilkut and Yurok joining them, fought the usurpers so successfully between 1860 and 1864 that they brought all commercial activity in the middle reaches of the watershed to a standstill, cut off all communications between the coast and the interior mines, and drove settlers back to the coastal towns” (McEvoy 1986, 56).

On August 21, 1864, Austin Wiley, the Superintendent of Indian Affairs for the State of California, signed a Treaty of Peace and Friendship between the United States government and the Hoopa, South Fork, Redwood, and Grouse Creek Indians.4

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4 This is a perfect place to address the confusion that can be wrapped around the two words “Hoopa” and “Hupa.” In the cleanest of distinctions, “Hupa” refers to the cultural tribe, and “Hoopa” refers to the valley at the confluence of the Klamath and Trinity Rivers. Now, in the first instance of confusion, when the government started writing up acts, treaties, Executive Orders, and the like, more often than not, they used the word “Hoopa” to refer to the tribe. And, in a second instance of confusion, when in the 20th century a “tribe” was created in the Hoopa Valley Reservation, it was called the “Hoopa Valley Tribe,” and was defined as...
Also on August 21, 1864, Wiley, acting pursuant to the Act of April 8, 1864, gave public notice that he had established a military reservation in Hoopa Valley, which had been the headquarters for the Indians who had been waging war for the past five years, and notified the white settlers in Hoopa Valley that they would have to leave and that the Federal government would purchase their improvements (Short I).

However, while the establishment of the Hoopa Valley Reservation as one of the four military reservations was authorized, the treaty was not authorized, and it was never ratified by Congress.

On June 23, 1876, an Executive Order was issued to accomplish what Wiley’s 1864 public notice had not, which was to formally define the boundaries of the Hoopa Valley Reservation at the confluence of the Trinity and Klamath Rivers. At that time, members of the Hupa, Klamath (i.e., the Yurok, as they came to be known later), Redwood and Saiaz Tribes were identified as living within the Hoopa Valley Reservation (Short I). Subsequent documents expanded this 1876 list to include the Sermalton, Miskut and Tish-tang-atan Tribes (Short I).

Putting aside the unanswerable question of whether the tribes who had signed the “treaty” ever knew that it was not ratified and hence not honored by the Federal government, peace was achieved, and the various tribes took up occupancy of the Hoopa Valley Reservation. From the perspective of the Hupa, they may have felt that they had “won” 90% of their ancestral territory, but from the perspective of the Federal government, title was retained by the United States and the Hupa had no vested rights to the land. This reservation was “part of the same Congressional program [of military reservations] and was not respected by the Federal government as a treated reservation granting sovereignty to the Hupa people. The dream of cultural assimilation was strongly connected to these establishments” (Beckman 1998b, 3).

**Indian Country Versus the Whiteman’s Lust for Indian Country.** Even with the establishment of the Klamath River Reservation as a military reservation in 1855, “even with all those lands freed for non-Indian uses, settlers complained that fine timber and good agricultural land was going to waste on the reservation along the Klamath River. ...As non-Indians continued to invade the region, pressure to get rid of the reservation altogether increased” (Most 2006, 84).

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Nature seemed to intervene. During the winter of 1861-1862, an extreme flood ripped through the Klamath Lower Basin, sweeping mining equipment away, diverting the Scott River from the west to the east side of the valley. It swept away villages and buildings at the mouth of the river, depositing mountains of logs on the beaches, and engulfing everything in mud. It washed away topsoil and equipment in the Klamath River Reservation and wrecked the Army’s Fort Ter-Waw. The government concluded that the site was now worthless and closed Fort Ter-Waw. “The Yurok knew otherwise: As the federal agents moved to a new reservation on Smith River, most of their charges simply took to the hills to wait out the flood, returning to the river and its salmon in the spring” (McEvoy 1986, 56, bold added).

The Act of April 8, 1864, which limited the number of military reservations in California to no more than four, with only one of those to be located in the northern district of California, also called into question the status of the Klamath River Reservation, not only because Klamath River Reservation + Hoopa Valley Reservation = two military reservations in northern California, but also because of the act’s requirement that abandoned reservations must be surveyed and that the land must be sold at auction (Most 2006). Therein arose the question of whether the Klamath River Reservation, after the flood of 1861-62, was or was not abandoned. A series of court cases, acts, and Executive Orders confused the issue, with some saying Yes, it was abandoned, it’s not Indian country, whites can settle there, while others, at the very same time, said No, it was not abandoned, it is Indian country, whites can’t settle there.

From the early 1870s on, officials at the Department of the Interior repeatedly recommended that “a reservation be established along the Klamath River for the Indians living there or that the Hoopa Valley Reservation be enlarged to encompass parts or all of the land bordering on the Klamath to the Ocean” (Short I, 202 Ct. Cl. at 907). “At the same time as these recommendations that a reservation be created along the Klamath, a movement was going on in Congress to open the lands of the Klamath River Reservation, as an abandoned reservation, to public entry and sale. The bills in Congress for this purpose, introduced from 1879 on, were steadily opposed by the Department of the Interior, which maintained that the Klamath River Reservation was not abandoned, was still in a state of reservation and that the homes of its Indians needed protection” (Short I, 202 Ct. Cl. at 908). None of the bills ever became law, though not for lack of trying on the part of Congress. And while the dispute was bouncing between Congress and Interior, whites settled on the Klamath River Reservation lands and petitioned the government for title to the lands.

On June 7, 1888, in United States v. Forty-Eight Pounds of Rising Star Tea etc, the court decided that the Klamath River Reservation did not have the legal status of an Indian reservation – in spite of the
contention of the Department of the Interior that it did – and that the lands must therefore be opened up for survey and sale (Short I). The court’s decision spawned a new spate of House resolutions seeking termination of the Klamath River Reservation. The Interior Department wanted provisions for allotment to the Indians if there were going to be termination, but the House firmly rejected allotting lands to Indians. None of these resolutions passed, though strong effort was made by the House proponents (Short I).

On October 16, 1891, an Executive Order finally accomplished what the Interior Department had been recommending for twenty years when the Order extended the Hoopa Valley Reservation to include a tract one mile wide on each side of the Klamath River from the then northern boundary of the Hoopa Valley Reservation to the ocean. This absorbed within the Hoopa Valley Reservation, the Klamath River Reservation as well as the 20 mile connecting strip between the Klamath River Reservation and the Hoopa Valley Reservation. The Hoopa Valley Reservation came to be called the Square, and the Klamath River Reservation plus the Connecting Strip came to be called alternatively the Addition or the Extension. “The entire reservation as enlarged contained 147,740 acres, 25,000 in the Lower Klamath Strip, 33,168 acres in the Connecting Strip, and 89,572 acres in the Square” (Short I, 202 Ct. Cl. at 903).

“Congressional proponents of public sale of the Klamath River Reservation did not cease their efforts on the issuance of the executive order incorporating the Klamath River Reservation into the Hoopa Valley Reservation. Either unaware of or indifferent to the executive order [which had incorporated the Klamath River Reservation within the Hoopa Valley Reservation], they continued to press for the public sale of the lands of the Klamath River Reservation and, in the House, even to forbid allotment to the Indians thereof” (Short I, 202 Ct. Cl. at 923).

In January 1892, H.R. 38 was introduced, in which removal of the Indians from the Klamath River Reservation was required. The Senate deleted the provision for removal of the Indians, added a provision for allotments to the Indians pursuant to the Dawes Act of 1887. The bill passed and became the Act of June 17, 1892. Nowhere within the 1892 Act was there mention of the 1891 Executive Order (Short I).

In 1893 and 1894, in the Klamath River Reservation portion of the now extended Hoopa Valley Reservation, 161 allotments averaging approximately 60 acres each were made, and in the Connecting Strip, 499 allotments averaging approximately 40 acres each were made (Short I). The allotments

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5 In yet another instance of a flurry of numbers that don’t agree with each other, other documents have different numbers for the acreage of the three sections of the extended Hoopa Valley Reservation. For example, the Senate Report No. 564 agrees with the first two acreages, but lists the Square as 88,665.52 acres (U.S. Senate 1988).
were approved in 1898 (Short I). Multiplying out the average allotment acres times the number of allotments yields 9,660 acres in the Klamath River Reservation portion and 19,960 acres in the Connecting Strip, for a total of 29,620. This represents an estimated allotment of about 51% of the Addition’s 58,168 acres.

In the Hoopa Valley, the local Indian agent reported to Washington, DC, that “Hoopa Valley did not have enough arable land to enable the Hupa to live off agriculture. Besides, lacking roads out of the valley, Indians were unable to send products to market” (Most 2006, 147). It took until 1915 for a survey to be done and approved and it took until 1922 and 1923 for 365 allotments in the Square to be approved and it took until 1933 and 1950 for the remaining 41 allotments in the Square to be approved, after which there were no further allotments in the Square (Short I). According to the 1915 survey, there were about 1600 acres of arable land and 2000 acres of grazing land in the Square, with the balance being timberlands (Short I). Allotments averaged 8 acres (Short I). Multiplying out the average allotment acres times the number of allotments yields 3,248 acres, which represents an estimated allotment of about 4% of the Square’s 89,572 acres.

Lest you think the question of whether the Klamath River Reservation was Indian country or not had been settled, the question would remain unanswered, dogging the Yuroks – until 1973.

**Accommodation While Still Resisting.** Fortunately, while contending with all of this, “[t]he environment to which they were so well adapted...served as a bulwark behind which the...tribes of the Klamath [Lower] Basin gained time to adapt to the new order of things. ...Given a chance, the Indians found that they could deal with the newcomers in business as well as in battle. Their senses of property and the exchange value of things were, if anything, more highly developed that those of the settlers” (McEvoy 1986, 56-57).

The Yurok supported themselves not only by hunting, fishing, and gathering as they always had, but also by establishing business partnerships with non-Indian commercial enterprises. “The commercial fisheries, while owned by non-Indians, primarily employed the resident Yurok people as fishermen and cannery workers. In the early years, the remoteness of the location and attendant transportation problems kept the commercial efforts from expanding, but the fishery continued to provide a beneficial income for the People until the early 1930’s” (Pierce 2002, Part 7, 2-3). The Hupa supported themselves by fishing, hunting, raising a little stock, farming a little, and day labor at the lumber mills in Arcata on Humboldt Bay (McEvoy 1986).
Clearly, the tribes in the Lower Basin were working to accommodate themselves to a radically and rapidly changing world, while still resisting persistent attempts to take away what was theirs – a difficult path to walk fraught with danger.

Population. This difficult and dangerous path took its toll on the Lower Basin tribes as the combined population count of the Yurok, the Karuk, the Hupa, and the Shasta plummeted from an estimated pre-Gold Rush high of 13,755 to an estimated low by 1880-1910 of 2,100 (McEvoy 1986, 53, table 3.1).

Klamath Upper Basin

The federal presence was also felt in the Klamath Upper Basin. During the 1850s and 1860s, increasing numbers of white settlers made the Upper Basin their home. “[T]he Oregon legislature asked Congress for a military post that that would keep the Indians of the Upper Basin under control” (Most 2006, 30). Fort Klamath was established north of Upper Klamath Lake in March 1863.

The leaders of the Klamaths looked at the presence of the U.S. Army at Fort Klamath. They looked at the population mushrooming at Linkville at the south end of Upper Klamath Lake. They looked at the increasing numbers of newcomers who were settling throughout the Upper Basin, creating towns, harvesting suckers commercially, pasturing cattle, overgrazing the land, draining wetlands, and diverting rivers. They both heard and knew first hand the devastation that had been visited upon the tribes in the Lower Basin during the Gold Rush. Klamath leaders looked at all this and “decided...that the wisest course of action was to find a way to live with the newcomers” (Most 2006, 31).

The Klamaths maintained more peaceable relations with the whites over the years than did the Modocs, whose resistance was at great cost, reducing their numbers to about 250 by 1864 (u-s-history.com - #2 n.d.).

“By the early 1860’s, white settlers in both Oregon and California were arguing that the Klamaths and Modocs should be placed on a reservation and the rest of their traditional homelands be made available for settlement” (Thompson 1971, 1). In 1864, the Klamaths, the Modocs and the Yahooskin negotiated the Treaty of Council Grove with the Federal government.

In this treaty, the three tribes (a) were lumped together as the Klamath Tribes, rather than recognized as the three separate tribes that they were; (b) ceded about 20 million acres to the Federal government – including all the Modoc and Yahooskin home lands; (c) retained about 2 million acres
of their ancestral territory as a reservation – which was part of the Klamaths’ ancestral territory, and onto which both the Modocs and the Yahooskin would have to move; and (d) retained their rights to hunt, fish, and gather on the reservation (Klamath Tribes 1999-2001a; Klamath Tribes 1999-2003a).

Ultimately, none of the three tribes was happy with the Treaty. The Klamaths resisted being forced to engage in irrigated agriculture (Doremus and Tarlock 2003), and neither the Yahooskin nor the Modocs wanted to stay in the reservation. Members of the Yahooskin tribe left the year the treaty was signed (Most 2006). The Modocs “barely survived on the hardscrabble reservation” (u-s-history.com - #2 n.d., 1), plus the Klamaths demanded tribute from the Modocs for the land and heaped other indignities on them (Thompson 1971). In 1870 the Modocs, under the leadership of Kintpuash6 (Captain Jack as he was known to the whites), returned to their homeland around Tule Lake. Neither the Modocs nor the settlers in the area got along. Many settlers wanted the soldiers to drive the Modocs back to the reservation; the Modocs said that they wanted a reservation in their home territory, that they were willing to have whites in their territory, but only if they did not settle where the Modocs had their winter camps. There was theft; there were killings – on both sides (Most 2006).

In 1872, based upon the belief of the military command at Fort Klamath that the Modocs had to be brought under military control without waiting for the government to set aside a reservation for them on Modoc land, “[w]hat happened was the worst of both worlds: an unplanned, undermanned military operation [out of Fort Klamath] combined with an undisciplined and uncoordinated civilian foray” (Most 2006, 34).

U.S. soldiers pursued the Indians to Tule Lake. There, lava beds and caves furnished nearly perfect fortifications for the quarry. The small band of about 150 poorly armed Indians held out for six months. Repeatedly repulsed, the soldiers enlarged their ranks to 1,000 by March 1873. In the course of the peace talks, negotiators General E.R.S. Canby and Eleazer Thomas were killed [on April 11, 1873]. The soldiers grimly stepped up their struggle to overpower the Modoc. In 1873 Captain Jack and his whittled-down band of approximately 30 surrendered; he and three others were hanged [at Fort Klamath]. A number of the rebellious group were returned to Klamath Reservation, and the rest were sent to Quapaw reservation in Oklahoma. (u-s-history.com - #2 n.d., 2)

The 1887 Dawes Act divided the Klamath Reservation into 160-acre parcels. Allotments to the individual members of the Klamath Tribes took about a third of the land in the reservation. The Act authorized the distribution of non-allotted lands to non-Indians; however, the surplus in the Klamath Reservation, more than 800,000 acres, remained tribal territory because the boundaries of the

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6 There are other spellings of Captain Jack’s Modoc name. I have chosen to use the one in Most (2006).
reservation were in litigation (Most 2003). The boundaries named in the Treaty of 1864
encompassed 2 million acres; however, an 1871 government survey “whether deliberately or by
mistake, cut that to 1.1 million acres” (ibid., 1). The reservation boundaries remained undefined until
a U.S. Supreme Court ruling in 1938 (ibid.).

Even with all this, “[f]rom the first, Klamath Tribal members demonstrated an eagerness to turn
new economic opportunities to our advantage” (Klamath Tribes 1999-2003a, 2). They developed
cattle ranching, vocational training, and freighting. In 1870, the Klamath Tribal Agency set up a
sawmill on the reservation initially for the purpose of constructing the Agency itself (Klamath Tribes
1999-2003a) and then from which lumber was delivered to Fort Klamath and other customers (u-s-
history.com - #1 n.d.). “By 1873, Tribal members were selling lumber to Fort Klamath and many
other private parties” (Klamath Tribes 1999-2003a, 2). By 1889, “there were 20 Tribal teams [of
freighters] working year-round to supply the private and commercial needs of the rapidly growing
county [and]... by 1896 the sale to parties outside of the [Klamath] reservation was estimated at a
quarter of a million board feet” (Klamath Tribes 1999-2003a, 2).

As were the tribes in the Lower Basin, the Klamath Tribes were working to accommodate
themselves to a radically and rapidly changing world, while still resisting attempts to take away what
was theirs – as difficult and dangerous path to walk in the Upper Basin as it was in the Lower Basin.

1.2 The State of California

While the federal policy was about getting the Indians out of the way, the policy of the State of
California was bluntly about getting rid of the Indians. While its ostensible interests were threefold –
“protecting white settlers and miners from Indian attack, protecting white property from any loss due
to Indian claims or attack, and regulating Indian labor” (Olson-Raymer 2003, 2), bottom-line, it quite
literally legalized their enslavement and endorsed their slaughter.

I have already dealt, in the Gold Rush section, with the 1850 Act for the Government and
Protection of Indians, which in effect enabled the kidnapping and enslavement of thousands of
Indians throughout California, until its repeal in 1863. Similarly, I have also dealt with the State of
California paying vigilantes for Indians they killed.

I will add here about the 1851 California Land Claims Act. The California legislature enacted
this law “to create a commission to consider the claims of parties who held lands under Spanish Rule.
As might have been expected, California Indians were not informed of this potential remedy, and the
United States and California failed to bring claims on their behalf. A series of claims court decisions
established the principle of law that the failure of California Indians to file claims in a timely manner
barred any subsequent actions by the Indians. Accordingly, the Indian tribes’ land claims against the Spanish were nullified and their lands became part of the public domain” (U.S. Senate 1994b, 2 of download).

It was the policies of the State of California that prompted the Federal government’s Office of Indian Affairs in California to begin negotiations in 1851 with Indian tribes in California, for they felt that if they did not intervene, California Indians were destined for destruction. I have dealt above with the ultimate failure of this intervention, in that California political and business interests successfully influenced the U.S. Congress in 1852 to refuse to ratify any of the 18 treaties that Redick McKee and his two fellow Indian Commissioners had negotiated with California Indians. This refusal of ratification left the California Indians at the mercy of the policies of the State of California.

1.3 The Euro-American Population

The Euro-American population in Northern California was deliberately genocidal with respect to the Indian tribes (Beckman 1998b; California OHP 1988b; McEvoy 1986; Most 2006; Norton 1979; Olson-Raymer 2003). I have already recounted in horrific detail, in the Gold Rush section, instances of murder and massacre by bands of vigilantes and of enslavement by bands of kidnappers. Piling more examples here upon those there – and there are more examples (see, e.g., Olson-Raymer 2003; Norton 1979) – will not make the already horrific more so, and might even numb one to the scope of the genocide. I will consider my point as having been made.

In summary, then, during both the Gold Rush and this Consolidation period, while the Federal government wanted to ‘protect’ the Indians by getting them out of the way and by forcibly assimilating them into the American way of life, the State of California and the Euro-American population in California just wanted to get rid of the Indians.

Federal policy, despite all the language about tribal sovereignty, tribal trust, and protection, seems to have had one overarching goal – to get the Indians out of the way as Manifest Destiny rolled across the continent. How this goal was effected went through different periods. First, there was the Removal period, in which Indian tribes were swept out of sight to the “West.” This policy came to an end as they ran out of “West” to sweep the Indians to. Second, there was the Reservation period, that sought to assimilate Indians into the American way of life by relocating them onto land that no whites might want and forcibly training them in the ways of the whiteman. This policy came to an end in the face of dismal failure. Third, there was the Allotment period, that sought to assimilate Indians into the American way of life by dismantling their native ways of life through dismantling
communal ownership of their lands. This policy was far more “successful,” in that in the 47 years over which the Dawes Act was in force, two-thirds of the 1887 Indian land base in the U.S. passed over to non-Indian ownership.

In the Klamath Basin, the tribes were on the receiving end of federal policy, treaties, congressional acts, and Executive Orders that sought to get them out of the way and turn them into whitemen – as well as were the targets of State acts and State-endorsed citizen actions that sought to get rid of them by means of murder, massacre, and enslavement. The Yurok, the Hupa, and the Klamaths – by means of varying arrangements of resistance and accommodation – secured much of their ancestral territory in reservations – though that doesn’t mean that they were ever immune from seemingly never-ending attempts by white settlers to wrest their land away from them. The Karuk remained in their ancestral territory by default (McEvoy 1986), mainly because the land there was extremely difficult to access as well as was not suitable for agriculture and because the Gold Rush miners had left after the easy gold had petered out. The Shasta seem to have evaporated as a tribe and their ancestral territory was completely overrun with settlers. The Modocs were decimated, defeated, and disbanded. The Yahooskin simply left.

2. Settlement in the Klamath Watershed

Where gold-diggers had come to the Klamath watershed to get rich quick, settlers came not only to make a living, but more importantly to make a life. The more the “Indian problem” was “taken care of,” and, as such, the more safe the settlers felt, the deeper and the more extensive were the roots they sank into their new lives. In the period after the Gold Rush, families were started, homes were built, towns were founded, and identities were constructed wrapped around bonds to family, home, ways of life. Ways of life were based upon ways of making a living and livings were made by extracting and by manipulating the natural resources of the Klamath watershed. The value-orientations of Manifest Destiny still very much informed the relationship of the settlers to the natural resources of the Klamath watershed – nature was there to serve the needs of the settlers, to be used as the settlers needed to make their livings. Each way of life was indissolubly linked to the watershed and the uses to which it put the watershed.

2.1 The Upper Basin

During the lusty days of the Gold Rush, individuals pastured herds of cattle in the Upper Basin, but made no attempt to permanently reside there (Oregon WRD 1999a) because of the “Indian problem” there. After Oregon became a state in 1859, one of the first acts of the Oregon legislature
was to ask Congress for a military post that would keep the Indians of the Upper Basin under control, in order to increase stability in the area and thus make it safe for settlement. The U.S. Army established Fort Klamath north of Upper Klamath Lake in 1863, and at the same time constructed a sawmill, thus beginning commercial logging in the Upper Basin (NRC 2004). In 1866, Wendolen Nus, who had been pasturing his herds there, returned to become the Basin’s first permanent white settler (Oregon WRD 1999a). “[I]n 1867, George Nurse established a one room store and ferry at the base of Upper Klamath Lake and Linkville was born” (Oregon WRD 1999a, 14). Soon buildings clustered around the store; pack trains and stage service came through; and increasing numbers of people settled in Linkville (Most 2006).

“Early white settlement in the upper Klamath basin centered on ranching rather than farming because without irrigation, precipitation often was insufficient for growing most crops” (NRC 2004, 63). These livestock ranchers pastured their herds on the annual grasses in the Upper Basin, and “cut wild hay from the lakeshores to feed their stock in the lean seasons. When the livestock population outgrew that natural supply, the settlers began building irrigation works so that they could grow more hay and produce row crops” (Doremus and Tarlock 2003, 298).

“Agriculturists began the development of irrigation systems and water companies in the Upper Basin, which supplied water for crops and municipal uses in the area. Because a significant portion of the Upper Basin was composed of lakes and wetlands, farmers and ranchers performed vast amounts of diking and draining so that land could be planted or used for grazing” (Moore, Harty, and Woodrow 2001, 5). In 1868, the first irrigation ditch was dug by the Langell family who settled beside Lost River, and rechanneled Lost River to irrigate 4,000 acres in Langell Valley. In the 1870s, James Poe did the same thing in Poe Valley. In 1878, the Linkville Water Ditch Co. was incorporated and constructed the Link River ditch at Link River where it flows from Upper Klamath Lake to run water through the city of Linkville for use by the owners of town lots. In 1882, the Van Brimmer brothers began constructing a ditch to supply 4,000 acres near the town of Merrill in Oregon. In 1884, the Link River ditch was extended into the country east of the city, and by 1988, the ditch – now known as the Ankeny-Henley Canal – ran 8 miles southeast and irrigated 4,000 acres. In 1886, J. Frank Adams began a ditch that by 1904 ran 22 miles around the north side of Tule Lake (Blake, Blake, and Kittredge 2000). One can only imagine how very much back-breaking work constructing these ditches required. By 1903, an estimated 13,000 acres were irrigated by private interests (NRC 2004).

In 1886, President Grover Cleveland issued an Executive Order to close Fort Klamath, which by then was the only active federal army post in Oregon. “Citizen outcry against this decision was so
great that the Secretary of War postponed Fort Klamath’s abandonment until August 9, 1889” (Oregon WRD 1999a, 31).

“In the upper Klamath basin, as throughout the entire inland portion of the West, cattle increased in abundance during the 1870s and 1880s until by the late 1880s overgrazing became a political ecological issue” (NRC 2004, 63). In 1875, the Central Pacific Railroad completed a shipping facility at Winnemucca, NV. The existence of an efficient transportation infrastructure prompted ranchers to bring more animals to the open range. Price fluctuations coupled with bad winters and dry summers led to serious overgrazing in the Upper Basin (NRC 2004). “Government inspectors who were sent to the [Upper Basin] warned that overgrazing was ruining the very source of the region’s prosperity. The inspectors recommended that the only solution was to provide more grass by draining wetlands and planting them with hay so that there would be less competition for a dwindling resource. Ranchers did exactly that as they began diking and draining wetlands in the 1890s along the borders of Upper Klamath Lake to provide more forage for cattle” (NRC 2004, 64).

Also in the late 1890s, a commercial “cannery processed Lost River suckers captured from the Lost River near Olene, Oregon” (NRC 2004, 71).

As the number of settlers in the Upper Basin increased, government institutions were not far behind. In 1882, Klamath County was formed in the State of Oregon, and Linkville was designated the county seat. In the 1890 Census, the population of Klamath County was 2,444 (U.S. Bureau of the Census 1901). In 1893, Linkville was renamed Klamath Falls. In the 1900 Census, the population of Klamath County had mushroomed by more than 60% since 1890 to 3,970 (U.S. Bureau of the Census 1901).

2.2 The Lower Basin

During the Gold Rush, logging, agriculture and ranching began in the Lower Basin as activities in the service of gold fever. After the easy-to-find gold petered out and the fever subsided, logging, agriculture and ranching in the Lower Basin expanded and sank deep roots as ways of life in the service of settlement.

Mining

There was one last flash of mining fever when copper was discovered in Del Norte County in 1860. Copper fever spread and a stampede ensued as people came in the summer of 1860 to make their fortune. Over the years, however, most of these and subsequent mines failed, the owners lacking the means and expertise to exploit them. (Bearss 1982h).
In the areas of the Lower Basin where gold had been found, the focus of operations changed from the easy-to-find deposits which had been exhausted, to the harder-to-find deposits. In a continuation of what had been done during the Gold Rush, more dams were built, more ditches were dug to divert water to sluice boxes, hydraulic jets blasted more land and water to dredge up harder-to-get-to placer deposits, more elemental mercury was used to separate gold from the water. Perhaps one should say that dams were built, and then rebuilt, and then rebuilt yet again after the all-too-common flooding in the months of December and January in the Lower Basin swept mining equipment and improvements away. I have already made mention of the devastating flood of 1861-62, and it seems that that flood was as devastating upstream as it was down at the mouth of the river. “According to a Scott Valley historian, the flood damage of 1861 was greatly affected by the upstream mining operations which ‘tore up the watershed’ and ‘left nothing but piles of rock and debris in the upper valley and along tributary streams’ (Jackson 1963). He claims that ‘many of the mountain slopes were stripped of their protective covering of trees’ and then the heavy rains of 1861 ‘flushed soil, logs, trash, and mine tailings out of the watershed into the upper end of the valley.’ Forming a debris dam, the Scott River was diverted from the west to the east side of the valley” (KRBFTF 1991, Chapter 2, 35). I have also found mention of major floods in 1852-1853, 1864, 1875, 1880, and 1890-1891 – each of which also wreaked its own havoc on mining operations. “In 1880, 15 active mining claims were noted on the South Fork of the Scott River alone ...Gold production reached a peak in 1894, but by 1900 many of the mining operations (in Scott Valley at least) had closed down due to low profits” (KRBFTF 1991, Chapter 2, 35).

**Logging**

Logging had begun in the Lower Basin in the service of mining and of agriculture and ranching. As mining waxed and waned, logging continued to serve agriculture and ranching, and finally emerged as commercial timber harvesting, along the way employing many of the unsuccessful miners of the Gold Rush (Benzinger et al. 1995). By 1860, in Siskiyou County along the upper reaches of the Klamath River and in the Scott and Shasta valleys, demand supported about 30 mills (KRBFTF 1991). Trees were felled on the steep slopes and in the valleys, dropped into the rivers, and floated down to the mills.

Commercial timber harvesting began in the early 1880s (Benzinger et al. 1995). In 1887, the Southern Pacific Railroad came to Yreka on a route that went from the Sacramento Valley in California to the Columbia River in Oregon, thus expanding markets available to timber companies (ibid.). In 1889, as a result of the coming of the railroad to Yreka, a large sawmill was built at
Klamathon near what is now Iron Gate Dam and a bustling logging town built up around it. In order to get the trees from the steep north bank of the Klamath to the mill, a gigantic chute was constructed. It was 2650 feet long and descended 834 feet vertically. When logs were slid down the chute to the river, they routinely reached 90 mph, sometimes even catching fire from the friction, and sometimes splitting apart upon impact or shooting clear across the river rather than landing in it. Once the logs were all in the river, they were floated on down to the mills to be cut (Dias 2002). In 1902, a spectacular fire consumed not only the sawmill at Klamathon but also “eight million board feet of lumber,...two box factories, thirty other businesses and more residences than anyone counted” (Dias 2002, 1).

In 1881, at the mouth of the Klamath River, the Klamath Commercial Company began commercial timber harvesting, milling logs that were floated down the river to the mill.

It is estimated that, by 1900, 10 million board feet of lumber were coming out all the mills of the Klamath River (Benzinger et al. 1995).

Around Humboldt Bay on the California coast, by 1860 there were 4 mills, producing 30 million board feet of lumber per year, and shipping most of that to the San Francisco market (Bearss 1982f).

**Agriculture**

While “[t]he farmers who usually succeeded the miners in building western communities found no arable land of any extent in the entire basin below Shasta country” (McEvoy 1986, 56), the Scott and Shasta valleys were rich with arable land. The Shasta valley tended to be dry, while the Scott valley was full of wetlands. As had been started during the Gold Rush, the valleys were cleared of trees and brush to provide farmland for livestock, alfalfa hay, potatoes, grains, corn, and other crops. Initially they dry-farmed, meaning that they depended upon rainfall, but irrigation was preferred because it increased yield and therefore profit. In the Scott Valley, the wetlands were drained, the river channelized and diverted by dams and ditches (Benzinger et al. 1995; KRBFTF 1991). As early as the 1860s, overgrazing and drought degraded the quantity and quality of the grasses and other plants suitable for grazing (KRBFTF 1991). By 1900, Siskiyou County supported 30,000 sheep and 50,000 cattle (KRBFTF 1991).

It is no stretch of the imagination to consider that the all-too-common winter flooding which devastated mining operations along the Klamath and its tributaries during the last half of the nineteenth century, also wreaked havoc with the agricultural land and livestock as well as with the irrigation projects that serviced that land.
Commercial Fishing

This period also saw the beginning of in-stream commercial fish harvesting at the mouth of the Klamath River. “Due to local feeling that the Reservation had been abandoned after the flood, Richardson and Jones, two early settlers of Crescent City, started the first commercial fishery on the Klamath in 1876” (Pierce 2002, Part 7, 2). “The Yurok protested their presence, and in 1877 they sought to force them to vacate their claim and fishery” (Bearss 1982i, 1). In 1879, by order of the Federal government, Jones and Richardson were evicted as trespassers, and the first commercial fishery on the Klamath was closed (Bearss 1982i; Pierce 2002).

In 1881, the Klamath Commercial Company began commercial timber and fish harvesting near the mouth of the Klamath River at a site that was not on the reservation. The company hired Indians to catch and deliver the salmon to the cannery. “As the cannery was off the Reservation and the Indians were benefited by its presence, the military took no action to interfere with its operation” (Bearss 1982i, 1).

In 1886, the Indian Agent at Hoopa Valley granted permission to John Bomhoff to build a saltery at Requa near the mouth of the Klamath. “Bomhoff reserved all of the fishing and most of the cannery jobs for the Indians” (McEvoy 1986, 58).

In 1887, salmon entrepreneur R. D. Hume arrived from Oregon, mooring his floating cannery at the mouth of the Klamath, and prepared to pack fish without permission, employing his own Oregon fishermen whom he had brought with him and housed on the floating cannery. The Yurok complained bitterly to the Commissioner of Indian Affairs. While the government was trying to figure out what to do, the fall salmon run ended and Hume sailed back to Oregon. The courts failed to act, and Hume returned in 1888 for the salmon run. This time his craft was seized by a U.S. Marshall, because the status of the area as Indian country needed to be determined in court (Bearss 1982e; McEvoy 1986). In a case with the engaging title of United States v. Forty-Eight Pounds of Rising Star Tea, Etc., thanks to poor prosecution by the government on behalf of the Indians, the “judge found that although the land was still the property of the Federal Government, the Reservation had been abandoned after the flood” (Pierce 2002, Part 7, 2) and as such was no longer Indian country. It was yet another instance in the series of inconsistent and conflicting rulings, acts, and orders with respect to the status of the Klamath River Reservation that would remain unresolved until 1973. “Hume was free to trade or to pack fish at the mouth of the Klamath as he pleased” (McEvoy 1986, 60). Hume proceeded to build a cannery ashore at the mouth of the Klamath and to do just that.

“Meanwhile the Yurok had entered into a partnership with John Bomhoff. ...Bomhoff supplied the Yurok with boats, nets, etc. A cannery to compete with Hume’s was soon in operation at Requa.
Bomhoff’s enterprise gave employment to all the Yurok at Requa [and for some distance up the river]. Commercial fishing continued on the lower Klamath, with Bomhoff and his Yurok allies in competition with Hume’s cannery” (Bearss 1982e, 1).

Hume operated there for several years, but never turned a profit, and finally his cannery was wrecked by the flood of 1890-1891. Hume merged his company with Bomhoff under the name of Klamath Packing and Trading Company. “They found the years between 1894 and 1909 profitable” (Bearss 1982i, 2). In the hey day of the canneries at the mouth of the Klamath River in the nineteenth century, from 7,000 to 10,000 fish were caught and delivered to the canneries every day (Bearss 1982i). The Klamath Packing and Trading Company operated until 1934 when commercial fishing was declared illegal on the Klamath (ibid.).

**Government Institutions**

As was the case in the Upper Basin, as the number of settlers in the Lower Basin increased, government institutions were not far behind. Trinity County was established in 1850, Siskiyou County in 1852, Humboldt County in 1853, and Del Norte County in 1857. Roads were built along the California coast. The town of Yreka in Siskiyou County was founded in 1851, and incorporated in 1857.

To deal with the “Indian problem,” U.S. Army installations were opened – and closed as the “problem” was “resolved.” Fort Humboldt at Humboldt Bay was opened in 1853 – and closed in 1866. Fort Gaston in Hoopa Valley was opened in 1858 – and abandoned in 1892. Fort Ter-Waw in the Klamath River Reservation was opened in 1857 – and abandoned in 1862 after the flood.

**Population**

Population counts mushroomed in the Lower Basin. “While gold and mining continued as an economic force in Siskiyou County during the last quarter of the nineteenth century, the expansion of ranching and logging brought more settlers to the area” (SiskiyouHistory.org 2002a, 1). Remembering that the non-Indian population prior to the Gold Rush in 1848 was zero, in 1860, the census count in Siskiyou County was 7,629. By 1890, it was 12,163, and by 1900, it was 16,962 (U.S. Bureau of the Census 1901).

Humboldt County grew by leaps and bounds, thanks to the commercial expansion around Humboldt Bay. Again remembering that the non-Indian population prior to the Gold Rush in 1848 was zero, in 1860, the census count in Humboldt County was 2,694. By 1890, it was 23,469, and by 1900, it was 27,104 (U.S. Bureau of the Census 1901).
2.3. The Hydroelectric Project

As commercial enterprise took root in the Klamath watershed, the desire to harness the waters of the Klamath watershed to power commercial operations as well as to produce electricity became stronger and stronger. The very first step happened in 1882, when a ditch – later called the Keno Canal – was constructed to run from Link River to operate a flour mill by water power (Kramer 2003).

In 1889, a wooden dam was built to power the sawmill at Klamathon, but it was destroyed in the spectacular fire of 1902 that burned the sawmill and much of the town as well (KRBFTF 1991).

By 1890, the burgeoning city of Yreka wanted electricity for its streets and homes. James Quinn responded to the challenge, formed a company called Yreka Electric Light Works, built a water power wheel on the Shasta River, and in October 1891 started producing electricity for Yreka (Kramer 2003). Klamath Falls was not to be outdone, so in 1895, H.V. Gates and his company, the Klamath Falls Light & Water Company, built a small power plant on Link River – which became known as Eastside No. 1 – and in November 1895 the first lights were ablaze in Klamath Falls (ibid.).

Not surprisingly, neither the Yreka plant nor the Klamath Falls plant would remain sufficient to meet the growing demands of their respective communities for electricity and water – but that is a story for the next century. What is interesting to make note of is that it was local people and local money that met the local demand – clearly, in a relatively short period of time, the settlers had done well enough for themselves to fund the construction of hydroelectric infrastructure to service their own communities.

3. The Klamath Watershed

How was the Klamath watershed faring with all the changes being wrought by the settlers’ ways of life that extracted and manipulated the natural resources of the watershed – mining, commercial timber harvesting, agriculture and ranching, commercial fisheries, hydroelectric projects for burgeoning towns and businesses.

As these enterprises expanded from their beginnings during the Gold Rush, so did the degradation increase from its beginnings during the Gold Rush. Mining, logging, ranching, and the fledgling hydroelectric project all dramatically rearranged the rivers with hydraulic jets, dams, ditches, and diversions as well as with the logs that both scraped and crashed their ways downstream to the mills as well as created logjams in the rivers. These enterprises also degraded the water habitat for the fish trying to live in the rivers and lakes with removal and/or destruction of riparian vegetation as
well as with degrading the water quality with agricultural drainage water plus mining debris plus logging debris plus sediment from erosion from slopes made barren by timber harvesting and from river beds channelized by logs on their trips downstream (Benzinger et al. 1995; KRBFTF 1991; NRC 2004).

In addition, timber and fish harvesting took more than the environment could sustain. Robbins writes very tellingly about the boom-and-bust timber industry in the Pacific Northwest, noting that “[a]t one time the forest bounty...seemed endless. ...For this was an environment lush with promise, requiring only the capital, technical expertise, and labor power to mill the lumber for sale in distant markets. Whether they were lumber entrepreneurs, local business people, millworkers, or loggers, they were part of a cultural system that knew few limits in their quest to turn nature’s bounty to market advantage. ...Operating in a political environment that invited graft and corruption, lumbermen and other resource entrepreneurs were part of the expansive and turbulent dynamics of late nineteenth- and twentieth-century resource capitalism. That system produced a mercurial and destructively competitive economic environment and brought cycles of instability and unemployment to resource-dependent communities” (Robbins 1985, 413-415). The consequences of overcutting plus boom-and-bust logging towns will rear their heads in the next century in the Klamath.

With respect to in-stream commercial fish harvesting, McEvoy notes that “[a]s if they were gold nuggets, the [commercial fishing] industry ripped fish out of their environment with no thought to the long-term consequences of its actions. ...Following the price mechanism,...the commercial fishery left a trail of devastated resources in its wake, each with enough pressure left on it to ensure that it would not revive for future use” (McEvoy 1986, 73).

McEvoy also paints a very powerful picture of the impact of degradation of natural resources on those who relied upon hunting, fishing, and gathering those natural resources for their survival. “Salmon streams became so clogged with mining debris as to be useless for fishing. Fences with armed farmers behind them blocked the natives’ access to wild foods when their seasons arrived. Farmers cut down the oak groves that had been the mainstay of most tribes’ economies or left them to provide forage for livestock. Not even enough acorns remained to ensure the survival of the oak species, much less that of the Indians who gathered them for food. Indian fishing suffered, especially, from the alternative uses to which the new tenants put the rivers of California” (McEvoy 1986, 47). Indicatively, sometime between the spring of 1865 and the spring of 1870, the Yurok held the last observation of their First Salmon ceremony at the mouth of the river (Most 2006).
Clearly, the ecosystem and the tribes were paying the price for the increasing environmental degradation wrought by the expanding settlement and burgeoning resource capitalism in the Klamath watershed during the last half of the nineteenth century.

Elsewhere in the United States, especially in the East, starting in the 1860s and continuing through the end of the century, there was a movement for conservation of natural resources. Intellectuals – from Henry David Thoreau to John Muir – “articulated the need for conservation and the preservation of our country’s natural resources from exploitation by business and settlement. Through their writings and leadership they made progress in reversing the traditional American attitude toward the utilization of natural resources” (Unrau and Mark 1991a, 1). Meanwhile, wholesale devastation of timber reserves by lumbermen, cattle grazing, and shepherding continued in the West (ibid.).

In 1891 the Forest Reserve Act was signed into law. In an attempt to preserve the forest as well as to preserve the forest conditions necessary for water flow, it authorized the withdrawal of public lands into forest reserves and forbade the sale of such land to private parties. Unfortunately, the law had no teeth for enforcement, leaving the forests reserved but unprotected. “Although lumbermen, miners, settlers, and stockmen could no longer obtain legal title to the land located in the national forest reserves, they continued to trespass on public forest land as they had in the past” (Unrau and Mark 1991b, 2).

In 1893, the Cascade Range Forest Reserve was created, of which Crater Lake was a part. The General Land Office – the precursor to the Bureau of Land Management – administered the Reserve from 1893-1902.7 Lawless depredation of the reserve lands continued to be the norm (Unrau and Mark 1991c).

“Conservationists continued to promote the need for a national forestry system while bills to provide for effective administration and protection of the national forest reserves languished in Congress. ...Congress [was] torn between a militant and well-organized sentiment in the East in favor of forest reservation and scientific forestry management and an irate West fighting against withdrawal and forest protection” (Unrau and Mark 1991d, 1-2). These conflicting views were reflected in the 1897 Forest Management Act, which, on the one hand, affirmed the establishment of forest reserves,

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7 The General Land Office was established in 1812 and charged with overseeing the disposition of Federal lands. It had had a presence in the Klamath watershed following upon the heels of the Gold Rush, doing surveys and issuing deeds, in the Lower Basin, from 1856, and, in the Upper Basin, from 1858. In 1946, the General Land Office was renamed the Bureau of Land Management.
but on the other hand, allowed mining and/or agriculture to trump if the lands were more valuable for those purposes than for forest purposes (ibid.).

There were, then, the beginnings of a reform in mindset about natural resources in the United States, but it either hadn’t reached the West or was being assiduously opposed by those in the West who had investment in the supremacy of market considerations over environmental and/or cultural considerations. It would take until the next century for this changed mindset to gain power in the West.
Discussion and Summary of Chapter Seven

It is time to take stock of the well-being of the Indian and non-Indian ways of life and of the watershed during the period 1856-1899. Please take a moment to look back at figure 6.1, to review my subjective visual depiction of the well-being of these three players during this period.

With respect to the non-Indian ways of life, during this period, the non-Indian newcomers consolidated their conquest of the lands that had been claimed during the Gold Rush, by establishing their way of life as the dominant way of life and by extinguishing the threat to this way of life that the Indians posed. The more the “Indian problem” was “taken care of,” and, as such, the more safe the settlers felt, the more settlers came to the Klamath, and the deeper and the more extensive were the roots they sank into their new lives. Families were started; homes were built; towns were founded; railroads were laid; roads were built; government was instituted; identities were constructed wrapped around bonds to family, home, land, way of life. From a pre-Gold Rush population count of zero, by 1900, the census count of the six counties within which the Klamath watershed lies totaled 59,903.8

Ways of life were based upon ways of making a living. Commerce changed from get-rich-quick to resource capitalism. Livings were made by extracting and manipulating the natural resources of the Klamath watershed. Mining waxed and waned, as it focused on the harder-to-get placer deposits. Logging and ranching expanded, moving from food for the miners to commercial enterprises. An in-stream commercial fishing industry was begun. And local people funded the beginning stages of their own hydroelectric infrastructure.

With respect to the Indian ways of life, during this period, their numbers albeit drastically reduced, the Indian tribes put the brakes onto their plummet to potential extinction and fought to survive and to preserve their ways of life through various degrees of resistance and of accommodation in the equation of survival. Tribes rose in resistance to policies and actions by both governments and citizens that ranged from oppressive to murderous. By a mind-boggling series of acts, rulings, orders, and treaties, peace of a sort was achieved, and most of the tribes managed to

8 Klamath County, OR 3,970; Modoc County, CA 5,076; Siskiyou County, CA 16,962; Trinity County, CA 4,383; Humboldt County, CA 27,104; and Del Norte County, CA 2,408, for a total of 59,903 (U.S. Bureau of the Census 1901).
occupy portions of their ancestral territory – but this did not absolve them from seemingly never-ending attempts by settlers to wrest these lands from them. Tribes also learned how to accommodate the newcomers, either by developing their own businesses that serviced the settlers or by getting non-Indian companies to only hire Indians. At the same time, while the tribes continued to hunt, fish, and gather for their sustenance, they had to contend with either degradation of, denial of access to, or outright loss of their food resources.

**With respect to the watershed itself,** during this period, as resource capitalism took root, as commerce expanded, as towns grew, as infrastructure expanded, the watershed slid even further down the slope of degradation. While the Indian ways of life experienced the degradation directly because they lived in interdependence with the watershed, the non-Indian ways of life did not experience the degradation directly because they saw the resources of the watershed as something to be used and the capacity of the watershed to offer up its resources as limitless. What they did not see, however, was that their ways of life were indissolubly linked to the well-being of the watershed, that the ability of the environment to compensate for the extraction and manipulation of its resources was not limitless, and that the degradation they wrought upon the watershed was being totted up on a bill that would come due when the extraction and manipulation exceeded the capacity of the environment to compensate. During this period, however, life was grand and the bill was nowhere in sight.

**In summary, then,** during the period from 1856 through 1899, the well-being of the non-Indian ways of life thrived in their mastery of their new lands, while the well-being of the Indian ways of life survived in the face of concerted efforts to get rid of them, one way or another, and the well-being of the watershed continued its slide down the slope of degradation, totting up a hidden bill that would come due in the next century.
Chapter Eight
Expansion 1900-1969

The period from 1900 through 1969 was a time of expansion for the non-Indian ways of life in the Klamath Basin, in which technological and infrastructural improvements fueled the expansion of resource extraction and manipulation, which in turn recursively fueled further technological improvements and then further expansion, and on and on round the recursive feedback loop. Not only were technological improvements applied to virgin resources but they also were applied to resources previously inaccessible as well as to resources that became or had become depleted, in order to force further extraction and manipulation.

Towards the end of this period of expansion, however, “the bill” for environmental degradation began to be felt for the first time by some non-Indian ways of life, as they experienced reductions in the resources around which their ways of life were constructed, that could not be overcome by the mere application of more technological force.

With respect to Indian ways of life, federal policy – and dominant public opinion – carried forward into the 20th century, the goal from the 19th century to get rid of the Indians, one way or another. Federal policy went through a series of approaches, each designed to correct the dismal failure of its predecessor. It was only after World War II and into the cultural upheaval of the 60’s that the dominant culture began to flirt with the idea of Indian self-determination.

The Indian tribes throughout the country as well as throughout the Basin survived and would not vanish. They preserved their cultures as best they could in the face of massive attempts to turn them into whitemen. They contended with a mind-boggling tangle of laws and litigation that pushed and pulled them six ways to Sunday, pressuring them to become self-sufficient and then ripping away the bases of that self-sufficiency.

The experience of World War II, the experience of living in big cities, the experience of the 60’s – especially the Civil Rights movement coupled with the creation of legal aid groups via Johnson’s War on Poverty – all of these experiences planted the seeds of resistance in Indian Country, seeds that would start blooming in the 70’s.

And the well-being of the environment in the Klamath Basin – as technological improvements allowed resource capitalism to dig even deeper, as infrastructure expanded – slid even further down
the slope of degradation – and began to pass the point where it could compensate for the
degradation, so that the once-hidden bill began to reveal itself for ways of life other than Indian.

By the end of this period, the seeds were planted in non-Indian ways of life, in Indian ways of
life, and in the Klamath Watershed that, when they came to fruition, would change their world.

1. Expansion of Resource Capitalism

The expansion of infrastructure in the Basin – the Klamath Hydroelectric Project plus the
network of roads and railroads – provided a foundation upon which technological improvements
could enable the exponential expansion of resource capitalism in the Basin – the
agriculture/ranching, timber, mining, and fishing industries.

1.1 Basin Infrastructure

Infrastructure in the Basin expanded in terms of a system of hydroelectric plants providing both
power and water to the Basin as well as in terms of a network of roads and railroads connecting the
Basin to the world.

The Klamath Hydroelectric Project

Organizational History through 1969. In Chapter Seven: Consolidation, I spoke of the
beginnings of the hydroelectric project in the Klamath Basin – the Yreka Electric Light Works
(YELW) in 1891, and the Klamath Falls Light and Water Company (KFLWC) in 1895. By 1911, a
mere 20 years after Quinn’s initial company, there were dozens of hydroelectric companies in southern
Oregon and northern California. Rather than compete against each other, companies chose to
merge, and then merge again, and then merge again, and so on, like a food chain, in which each fish
is consumed by progressively larger fish, from the goldfish on up to the whale.1

In 1911, the latest “fish to emerge” was the Siskiyou Electric Power & Light Company (SEP&L)
which then immediately combined the generation and transmission facilities of 27 different
companies that had been providing power to a huge area from Grants Pass, OR in the north to
Dunsmuir, CA in the south, and from Etna, CA in the west to Klamath Falls, OR in the east, and
reorganized into the the California-Oregon Power Company. This company became known as
Copco as well as the ‘hyphen company’ to distinguish it from a subsequent Copco, and the service
area became known as Copcoland. In 1920, the hyphen company was reorganized, becoming
California Oregon Power Company, with no hyphen, and also known as Copco. In 1961, Copco

1 All of the historical information in this section comes from Kramer’s 2003 Klamath Hydroelectric Project: Historic
Context Statement, which is a wonderfully complete compendium.
merged with its larger neighbor to the north, Pacific Power & Light (PP&L). Later PP&L changed its name to PacifiCorp, the company name with which we are familiar today in the Klamath. In 1901, Yreka published that it wanted more electricity for commercial benefits. In response, Siskiyou Electric Power Company (SEPC) was incorporated in 1902, and constructed the Fall Creek Powerhouse which began service in 1903, supplying electricity to California and Oregon.

**Dam and Powerhouse Construction.** “By 1911, SEP&L had completed sufficient survey work to develop a long-term development program for the Klamath River that, essentially, would serve as the primary blueprint for the hydroelectric development for the next five decades” (Kramer 2003, 19). Copco seriously investigated sites below the first 50 miles of the Klamath River, but none was ever found to be suitable (KRBFTF 1991).

In 1917, the hyphen company entered into a 50-year contract with the Federal Power Commission (precursor to the Federal Energy Regulatory Commission [FERC]) (1) for Copco to construct and operate Link River Dam; (2) for BOR to use the Link River Dam to create water storage in Upper Klamath Lake; (3) for Copco to use the Link River Dam to provide water for Copco’s downstream powerplants; and (4) for Copco to provide electricity to the Project participants at greatly reduced rates (KRBFTF 1991). In 1921, Copco completed construction of **Link River Dam**.

The hyphen company started construction on the **first** Klamath River project – the **Copco No. 1 Dam and Power Plant** – in 1916 and completed it in 1918. There was no provision for fish passage, so salmon were cut off from spawning habitat upstream of the dam. Construction was begun in 1924 on the **second** project – the **Copco No. 2 Powerhouse** – and it went into operation in 1925.

In the early 1920s, momentum was growing for more dams (KRBFTF 1991). The argument distilled down to yet another version of the usual one of the times: much needed industrial expansion versus conservation, in this case, of the salmon in the Klamath River, and, of course, the salmon canneries at the mouth of river. The California Fish and Game Commission as well as farmers in Siskiyou County opposed more dams on the river, while the California Division of Water Rights and other hydroelectric companies favored more dams on the river. In a novel move, Siskiyou County and the Fish and Game Commission put an initiative measure on the state ballot in November 1924 – and it passed by a nearly two to one margin. The initiative prohibited the construction or maintenance of any dam from the confluence of the Klamath River with the Shasta River on down to the mouth of the Klamath River. That prohibition is still in effect.
There were no minimum flows required of either Copco No. 1 or Copco No. 2; rather, [t]he power plants were operated to meet peak power demands and the flow releases fluctuated with the anticipated demands. ...Hazards were created for fish and fishermen with these extreme and unnatural short-term fluctuations. Complaints were common during the 1920s and 1930s and lawsuits against Copco were filed. ...As a result, the U.S. Bureau of Fisheries [precursor to U.S. Fish and Wildlife Service] recommended in 1935 that an ‘equalizing dam’ be constructed below the Copco power plant to regulate the releases to a steady flow. In 1945, the [California] State Legislature finally requested the Public Utilities Commission to study the effects of the artificial fluctuation and recommend a solution. The final report recommended in 1947 that a regulating dam below Copco No. 2 be installed and operated by the company. (KRBFTF 1991, Chapter 2, 65)

While concerns about the problems associated with the extreme fluctuations were moving glacially slowly through the governmental channels, Copco completed construction on the third project – the Keno Regulating Dam – in 1931. In 1956, the original contract with the Federal Power Commission was amended and extended with Copco for another 50 years, with Copco continuing to operate Link River Dam for BOR and continuing to offer electricity to Project irrigators at about 10% of the going rates.

Construction on the recommended re-regulating dam was stalled until water rights issues in the Klamath Upper Basin were resolved by the Klamath River Basin Compact passed by the States of California and Oregon and confirmed by the U.S. Congress in 1957. Even then, construction of the fourth project – the Big Bend (later renamed the J.C. Boyle) Dam and Power Plant upstream of Copco No. 1 in Oregon – was of a higher priority to Copco. Construction of Big Bend was completed in 1958.

Finally, the re-regulating dam – the fifth and final project – Iron Gate Dam and Powerhouse at river mile 190 seven miles below Copco No. 2 – was started in 1960 and completed in 1962. There was no fish passage in Iron Gate Dam, which meant that salmon were permanently cut off from their spawning and rearing habitat upstream of Iron Gate Dam. A fish hatchery was built at Iron Gate Dam in lieu of a fish ladder.

California Fish and Game Commission noted that in one year (June 1948 through May 1949) more than 1.8 million salmonid fingerlings, yearlings, and adults were lost as a result of the power plants’ fluctuating releases. Multiplying this annual loss times the years from the completion of Copco No. 1 in 1918 – and the beginning of the fluctuating releases – and the completion of Iron Gate Dam in 1962 – the re-regulating dam meant to end the fluctuations – a span of 45 years – reveals the magnitude of the huge loss to the salmon fishery in the Klamath River (KRBFTF 1991).
In summary, then, with the construction of the Iron Gate Dam and Powerhouse, the Klamath Hydroelectric Project was completed. Putting together the facilities gained through purchase, merger, and construction, the Klamath Hydroelectric Project encompasses:

- Link River Dam (constructed by Copco for BOR)
- Eastside Powerhouse (originally constructed by the Klamath Falls Light & Water Company)
- Westside Powerhouse (originally constructed by the Klamath Light and Power Company)
- Keno Regulating Dam (constructed by Copco to replace the Keno Diversion Dam originally constructed by the Keno Power Company)
- J.C. Boyle Dam and Powerhouse (constructed by Copco)
- Copco No. 1 Dam and Powerhouse (constructed by Copco)
- Fall Creek Powerhouse (originally constructed by the Siskiyou Electric Power Company)
- Copco No. 2 Powerhouse (constructed by Copco)
- Iron Gate Dam and Powerhouse (constructed by Copco)

All of these facilities operate under Federal Energy Regulatory Commission License No. 2082.

Not part of the plan was the effect on the salmon of the Klamath River – and by extension on those who depend upon the salmon. Not only were millions upon millions of salmon adults and young killed by the extreme fluctuations in river flow over a span of 45 years from 1918 through 1962, but returning salmon have also been cut off from their spawning and rearing habitat upstream of Iron Gate Dam since 1918.

Roads and Railroads

If it were not for roads and railroads, the Klamath Basin would have remained isolated from the market opportunities in the rest of the country, and the agriculture/ranching and timber industries would not have been able to expand as they did.

Railroads in particular developed symbiotically with the timber industries in the Basin – railroads enabled the timber industries to reach out to markets they would not otherwise have been able to reach, and the revenue from the timber industries enabled railroads to go into territory they would not otherwise have gone into.

Railroads started making their presence felt almost immediately after the discovery of gold in the Basin. For example, tracks were laid from Eureka to the gold mines along the Trinity River, with railcars being drawn by horses along the tracks (California RA 1996). As gold fever waned and logging waxed, not only were the mining railroads converted to logging railroads, but new logging
railroads were laid throughout the forests of the Upper and Lower Basins (California RA 1996; Bowden 2003). In time, locomotives replaced horses in pulling the railcars (California RA 1996). This web of short-length logging railroads running like varicose veins throughout the Basin, however, did not connect the Basin directly to market opportunities.

The first step to changing this situation occurred when the Overland Route of golden spike fame was completed in 1869, opening markets to the east and the west. In 1875, cattle shipping facilities opened on the Overland Route at Winnemucca, NV, expanding the market opportunities for cattle production in the Klamath Basin (NRC 2004). Even so, this required ranchers driving their cattle from the Basin to Winnemucca – a trek of between 300 and 350 miles at conservative estimate. Still, nothing as yet connected the Basin directly to the world.

That situation changed in 1887 when the Siskiyou Route was completed, running through Yreka on its route over the Siskiyou Summit between Portland, OR and Sacramento, CA, and expanding markets available to timber companies in Siskiyou County (Benzinger et al. 1995). In 1907, a rail line was completed that directly connected Eureka with San Francisco and market opportunities, and thus fueled the expansion of the North Coast timber industry in Del Norte and Humboldt Counties.

Also in 1907, BOR constructed the dike that prevented the overflow of water from Klamath River into Lower Klamath Lake (Rykbost and Todd 2002). By 1909, the railway was completed between Weed, CA, along the dike, to Klamath Falls, OR. The presence of the railroad gave farmers a connection to markets outside the Basin and thus enabled farmers to grow more crops for export. By 1911, the line was extended to Chiloquin, OR, and by 1912, it reached north to Kirk, OR. By 1915, 40 trains per day carrying daily shipments of around a million and a half board feet of logs passed through Chiloquin enroute to Klamath Falls and its mills (Chiloquin Visions 2008).

By 1926, the last length of track was laid between Kirk and Eugene, and the Shasta Route was complete, looping from Weed, along the dike, through Klamath Falls and Chiloquin, and rejoining the Siskiyou Route at Eugene. The Shasta Route enabled the expansion of the timber industry in the Upper Basin, and the revenue from the timber industry enabled the railroad to lay the Shasta Route through territory that was sparsely settled and would not ordinarily have supported the laying of a line. Immediately upon its completion in 1926, the Shasta Route became the primary route for the north to south rail traffic because it was a significantly easier route for the trains. The Siskiyou Route, with its exceedingly difficult climb through Siskiyou Summit, became the secondary route, though still vital for industries in western Oregon.

Chiloquin became known as ‘Little Chicago of the West,’ where the keeping of law and order among loggers, mill workers, ranchers and Indians was one of its main problems (Chiloquin Visions
At the time of the city’s incorporation in 1926, “there were 2000 inhabitants, 3 big lumber mills, box factories, restaurants, barber shops, grocery stores, drug stores, doctors, dentists, lawyers, pool halls, dance and card rooms. Chiloquin was the trade area for the entire northern part of Klamath County” (Chiloquin Visions 2008, 3).

In 1929, the Modoc Route was completed, by piecing together track from 3 different railroad companies, running from Klamath Falls down to the Overland Route at Fernley, NV. Its sole purpose was to provide a short cut for forest products from southern Oregon to markets east and west. Its heyday was during the construction boom after World War II (Bowden and Dill 2002).

In 1908, Henry Ford began rolling cars for the masses off his production lines. In seemingly no time at all, roads – or, as they were originally known, ‘auto trails’ – appeared everywhere. In 1909, the California State Legislature passed the State Highway Bond Act, and in 1912 construction began on over 3000 miles of interconnected highways (California DOT 2008). In the Klamath Basin, the system of major highways that connect the parts of the Basin today were in place by the end of the 1920s, expanding market opportunities for agriculture/ranching and timber throughout the Basin.

By 1934, automobile roads paralleled the Klamath, Salmon, Scott, and Shasta Rivers, plus nine small creek basins (KRBFTF 1991). Old US 99 (later paralleled and/or replaced by I-5) followed the Siskiyou Trail running north to south through Yreka. US 97 split off from old US 99 at Weed, CA, and ran north through Klamath Falls on up to Canada. The Redwood Highway – later US 101 – ran along the coasts of Del Norte and Humboldt Counties and to points north and south. When a bridge was finally completed over the mouth of the Klamath River in 1926 (Pierce 2002), sportsfishermen arrived in droves. “Postcards from the 1920s show fishermen lined up shoulder-to-shoulder along the sandspit” (Most 2006, 95). US 199 linked Crescent City in Del Norte County with old US 99 at Grants Pass, OR, and OR State Route (SR) 66 connected old US 99 near Ashland, OR, with Klamath Falls in the Upper Basin.

There were some interesting gaps in the highway system in the Basin in the 1920s that persist to this day. There is NO road connecting the mouth of the Klamath with Hoopa Valley at the confluence of the Klamath River with the Trinity River. The original CA SR 96 paralleled the Klamath River from Yreka down to Hoopa Valley and then turned north, going along the Klamath River half way from Hoopa Valley towards the mouth, and then just stopping. CA SR 96 was later extended south from Hoopa Valley to connect with CA SR 299 that runs from Eureka to meet old US 99 at Redding. There is also NO road that runs along the Klamath River all the way from Yreka up to Klamath Falls and Upper Klamath Lake.
In summary, then, by the 1920s, a network of roads and railroads connected the Klamath Basin with market opportunities in the rest of the world, and thus enabled and fueled the expansion of the agriculture/ranching, timber, mining and fishing industries within the Basin. And all of the highways and many of the rail lines laid by the 1920s still serve the Basin today.

It is interesting to note, however, that, while this network of roads and railroads connected the Basin to the world, it did not connect the Basin to itself. Today, passenger trains run only north and south through Klamath Falls; nothing goes to the coast. And, lest the list of highways above gave one the impression that it is quick and easy to get from here to there in the Klamath Basin, let me tell you that it is most assuredly not. From the northernmost reaches of the Basin to the southernmost end of the Basin, there is no nice, neat direct route. And in the winter, snow can prevent one from getting in as well as getting out of the Upper Basin. Getting from here to there in the Basin always seems to involve a choice of which long way around one wants to take this time. And even at today’s speeds, the roads are such that it takes no less than a full day to make the trip from one end to the other – one-way. As such, people who live at one end of the Basin may never travel to the other end of the Basin.

1.2 Agriculture and Ranching

The Klamath Reclamation Project

By far, the most extensive application of technology occurred in the lower half of the Klamath Upper Basin with the construction and implementation of the Klamath Reclamation Project by the Bureau of Reclamation.

Appropriation. In 1902 the Reclamation Act was passed by Congress and signed into law by President Theodore Roosevelt. The intent of the Act was to promote viable family farms in the West, by providing irrigation to arid lands, as well as by reclaiming land by draining swamps and lakes and making the reclaimed land available to homesteaders. The Act created the United States Reclamation Service to initiate, construct and manage irrigation projects in the West.2

“By 1903 about 13,000 acres in the upper Klamath basin were irrigated by private interests. Land speculators urged [BOR] to consider the Klamath basin for irrigation, and a [BOR] engineer estimated in 1903 that irrigation could water 200,000 acres of farmland” (NRC 2004, 67).

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2 In 1923, the name of the Reclamation Service was changed to the Bureau of Reclamation [BOR]. Given that people are more familiar with the name BOR, I will use it to refer to activities that were taken by the agency when it was still officially called the Reclamation Service.
Way back in 1860, California and Oregon had acquired Lower Klamath Lake from the Federal government through the Swamp Lands Act of 1860, but their efforts to stimulate drainage and reclamation had failed (NRC 2004). In 1905 they ceded Lower Klamath Lake back to the Federal government for use by BOR.

In 1905, the Klamath Reclamation project was approved by Congress. The United States filed with both California and Oregon its notice of its intent to appropriate all of the waters of the Klamath Upper Basin. In addition, the U.S. purchased water rights from individuals with private irrigation works. By a combination of appropriation and purchase, BOR “had full control of all of the rights to the use of water in the basin to facilitate Project operation” (U.S. BOR 2000a, 34).

**Construction.** To get a sense of the scope of this gigantic “plumbing” project, let’s harken back to the picture I painted in the section on geography of the Upper Basin of water flowing downhill into puddles. The goals of the Klamath Reclamation Project were, in essence, to prevent the water from flowing downhill into puddles by impounding the water uphill, and to make the water flow when and where they wanted it to flow.

The primary source of water for the Project is Upper Klamath Lake and the Klamath River. The secondary source is Clear Lake, Gerber Lake, and Lost River in the Lost River Basin. In essence, then, the Project impounded water in Upper Klamath Lake, Clear Lake, and Gerber Lake; drained water from the two “puddles” – Lower Klamath Lake and Tule Lake; and diverted water as needed for irrigation of Project lands. The Klamath Reclamation Project was unique among reclamation projects in that, where other reclamation projects had water storage capacity that could save for future needs, the shallowness of Upper Klamath Lake meant that the amount of the water in the lake was at the mercy of the weather year by year and that water could not be saved for future needs.

Construction began in 1905 on the Main Canal – later called the “A” Canal. In 1907, a dike was constructed to isolate Lower Klamath Lake from the Klamath River, thus preventing water from making its historic downhill run from the river to the lake, as well as to serve as a bed for a railroad connecting Klamath Falls with points south (Rykbost and Todd 2002). In 1909, California Northeastern Railway Company – later Southern Pacific Railroad – completed construction of the railroad line. Seven dams were completed between 1910 and 1925. ³ Two tunnels were constructed in 1941 – the Tule Lake Tunnel and the Klamath Straits Drain.

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³ (1) Clear Lake Dam 1910; (2) Lost River Diversion Dam 1912; (3) Lower Lost River Diversion Dam 1921; (4) Link River Dam 1921; (5) Malone Diversion Dam 1923; (6) Miller Diversion Dam 1924; and (7) Gerber Dam 1925.
Over the years, BOR has constructed a massive tangle of canals, laterals, and drains that take fresh water to the acreage to be irrigated and drainage water back to the rivers and lakes. Taken together, these pieces of the distribution network have a total length of 1,429 miles (Rykbost and Todd 2002).

In 1908, President Theodore Roosevelt issued an Executive Order establishing the Lower Klamath National Wildlife Refuge (NWR), the nation’s first waterfowl refuge.

Some Klamath Project farmers did not want the government to establish bird refuges on agriculturally valuable land, even if most of those acres were on periodically flooded bottomlands. By 1915, their organization, the Klamath Water Users Association, had persuaded President Woodrow Wilson to reduce the Lower Klamath Lake Refuge from 80,000 acres to 53,600. Meanwhile, the Bureau of Reclamation used the Southern Pacific railbed as a dike to block overflow from the Klamath River that refilled the shallow lower lake. Its waters quickly evaporated under the abundant sunlight of the Upper Basin. By 1922, less than 400 acres was all that remained of the lake. (Most 2006, 52)

The birds – previously millions upon millions – all disappeared. The peat soils of the lakebed, now drained of water, began to burn; ash filled the skies of Klamath Falls; dust closed schools (Most 2006).

**Water Contracts and Water Deliveries.** BOR entered into numerous contracts with water users – with irrigation districts as well as with individuals who used the Project distribution network as well as, after the Warren Act of 1911, with irrigation districts and individuals who had their own private distribution networks.

The contracts are written in perpetuity. The priority date for Project water rights is generally 1905. “The contracts do not specify the amount of water to be delivered; instead, they obligate the U.S. to provide available water for [beneficial] use on specified lands” (Doremus and Tarlock 2003, 300). The water users do not pay for the water they receive, but they are obligated for repayment of the Project costs. “Water allocation to irrigators currently is based on a system of contract priorities. ‘A users’ have the most senior contract type, followed by ‘B users’ and finally ‘C users’” (OSU-UC 2002, 22). Seniority means most senior gets all they can beneficially use before anybody junior gets anything. “Water surplus to these contracts flows to lands leased for agricultural purposes within the Lower Klamath and Tule Lake National Wildlife Refuges, and to a small amount of other Project lands” (Doremus and Tarlock 2003, 300).

“The Reclamation Service in the early days of the Klamath Project promised farmers water they had no assurance of receiving, and the agency called no attention to the fact of rights guaranteed to
the tribes. …[T]he old-time Reclamation Service…built the basis for the enormous enterprise that is agribusiness in the Klamath [Upper] Basin on the use of water that was not theirs to give away” (Blake, Blake, and Kittredge 2000, 93). The contracts did not spell out that other water rights may trump those of the Project, nor that the ability of BOR to deliver water was subject to the availability of the water. I can imagine that, in those early days, the thought that there might not be enough water to go around was the farthest thing from anybody’s mind, and the Project irrigators were lulled into the expectation that there would always be water delivered to their lands.

[T]he people who ran the Reclamation Service were ‘overwhelmingly an elite group promoting an elite program. Their overriding aim was to enlarge, for their own ends, the country’s wealth and influence.’ Short-term results, irrigated acres, were the prime objective. Long-term ecological problems like salinization and pollution from chemical fertilizers and pesticides, and social problems like the need for curbing use of public money to further enhance the fortunes of the privileged, were left for the future to deal with. (Blake, Blake, and Kittredge 2000, 57, quoting from Worster 1992, no page provided)

The first water deliveries were made on May 22, 1907 through the main “A” Canal to lands now known as the Main Division. Water deliveries are used to flood irrigate private, leased, and Lower Klamath NWR lands. Tule Lake NWR receives water from drainage runoff from the Tule Lake area and from the Lost River (U.S. BOR 2000a).

Through 2000, water was delivered without fail – even if in reduced amounts in some years.


“The Project presently includes approximately 240,000 acres of irrigable lands plus national wildlife refuge lands. The Project has generally provided water to approximately 200,000 acres of agricultural lands per year, with the actual number of irrigated acres varying annually” (U.S. BOR 2000a, 6). Doremus and Tarlock note that water use is inefficient in the Project – that 2 acre feet are lost for every acre foot actually consumed by the crops (Doremus and Tarlock 2003).

**Electricity for Project Irrigators.** In the 1917 contract, Copco committed to providing electricity to the Project participants for 50 years at greatly reduced rates (KRBFTF 1991). The original contract was amended in 1956 and extended with Copco for another 50 years. Until the rate
change which commenced in 2007 (Oregon PUC 2006), Project irrigators paid less than 10% of the
gothing commercial rate for the electricity that they use to pump water (Doremus and Tarlock 2003).

Reclaimed Lands, Allotments, Leased Lands, Refuge Lands. “President Roosevelt had
intended no settlement within the boundaries of the [refuges], but [BOR] interpreted refuge
boundaries as encompassing only land covered by water all year. Thus, if [BOR] drained the lakes
and wetlands, it would no longer be refuge land, and it could be sold or leased” (NRC 2004, 68).

To give some sense of the scope of the reclamation of land from Tule Lake and Lower Klamath
Lake, it is instructive to compare the sizes of the lakes historically versus after reclamation. Tule
Lake is estimated to have been historically between 55,000 and 110,000 acres, and in 2002 was
estimated to be between 9,450 and 13,000 acres (U.S. BOR 2002) – a reduction somewhere in the
neighborhood of 76% to 91% of the historical size.

Lower Klamath Lake is estimated to have been historically between 78,000 to 111,000 acres, and
in 2002 was estimated to be 4,700 acres, about half of which lies in the Keno Reservoir and the other
half of which lies in Lower Klamath NWR (U.S. BOR 2002) – a reduction somewhere in the
neighborhood of 94% to 96% of the historical size.

Allotment of land reclaimed from the bottomland of Tule Lake started in March 1917 with 35
homestead units authorized in the Main Division which included 3,250 acres of private lands and
2,700 acres of public lands (Rykbost and Todd 2002). “Reclaimed lands in the Tule Lake Division
were opened for homestead entry under 10 different public notices the first in 1922 and the last in
1948. In total, about 44,000 acres…making up 614 farm units were homesteaded in the Tule Lake
Division” (Rykbost and Todd 2002, 71). Adding the eleven drawings together yields a total of 49,950
acres allotted over the 31 years. After each of the World Wars, veterans were given preferential
positions in the allotments. “The federal government urged thousands of veterans to apply for these
new homesteads, promising them as much water as they would ever need for irrigation” (NRC 2004,
70).

“As Tule Lake receded, reclaimed lands were leased for farming before opening to homestead”
(Rykbost and Todd 2002, 71). Some of the reclaimed lands from both Lower Klamath Lake and
Tule Lake were ultimately never released for allotment, but were retained by the Federal government
as lands to be leased.

In 1928, President Calvin Coolidge issued an Executive Order establishing the Tule Lake NWR
as a waterfowl refuge. Both the Lower Klamath NWR and Tule Lake NWR lie completely within the
Klamath Project. Even with their designation as refuges, land in both Lower Klamath NWR and
Tule Lake NWR was reclaimed by draining the lakes and was leased out. By 2002, there were 14,400 acres of leased lands in the Lower Klamath NWR and 17,500 acres of leased lands in the Tule Lake NWR, for a total of 31,900 acres of leased lands in the two refuges (U.S. BOR 2002). Some of what is grown on these leased lands is cereal grain for the migratory waterfowl (Moore, Harty, and Woodrow 2001).

In 1941, as mentioned above, the Tule Lake Tunnel was constructed, which pumped runoff water from the Tule Lake Basin up to the Lower Klamath Lake. “This feat of engineering refilled the wetlands, and birds began to return” (Most 2006, 53).

Tule Lake and Lower Klamath NWRs were established as waterfowl refuges. “Each refuge has a federal reserved water right to the amount of water, unappropriated at the time of creation of the refuge, necessary to fulfill the primary purposes of the refuge. ...The priority date for the reserved water right is the date of the executive order creating that refuge [1908 for Lower Klamath NWR and 1928 for Tule Lake NWR]. ...In addition, certain lands within the Lower Klamath and Tule Lake refuges that are irrigated have a priority date of 1905 based on the Klamath Project water rights” (U.S. Solicitor 1995, 3-4). “The Kuchel Act [of 1964]...requires that the refuge lands be used primarily for waterfowl purposes but with full consideration given to optimum agricultural use so far as agricultural use is consistent with the refuge purposes” (ibid., 7). BOR was tasked with judging what was consistent with refuge purposes.

Klamath River Basin Compact. In 1957, the States of California and Oregon ratified the Klamath River Basin Compact (Compact), and the United States consented to the Compact. The Compact had the following purposes: (1) to facilitate and promote the development of water in the Upper Klamath Basin for the following uses: domestic, irrigation, fish and wildlife, recreation, industrial, hydroelectric, navigation, and flood prevention; (2) to further intergovernmental cooperation among the two States and the Federal government; and (3) to set relative priorities to the use of unappropriated water that postdates the Compact. These relative priorities are: (1) domestic use; (2) irrigation use; (3) recreational use, including fish and wildlife; (4) industrial use; (5) generation of hydroelectric power; (6) such other uses as are recognized under the laws of the state involved (U.S. BOR 2000a). In addition, domestic use and irrigation use trump the remaining uses. Irrigation use has a cap of the water necessary to irrigate 100,000 acres in California and 200,000 in Oregon.

Article XI states that nothing in the Compact shall deprive any tribe of their water rights and Article XII states that nothing in the Compact shall deprive the Federal government of its reserved water rights.
**Life for the Project Homesteaders.** “[A] recital of dates and facts [about the Klamath Project] misses the heart of this story, which has to do with promises and dreams, with hard work and the rewards earned by such effort and diligence” (Blake, Blake, and Kittredge 2000, 55) both by those who built the facilities and by those who worked the land. “Life was spartan for the early homesteaders on Klamath Project lands. They lacked electricity, running water, and telephones. Their farms were spread out, without roads between them” (Most 2006, 51).

“The peat beds of the wetlands [of the Lower Klamath Lake] began to burn and collapse, farm efforts failed, and, by 1925, homesteaders were going bankrupt. By 1925, nearly everyone involved agreed that the project was a failure” (NRC 2004, 69).

“Eventually the hardships of the lifestyle, isolation of the area and lack of management skills took its toll. A significant number of homesteaders left in the 1950s and 1960s. Those who remain have established deep roots, a strong sense of community, and produced prosperous farms” (KlamathBasinCrisis.org n.d., 4).

**Non-Project Agriculture and Ranching in the Klamath Upper Basin**

The technological improvements that contributed to the increase in agriculture and ranching in the Project lands were the same that contributed to the increase in the non-Project lands – irrigation and railroad.

The irrigation in this case was provided by private dams and diversions on lands in the Lost River Watershed and in the Upper Klamath Lake watershed, which included the Sprague River and Williamson River watershed. Multitudinous dams and diversions were constructed throughout non-Project private lands as well as on Forest Service lands. The most significant non-Project dam was Chiloquin Dam located 12 miles upstream of Upper Klamath Lake on the Sprague River (U.S. BOR 2002), which was built to service both agriculture as well as timber milling. Construction was started in 1914 and completed in 1918.

The entry of the railroad into the Upper Basin began with the construction by BOR in 1907 of the dike preventing the overflow of water from Klamath River into Lower Klamath Lake. By 1909, California Northeastern Railway Company – later Southern Pacific Railroad – had completed laying the railway along the dike, and by 1918, the railroad line ran all the way through the north of Klamath County. The presence of the railroad gave farmers a connection to markets outside the Basin and thus enabled farmers to grow more crops for export.
The bulk of the non-Project irrigable acreage is located in the Sprague River and Williamson River watershed. The number of irrigable acres there has increased from about 10,000 acres in 1900 to about 75,000 acres in 1970 (U.S. BOR 2002).

With respect to the Upper Basin as a whole, in 2002, National Marine Fisheries Service (NMFS) calculated that of the total irrigated acreage in the Upper Basin, Project lands accounted for 57% and non-Project lands for 43% (U.S. NMFS 2002). It does not seem unreasonable to imagine that the proportion between the Project and non-Project acreage stayed within range of that 57:43 relationship over the years from inception to present.

In 1920, cattle production in Klamath County involved about 30,000 head of cattle. By 1950, cattle production had increased to 60,000 head of cattle, and then it skyrocketed to a peak of 140,000 head by 1960. By 1970, it had declined back down to 80,000 head of cattle (U.S. BOR 2002).

Agriculture and Ranching in the Klamath Lower Basin

Agriculture and ranching in the Lower Basin is centered in Siskiyou County. In the first quarter of the 20th century, agriculture and ranching as well as logging grew as the economic mainstay of the county (SiskiyouHistory.org 2002b). “During the early 1900s, farmers and ranchers removed riparian vegetation and valley forests along the lower Klamath River and its tributaries” (NRC 2004, 70) and constructed numerous dams and diversions for irrigation purposes (KRBFTF 1991). The amount of lands under irrigation nearly doubled in Siskiyou County from 57,000 in 1912 to nearly 100,000 in 1914 (KRBFTF 1991).

“Following the turn of the century, Shasta Valley was noted for having completed most of the work for irrigation purposes” (KRBFTF 1991, Chapter 2, 81). By 1970, there were an estimated 48,000 acres of irrigated farmland in Shasta Valley (KRBFTF 1991).

In Scott Valley, diversion ditches supplemented the generous rainfall enjoyed by the valley (KRBFTF 1991). “In 1958, water…was applied to 31,300 acres through 240 miles of ditch and pipeline by about 200 diversions” (KRBFTF 1991, Chapter 2, 84). By 1970, there were an estimated 31,500 acres of irrigated farmland in Scott Valley (KRBFTF 1991).

In addition, the advent of the hydroelectric projects on the Klamath River by Copco enabled farmers to purchase electricity to pump water directly from the rivers or from ground water instead of having to develop gravity-fed long ditches (KRBFTF 1991).

4 From the manner of presentation in the KRBFTF report, I believe this is non-Project land.
Even with all the irrigation, sometimes there was not enough water, and some farmers had to
dry-farm or sub-irrigate (KRBFTF 1991). Finally, there were some crops in both valleys that
farmers continued to dry-farm by choice, regardless of the irrigation systems (KRBFTF 1991).

After the turn of the century, Siskiyou County supported 30,000 sheep grazing on the hillsides
and an additional 50,000 cattle being raised on rangelands. In addition, both sheep and cattle were
often pastured in Forest Reserves (later called National Forests).

As when you speak of the Upper Basin, ultimately you will also speak of droughts – too little
water, so when you speak of the Lower Basin, ultimately you will also speak of floods – too much
water. While I have not tried to verify the total number of floods in the period 1900-1969, I have
found mention of floods in 1900, 1926, 1934, 1937, and the extreme floods of 1955 and 1964. As
farmland became more productive and valuable, the damages caused by each flood became less
tolerable. Eroded streambeds; debris deposited everywhere; equipment, buildings, crops, irrigation,
dams, diversions destroyed (KRBFTF 1991).

In summary, then, technological and infrastructural improvements enabled agriculture and
ranching to expand exponentially in the Klamath Basin. The Klamath Reclamation Project and
private irrigation works changed the hydrography of the Klamath Basin, providing irrigation to
farmlands. Hydroelectric projects provided electricity to pump water directly to farmlands. The
railroad opened market opportunities outside the Basin to farmers and ranchers. Sprinklers and
fertilizers came to replace flood-irrigation. Thanks to these technological and infrastructural
improvements, Project agriculture and ranching expanded to about 240,000 acres and non-Project
agriculture and ranching expanded to around 175,000 acres in the Upper Basin and around 100,000
acres in Siskiyou County in the Lower Basin. Just to give a sense to the scope of this expansion, it is
instructive to remember that at the time of the Gold Rush in 1848, there were no acres of agriculture
and ranching anywhere in the Basin.

Of course, the above details do not tell the story of people who came to have by 1969
generations’ worth of blood, sweat, and tears invested in the land they saw themselves as having
turned from unproductive wilderness to productive farm and range land. It is hard to find words
strong enough to express the depth of the bond felt by these farmers and ranchers to their land and
to the ways of life they have constructed around their land.

Dry-farming refers to relying only upon rainfall without any additional irrigation, and sub-irrigation refers to
relying upon rainfall and a less than complete amount of irrigation.
1.3 The Timber Industry

The Timber Industry as a Whole

I estimate that private and federal forestlands cover about 74% of the land area in the Klamath Basin.\(^6\) And of those forestlands, I estimate that 29% are privately owned and 71% are publicly managed by the U.S. Forest Service.\(^7\) In general, it can be said that the private forestlands are areas that are both more easily accessible and closer to infrastructure that enables transportation to markets, and that the public forestlands are areas that are more remote and thus less readily accessible (KRBFTF 1991).

The 1891 Forest Reserve Act created the first public forestlands, which were administered by the General Land Office (GLO), the precursor to the Bureau of Land Management. In 1905, Congress passed an act establishing the U.S. Forest Service, and transferred the administration of the national forest reserves from the GLO to the Forest Service. In 1907, the forest reserves were renamed National Forests.

At the same time as President Theodore Roosevelt was establishing the Lower Klamath National Wildlife Refuge in the Klamath Basin, he also established five National Forests (NF) in the Klamath Basin: in 1904, the Modoc NF in the Upper Basin; in 1905 the Fremont NF in the Upper Basin and the Klamath NF and the Shasta NF in the Lower Basin; and in 1907 the Trinity NF in the Lower Basin. In 1947, the Six Rivers NF was established in the Lower Basin from parts of the Klamath, Trinity, and Shasta NFs. In 1954 the Shasta and the Trinity NFs were administratively combined into the Shasta-Trinity NF. In 1961, the Winema NF in the Upper Basin was created from lands acquired by virtue of the 1954 termination of the Klamath Tribes (a thorny topic with which I will deal in detail below in the section about the Tribes). In 2002, the Fremont NF and the Winema NF

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\(^6\) There is a blizzard of numbers about land area in the Klamath Basin, but within that blizzard I have been unable to find a number that says definitively what the proportion of forestlands is of the land area in the Klamath Basin. Therefore, I have been forced to make the best estimate that I can. U.S. NRCS (2004) says that (1) Total land acreage in the Klamath Basin is 10,080,800 acres [yes, I know that this is slightly different by 40,445 acres (63 sq. miles) from the total of 10,040,355 that U.S. NRCS (2002) says and which I used in my section on Geography, but I am willing to live with this tiny difference, especially given that I will be calculating at the order of millions]; (2) Total Private Forestlands in the Klamath Basin is 2,184,000 acres; and (3) Total Public land (Federal/State/Tribal) in the Klamath Basin is 6,335,800 acres. Included within the Total Public Land acreage are the National Forest forestland acres managed by the U.S. Forest Service. The U.S. Forest Service’s 2005 Briefing Paper states that they manage 5.3 million acres in the Klamath Basin. Putting this information together (and rounding to the least accurate level) yields Forestland (2.2 million acres Private + 5.3 million acres Federal) of 7.5 million acres, Total Land Area of 10.1 million acres, and Private + Federal Forestland as 74% percent of Total Land Area.

\(^7\) Using the numbers from the previous footnote, 2.2 million acres Private is 29% of estimated 7.5 million acres Total Private + Federal Forestland, and 5.3 million acres Federal is 71% of estimated 7.5 million acres Total Private + Federal Forestland.
were administratively combined into the Fremont-Winema NF. The Forest Service in 2005 stated that they manage 5.3 million acres in the Klamath Basin – which translates into an estimated 53% of the land area in the Klamath Basin.\(^8\)

Improvements in equipment and in transportation infrastructure in the 20\(^{th}\) century greatly enhanced the capability of the timber industry to harvest timber, and to mill and market their products. At the turn of the century, men wielded axes and handsaws. To get the felled trees from the harvest area to the mill was no small feat. Constructing roads and skid roads was difficult and expensive (Bearss 1981). Hauling logs over roads and skid roads was initially done by teams of oxen and horses, but by the 1920s, steam donkeys and bull donkeys – sleds upon which were mounted engine-powered winches with cables – had replaced the oxen and horses (Bearss 1982g).

“It was inevitable, as the logging sites moved farther away from the mill, that railroads should enter the picture” (Bearss 1982g, 6). Logging railroads were laid like varicose veins throughout forestland to move logs from the cutting site to the water’s edge. Logs were stored in rivers as they awaited transit to and/or production in the mills. Logs were floated down rivers, formed at the mouth into huge rafts holding several million board-feet of timber, and floated along the coast to the mills.

“Power saws were introduced in the early 1930s, and by 1936 their use was general. After World War II, ...bulldozers were used to build roads into the logging areas, and trucks and trailers to speed the logs to the mill” (Bearss 1982g, 7). Where there was no road, logs were still floated down rivers.

Starting in 1932, during the Great Depression, the Civilian Conservation Corps (CCC) constructed logging and fire roads in National Forests, National Parks, and other public lands – allowing timber companies to reach previously unharvestable areas (KRBFTF 1991).

Once the logs reached the mills and were formed into marketable products, access to markets was enhanced by the network of highways and railroad lines that had expanded significantly throughout the U.S. by the end of the 1920s.

Demand for timber waned during the Great Depression, and then waxed dramatically during and after World War II. The technological improvements in equipment and transportation infrastructure enabled the timber industry to meet this demand with ease, and the board-feet of timber harvest increased dramatically.

\(^8\) 5.3 million acres Public forestland managed by the U.S. Forest Service is 53\% of the 10.1 million total acres in the Klamath Basin (see previous two footnotes).
With respect to harvesting protocols on private lands, clearcutting was a common practice before about 1930, when ‘donkeys’ and railroads were usually used in hauling the timber. Between 1930 and 1960, selective cutting was the general practice, when tractors and trucks began to be used. Starting in about 1960, clearcutting of the entire stand became the predominant method for primarily economic reasons (KRBFTF 1991).

“Despite warnings and some congressional rumblings in the early 1920s, federal and state governments took no action to restrain private timber-harvesting practices, nor did they establish policies to stabilize timber-dependent communities” (Robbins 1985, 416). “U.S. Forest Service officials led the struggle in the 1930s to attack the social problems associated with excessive timber harvests. ...[The] agency showed special concern for the stability of timber-dependent communities...[and] the effect of [the] present ‘cut-out and get-out’ policy upon families and communities” (Robbins 1985, 418-419). The Forest Service recommended sustained yield rather than timber depletion. Planning councils were formed by states; they outlined sustained-yield programs, but no one did anything about them.

“In the midst of the wartime effort to increase [timber] production, the warnings continued. The Forest Service again singled out the Pacific Northwest [for engaging in destructive cutting practices, which would inevitably cause many communities to suffer.] ...Words of caution, however, meant little to lumbermen who were operating cost-plus contracts during the war. For those districts in the region with large stands of old growth timber, the supply problem lay somewhere in the future” (Robbins 1985, 420).

In the 1940s in the Pacific Northwest, California, Oregon, and Washington all passed forest practice acts. Oregon passed its Forest Conservation Act in 1941. It required reforestation of clearcut lands through a variety of options and collected fines from those who did not follow the law to cover state expenses of reforestation. California passed its Forest Practice Act in 1945. It was essentially ineffective; its intent was to protect the productivity of the timberlands and not other resources; it had no penalizing authority; it could only ‘educate.’ Whatever attempts were made to advocate stream protection were always defeated (KRBFTF 1991).

Henry K. Trobitz, in recollecting his 32 years of service from 1950 to 1982 with the Simpson Lumber Company in California, remembered the 1950s as a period of tremendous growth in the timber industry, of “relative freedom from regulations and a generally disinterested public. ...As would be expected, there was an increase in dust, smoke, noise and sawdust associated with the industry accelerating activities” (Trobitz 1982, 1-2).
The Timber Industry in the Lower Basin

The private timberlands in the Lower Basin originally developed on the more accessible tracts, which were nearest the two ends of the Klamath Lower Basin with access to interstate highways or railroads (KRBFTF 1991).

At the eastern end, Siskiyou County had been serviced since 1887 by the Siskiyou Route of the Southern Pacific Railroad, and by both the Siskiyou Route and the Shasta Route since 1926. In addition, major highways laid in the 1920s linked the county north and south, and by 1934, automobile roads paralleled the Klamath, Salmon, Scott, and Shasta Rivers, plus nine small creek basins (KRBFTF 1991).

In the first quarter of the 20th century, logging grew as an economic mainstay of Siskiyou County (SiskiyouHistory.org 2002b). By 1915, large tracts of the national forests in Siskiyou County were being opened up for lumbering operations (KRBFTF 1991).

At the western end, at the turn of the century, Del Norte and Humboldt Counties were serviced by maritime shipping lines, from Humboldt Bay in Humboldt County and Crescent City in Del Norte County. In 1907, a rail line was completed that directly connected Eureka on Humboldt Bay with San Francisco and market opportunities, and thus fueled the expansion of the North Coast timber industry in Del Norte and Humboldt Counties. In the 1920s, the Redwood Highway – later US 101 – was constructed running along the coasts of Del Norte and Humboldt Counties and to points north and south. In the beginning, there was no bridge across the Klamath River; traffic had to use a ferry to cross the river. A bridge was finally completed over the mouth of the Klamath River in 1926 (Pierce 2002).

“Immediately following the end of World War II, the lumber industry of Del Norte County, which had died prematurely when Hobbs, Wall Co. shut down in 1939, received ‘a most effective shot in the arm’” (Bearss 1981, 278). And timber resources were quickly developed around Humboldt Bay in Humboldt County. “By 1914, 8.3 billion board feet of timber had been harvested and shipped from Humboldt Bay” (HBWAC 2005, 20).

Railroads were constructed in all of the major Humboldt Bay drainages, opening up the entire Humboldt Bay watershed to timber companies. With the coming of diesel equipment at the end of World War II, many of the earlier forestry practices changed. Miles of roads were constructed throughout the watershed, often with stream crossing called Humboldt Crossings that did not allow for fish passage and failed during winter rains. Humboldt crossings were built of logging debris (unmarketable logs) covered with dirt. (HBWAC 2005, 23)
Not all of the lower basin was opened up during the 1950s. As of 1953, in the southwest half of the lower basin, much of the timberland was untouched, due to rugged terrain, inaccessible timber, and lack of transportation (KRBFTF 1991).

Even with all the improvements in equipment and transportation infrastructure, logs continued to be rafted down the Klamath River from its confluence with the Shasta River to the mouth. During the 1920s and 1930s, many difficulties were experienced in rafting logs out of the Klamath because of the breakers and tides pounding on the estuary (Bearss 1981). Once clear of the estuary, huge swifter rafts were constructed, holding several million board-feet of timber. They were towed out to sea and down the coast to the mills in Eureka (Bearss 1981).

“Rapid expansion of the logging industry on the lower Klamath in the post World War II years caused serious problems. By the early 1950s, logging and rafting operations on the river had reached a point where sports fishermen took action” (Bearss 1981, 281). “The sports fishermen maintained that the loggers, in using the lower 30 to 35 miles of the Klamath for rafting logs downstream, had contaminated the waterway with bark from the logs to an extent that the water was becoming untenable for fish life” (Bearss 1981, 285).

The members of the sports fishing community tended to be men connected directly or indirectly to the halls of power. In 1955, they were able to get a bill introduced in the California legislature to prohibit log rafting on the river between July 15 and October 15 (KRBFTF 1991) and to get the California Assembly’s Interim Committee on Fish and Game to hold visits and hearings about the issue.9

“In late December 1955, four months after the Eureka hearings, disastrous floods on the lower Klamath destroyed the log dumps, reloads, and weirs. The banks were stripped clean, placing the loggers in the position of starting from ‘scratch.’ ...The committee accordingly urged that spokesmen for the loggers and fishermen continue to explore means of cooperation with a view to further eliminating and minimizing areas of friction between the two groups” (Bearss 1981, 295). The committee concluded that there was no need for legislative action.

Henry Trobitz recollected that “in the case of bark in the Klamath River due to log rafting, it was discovered that bark in the river peaked in the morning when fishermen were going upriver, causing mechanical problems in their outboard motors. This was caused by the loggers bulldozing the bark on the river landings into the river as a first order of business in the morning. Once this practice

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9 In 1934, the sportsfishermen were successful in getting commercial fishing banned in the Klamath River. I will deal with this situation below in the sections on the fishing industry and on the Tribes.
Table 8.1. Timberland and Timber Production by County

<table>
<thead>
<tr>
<th>Counties</th>
<th>Timberland as % of total county area</th>
<th>% of Timberland</th>
<th>Timber production from both public and private timberlands in millions of board-feet (mmbf)</th>
<th>Timbers</th>
<th>Privately owned</th>
<th>Publicly managed</th>
<th>early in period</th>
<th>peak in period</th>
<th>end of period</th>
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<tbody>
<tr>
<td>Lower Basin</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Siskiyou</td>
<td>54% (^{a})</td>
<td>29% (^{a})</td>
<td>71% (^{a})</td>
<td>1948</td>
<td>292</td>
<td>606</td>
<td>1965</td>
<td>1969</td>
<td>517</td>
</tr>
<tr>
<td>Del Norte</td>
<td>50% (^{c})</td>
<td>51% (^{c})</td>
<td>49% (^{c})</td>
<td>1920</td>
<td>23</td>
<td>350</td>
<td>1964</td>
<td>1969</td>
<td>270</td>
</tr>
<tr>
<td>Humboldt</td>
<td>65% (^{f})</td>
<td>81% (^{f})</td>
<td>19% (^{f})</td>
<td>1947</td>
<td>481</td>
<td>1570</td>
<td>1959</td>
<td>1969</td>
<td>1166</td>
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<tr>
<td>Trinity</td>
<td>52% (^{h})</td>
<td>34% (^{h})</td>
<td>66% (^{h})</td>
<td>1948</td>
<td>133</td>
<td>439</td>
<td>1959</td>
<td>1969</td>
<td>248</td>
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<tr>
<td>Upper Basin</td>
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<td></td>
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<tr>
<td>Klamath</td>
<td>61% (^{i})</td>
<td>32% (^{i})</td>
<td>68% (^{i})</td>
<td>1920</td>
<td>120</td>
<td>692</td>
<td>1942</td>
<td>1969</td>
<td>483</td>
</tr>
<tr>
<td>Modoc</td>
<td>26% (^{m})</td>
<td>36% (^{m})</td>
<td>64% (^{m})</td>
<td>1948</td>
<td>210</td>
<td>223</td>
<td>1950</td>
<td>1969</td>
<td>76</td>
</tr>
</tbody>
</table>

\(^{a}\) Note: From California DF (1998), in 1996 in Siskiyou County, total public timberland was 1.560 x 10\(^6\) acres and total private timberland was 628 x 10\(^3\) acres, for a total of 2.188 x 10\(^6\) acres. From U.S. Bureau of the Census (2000e), total county land area was 6286.78 sq. mi. which converts to 4.024 x 10\(^6\) acres.

\(^{b}\) Note: In the Colclasure, Moen, and Bolsinger (1986) document, the columnar data for Shasta and Siskiyou counties were reversed. I verified the data for Siskiyou County by consulting the documentation that the authors originally consulted.

\(^{c}\) Note: From California DF (1998), in 1996 in Del Norte County, total public timberland was 157 x 10\(^3\) acres and total private timberland was 163 x 10\(^3\) acres, for a total of 320 x 10\(^3\) acres. From U.S. Bureau of the Census (2000e), total county land area was 1007.81 sq. mi. which converts to 645 x 10\(^3\) acres.

\(^{d}\) Note: Data from Bearrs 1981.

\(^{e}\) Source: Data from Waddell and Bassett 1996.

\(^{f}\) Note: From California DF (1998), in 1996 in Humboldt County, total public timberland was 277 x 10\(^3\) acres and total private timberland was 1.210 x 10\(^6\) acres, for a total of 1.487 x 10\(^6\) acres. From U.S. Bureau of the Census (2000e), total county land area was 3572.49 sq. mi. which converts to 2.286 x 10\(^6\) acres.

\(^{g}\) Source: Data from Waddell and Bassett 1996.

\(^{h}\) Note: From California DF (1998), in 1996 in Trinity County, total public timberland was 701 x 10\(^3\) acres and total private timberland was 361 x 10\(^3\) acres, for a total of 1.062 x 10\(^6\) acres. From U.S. Bureau of the Census (2000e), total county land area was 3178.61 sq. mi. which converts to 2.034 x 10\(^6\) acres.

\(^{i}\) Source: Data from Colclasure, Moen, and Bolsinger 1986.

\(^{j}\) Note: From Azuma et al. (2002), in 1999 in Klamath County, total public timberland was 1.557 x 10\(^6\) acres and total private timberland was 746 x 10\(^3\) acres, for a total of 2.303 x 10\(^6\) acres. From U.S. Bureau of the Census (2000e), total county land area was 3178.61 sq. mi. which converts to 2.034 x 10\(^6\) acres.

\(^{k}\) Source: Data from Colclasure, Moen, and Bolsinger 1986.

\(^{l}\) Note: From California DF (1998), in 1996 in Modoc County, total public timberland was 427 x 10\(^3\) acres and total private timberland was 241 x 10\(^3\) acres, for a total of 668 x 10\(^3\) acres. From U.S. Bureau of the Census (2000e), total county land area was 3944.10 sq. mi. which converts to 2.524 x 10\(^6\) acres.

\(^{m}\) Source: Data from Colclasure, Moen, and Bolsinger 1986.
ceased, the problem was resolved, avoiding the possibility of closing down log rafting on the Klamath” (Trobitz 1982, 3).

In 1956, the California Department of Fish and Game published a booklet about the irreparable damage done to the salmon and steelhead fisheries by the bad logging practices. They noted that under the California Forest Practices Act, the lumber industry had been permitted to police their own industry, and accordingly were expected to adopt rules and guidelines favorable to their own interests. “One of the greatest weaknesses of the Forest Practices Act, which sportsmen continually harked to, was that there was no provision or responsibilities for protection of the streams and wildlife” (Bearss 1981, 297).

The Timber Industry in the Upper Basin

The timber industry had a long history in the Upper Basin brought forward from the 19th century. Miles upon miles upon miles of logging railroads were laid in the forests of the Upper Basin. However, improvements in transportation infrastructure came much later to the Upper Basin than they did to the Lower Basin.

While the Siskiyou Route that serviced the Lower Basin was completed in 1887, the Shasta Route was not begun until 1909 and not completed until 1926. The Shasta Route enabled the expansion of the timber industry in the Upper Basin, and the revenue from the timber industry enabled the railroad to lay the Shasta Route through territory that was sparsely settled and would not ordinarily have supported the laying of a line. Immediately upon its completion in 1926, the Shasta Route became the primary route for the north to south rail traffic because it was a significantly easier route for the trains. In 1929, the Modoc Route was completed, by piecing together track from 3 different railroad companies, running from Klamath Falls down to the Overland Route at Fernley, NV. Its sole purpose was to provide a short cut for forest products from southern Oregon to markets east and west. Its heyday was during the construction boom after World War II (Bowden and Dill 2002). In addition, by the end of the 1920s, US 97 highway linked the Upper Basin north and south.

Immediately upon the completion of the first leg of the Shasta Route from Weed, CA, to Klamath Falls, OR, the pace of logging in the Upper Basin increased to meet the increase in marketing opportunities provided by the railroad line. By 1911, the line was extended to Chiloquin, OR, in the heart of the Klamath Tribes Reservation. “With the arrival of the railroad in 1911, reservation timber became extremely valuable. The economy of Klamath County was sustained by it for decades” (Klamath Tribes 1999-2003a, 2).10 By 1912, it reached north to Kirk, OR, and by 1915, it

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10 I will deal with the idiosyncrasies of the sale of reservation timber in the section below about the Tribes.
40 trains per day carrying daily shipments of around a million and a half board feet of logs passed through Chiloquin enroute to Klamath Falls and its mills (Chiloquin Visions 2008).

Routinely, logs were stored in the Klamath River immediately below Klamath Falls. “Log storage on the Klamath River below Klamath Falls was greatly reduced after fish kills in the late 1960s, but sections of the river above US 97 are still used for log storage today [1993]” (U.S. FWS 1993, 33).

The 1960s – Harbinger of Changes to Come

Henry Trobitz, in his recollections of his 32 years in the timber industry, recounted that “1960-1969 was heralded as the ‘golden 60’s.’ This was to be a decade of unparalleled forest products business. It fell miserably short of expectations” (Trobitz 1982, 4). Instead, he recalls, the 1960s were a period of transition. On the one hand, business in general declined from its highs in the 1950s. “Many small timber-poor operators closed their doors” (Trobitz 1982, 4). And on the other hand, the heretofore generally disinterested public began to take an interest.

In the Klamath Basin, “[t]he devastating effects of the 1964 flood, in the North Coast, definitely intensified public concerns about the relationship of forest practices to soil erosion and stream and fisheries damage” (KRBFTF 1991, Chapter 2, 26). “The 60’s were a period of change in the public interest with what was going on in the harvesting of timber and the impact on the environment as well as a period of marshalling of political, public and lobbying [activities which] forced [the timber industry] to institute changes” (Trobitz 1982, 5). “The 60’s were...a period of transition from the noninterference philosophy to regulation as known today” (Trobitz 1982, 4).

In 1960, Congress passed the Multiple Use and Sustained Yield Act which gave formal recognition to all types of resource uses in the management of the national forests. Timber production was recognized as one of the uses along with watersheds, fish, recreation, and wildlife habitat (KRBFTF 1991; CRS 2005).

In summary, then, the expansion of the timber industry in the Klamath Basin was grounded upon the dominant cultural premise of the times that whatever the market wanted, the market got, and was fueled by technological improvements in equipment and transportation infrastructure that enabled the industry to meet the booming demands during and after World War II with timber harvests that increased prior output by everything from a modest 50% to a staggering 1000%.

Government agencies warned about the consequences of market-driven timber depletion and bad logging practices for both the environment and the timber-dependent communities, but theirs
were voices in the wind – until the 1960s when the heretofore generally disinterested public began to take an interest in the environmental consequences of forestry practices. By 1969, the stage was set for things to change for the timber industry.

The phrase ‘timber-dependent community’ does not tell the story of identities that were forged in a way of life wrapped around everything that was involved in felling trees, moving them, milling them, and getting them to market. As deeply bonded as were farmers and ranchers to their land and to the ways of life they had constructed around their land, so were loggers deeply bonded to their land and to the ways of life they had constructed around their land.

1.4 Mining

The Mining Industry

Both logging and precious-metal mining are characterized as boom-and-bust industries, but it seems to me that, from the perspective of the industries, the characters of the boom-and-bust are different. For the logging industry, the boom is driven by demand, price follows demand, and the bust comes with a reduction in demand. For the precious-metal mining industry, the boom is driven by price, demand follows price, and the bust comes with a reduction in price. In both instances, capital investment will increase when the boom promises sufficient profit to make the investment worth it, and capital investment will decrease when the bust promises insufficient profit to make the investment worth it. Both industries fluctuate dramatically and frequently between boom and bust.

From the perspective of the precious-metal-mining- and timber-dependent communities, boom means jobs, and bust means loss of jobs and comes to their community when the industry either depletes the resource located near their community and moves on to the next stand of timber or the next deposit of minerals, or closes down in the face of insufficient returns on their investment.

In the Klamath Basin, mining is a Lower Basin industry; the epicenter is predominantly western Siskiyou County, with Trinity County following second, and Del Norte and Humboldt Counties following third with their modest contributions. Precious-metal mining – predominantly gold, secondarily silver – in the Klamath Basin followed the cycle that was typical of other gold-bearing regions in California (Winthrop, Gray, and Winthrop 1987). The Gold Rush brought hordes of individual miners who wanted to get rich quick and leave. The easy-to-get surface placer deposits were rapidly exhausted. The hard-to-get deeper placer and lode deposits required more equipment, which required more capital than the individual miner had at his disposal. Enter companies with urban investors who were able to fund the capital-, water-, and labor-intensive operations necessary to reach the hard-to-get deposits. The individual became an employee of a mining company.
The predominant mining methods used by the corporately-owned mines were first hydraulic mining, which had its heyday from the 1860s through the mid 1880s, though it continued to be used until it was prohibited in the 1970s, followed by bucket line dredge mining, which by the first decades of the 20th century had become efficient and profitable (Costello, Herbert, and Selverston 2007).

By the turn of the century, more than four-fifths of the total production of gold and silver in California was from corporately-owned mines (Winthrop, Gray, and Winthrop 1987). For the last quarter of the 19th century, mining and gold were the economic mainstays of Siskiyou County (SiskiyouHistory.org 2002a). “Gold production reached a peak in 1894, but by 1900 many of the mining operations (in Scott Valley at least) had closed down due to low profits” (KRBFTF 1991, Chapter 2, 35). Gold production in California declined steadily from the turn of the century through the 1920s. Locally, even though expectations of cheap power (Copco No. 1 and No. 2 powerplants were completed in 1916 and 1924 respectively) and cheap motor transportation (mass-produced vehicles plus network of roads by the 1920s) helped revitalize the local mining industry in the early 20th century to some degree (KRBFTF 1991), in the first quarter of the 20th century, logging plus agriculture and ranching replaced mining and gold as the economic mainstays of Siskiyou County (SiskiyouHistory.org 2002b). The boom was over (Winthrop, Gray, and Winthrop 1987).

1929 the stock market crashed. The fullest effect of the 1929-1941 Depression was felt in 1932-1933 (Winthrop, Gray, and Winthrop 1987). In June 1933, the U.S. abandoned the gold standard, and in 1934, the price of gold skyrocketed from $20.67 to $35.00 a fine ounce (Albers 1966). “[I]n a somewhat anomalous reversal of national and state economic trends [during the Depression], gold mining underwent a boom” (Winthrop, Gray, and Winthrop 1987, 12). In California, 20,000 Depression miners came to the mountains throughout the state to try to scratch out a living through gold prospecting (Winthrop, Gray, and Winthrop 1987). Put together the increase in price with the decrease in cost of labor, and gold production in the Klamath Basin began to boom again, rivaling that of the Gold Rush era, and peaking in 1941 (Albers 1966; Costello, Herbert, and Selverston 2007). Dredging companies were very active throughout the Salmon and Scott Rivers and their tributaries (KRBFTF 1991). In 1940, Siskiyou County was one of the largest gold and precious metals producing counties in California, responsible for 4% of the total gold and precious metals production in the state, largely from placer gravels (Costello, Herbert, and Selverston 2007).

World War II resulted in a very sharp decline in gold production (Albers 1966). “All but a few of California’s gold mines were shut down late in 1942 by Limitation Order L-208 of the War Production Board, which remained in effect until July 1, 1945” (Averill 1946, 229). Prior to the
Limitation Order there were a great number of companies working in the Klamath Basin. In Bulletin 135 of the California Division of Mines and Geology, Averill presented information about a sampling of 25 entities in Siskiyou County and 28 entities in Trinity County engaged in dredging or hydraulicking (Averill 1946). Most all closed down under the Limitation Order. In Siskiyou County, many of the massive bucket line dredges closed down; hydraulic mining continued in the Salmon River area until it was prohibited in the 1970s.

After World War II, gold production was slow to recover because of the high cost of labor (KRBFTF 1991). According to data gathered from payroll records and published in County Business Patterns books, in 1948, mining companies in Siskiyou County had but 75 employees and in Trinity County had but 6 (U.S. Department of Commerce 1949). By 1967, in Siskiyou County there were but 2 establishments reporting, each of which had between 1 and 3 employees each, and in Trinity County there was but 1 establishment reporting, which had between 8 and 19 employees (U.S. Department of Commerce 1968).

**Mining as Survival**

But this story of the mining industry in the Klamath Lower Basin does not tell the whole story about mining in the Klamath Lower Basin. “Well outside the mainstream of American society, a way of life developed in Siskiyou County which allowed for survival on relatively low incomes, gleaned through a variety of cash earning activities. A self-sufficient poverty, this way of life provided a cultural buffer against the fluctuations in work available through the major industries” (Winthrop, Gray, and Winthrop 1987, 18). “This pattern has, perhaps, been accentuated in the western part of the county where the rugged terrain has precluded the development of many small farms or ranches [such as exist in the eastern part of the county]” (Winthrop, Gray, and Winthrop 1987, 27). For residents of the western part of the county, gold mining was a persistent source of income and part of the annual routine (Winthrop, Gray, and Winthrop 1987). The gold the residents found provided them with the means to buy store-bought goods which the environment could not provide through hunting and fishing and which they would otherwise not have been able to buy. The measure of gold production for these individuals was not the same as the measure for the mining companies; where, for the mining companies, the measure was price and profit, for the individual miner, the measure was survival.

During the Depression, on the heels of the wave of the 20,000 Depression miners who immigrated to the mountains of California to scratch out a living, the number of small placer mines increased significantly throughout California (Costello, Herbert, and Selverston 2007). A map of
northern California in Bulletin 135 of the California Department of Mines and Geology states that in 1932 there were 1,550 individuals working small placer mines in Siskiyou County and 628 individuals working small placer mines in Trinity County (Averill 1946). The County and City Data Book for 1940 states that in Siskiyou County, there were 899 individuals who had declared themselves in the U.S. Census as workers employed in mining, including self-employed individuals, and in Trinity County, there were 511 workers employed in mining (U.S. Bureau of the Census 1947). By 1950, these numbers had declined even further to 198 and 90 in Siskiyou and Trinity Counties, respectively (U.S. Bureau of the Census 1952).11

Of the individual miners, there were those who staked claims, often lived on them, and constructed dams, diversions, hoists, and other such low-tech methods requiring minimal investment to aid in working their claim (Costello, Herbert, and Selverston 2007). There were also ‘snipers’ – a local term for those who did not file claims and who moved “about the streams and rivers, using simple hand tools such as the rocker, pan, sluice box, pick and shovel” (Winthrop, Gray, and Winthrop 1987, 22).

In summary, then, there are two patterns of mining in the Klamath Lower Basin – the usual pattern of corporately-owned mining companies going through cycles of boom-and-bust and the unique pattern of individuals routinely depending upon small-scale placer gold mining as a means of self-sufficiency against the cycles of boom-and-bust, especially in the western part of Siskiyou County where the rugged terrain precludes dependence upon small farms and ranches. As might be expected, the identity wrapped around mining as a way of life for individuals in Siskiyou County is deeply rooted – and reveals itself to this day. For example, the New 49’ers Club in Happy Camp, CA, has been in existence since the 1980s, makes its more than 60 linear miles of mining claims on the Klamath, the Salmon and the Scott Rivers as well as on Indian, Elk, and Thompson Creeks (New 49’ers Club - #1 n.d., New 49’ers Club - #2 n.d.) available to its members who prospect for gold both recreationally as well as commercially.

1.5 Fishing

In what is becoming a familiar story in this section, improvements in equipment and in transportation infrastructure in the 20th century fueled the exponential expansion of the ability of the

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11 It is interesting to compare in Siskiyou and Trinity Counties respectively, the 198 and 90 who declared themselves in the 1950 Census as employed in mining, with the 75 and 6 reported by companies in 1948 as their employees. It would not seem unreasonable to conclude that more individuals were doing this on their own than as employees of mining companies.
fishing industry to catch fish and to process and market their products – and to join the brotherhood of boom-and-bust along with the mining and the timber industries.

The California Fishing Industry

In California, at the turn of the century, equipment was by hand, and power was by wind and by hand. Commercial fishing was predominantly in-river, centered on canneries located at the mouth of a river. Ocean fishing was modest, limited by the capacities of wind- and hand-power. Recreational fishing was on the pier and on the shore, limited to local sites by the absence of transportation equipment and infrastructure that might have enabled either ocean sport fishing or easy travel to more distant in-river sport fishing sites.

California Commercial Ocean Fishing. “Within 25 years [of the turn of the century]...a combination of events dramatically altered a rather sleepy industry into an industrialized giant...By 1915, most of the fishing vessels on the California coast were gasoline powered. Trolling with gasoline engines was far more efficient than with sails” (Love 2006, 570). As the demand for fish increased, but the supply of fish became depleted close to port, larger vessels were constructed that could carry larger loads and could work fishing grounds further – and increasingly further – from port (Love 2006). The mechanization of fishing equipment, the improvement of on-board fish storage capabilities, and the advent of the radio-telephone dramatically improved the ability of commercial fishing boats to catch and store fish (Bearss 1981; Love 2006). Improvements in canning technology allowed processors to handle greater harvests (NRC 2004). And “efficient rail service and the advent of inexpensive freezing and icing facilities began to make it possible to ship fresh and fresh-frozen fish from California throughout the United States and even to Europe” (Love 2006, 569).

“Three resources only – salmon, tuna, and sardines – [bore] the brunt of the industry’s assault as it mechanized and took to the open ocean. Emboldened by opportunity and the apparent boundlessness of the sea’s wealth, fishers, processors and their customers downstream in the economy [tore] at the fisheries with little thought to their capacity to sustain production either over the long term or in the face of random ecological change” (McEvoy 1986, 150).

With respect to the demand for fish, World War I “had a profound effect on California’s [commercial] fisheries. ...[W]hile there had been a handful of canneries in California in 1910, by 1919 there were 44. ...In addition, in the effort to increase landings, a number of fishing regulations were temporarily relaxed” (Love 2006, 570). Demand did not seem to decrease during the Depression
years from 1929-1941, and the first impact of World War II “was to increase the demand for food, for labor, and for seagoing boats. ...To everyone’s surprise, salmon harvests took a remarkable jump in 1944, and commercial landings for the next three years were the largest on record” (McEvoy 1986, 151-2). “By the late 1940s, ocean [salmon] trolling had developed into one of the state’s major industries, having accounted for a catch of approximately 1,433 to 5,179 tons of salmon annually since 1916” (Bearss 1981, 240; PWA 1994).

However, in the early 1950s, salmon landings declined back down to previous levels (McEvoy 1986). And in the 1960s, California’s domestic fisheries continued to decline, although “coastal salmon ports [improved] through the 1960s, ...largely on the strength of increased harvests of coho salmon.... Yields of the more valuable chinook variety fell back to the low levels of the 1930s” (McEvoy 1986, 207).

**California Recreational Ocean Fishing.** “Through the end of the nineteenth century, relatively few average anglers fished from boats. Indeed, before World War I, pier and surf fishing were the choice of the masses” (Love 2006, 580). The recreational ocean fishing industry had its beginnings just before World War I. “The economic upswing that presaged the United States entrance into World War II added to the rising popularity of marine recreational angling and it was World War II that caused its abrupt halt. ...After Pearl Harbor, all [recreational ocean fishing vessels] were shut down and most did not return into operation until after the end of the war. ...However, within a few years, recreational marine angling...began a boom that lasted for decades. ...Recreational angling became a very big business after World War II, the result of a burgeoning population and much better fishing tackle” (Love 2006, 583-584). “Before 1950, few sportsmen fished for salmon in the ocean. ...This changed in the 1950s with the introduction of and the popularity of glass, metal, and plastic boats that revolutionized the boat-building industry. ...These small craft ‘tended’ to outnumber the commercial boats and invaded coastal waters formerly fished exclusively by commercial trollers” (Bearss 1981, 268-269). “The ocean sport fishing boom continued through the 1960s. In 1970, it was estimated that ‘sport fishery has taken about 14 percent of the total number of salmon landed since 1950’” (Bearss 1981, 272, no footnote citation for quote provided in original, though it may be from California’s Living Marine Resources and Their Utilizations noted in a subsequent footnote).12

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The Salmon Fishery of the Klamath Lower Basin

All four sectors of the fishing industry participated in the salmon fishery of the Lower Basin.

**In-river and Ocean Commercial Salmon Fishing.** At the turn of the century, there were three canneries operating on or near the estuary at the mouth of the Klamath River (NRC 2004). “The Klamath Packing & Trading Co. found the years between 1894 and 1909 profitable. During the calendar year 1908, there were 6,500 cases of salmon shipped from the cannery aboard its gasoline-powered craft [which] made the run from Requa to Humboldt Bay, during favorable weather, with cases of fish which were transshipped to San Francisco” (Bearss 1982i, 2). “In the heyday of commercial salmon fishing on the Klamath, it was not uncommon during a good run for the netters, Indian and white, to bring 7,000 to 10,000 fish daily to the canneries. Seventeen thousand was the record catch in 1912. When several canneries were in operation, as many as 100 nets were in use. When the canneries had all the salmon they could handle for the day, a signal was given for the netters to cease operations” (Bearss 1982i, 2). “Between 1915 and 1928, an average of eighty-two boats harvested some 52,000 chinooks, or about 725,000 pounds, each year” (McEvoy 1986, 61).

With the proliferation of internal combustion engines, serious salmon fishing started in open water. By 1916, the fleet had extended south to Eureka and north to Crescent City (Pierce 2002; PWA 1994). “[B]y the mid-1920s ocean fishermen had begun operating out from Eureka, and were soon trolling off the mouth of the Klamath, where they took salmon in large numbers” (Bearss 1981, 337).

In his 1981 book, Bearss compiled from the annual reports of the Department of Commerce a table detailing the annual commercial catch in pounds off the northern coast of California from Point Arena north about 200 miles to the Oregon state line. The catch in this area would reflect the catch of Klamath River salmon. **During the Depression (1929-1941),** the salmon catch in this area averaged 3.0 million pounds per year, with a high of 3.9 million pounds in 1932 when the Depression was at its deepest, and unexpected lows in 1938 of 1.9 million pounds and in 1939 of 1.7 million pounds (Bearss 1981, table on pages 243-244).¹³

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¹³ 1929: 2,774,315; 1930: 2,750,560; 1931: 3,501,539; 1932: 3,940,754; 1933: 3,128,939; 1934: 3,356,047; 1935: 2,769,300; 1936: 3,449,900; 1937: 3,479,800; 1938: 1,853,700; 1939: 1,673,100; 1940: 3,369,500; and 1941: 2,413,400; averaged over 13 years = 2,958,527.
During World War II, the catch here mirrored the dynamics of the total California catch: a 74% increase in catch in 1944 (3.8 million lbs.) over 1943 (2.2 million lbs.), and even higher catches in 1945, 1946, and 1947 (Bearss 1981, table on pages 243-244). 14

In the years 1950-1954, the commercial catch in this area again mirrored the dynamics of the total California catch, declining to an average of 2.7 million pounds per year, which was less than the average during the Depression years (Bearss 1981, table on pages 243-244). 15 However, in 1955-1957, unlike the dynamics of the total California catch, the catch in this area spiked to new record highs, peaking at 6.3 million pounds in 195616 and then plummeted to a new record low in 1958 of 1.6 million pounds 17 (Bearss 1981, table on pages 243-244).

In the 1960s, while the California fisheries as a whole declined (McEvoy 1986), the coastal salmon catch improved dramatically. In the years 1960-1969, the commercial catch in this area averaged 4.2 million pounds per year (Bearss 1981, table on pages 243-244). In addition, 1964-1967 were peak years averaging 6.0 million pounds per year, with an all-time high of 6.9 million pounds in 1966 (Bearss 1981, table on pages 243-244). 18 Contributing to these peak years was a dramatic increase in the number of pounds of coho salmon caught in this area. “Before 1963, chinook salmon constituted the vast majority of salmon landed, but, between 1963 and 1973, coho salmon landings soared to 25% of the total, an increase that was coincident with artificial propagation programs in Washington and Oregon” (Bearss 1981, 240).

In California as a whole, the “terminal fisheries in the rivers gradually gave way to the ocean fisheries in importance; by 1915 ocean harvests exceeded California terminal harvests, and the last cannery on the Sacramento closed in 1919” (Pierce 2002, Part 7, 3). The terminal fisheries in the Klamath River had a different history. On January 1, 1934 – for reasons that are important and will be presented in detail below – the State of California banned in-river commercial salmon fishing in the lower Klamath, and as a consequence, the canneries at the mouth of the river closed down. Commercial ocean salmon fishing continued unabated in the waters outside the mouth of the Klamath.

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14 1943: 2,162,300 lbs; 1944: 3,762,100 lbs; 1945: 4,627,700 lbs; 1946: 4,544,000 lbs; and 1947: 5,868,600 lbs.
15 1950: 2,221,500; 1951: 2,002,400; 1952: 2,490,800; 1953: 2,949,800; 1954: 3,928,900; averaged over 5 years = 2,718,680.
17 1958: 1,599,000.
In-river and Ocean Recreational Salmon Fishing. “Recreational fishing on the Klamath River depended on access” (Pierce 2002, Part 7, 3). The new Redwood Highway was completed in 1923, though still bridge-less, traffic depending upon the ferry to cross the Klamath. “In the mid-1920’s several small canneries opened to cater to the hundreds of sportsmen lining the banks and trolling the waters of the estuary. A fisherman’s catch could be canned, including personalized labels, and saved for future use. The Bridge across the Klamath was finally completed in 1926” (Pierce 2002, Part 7, 4). “Postcards from the 1920s show fishermen lined up shoulder-to-shoulder along the sandspit” (Most 2006, 95).

Even though in-river commercial salmon fishing was banned in 1934, in-river recreational salmon fishing continued unabated. In 1936, 30,000 families vacationed in the Klamath-Trinity Basin (Pierce 2002). “Except for the World War II years with the gas and tire rationing, the lower Klamath through the 1930s and 1940s continued to draw an increasing number of sports fishermen to the area” (Bearss 1981, 266).

“In the mid-1950’s recreational fishing in the Klamath had only increased in popularity” (Pierce 2002, Part 7, 4). “During the period, July 15 to October 1, 1954, an estimated 15,000 salmon were taken by sportsmen on the reach of the Klamath between its mouth and the Douglas Memorial Bridge. In 1955-56, records document that in this same area from 1,200 to as high as 3,200 salmon were landed, daily, during the run” (Bearss 1981, 268). However, in the late 1950s, things began to change for the Klamath sports fishermen. “There was an acceleration in logging operations on the Klamath watershed in the mid-1950s, and, in the years 1958-60, the number of salmon declined drastically, and, on the best days, the number taken rarely exceeded 600” (Bearss 1981, 267). And in the 1960s, the take continued to be far short of the normal take (Bearss 1981).

Recreational ocean salmon fishing continued unabated in the waters outside the mouth of the Klamath, mirroring the boom of ocean sport fishing throughout California. As noted above, California Ocean Recreational Fishing was estimated in 1970 to have accounted for 14% of the total number of salmon landed since 1950 (Bearss 1981).

Fisheries Management

As happens so often with numbers, the rosy picture painted above by improving catch statistics masks the underlying story of increasing depletion of the salmon stock by environmental degradation exacerbated by overfishing – a story that sparked competing sectors of the industry to fling
accusations of overfishing back and forth, but did not spark efforts to address the environmental degradation.

From the perspective of overfishing, McEvoy asserted in 1986 that “[e]mboldened by opportunity and the apparent boundlessness of the sea’s wealth, fishers, processors and their customers downstream in the economy had torn at the fisheries with little thought to their capacity to sustain production either over the long term or in the face of random ecological change” (McEvoy 1986, 150).

From the perspective of environmental degradation, BOR in 2002 asserted that

Klamath Basin anadromous fisheries have declined precipitously since the early 1900’s. Normally, robust populations can withstand environmental perturbations and recover over time; however, this has not been the case for anadromous fishes in the Klamath River for the following reasons. Loss of fish habitat, problems with chronic and acute water temperatures and excessive nutrients, commercial over harvest, and climatic changes have resulted in declining populations of steelhead, chinook and coho salmon. The combination of timber management practices, agricultural practices, placer mining, water diversions in the Scott and Shasta River watersheds and the construction of hydroelectric dams appear to have individually, and cumulatively, caused significant reduction in spawning, rearing, and emigration habitat throughout the watershed. (U.S. BOR 2002, 87)

The first 50 years of the 20th century, with its upsurge in fisheries, brought the first large flurry of fisheries management activity (Love 2006). Government institutions, however, were ill-positioned not only to pay attention to the ancillary costs of growth (McEvoy 1986), but also to actually do anything that made a difference. Government institutions had developed in an earlier time when the promotion of economic progress was the key function of government (McEvoy 1986) and when the focus of an individual institution was on its sector of the world, disconnected from the other sectors. California built up the foremost marine research apparatus in the United States (McEvoy 1986). But, “even when there was virtual unanimity in the scientific community, particularly in the [California] Division of Fish and Game, regarding overfishing, economics ruled fisheries management” (Love 2006, 588). Government institutions had neither the leverage nor the political capital to impose on a fishery controls that would have economic consequences (McEvoy 1986).

“First,...[t]he state legislature and other regulatory bodies were loath to either end a fishery, or even decisively reduce its size. Second, those fishery laws that were passed tended to make fishing less efficient through 1) area closures, 2) closed seasons, 3) gear restrictions, or 4) size restrictions. There was little or no attempt either to set specific quotas or limit the number of fishermen” (Love 2006, 588). Over the years, continuous configurations and re-configurations of area closures, time closures, gear restrictions, bag limits, size restrictions, commercial restrictions failed to stem the
decline in the salmon populations. And the impact of environmental degradation in other parts of 
the ecosystem of which the salmon were a part – which surely had a huge but as yet unrecognized 
part to play in the decline of the salmon populations – was not a consideration that entered into the 
equation. It was all about fish and overfishing. By World War II, the scientific community, both 
university- and agency-based, had surrendered to the conclusion that the only factor that could affect 
the well-being of a fishery was the rate of predation by humans (McEvoy 1986), but actually affecting 
the rate of human predation would require fundamental changes in both the government and the 
fishing industry.

In the 1960s, harbingers of such fundamental changes appeared. By the end of the 1960s, the 
dominant cultural premise “that resources were there to be used profitably, that the role of science 
and policy was to keep profits flowing, and that there was always more to be had...was clearly out of 
date” (McEvoy 1986, 225). The distinctions between environmental and economic forces as well as 
between commercial and recreational harvesting lost their meaning (McEvoy 1986). In 1967, 
California Cooperative Oceanic Fisheries Investigations (CalCOFI), a highly respected scientific 
institute, opened the discussion at their annual conference by stating outright that the dominant 
cultural premise had become obsolete, that the resources of the sea were not boundless, and that 
humans must exercise restraint in order to maximize their benefit of what there was (McEvoy 1986). 
And also in 1967, for the first time ever, in reaction to the virtual annihilation of the California 
sardine fishery, Governor Reagan approved an emergency two-year moratorium on sardine fishing. 
“Both the harvest and the effort to reform management moved forward again after 1970, although 
under a very different set of attitudes than had prevailed earlier toward the ocean environment and 
the role of human activity in it” (McEvoy 1986, 226).

**Competition between Commercial and Recreational.** I alluded above to a blame game 
among sectors of the fishing industry. “For a blissfully short period [at the beginning of the 20th 
century], when few fished California’s waters, there was little hostility among the two communities. 
...Gradually, however, recreational anglers perceived a decline in the fish populations, and, in a 
pattern repeated over the years, laid the blame solely on commercial fishermen” (Love 2006, 590). 
And, “for much of the [next] 100 years, the recreational angler’s view [was] that 1) any depletion is 
caused by commercial fishermen, 2) recreational angling is somehow on a higher moral plane than 
commercial fishing, and 3) recreational angling has a greater economic importance to California. 
Historically, the response from commercial fishermen [was] to either deny that depletion was 
occurring and/or either deny or minimize their role in it” (Love 2006, 590). Neither sector of the
industry was without political clout, and the regulations – or lack thereof – could be said to reflect this clout.

**Regulation of In-river Fishing.** It was here that the competition between commercial and recreational interests was particularly sharp – and as it relates to in-river fishing in the Lower Klamath, the recreational interests clearly won.

In the early years of the 20th century, the regulations enacted by the California legislature for the Klamath River set the open seasons for both commercial and in-river fishermen as well as the restrictions on when gill nets could be used by commercial in-river fishermen (Bearss 1981 for this and all ensuing detail about in-river regulations as they pertained to the Klamath).

“By the late 1920s, a succession of poor salmon runs on the Klamath caused many sportsmen to charge that the runs were being destroyed by the river’s commercial fisheries. They also complained loudly that the steelhead-run was being destroyed by gill nets and urged that the river be closed to commercial fishing” (Bearss 1981, 335). California Fish and Game disagreed, contending that “ocean fishing was the principal cause of this depletion” (Bearss 1981, 337). In 1929, state regulations set a recreational in-river season of about 7 months on the lower Klamath, set a restricted commercial gill netting season of about 3 months in the tidewater area of the Klamath, and banned commercial in-river fishing elsewhere on the lower Klamath.

The sportsfishermen, many of whom were affluent and well-connected, were not satisfied with Fish and Game’s conclusions, formed the Klamath River Anglers Association and lobbied the state legislature to investigate the causes of the decline (Most 2006). The verdict of first one, and then another, committee in Sacramento was that the Indians on the Klamath had overfished the resource, the Indians being the commercial in-river fishermen in the employ of the canneries and the ones who used gill nets when they fished. These conclusions ignored the impact of the commercial trollers in which non-Indians harvested salmon in the ocean near the mouth of the Klamath – and ignored the impact of the dams on the Klamath – Copco No. 1 completed in 1918 and Copco No. 2 completed in 1925 – that prevented the chinook from reaching their spawning habitat in the Upper Basin (Most 2006).

In 1933, after a bitter contest, the legislature enacted regulations which took effect on January 1, 1934 and banned all commercial in-river fishing on the Klamath and the Smith Rivers and made possession of a gill net a crime. Not only were the Yuroks out of jobs as commercial fishermen and cannery workers, but they could not engage in subsistence fishing using their gill nets. The
regulations for recreational in-river fishing remained essentially unchanged through 1941; whatever changes made subsequently would have been only in terms of dates of open season and bag limits.

**Regulation of Ocean Fishing.** In comparison to the convoluted regulations for in-river fishing, the regulations for ocean fishing seem to me to have been quite simple. In 1919, in the strip of ocean from 0 to 3 miles out over which the state had jurisdiction, there were closed and open seasons with respect to the commercial fishing of chinook and coho. The sportsfishers had no closed seasons. Regulations for international waters beyond 3 miles out were limited to ensuring sanitary conditions for fish caught and delivered to canneries.

In 1922, the closure of seasons was extended to apply to sportsfishers as well, and the open season was limited to June 1 through September 15. In 1945, it was mandated that commercial fishing required the purchase of a commercial fishing license.

In 1947, the Pacific Marine Fisheries Commission (PMFC, not to be confused with PFMC, a later institution) was formed by the western states to “‘promote the better utilization of fisheries...which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries’” (Bearss 1981, 409). The PMFC offered recommendations for regulations coordinating seasons and setting size limits for the ocean troll fleet (Pierce 2002), but did not legislate regulations.

From the late 1940s through 1979, the commercial troll fishing season hovered around the dates of April 15 through September 30.

**The Sucker Fishery of the Klamath Upper Basin**

Lest we forget, there were fish in the Upper Basin as well. However, the story in the Upper Basin is very, very different from the story in the Lower Basin. Where in the Lower Basin – and by extension, throughout the salmon’s ocean territory, the impact of environmental degradation on salmon populations put the brakes on a booming fishing industry, in the Upper Basin, the impact of environmental degradation on sucker populations precluded the development of a fishing industry at all.

“Historically, Lost River and shortnose suckers were abundant in Upper Klamath Lake and were utilized as a subsistence fishery by the Klamath Tribes” (U.S. BOR 2002, 16). Beginning in the 19th century, tribal harvests were augmented by commercial harvests, including a cannery that processed Lost River suckers captured from the Lost River near Olene, Oregon in the late 1890s (NRC 2004). Commercial operations also processed the suckers into oil, dried fish, and other products (U.S. BOR
“A recreational snag fishery for suckers developed as early as 1909; it focused on fish that were moving into tributary rivers to spawn and secondarily on fish attempting to spawn around the edges of Upper Klamath Lake. The snag fishery remained unregulated until Klamath suckers were declared game species in 1959” (NRC 2004, 71). “Before the drainage of Tule Lake and Sheepy Creek in the 1920s, suckers were taken in large numbers from Sheepy Creek for consumption for both humans and livestock” (NRC 2004, 71).

The subsequent drainage of the Tule Lake and Lower Klamath Lake watersheds for the Reclamation Project reduced the sucker territory and sucker populations. Fishkills occurred in the 1960s in the Klamath River just below Upper Klamath Lake because of log storage (U.S. FWS 1993). NRC in 2004 concluded that agricultural, ranching, and timber practices in the Upper Basin over the years had seriously degraded sucker habitat which culminated in a severe reduction in the sucker population (NRC 2004). “Over the period from 1966 to 1986, the annual harvest of fish declined 95 percent from about 12,500 to 687 fish and several spawning groups went extinct” (U.S. BOR 2002, 16).

As the sucker population waned, whatever commercial and recreational sucker fishery that had existed also waned and ultimately disappeared – as did, as well, the ability of the Klamath Tribes to depend upon the sucker population as a subsistence and ceremonial fishery.

In summary, then, one can look at the fishing industry in California in two different ways. On one hand, one can see that improvements in equipment and in transportation infrastructure enabled the California fishing industry to expand rapidly and dramatically from a rather sleepy industry at the turn of the century to an industrialized giant (Love 2006), and to join the brotherhood of boom-and-bust with mining and timber. The then-dominant cultural premise that market trumps all and nature is boundless drove all fishing sectors – commercial and recreational, ocean and in-river – to take as many fish as they could today with no thought about tomorrow.

For some sectors in the California fishing industry – recreational ocean fishing in general, and commercial ocean salmon fishing in specific – the boom never stopped and tomorrow never came – although, in the 1960s, in the total salmon catch numbers, the depletion of the chinook salmon population was masked by marked increases in the take of the coho salmon population.

For other sectors in the California fishing industry – commercial ocean fishing in general (with the exception of commercial ocean salmon fishing as noted above) and in-river commercial fishing in general – tomorrow and the bust came with a bang. Fish populations declined precipitously as a result of overfishing. Fisheries management preached the sins of overfishing, but had neither the
institutional culture, the leverage, nor the political capital to impose controls that might have
economic consequences for the fishing industry. Amidst a cacophony of accusations of blame for
the overfishing flung back and forth between the commercial and recreational fishing sectors, state
regulations endlessly reconfigured restrictions on everything but the number of fish caught and the
number of people fishing, and ultimately failed to stem the decline in fish populations.

With respect to the Klamath watershed and the salmon indigenous to that watershed, tomorrow
and the bust came with a bang there as well. In-river commercial salmon fishing was terminated in
1934, thanks to a ban engineered by the Klamath in-river recreational salmon fishermen on the
premise that the Klamath commercial in-river salmon fishing industry was responsible for the decline
in the salmon population in the Klamath — even though California Fish and Game had determined
that it was commercial and recreational ocean salmon fishing outside the mouth of the Klamath
River that was responsible. However, even with the sportsfishers’ ban on in-river commercial
salmon fishing in the Klamath, salmon populations continued to decline, with the result that the
sportsfishers’ in-river recreational salmon fishing in the Klamath also declined.

One can look at the fishing industry in California in another way as well. On this other hand,
fishing connected with the Klamath watershed became the first industry to be directly impacted by
the environmental degradation of the Klamath watershed.

In the Upper Basin, the environmental degradation of the sucker habitat in the Upper Basin
precluded the development of a commercial and/or recreational fishing industry — as well as of
course decimated the ability of the Klamath Tribes to draw upon the sucker as a subsistence and
ceremonial fishery.

In the Lower Basin, while everyone blamed overfishing for the decline in the salmon
populations, environmental degradation of the salmon habitat in the Lower Basin played a huge if at
the time unrecognized part in the decline of the salmon populations. Granted, overfishing was real —
the northern California ocean salmon fishing industry did deplete their resource in the same manner
that their brother boom-and-bust mining and timber industries had depleted their resources. There
the similarity ends, however, for mining and timber industries contributed to the environmental
degradation of the salmon habitat in the Klamath Lower Basin, while the Klamath in-river sport
fishing industry became the first non-Indians to pay the price for that environmental degradation in
the form of reduced salmon populations.

Up to this point, as the well-being of the watershed had continued its slide down the slope of
degradation, only the Indians of the watershed had been paying the price; the bill had remained
hidden to the non-Indians of the watershed. Now the populations of the salmon indigenous to the Klamath watershed were declining because of environmental degradation of spawning and rearing habitat exacerbated by overfishing by the northern California ocean salmon fishing industry. Interestingly, even though the Klamath in-river sport fishing industry was paying the price of environmental degradation of salmon habitat in the Klamath watershed in the form of reduced salmon populations, during the period of expansion from 1900-1969, overfishing was thought to be the only cause of the decline in the salmon populations, and environmental degradation as cause lay unrecognized until later in the 20th century.

The expansion of the northern California commercial ocean salmon fishing industry had another impact on the Klamath watershed. Prior to the expansion of the northern California commercial ocean salmon fishing industry, actions within the watershed had impacted others within the watershed and the watershed itself. Now with the expansion of an industry that was built around a resource that moved outside of the geographic boundaries of the watershed, the actions of those who lived within the watershed impacted others who technically lived outside of the watershed, AND the actions of those who technically lived outside the watershed impacted those who lived within the watershed and the watershed itself. In essence, the expansion of the northern California commercial ocean salmon fishing industry expanded the zone in which the impact from environmental degradation in the Klamath watershed would be felt beyond its landed territory to now include the ocean territory of the anadromous salmon indigenous to the Klamath watershed. I can only imagine that it would be a challenge for people within this now expanded territory to wrap their heads around the fact that, for example, the actions of the rancher near Chiloquin, OR, and the actions of the commercial salmon fisherman many miles out in the Pacific Ocean are indissolubly linked.

Fishing as a way of life is a deeply rooted identity for fishing communities. Whether they be commercial ocean fisherfolk or providers of recreational ocean fishing opportunities or people who work in the professions that support and are supported by fishing, “salmon fishing is a family tradition in the coastal communities of Eureka, Trinidad, Crescent City, Fort Bragg, and Brookings” (KRBFTF 1991, Appendix D, 9). Not being able to fish is experienced as a threat to their sense of who they are. And let us not overlook the identity of the in-river sportsfishers. As we saw, more than once this fishing community went to bat for what they perceived as the preservation of their way of life as sportsfishers.
1.6 Summary

The period from 1900 through 1969 was a time of exponential expansion for the non-Indian ways of life in the Klamath Basin. Expansion of the infrastructure in the Basin provided a foundation for the expansion of resource capitalism in the Basin. The Klamath Hydroelectric Project created a system of dams and powerhouses that provided power and water to much of the Basin. The network of roads and railroads connected the Klamath Basin with market opportunities in the rest of the world.

All of the resource-based industries of the Basin – agriculture/ranching, timber, mining, and fishing – were grounded on the then-dominant cultural premise that the market trumps all and that nature is a boundless supplier of resource commodities. For all the industries, technological improvements fueled the expansion of resource extraction and manipulation, which in turn recursively fueled further technological improvements and then further expansion, and on and on round the recursive feedback loop.

By the end of this period of expansion, the acreage devoted to agriculture and ranching in the Basin had grown to more than half a million acres, thanks to aggressive rearrangements of geography coupled with technology improving the process of agriculture and ranching, with hydroelectric improvements supplying water and power, and with transportation networks providing access to markets outside the Basin.

Both the timber and the mining industries expanded thanks to technology that improved the processes of timber and of mining and thanks to transportation networks providing access to markets outside the Basin. And the brotherhood of boom-and-bust industries expanded from two – timber and mining – to three, with the growth of the fishing industry from a sleepy pastime into an industrialized giant (Love 2006), also thanks to technological and transportation improvements.

While each industry had its cycles of boom-and-bust during this period of expansion, the cycles were unique to each industry. Mining booms were driven by price; gold mining boomed in the Basin during the Depression era because of the de-regulation of gold in the US. Timber and fishing booms were driven by demand; fishing boomed during World War I and during and after World War II, and timber boomed after World War II.

Throughout this period, government was ill-positioned not only to pay attention to the costs of expansion, but also to actually do anything that made a difference. Government institutions had developed in an earlier time when the promotion of economic progress was the key function of government (McEvoy 1986) and when the focus of an individual institution was on its sector of the world, disconnected from the other sectors. Government institutions had neither the institutional
history, the leverage, nor the political capital to impose on an industry controls that would have economic consequences for that industry.

Government institutions routinely issued warnings to the mining, timber, and fishing industries about the damage being wrought upon the environment by their practices, but the warnings were generally unheeded. State legislatures passed laws to limit the use of damaging mining practices, such as dams, diversions, and hydraulic mining, passed forest practice laws to limit damaging logging practices, and passed fishing restrictions to try to stop overfishing – and none of these were effective in reining in the market-driven expansion of their respective industries.

All three of the industries were in some sort of decline by 1969, thanks variously to reduction in price or reduction in demand or depletion of resource or increase in public scrutiny. In a harbinger of the change to come in the 1970s, the timber industry, after the devastating effects of the 1964 flood on the North Coast, was confronted with the awakening of a previously sleepy public to their concerns about the relationship of forest practices to soil erosion and stream and fisheries damage (KRBFTF 1991; Trobitz 1982), and was forced to begin in the 1960s the transition that would confront other industries in the 1970s from a time of unregulated expansion to a time of regulated business practices.

In addition, the fishing industry connected with the Klamath watershed became the first industry – and the first non-Indians – to be directly impacted by the environmental degradation of the Klamath watershed. In the Upper Basin, the environmental degradation of the sucker habitat caused by the practices of the agriculture/ranching and timber industries precluded the development of a commercial and/or recreational fishing industry.

In the Lower Basin, the northern California ocean salmon fishing industry engaged in their own resource depletion by overfishing, and the Klamath in-river sport fishing industry paid the price in the form of salmon populations reduced by the environmental degradation of the salmon habitat caused by the practices of the agriculture/ranching, mining, and timber industries as well as by the dams which cut salmon off from their habitat.

The expansion of the northern California commercial ocean salmon fishing industry also expanded the zone in which the impact from environmental degradation in the Klamath watershed would be felt beyond its landed territory to now include the ocean territory of the anadromous salmon indigenous to the Klamath watershed – and as such expanded the population of peoples whose lives were indissolubly linked to the Klamath watershed and therefore to each other to include fishing communities along the northern California coast.
The identities associated with the ways of life of agriculture/ranching, timber, mining, and fishing in this now extended territory are as deeply rooted as one would ever think to see. Farmers and ranchers point to generations’ worth of blood, sweat, and tears invested in the land that they see themselves as having turned from unproductive wilderness to productive farm and range land. The scarred hands of the tree-feller point to the lives and the years wrapped around felling trees, moving them, milling them, and getting them to market. Individuals who prospect for gold in western Siskiyou County have for years upon years seen gold mining as a means of self-sufficiency against the cycles of boom-and-bust. The sportsfishers who come to the Klamath River are willing to go to bat to preserve their way of life as sportsfishermen. And salmon fishing is a family tradition going back many generations in the coastal fishing communities of northern California.

2. That Pesky Indian Problem That Just Won’t Go Away

2.1 Federal Policy and Indian Response to Federal Policy

In general, federal policy with respect to the Indian problem can be characterized by a cycle that has characterized so many attempts to make a problem go away:

Federal policy with respect to the Indians, in pursuit of its overarching goal of making the Indian problem go away, from its very beginning, has gone through this cycle over and over and over. In the prior period, it started with Removal and moved to Reservations and then Allotment. In this period from 1900 through 1969, we pick it up with the failures of Allotment and and then it moves on to Reorganization, then to Termination. Only towards the end of this period, after the failures of Termination, did federal policy begin to flirt with the idea of Indian self-determination.

In general, the Indian response to federal policy during this period can be characterized by a pattern that characterized so many non-dominant groups in the United States during this period –
moving from domination by the dominant culture, to a spectrum of responses to the dominant
culture that ranged across assimilation, accommodation, resistance, rejection, and rebellion and that
set faction against faction within and across the groups, and finally to the planting of seeds of pride
that would blossom in the next period into an assertion of rights.

The Allotment Period

“In 1887, Congress adopted the General Allotment Act of 1887, also known as the Dawes Act,
under which the government attempted to assimilate American Indians by dividing many
reservations into allotments, transferring ownership from the tribe as a whole to individual tribal
members, and arranging for the sale of so-called ‘surplus’ land to non-Indians” (Singer 1991, 9). The
goal was, on the one hand, to dismantle the communal life-style of the Indian tribes and to forcibly
impose dominant values of individual private property and the nuclear family onto the tribes, and, on
the other hand, to open the reservations to white settlers through the sale of ‘surplus’ lands not
allocated to Indians.

In terms of the first goal, the lands allotted to the Indians were to be held in trust for 25 years or
until the Indians could prove to BIA that they were competent in the agricultural ways of the
dominant culture. Contrary to the expectations of the law, “[n]ative people understood full well the
implications of allotment and offered considerable resistance” (Heizer 1978a, 117).

In terms of the second goal, coupled with the sale of unallotted land to non-Indians was the
ultimate sale of allotted land by Indians to non-Indians forced by the inability of the Indians to pay
taxes on the acquired land once they received title (Brann 2002-2003). When the Dawes Act was
enacted in 1887, Indians owned 138 million acres of land (Walch 1983). By the time that the
allotment policy was terminated in 1934 by the Indian Reorganization Act (IRA), Indian tribes had
lost over 86 million acres of land and a class of 100,000 landless Indians had been created (Philp
1983). The land that remained – 52 million acres – was generally of poor quality and lacked adequate
water resources, and was, as such, unusable for agricultural purposes (Philp 1983). In addition,
Indians who had received allotments had their own perplexing problems. In 1933, the Federal
government adopted a policy denying title to the allotted lands as promised by the Dawes Act, which
in effect tied the Indians to the lands like serfs, and discouraged them from developing the lands
(Philp 1983).

“Allotment destroyed the majority of the Indian land base throughout the nation, and is arguably
the most devastating federal policy ever adopted in relation to tribes” (Gingrich 2003, 226). “The
end result was a ‘checkerboard’ pattern both of ownership of land and jurisdiction on Indian
reservations. Reservations today include tribal property, individual restricted trust allotment property, and property owned in fee simple by both members and non-members of the tribe” (Singer 1991, 9).

Realizing the mistakes it had made during the allotment period, Congress adopted the Citizenship Act of 1924, which declared all Indians to be citizens of their tribes and citizens of the United States. While this Act was intended to be a benefit to the Indians, it proved only to cause more confusion in the relationship between the United States and Indians. By passing this Act, Congress ultimately ‘complicate[d] the jurisdictional relationship among the states, [the] federal government, and [the] tribes.’ Despite popular belief, it did not automatically confer on Indians the same protections afforded other citizens of this country. (Brann 2002-2003, 749-750, quoting from Conference of Western Attorneys General 1998, 22)

Several Indian nations declined U.S. citizenship in favor of retaining sovereign nationhood (Brann 2002-2003).

The Reorganization Period

On February 21, 1928, The Institute for Government Research (later called the Brookings Institution) submitted a report on a survey of the economic and social conditions of the American Indians as requested on June 12, 1926 by the Secretary of the Interior. Entitled The Problem of Indian Administration, the report became known popularly as the Meriam Report in reference to Lewis Meriam who was the Technical Director of the Survey Staff.

The Meriam Report was hailed by many as a catalyst for changes in federal Indian policy. I find that the report in no way criticizes federal Indian policy’s overarching goal of assimilation, but stingingly criticizes the Federal government for the gross inadequacy of its programs for the accomplishment of the goal of assimilation. The attitude of the report towards the American Indians I find to be one that lulls me in, then unexpectedly slaps me upside the head. On the one hand, the report finds the lot of the American Indian to be one of misery as a result of the grossly inadequate programs. It strongly criticizes programs that attempt to destroy the Indian culture and strongly urges respect for the human rights and the culture of the Indians. On the other hand, the report urges that programs should gradually modify and build upon the Indian culture so that a “retarded race” can become competent in the ways of the dominant culture (Meriam 1928 Chapter I, 31 of download).

I am going to quote to some extent from the findings and recommendations of the report because, from the handy-dandy vantage point of hindsight, it is eerily prescient of the reasons given for the failure of the subsequent federal policy of Termination.
The Institute considered that the object of the task before the Institute was
to indicate what remains to be done to adjust the Indians to the prevailing civilization so that
they may maintain themselves in the presence of that civilization according at least to a minimum
standard of health and decency. (Meriam 1928 Letter of Transmittal, 3 of download)

An overwhelming majority of the Indians are poor, even extremely poor, and they are not
adjusted to the economic and social system of the dominant white civilization. (Meriam 1928
Chapter I, 1 of download)

The income of the typical Indian family is low and the earned income extremely low. From the
standpoint of the white man, the typical Indian is not industrious, nor is he an effective worker
when he does work. ...He generally ekes out an existence through unearned income from leases
of his land, the sale of land, per capita payments from tribal funds, or in exceptional cases
through rations given him by the government. The number of Indians who are supporting
themselves through their own efforts, according to what a white man would regard as the
minimum standard of health and decency, is extremely small. ...In justice to the Indians, it should
be said that many of them are living on lands from which a trained and experienced white man
could scarcely wrest a reasonable living. In some instances the land originally set apart for the
Indians was of little value for agricultural operations other than grazing. ...Frequently the better
sections of the land originally set apart for the Indians have fallen into the hands of the whites,
and the Indians have retreated to the poorer lands remote from markets. ...Some people assert
that the Indians prefer to live as they do; that they are happier in their idleness and
irresponsibility. The question may be raised whether these persons do not mistake for happiness
and content an almost oriental fatalism and resignation. The survey staff found altogether too
much evidence of real suffering and discontent to subscribe to the belief that the Indians are
reasonably satisfied with their condition. ...The economic basis of the primitive culture of the
Indians has been largely destroyed by the encroachment of white civilization. The Indians can
no longer make a living as they did in the past by hunting, fishing, gathering wild products, and
the extremely limited practice of primitive agriculture. The social system that evolved from their
past economic life is ill-suited to the conditions that now confront them, notably in the matter of
the division of labor between the men and the women. They are by no means yet adjusted to the
new economic and social conditions that confront them. Several past policies adopted by the
government in dealing with the Indians have been of a type which, if long continued, would tend
to pauperize any race. Most notable was the practice of issuing rations to able-bodied Indians.
...When the government adopted the policy of individual ownership of the land on the
reservations, the expectation was that the Indians would become farmers. ...It almost seems as if
the government assumed that some magic in individual ownership of property would in itself
prove an educational civilizing factor, but unfortunately this policy has for the most part
operated in the opposite direction. (Meriam 1928 Chapter I, 2-3 of download)

Since the Indians were ignorant of money and its use, had little or no sense of values, and fell an
easy victim to any white man who wanted to take away their property, the government, through
its Indian Service employees, often took the easiest course of managing all the Indians’ property
for them. The government kept the Indians’ money for them at the agency. When the Indians
wanted something they would go to the government agent, as a child would go to his parents.
...[T]his practice...gives the Indians no education in the use of money, is irritating to them, and
tends to decrease responsibility and increase the pauper attitude. The typical Indian, however,
has not yet advanced to the point where he has the knowledge of money and values, and of business methods that will permit him to control his own property without aid, advice, and some restrictions; nor is he ready to work consistently and regularly at more or less routine labor. (Meriam 1928 Chapter I, 4 of download)

The fundamental requirement is that the task of the Indian Service be recognized as primarily educational, in the broadest sense of the word, and that it be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilization or be fitted to live in the presence of that civilization at least in accordance with a minimum standard of health and decency. (Meriam 1928 Chapter I, 12 of download)

[The education program] must provide for the promotion of health, the advancement of productive efficiency, the acquisition of reasonable ability in the utilization of income and property, guarding against exploitation, and the maintenance of reasonably high standards of family and community life. (Meriam 1928 Chapter I, 13 of download)

The responsibility of the government is to bring the Indians to the point where they are fitted to be independent, reasonably competent citizens. (Meriam 1928 Chapter VII, 8 of download)

No evidence warrants a conclusion that the government of the United States can, at any time in the near future, relinquish its guardianship over the property of restricted Indians, secured to the Indians by government action. (Meriam 1928 Chapter I, 29 of download)

In handling property, most of the restricted Indians are still children. True friends of the Indians should urge retention of restrictions until the Indian is economically on his feet and able to support himself by his own efforts according to a minimum standard of health and decency in the presence of white civilization. (Meriam 1928 Chapter I, 29-30 of download)

The belief is that it is a sound policy of national economy to make generous expenditures in the next few decades with the object of winding up the national administration of Indian affairs. The people of the United States have the opportunity, if they will, to write the closing chapters of the history of the relationship of the national government and the Indians. The early chapters contain little of which the country may be proud. It would be something of a national atonement to the Indians if the closing chapters should disclose the national government supplying the Indians with an Indian Service which would be a model for all governments concerned with the development and advancement of a retarded race. (Meriam 1928 Chapter I, 31 of download)

“Congress did not immediately accept [the 1928 Meriam] report and proceeded to conduct its own survey, which took eight years to complete. ...In the end, Congress reached the same conclusions and began a new policy of reorganization and self-government” (Brann 2002-2003, 750n54).

In 1934, Congress passed the Indian Reorganization Act (IRA) – which became known popularly as the Indian New Deal. Intended as a panacea to remedy all the failures from the previous policies
of assimilation and allotment, the Indian New Deal reformers aimed to improve tribal economies, to decentralize control over the Indians, to return the power of deciding what was best for the Indian community into the hands of the reservation government (Brann 2002-2003). “The IRA promoted the notion of cultural pluralism, tribal sovereignty, and the concept that reservations were permanent homelands. The IRA ended future land allotment, allowed the voluntary exchange of allotments to consolidate checkerboard reservations, and restored to tribal [communal] ownership remaining surplus lands created by the Dawes General Allotment Act. It provided Indians with economic aid through a $10 million credit fund and authorized an annual appropriation of $2 million for the acquisition of additional land for landless Indians” (Philp 1983, 169). “BIA services were expanded to include forestry, range management, and agricultural extension service, construction, and land acquisition” (Henson 1996, 2).

“Felix Cohen,...a major architect of the new deal for Indians, resurrected 'tribal sovereignty' as an organizing principle of the Indian Reorganization Act of 1934” (d'Errico 2000, 692, italics in original). The IRA provided for the formation of tribal governments – BIA prepared a source book of model constitutions patterned after the U.S. Constitution from which tribes were required to choose their form of tribal government – yet also provided that the constitution and its bylaws, plus any subsequent amendments, as well as all important tribal government decisions were subject to approval by the Secretary of the Interior (Brann 2002-2003; Philp 1983).19

The IRA also provided tribes with the right to hold a special referendum to decide whether the tribe wished to have the IRA apply to them or whether they wished to exclude themselves from the IRA. If tribes accepted the IRA, they “could draft constitutions defining their powers of self-government and establish business charters that permitted them to borrow money from the revolving credit fund. If a tribe voted against the IRA, or failed to draft a constitution and business charter, it could not borrow money from the revolving credit fund” (Philp 1983, 169).

The Indian New Deal reformers seem to have operated on the assumptions that tribes were unified entities and that the solutions the reformers had devised for the problems the reformers had defined would be desired by all tribes (Philp 1983). Unfortunately, neither assumption held.

Tribes were not “unified entities capable of articulating Indian aspirations. Indeed, New Dealers were blind to the reality that many traditional tribal governments consisted of weak decentralized

19 The point has been made that the IRA, which touted itself as an end to the policy of assimilation, required the greatest amount of assimilation by its insistence that tribes adopt a form of government modeled on that of the dominant culture (d'Errico 2000).
entities. ...[In addition,] factional division characterized reservation life throughout the United States” (Philp 1983, 172).

Some Indians had assimilated, did not want the emphasis on tribalism promoted by the IRA, and wanted to be completely free of government bureaucrats who inserted themselves into every nook and cranny of their lives (Philp 1983).

Some Indians rejected the constitutions and the corporate charters as an imposition of the dominant culture upon Indian culture (Brann 2002-2003; Philp 1983; Walch 1983). Many tribes had indigenous tribal councils or other forms of social organization but these forms of organization were not recognized as legitimate by the IRA; only constitutions modeled on the U.S. Constitution and business charters modeled on U.S. businesses were recognized as legitimate (Philp 1983).

Some Indians rejected the IRA because it did not go far enough toward Indian self-rule, what with the requirement that everything must be approved by the Secretary of the Interior (Philp 1983).

Demographics within reservations had changed. No longer inhabited solely by the uniform tribe of full-blooded Indians, things had changed because of (a) intermarriage both across tribes and with non-Indians; (b) sale of allotted lands by Indians to non-Indians; (c) migration of landless Indians from the reservation; and (d) conversion of some Indians to the evangelical Christianity of their white neighbors. As such, reservations and tribes were rife with rivalries between mixed and full blood, with religious and cultural differences, and with economic conflict over control of reservation resources (Philp 1983).

“Unfortunately, the Indian Reorganization Act did not forge a new tribal identity. Instead, it frequently intensified existing factionalism” (Philp 1983, 172). Given the above, it is no surprise that, while some tribes did vote to accept the IRA, other tribes voted to reject the IRA. For those who did accept the IRA, however, the benefits of the IRA did not work out as expected by the Indian New Deal reformers.

With respect to tribal sovereignty and tribal government, the Court swung back and forth repeatedly between the two poles of independence and federal control, with the tribes in one moment enjoying the pre-colonial status of independent nations and in the next moment finding themselves back under the federal thumb (d'Errico 2005).

With respect to the IRA land acquisition program, about 4 million acres were acquired, with the expectation that 12,000 of the 100,000 landless Indians would be rehabilitated upon this new land. However, the Indians who moved onto the new land found it worthless and submarginal (Philp
1983). And the remaining “88,000 landless tribesmen had to accept continued rural poverty or decide to relocate to more prosperous cities” (Philp 1983, 177).

The intent of the IRA was to return as much land as possible to communal status. However, “[t]his communal land tenure system was plagued with problems. ...Without clear title to this land, individual Indians were reluctant to build homes or make permanent improvements” (Philp 1983, 177).

The revolving credit fund was created in the expectation that this would enable economic recovery, but it was a failure (Philp 1983). Loans were taken and never repaid or were repaid by taking out new and larger loans. The funds received were not used to fund economic expansion. And accusations of mismanagement and favoritism ran rampant.

Various funds were appropriated to the tribes struggling to establish self-government under the IRA, but the funds were insufficient to undo what prior wrongs had brought about or to carry out necessary programs (Brann 2002-2003). For example, Congress failed to appropriate adequate funds for the hiring of enough tribal police officers or tribal court officials, which led to a breakdown of law and order on the reservations (Philp 1983).

“The IRA...did not meet the needs of a diverse Indian population. Nor did it provide substantial economic progress, or create a durable political framework for the future. Instead, it left a bitter legacy that paved the way for new directions in federal Indian policy” (Philp 1983, 166).

**The Termination Period**

A number of factors coalesced to set the stage for the 1950s Era of Termination: (1) the dismal failure of the IRA; (2) changes in the dominant culture after World War II; and (3) changes in the Indian culture.

With respect to the dismal failure of the IRA, in 1944 Indian Commissioner John Collier “admitted that the Indian New Deal had not accomplished many of its objectives despite an annual budget of almost $30 million” (Philp 1983, 179). “By 1944 the Indian Bureau estimated that as much as 25 percent of the total Indian population, or 92,204 individuals, had migrated away from reservations” (Philp 1983, 176). Despite tribal reorganization, land acquisition, and federal credit programs under the IRA, the economic position of the Indians in 1945 was only slightly better than had been reported in the 1928 Meriam Report (Philp 1983).

With respect to changes in the dominant culture, World War II “encouraged a sense of national unity and consensus that led to a renewed emphasis on integrating minority groups into mainstream society” (Philp 1983, 167). This emphasis was exacerbated by the Cold War and the Red Scare which
engendered intolerance of anything that deviated from the mainstream (Philp 1983). Communal ownership of tribal property was equated with socialism and communism; Indian religions were equated with the godlessness of communism (Walch 1983).

A more conservative Republican Congress sought to reduce federal expenditures by ending many of the social welfare policies of the New Deal, which included the Indian New Deal. “After the war, as the United States spent millions of dollars rebuilding Germany and Japan, the government hoped to rid itself of its embarrassing failure to ‘rebuild’ Indian nations by simply withdrawing government aid to Indian people. This philosophy was expressed in the Hoover Commission survey of 1948” (Heizer 1978b, 122), which proposed “that the federal government follow a policy of assimilation, [that it ultimately abolish the Indian Bureau], and that state responsibility for administering special Indian programs be encouraged” (Philp 1983, 167).

With respect to change in the Indian culture, there were two different components to this change. On the one hand, “[a] significant number of individuals were influenced by Pan-Indian organizations that...deemphasized tribalism, stressed the desirability of assimilation, and called for the abolition of the Indian Bureau to free Indians from the control of government bureaucrats. [Many] Pan-Indian groups...opposed the Indian New Deal” (Philp 1983, 170). “The leaders of these organizations proved to be effective critics of the Indian Reorganization Act. They persuaded many tribesmen [of its defects, and they]...engaged in extensive lobbying that eventually convinced members of Congress that the government should...eliminate unnecessary federal wardship. ...[T]hese groups helped sow the seeds of termination by repeatedly asking Congress to repeal the Indian Reorganization Act and abolish the Indian Bureau” (Philp 1983, 171).

On the other hand, World War II also unleashed forces among the Indians that encouraged termination. During World War II, more than 40,000 Indians left their reservations to work in war-related industries and another 25,000 served in the armed forces. “After becoming better acquainted with the outside world, many of these individuals no longer wanted to return to the poverty and segregation associated with reservation life” (Philp 1983, 167).

After 1945, the Indian Bureau was “flooded with letters from tribesmen...who...favored emancipation from the federal government to obtain needed cash and to secure full citizenship rights” (Philp 1983, 178-179).

In addition to the above factors, there were some, especially from the Western states, who simply wanted to open up Indian lands for private development and so pressured Congress accordingly (Walch 1983).
The stage was set. “New creative initiatives were needed after 1945 to overcome the legacy left by the Indian New Deal” (Philp 1983, 180). Unfortunately, no policymakers had any new creative initiatives to offer and so fell back on the “traditional approach to Indian affairs, which stressed rapid assimilation with little concern for Indian culture, property, or treaty rights” (Philp 1983, p.180).

“Congress would respond...by establishing the Indians Claims Commission [to settle all tribal claims], creating a relocation program, lifting restrictions on allotments, and by drafting termination plans for many of the tribes [that Collier had categorized as predominantly acculturated]” (Philp 1983, 179-180). In addition, the Indian Bureau curtailed its services and “undercut the Indians’ right to independent legal council by controlling attorney contracts” (Philp 1983, 168).

“The majority of Indians clearly opposed termination, but the congressional committees holding hearings on the termination acts gave exaggerated exposure to the Indians favoring the acts, so as to create the appearance of widespread support for the acts. Opponents of the policy were ridiculed, and committee members disparaged their views. Some opponents were unable to travel to Washington to testify because of the expense....The termination acts were passed with undue haste and little consideration of their eventual effects” (Walch 1983, 1186n29).

There were a number of components to the termination project: (1) sale of previously restricted land allotments; (2) the relocation program; (3) Public Law 83-280, which forged the path for the termination acts; and (4) the termination acts themselves.

The relocation program was actually intimately linked to the sale of previously restricted land allotments. With respect to the allotments, “[t]he Indian Bureau promoted the migration away from tribal homelands by approving virtually all Indian requests for fee patents to their restricted land allotments. Between 1948 and 1957 federal protection was also removed from over 2.5 million acres of individual trust lands” (Philp 1983, 166). With respect to the relocation program, “[b]etween 1952 and 1960 the federal government provided over 35,000 Indians with travel money – usually one-way bus tickets – to find jobs in urban areas. Approximately 30 percent of the Indian relocatees would eventually return to their reservations because they encountered white racism and cultural isolation and found it difficult to obtain decent jobs and adequate housing” (Philp 1983). “The ultimate outcome was the loss of more land, the loss of customs and traditions, and a deteriorated economic situation for most Indians in this country” (Brann 2002-2003, 752).

1953 was a turning point in American Indian history. On August 1, 1953, the House passed House Concurrent Resolution 108 (with Senate concurrence) (U.S. House 1953), establishing it as the policy of Congress “to make the Indians within the territorial limits of the United States subject to
the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship...[and to expect that they] should assume their full responsibilities as American citizens” and resolved that the following Indian tribes should be freed from federal supervision and control and from all disabilities and limitations specially applicable to Indians: all the Indian tribes of California, Florida, New York, and Texas, as well as 5 specifically named tribes: the Klamath Tribe of Oregon, the Flathead Tribe of Montana, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who were on the Turtle Mountain Reservation, North Dakota (U.S. House 1953).

“The first law that actually initiated termination was in the field of criminal justice” (California OHP 1988d, 3). The 83rd Congress passed the Act of August 15, 1953, which applied to tribes in California, Oregon, Nebraska, Minnesota, and Wisconsin – states where allotment, for the most part, had shattered Indian homelands – and which reduced tribal sovereignty on reservations by transferring jurisdiction on criminal and civil cases occurring on the reservation from the tribal courts to the state courts (Philp 1983). “This new law caused much confusion and resulted in poor protection for Indians on reservations. It was frequently reported that many county sheriffs would arrive three or four days late for emergency situations” (California OHP 1988d, 3). “In addition to its effect on Indian autonomy, the abolition of tribal court jurisdiction [also]...forced Indians into state court systems that were hostile to Indians” (Walch 1983, 1185-6n28).

Between 1954 and 1962, Congress passed twelve termination acts, terminating more than a hundred tribes, in the states of California, Oregon, Nebraska, Wisconsin, Texas, Utah, Oklahoma, and South Carolina. The termination acts took effect over the years from 1955 through 1970 (Walch 1983), “freeing” 13,263 tribal members and removing 1,365,801.86 acres from federal trust status (Butler 1978; Taylor 1972). The Klamath Tribe and the Menominee Tribe, who had been named in H. Con. Res. 108, had the greatest number of members of their tribes and the greatest number of acres in their reservations of all the tribes terminated (Walch 1983). “The termination acts attempted to stop Indians in terminated tribes from receiving any special treatment because of their

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20 Walch 1983 lists 14 termination acts, while others such as Butler 1978 say 12. The source (Taylor 1972) from which Walch and Butler drew their information lists 12, excluding 2 tribes from California that Walch includes. I have chosen to adhere to Taylor’s list on page 180 of his book.
21 Interestingly, it seems that of the 5 states named in H. Con. Res. 108, no tribes were terminated in Florida and Texas, and of the 5 tribes named, only the Klamath and the Menominee were terminated.
22 Menominee Tribe 3,270 members and 233,881 acres; Klamath Tribe 2,133 members and 862,662 acres (Walch 1983). In section 2.3, I use a slightly different number for the acreage of the Klamath Reservation.
status as Indians. Without their consent, the affected tribal governments, which had existed for centuries, lost most of their authority over tribal members and their recognition by the United States as sovereign entities. The terminated tribes and Indians also lost their state tax exemptions, the benefits they received from federal Indian programs, and extensive land holdings. Perhaps an even greater concern to the Indians involved was that termination ended their recognition as Indians” (Walch 1983, 1188). “Terminated tribes were given the choice of selling their reservations, dividing communal land into individual allotments, or forming a private management corporation to administer tribal property” (Philp 1983, 165).

The termination acts were passed despite opposition from BIA itself, from academe, and from state government. “The termination acts took effect despite the discovery that Congress and BIA had grossly overstated the Indians’ willingness and readiness for termination. ...The tribes were selected for termination based primarily on subjective reports of BIA field agents estimating the readiness of individual tribes to adapt to the loss of their status as wards of the government. ...While developing the plans for termination, BIA recognized that the reports were inaccurate and that most of the Indians involved were far from ready for termination. ...Nevertheless, termination was implemented” (Walch 1983, 1189n37).

It would not be inappropriate to reference back to what Lewis Meriam had written in 1928, to wit, that “[a]n overwhelming majority of the Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization” (Meriam 1928 Chapter I, 1 of download), as well as to the conclusion that the economic development of the Indians was no better in 1945 than it had been when Lewis Meriam had written the above in 1928 (Philp 1983).

In 1954, a conference of social scientists, mainly anthropologists, met under the chairmanship of former Assistant Commissioner of Indian Affairs John H. Provinse for the purpose of pooling their knowledge and bringing it to bear on federal Indian policy. A portion of the statement they produced follows. ‘An assumption which seems to underlie the basic philosophy of much of the United States approach centers about the idea that assimilation of the American Indian into the normal stream of American life is inevitable, that Indian tribes and communities will disappear. There was complete agreement on the part of the discussants that this prediction is unwarranted...Group feeling and group integrity among the American Indian are as likely to gain strength in the decades ahead as they are to lose it.’ (Spicer 1969, 249)

The California Legislature had endorsed the idea of termination in 1953 but during 1954 made an abrupt change, largely as a result of the hearings conducted by the State Senate Interim Committee on Indian Affairs. The committee found that most reservations were simply unprepared for termination, with a multitude of problems often including undefined boundaries,
no roads, no water, no sanitation, substandard housing, and 2,600 complicated heirship cases. The state was unwilling to accept the financial responsibility for correcting the failures of bureau management and opposed the BIA termination legislation. (Forbes 1969, 112)

However, as noted above, the termination acts were passed and took effect despite the voices of opposition.

Most of the termination acts had scarcely taken effect when their flaws became apparent. Termination resulted in the sale of some former reservations, in whole or in part, which required relocation of the Indians living there. Indian education levels declined when relocation was imposed on many of the terminated Indians. Few Indians had the education and skills to obtain off-reservation employment or any desire or motivation to become integrated into a non-Indian society. Local citizens were similarly unwilling to employ or socialize with the Indians. At the same time that these Indians were losing revenues derived from tribal resources, they became liable for state income, property, and sales taxes. Terminated Indians were also no longer eligible for benefits from federal Indian programs. In this situation, few terminated Indians were able to support themselves for long, and many lost their homes and became welfare recipients. (Walch 1983, 1189-1190)

“Termination halted the education of Indian children in BIA schools and forced them to transfer to local public schools. The education levels of Indian were already extremely low, and their transfer to state schools increased an already substantial dropout rate. The terminated Indians soon had even lower educational levels than before, which increased both the difficulty of obtaining jobs and the feelings of alienation from non-Indians” (Walch 1983, 1189n39).

While the terminated tribes suffered acutely from the economic losses, they suffered far more acutely – as their tribal governments were stripped of most of their powers – from the loss of tribal autonomy, from the loss of the strong sense of themselves as a tribe (Walch 1983). “[M]ost of the terminated tribes and tribal members still suffer from the loss of autonomy and economic and psychological damage caused by termination” (Walch 1983, 1181).

The Self-Determination Period

Things began to change – at the level of government and within Indian country.

With respect to changes at the level of government, as the effects of termination became apparent, opposition to the policy grew rapidly (Walch 1983). At the level of state government, when states realized that they would be responsible for the costs of supporting the Indians that were displaced during the termination period, they withdrew their support for the policy (Brann 2002-2003). At the level of Federal government, the Kennedy and Johnson administrations approached the economic and social problems of the Indians and the reservations, not as unique, but as similar to
the difficulties of other economically depressed areas (Butler 1978). Congress gave its approval to “considering Indian reservations as communities in the War on Poverty legislation, thereby increasing the availability of federal resources to the Indian communities” (Butler 1978, 55).

However, “[w]hile money was literally being poured into Indian country during the early 1960s, many Indian leaders were reluctant to take full advantage of the opportunities offered because of the specter of termination” (Butler 1978, 56). It was a Catch-22 from their perspective: if they took the money and became self-sufficient, they would be terminated because they were self-sufficient and then lose all the money and the basis of that self-sufficiency. It was not an unfounded wariness: termination acts were still being passed through 1962 and becoming effective up through 1970.

“To allay these fears and to encourage greater participation by the tribes in the antipoverty programs, President Lyndon B. Johnson delivered to Congress on March 6, 1968, “The Forgotten American” speech. In it the President called for an end to termination and proposed a ‘new goal’ that stressed self-determination” (Butler 1978). Unfortunately neither government nor tribal leaders knew exactly what he meant by ‘self-determination,’ and did not act upon the notion.

On April 11, 1968, the Civil Rights Act of 1968 was passed. While Titles II through VII applied specifically to Indians, the Act did not really produce a positive definition of self-determination. Title II of the Act was called the Indian Bill of Rights. “It emphasized that Indian tribes are subject to the United States Constitution. Self-government by an Indian tribe does not exempt that tribe from the Constitution’s limitations and responsibilities” (Butler 1978). Prior to the Indian Civil Rights Act, Indians whose tribe had a treaty with the United States were under the laws of their tribe and not under the provisions of the U.S. Constitution and its Bill of Rights. The Indian Civil Rights Act imposed the U.S. Bill of Rights on tribal law, in yet a further erosion of traditional Indian practices (Deloria and Lytle 1983). Title VII of the Act in essence amended Public Law 83-280 of 1953, by requiring that a majority vote of a tribe was required before allowing a state to assume the jurisdiction exercised by the tribal court (Walch 1983).

With respect to changes in Indian country, a number of seeds were planted that would blossom fully in the 1970s and later into an assertion of rights – the experiences of Indians away from the reservation both during World War II as well as because of relocation to the cities; increased education; legal services provided by the War on Poverty; and inspiration taken from the Civil Rights Movement.

As I noted earlier, during World War II, more than 40,000 Indians left their reservations to work in war-related industries and another 25,000 served in the armed forces. “After becoming better
acquainted with the outside world, many of these individuals no longer wanted to return to the poverty and segregation associated with reservation life” (Philp 1983, 167).

In addition, “[r]elocation legislation brought Indians from reservations across the country into cities, including Oakland and Los Angeles. There, living in poverty and relying on each other, some native people forged a new identity as American Indians, understanding what they had in common as well as the differences that distinguished their particular tribes. Exposed to mass media as never before and inspired by the Civil Rights movement, many Indians rejected pressures to assimilate” (Most 2006, 162). Some Indians engaged in protests, for example, ‘fish-ins’ staged in the early 1960s by Indians in Washington defending their treaty-guaranteed fishing rights (Most 2006), and the occupation of Alcatraz in San Francisco Bay by Indians from the fall of 1969, until they were forcibly removed in the summer of 1971 (Butler 1978).

A cadre of professional Indians began to use the spoken and written word, and outside the glare of the public eye on protests, new organizations were formed and new tactics were used to fight for Indian rights. As part of the War on Poverty,

government funded legal services programs were established around the country to provide legal services to poor and disadvantaged people. Many of these programs were located on or near Indian reservations [ -- such as, for example, California Indian Legal Services]. As these programs began working with their Indian clients, a common realization soon developed among them that Indians had special legal problems which were, for the most part, governed and controlled by a specialized and little-known area of the law known as ‘Indian Law’ – a complex body of law composed of hundreds of Indian treaties and court decisions, and thousands of federal Indian statutes, regulations and administrative rulings. (NARF n.d., no page number)

Organizations such as the California Indian Legal Services and the Native American Rights Fund began to use litigation as a tool in the fight for Indian rights. Other organizations, such as the Native American Heritage Commission and others, were formed to work on cultural revival within and across tribes.

**In summary, then,** the period 1900-1969 saw the continuation of the cycles of federal policymakers constructing policy based upon images they imposed upon the Indians, then discovering that the policy didn’t work because the Indians in reality were not the images the policymakers had constructed. We started with the failures of allotment, then moved to “fix everything” with the Indian New Deal, which segued to the failures of the New Deal, and then moved to “get rid of everything” with termination, which segued to the failures of termination. Only then did the Administration begin to flirt with the notion of Indian self-determination, though by the
time the 1960s ended, both Congress and the tribes still did not have a clear idea of what self-
determination might exactly mean and not much movement had been made to move forward from
that perspective.

The changes wrought in Indian country during this period were far more powerful, for not only
were the Indians reeling from the failures of the various federal policies, but also they moved from
domination by the dominant culture, to bitter factionalism within the tribes ranging from assimilation
to rebellion, and finally to the seeds that would blossom in the 1970s and beyond into an assertion of
Indian rights.

2.2 Klamath Lower Basin

How did all of the above play out in the Klamath Lower Basin? I find myself continuously
thinking that the physical inaccessibility of the terrain in the Klamath Lower Basin which had blunted
to some degree the devastation wrought by the invasion of non-Indians since 1848 was finally
penetrated during this period by laws and regulations. In some instances, things that had been taken
for granted by the Indians since time immemorial were now routinely either illegal or off-limits. In
other instances, the tribal definition of identity as something constructed of relationships among
people and place smacked up against the dominant culture’s definition of identity as something
legitimated by laws – and routinely lost the confrontation.

Some things that occurred applied across the board to all the tribes in the Klamath Lower Basin
– as in the settlement with respect to the non-ratified 1851 treaties. Some things applied to specific
tribes in the Klamath Lower Basin – i.e., to the Karuk and the Yurok. But by far the most important
focus of attention during this period is not who, but where – the Hoopa Valley Reservation. It was
here, in my opinion, that the contest between legal identity and cultural identity was waged, a contest
which was won by legal identity.

**Settlement with Respect to the Non-Ratified 1851 Treaties**

The Yurok, the Hupa, and the Karuk were among the tribes who negotiated treaties with Col.
McKee in 1851. In 1852, as a result of lobbying by California, the Congress refused to ratify the
treaties. The treaty documents were then placed under an injunction of secrecy until January 18,
1905.

The tribes were never told that the treaties had not been ratified. In good faith, they abided by
the terms of the treaties, voluntarily relegating themselves to their “reservations.” The lands that
they had vacated were surveyed as public lands and were sold.
In 1928, after the 1851 treaties were finally uncovered, Congress passed the Act of May 18, 1928 ("1928 Act"), which allowed Indians to sue the Federal government for the lost compensation involved in the 18 non-ratified treaties. “The basis of compensation would be the reservation lands promised, not the vast amount of lands surrendered. The suit was...settled in 1944 with a total award of $17,053,941. However, the Federal government claimed to have spent $12,029,099 for the protection of California Indians and deducted this amount from the award. In 1950 Congress authorized the payment of $150 to each person ‘on the corrected and updated roster of California Indians prepared under the original provisions of the act’” (Beckman 1998b, 3-4, no citation provided for his quote).

So, 99 years after the enactment of the 1851 treaties, some members of the Yurok, Hupa, and Karuk tribes probably received checks for $150 to compensate them for the reservation lands they lost in 1851. Somehow, I cannot imagine that a check for $150 could have been experienced as making up for a century of loss and suffering.

**The Karuk**

During the Consolidation period, the Karuk had risen, along with the Yurok and the Hupa, in resistance to oppressive policies and citizen massacre. The Karuk essentially lost, and ultimately melted back into their ancestral territory where the inaccessibility of the terrain worked towards their survival.

The Karuk had negotiated one of the McKee treaties in 1851 establishing a reservation for themselves, but the treaty was never ratified, so a reservation was never established for the Karuk. According to U.S. law, only a treaty or an act ratified by Congress can vest a tribe with rights to the land that they live on. Without the treaty or the act vesting the tribe in the land, it doesn’t matter that the lands are aboriginal territory that they have lived on since time immemorial; they have no vested right to it, according to U.S. law (Brann 2002-2003). This is the situation that pertains to the Karuk.

Most of the 1,015,016 acres of Karuk aboriginal territory was claimed by the Federal government with little compensation (NRC 2004; Stercho 2006). During the Allotment period, only about 20 allotments were given to Karuks (Stercho 2006). In 1905 the majority of Karuk ancestral territory was designated part of the national forest system (Stercho 2006). “Members of the Tribe continued to live on Indian allotments, remnants of village sites, and parcels of private property along the Klamath and Salmon Rivers” (Stercho 2006, 50). However, the construction and subsequent paving of state highway 96 paralleling the Klamath River – starting in 1919 and continuing on until the 1970s – cost the Karuk people “much of the land that [had] remained in their ownership, as the
The majority of village and spiritual sites, as well as Indian allotments, were located along the river and in the path of the road” (Stercho 2006, 52). During the Termination period, the Federal government relocated many Tribe members to the Hoopa Valley Reservation down-river as well as to the Quartz Valley Reservation up-river (Stercho 2006).

Because the Karuk are not federally recognized as having land rights to their ancestral territory, they have minimal fishing rights along the Klamath River and no hunting and gathering and land management rights within their ancestral territory. In order to hunt, to fish, to gather cultural materials and plants, the Karuk must abide by the regulations of both the U.S. Forest Service and the California Department of Fish and Game. This means that they must purchase licenses, must pay fees, must abide by a mind-boggling set of regulations restricting what can be done when and where (including seasons too short and harvests too small for providing adequate food supplies) – and must endure exhorbitant economic consequences (including arrest) if they break any of the regulations (Stercho 2006). The result is that, even though a significant proportion of Karuk households still rely on hunting and fishing for subsistence, many have stopped hunting, gathering and fishing. In addition, they are denied access to lands and cultural areas once managed for subsistence foods and cultural materials (Stercho 2006).

If the above is the rock, the hard place is the fact that there is extremely low employment opportunity in the area. It’s basically the Forest Service, Caltrans23, and the Tribe (Stercho 2006). Logging was boom-and-bust; mining was boom-and-bust; so neither was reliable. There was something of an in-river recreational fishing industry, but that has declined precipitously because of the environmental degradation of the Klamath watershed (Stercho 2006). Poverty and unemployment are the norm for the Karuk.24 Can’t find a job, so need to rely on hunting, fishing, and gathering for subsistence. But can’t afford the costs associated with hunting, fishing, and gathering, so can’t hunt, fish, or gather for subsistence. If there were clearly a loser in the Klamath Lower Basin in the contest between the dominant culture and the tribal culture during this Expansion period, it would, in my opinion, be the Karuk.

The Yurok

Once again, we have the situation where what the tribe had been doing since time immemorial was legal one day and illegal the next. And fold that situation into the confusion that had dogged them since the flood of 1861-1862 called the status of the Klamath River Reservation into question.

23 Caltrans is the California department responsible for construction and maintenance of highways.
24 As such, it comes as no surprise that U.S. Census 2000 shows 53% unemployment and 80% poverty for the Karuk living in the ancestral territory (Stercho 2006).
Earlier in this chapter, I covered in the detail the situation leading up to the 1934 statute passed by the State of California, which banned in the lower 20 miles of the Klamath River both in-river commercial fishing and the use of gill nets for any sort of fishing, and which made even the possession of a gill net a crime. Up until January 1, 1934, the Yurok had not only been able to look to commercial fishing as a source of income, but also had been able to look to gill nets to enable them to catch enough salmon to provide for their subsistence needs. With the dawn of New Year’s Day in 1934, not only were the Yuroks out of jobs as commercial fishermen and cannery workers when the canneries closed, but they also could not engage in subsistence fishing using their gill nets.

This action was followed by illegal netting. ...So flagrant and defiant of the laws were these people that they loaded their trucks with netted salmon in broad daylight, then trucked to Oregon wholesalers for sale and distribution. This condition got so bad during World War II that Del Norte sportsmen telegraphed Governor Earl Warren, either to take immediate action to stop the depredation, or they would. Governor Warren accordingly ordered Otis Wright, a hard-boiled warden, to Del Norte. From the day that Wright stopped his first truck-load of fish on U.S. 199, en route to Oregon, illegal netting was on its way to extinction. (Bearss 1982i, 2)

The ban was a terrible economic blow to the Yurok community. The standard of living fell, and to find employment, the Yurok either had to take jobs as loggers or leave the reservation and go to the cities (Bearss 1981). Those who stayed drew upon their skills as hunters and fishers to evade the State Fish and Game wardens in order to provide food for their community (Most 2006).

On December 15, 1934, the Klamaths (i.e., the Yuroks as they were initially called) voted overwhelmingly against having the Indian Reorganization Act apply to them (Short I) – in other words, they voted against adopting one of the organizational formats devised by the Bureau of Indian Affairs, because of not only a reluctance to adopt a written form of government, which they had neither ever had nor ever felt the need for, but also a deep distrust of the Federal government born of the years in which the United States had decimated their population, their land, and their resources (Yurok Tribe 1993).

In the 1930s, the Yurok Tribal Organization was formed to fight for greater equity for the Yurok tribe (Buckley 2002). In 1949, the Yurok Tribal Organization was incorporated as a nonprofit in the State of California “to represent and promote the interests of all persons of Yurok ancestry, a group described as native to and resident of the Klamath River Basin, an area larger than the Addition” (Short I, 202 Ct. Cl. at 958). As the organization itself wrote,

Any justification for tribal organization at this late day must be based upon a determination to conserve the interests and rights of the Indian people. This may best be done on a tribal basis by
people having in common bonds of basic laws and established customs and beliefs, despite the obstacles of arbitrary geographical divisions of territory by white-man laws and regulations. Such arbitrary divisions...[have been made] at the cost of tribal unity in securing common benefits and struggle for social, economic, and political advancement. Having accepted as fundamental these truths, the Yurok tribal organization purports [sic] to encourage and promote a sense of unity among the Yurok people, and to seek so far as possible official recognition of these people as an identifiable tribe and itself as their accredited representative in matters affecting them as a tribe. (U.S. House 1950, 1075)

At some point, the Yurok Tribal Organization attempted to secure approval of their constitution from the Interior Department, but Interior denied approval (Buckley 2002). Interestingly, even though the Federal government did not formally recognize the Yurok Tribal Organization as a tribe and as tribal organization, they did deal with them as representative of the Yurok tribe. For example, in 1954, BIA was “allotted $1,000.00 of ‘Yurok Tribal funds,’ presumably funds in the account ‘Proceeds of Klamath River Reservation’ for the program submitted by the secretary [of the Yurok Tribal Organization], including travel expenses of tribal delegates” (Short I, 202 Ct. Cl. at 969).

And in 1955, the Yurok Tribal Organization received a sort of back-door acknowledgement by the Commissioner of Indian Affairs.

On September 3, 1955 a constitution was adopted by a group of Indians, presumably Yuroks of the Connecting Strip, establishing an organization called the ‘Yurok Extension Business Organization,’ whose members would be Yuroks and which would exercise jurisdiction over the unallotted trust-status lands of the Connecting Strip. The Commissioner refused to approve the organization on the grounds, among others, that the organization would be confused with the ‘Yurok Tribal Organization’...and that the membership was limited to Yuroks while not all the residents of the area intended to be represented were Yuroks. (Short I, 202 Ct. Cl. at 958-959)

Contrary to the Federal government, however, the State of California did recognize the legitimacy of Yurok Tribal Organization, Inc. On July 12, 1951, the California legislature, on the urging of members of the Yurok tribe, passed Section 7155 of the California Fish and Game Code, which became known as the Yurok fishing statute, and which allowed those persons on the register of the Yurok Tribal Organization to take fish for subsistence all year long in the lower 20 miles of the Klamath River, but forbade them either to sell any fish they caught or to use gill nets in catching them (Bearss 1981).

Over the ensuing years of this period (1900-1969), the Yurok Tribal Organization would continue to advocate for Yurok tribal rights.

Prior to 1953 and the passage of Public Law 83-280, Indians on California reservations hunted and fished without regard to state laws, even though there were no treaties, acts, or statutes granting them what the Indians considered as their rights (Bearss 1981). Public Law 83-280 passed in 1953
conferred upon the states of California, Minnesota, Nebraska, Oregon, and Wisconsin, jurisdiction over the Indian reservations in those states for both criminal and civil matters, but not over hunting, trapping, and fishing rights which had been granted by treaty, agreement or statute (Bearss 1981). That raised the obvious questions in California. With respect to the Klamath Lower Basin in specific, the 1891 executive order that had expanded the Hoopa Valley Reservation to include both the Klamath River Reservation and the Connecting Strip between the two had made no mention of hunting, trapping, and fishing rights. Not unexpectedly, the Indians wanted clarification of their rights. On May 5, 1955, the California legislature passed Section 12300 of the California Fish and Game Code which said, in essence, that if the Fish and Game Code were not applicable to them before the passage of Public Law 83-280, it was not applicable to them after the passage of Public Law 83-280 – with the exception that the sale of any fish and game was prohibited (Bearss 1981).

In 1957, two Yuroks, Emery Mattz and his younger brother Raymond, were tired of being chased by the State Fish and Game wardens because they continued to use gill nets for their subsistence fishing. They decided to do something about getting their fishing rights back. They went out with their gill nets and just waited to be arrested. They were, though only Emery wound up behind bars, while Raymond was let go because he was underage. “Emery intended to use his arrest to challenge California’s jurisdiction in court and restore Indian fishing rights. …[T]his course of action had their tribe’s support. …The trial was underway when Emery was killed in a car accident” (Most 2006, 105). The case was dropped. Raymond continued fishing. Four times when he was eighteen, he was arrested, booked, and let go. One of the wardens treated Raymond and his sister Lavinia who often went gill netting with him with respect – if he didn’t see them in the boat, he wouldn’t stop (Most 2006).

In 1958, the Deputy Solicitor of the Department of the Interior issued a ruling that the Square and the Addition were two separate reservations, together only for administrative purposes in the Hoopa Valley Reservation (Short I). While this ruling was repudiated in subsequent litigation about the Hoopa Valley Reservation (see Short I), in January 1963, the Attorney General of California used this ruling to render his own opinion that the Yurok tribe could not claim the benefits of Section 12300 of the California Fish and Game Code while hunting or fishing on either the Square or the Addition of the Hoopa Valley Reservation or, for that matter, on any reservation, because the Yurok tribe did not have a reservation of their own and did not have a recognized tribal organization (Bearss 1981).

At the request of the Yurok Tribal Organization, Inc., Assembly Bill 544 was introduced in 1963 into the California legislature in an attempt to restore Yurok fishing rights. The President of the
Yurok Tribal Organization, Inc. testified that the Yuroks were indeed organized and lived on a reservation that was an extension of the Hoopa Valley Reservation (Bearss 1981). Unfortunately, because factionalism within the Yurok tribe was raging because of litigation being filed in 1963 about the distribution of the timber revenues of the Hoopa Valley Reservation (see below for a lengthy presentation of this anything but Short litigation), the Assembly Bill failed to pass (Bearss 1981).

In April 1964, a California Fish and Game warden seized the gill nets of two Yuroks, Grover Reed and Dewey George, both enrolled with BIA, who were fishing in the Addition of the Hoopa Valley Reservation. The case was brought to trial as Elser v. Gill Net No. 1. Even though gill nets were seized, the case seemed to have been, not about the use of the gill nets, but about whether the Indians could fish there, with the State saying that they could not. After the usual cycle of decisions and appeals, on October 31, 1966, the California Supreme Court affirmed the lower court’s decision that the Yuroks could fish there (again no mention of the gill nets) (Bearss 1981).

That decision did not seem to stop the Fish and Game wardens. On September 24, 1969, Raymond and seven other young men were fishing and having a party near Brooks Riffle on the Klamath River. When they went back to where they had piled up their five nets, the nets were gone. Raymond decided to claim all five nets and go to jail, because they needed to get their fishing rights back (Most 2006). And thus began a cycle of litigation that would not be resolved until the 1970s by the United States Supreme Court.

Interestingly, even though the Yurok Tribal Organization had been promoting and preserving the cultural identity of the Yurok tribe since the 1930s, it would be asserted consistently in litigation that would ensue in the next period that the Yurok tribe had no tribal organization (see Short Original, Short II, Short III). It seems that, in the same vein as with aboriginal territory – i.e., if the Federal government does not vest you in that land, you have no rights to that land, even though you have been living on it since time immemorial, so with tribal organization – i.e., if the Federal government does not recognize your tribal organization, you are considered as having no tribal organization, even though from your perspective you do.

The Yurok culture says fishing for salmon is the heart and soul of our people. The dominant culture says catch a fish, go to jail. The Yurok tribe says we are organized and we live on a reservation. The dominant culture says no, you aren’t and no, you don’t. Back and forth the contest went between the Yurok tribe and the dominant culture throughout the Expansion period, with no resolution in sight as the period came to an end. It would take an onslaught of litigation and legislation and physical confrontation in the 1970s to settle the contest.
The Hoopa Valley Reservation

I said at the beginning of this section that the most important focus of attention during this period is not who, but where – the Hoopa Valley Reservation. It was here, in my opinion, that the contest between legal identity and cultural identity was waged, a contest which was won by legal identity.

In order for you to understand the implications of things that transpired, I must provide you with a foundation of understandings. First, individual members of many, many tribes and bands lived in the Hoopa Valley Reservation. In litigation (see *Short III*), it was determined that Indians of the Hoopa Valley Reservation were comprised of individual members of the following tribes and bands: “Yurok, Hoopa/Hupa; Grouse Creek; Hunstang/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongatl/Siavs; Sermalton; South Fork; Tish-tang-atan; Karok [sic]; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; Wintun” (*Short III*, 719 F.2d at 1144). And it is important to note that, while the Square was predominantly Hupa, it was not exclusively so, and, while the Extension was predominantly Yurok, it was not exclusively so.

Second, drawing from the decisions of future litigation (see *Karuk v. U.S. 1998* and *Karuk v. U.S. 2000*), the Hoopa Valley Reservation was created as military reservation, rather than as a treated reservation, and no tribes were named as vested in the lands of the reservation. It doesn’t matter that some of the aboriginal territory of the Hupa was contained in the Square or that some of the aboriginal territory of the Yurok was contained in the Addition. Neither the Yurok nor the Hupa nor any of the many other tribes whose members lived in the Hoopa Valley Reservation had a vested right to the lands of the reservation, because they were not named in the original statutes and executive orders by means of which the Hoopa Valley Reservation was created.

Third, the revenues from the commercial extraction of the natural resources from the unallotted lands of a reservation go into the coffers of the Federal government. Individual Indians of a reservation may be employed by these commercial enterprises, but the revenues go to the Federal government.

Fourth, thanks to a series of acts at the beginning of the 20th century, the revenues from these commercial enterprises must be used for the benefit of the Indians of the reservation, independently of whether the reservation is a military reservation in which the Indians enjoy only permissive occupancy or a treated reservation in which the Indians have a vested right. Of particular relevance to the Hoopa Valley Reservation is the Act of June 25, 1910, which empowered the Secretary of the
Interior to sell timber on unallotted lands and apply the proceeds of the sales, less administrative expenses, to the benefit of the Indians.

During the Allotment period, allotments were made in the Hoopa Valley Reservation. Allotments in the Addition were approved in 1898 and, based upon the data provided in Short I, represented an estimated allotment of about 51% of the Addition’s 58,168 acres.25 In the Square, it took until 1915 for a survey to be done and approved, and ultimately until 1950 for the final allotments in the Square to be approved. Based upon the data provided in Short I, the total allotment in the Square represented an estimated allotment of about 4% of the Square’s 89,572 acres.26

On February 20, 1933, “Commissioner Rhoads halted allotments, and directed that the remaining land on the square be assigned, on the ground that Indians of the Addition and of the Square were equally entitled to allotments, and that there was insufficient land for allotment to all who would be entitled” (Short I, 202 Ct. Cl. at 950).

On January 10, 1933, the Superintendent of the Hoopa Valley Reservation reported to the Commissioner of Indian Affairs that the Indians in Hoopa Valley wanted to form a Council to represent only the Hoopas, and wanted to leave it to the Klamaths down the river (i.e., the Yuroks as they were called then) to form their own Council, especially since they seldom came to the Square, given the difficulty of travel (Short I). On January 23, 1933, the Superintendent reported to the Commissioner that some of the Indians living along the river had formed a business committee to represent their interests.

The responses from the Commissioner seem to have codified the confusions surrounding the terms “Hoopa,” “Hoopa Valley,” and “Hoopa Valley Reservation.” What one person meant by one of the terms was quite likely not what another person meant by the term. The Indians of Hoopa Valley wanted to form a Council just for the Square, to the exclusion of the Addition. The Commissioner, however, interpreted “Hoopa Valley” as referring to the Hoopa Valley Reservation as a whole, not just to the Square in Hoopa Valley, and understood that the “Hoopa Council” as proposed would have jurisdiction over the entire Reservation, not just the Square. Given that understanding on the part of the Commissioner, he then told the Indians living on the river that they could have their

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25 Short I tells us that in the Klamath River Reservation, 9762 acres were allotted, and that in the Connecting Strip, 499 allotments were made, averaging 40 acres per allotment, for a total of 19,960 acres allotted. Summing them together, allotments in the Addition came to an estimated 29,722 acres, which is 51% of the 58,168 acres in the Addition.

26 Short I tells us that in the Square, 406 allotments were made, averaging 8 acres per allotment, for a total of 3,248 acres allotted, which is 4% of the 89,572 acres in the Square.
committee but that it would have to be a sub-council under the jurisdiction of the Hoopa Council. They were not pleased (Short I).

In June 1933, councilmen were elected to the Hoopa Council from the seven districts within the Square. All of the elected councilmen were residents of the Square. They described themselves as “Councilmen of the Hoopa Tribe” and asked the Commissioner of Indian Affairs for approval and recognition of their Hoopa Council as the representative of the Hoopa Indians to consider problems within their boundaries, the boundaries not being specified (Short I).

In July 1933, the Hoopa Business Council submitted to the Commissioner of Indian Affairs the “Constitution and By-Laws of the Hoopa Business Council.” The constitution referred to the “Hoopa tribe,” and did not specify whether the council was to be representative of the Square alone or the entire reservation (Short I). In November 1933, the Commissioner approved the constitution, recognizing the Hoopa Business Council as the official representative body of the Hoopa Valley tribe (Short I).

Confusion continued. While the Commissioner thought of the Hoopa Business Council as representative of the entire reservation, the local Superintendent was clear that the Council represented the Square only (Short I). The Councilmembers of the Hoopa Business Council, while all residents of the Square, were not all Hupas, but included Indians of Yurok, Karuk and mixed Yurok and Hupa blood who had been long time residents of the Square (Short I).

It is interesting to note that all these organizational efforts were occurring prior to the 1934 Indian Reorganization Act. On December 15, 1934, two elections were held in the Hoopa Valley Reservation, one in Hoopa Valley for the Hoopa and the other in the territory occupied by the Klamaths. As the Klamaths had done, the Hoopas voted overwhelmingly against having the Indian Reorganization Act apply to them (Short I) – in other words, they voted against adopting one of the organizational formats devised by the Bureau of Indian Affairs, choosing instead to retain the organizational format they already had.

The Hoopa Business Council, over the 1930s and 1940s, dealt not only with matters affecting only the Square but also with matters affecting the Addition, and the Council’s Indian Court exercised all-reservation jurisdiction as well (Short I).

“In 1948, the Hoopa Business Council began formulating a program for the compilation of a current roll of the Indians of the Hoopa Valley Reservation as it originally was created, that is, the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined. The discussions at council meetings of the complication of the proposed roll, as reported in
the minutes of the meeting, reflect a sentiment to exclude from the roll Indians of the Addition” (Short I, 202 Ct. Cl. at 959). The enrollment applications were not distributed in the Addition.

The cut-off date for enrollment into the “Hoopa Valley Tribe” was persons living on October 1, 1949. From the applications received, the Hoopa Business Council prepared two lists: (1) **Schedule A**, comprised of those who had been allotted land on the Square or who were descendants of such allottees, living on October 1, 1949; and (2) **Schedule B**, comprised of “Indians living as of October 1, 1949, whose residence within the Square was not subject to question, who never received allotments but were generally considered as members of the Hoopa Valley Tribe and permitted to participate in tribal affairs, and their descendants living on October 1, 1949” (Short III, 719 F.2d at 1139).

An election was held on May 13, 1950 (1) to approve the schedules A and B “as the roll of Indians who would be entitled to share in the revenues from the original reservation, that is, the Square” (Short I, 202 Ct. Cl. at 960); (2) to determine the minimum degree of Indian blood which a member of the Hoopa Tribe must have to be eligible for enrollment in the future; and (3) to adopt a new Constitution and By-Laws (Short I, 202 Ct. Cl. at 960). Only Schedule A Indians who were not less than 21 years old could vote in the election. The results of the election were that the Constitution and By-Laws as well as Schedules A and B passed, and the minimum degree of Indian blood was set at one-quarter (Short I). The Constitution established an entity called the “Hoopa Valley Tribe,” whose membership was comprised of Schedules A and B and of all children born to Schedules A and B who were at least one-quarter degree Indian blood (Short I). The Constitution also created an executive body called the Hoopa Valley Business Council and “conferred upon the council authority to direct the distribution of the resources of the Square, in addition to the authority...to make the rules governing membership in the ‘Hoopa Valley Tribe’” (Short I, 202 Ct. Cl. at 962). In June 1950, the councilmembers of the Hoopa Valley Business Council were elected, as called for in the Constitution.

On March 25, 1952, the Commissioner of Indian Affairs approved Schedules A and B, and on September 4, 1952, he approved the Constitution, with certain exceptions (Short I).

On June 10, 1954, the Hoopa Valley Business Council adopted **Schedule C** for the enrollment in the Hoopa Valley Tribe of 18 “Indians residing within the Hoopa Valley Reservation for a minimum of 15 years, who had forebears born within the 12-mile square Hoopa portion of the Reservation, who had at least ¼ degree Indian blood, and who filed an application within the 60-day period ending June 2, 1953” (Short III, 719 F.2d at 1139).
In 1959, the Hoopa Valley Business Council adopted resolutions (1) defining the “Hoopa Valley Tribe” as consisting of “‘remnants of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, and Tish-tang-atan Bands of Indians residing within the twelve-mile square reservation created June 23, 1876, and their descendants’” (Short I, 202 Ct. Cl. at 965, quoting from the resolution, no page provided), (2) defining the official roll of the Hoopa Valley Tribe as consisting of Schedules A and B, and (3) adding Schedule C to the Hoopa Valley Tribe (Short I).

To summarize, then, a legal identity – not a cultural identity, but a legal identity – called the Hoopa Valley Tribe was created and membership in the tribe was defined to include only certain Indians of the Square in the Hoopa Valley Reservation – (a) allottees in the Square plus (b) non-allottees who were considered members of the Hoopa Valley Tribe, which came to mean upon further clarification that they were from the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, and Tish-tang-atan tribes and bands. Excluded from this legal identity were non-allottees who resided in the Square but who were not considered members of the Hoopa Valley Tribe. By process of subtraction from the list provided in Short III of all the tribes and bands which resided in the Hoopa Valley Reservation, these would be Indians of the Yurok, Karuk, Grouse Creek, South Fork, Tolowa, Sinkyone/Sinkiene, Wailake/Wylacki, Wiyot/Humboldt, and Wintun tribes and bands.

Even though their Constitution restricted jurisdiction of the Hoopa Valley Business Council to the Square, the Council acted upon matters in the other parts of the reservation. And to confuse things even more, in 1951 the Superintendent of the Hoopa Valley Reservation was advised that the Indians of the Addition should be represented by the Hoopa Valley Business Council and that revenues derived from the resources of the Addition should be credited to the Indians of the Hoopa Valley Reservation (Short I).

“Until 1955, any revenues from both parts of the Hoopa Valley Reservation – the Square and the Addition – were deposited in a single United States Treasury Account, No. 14X7236, entitled ‘Proceeds of Labor, Hoopa Valley Indians.’ The interest derived from the funds in this account was credited to United States Treasury Account No. 14X7736, entitled ‘Interest on Proceeds of Labor, Hoopa Valley Indians.’ Disbursements were made from these accounts for improvements on all parts of the reservation” (Short I, 202 Ct. Cl. at 970).

Starting in 1955, the Interior Department opened two more sets of Treasury accounts, one for the Yuroks of the upper Klamath River, or in other words, the Connecting Strip, into which revenue from the resources of the Connecting Strip was deposited, and another for the Yuroks of the lower
Klamath River, or in other words, the old Klamath River Reservation, into which revenue from the resources of the lower 20 miles of the Klamath River was deposited. Revenue from the Square continued to be deposited into the original account for the Hoopa Valley Indians (Short I).

During the 1950s, seven new sawmills were constructed in the Hoopa Valley (NRC 2004). In 1955 at the request of the Hoopa Valley Tribe, BIA began to sell timber from the Square (Schlosser 2008). Beginning in 1955, the Hoopa Valley Business Council passed resolutions requesting per capita payments to the official roll of the Hoopa Valley Tribe, from the accumulated funds in the set of accounts for the Hoopa Valley Indians. In 1958 the Deputy Solicitor of the Department of the Interior issued a ruling defending the separation of the revenue from the three parts of the Hoopa Valley Reservation and asserting that the “Hoopas” were vested in the Square by 1891, and so therefore had a vested right to the revenues from the Square. As pointed out in Short I in the court’s repudiation of the 1958 ruling, the Deputy Solicitor ignored the fact that non-“Hoopa Valley Tribe” Indians had been living in the Square from aboriginal times continuously to 1891 and beyond (Short I), and was in error in asserting that the “Hoopas” were vested in the Square by the time of the 1891 Executive Order (see Karuk v. U.S. 1998 and Karuk v. U.S. 2000).

In 1961, the Federal government tried to get the Indians of the Connecting Strip to create their own organization to represent the Indians of the Connecting Strip with respect to the revenues from the resources of the Connecting Strip, but by a vote of 110 to 31, people voted it down, “the majority being of the opinion that they had a right to be members of an all-reservation group and intended to use legal means to enforce their rights” (Short I, 202 Ct. Cl. at 959). And they did just that.

On March 27, 1963, the case Jessie Short, et al. v. The United States and the Hoopa Valley Tribe of Indians [Short Original] was filed in the United States Claims Court. The plaintiffs – who grew in number to about 3800 by the time the class was closed in 1976 – were Indians of the Hoopa Valley Reservation who contended that they were entitled to their share of the funds in the Hoopa Valley Indians Treasury account and that the government was wrong in distributing those funds only to the Hoopa Valley Tribe. And so it began, cycles upon cycles upon cycles of litigation, that, to quote the judge in one of many decisions, “outlasted some 400 now deceased plaintiffs, the original trial judge, several deceased attorneys, and even the court in which it originally was filed” (Short Original, 12 Cl. Ct. at 37), and that, in some ways, is still having a ripple effect today.
Discussion

During this period, within a context of confusion in language exacerbated by contradiction in actions and rulings, a contest between cultural identity and legal identity was waged in the Hoopa Valley Reservation.

Confusion reigned during this period with respect to words used to refer to people and place.

Hupa ≡
- used to refer to a cultural identity

Hoopa ≡
- sometimes used to refer to the Hupa cultural identity
- sometimes used to refer to the Indians of the Square

Hoopa Valley ≡
- sometimes used to refer to the geographic location
- sometimes used to refer to the Hoopa Valley Reservation

Hoopa Valley Reservation ≡
- sometimes used to refer to the original reservation, i.e., just the Square
- sometimes used to refer to the extended reservation, i.e., Square + Addition.

Hoopa Valley Tribe ≡
- sometimes used to refer to Indians of the Square
- sometimes used to refer to the legal identity created in 1950

In addition, there were contradictory rulings and actions from the Federal government, some engendered by the confusion in language, and some simply involving officials saying things were one way at one moment, and were just the opposite at another moment.

Sometimes the interplay of confusion plus contradiction worked to the benefit of the Indians of the reservation, as it did for the Indians of the Square, and sometimes it worked to the detriment of the Indians of the reservation, as it did for the Indians of the Addition.

Living in the midst this context of confusion plus contradiction were the Indians of the reservation – persons from high-context cultures in a position of domination by the low-context culture of the United States. And “battle” in the dominant culture was waged in court, where attorneys presented competing rule-oriented accounts to a neutral judge who decided who won and who lost, and where relationship-oriented accounts were dismissed as irrelevant and illegitimate (Conley and O’Barr 1990a, 1990b, 1998).
The Yuroks throughout this period worked to protect and promote their cultural identity. They organized themselves in a manner in concert with their high-context culture, and rejected the low-context rule-based forms of organization considered legitimate by the dominant culture. Not surprisingly, the dominant culture, while it acknowledged that their tribal organization spoke for the tribe, did not accord that organization formal recognition because it did not consider their form of organization to be legitimate. It would take the Yurok tribe until 1993 to find a way to marry their relational concerns with respect to their cultural identity with the rule-based requirements for organization (Yurok Tribe 1993). In this period, however, the Yuroks, in their attempt to protect and promote their cultural identity, were consistently unsuccessful in their attempts for formal recognition by the dominant culture.

Conversely, the Indians of the Square throughout this period worked to organize themselves in a manner in tune with the rule-based requirements of the low-context dominant culture. They created a legal identity called the Hoopa Valley Tribe that was divorced from the protection or promotion of any cultural identity, and they created a rule-based form of organization that would enable them to protect and promote the interests of the legal entity and to develop cooperative relations with the federal, state, and local governments (Hoopa Valley Tribe 2008). Not surprisingly, the dominant culture accorded the legal entity formal recognition because it considered their form of organization to be legitimate. In this period, the Indians of the Square, in their attempt to protect and promote their legal identity, were consistently successful in their attempts for formal recognition by the dominant culture.

2.3 Klamath Upper Basin

In so many ways, I find the scenario involving the Klamath tribes in the Upper Basin to be a mirror of the national picture I painted at the beginning of this section. I also find myself looking at this scenario from four different angles: (1) as a story of shrinking acreage (2) as a story that is grounded on different understandings of “competence,” (3) as a story that is grounded on different understandings of “termination,” and most powerfully, (4) as a story of a moment in time – in which everything that had happened in the past was squeezed down to a few moments in an anteroom in which decisions were made that would then explode forward into the future in the form of repercussions of those decisions.
Life for the Klamath Tribes before Termination

With respect to the story of shrinking acreage, it is powerful to remember that, before the invasion by non-Indians, the Klamath tribes controlled an estimated 22 million acres in southern Oregon and northern California (Klamath Tribes 1999-2001b). In the Treaty of 1864, the Tribes ceded about 20 million acres, and agreed to take up residence on a reservation, the boundaries of which were spelled out in the treaty only by means of verbal description, employing sometimes Indian and sometimes white names for geographic markers for the boundaries of the reservation. Using data provided in House Report No. 2483 (U.S. House 1954b), I calculate the acreage of the treated reservation at 1,729,671.59 acres.27

Almost immediately this acreage was reduced because the 1871 survey by the General Land Office omitted a huge chunk of land. The tribes immediately challenged the survey, but the land was also immediately settled by non-Indians. After a succession of surveys, the Klamath tribes agreed on June 17, 1901 to a determination that their reservation had been shortchanged 621,824 acres. By subtraction, this left a reservation of 1,107,847.31 acres.28

Allotments started in 1895, but were interrupted in 1897 by conflicts about reservation land that had been erroneously granted by the State of Oregon for the construction of a military road (Ruby and Brown 1986). The Act of June 21, 1906 took allotted acres from the land company and put them back into the reservation and, in exchange, took unallotted acres from the reservation and gave

27 After days upon days of sleuthing coupled with gnashing of teeth, working through the tangled mess of surveys plus court cases plus more surveys plus Congressional documents plus more surveys, and coming up with my own calculations, I then unexpectedly stumbled upon a set of numbers in the July 23, 1954 House Report No. 2483 (U.S. House 1954b). In comparing “my” numbers with the House Report numbers, I find that they are not that far apart. I have no idea where the House Report got its numbers, and just because the numbers are published in a Congressional document is not absolute assurance of their accuracy. However, I have decided to use the House Report numbers rather than my own numbers because (a) they come from one source, and (b) I will not have to append lengthy footnotes explaining the history and the rationale behind my numbers.

Reservation acreage is comprised of all lands that are held in trust by the Federal government for the tribe. This includes unallotted acreage still held in trust for the tribe as well as allotted acreage that is still held in trust for the allottees. Allotted acreage which has passed out of trust is excluded from reservation acreage.

The number for the acreage of the treated reservation is comprised of three numbers from House Report No. 2483 (U.S. House 1954b) added together:

<table>
<thead>
<tr>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current total reservation acreage</td>
<td>1,000,188.31</td>
</tr>
<tr>
<td>Acreage excluded by survey error</td>
<td>621,824.28</td>
</tr>
<tr>
<td>Allotments that passed out of trust</td>
<td>107,659.00</td>
</tr>
<tr>
<td>Treated Reservation</td>
<td>1,729,671.59</td>
</tr>
</tbody>
</table>

28 Treated reservation acreage of 1,729,671.59 acres less excluded acreage of 621,824.28 acres yields remaining reservation acreage of 1,107,847.31 acres. In House Document No. 156, it is reported that on May 7, 1900, the General Land Office accepted an amended survey which showed that 621,824.28 acres had been excluded from the treaty reservation by an erroneous 1871 survey (U.S. House 1900). Within that same document, the number of acres for which the tribe was subsequently paid was rounded to 621,824 acres.
them to the land company. (This conveyance of the unallotted acreage was done without consulting the Klamath tribes, which, of course, occasioned lawsuits and subsequent compensation paid to the Tribes.) Allotments were resumed in 1909. Per House Report No. 2483, the total allotment acreage was 244,688.42 acres (U.S. House 1954b). Subsequently, ostensibly as of the July 23, 1954 date of the House Report, a total of 107,659 acres had ceased to have trust status, leaving a balance of 137,029.42 acres of allotment still in trust status and therefore included in the reservation acreage.29

Because the reservation boundaries were in dispute until 1938 (when the final lawsuit was decided [U.S. v. Klamath 1938]), unlike what routinely happened in other reservations, the unallotted land was not declared surplus and was not opened up to non-Indian purchase. By the time the boundary dispute was resolved in 1938, the allotment policy had been repudiated by the 1934 Indian Reorganization Act, and the unallotted land remained tribal land. Per House Report No. 2483, ostensibly as of the July 23, 1954 date of the report, the unallotted acreage totaled 863,158.89 acres, comprised of 856,593.20 acres of land held in common by the tribe, and of 6,565.69 acres in administrative sites and reserves (U.S. House 1954b).

Taking the measure of the shrinking acreage, the Klamath Reservation had shrunk from its treated reservation acreage of 1,729,671.59 acres, to its current reservation acreage (ostensibly as of the July 23, 1954 date of House Report No. 2483 [U.S. House 1954b]) of 1,000,188.31 acres – a loss of 729,483.28 acres or 42% of the original treated reservation. The current reservation acreage was comprised of 137,029.42 acres of allotments still in trust status plus 863,158.89 acres of unallotted land in trust status.

“With the arrival of the railroad in 1911, reservation timber became extremely valuable. The economy of Klamath County was sustained by it for decades” (Klamath Tribes 1999-2003a, 2). As noted in the earlier section with respect to the Hoopa Reservation, the revenues from the natural resources from the unallotted lands of a reservation go into the coffers of the Federal government, and the proceeds, less administrative expenses, must be used for the benefit of the Indians of the reservation.

The role of BIA in relation to the Klamath tribes involved (1) complete supervision of the tribe’s forest and grazing lands, roads, irrigation, soil and moisture conservation, agricultural extension; and (2) supervision of compliance by the tribal loan board, of the welfare program in cooperation with

29 The number of allotments in trust status ostensibly as of the July 23, 1954 date of the House Report No. 2483 was 1,092, with 605 of those allotments in single ownership and 487 in multiple undivided ownership (U.S. House 1954b).
the tribe, and of the disbursement of education funds to the State. The costs for all these services were paid from various reservation revenue funds (U.S. House 1954b).

The BIA management, however, was objectionable on several fronts (Most 2006). On one front, “[t]he Bureau of Indian Affairs sold Indian timber at low prices, [thereby] driving up profits and boosting prosperity in Klamath County” (Most 2003, 1). On another front, the agency “did not permit tribal members to market their own goods or develop their economy by building a mill and other tribal businesses” (Most 2003, 1). And finally, “[t]he federal government deducted all of its costs on the reservation from the tribe’s income, deciding what the fees were without input from the Indians” (Most 2006, 221). The Klamath tribes were the only tribe in the country paying their BIA administrative costs (NARF 2002).30

“Even so, per capita payments for forest revenues made Klamath Indians rich compared to other American Indians. (Only members of Oklahoma tribes that received revenues for oil had more income.)” (Most 2003, 1).

The primary sources of earned income on the reservation are farming and livestock enterprises, wage work in timber and on farms, logging enterprises, and skilled trades. Off-the-reservation earned income is derived from work for wages in the timber industry, skilled trades, business enterprises, etc. Unearned income in all cases [i.e., both on and off reservation] comes from per capita payments from the tribe’s income amounting to about $800 per person annually, or roughly $3,000 per family. The average total income per family averages in excess of $4,000, which compares favorably with the average annual income of non-Indian families in the area. (U.S. House 1954b, 4, bold added) 31

As NARF points out, however, this picture of relative wealth and self-sufficiency is not a complete picture (NARF 2002). One must understand it within context – and this gets directly to my earlier point about the notion of “competence.” On one hand, while the Klamath tribes were very competent at managing their lives within the reservation, on the other hand, the Klamath tribes were NOT competent at managing their lives outside the reservation. Each locus entailed a different definition of what counted as competence.

Within the reservation, the Klamath tribes lived primarily in small communities insulated from most of the influences of the majority culture (NARF 2002). They managed their timberlands on a sustained-yield basis; they grazed livestock on their rangelands. A significant portion of their

30 See later in this section and in the next chapter about the recovery of disallowed expenses.
31 The low level of earned income (about $1000 per year per family) will figure hugely in the repercussions of termination, which will end all unearned income and leave families dependent upon this low level of earned income, resulting in a plunge into poverty.
subsistence was taken from reservation fish and game sources, to which they had exclusive access (NARF 2002).

Outside the reservation, the members of the Klamath tribes had minimal expertise or experience in the ways of the money-based economy of the majority culture, in which one must be paid in money for one’s labor and must use that money to buy one’s sustenance. Few had checking accounts. Few engaged in any significant amount of consumer purchases for large and expensive items with the exception of cars or appliances. They had little or no consumer debt (NARF 2002). They were not subject to federal or state income taxes, or state property taxes.

As noted above, the members of the Klamath tribes received regular distributions of unearned income from the Federal government over the years. Meriam, in his 1928 report, noted that many times BIA would hold distributions at the agency and only distribute the funds to the recipients much as one would give an allowance to a child (Meriam 1928). According to testimony at Senate hearings in 1957, the distributions payable to 600 minor tribal members were held at the agency for supervision (U.S. Senate 1957: testimony of Klamath Management Specialists). In general, the members of the Klamath tribes had had no expertise with large distributions of money (NARF 2002). Stories abound with respect to distributions rapidly running through the fingers of their recipients, thanks to their inexperience with a money-based economy exacerbated by the onslaught of hucksters and unscrupulous attorneys bent on exploitation (U.S. Senate 1957: testimony of League of Women Voters; NARF 2002). “Many succumbed [to debt,] to apathy and alcohol” (Most 2003, 1).

They were criticized by the dominant culture for being either apathetic about or outright opposed to sending their children to public schools (Most 2003; U.S. Senate 1957: testimony of Klamath Management Specialists) – a position, in my opinion, not at all surprising, given (a) their negative experience with boarding schools, (b) the discrimination against them by the majority culture, and (c) the irrelevance of book-learning with respect to competence in terms of one’s ability to draw sustenance from one’s environment. They did not seek employment as assiduously as the dominant culture thought they should (U.S. Senate 1957: testimony of Klamath Management Specialists) – which, again in my opinion, is not all that surprising, given (a) that they received “unearned income” in the form of the federal distributions, (b) that there was discrimination against them by the majority culture, and (c) that theirs was culture which was not constructed around the notion of wage-labor, as was that of the dominant culture.

Within the reservation, the economy of the Klamath tribes was subsistence-based, and competence was measured in terms of one’s ability to draw sustenance from one’s environment. Outside the
reservation, the economy of the majority culture was money-based, and competence was measured in terms of one’s ability to make and manage one’s money. Clearly, the Klamath tribes were competent within the reservation, and, in general, not competent outside the reservation.

In 1929, the Klamath tribes established a business committee (Ruby and Brown 1986). “On June 15, 1935, a majority of Klamaths voted to reject the provisions of the Indian Reorganization Act” (Ruby and Brown 1986, 92).

“The Klamath Tribe...is organized under a constitution and bylaws approved by the tribe in general council on February 3, 1950, and officially recognized by the Bureau of Indian Affairs on October 12, 1950. ...By resolution of August 21, 1952, the Klamath Tribal General Council delegated broad powers to an executive committee of eight elected members and the president and secretary of the general council” (U.S. House 1954b, 3).

However, the tribe as well the tribal government were characterized as a house divided against itself, during the 1957 Senate hearings (U.S. Senate 1957: testimony of League of Women Voters). On one hand, the tribal government did not play a unifying role for the tribe. For example, according to testimony at the 1957 Senate hearings, “many times in recent years the tribal general council has been unable to convene at a scheduled meeting for lack of the necessary quorum of 100 eligible members or has been unable to complete the deliberation of items on the agenda because of the failure of the quorum to remain at the meeting. Many adult members of the tribe do not attend the meetings of the general council, either because they are disturbed by the constant bickering and dissension within the tribe, or because they are not sufficiently motivated by interest in their own affairs” (U.S. Senate 1957: testimony of Klamath Management Specialists, 55). In addition, every major decision reached by the tribal government was subject to the approval of the Indian Bureau (U.S. Senate 1957: testimony of Klamath Management Specialists).

On the other hand, for more than 20 years, intense factionalism – grounded in personal conflict between two men – had riven both the tribe and its government – and this brings me to my earlier point about different understandings of “termination.” Each faction spoke of termination, but each meant something different by termination. One faction, led by Boyd Jackson, a member of the Tribal Executive Committee, wanted to keep the tribe and tribal rights, but to terminate the relationship with BIA, allowing the tribe to form a corporation and manage its own tribal assets. The other faction, led by Wade and Ida Crawford, also members of the Tribal Executive Committee, wanted to create individual Indian rights, to terminate the tribe, and to liquidate tribal assets, paying each individual his or her share of the proceeds. As Ida Crawford said during the 1957 Senate
hearings, she and her husband had been trying for 30 years to get away from the Indian Bureau – “from this everlasting, infernal bureaucracy” (U.S. Senate 1957: testimony of Wade and Ida Crawford, 143).

“Many [tribal] members have expressed the opinion that the function of the general council has degenerated to such a point that attending the meetings is merely an empty gesture” (U.S. Senate 1957: testimony of Klamath Management Specialists, 55). “Many are torn and confused by the crosscurrents of the fighting” (U.S. Senate 1957: testimony of League of Women Voters, 34).

One final point with respect to a characterization of life for the Klamath tribes before termination: perhaps thanks to the relocation program pushed by BIA, perhaps thanks to other reasons, but an analysis of the final tribal roll published in the Federal Register on November 21, 1957 (U.S. Department of the Interior 1957), reveals that as of that final tribal roll 1,007 of the 2,133 tribal members did not live on the reservation.32

<table>
<thead>
<tr>
<th>Table 8.2. Analysis of Final Tribal Roll of Klamath Tribes at November 21, 1957</th>
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</thead>
<tbody>
<tr>
<td><strong>Living on Reservation</strong></td>
</tr>
<tr>
<td><strong>Living Outside of Reservation</strong></td>
</tr>
<tr>
<td><strong>Living in Oregon</strong></td>
</tr>
<tr>
<td><strong>Living in Klamath Falls</strong></td>
</tr>
<tr>
<td><strong>Living elsewhere in OR</strong></td>
</tr>
<tr>
<td><strong>Living in 23 other states</strong></td>
</tr>
<tr>
<td><strong>Military Service</strong></td>
</tr>
<tr>
<td><strong>Total Living Outside of Reservation</strong></td>
</tr>
<tr>
<td><strong>Deceased since original 8/13/54 roll</strong></td>
</tr>
<tr>
<td><strong>Total on Final Roll</strong></td>
</tr>
</tbody>
</table>

*Source:* U.S. Department of the Interior 1957

This reveals that, of those living members on the final tribal roll, half resided on the reservation and half resided away from the reservation. Testimony at the 1957 Senate hearings revealed that there were practically no records pertaining to those tribal members residing away from the reservation (U.S. Senate 1957: testimony of Klamath Management Specialists).

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32 I got these numbers by hand-counting data in the original document. In determining the line between on and off reservation, I consulted both historical surveys and present-day maps and made the decision that the towns of Modoc Point, Sprague River, Beatty, and Bly, OR, fell within the reservation boundaries on the south and that the city of Klamath Falls, OR, did not. If this is not the case, then even fewer people would have lived on the reservation than I have indicated.
The information provided on the final tribal roll also allows me to count up that there were 289 allotments still held by tribal members as of that final roll. Only 169 of these allotments within the reservation were held by tribal members who actually lived on the reservation; of the remainder, 79 of the allotments within the reservation were held by tribal members who lived outside of the reservation, and 41 by members who had died in the period between August 13, 1954 and November 21, 1957. On the final tribal roll, the highest numbered allotment is 1601. This means that, if my assumption is correct that the allotments listed on the final tribal roll are those that remain in trust status, then, at a minimum, 1,312 allotments had passed out of trust status since when the allotments were originally made.

In summary, then, life for the Klamath tribes before termination can be seen as involving (1) the emigration of about half of the tribal membership away from the reservation, (2) competence in a subsistence-based economy within the reservation, but lack of competence in a money-based economy outside of the reservation, (3) desire to be out from under the thumb of the Indian Bureau, but disagreement about how to accomplish this, (4) intense factionalism among those living on the reservation (and perhaps including those who lived nearby in Klamath Falls), and (5) disillusionment concerning tribal government because of the constant bickering among the factions.

The Road to Termination

This was a well-traveled road, both by the Klamath tribes as well as by non-Indians. The decision in House Concurrent Resolution 108 calling for the termination of the Klamath tribes did not come out of nothing.

33 If the data are accurate in both the House Report No. 2483 dated July 23, 1954 (U.S. House 1954b) and the final tribal roll dated November 21, 1957, and if it is accurate to infer that the allotments listed on the final tribal roll are still in tribal status, then one can conclude that the number of allotments in trust status shrunk in something over three years from 1,092 to 289, a decrease of 803 allotments. This would mean that the reservation acreage at August 13, 1954 would have been reduced by however many acres went with these 803 allotments that were removed from trust status.

34 The final tribal roll was published in the Federal Register on November 21, 1957 (U.S. Department of the Interior 1957). I do not know the exact date upon which the final tribal roll was finished and submitted for publication. The Assistant Secretary of the Interior acknowledged receipt of the final tribal roll on October 10, 1957, and the latest date upon which an appeal was filed was July 17, 1957, so I would venture to guess that the tribal roll was finalized on some date within those parameters. For the sake of sanity, I have elected to take November 21, 1957 as the date of the final tribal roll. Variations in numbers could arise in the number of deceased (someone else could have died), in the number of minor tribal members (someone could have turned 21), and in the number of elder tribal members (someone could have turned 56), but I feel that the variation will be small enough to live with.
Representatives of the Klamath Tribe have journeyed to Washington to appear before the committees of the House and the Senate, and to consult with officials of the Department of the Interior and Bureau of Indian Affairs, during at least the past 40 years. Committee appearances involving this tribe have resulted in printed hearings alone for the following years: 1916, 1920, 1923, 1924, 1929, 1930, 1932, 1937, 1939, 1940, 1946, 1947, 1948, 1953, and 1954. As early as 1930, hearings were held before House and Senate committees on legislation providing for the final enrollment of Klamath Indians, and to permit incorporation of the Klamath Indian corporation. (U.S. House 1954b, 5)

The voice of the faction within the Klamath tribes for voluntary termination had been making itself heard both on the reservation as well as in Washington, DC, for a long time prior to actual termination. The proportion of the tribe that actually supported voluntary termination is unknown, but the loudest and most unrelenting advocates of this position were Wade and Ida Crawford. As Ida Crawford said during the 1957 Senate hearings, she and her husband had been trying for 30 years to get away from the Indian Bureau – “from this everlasting, infernal bureaucracy” (U.S. Senate 1957: testimony of Wade and Ida Crawford, 143).

The Crawfords had a huge impact on the termination process – both in terms of what they actually did, as well as, very importantly, what others did in the hopes of ridding themselves of their disruptive presence. It is very interesting to remember here the points I drew from Conley and O’Barr in the previous chapter about the dominance of the language of rules employed by dominant members of the dominant culture over the language of relationships employed by either non-dominant members of the dominant culture or non-dominant cultures within the dominant culture (Conley and O’Barr 1990a, 1990b, 1998). In reading the 1957 Senate hearings, one cannot help but note that the hearings were grounded on the dominant culture’s language of rules. The fact that the hearings were held in a courtroom lent huge symbolic power to the supremacy of the language of rules. The fact that the hearings were held in a courtroom lent huge symbolic power to the supremacy of the language of rules. The fact that the

In testifying before Senator Neuberger and his aides, the official delegation of the Klamath tribes – Boyd Jackson, in particular – employed the language of rules in presenting their concerns – and is praised by the Senator for the cogency and usefulness of their comments. Contrarily, when Wade and Ida Crawford testify, every word is tinged with an abiding anger and resentment. The pages of the report bristle with the tension in the hearing room during their lengthy testimony. Routinely, the Senator and his aides pick apart and belittle what the Crawfords are saying – with the Crawfords responding even more angrily to the slights, and with the committee missing the actually valid points that the Crawfords do make. Clearly this was a case of the language of relationships being dismissed by the language of rules. What is particularly interesting in this case, however, is that, for however much the Crawfords may have been dismissed, they did not ever go away, and in the long run, they had a huge impact on what actually transpired.
During his testimony during the 1957 Senate hearings, Wade Crawford proclaimed that he himself had written two bills seeking voluntary withdrawal – S. 1313 and S. 1222. The Klamath Tribe had officially supported the introduction of these two bills. No action was taken by the Congress on either of these bills. It is most revealing to note what Senator Wayne Morse had to say about these bills.

On July 25, 1945, on behalf of Senator Guy Gordon and myself, I introduced a bill (S. 1313) to remove restrictions on the property and moneys belonging to enrolled members of the Klamath Indian Reservation in Oregon to provide for liquidation of tribal property and distribution of the proceeds thereon and for other purposes. On page 8042 of the Congressional Record for the 79th Congress, 1st session, you will find I said: ‘...We wish to make it perfectly clear that we are introducing the bill at their (persons in Oregon) request.’ No action was taken on this bill.’ (U.S. Senate 1957: letter by Senator Wayne Morse, 266)

On May 2, 1947, Senator Cordon and I again joined in the introduction of a similar bill (S. 1222). Page 4457 of the Congressional Record for the 80th Congress shows that I said again: ‘We want the record to show 2 or 3 things very clearly: First, that the bill is being introduced at the request of a certain group, and, I think, properly described as a certain faction, within the Indian Reservation, that it is being introduced at the request of certain officials of the county, including the county judge, and it is being introduced in behalf of certain civic bodies, who at least want the bill introduced for the purpose of hearings.’ (U.S. Senate 1957: letter by Senator Wayne Morse, 266)

Senator Morse goes on to declare that “no one associated with this legislation [i.e., both S. 1313 and S. 1222] was willing to knowingly approve a bill which would liquidate these great resources for a few paltry dollars” (U.S. Senate 1957: letter by Senator Wayne Morse, 266). It does not seem unreasonable to conclude that, on the one hand, by dint of personal persistence, Crawford was able to get the Senators to introduce the bills, but, on the other hand, the Senators wanted to distance themselves as far as possible from the bills.

In 1953, during the 1st session of the 83rd Congress, the House Indian Subcommittee yet again held hearings on a Klamath voluntary withdrawal bill (U.S. House 1954b). It was in that same session of Congress, on August 1, 1953, that Congress adopted House Concurrent Resolution 108 which listed the Klamaths as one of a number of tribes to be terminated and declared that upon completion of the termination process, BIA should be abolished (Klamath v. U.S. 1971). Clearly, given the number of times over the years that hearings had been held and bills had been submitted for Klamath voluntary withdrawal, it really comes as no surprise to me that the Klamath tribes were named for termination in the House Concurrent Resolution establishing federal termination policy.

House Concurrent Resolution 108 required the Secretary of the Interior to provide Congress with his recommendations for legislation to accomplish the termination (U.S. House 1953). To
enable this, “[s]everal conferences were held in Washington, with the area director and Klamath Agency superintendent participating in the drafting of legislation responsive to the directive of the House resolution” (U.S. House 1954b, 6). And thus began a very busy year. And like the proverbial which-cup-is-the-pea-under, the important question about this year is who knew about which version of Section 5 when.

On September 25, 1953, a draft of the bill was mailed to the area director for use in local discussions (U.S. House 1954b). Section 5 of the draft bill dealt with the steps that would be taken to make the termination happen. It presented what I will call a ‘slow-track’ approach to termination: “Section 5 of the bill authorizes the Tribe to retain specialists under contracts approved by the Secretary to study Reservation resources and formulate and submit management recommendations... Studies and recommendations of the specialists are to be completed within 18 months of the date of the act, and tribal plans for the management of tribal property are to be submitted to the Secretary within the next 6 month period” (U.S. Senate 1954, 9). The remaining two years of the four-year period were to be used for implementing the termination. It did not contain provisions for withdrawal and liquidation of tribal assets.

In early October 1953, copies of the September version of the ‘slow-track’ draft bill were sent to the chairman of the Klamath General Council, the Klamath tribal executive committee, and to various individual Indians, as well as to the Governor and other State and local county officials (U.S. House 1954b). On October 22, 1953, a meeting was held with State officials for consideration of the September version of the ‘slow-track’ draft bill (U.S. House 1954b). On December 8, 1953, another meeting was held with State officials for consideration of the September version of the ‘slow-track’ draft bill, this time with a tribal delegation attending the meeting (U.S. House 1954b).

On December 14 and 16, 1953, the Klamath tribal executive committee reviewed a draft of the bill, section by section, with the assistance of the area counsel, and voted to reject the draft bill. On December 17 and 18, 1953, the Klamath General Council considered the draft of the bill and an alternative plan of termination of the special Federal-Klamath Indian relationship then being sponsored by certain members of the tribe. The Council voted to consider the entire matter on January 14, 1954, directing the chairman to arrange in the meantime for various community meetings; the Governor of the State and interested county commissioners were invited to attend the meeting. (U.S. House 1954b, 6)

Back in Washington, DC, on January 4, 1954, a revised draft of the bill was prepared and submitted to Congress, becoming S. 2745. This January version of the ‘slow-track’ draft bill was prepared without input from the Indians or the State or local officials in Oregon (U.S. House 1954b). Whatever else was revised, the ‘slow-track’ language of Section 5 remained the same.
Back in Oregon, on January 14, 1954, the Klamath General Council voted to adopt the **September version of the ‘slow-track’ draft bill** in principle, subject to various modifications suggested at the council meeting and to be worked out by the committee on legislation and the tribal executive committee (U.S. House 1954b).

Back in Washington, DC, on January 26, 1954, the **January version of the ‘slow-track’ draft bill (S. 2745)** was furnished to State officials (U.S. House 1954b).

In February 1954, hearings began in Washington, DC, before a joint House and Senate committee to consider the **January version of the ‘slow-track’ draft bill (S. 2745)**. “Klamath Indian tribal delegates were present representing the tribe, as was a spokesman for an ‘opposition’ group opposed to some recommendations of the tribal governing body” (U.S. House 1954b, 6). The Klamath Indian tribal delegates were Boyd Jackson and Jesse Kirk. Reference to an ‘opposition’ group meant Wade Crawford, and whoever else accompanied him, and whatever attorneys represented them. I find it reasonable to assume that the tribal representatives would have been given the **January version of the ‘slow-track’ draft bill (S. 2745)** for their consideration and response during the hearings.

During the February 1954 joint hearings, “[t]he criteria upon which the Klamath Indians were judged competent and ready to handle their own affairs were set forth in a letter written by Orme Lewis, the Assistant Secretary of the Interior in 1954” (Hood 1972, 381). Lewis asserted their belief that “‘the Klamath Tribe and the individual members thereof have in general attained sufficient skill and ability to manage their own affairs without special federal assistance. ...The Klamath Tribe has been considered one of the most advanced Indian groups in the United States’” (Hood 1972, 381, quoting from U.S. House 1954a, 204). The measure of this competency was the degree to which daily lives of the Klamath Indians mirrored that of the dominant culture and were divested of any vestiges of their Indian culture – or, to put it in crass terms, the degree to which they looked like whitemen.

The joint hearings in Washington, DC, in February 1954 were adjourned to recommence on April 19, 1954 when a special joint House-Senate subcommittee took extensive testimony at the Klamath Agency, OR, with testimony heard from county and State representatives as well as from representative spokesmen for various segments of opinion among tribal members (U.S. House 1954b). It would have been the **January version of the ‘slow-track’ draft bill (S. 2745)** under consideration during these hearings. Boyd Jackson, the official tribal delegate, testified, as did Wade and Ida Crawford, as well as many others.
After the April 1954 hearings in Oregon, the show moved back to Washington, DC, leaving those who had been involved in considerations in Oregon feeling secure that they knew what was in the bill, i.e., the January version of the ‘slow-track’ draft bill (S. 2745).

The official tribal delegation of Boyd Jackson and Jesse Kirk traveled to DC, where, on June 1, 1954, they hired Glen Wilkinson to once again be their attorney to represent them in meetings. Wade Crawford traveled to DC to represent the “opposition” group, and employed a Mr. Littell and a Mr. Alexander as his counsel to represent his viewpoint in meetings (U.S. Senate 1957: testimony of Glen Wilkinson).

In testimony that provides us with a fascinating blow-by-blow account of what happened in DC, Glen Wilkinson said,

Commencing mid or late June 1954, Mr. Jackson, Mr. Kirk, and I met in a series of conferences with officials of the Bureau of Indian Affairs, the Department of the Interior, and representatives of Senators and Congressmen involved in work of the two Interior and Insular Affairs Committees. The conferences nearly always involved what I shall designate as the Klamath official delegation, namely, Messrs. Jackson and Kirk, and Mr. Crawford, who likewise was represented by counsel. We were not able over a period of perhaps 2 or 3 weeks to come to complete agreement on a revision of S. 2745, which at that time seemed unsatisfactory to both factions then represented. (U.S. Senate 1957: testimony of Glen Wilkinson, 239)

During those 2 or 3 weeks, drafts of amendments went back and forth between the two factions. These drafts included amendments to Section 5 that changed it from a ‘slow-track’ to a ‘fast-track’ approach and included provision for withdrawal and liquidation of tribal assets that was based upon the principle that had been contained in the voluntary withdrawal bills which had been brought before Congress many times before by Wade Crawford and his faction with the approval of the tribe.

Wilkinson continued,

We had a final conference in an anteroom off the House committee hearing room during the morning on which the House committee was having its final meeting of the session. In that conference were several representatives of the Department of the Interior, Congressman Coon, Dr. Taylor of the House committee staff, Mr. Jackson, Mr. Kirk, Mr. Crawford, myself, and as I recall, Mr. Littell and Mr. Alexander, who were counsel representing Mr. Crawford and his viewpoint. At that meeting the version which became Public Law 587 resulted. (U.S. Senate 1957: testimony of Glen Wilkinson, 239)

The moment in time. In that moment in the anteroom, both factions agreed to a ‘fast-track’ approach to termination, including withdrawal and liquidation of tribal assets, that was a compromise between the two factions.
Wilkinson in 1957, having had 3 years to consider the repercussions of that moment in time, offered his thoughts about why the compromised ‘fast-track’ approach was accepted by the two factions:

1. The Klamath Tribe had been officially supporting voluntary withdrawal bills for quite a while. Crawford represented the faction – of unknown size – that supported voluntary withdrawal and the official tribal delegation wanted to give him and his followers that opportunity.

2. “Mr. Crawford and perhaps a few of his followers represented a disquieting influence in the conduct of tribal affairs, and the others felt strongly that, if a method could be provided whereby Mr. Crawford and a few others could be allowed to withdraw, tribal business could be conducted in a calmer and more efficient manner” (U.S. Senate 1957: testimony of Glen Wilkinson, 240).

3. “Another factor which motivated the official delegates in agreeing and instructing me to agree to the version which came out of the conference I have mentioned was the fact that this bill contained a provision for payment of a $250 per capita payment. That had originally been sought as separate legislation. We were not successful in obtaining action on that as separate legislation and it was merged in the termination bill. There was considerable pressure on the delegates from their constituents at home...that the need on the reservation, or at least the desire, was such that they wished the delegates to agree to some reasonable form of termination in order to obtain the $250 payment” (U.S. Senate 1957: testimony of Glen Wilkinson, 240).

Wilkinson separated the adoption of termination legislation in general from the adoption of the ‘fast-track’ version of Section 5. They felt at the time that some form of termination legislation would be passed anyway, and the $250 per capital payment was a strong factor in convincing the delegation to support termination legislation in general.

However, the ‘fast-track’ version of Section 5 would not have been part of it, except for the agreement by the two factions representing the tribe. At the time, part of their willingness to accept the proposed Section 5 was their estimation that perhaps up to 5 percent of the tribe would choose to withdraw – an estimation that would prove seriously wrong.

After the meeting in the anteroom, a representative of the Interior Department presented the compromise ‘fast-track’ version of Section 5 to the House Committee on Interior and Insular Affairs, and this plus other recommended amendments to S. 2745 were adopted and reported to the House floor. The ‘fast-track’ version of Section 5 provided for (1) an appraisal of the tribal assets, (2) an
opportunity for each member to determine whether to withdraw from the tribe and have his interest
converted into money, or to remain in the tribe and participate in a tribal enterprise, and (3) a
selection and sale of those tribal assets which, if sold on the basis of the appraised value, would
generate sufficient funds to pay the withdrawing members their shares in the tribal property. It also
provided for (4) studies and reports to be done as deemed necessary, and (5) the preparation of a
plan for the management of tribal property through a trustee, corporation, or other legal entity

Wilkinson confirmed that on the afternoon or the following morning of the date on which the
House committee acted, they forwarded by mail to the tribe a number of copies of a report signed by
the delegates and himself, advising of the action that had been taken and transmitting an exact copy
of the bill that the House committee had reported to the House floor. Continuing, he confirmed
that the Klamath General Council acknowledged receipt of the report submitted, but did not have
adequate time to consider the bill or to take action with respect to it before the House passed the
amended version with the ‘fast-track’ version of Section 5 and the bill returned to the Senate for
concurrence.35 At that time, Wilkinson confirmed, they talked with strategic people in the Senate,
asking them to adopt the House bill without making any changes to it. He noted that those Senators
who had doubts were reconciled to supporting it because of the intercession by the tribal
representatives. The bill was concurred by the Senate without conference, and the passed bill was
sent to the President for his signature, becoming the Act of August 13, 1954 (U.S. Senate 1957: testmony of Glen Wilkinson).

The Termination Train Keeps on Rolling
And so it began – the termination train started rolling, seemingly inexorably, to the end of the
track where the Klamath tribes would be terminated as a tribe and their reservation gone.

What exactly did Public Law 83-587 set in place? In brief (all data concerning the Act were taken
from Klamath v. U.S. 1971; comments are mine):

35 Crawford had a somewhat different take on this matter, asserting in his testimony at the 1957 Senate hearings
that “the council had a right and time to object to it, but then didn’t do it. They approved of the amendment of
setting up the individual rights for the Indian, so it was so reported back to the Congress by wire and the bill
went through with no objections from the general council. ...The Indians approved of the amendments that
was [sic] made in the House after the House made them and the record will show that” (U.S. Senate 1957: testmony of Wade and Ida Crawford, 141-142).
Section 3: The tribal roll was closed as of midnight on August 13, 1954 – which meant that nobody could be added to the tribal roll after that moment, and that only those on the roll would participate in the termination process.

Section 4: The rights or beneficial interests in tribal property of each person whose name appears on the roll would constitute personal property which could be inherited or bequeathed. In other words, there was no more land held in common by the tribe; there was only personal property; the task was to determine how much personal property should go to each individual on the tribal roll.

Section 5: This is the section that was amended in DC after the Oregon meetings. Management specialists would be hired and would have the following responsibilities:

1. have an appraisal done within a year of their employ
2. immediately after the appraisal was approved, provide for an election by means of which the Indians on the tribal roll would decide whether to withdraw from the tribe and have his/her tribal interest converted to cash or to remain in the tribe and participate in the tribal management plan
3. apportion the tribal property between that which would need to be sold to pay the withdrawing members and that which would be kept for the remaining members, arrange for the sale, and distribute the proceeds to the withdrawing members
4. do studies as needed
5. prepare a management plan for the remaining tribal property through a trustee, corporation, or other legal entity

Section 6: The timeline: Everything must be completed in 4 years, by August 13, 1958.

Section 7: This is the per capita payment which was rolled into the termination legislation and the reason that tribal members pressured the DC delegation to accept the termination legislation. Pay all Indians on final tribal roll the $250 per capita payment as soon as possible.

Section 8: All allotment restrictions would be lifted on August 13, 1958, except for subsurface rights which would be transferred to a trustee appointed by the Interior Department for not less than 10 years. This meant that, for however many allotments still remained in trust as of August 13, 1958, the trust status of those allotments would be terminated and the allotments would become personal property and be removed from reservation acreage. With respect to the story of the shrinking acreage, it doesn’t matter whether this amount was the 137,029.42 acres in the House Report No. 2483 or a lesser amount
as intimated by the final tribal roll of November 21, 1957, because in the end, it all shrinks down to zero.36

Section 11: The distribution to the withdrawing members would be exempt from federal and state income tax. After that, Indians would be subject to federal and state income tax.

Section 14: The tribe and its members would keep their water rights and their fishing rights.

Section 15: Minors and incompetents would be protected by guardianships.

Section 18: Upon termination, individual members of the tribe would no longer be entitled to any programs because of their status as Indians, and would be subject to state laws

Section 26: Provision was made for a special program of education and training for the members of the tribe to prepare them for termination. This education and training never happened.

According to Klamath v. U.S. 1971 (193 Ct. Cl. at 709), the unallotted tribal lands as of November 1953 consisted of:

- 693,997 acres forest (commercial and noncommercial)
- 127,938 acres open range
- 23,421 acres marsh
- 14,524 acres bush or wasteland
- 1,245 acres farmland
- 861,125 total acres unallotted tribal lands37

It took 9 months, until May 1955, for three management specialists to be hired. All were residents of Oregon: Thomas B. Watters of Klamath Falls, William L. Phillips of Salem, and Eugene G. Favell of Lakeview. Phillips resigned in 1956 and was not replaced (U.S. Senate 1957).

This means, given the deadline of August 13, 1958, everything on their Termination To Do list – appraisal, election, sale, and distribution – had to be completed in 39 months.

Two of the first things that the management specialists did were to contract with Western Timber Services to do an appraisal of tribal property and with Stanford Research Institute (SRI) to do a survey of the Klamath tribes.

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36 On the November 21, 1957 final tribal roll, only 289 allotments remained. Multiplying this times the average allotment acreage (i.e., 137,029.42 acres divided by 1,092 allotments) of 125.48 acres, yields an estimation of only 36,263.72 allotment acres remaining in trust status at August 13, 1954.

37 With respect to the story of the shrinking acreage, I would be remiss if I did not note the difference between the 861,125 acres asserted by Klamath v. U.S. 1971 as the total acres of unallotted tribal lands, and the 863,158.89 acres asserted by House Report No. 2483 as the total acres of unallotted tribal lands (U.S. House 1954b). The difference amounts to 2,033.89 acres. I find I am not concerned about reconciling a two thousand acre difference, not only because I have found that the hunt for numbers that agree across all references is a hopeless and frustrating quest – numbers fly all over the place, but also because, in the end, it all shrinks down to zero.
1956 was the year in which report after report after report revealed that Public Law 83-587 was grounded upon errors and could wreak havoc on both the Tribes and the economy.

In April 1956, SRI submitted a preliminary report to the management specialists in which they observed that at least 50% -- and possibly as much as 70% -- of the tribe might elect to withdraw, and that a forced sale of such a proportion of the forests in the short time between whenever the appraisal was complete and the required completion date of August 13, 1958 would not be “‘in the best interests of the withdrawing members, the remaining members, the regional economy, or the nation as a whole’” (Klamath v. U.S. 1971, 193 Ct. Cl. at 721, quoting from SRI 1956, no page provided). This proportion far exceeded the estimation of 5% that had guided the willingness of the official tribal delegation to agree in that moment in time in the anteroom to the ‘fast-track’ version of Section 5 of the termination legislation – and changed the nature of the termination process in every way possible.

The SRI report also found that there was great confusion on the part of the Indians as to what the word “termination” meant:

1. 34% of the members surveyed thought that when termination actually took place they could both stay in the tribe and sell their share of the tribal land at the same time.
2. While younger members favored termination, older members believed the tribe was not ready and that the government was doing them an injustice.
3. Only 14% of the members surveyed thought the whole tribe requested termination; there were no commonly shared ideas about why they had been selected for termination.
4. 48% thought the tribe would be ready for termination by 1958, and 50% thought they would not (Hood 1972).

I draw two sets of inferences from this data. First, I don’t think that one would have found any sort of uniformity among the 50-70% of those surveyed concerning what they thought would happen when they withdrew, and it is a serious question about how many of them actually knew the actual consequences of withdrawal. Secondly, it seems clear to me both that the understandings of the tribal delegation with respect to termination did not percolate down to the general membership and that the voice of termination spoken so loudly and persistently by the Crawfords and their faction was not echoed back by the general membership at any volume louder than perhaps a whisper. I cannot conclude that the estimated 50-70% indicating a preference for withdrawal in the SRI report did so as an expression of confirmation of the Crawfords’ position but rather did so as an expression of general confusion.
In May 1956, the management specialists submitted a report to the Secretary of the Interior, presenting both conclusions and recommendations:

1. that neither County nor State officials had had the opportunity to examine the last-minute change to the “fast-track” version of Section 5 of the Act

2. that the forced sale of tribal resources required by Section 5 would greatly reduce the prices, and would probably result in a cut-out-and-get-out policy that would result in serious injury to the economy of the Klamath Basin

3. that the “Klamath Indians do not have an adequate management background to wisely manage their own resources. ‘On the job’ training of a board of directors has no place in the management of a multi-million dollar corporation. To manage the organization under a trustee is no more than shifting the present trust responsibility from the Federal Government to some other entity” (Klamath v. U.S. 1971, 193 Ct. Cl. at 722, quoting from the report, no page provided)

4. that, “[a]fter studying the basic qualities of each proposal the Management Specialists have concluded that only one method for terminating the Federal Government’s present trust responsibility will protect the interests of both the members of the Tribe and the economy of the community in which they live. This method is the purchase of the Klamath tribal property by the Federal Government” (Klamath v. U.S. 1971, 193 Ct. Cl. at 723, quoting from the report, no page provided). As such they recommended that Public Law 83-587 be amended to provide for the purchase of the Klamath Tribal resources by the Federal government.

In December 1956, the management specialists submitted a report entitled Some of the Social Implications of Public Law 587. In this report, the management specialists note that only 60% of the tribal adult population lives on the reservation and that the remaining 40% is scattered over the rest of Oregon and 19 other states. They state that they have become convinced that Congress acted on the basis of inaccurate information concerning the majority of Klamath tribal members. ...One concept held by the members of the Committees on Indian Affairs would seem to be that the Klamaths are, and have for a long time been managing their own affairs. The fact of the matter is that the Klamaths have never managed their own affairs as a group since the establishment of the reservation and there is a large group of the Klamaths whose members do not manage their own affairs as individuals. ... Every major decision of the Klamaths, expressed through the general council or the 10-member tribal executive committee, is and has been subject to veto by the Bureau of Indian Affairs. Such financial matters as the budget for operation of the Agency, sales of tribal timber, and distribution of per capita payments are either planned by the Bureau and submitted to the tribal
The clock was ticking – less than two years left on the timeline; the problems were metastasizing; and the end of the termination track seemed more and more to be heading out over a cliff to disaster on the rocks below.

Almost instantly, a bill (S. 469) was submitted in January 1957 to amend Public Law 83-587 by, in effect, lengthening the track in order to give people time to try to figure out what to do about the problems. Passed on August 14, 1957, Public Law 85-132 decreed that no sales of tribal property could be done before the last day of the 2nd session of the 85th Congress (my best guess is August 24, 1958) and that the ending date for timeline for the whole termination process would be extended two years to August 13, 1960.

What were the problems that had been revealed?

(1) The members of the Klamath tribes were confused as to what actually would happen upon termination.

(2) The members of the Klamath tribes were in no way ready for termination, i.e., for managing their financial affairs as individuals within the dominant culture.

(3) A sizeable proportion of the Indians living on the reservation either were minor children or were adults declared incompetent to manage their own affairs.
Extremely little was known about the approximately 50% of the tribal roll who lived off the reservation scattered throughout Oregon as well as other States.

Local attorneys were gouging the Indians with exhorbitant fees for managing the required guardianships.

The prospect of having to sell 70% of the Klamath Indian Forest sent earthquakes of concern throughout the regional economy out of fear of both bargain-basement prices in order to complete required sales, and clear-cutting that would devastate the environment for everyone.

The members of the Klamath tribes were said not to possess the requisite skills for managing tribal assets on their own.

There was no program for training the members of the Klamath tribes either how to manage their personal finances or how to manage tribal assets through a corporation.

Local government and business officials were seriously upset that the “fast-track” version of Section 5 had been passed without consultation with them.

Almost immediately after the passage of Public Law 85-132 in August 1957, Senators Neuberger and Morse introduced S. 2047 in an attempt to do something about the problems. Senator Neuberger chaired hearings in Oregon in October 1957. Testimony spanned all problems and all positions. There was regret for having supported the original legislation; there was assertion that they never did support it; there was confusion and dismay about what would be happening to them, be they Indians and non-Indians alike. There was a call for repeal of Public Law 83-587, to which Senator Neuberger responded that he was afraid that you couldn’t put the egg back in the shell, by which he meant that because Public Law 83-587 had vested tribal members with individual property rights, he did not know if that vestiture could be rescinded and the tribe re-vested with communal property rights. And there was anger – most especially from Wade and Ida Crawford, who were angry that the stopgap Public Law 85-132 had been passed delaying termination, who didn’t care to whom the land was sold as long as it was for the best price possible and as long as they got their money.

Meanwhile, the termination train kept chugging along. On November 21, 1957, the final tribal roll was published in the Federal Register.

Congress did not pass S. 2047. Almost immediately, S. 3051 was introduced, and yet another round of hearings occurred, with much the same cast of characters participating.
All the while, the termination train still kept chugging along. On February 20, 1958, a tentative management plan was approved by the Secretary of the Interior, and on February 28, 1958, the appraisal of tribal lands, valuing them at $119,758,029 (Hood 1972), was approved by the Secretary of the Interior. The approval of the appraisal triggered the requirement for the management specialists to proceed with the election, even though it was not known how the tribal lands would be disposed of to pay withdrawing members. On March 7, 1958, the management specialists sent out an election package to all members on the final tribal roll. The package contained "a notice of the election, an election form, data on the appraisal of tribal assets and on the financial effects of withdrawing from or remaining in the tribe, and a summary of a tentative management plan for those electing to remain in the tribe. The completed election form was to be returned by April 21, 1958" (Klamath v. U.S. 1971, 193 Ct. Cl. at 737).

I need to make a comment about the package that the management specialists sent out. I am sure that they felt that they were providing useful and thorough information which the electors could use in making their decision. I also know what it is like to be on the receiving end of a thick package filled with information which I do not have a clue how to assess – as in, for example, in my personal experience, propositions about bond measures, or prospectuses for investments, or insurance policies, or car purchase agreements, or anything that is an overwhelming amount of detail in a vocabulary that is foreign to me and about a subject about which I know absolutely nothing. Rather than helping me, the wad of papers makes me feel helpless and confused. I tend to put it aside and talk to my friends and family to see what they think. In that context, I can only imagine how the 2,133 electors -- 1,072 of whom were minors, and at least 94 of whom were deceased – might have felt about the election package they received.

The choice posed to electors on the election ballot was:

‘A. I elect to remain in the tribe and have my share of tribal assets placed under a management plan substantially in the form of the plan dated Feb. [20], 1958, of which I have received a summary, which is satisfactory as to form and content.

‘B. I elect to withdraw from the tribe and have my share of tribal assets converted into cash.’

Each ballot specified that it must be executed and returned by a specified date and that a person failing to make the election would remain in the tribe with his assets placed under the final tribal management plan. (Crain v First National Bank 1963, 324 F.2d at 2, date omitted in source document, unknown whether it was omitted on actual ballot, supplied by me based on other information)
One would think it should not be difficult to find the results of this election – well, actually it is not difficult to find results; what is difficult is to find results that agree with each other. I have found all kinds of numbers; I choose to go with the numbers I found in *Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs – 1917-1974*, which stated that there were 474 votes (22.222%) for remaining in the tribe, and that the election results were approved by the Under Secretary of the Interior by letter dated June 12, 1958 (2003, 1841). This means that the election results were:

- 1,659 votes for Option B (withdrawal) (77.778%)
- 474 votes for Option A (remaining) (22.222%)
- 2,133 voters on final tribal roll (100.000%)

An analysis of these numbers is most revealing. Votes that were counted for Option B were actually cast. Votes that were counted for Option A were comprised of those that were actually cast (variously noted as 74 or 84) plus those ballots that were never returned (by subtraction, perhaps either 390 or 400).

Of the 2,133 members on the final tribal roll, at least 94 were deceased (more members may have passed away between November 21, 1957 and April 21, 1958), so they would be included in the ballots never returned, leaving a balance of 296 to 306 (or fewer) ballots not returned by living members.

Of the 2,039 (or fewer) living members on the final tribal roll, 967 (or fewer) were adults and eligible to vote, while 1,072 (or fewer) were minors (i.e., less than 21 years of age) and ineligible to vote. The 967 adults were able to cast the votes of their minor children.

In Hood’s 1972 article, while her numbers are not in agreement with the ones published by the Department of the Interior, her thoughts about the nature of the votes cast are intriguing. A Klamath informant tells Hood that of the votes cast for withdrawal, only about 10% or 160 of the votes were those cast by Crawford’s group. The remaining 90% of the votes for withdrawal were actually votes against the management plan – people were unsure about what would happen to them under the management plan. There was no way to vote for remaining, but against the management plan. If you voted for remaining, you got the management plan. If you abstained from voting, you remained and you got the management plan. The only way to vote against the management plan was to vote to withdraw. The way that the choices were offered on the election ballot, conflating remaining with acceptance of the management plan, in essence, backed the voters into a corner, with
withdrawal the only way out. One wonders what the vote might have been if remaining had been separated from acceptance of the management plan. It boggles the imagination.

The management specialists set about determining which lands would be sold to compensate the 77.778% of the tribal members withdrawing and which lands would be placed in trust for the 22.222% of the members remaining. Per Public Law 85-132, the expectation was that sales would start on or about August 24, 1958 and that the whole termination process would be finished by August 13, 1960.

However, on August 23, 1958, Congress passed Public Law 85-731 in its ongoing attempt to fix the problems in the termination process. In brief, the Act established that (Klamath v. U.S. 1971):

1. Forest units would be offered for sale only to purchasers who agreed to sustained-yield forestry practices.
2. No sale would be for less than the realization value of the units involved.
3. If a purchaser failed to do sustained-yield, title would revert to the Federal government and the lands would become national forest lands.
4. A new appraisal would need to be done, to take the delay in the sale into consideration, using three appraisers, and must be turned in no later than January 15, 1959. If the three appraisals were not in agreement, the average must be used.
5. There would be no sales of forest units before April 1, 1959 – a delay of 8 months from the previous initiation date of August 24, 1958 – and all units must be sold by April 1, 1961.
6. Whatever forest units had not been sold by April 1, 1961, would be taken by eminent domain by the Federal government with just compensation and would become national forest.
7. Klamath Marsh would be taken by eminent domain by the Federal government on April 1, 1961, with just compensation, and would become Klamath Forest National Wildlife Refuge.
8. The management specialists would be terminated in 60 days.
9. The election would still obtain.
10. Everything must be completed by August 13, 1961 – a 1-year extension of the timeline.

38 “Eminent domain” refers to the power of the federal or state government to take private property for a public purpose, even if the property owner objects. It is sometimes also called condemnation, taking, or expropriation. I have chosen not to use the variation condemnation because I have noticed that when others have used it, because of the popular connotations about condemnation, the sentence somehow always takes on a pejorative tone critical of the government for its actions. This may in some cases be warranted, but not in all cases. So I avoid using the term.
The termination train continued chugging along, even without the services of its “conductors.” The 3 appraisal reports were submitted in December 1958. The three appraisals did not agree, so they were averaged to yield a realization value of $89,819,692 (*Klamath v. U.S.* 1971).

Given the almost $20 million decline in value from the original appraisal, the Indians asked for a new election, but were refused (Hood 1972).

The termination train gathered speed. Between the appraisals in December 1958 and termination on August 13, 1961, the Klamath reservation acreage shrank to zero. I have never been able to find a set of numbers consistent across multiple references, but what I will present below in table 8.3 will give a sense of where what went (the numbers possess obviously different levels of accuracy).

On August 13, 1961, the Klamath tribes were terminated (U.S. Department of the Interior 1961). Checks were sent out to the withdrawing members. Land was placed in trust for the remaining members. End of the line.

**Post-Termination Repercussions**

I think among the Klamath tribes there would be very little objection to my saying that the termination train plunged over the cliff at the end of the line to disaster on the rocks below.

But before I can talk about repercussions, I must talk about money. In the course of researching the history of the Klamath watershed, I have run across a number of compilations of money that has been distributed to the Klamath tribes over time. In my opinion, these compilations often have carried with them the implicit implication that “they have received all this money that they didn’t earn and don’t deserve, they have nothing to complain about.” I decided I needed to dig beneath the surface to see what stories were there.

On October 14, 1864, the Treaty of 1864 awarded the Klamath tribes $115,000 over 15 years for the more than 20 million acres that the Tribes ceded to the Federal government. This money was never actually paid to the Klamath tribes in the form of distributions, but rather was deposited into “their” Treasury account, and was disbursed at the discretion of the Federal government for “the benefit of the Indians,” including lots of farming supplies (for people who were not farmers), as well as for covering the expenses incurred by the government in running the reservation.
Table 8.3. The Shrinking Acreage of the Klamath Reservation

<table>
<thead>
<tr>
<th>Description</th>
<th>Previous Acreage</th>
<th>Became Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allotments still in trust status</td>
<td>137,029.42</td>
<td>- 0 -</td>
</tr>
<tr>
<td>Allotments became private property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unallotted land in trust status</td>
<td>863,158.89</td>
<td>- 0 -</td>
</tr>
<tr>
<td>Klamath Marsh ‘taken’ by Federal government</td>
<td>14,641</td>
<td></td>
</tr>
<tr>
<td>1 Forest unit purchased by Crown Zellerbach</td>
<td>92,000</td>
<td></td>
</tr>
<tr>
<td>10 Forest units ‘taken’ by Federal government</td>
<td>525,680</td>
<td></td>
</tr>
<tr>
<td>Sales of small units</td>
<td>84,000</td>
<td></td>
</tr>
<tr>
<td>Trust for remaining members</td>
<td>143,000</td>
<td></td>
</tr>
<tr>
<td>Cemeteries, administrative sites and reserves</td>
<td>??????</td>
<td></td>
</tr>
<tr>
<td>Total Reservation acreage</td>
<td>1,000,188.31</td>
<td>- 0 -</td>
</tr>
</tbody>
</table>

\(a\) Data taken from *Klamath v. U.S. 1971*; actual number 146,411.02; no other number in my table had even close to the same level of accuracy, so I omitted the 0.02 from the table. See also U.S. Department of the Interior 1960.

\(b\) Data taken from Brophy and Aberle 2001. A number also routinely found is 90,000 acres

\(c\) Data taken from *Klamath v. U.S. 1971*

\(d\) Data taken from Brophy and Aberle 2001

\(e\) “In 1973, the Government acquired by condemnation most of the tribal land then held by the United States National Bank of Oregon. The rest of the trust land was sold to private persons” (*Federal Supplement* 1980, 340). “At the time the trust was formed, the assets of the group amounted to approximately 143,000 acres of timber, marsh, and ranch land and 206 head of cattle” (Brophy and Aberle 2001, 198). In the 1972 Senate hearings, the number routinely found for the acreage bought by the U.S. was 135,000, but Senator Packwood also referred more specifically to the acreage as 134,960 acres (U.S. Senate 1972, 5). I decided to take 143,000 as the total acreage put into the trust, 134,960 acres as the acreage sold to the Federal government, and the difference as the acreage sold to private persons

\(f\) Notion taken from *Klamath v. U.S. 1971* as well as House Report No. 2483 (U.S. House 1954b). While House Report No. 2483 assigns 6,565.69 acres to administrative sites and reserves, and while *Klamath v. U.S. 1971* notes that title to the cemeteries was transferred to whatever organization got worked out between the tribe and the Interior Department, I don’t feel comfortable assigning an acreage to the notion. Between the total unallotted land and the sum of the distributions that I listed, there is a difference of 3,837.89 acres.

On June 21, 1906, Public Law 59-258 awarded the Klamath tribes $537,007.20 for the 621,824 acres that had been omitted from their reservation by the erroneous survey by the General Land Office in 1871.\(^{39}\) The distribution of the award was as follows:

- Distribution fund of $25,000 to be distributed per capita to the Klamath tribes. The 1908 census of the Klamath tribes totaled 1,038 members (*Klamath v. U.S. 1935*). This would have yielded a one-time distribution of $24.08 per member

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\(^{39}\) This award paid 86.36 cents per acre.
• Principal fund of $350,000 to earn 5% simple interest per year. The annual interest would be distributed per capita to the members. In addition, the Secretary of the Interior could, at his discretion, expend up to 10% of the principal fund for the “benefit of the Indians,” which could include costs as well as additional distributions. This works out to a maximum possible interest distribution of $16.36 per member per year, if no principal is expended.

• Expenses fund of $162,007.20 from which were to be deducted both sides’ litigation costs as well as any other costs which the Federal government decided at its own discretion to reimburse itself. I would imagine this fund zeroed out immediately.

On April 30, 1908, Public Law 60-104 awarded the Klamath tribes $108,750 for the 87,000 acres that had been removed from the Klamath reservation on June 21, 1906 by Public Law 59-258 without the knowledge of or compensation to the Tribes. Payment was actually made in 1909. I do not know how many, if any, costs were deducted by the Federal government and I do not know if per capita distribution was actually made. Just for comparison’s sake, however, using the 1908 census number of 1,038, this would have yielded, at most, an estimated distribution of $104.77 per member.

On June 7, 1937, the United States Court of Claims (Klamath v U.S. 1937) awarded the Klamath tribes $7,291,778.56 as additional payment for the 87,000 acres that had been removed from the Klamath reservation on June 21, 1906 by Public Law 59-258 without the knowledge of or compensation to the Tribes. The net award after deduction of approved Federal costs was $5,313,347.32. The decision was affirmed by the Supreme Court of the United States on April 25, 1938 (U.S. v. Klamath 1938), and the judgement was presented for appropriation on May 19, 1938 (U.S. House 1938). I do not know the manner in which distributions were made nor the total

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40 $350,000 X 5% = $17,500 divided by 1,038 = $16.36. And if the Interior Department chose to use the 10% every year to reimburse itself for costs, the principal fund would be gone in 10 years and the members would have received a total of $92.73 in per capita interest distributions over the 10 years. Adding this to the $24.08, would make an estimated total of $116.81 that each member would have received.

41 “The plaintiffs are entitled to judgment...as follows: Value of property taken on August 22, 1906, $2,980,000, which, less $108,750 paid April 30, 1908, leaves an unpaid balance due plaintiffs as the value of the property on the date it was taken of $2,871,250; the additional amount to be added to this unpaid value of $2,871,250...is $4,420,528.56 measured by interest at 5% per annum on the unpaid value of the property taken from August 22, 1906, the date of taking, to June 7, 1937, the date of judgment. The total due plaintiffs on June 7, 1937, is therefore $7,291,778.56. From this amount there must be deducted...disbursements made by the United States for the benefit of plaintiffs...$1,978,431.24. [The government had claimed expenses of $2,652,181.49; the court disallowed $673,750.25 of that claim.] The deduction of this amount from the amount of $7,291,778.56 due plaintiff tribes as just compensation for their property taken in 1906 leaves $5,313,347.32, for which judgment will be entered in favor of plaintiffs with interest at 5% per annum on $2,871,250 from June 7, 1937, until date of payment. It is so ordered” (Klamath v U.S. 1937, 85 Ct. Cl. at 465-466).
interest added until distribution was completed; however, if I make a really rough calculation, it yields $3,200.81 per member.42

The June 7, 1937 award was the last award to the Klamath tribes prior to termination. Prior to the 1937 award, the distribution amounts would have been, in my opinion, pretty small potatoes. The distribution in 1937 would have been more sizeable, especially when one considers that a family of, let us say, 5 would have received 5 times $3,200.81, or just over $16,000, which in 1937 dollars would have been a quite a windfall. Of course, at the same time, I do not know the number of persons for whom BIA kept the distributions at the agency, doling out funds to each as BIA considered it appropriate.

In 1951, the Klamath tribes filed a series of claims with the Indian Claims Commission. These were claims with respect to inadequate compensation for the 20 million acres ceded and for the 621,824 acres omitted, as well as with respect to a general accounting of how the Federal government had been handling the resources of the Klamath reservation. None of the claims would be decided until after the 1961 termination. Because distribution of the judgements on the claims occurred no earlier than the 1970s, I will defer consideration of the distribution from these series of claims until the next period.

With respect to the sale of lands to pay the withdrawing members, sales yielded $70,819,108.31 before costs of sale were deducted per the stipulation of Section 5(b) of the 1954 termination act.43 Upon termination, distributions were made to the 1,659 withdrawing members. The usual amount referred to is $43,000. A more specific amount referred to is $43,124.71 (Darling 2005c).44

To those born on August 14, 1954 and later, there were no distributions, even though their parents and older siblings received distributions. Distributions to the deceased members (in 1957, 94 were deceased) went to their estates, which were managed by attorneys who charged their fees. Distributions to minors (in 1957, 498 on the reservation and 574 off the reservation, for a total of 1,072, or more than half of the living membership) went to guardianships, which were managed by

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42 Census 1908 = 1,038. Final tribal roll 1954 = 2,133. Treat like an instance of compounding over 46 years. Then figure what it would be at 1938. This assumes the same percentage increase each year, an unlikely reality, but it yields an estimate of a population of 1,660 in 1938. Dividing $5,313,347.32 by 1,660 yields $3,200.81.
44 I would imagine that the $70,819,108.31 would have had costs of sale deducted plus interest added until per capita distribution was made. Dividing the $70,819,108.31 by 1659 = $42,687.83. Pretty close.
attorneys who charged exhorbitant fees. Distributions to adults declared incompetent (at 1957, 240 of the reservation adults were declared incompetent [U.S. Senate 1957: testimony of Klamath Management Specialists]) went to guardianships, which were managed by attorneys who charged exhorbitant fees. Competent adults actually received their distributions. Stories abound with respect to distributions rapidly running through the fingers of their recipients, thanks to their inexperience with a money-based economy exacerbated by the onslaught of hucksters and unscrupulous attorneys bent on exploitation (U.S. Senate 1957: testimony of League of Women Voters; NARF 2002). The less sensational stories about success do not make for salacious headlines, but not all of the members of the Tribe spent their money quickly or lived dangerously (Darling 2005c). But even then the new reality of federal and state tax obligations that they could not meet stripped many of what assets they did have and plunged them as well into poverty.

In December 1972, the Federal Trade Commission held a public hearing in Klamath Falls.

“The FTC concluded that members of the Tribe were charged inflated prices for cars, homes and other items compared to what white customers paid, sometimes double the cost or more. ...FTC officials also looked into the dealings of trustees and lawyers who represented many of the withdrawing members of the Tribe. Of the 1,658 [sic] who opted to withdraw from the Klamath Tribe, almost 1,200 had their share held in a trust or guardianship. Many of these 1,200 had been minors at the time of termination. Reports abounded of trustees and lawyers abusing their privileges, taking money from their clients and charging exhorbitant rates. (Darling 2005c, 2-3 of download)

“Many succumbed [to debt,] to apathy and alcohol” (Most 2003, 1). And for those who begrudge the Tribes this distribution, “[j]ealousy over the Tribe’s “windfall” is a wasted emotion. A drive through Chiloquin, the hub of the Tribes, reveals a more accurate state of affairs for the Klamath people. Chiloquin consistently earns the recognition of Oregon’s poorest town – in 1996, Tribal members existed on a per capita income of only $5,672 and an unemployment rate of 17.2 percent” (Oregon WRD 1999a, 14). By 1999, the percent of total families living below the poverty level in Chiloquin, OR, was 33.5%, compared with 12.0% for Klamath County, OR, 7.9% for the State of Oregon, and 9.2% for the nation.45

What was happening with the remaining members during all this? The trust was established in 1959 with the United States National Bank of Portland (later to be called the United States National Bank of Oregon). The remaining members were very soon not happy with the management of the

trust, because the bank took over the role previously exercised by BIA – paternalism “with no concern for encouraging the people themselves to handle their own property” (Brophy and Aberle 2001, 198). It was a case of “same ol’, same ol’” for the Indians.

These feelings were obvious at a meeting on May 4, 1963, in the Klamath County Library in Klamath Falls. ...The Indians’ discontent was centered upon the following factors: First, the failure of the bank to employ Indians to help with the forest or cattle herd. It was explained that the bank had tried hiring Indians but had not found such applicants to be satisfactory. Second, the bank made too much money handling the estate. (The bank was to receive 39/100 of 1 per cent of the assets, which never amounted to less than $91,000 a year; in 1962 the bank had charged the Klamaths $92,597.68). And, third, in its farm operation the band [sic; I think bank] purchased equipment and then hired farmers who brought in their own machinery. (It was pointed out that the machinery purchased did not include the type of machinery rented.) (Brophy and Aberle 2001, 198-199)

The 474 members received $1,000 to $3,000 per year from the trust (Turner 1974).

The trust agreement provided that the 474 remaining members were to be given the opportunity to terminate the trust agreement at the end of each five-year period. “The first period ended in 1964. Somewhat over half the members in this group were minors in 1959 and many reached their majority by the 1964 election. At this meeting, the trust would have been terminated if the votes of only those present had been counted. However, it was decided to count the absentees as voting for a continuation of the trust; therefore the trust is still intact” (Brophy and Aberle 2001, 198).

At the 1969 election, the vote was 54% to end the trust agreement and 46% to retain the trust agreement (Turner 1974). What the Indians meant by their vote is still in dispute. Elnathan Davis, remaining member, believed that “most Indians thought the vote was to oust the trustee, not to sell the land” (Wolhowe 1973, E9). The bank interpreted the vote as a mandate to end the trust and sell the land, and set about doing just that. As of 1969, the end of this period, the last of the Klamath lands was up for sale.

Enough with numbers, however, for numbers do not begin to get to the heart of the matter. “Despite the amount of money received..., to Tribal members Termination was a disastrous event. ‘Termination hit like a big bomb,’ said Elwood Miller of the Klamath Tribes. ‘Ever since termination, we’ve been scratching and clawing to stay alive’ ” (Oregon WRD 1999a, 14).

“The windfall tore the community apart. More young Klamaths than ever before dropped out of school and left home. Bitter resentment arose between those born before 1954 who were suddenly rich and their younger brothers and sisters who received nothing” (Most 2006, 222).
Their way of life was being completely transformed. Their economic system was being stripped away. And in all of this they were being blamed for abandoning their Indian identity in a situation where they had no real choices and little hope of having others understand the complex set of circumstances that led them to the situation in which they were placed. One result was tremendous guilt along with frustration... It also led to rampant alcoholism and the attendant problems of suicide, domestic violence, loss of self-esteem, symptoms of post-traumatic stress syndrome, and more. This is but part of the legacy of termination. (NARF 2002, no page number)

Off-reservation, Indians were confronted with discrimination in housing, in employment, in schools. “Faced with growing demoralization, the social profile of the Klamath people reflected increasing evidence of all of the indices that have come to characterize one face of Indian America – poverty, alcoholism, high suicide rates, low educational achievement, disintegration of the family, poor housing, high drop-out rates from school, disproportionate numbers in penal institutions, increased infant mortality, decreased life expectancy and more” (NARF 2002, no page number).

Throughout all of this, the tribal organization was extant and active, holding within its cultural embrace all members of the Klamath tribes, withdrawing and remaining alike. “Even with termination, the liquidation of their lands, and revoked recognition as a Tribe, the Tribal elders never disbanded their government” (Oregon WRD 1999a, 15). The Tribal Executive Committee, the Tribal General Council and the membership in general were active in the 1951 claims still being litigated before the Indian Claims Commission, and would become even more active in the next period in pursuit of protection of their rights and restitution of their federal recognition.

In summary, then, I think of this period as a story of loss for the Klamath tribes – loss of ancestral lands, loss of federal recognition, loss of tribal identity. For some few, this loss was just fine – they took their money and moved on. For most, however, no amount of money could recompense the loss – and the money itself even exacerbated the sense of loss.

The Klamath tribes ended this period at a nadir from which they began to scratch and claw their way back to tribal pride, to federal recognition, to assertion of tribal rights, to re-acquisition of some ancestral lands. But as we leave them in 1969, they are in the abyss looking back up at where the termination train plunged over the cliffs to leave them in disaster below.
2.4 Summary

While the period from 1900 through 1969 was a time of exponential expansion for the non-Indian ways of life in the Klamath Basin, the period was yet again a time of loss and suffering for the Indian ways of life in the Klamath Basin.

For Indians throughout the nation, this period saw the continuation of the cycles of federal policymakers constructing policy based upon images they imposed upon the Indians, then discovering that the policy didn’t work because the Indians in reality were not the images the policymakers had constructed. We started with the failures of allotment, then moved to “fix everything” with the Indian New Deal, which segued to the failures of the New Deal, and then moved to “get rid of everything” with termination, which segued to the failures of termination. Only then did the Administration begin to flirt with the notion of Indian self-determination, though by the time the 1960s ended, neither Congress nor the tribes had a clear idea of what self-determination might exactly mean and not much movement was made to move forward from that perspective.

The changes wrought in Indian country during this period were far more powerful, for not only were the Indians reeling from the failures of the various federal policies, but also they moved from domination by the dominant culture, to bitter factionalism within the tribes ranging from assimilation to rebellion, and finally to the seeds that would blossom in the 1970s and beyond into an assertion of Indian rights.

In the Klamath Lower Basin, the physical inaccessibility of the terrain which had blunted to some degree the devastation wrought by the invasion of non-Indians since 1848 was finally penetrated during this period by laws and regulations and litigation. On the ostensibly positive side of the ledger, in 1950, some members of the Yurok, Hupa, and Karuk tribes probably received the paltry pittance of $150 to compensate them for the reservation lands they never received because the 1851 treaties granting them reservation lands were never ratified.

On the decidedly negative side of the ledger, no reservation – treated or military – was ever established in the aboriginal territory of the Karuk tribe, which means that they have no rights to the land they have lived on since time immemorial, and extremely minimal rights to hunt, fish, and gather on those lands. They are lashed on the rack torn between the need to rely upon foraging for subsistence because there is precious little employment available and the impossibility of relying upon foraging for subsistence because the regulations, fees, fines, and penalties for doing so are exhorbitantly prohibitive.
The Yurok had enjoyed a modest degree of prosperity through 1933, thanks to in-river commercial fishing coupled with gill net subsistence fishing, but in 1934, thanks to their being blamed for the decline in the salmon population that was actually caused by excessive commercial and recreational ocean fishing outside the mouth of the Klamath River coupled with the degradation of the salmon habitat in the Klamath watershed, that modest prosperity was ripped away by laws banning both in-river commercial fishing and the use of gill nets for subsistence fishing. The Yuroks began a quest for restoration of their fishing rights that would require litigation, legislation, and even physical confrontation in the 1970s to accomplish the task.

The Hoopa Valley Reservation was home to a contest waged between legal identity and cultural identity, a contest which was won by legal identity.

The Yuroks throughout this period worked to protect and promote their cultural identity. They organized themselves in a manner in concert with their high-context culture, and rejected the low-context rule-based forms of organization considered legitimate by the dominant culture. Not surprisingly, the dominant culture, while it acknowledged that their tribal organization spoke for the tribe, did not accord that organization formal recognition because it did not consider their form of organization to be legitimate. It would take the Yurok tribe until 1993 to find a way to marry their relational concerns with respect to their cultural identity with the rule-based requirements for organization (Yurok Tribe 1993). In this period, however, the Yuroks, in their attempt to protect and promote their cultural identity, were consistently unsuccessful in their attempts for formal recognition by the dominant culture.

Conversely, the Indians of the Square throughout this period worked to organize themselves in a manner in tune with the rule-based requirements of the low-context dominant culture. They created a legal identity called the Hoopa Valley Tribe that was divorced from the protection or promotion of any cultural identity, and they created a rule-based form of organization that would enable them to protect and promote the interests of the legal entity and to develop cooperative relations with the federal, state, and local governments (Hoopa Valley Tribe 2008). Not surprisingly, the dominant culture accorded the legal entity formal recognition because it considered their form of organization to be legitimate. In this period, the Indians of the Square, in their attempt to protect and promote their legal identity, were consistently successful in their attempts for formal recognition by the dominant culture.

And, finally, on March 27, 1963, the initial filing was made in what was to become cycle upon cycle upon cycle of the anything but short litigation to resolve the issue of who should receive distributions from revenue from the sale of timber in the Square – just the Hoopa Valley Tribe who
had been receiving distributions since 1955 or all of the Indians of the reservation most of whom had been receiving nothing since 1955. The ripple effect of this litigation, ostensibly “resolved” by legislation in the 1980s, was still being felt in 2008 with the newest round of litigation.

In the Klamath Upper Basin, the revenue generated from the sales of timber on the lands of the Klamath Reservation not only sustained the economy of Klamath County for decades, but also made the Klamath tribes one of the wealthiest tribes in the country. That statement sounds very nice, but it is also very misleading because, under that apparent well-being, the Klamath tribes lived under the paternalistic thumb of BIA, which managed everything and did nothing by means of which the tribes could become competent in the ways of the dominant culture outside the reservation. Earned income averaged a meager one-fourth of annual income, and discrimination from the surrounding dominant culture abounded in employment, housing, and school. Around half of the members moved away from the reservation, and those who remained were riven by bitter factionalism about how to get out from under the thumb of BIA, torn between those who wanted to keep the tribe and tribal rights, but to terminate the relationship with BIA, allowing the tribe to form a corporation and manage its own tribal assets, and those who wanted to create individual Indian rights, to terminate the tribe, and to liquidate tribal assets, paying each individual his or her share of the proceeds.

Tribal factionalism mated with federal termination policy to beget a moment in time in which agreements were made to termination legislation considered inevitable in general – in order to secure a $250 per capita payment rolled into the termination legislation – and to ‘fast-track’ liquidation of the tribe and its assets, based on an expectation that only 5% – the irritating 5%, it was hoped – would choose to withdraw.

Almost from the moment the legislation was passed, it was declared that it was a disaster in the making. Reports plus hearings plus multiple stopgap public laws tried to stave off the disaster, but the disaster happened anyway. The members were not prepared for making and managing money in the dominant culture. The election backed voters into a corner where 78% chose withdrawal, some few actually wanting withdrawal, but most having to choose withdrawal as the only way of not choosing the management plan that was offered. A proportionate amount of the tribal lands were sold to pay the withdrawing members. Distributions of the proceeds flowed through the fingers of many of the withdrawing members – or were placed in guardianships gouged by attorneys. The remaining tribal lands were placed for the remaining members in a trust under yet another paternalistic thumb.
As I said above, I think of this period as a story of loss for the Klamath tribes – loss of ancestral lands, loss of federal recognition, loss of tribal identity. For some few, this loss was just fine – they took their money and moved on. For most, however, no amount of money could recompense the loss.

The Klamath tribes ended this period at a nadir from which they began to scratch and claw their way back to tribal pride, to federal recognition, to assertion of tribal rights, to re-acquisition of some ancestral lands. But as we leave them in 1969, they are in the abyss looking back up at where the termination train plunged over the cliffs to leave them in disaster below.

It is worthwhile to take a moment to consider each of the Indian tribes in the watershed during this period from the perspective of identity. The Yurok tribe worked consistently throughout this period to promote and protect their cultural identity, in the face of laws and regulations that mitigated against them. The Karuk tribe struggled to hold on to their cultural identity in the face of loss of access to their ancestral lands. The Klamath tribes suffered deep and enduring blows to their cultural identity from termination and its repercussions. For the Yurok, the Karuk, and the Klamaths, the blows to identity during this period planted seeds that would blossom in the 1970s and beyond into assertions of tribal pride and tribal rights.

The Hupa tribe – well, now this gives rise to an interesting wrinkle with respect to the notion of identity. The Hupa tribe did live within their ancestral lands in the Square of the Hoopa Valley Reservation. I cannot, however, speak to the cultural identity of the Hupa tribe during this period. The identity that seemed to be the more important one was the legal identity of the Hoopa Valley Tribe, which was created in 1950 to enable the Indians of the Square – members of the Hupa tribe as well as members of six other tribes – to protect and promote the interests of that legal entity and to develop cooperative relations with the federal, state, and local governments. As I move forward in discussing the subsequent periods in this history, I will no longer be talking about the Hupa tribe, but will be talking about the Hoopa Valley Tribe.

Now I do not want anyone to interpret my contrasting legal identity with cultural identity as my sneakily impugning the identity of the Hoopa Valley Tribe. Quite the contrary. Even though the identity of the Hoopa Valley Tribe may have originated in the rules and circumstances of a moment in time rather than in the relationships and experiences of time immemorial as did the identities of the Yurok and the Karuk and the Klamaths, it is every bit as much an identity as are the other three. An identity arises in the construction of a boundary between us and them. Those who hold the
identity of Hoopa Valley Tribe do so with every bit as much conviction and commitment as do those who hold the identities of Yurok and Karuk and Klamath.

3. The Watershed Slides on Down the Slope of Degradation

The Consolidation period 1856-1899 laid down, if you will, a baseline of environmental degradation in the Klamath Basin. In the period 1900-1969, the expansion of resource capitalism triggered an even more aggressive expansion of environmental degradation in the Klamath Basin. The more resource capitalism recursively fueled and fed upon technological and infrastructural improvements, the more the well-being of the environment in the Klamath Basin slid down the slope of degradation – and began to pass the point where the environment could compensate for the degradation, so that the once-hidden bill began to reveal itself for ways of life other than Indian.

The practices of forestry, mining, agriculture/ranching, and fishing, and the construction of water diversions, dams, roads, and railroads individually, cumulatively, and recursively caused massive damage to the environment in the Klamath Basin (Benzinger et al. 1995; U.S. BOR 2002; KRBFTF 1991; McEvoy 1986; NRC 2004).

Wetlands disappeared. Lakes disappeared. Reservoirs engulfed valleys. River flows fluctuated dangerously. Waterways were gouged out – blocked – re-routed. Riparian vegetation was degraded or disappeared altogether. Water was sucked out from lakes – from rivers – from streams.

Water fouled with fertilizers, herbicides, insect control chemicals, mining chemicals, mining tailings, livestock wastes, sewage wastewater, logging debris, leachates from log storage facilities was returned to lakes – to rivers – to streams.

Logging roads and railroads scarred mountainsides and blocked streams. Hillsides were stripped of trees. Erosion ate away at naked earth. Rivers, lakes, and streams were filled with sedimentation.

Salmon in the Lower Basin were overfished by the ocean commercial and recreational fishing industries. Suckers in the Upper Basin and salmon in the Lower Basin were trapped and often killed in nonscreened diversions. They were cut off from their spawning and rearing grounds by dams, diversions, logging roads and railroads, mountains of mining debris, and other such rearrangements of geography. Spawning and rearing habitats for suckers in the Upper Basin and salmon in the Lower Basin were seriously degraded or disappeared altogether.

Populations of suckers in the Upper Basin and salmon in the Lower Basin declined precipitously, and the flora and fauna upon which the tribes relied for subsistence were degraded or disappeared altogether. By 1969, the well-being of the Klamath ecosystem was seriously compromised.
Heretofore it had been the Indian ways of life that had felt the repercussions of environmental degradation, because they lived hand-in-hand with the environment. Now, however, the degradation began to exceed the capacity of the environment to compensate for the degradation – and began to impinge upon ways of life other than Indian.

After the devastating effects of the 1964 flood on the North Coast, the timber industry was confronted with the awakening of a previously sleepy public to their concerns about the relationship of forest practices to soil erosion and stream and fisheries damage (KRBFTF 1991; Trobitz 1982). In the 1960s, the industry was forced to begin the transition that would confront other industries in the 1970s from a time of unregulated expansion to a time of regulated business practices.

In addition, the fishing industry connected with the Klamath watershed became the first industry – and the first non-Indians – to be directly impacted by the environmental degradation of the Klamath watershed. In the Upper Basin, the environmental degradation of the sucker habitat caused by the practices of the agriculture/ranching and timber industries precluded the development of a commercial and/or recreational fishing industry.

In the Lower Basin, the Klamath in-river sport fishing industry also paid the price in the form of salmon populations reduced by the environmental degradation of the salmon spawning and rearing grounds, as well as by overfishing by the ocean salmon fishing industry.

The last third of the 19th century saw the first faint tremors of a change in the mindset about natural resources in the United States (Shabecoff 1993). Conservation groups were founded by sportsmen – generally wealthy, white, Anglo-Saxon males from political, military and professional circles who enjoyed outdoor activities, such as hunting, fishing, and camping. George Bird Grinnell founded the Audubon Society in 1886; Theodore Roosevelt the Boone and Crockett Club in 1887; and John Muir the Sierra Club in 1892. Debates arose among the various clubs over what principles should guide the protection of natural resources. The conservationists argued that public lands should be scientifically managed to yield both maximum economic use and protection of the resource over the long-term. The preservationists argued that public lands should remain untouched.

The 1891 Forest Reserve Act and the 1897 Forest Management Act were attempts by conservationists to protect natural resources while still allowing for scientifically managed use of the natural resources for market purposes. Unfortunately, the laws had no teeth for enforcement, and lawless depredation of the forest reserve lands continued to be the norm (Unrau and Mark 1991c). And for the natural resources other than forest, it was still business as usual (Shabecoff 1993).

“Massive overgrazing, timber cutting, land monopolization, boom-and-bust mining practices as well
as the industrialization of mines, speculation in land and water rights, and monocrop plantings overwhelmed limited efforts at cooperation and more orderly resource development” (Gottlieb 1993, 20-21).

“Conservationists established a foothold in American politics in 1901, when President Theodore Roosevelt delineated plans for resource management to Congress. Conservation became the dominant resource strategy of the government during President Roosevelt’s tenure” (Silveira 2001, 500). Roosevelt moved quickly to set aside public lands. With respect to the Klamath watershed, the Modoc National Forest (NF) was established in 1904; the Fremont NF, the Klamath NF, and the Shasta NF in 1905; the Trinity NF in 1907; and the Lower Klamath National Wildlife Refuge in 1908.

Roosevelt created two resource bureaucracies: the Reclamation Service (later renamed the Bureau of Reclamation) in 1902 and the Forest Service in 1905. The two agencies “became the cornerstone of conservationist politics over the next-half century” (Gottlieb 1993, 23), coordinating private development of public resources through government regulation and management, through the application of the principles of science and engineering (Gottlieb 1993).

“During the seven years of the [Teddy] Roosevelt administration,...conservationism emerged as the country’s dominant resource strategy and...the conservationist agencies became central to the formation of these resource strategies” (Gottlieb 1993, 24). “Conservation...challenged the prevailing notion, a relic by the end of the nineteenth century, that America’s resources were inexhaustible...While economic interests would continue to skim the resources of the public lands for self-enrichment, such practices would never again be regarded as a morally acceptable norm. Thereafter, the exploitation of the nation’s resources would have to be justified under the guise of spurring economic growth, protecting jobs, safeguarding national security, or some other subterfuge” (Shabecoff 1993, 68-69).

From the end of Teddy Roosevelt’s presidency through World War I and the Roaring Twenties, “the country entered a new age in which growth and expansion again became linked to resource availability rather than resource management” (Gottlieb 1993, 25). President Coolidge declared that the business of America was business. In the Forest Service and the Reclamation Service, the pendulum swung back to the business side of the conservationist equation, now appropriating the language of scientific management to justify development of resources for market uses (Gottlieb 1993).

One instance in which this was not the case was the National Park Service which was established in 1916 to administer the system of national parks and monuments. From its inception, the National
Park Service aligned itself with the preservationists, working to exclude commercial interests that wanted to exploit the resources within the borders of the parks and monuments (Shabecoff 1993).

Private voluntary organizations continued to be concerned with preserving the land in its natural state. The National Parks Conservation Association was founded in 1919 to preserve the national parks. The Wilderness Society was founded in 1935 to protect public lands from development. “In the first half of the century, hunting and fishing organizations were the most politically effective environmental activists” (Shabecoff 1993, 85-86). Sportsmen formed the Izaak Walton League in 1922 and were core members in the formation of the National Wildlife Federation organized in 1936.

“The federal government finally got back into the conservation business in a significant fashion when Teddy Roosevelt’s second cousin Franklin entered the White House in 1933” (Shabecoff 1993, 80). Roosevelt’s New Deal established the Civilian Conservation Corps, the Soil Conservation Service, and the Fish and Wildlife Service, all of which were conservationist in orientation, focusing on maximizing the right-use of natural resources. The CCC constructed logging roads throughout the forests of the Klamath Basin, and the Soil Conservation Service brought scientific expertise to the farmers of the Klamath Basin.

In 1934, the U.S. Grazing Service was established to oversee range management, and in 1935 the Taylor Grazing Act was signed into law “which, for the first time, set rules on the use of the public range intended to limit the abuses that were causing severe degradation of the land” (Shabecoff 1993, 81). And lands were added aggressively to the public domain – new national forests, new national parks.

Unfortunately, World War II erupted and pushed the New Deal environmental programs into the background (Shabecoff 1993). “The dark pall of World War II and the careless optimism and materialism of the immediate postwar years pretty much drove conservation issues off the national agenda. Public health officials continued to press for improved sanitation and control of disease vectors...[b]ut the broad agenda we now call environmentalism was largely ignored” (Shabecoff 1993, 90-91). The Eisenhower administration (1953-1961) “sought to revert to the nineteenth-century tradition of turning over federal lands and resources to the highest bidder or those with the right political connections” (Shabecoff 1993, 91).

During and after World War II, production and consumption increased dramatically and generated an unanticipated consequence – pollution. In 1943, Black Monday was an air pollution incident in Los Angeles that “was the first significant environmental episode to capture widespread public attention” (Gottlieb 1992, 77). In 1948, twenty people died in Donora, PA, when an atmospheric inversion held the town under a cloud of gas from the Donora Zinc Works. “Air
pollution was just one of the visible forms of environmental degradation generating public concern in the postwar period” (Gottlieb 1993, 78). There was water pollution, such as the Arthur Kill blob – the mass of untreated sewage forming off Staten Island, NY during the 1950s – and the fouling of Boston Harbor, of Santa Monica Bay and of other bays that became unfit to swim in or otherwise inhabit (Gottlieb 1993). There was land pollution in the form of disposal of wastes in landfills.

“The emergence of these myriad forms of pollution and technology-based hazards at first seemed to generate active opposition only at isolated local sites” (Gottlieb 1993, 79). At the national level there was only limited opposition. On July 14, 1955, Congress, in reaction to the Donora incident, did pass the Air Pollution Control Act, but that was the only governmental response in the 1950s to pollution. “Indeed, the 1950s seemed to be a time of political contentment and acquiescence to the system, where problems such as pollution were seen as minor irritants to be resolved by appropriate technological interventions” (Gottlieb 1993, 79).

Shabecoff makes the point that the spark of deep concern for the fate of the natural world that had been ignited prior to the two world wars continued to smolder beneath the surface of the nation’s affairs, “[n]urtured and fed at first by a small coterie of visionary individuals and the voluntary organizations they formed, by a few pioneering public servants, by passionate hunters and fishing enthusiasts, and then by a growing number of scientists, public health professionals, scholars, a number of enlightened business leaders, and a band of concerned activists” (Shabecoff 1993, 83), until it reemerged after World War II, called forth by public alarm over pollution and the exploitation of natural resources.

“After World War II, alarm and anger over the despoliation of the nation’s environment slowly began to simmer toward a boiling point” (Shabecoff 1993, 99-100). The 1960s were a time of social upheaval throughout the country as well as an era of grassroots social activism which saw the rise of the Civil Rights, Peace, Women’s, and Lesbian/Gay movements. The publication in 1962 of Rachel Carson’s Silent Spring fell right into the middle of this fertile context. Her book has frequently been credited with launching the modern environmental movement in the United States. Carson’s book “not only warned of dangers from industrial activities, but also provided the public with a new conceptual apparatus for understanding ecological relationships and for constructing a broad-scale political movement” (Coglianese 2001, 91). “She showed how all life, including human life, was affected by misguided technology. The book synthesized many of the concerns of the earlier conservationists and preservationists with the warnings of the newer environmentalists who worried about pollution and public health” (Shabecoff 1993, 109). Not surprisingly, the messages of ecological alarm and activism found a receptive audience in the social unrest and activism of the
1960s (Coglianese 2001). And the sense of alarm was fueled by a subsequent series of environmental catastrophes:

- in 1965, the power blackout and garbage strikes of New York City
- in 1967, an oil tanker going aground in England
- in 1969, oil spilled from an offshore well into California’s Santa Barbara Channel
- and also in 1969, pollution in the Cuyahoga River in Ohio along the industrial sections of Cleveland bursting into flames

And in addition to environmental catastrophes, “[a]ttempted raids on the minerals, timber, grass, and other resources of the national parks and other parts of the public domain by profiteers rekindled some of the activism that had been dormant among the old-line preservationist groups” (Shabecoff 1993, 99-100). As a measure of the level of public interest in issues environmental, over the two years 1968 to 1970, press coverage of the environment in the *New York Times* quadrupled and stayed at that level for the next 7 years (Coglianese 2001).

Where the first era of environmentalism was an expression of elite concerns and had emphasized the protection or efficient management of the natural environment, the second era was an expression of grassroots concerns and emphasized the cleanup and control of pollution (Silveira 2001) and the protection of public lands from the rapacious raids of profiteers (Shabecoff 1993). Environmentalism “transformed from top-down control by technical and managerial leaders [to] bottom-up grassroots demands from citizens and citizen groups” (Silveira 2001, 503).

The tactics used by environmental groups borrowed heavily from the civil rights movement and the antiwar protests, employing both litigation and protests as tools of environmental reform (Coglianese 2001; Silveira 2001).

In 1965, the Sierra Club brought suit to protect New York’s Storm King Mountain from a power project. The decision rendered on December 29, 1965 in *Scenic Hudson Preservation Conference v. Federal Power Commission* established a powerful precedent, allowing the Club to have standing, i.e., to take someone to court over concerns about their non-economic aesthetic, conservational, or recreational interests in the case. The presumption before this case was that only those who had an economic interest in a case could take someone to court. This decision has been described as giving birth to the use of litigation as a tool for environmental reform, and opened the floodgates to the tidal wave of lawsuits that would be filed by environmental organizations in the 1970s and beyond.

The 1960s – and on into the 1970s – saw not only the re-invigoration of the older preservationist organizations, but also the creation of new organizations, which were founded on a broad base of
grassroots support and many of which specialized in litigation (Coglianese 2001). Hard on the heels of the Scenic Hudson decision, the Environmental Defense Fund was founded in 1967 and the Friends of the Earth in 1969. The 1970s would see even more such organizations founded.

On the governmental – still generally conservationist – side of the tracks, the “[g]overnment slowly began to respond to public alarm over the environment during the 1960s” (Shabecoff 1993, 91). In 1964, the Wilderness Act was passed, setting a precedent for protecting public lands, forever, from new development, commercial activities, and motorized vehicles. And in 1968, both the National Wild and Scenic River Act and the National Trail Systems Act were passed.

1963 saw the passage of the Clean Air Act and 1967 saw the passage of the Air Quality Act. However, “[a]lthough federal air and water pollution legislation existed in the 1960s, these laws mainly empowered the federal government to conduct research and issue advisory standards. The environment was still largely an issue addressed by state laws, which many observers viewed as fragmented and ineffective” (Coglianese 2001, 96). “[P]rior to 1970, environmental protection law in the United States was essentially nonexistent. ...[T]here was nothing even remotely resembling a comprehensive legal regime for regulating pollution of the air, water, or land” (Lazarus 2001, 76). However, as public awareness and support for the environment grew, so did the possibility of an expanded role for the Federal government in environmental regulation (Coglianese 2001).

By 1969, while legal and legislative reform was only just getting into gear, grassroots public values had genuinely changed. There was a social consensus that the market no longer reigned supreme, was no longer able to do whatever it wanted in the name of profit. The public would no longer accept that public lands and public health could be decimated in the name of the dollar. The legal and legislative reform that would transpire in the 1970s could not have had an enduring impact if it had not been grounded upon such a genuine change in public values (Coglianese 2001).

Why have I taken the time to talk briefly about the history of the environmental movement in America? What does this have to do with the Klamath? I talk about it because quite literally on the first day of 1970 with the signing into law of the National Environmental Protection Act (NEPA), environmental organizations, environmental litigation, and environmental legislation became major players not only in general throughout the United States but very specifically within the Klamath Basin. And to the large cast of identities in the Klamath Basin must be added the identity of environmental activist – one who frames their sense of who they are in terms of the mission they see themselves as having, to protect nature from whatever and whoever they feel might injure it. Their
way of life is wrapped around the pursuit of this mission and they are as invested in that way of life as deeply as any of the other people in the Klamath Basin are invested in theirs.

Where environmental degradation reached out and wrapped the coastal commercial and recreational fishing communities into the Klamath Basin, environmental litigation would open a door that would bring the environmental activists into the Klamath Basin from the 1970s on.

**In summary, then,** in the period 1900-1969, the expansion of resource capitalism triggered an even more aggressive expansion of environmental degradation in the Klamath Basin. Individually, cumulatively, and recursively, the practices of fishing, mining, forestry, and agriculture/ranching plus the construction of water diversions, dams, roads, and railroads caused massive damage to the environment in the Klamath Basin.

By 1969, the well-being of the Klamath ecosystem was seriously compromised, and had slid past the point where the environment could compensate for the degradation, with the result that for the first time ways of life other than Indian began to pay the price. The timber industry was reined in by a public awakened by the devastating damage caused the 1964 flood on the North Coast. And the fishing industry was diminished by precipitous declines in the salmon and sucker populations caused by environmental degradation.

I find myself looking at the development of the environmental movement in the United States as the interaction between a public track and a governmental track. As we came into the 20th century, the public track was comprised of a small coterie of visionary individuals and the voluntary organizations they formed. The debate within the public track was between conservationism and preservationism, basically between ‘right-use’ and no use at all. Theodore Roosevelt moved from the public track to the governmental track when he became president in 1901 and constructed a conservationist governmental track. The governmental track remained conservationist throughout the period 1900-1969, with the weight given to the protection and the market-use portions in the conservationist equation fluctuating with the times. The protection portion waxed with the administrations of Theodore and Franklin Roosevelt, while the market-use portion waxed with the two World Wars, the Roaring Twenties, and the post-WW2 Eisenhower administration.

Where the first era of environmentalism in both the governmental and public tracks was an expression of elite concerns and had emphasized either the protection or the efficient management of the natural environment, the second era emerged from the public track and emphasized the cleanup and control of pollution and the protection of public lands from the market. By the time the
1960s arrived, grassroots public values had genuinely changed. The public would no longer accept that public lands and public health could be decimated in the name of profit. In the public track, alarm about environmental catastrophes armed itself with the tactics of the 60’s activists and by 1969 was primed to use organization, litigation, protest, and legislation to demand and even to force change. The governmental track had responded slowly and inadequately to the public alarm during the 1960s, but by 1969, an expanded role for the governmental track in environmental regulation was a strong possibility.

The period 1900-1969 saw the birth of the environmental activist, and from the 1970s on, environmental litigation would open a door that would bring the environmental activists into the Klamath Basin.
Summary and Discussion of Chapter Eight

Summary

As I was reviewing what I wrote about the Expansion period 1900-1969, I found myself saying to myself, “Do they all live in the same watershed?” And what I meant by that was that each way of life seemed to be living completely separately from all the other ways of life. The only contact was indirect, with the Indian ways of life always and the non-Indian timber and fishing ways of life just beginning to be impacted by the repercussions of the environmental degradation in the watershed caused by the activities of the non-Indian ways of life.

And then I found myself thinking about the various ways of life during this period in terms of a metaphor. I have lived in my fair share of apartment buildings, and I have always marveled at the fact that people can live right next door to each other for years and never meet each other – unless someone’s toilet leaks into your closet, or unless the landlord wants to tear out all the parking area, or some such. Bottom-line, it is more often than not the case that, unless I make a concerted effort to make positive social connections, I will not get to know my neighbors unless something happens that affects me negatively – either me by myself in relation to another tenant, or me along with everyone else in relation to some external circumstance that affects us all.

So in my metaphorical apartment building called the Klamath watershed, we have the tenants who live on the upper floors – agriculture/ranching, mining, timber, and fishing – and we have the tenants who live in the basement – the Klamath Tribes, the Yurok, the Karuk, and the Hoopa Valley Tribe and we have an apartment building that has some years under its belt. Agriculture/ranching lives in the penthouse, and mining in the next floor down. Neither has any contact either with each other or with any of the other tenants. They fix up their apartments to the nth degree – House and Garden beauties. They are unaware of anything happening elsewhere in the apartment building; the repercussions of their construction occurs on the lower floors out of their ken.

Next we have timber who lives on the second floor and fishing who lives on the first floor. Neither ever had any contact with each other or with any of the other tenants. They too fix up their apartments. Then each separately started having problems with water leaks and crumbling ceilings. The problems were actually caused by construction they did on their own apartments as well as by
construction by the tenants on the top floors, plus poor care of the building by the landlord. Timber and fishing don’t see the situation that way, however, and blame each other for the problems. They are unaware of anything happening elsewhere in the apartment building – only each other.

Next we have the Indians who live in the basement. None has any contact with the other tenants. They do know each other, however, because they live cramped together in the dark, dank basement. They are always being hassled by the landlord as well as always having to contend with water leaks, mold and other such problems that compromise the already sub-standard housing in the basement.

And finally we have the folks in the town who are concerned with preservation of older historical buildings, and are beginning to think about taking the landlord to court to force him to take care of the apartment building.

It’s pretty clear that things are going to change in the near future for all of the tenants in the building, whether they want it to or not.

If you ponder this metaphor, it paints a compelling picture of the Klamath watershed by the end of this period – ways of life that had lived separately from each other; non-Indian ways of life that had improved their lots exponentially without worrying about the environmental repercussions of those improvements; Indian ways of life that were continuously impacted by those very repercussions; two non-Indian ways of life that were just beginning to be impacted by those environmental repercussions; and a way of life completely external to the watershed who was gearing up to insert themselves into the watershed because of those environmental repercussions.

The expansion of infrastructure in the Basin – the Klamath Hydroelectric Project plus the network of roads and railroads – provided a foundation upon which technological improvements could enable the exponential expansion of resource capitalism in the Basin – the agriculture/ranching, timber, mining, and fishing industries.

At the same time, the dams of the Hydroelectric Project also cut the salmon of the Lower Basin off from their spawning and rearing habitat above the dams, and wide variations in water flow released from the dams diminished the survival of the salmon below the dams. And the construction of Highway 96 took most of the few acres of land that the Karuk had had along the Klamath River.

Technological and infrastructural improvements enabled agriculture and ranching to expand exponentially in the Klamath Basin. Massive irrigation works – public and private alike – changed the hydrography and geography of the Klamath Basin. Agricultural acreage expanded to about
515,000 acres, about 415,000 in the Upper Basin and about 100,000 in Siskiyou County in the Lower Basin. This represents almost 20% of the non-forestland acreage in the entire watershed.46

At the same time, the irrigation works degraded or decimated salmon and sucker habitat, by degrading or decimating riparian vegetation and other locations of spawning and rearing grounds, by sucking water out of the rivers, lakes, and streams, by sucking fish into non-screened diversions, by returning fouled water to the rivers, lakes, and streams.

During the boom times, technological and infrastructural improvements enabled the mining industry to expand exponentially in the Lower Basin. Hydraulic mining plus massive bucket line dredge mining allowed companies to dig deeper and wider to reach those hard-to-get lodes. When the bust times came after World War II, the mining industry dwindled down to but a mere shadow of its former self, leaving only those individuals in western Siskiyou County who relied upon individual placer mining for survival.

At the same time, hydraulicking and dredging degraded or decimated salmon and sucker habitat, by damming rivers and streams, by sucking water out of rivers and streams, by depositing mining debris in rivers and streams, and by returning fouled water to rivers and streams.

During the boom times, technological and infrastructural improvements enabled timber to expand exponentially in the Klamath Basin. Logging railroads were laid like varicose veins throughout forestland to move logs from the cutting site to the water’s edge, where they were formed up into rafts and floated down to the mills for processing and transport. During the boom times, timber harvests increased prior output by everything from a modest 50% to a staggering 1000%.

At the same time, forestry practices degraded or decimated forestlands by clear-cutting which led to erosion, which in turn led to sedimentation deposited in the rivers, lakes, and streams, and by logging roads and railroads which blocked streams. The forestry practices also degraded or decimated waterways by log-rafting which channelized waterways, and by log-storage which deposited pollutants into the water. All of the above degraded or decimated salmon and sucker habitat. And timber processing mills increased dust, smoke, noise, and sawdust.

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46 See footnote no. 6 in this chapter in which I used data from U.S. NRCS (2004) to estimate that Basin forestland was 7.5 million acres, or 74% of a total 10.1 million acres. This leaves an estimated 2.6 million acres of non-forestland in the Basin, and 0.5 million acres of agriculture/ranching land is 19% of that estimated 2.6 million acres.
Government agencies warned about the consequences of market-driven timber depletion and bad logging practices for both the environment and the timber-dependent communities, but theirs were voices in the wind – until after the devastating effects of the 1964 flood on the North coast when the heretofore generally disinterested public began to take an interest in the environmental consequences of forestry practices. By 1969, the stage was set for things to change for the timber industry.

In what is becoming a familiar story, technological and infrastructural improvements enabled the exponential expansion of the ability of the fishing industry – commercial and recreational, ocean and in-river alike – to catch fish and to process and market their products – and to join the brotherhood of boom-and-bust along with the mining and the timber industries. The fishing industry also became the first non-Indian way of life to begin to feel the repercussions of the environmental degradation in the Klamath watershed.

With respect to ocean salmon fishing, the boom never stopped and tomorrow never came, for, while the bust came to California ocean fisheries as a whole because of the overfishing of resources to extinction, the coastal commercial and recreational salmon catch improved dramatically, although, in the 1960s, in the total salmon catch numbers, the depletion of the chinook salmon population was masked by marked increases in the take of the coho salmon population.

With respect to in-river salmon fishing, the tomorrow and the bust came with a bang. Precipitous declines in the salmon population were caused, not only by overfishing by ocean fishing, but also by the degradation of salmon spawning and rearing habitat in the Klamath watershed. In-river recreational salmon fishing followed their tradition of blaming in-river commercial salmon fishing for the declines and caused laws to be passed banning in-river commercial salmon fishing, thinking that that would solve the problem, but it didn’t and ultimately the bust caught up with in-river recreational fishing as well.

And with respect to sucker fishing, environmental degradation in the Upper Basin caused disastrous declines in the sucker populations, and, as the sucker population waned, whatever commercial and recreational sucker fishery that had existed also waned and ultimately disappeared.

With respect to Indian ways of life in general, federal policy – and dominant public opinion – carried forward into the 20th century, the goal from the 19th century to get rid of the Indians, one way or another. Federal policy went through a series of approaches, each designed to correct the dismal
failure of its predecessor. It was only after World War II and into the cultural upheaval of the 60’s that the dominant culture began to flirt with the idea of Indian self-determination.

The Indian tribes throughout the country as well as throughout the Basin survived and would not vanish. They preserved their cultures as best they could in the face of massive attempts to turn them into whitemen. They contended with a mind-boggling tangle of laws and litigation that pushed and pulled them six ways to Sunday, pressuring them to become self-sufficient and then ripping away the bases of that self-sufficiency.

The experience of World War II, the experience of living in big cities, the experience of the 60’s – especially the Civil Rights movement coupled with the creation of legal aid groups via Johnson’s War on Poverty – all of these experiences planted the seeds of resistance in Indian Country, seeds that would start blooming in the 70’s.

With respect to the Indian tribes within the Klamath watershed, the overarching experience is one of loss within which were planted the seeds of resistance that would bloom in the 1970s. Throughout the Basin, the environmental degradation reduced the flora and fauna upon which all the tribes relied for subsistence.

In the Lower Basin, the Karuk lost most of what little land they had to the construction of Highway 96, had no rights to the land they had lived on since time immemorial, had extremely minimal rights to hunt, fish, and gather on those lands, and were squashed between the rock of needing to rely upon foraging for subsistence because of lack of employment opportunities and the hard place of not being able to do so because of prohibitive legal restrictions.

The Yurok had whatever modest degree of prosperity they did have ripped away by laws which banned in-river commercial fishing and the use of gill nets for subsistence fishing. They began a quest for restoration of their fishing rights that would require litigation, legislation, and even physical confrontation in the 1970s to accomplish the task. In addition, the Yurok worked tirelessly within this period to protect and promote their cultural identity, but were consistently unsuccessful in their attempts for formal recognition by the dominant culture.

The Indians of the Square of the Hoopa Valley Reservation created the legal identity called the Hoopa Valley Tribe and created a form of organization that protected and promoted this legal identity in relationship to the federal, state, and local governments. The Hoopa Valley Tribe was consistently successful in their attempts for formal recognition by the dominant culture.

When revenue began to be earned from harvesting of the timber in the Square of the Hoopa Valley Reservation, the Hoopa Valley Tribe claimed that they were vested in the land and therefore
the timber and thus entitled to the distribution of all of the revenues earned from the harvest. Other Indians of the reservation asserted that they were entitled to their share of such distributions, and took their case to court in 1963, starting what was to become cycle upon cycle of the anything but Short litigation that would continue well into the future.

In the Upper Basin, the Klamath Tribes anguished through a torturous termination process which I think of as a story of loss – loss of ancestral lands, loss of federal recognition, loss of tribal identity. For some few, this loss was just fine – they took their money and moved on. For most, however, no amount of money could recompense the loss. The Klamath tribes ended this period at a nadir from which they began to scratch and claw their way back to tribal pride, to federal recognition, to assertion of tribal rights, to re-acquisition of some ancestral lands. But as we leave them in 1969, they are in the abyss looking back up at where the termination train plunged over the cliffs to leave them in disaster below.

During this period, the well-being of the environment in the Klamath Basin slid even further down the slope of degradation as individually, cumulatively, and recursively, the practices of fishing, mining, forestry, and agriculture/ranching plus the construction of water diversions, dams, roads, and railroads caused massive damage to the environment in the Klamath Basin. By 1969, the well-being of the Klamath ecosystem was seriously compromised, and had slid past the point where the environment could compensate for the degradation, with the result that for the first time ways of life other than Indian began to pay the price. The timber industry was reined in by a public awakened by the devastating damage caused the 1964 flood on the North Coast. And the fishing industry was diminished by precipitous declines in the salmon and sucker populations caused by environmental degradation as well as by overfishing.

Outside the Klamath watershed, grassroots public values had genuinely changed, such that the public would no longer accept that public lands and public health could be decimated in the name of profit. On the government track, the possibility of an expanded role for government in environmental regulation was being entertained. And on the public track, alarm about environmental catastrophes armed itself with the tactics of the 60’s activists and by 1969 was primed to use organization, litigation, protest, and legislation to demand and even to force change. The environmental activist was born, and from the 1970s on, environmental litigation would open a door that would bring the environmental activists into the Klamath Basin in pursuit of protection of the natural resources of the watershed.
By the end of this period, the seeds were planted in non-Indian ways of life, in Indian ways of life, and in the Klamath Watershed that, when they came to fruition, would change their world.

**Discussion**

It is time to take stock of the well-being of the Indian and non-Indian ways of life and of the watershed during the period 1900-1969. Please take a moment to look back at figure 6.1, to review my subjective visual depiction of the well-being of these three players during this period.

**With respect to the non-Indian ways of life**, during this period, while in general the well-being of non-Indian ways of life soared from the foundation consolidated during the prior period, it did not do so uniformly for all non-Indian ways of life at all times – hence the bit of a down-turn in the graphic. Infrastructure expanded exponentially within the Basin, providing hydroelectric power and roads and railroads that fueled the concomitant expansion of resource capitalism. *On one hand*, farming and ranching communities point to generations’ worth of blood, sweat, and tears invested in the more than half a million acres that they see themselves as having turned from unproductive wilderness to productive farm and range land. *On the other hand*, mining, timber, and fishing communities were at the mercy of the boom-and-bust cycles of their respective industries. When it was boom, life was exceptionally grand and bust was a forgotten memory. When it was bust, life wasn’t as grand. Mining companies folded, and individual miners looked to small-scale placer mining for survival. As the timber resource was depleted or as timber demand dried up, timber companies shrank or folded – or had to change their forestry practices in the face of regulations to curtail environmental degradation. Those whose ways of life were wrapped around everything that was involved in felling trees, moving them, milling them, and getting them to market had to follow the work wherever boom or bust took them. For those for whom fishing was their way of life, fishing rose from a sleepy industry to an industrialized giant, but overfishing to the point of extinction plus habitat degradation turned boom into bust for some, as fishing in some instances was deeply curtailed or, in other instances, was downright banned.

**With respect to the Indian ways of life**, during this period, the well-being of the Indian ways of life struggled to not lose more than they did, and planted seeds for the improvement of their well-being that held promise of blooming in the next period. I find myself thinking of the tribes during this period as, in general, continually having the rug pulled out from under their feet. Whatever steps they tried to take to improve their lot, to protect and promote their identities, something – laws, termination, regulations, rules, litigation, legislation – seemed to get in their way. But they did not go
away, and began to arm themselves with tactics inspired by the activism of the 1960s – litigation, legislation, and even physical confrontation – that they would use in the 1970s and beyond.

**With respect to the watershed itself,** during this period, the more that resource capitalism recursively fueled and fed upon technological and infrastructural improvements, the more that the well-being of the environment slid down the slope of degradation – beyond the capacity of the environment to compensate for the degradation. And while the Indian ways of life continued to experience this degradation directly because they lived in interdependence with the watershed, for the first time non-Indian ways of life began to experience the repercussions of the environmental degradation – the bill, hidden through the last period, began to become due during this period. Interestingly, though, while the timber and the fishing industries were negatively impacted, the connection of this negative impact to the environmental degradation was not recognized by these industries. For the timber industry, it was regulations that they now had to deal with – without recognizing that their forestry practices had contributed to the degradation which in turn prompted the regulations to alter their forestry practices. For the fishing industry, commercial and recreational sectors threw blame back and forth for overfishing – without recognizing that environmental degradation also contributed significantly to the declines in fish populations. There were tiny voices in the timber and fishing industries who called into question the prevailing assumption that the environment was boundlessly malleable, but they were generally drowned out by the call of profit. It was environmental activists outside the watershed who would recognize environmental degradation and who, by the end of this period, were gearing up to fight for the well-being of the watershed.

**In summary, then,** during the period from 1900 through 1969, the well-being of the non-Indian ways of life soared, but not for all non-Indian ways of life at all times, while the well-being of the Indian ways of life struggled to stay afloat in the face of everything that tried to sink them, and the well-being of the watershed continued its slide down the slope of degradation to the point where some of the non-Indian ways of life began, for the first time, to pay the price.
Chapter Nine
Breakdown 1970-2000

The period from 1970 through 2000 was a time of the breakdown of everything that had been taken for granted. The world changed for everyone.

It had been taken for granted that the environment was a boundlessly malleable commercial resource. No more, as “the bill” for environmental degradation “came due” for all the non-Indian ways of life, and resources dwindled.

It had been taken for granted that the market trumped all other considerations. No more, as legislation, litigation, and regulations turned the world upside down, empowering the environment to trump the market, no matter the cost.

It had been taken for granted that individual ways of life could live in isolation from each other. No more, as it became painfully obvious that all ways of life were indissolubly linked to the Klamath watershed and therefore to each other, and that each had to deal with the others, whether they wanted to or not.

It had been taken for granted that the Indians were a problem that had been silenced. No more, as the Indians took up the activist ways of the dominant culture to fight for their tribal rights – and won.

In this part, I will begin by looking at how things stood at the beginning of this period for the watershed and the ways of life indissolubly linked to the watershed. I will also establish a point of focus – the Bureau of Reclamation in its role as a federal agency and in its relationship to the farmers and ranchers within the Project – and at this point will look at where that role and relationship stood at the beginning of this period.

Next, I will proffer the concept of a “thread” – a sequence of events that starts from tiny wisps of events that over time weave together into ropes as strong as steel that constrain the previously unlimited into severely limited spheres of possible action. I will look at five such threads in the Klamath watershed – threads that were not isolated from one another, sometimes sharing key events, sometimes intersecting, sometimes merging.
Next, I will look at how these ropes of steel wrapped themselves around BOR in its role as a federal agency, severely constraining its relationship with the farmers and ranchers within the Project – and at how the Project farmers and ranchers responded by fighting for their way of life.

And finally, I will look at how things stood as 2000 drew to a close – when everything had changed for everyone and everything was primed for an explosion of conflict – an explosion that would happen in April 2001 when drought would touch litigation as match to gunpowder, and the entire basin would explode into a conflict that had been in the making since the first gold miner set foot in the watershed more than 150 years before.

1. How Things Stood at the Beginning of This Period

1.1 Watershed

In each of the prior sections of this chapter, I have first presented what had been going on with respect to the various ways of life within the Basin, and then at the end of each section took a look at the well-being of the watershed, given what had been going on with respect to the various ways of life within the Basin.

By the end of the last time period 1900-1969, the environmental degradation throughout the watershed had accumulated to such a point that the well-being of the watershed had slid beyond the capacity of the environment to compensate for the degradation, and “the bill” had begun to “come due” for the fishing and timber ways of life.

In this section, I am going to take the environmental degradation of the watershed as a given, and move directly to looking at what went on with respect to the various ways of life within the Basin, given the fact that “the bill” for the environmental degradation was delivered to all ways of life throughout the Basin, who now had to “pay up.”

1.2 The Ways of Life throughout the Basin

At the beginning of this period, the ways of life throughout the Basin lived separately from each other. Non-Indian ways of life had improved their lots exponentially without worrying about the environmental repercussions of those improvements. Indian ways of life continued to be impacted by those very repercussions. Two Non-Indian ways of life – timber and fishing – were just beginning to be impacted by those environmental repercussions. And a way of life completely external to the watershed – the environmental movement – was gearing up to insert itself into the watershed because of those environmental repercussions.
1.3 **Point of Focus: BOR and the Klamath Reclamation Project**

From the very beginning of the Bureau of Reclamation in 1902, the agency had seen its role as one of delivering water to farmers and ranchers so that otherwise unproductive arid land could be reclaimed and put to productive use for agriculture and ranching. In the Klamath basin, BOR saw its role as delivering water to the Klamath Reclamation Project. The repayment contracts between BOR and water users in the Project obligated the United States to provide water for beneficial use on specified lands, subject to the availability of the water. The contracts stated that the availability of water could be compromised by drought, canal breaks, inaccuracy in distribution, or other causes *(KWUA v. Patterson I 15 F. Supp. 2d at 992).* Allocation of water to irrigators was based on a system of contract priorities, with senior contracts supposed to receive all they could beneficially use before junior contracts received anything.

In reality, from the first water delivery in 1907 to the beginning of this period in 1970, BOR delivered water to everyone in full without fail.

From the perspective of the water users in the Project, the delivery of water to their fields was an unquestioned given. As they saw it, BOR existed to deliver water to them, and they had a right to receive it. And they received it, come rain or come drought. And they took it for granted that they would always receive it.

And BOR took it for granted that they would always deliver it. The fact that federal responsibilities and/or other water rights could limit BOR’s ability to deliver water to the Project or the possibility that the diversion of water to the Project could have deleterious effects on others throughout the Basin were not considerations that crossed anyone’s mind.

And, as such, by delivering water without fail in full to everyone, BOR insulated “Klamath Reclamation Project growers from climatic variability, competing federal commitments, and the effects on others of agricultural water diversions” *(Woodward and Romm 2002, 337).*

2. **The Five Threads**

As noted above, I am using the term “thread” to capture the character of a sequence of events that starts from tiny wisps of events that over time weave together into ropes as strong as steel that constrain the previously unlimited into severely limited spheres of possible action. I will look at five such threads in the Klamath watershed – threads that were not isolated from one another, sometimes sharing key events, sometimes intersecting, sometimes merging – and I will name key events in each thread, events after which everything was different, and without which things would not have gone in the directions they did. The five threads are (1) Lower Basin tribes fighting for their tribal rights; (2)
Ocean fishing communities fighting for their way of life; (3) Environmental activists fighting for the well-being of the environment; (4) Upper Basin tribes fighting for their tribal rights; and (5) the State of Oregon trying to adjudicate water rights. There is a theme here.

2.1 Lower Basin Tribes Fight for Their Tribal Rights

In this thread, there are a number of strands that are inextricably interwoven. There are the ocean fishing strand and the tribal fishing strand which run along side-by-side, until, thanks to a key event in 1993, the tribal fishing strand trumps the ocean fishing strand. There is also the Short litigation strand, which not only has a direct impact on the tribal fishing strand, but also gives birth to the HYSA settlement strand. The HYSA settlement strand takes over the issues of the Short litigation strand, and the Short litigation strand dwindles away to nothing.

Over the course of this thread from 1970 through 2000, the tribes move from a position of powerlessness in which their tribal rights are ignored to a position of actual clout in which their tribal rights not only are recognized, but are recognized as trumping other rights. While, in general, the tribes’ cultures can be said to be organized by the language of relationships (Conley and O’Barr 1990a, 1990b, 1998), the tribes learn the language of rules that organizes the dominant culture. In the dominant culture, rules are codified in regulations and legislation and solicitor’s opinions; problems are defined in terms of broken rules; and solutions are defined by litigation in terms of setting precedent for knowing what the rules are and in terms of assigning blame for breaking the rules. The tribes quite literally learn how to fight according to the ways of the dominant culture – and win.

The Salmon Population

The salmon population serves as both cause and effect of what transpired in both the ocean fishing strand and the tribal fishing strand, so it is extremely informative to look at how it fared over these years. In table 9.1, I have assembled data for the years 1978-2000 that, on one hand, show the regulations that were imposed on tribal, commercial ocean, and recreational ocean fishing for each of the years, and on the other hand, show the numbers of Klamath Basin fall run adult chinook caught each of the years by four fisheries, plus the Spawning Escapement, and the Total Run.

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1 The term “escapement” refers to the number of fish that “escape” being caught and return upstream to spawn.
2 “Total Run” is a variable that I have constructed by adding together numbers of fish from various tables produced by the Pacific Fishery Management Council (PFMC). I have constructed this variable in order to have some way of comparing across years. I have defined “Total Run” as “Total Catch” plus “Spawning Escapement.” I have defined “Total Catch” as the sum of the following:
The table starts with 1978, because, prior to the inception of the Pacific Fishery Management Council (PFMC) in 1977, there had been no coordinated counting of fish that covered all fisheries.

The years 1976-1977 and 1987-1992 were both periods of drought which scorched California, which in turn compromised salmon spawning and thus subsequent salmon populations.

Figures 9.1, 9.2, and 9.3 give us a visual sense of how things changed over the period 1978-2000. The trendline of figure 9.1 reveals that, oscillations aside, the Total Klamath Basin Fall Run Chinook declined steadily from 1978 through 2000. The trendlines of figure 9.3 reveal that, oscillations aside, the Ocean Catch of Fall Run Chinook declined even more precipitously than did Total Run, while the Tribal Catch of Fall Run Chinook stayed just about the same over the same period.

What is most interesting to note is that the trendline of figure 9.2 reveals that, oscillations aside, the Spawning Escapement increased only slightly over the period. This means that for essentially the same number of fish escaping to spawn, the Total Run continued to decrease. If overfishing were the only cause of decline in the salmon population, then the curtailment of the Total Catch to but a shadow of its former self should have allowed the salmon population to increase – but it did not. This, in my opinion, gives credence to those who asserted at the time that upstream degradation of the salmon spawning and rearing habitat was at the very least as much responsible for the decline in the salmon population as was overfishing. In essence, overfishing as an independent variable was removed from the causal equation, leaving only environmental degradation as the independent variable responsible for the decline in the salmon population. Lending even more weight to this argument was the fact there were salmon fish-kills in the Klamath River (i.e., salmon simply dying in the river) in 1994, 1995, 1997, 1998, 1999, and 2000 (U. S. BOR 2001a; Grader and Spain 2001).

Strand No. 1 The Ocean Fishing Strand

Just to be clear, the ocean fishing strand within the thread of the Lower Basin tribes fighting for their tribal rights is about the ocean catch and the ocean regulations as they impacted the tribes. The ocean catch and the ocean regulations as they impacted the ocean fisheries will be at the heart of the thread of the ocean salmon fishing communities fighting for their way of life.

- In-river sport catch (data from PFMC 2007c, table B-4, adult fall chinook in-river sport harvest)
- Yurok Tribe and Hoopa Valley Tribe catch (data from PFMC 2007c, table B-5, Fall Run Adult Chinook).
- Recreational ocean catch (data from PFMC 2007b, table A-5, Season total chinook landed by recreational boats at the ports of Crescent City, CA and Eureka, CA)
- Commercial ocean catch (data from PFMC 2007b, table A-3, Season total chinook landed by commercial boats at the ports of Crescent City, CA and Eureka, CA)

Data for “Spawning Escapement” is taken from PFMC 2007c, table B-4, Natural Adult Fall Run Chinook Spawners.

<table>
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<th>Year</th>
<th># fish caught In-river Sport</th>
<th>% of Total Run</th>
<th>Days can fish in KMZ b including KCZ c</th>
<th>Bag limit per day d</th>
<th># fish caught Crescent City &amp; Eureka e</th>
<th>% of Total Run</th>
<th>Days can fish in KCZ f, excluding Crescent City &amp; Eureka f</th>
<th>Bag limit per day f</th>
<th># fish caught Commercial Ocean</th>
<th>% of Total Run</th>
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Table 9.1 continued

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Table 9.1 continued

| Data fromPFMC 2007c, table B-4, In-river Sport Harvest Adult Fall Run Chinook |
| KMZ ≡ Klamath Management Zone |
| KCZ ≡ Klamath Control Zone |
| Data derived fromPFMC 2001, table C-2, Recreational Regulations in State and Federal Waters |
| Data fromPFMC 2007b, table A-5, Season total chinook landed by recreational boats at the ports of Crescent City, CA, and Eureka, CA. |
| KMZ ≡ Klamath Management Zone |
| KCZ ≡ Klamath Control Zone |
| Data derived fromPFMC 2001, table C-2, Recreational Regulations in State and Federal Waters |
| Data fromPFMC 2007b, table A-5, Season total chinook landed by recreational boats at the ports of Crescent City, CA, and Eureka, CA. |
| KMZ ≡ Klamath Management Zone |
| KCZ ≡ Klamath Control Zone |
| Data derived fromPFMC 2001, table C-2, Recreational Regulations in State and Federal Waters |
| Data fromPFMC 2007b, table A-3, Season total chinook landed by commercial boats at the ports of Crescent City, CA, and Eureka, CA. |
| KMZ ≡ Klamath Management Zone |
| KCZ ≡ Klamath Control Zone |
| Data derived fromPFMC 2001, table C-1, Commercial Regulations in State and Federal Waters |
| Data fromPFMC 2007b, table A-3, Season total chinook landed by commercial boats at the ports of Crescent City, CA, and Eureka, CA. |
| KMZ ≡ Klamath Management Zone |
| KCZ ≡ Klamath Control Zone |
| Data derived fromPFMC 2001, table C-1, Commercial Regulations in State and Federal Waters |
| In 1987-1989, as permitted by the KFMC 1987-1991 plan, the Yuroks caught fall chinook for commercial sales for the first time since 1978, with their commercial catch increasing from 9.9% of the Total Run in 1987 to 16.1% of the Total Run in 1989. In 1990-1991, the Yuroks did not have a commercial catch. Through 1991, there are NO notices in the Federal Register after 52 Fed. Reg. 27329 (U.S. BIA 1987b) that alter the regulations established by that notice on July 21, 1987. Therefore, given that that the Total Run was seriously reduced in those years, and noting that PFMC closed both KMZ and KCZ to commercial ocean trolling in 1991, I am concluding that the Yurok commercial catch, while permissible, was contingent upon stock abundance predictions, and that the predictions for 1990 and 1991 precluded their commercial catch. In 1988, with the passage of the Hoopa-Yurok Settlement Act, I am assuming that the Hoopa Valley Tribe assumed regulation of their fishery according to the fishing ordinance of their constitution, and that the Yurok Tribe continued to be covered by federal regulations until they passed their constitution on October 22, 1993. In 1995, the Yurok Tribe took over management of their fishery according to the fishing ordinance of their constitution. On November 22, 1996, BIA issued a notice in the Federal Register eliminating all the fishing regulations because both tribes had established their own regulations (U.S. BIA 1996). I have no information about the regulations imposed by the tribes on their own fisheries, other than, subsequent to the 1993 Solicitor’s Opinion, the 50% of the allowable harvest allocated to the tribes was split 80:20 between the Yurok Tribe and the Hoopa Valley Tribe. |
| Data fromPFMC 2007c, table B-5, Adult Fall Run Chinook. |
| Data fromPFMC 2007c, table B-4, Natural Adult Chinook Spawners |
| In 1987-1989, as permitted by the KFMC 1987-1991 plan, the Yuroks caught fall chinook for commercial sales for the first time since 1978, with their commercial catch increasing from 9.9% of the Total Run in 1987 to 16.1% of the Total Run in 1989. In 1990-1991, the Yuroks did not have a commercial catch. Through 1991, there are NO notices in the Federal Register after 52 Fed. Reg. 27329 (U.S. BIA 1987b) that alter the regulations established by that notice on July 21, 1987. Therefore, given that that the Total Run was seriously reduced in those years, and noting that PFMC closed both KMZ and KCZ to commercial ocean trolling in 1991, I am concluding that the Yurok commercial catch, while permissible, was contingent upon stock abundance predictions, and that the predictions for 1990 and 1991 precluded their commercial catch. In 1988, with the passage of the Hoopa-Yurok Settlement Act, I am assuming that the Hoopa Valley Tribe assumed regulation of their fishery according to the fishing ordinance of their constitution, and that the Yurok Tribe continued to be covered by federal regulations until they passed their constitution on October 22, 1993. In 1995, the Yurok Tribe took over management of their fishery according to the fishing ordinance of their constitution. On November 22, 1996, BIA issued a notice in the Federal Register eliminating all the fishing regulations because both tribes had established their own regulations (U.S. BIA 1996). I have no information about the regulations imposed by the tribes on their own fisheries, other than, subsequent to the 1993 Solicitor’s Opinion, the 50% of the allowable harvest allocated to the tribes was split 80:20 between the Yurok Tribe and the Hoopa Valley Tribe. |
| Data fromPFMC 2007c, table B-5, Adult Fall Run Chinook. |
| Data fromPFMC 2007c, table B-4, Natural Adult Chinook Spawners |
Figure 9.1. Total Run for 1978-2000 (from table 9.1): Actual Numbers and Trendline

Figure 9.2. Spawning Escapement for 1978-2000 (from table 9.1): Actual Numbers and Trendline

Figure 9.3. Tribal and Ocean Catch for 1978-2000 (from table 9.1): Actual Numbers and Trendlines
An additional aside: it is interesting – and important – to note that the fish of interest in the Lower Basin – the salmon – is an anadromous fish that is spawned upstream in freshwater, lives its adult life in the ocean, and then returns to spawn upstream in its freshwater of origin. In a very real sense, the salmon swims through the regulatory network, making a mockery of regulations that treat it as if it only existed within each disconnected jurisdictional territory.

In the regulatory network, California Fish and Game regulated commercial and sport fishing in the coastal waters from shore to 3 miles out. The commercial troll fishing season hovered around the dates of April 15 through September 30, with no bag limit. The sportfishers had no closed seasons and a bag limit of 3 per day.

Prior to March 1, 1977, there was no regulation of ocean fishing beyond the 3-mile state line. That changed with the passage of the Fishery Conservation and Management Act (FCMA) which became effective on March 1, 1977. The Act established a fishery conservation zone from 3 to 200 miles out, as well as established eight Regional Fishery Management Councils. Fisheries off the coasts of California, Oregon, and Washington fell within the jurisdiction of the Pacific Fishery Management Council (PFMC). The waters outside the Klamath watershed fell into the Klamath Management Zone (KMZ) which ran north to south from Humbug Mountain, OR, to Horse Mountain, CA, and east to west from 3 to 200 miles out from the coast. Within the KMZ was the Klamath Control Zone (KCZ), which was a 12-mile square with the mouth of the Klamath centered on the eastern edge of the square. I have assumed that California managed the waters from 0 to 3 miles out from the coast, and the Commerce Department (through PFMC) managed from 3 to 12 miles out.

In 1977, PFMC created its first Fishery Management Plan, which basically replicated the extant California regulations – commercial salmon fishing for 169 days (April 15 – September 30) with no bag limit, and recreational salmon fishing for the entire year with a bag limit of 3. So, as far as the Lower Basin tribal fishery was concerned, nothing changed for them.

However, from 1978 through 1992, PFMC set both the spawning escapement goals and the ocean harvest quotas without taking the tribal fishery into account. As will be presented in detail in the tribal fishing strand, the result of this management plan was that when, after the ocean fisheries had fished to their quota, it was realized that the spawning escapement goal would not be met, the tribal fishery was restricted in order that the spawning escapement goal might possibly be met. In other words, the tribes were made to bear a disproportionate, and thus inequitable, share of the conservation burden.
This situation would be changed completely by a key event in 1993, about which I shall deal below.

Strand No. 2 The Short Litigation Strand

This strand started seemingly innocently on March 27, 1963, when Jessie Short and other Indians of the Hoopa Valley Reservation who were not members of the Hoopa Valley Tribe filed suit in the United States Claims Court, contending that they were entitled to their share of the revenue from the sale of the timber of the Hoopa Valley Reservation and that the government was wrong in distributing those funds only to the Hoopa Valley Tribe (Short Original).

From that moment on, the Short litigation strand oozed forward ever so slowly. Ten years later, on October 17, 1973, a decision was rendered in Short I, establishing that the Hoopa Valley Reservation was one reservation, created by a series of executive orders (1855, 1876, and 1891), and comprised of the Square and the Extension (which, in turn, was comprised of the Connecting Strip, and the Klamath River Reservation – and which is many times also referred to as the Addition). The decision also asserted that the executive orders establishing and then extending the Hoopa Valley Reservation did not name a specific tribe, but rather said that Indians of different tribes would reside there and that the United States would retain title to the lands in the reservation. This meant that none of the Indian tribes who resided in the Hoopa Valley Reservation had vested property rights in the lands in the reservation. And finally, Short I determined that the United States was liable for having wrongfully paid per capita distributions only to members of the Hoopa Valley Tribe to the exclusion of the plaintiffs.

The Short litigation strand continued to ooze along, interweaving with the tribal fishing strand, unfinished but influencing everything that anyone tried to do (see below for details). Eight more years later, on September 23, 1981, a decision was rendered in Short II, instructing Trial Judge David Schwartz, who had written the opinion for Short I, to establish standards for determining who qualified as “Indians of the reservation,” similar in construction to those that the Hoopa Valley Tribe had used in 1949 to establish standards for membership in the Hoopa Valley Tribe. Judge Schwartz was given until April 1, 1982 to publish these standards, and, indeed, published them on March 31, 1982.

On October 16, 1983, the Court of Appeals rendered a decision in Short III, accepting the standards published by Judge Schwartz, for qualification as “Indians of the Reservation.” Short III asserted that the standards were a matter of individual entitlement, and that the starting date for qualification as an Indian of the Reservation was October 1, 1949, the same date employed by the
Hoopa Valley Tribe in constructing their tribal roll. Reservation blood was defined as the blood of 16 different tribes and bands, which added 9 tribes and bands (Yurok, Grouse Creek, South Fork, Karok, Tolowa, Sinkoyone, Wailake, Wiyot and Wintun) to those 7 named by the Hoopa Valley Tribe for their tribal roll (Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, and Tish-tang-atan Bands of Indians).

Finally, on March 17, 1987, *Short Original* was decided. Judge Margolis wrote in his opinion that “[t]his case, filed in the United States Court of Claims on March 27, 1963, has outlasted some 400 now deceased plaintiffs, the original trial judge, several deceased attorneys, and even the court in which it originally was filed” (*Short Original* 12 Cl. Ct. at 38).

It had taken all this time (1) to determine that there was just one reservation that encompassed the Square and the Extension (the Connecting Strip, and the old Klamath River Reservation) (*Short I*); (2) to determine that the United States was liable for having wrongfully paid per capita distributions only to members of the Hoopa Valley Tribe to the exclusion of the plaintiffs (*Short I*); and (3) to determine the standards for determining who was an Indian of the Reservation and therefore eligible to receive distributions (*Short II* and *Short III*). Even though the case-by-case qualification of the 3,800 individual plaintiffs, under those standards, was still underway at the date of the 1987 decision, *Short Original* could rule on the nature and extent of the damage award.

In determining what would count as monies about which damages would be paid, the court noted that over the period March 27, 1957 to June 30, 1974, $23,811,963.75 of timber revenues had been distributed just to the individual members of the Hoopa Valley Tribe. In addition, the court noted that, from July 1, 1974, timber revenues had been deposited into a government account. “Following the liability decision in *Short I*, the Bureau of Indian Affairs restricted the distributions made to the Hoopa Valley Tribe to only thirty percent (30%) of the unallotted Reservation income. The thirty percent figure was selected because the number of Hoopa tribal members, when compared with the number of *Short* plaintiffs in 1974, represented about 30% of the total number of potential ‘Indians of the Reservation’” (*Short Original* 12 Cl. Ct. at 38).

On six separate occasions commencing on August 6, 1974 and ending on March 7, 1980, per capita payments amounting to some $5,293,975 were made to individual Hoopa Indians on the official roll of the Hoopa Valley Tribe, with the knowledge, acquiescence or cooperation of the Secretary. The remaining seventy percent (70%) of the funds has been held in trust by the Secretary in ‘Indian Monies, Proceeds of Labor’ accounts (IMPL accounts), pending resolution of this case. These accumulated monies, sometimes referred to as the Short escrow fund, now

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3 In other recountings of the *Short* litigation saga, this 1987 decision is called *Short IV*. I have chosen to continue to call it *Short Original* in order to highlight its connection to the original filing in 1963.
total over $60,000,000 and remain in the United States Treasury, accumulating interest pursuant to statute. (Short Original 12 Cl. Ct. at 39)

Short Original ruled that those plaintiffs who qualified as Indians of the Reservation were entitled to damages, plus interest, with respect to the monies paid out as distributions to individual members of the Hoopa Valley Tribe for the period March 27, 1957 to June 30, 1974 as well as for the period July 1, 1974 to March 7, 1980, and set out a formula for determining how much each qualified plaintiff should receive in damages.

With respect to the monies in the 70% Short escrow fund, beyond asserting that all “Indians of the Reservation” were held entitled to receive payments in distribution of the escrow fund, Short Original asserted that it was not positioned to deal with ordering the distribution of the escrow fund. “The Short escrow funds remain subject to the Secretary’s discretion, and shall be expended as the Secretary determines, for the benefit of the Indians of the Reservation as provided by statute, and in a manner otherwise consistent with this opinion and previous court decisions” (Short Original 12 Cl. Ct. at 45).

In other words, it wasn’t over yet. In 1988, the HYSA Settlement Strand subsumed the issues with respect to the distribution of the Short escrow fund, while the Short litigation strand continued to ooze along with respect to the payment of damages.

On July 29, 1993, after having gone through additional Short cases nigging and piggling the details, the Court of Federal Claims issued a final order directing the entry of judgements for Short v. U.S., awarding plaintiffs $57 million in damages (Short v. U.S. 1996).

On December 21, 1995, the Court of Federal Claims issued an Order Re: Disbursements, Deposits, and Payment of Judgment, establishing detailed procedures for disbursing the judgment monies from the government to the individual Short plaintiffs (Short v. U.S. 1996).

During 1996, actual payment of damages plus interest was made to individual qualified Short plaintiffs, who received about $25,000 each (U.S. Senate 2002: Prepared Statement of Thomas Schlosser, counsel, Hoopa Valley Tribal Council). On December 17, 1996, decision was rendered in Short v. U.S. 1996 that ultimate payments could be decreased by amounts owing for such as unpaid child support and the like. With this payment, I do believe that at long last the Short litigation strand had dwindled to nothing – 33 years after it was begun in 1963. While each plaintiff received about $25,000 (before deductions, if any) after 33 years’ worth of waiting, I cringe to think about how much the various attorneys made for 33 years’ worth of litigation.

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4 Short IV, Short V, Short VI, Short VII.
5 Short VII enumerated 3,745 living qualified plaintiffs entitled to receive damages.
Strand No. 3 The Tribal Fishing Strand

This strand is all about the regulation of the tribal fisheries as well as the allocation of the allowable harvest and the conservation burden among all fishing groups.

The Mattz Litigation Track 1969-1975. It started on September 24, 1969 when five gill nets belonging to Raymond Mattz, a Yurok Indian, were seized by a warden of California Department of Fish and Game. Mattz and the Yurok tribe decided it was time to fight for their tribal fishing right. He claimed all five nets and went to jail in order to get the court to resolve the confusion that had hung over the lower 20 miles of the Klamath River since the flood of the winter of 1861-1862 and to decide once and for all whether the lower 20 miles of the Klamath River was Indian Country or not. Mattz and the Yurok Tribe contended that the lower 20 miles of the Klamath River was still the Klamath River Reservation and that therefore Indians had a right to fish there without interference from the California Department of Fish and Game. Conversely, Fish and Game contended that the Klamath River Reservation was not a reservation because the Act of June 17, 1892 had terminated it, and that therefore Indians fishing there were under the jurisdiction of Fish and Game regulations.

In researching the history of the Klamath watershed, I have come to learn that court cases have a life of their own. The case starts at a lower court and bounces up to higher and higher courts until a decision is rendered that then sends the case bouncing back down to the original lower court and, sometimes, if one is lucky, a final resolution of the issue. This litigation track can take years and years and years. It is really quite astounding.

The Mattz litigation track was no different. After losing in the original court,6 losing again in the appeals court,7 and then being denied the right to appeal to the California Supreme Court, Mattz took his case to the Supreme Court of the United States. On June 11, 1973, the Supreme Court reversed the decision of the appeals court, concluding that the Klamath River Reservation was not terminated by the Act of June 17, 1892, and that the land within the boundaries of the reservation was still Indian country. The Supreme Court remanded the case back to the original court for further proceedings with respect to the disposition of the gill nets.8 The original court ordered the return of the five gill nets to Mattz.9

Of course, the California Department of Fish and Game appealed the decision. They claimed (1) that Mattz did not have right to use a gill net for subsistence fishing; (2) that the state was allowed to

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6 Superior Court of Del Norte County, Case No. 10434.
8 Mattz v. Arnett.
9 Superior Court of Del Norte County, Case No. 10434.
regulate fishing on land owned by non-Indians [the gill nets had been seized upon land within the reservation owned by Simpson Timber Co.]; (3) that Indian gill net fishing was to blame for the diminution in the salmon population in the Klamath River; and (4) that the regulation was out of necessity to conserve the fish population.

On May 27, 1975, the Appeals Court affirmed the decision of the original court, holding (1) that Public Law 280 guaranteed Mattz’s fishing rights; (2) that the state had no right to regulate reservation land owned by non-Indians, because the “lands that were within a continuing reservation were under the jurisdiction of the tribe and the federal government” (Arnett v. Five Gill Nets 1975 48 Cal. App. 3d at 454); and (3) that “there was no evidence that subsistence gill fishing was the cause of the decrease in salmon runs or that the regulation of gill fishing was the only means of solving the salmon problem” (Arnett v. Five Gill Nets 1975 48 Cal. App. 3d at 454).

For the first time since January 1, 1934, Indians were now legally able to fish with gill nets and for commercial as well as subsistence and ceremonial purposes in the lower 20 miles of the Klamath River. And the State of California could not regulate fishing on the reservation.

The May 27, 1975 decision of the Appeals Court was a key event because it served to interweave the tribal fishing strand with the Short litigation strand. On the one hand, in the Short litigation strand, the 1973 Short I decision said that there was just one reservation comprised of the Square and the Extension (the Connecting Strip and the Klamath River Reservation) – not multiple reservations, such as the Hoopa Valley Reservation on the Square or the Klamath River Reservation on the lower 20 miles.

On the other hand, in the tribal fishing strand, the 1975 Mattz decision said that the reservation was under the jurisdiction of the tribes and the Federal government. The problem that arose on the heels of the 1975 Mattz decision was that, while there was just one reservation, there was no reservation-wide tribal government – the constitution of the Hoopa Valley Tribe, while recognized by the Federal government, applied only to the Square, and the Federal government did not recognize the Yurok Tribal Organization, Inc. as the tribal government of the Yuroks – and with no reservation-wide tribal government, there was no reservation-wide management of the fishery in the reservation.

Regulatory Limbo 1975-1977. The period May 28, 1975 through August 11, 1977 seems to have been a period of limbo with respect to fishery regulation in the reservation. Fishing in the Hoopa Valley Reservation was technically unregulated – or more specifically, fishing within the
Extension was technically unregulated, while fishing within the Square was regulated by the Hoopa Valley Tribe according to their own ordinances.

California Fish and Game still regulated non-Indians who fished in the reservation, by means of limitations on fishing seasons, equipment, and daily bag numbers, as well as the ban on commercial sales.

There was a severe drought in 1976 and 1977 – I remember it well, what with extremely stringent limitations on water usage and such. There was fear that the drought would compromise spawning and thus impact salmon populations in the coming years.

**BIA Starts Regulating in 1977.** The Bureau of Indian Affairs stepped into the regulatory limbo in the reservation, determining that their trust responsibility required them to provide fishery regulations on a temporary basis until the limbo created by the lingering Short litigation track was resolved and the Yuroks had a federally recognized tribal government that could regulate their own fishery.

On August 12, 1977, BIA established the first set of fishing regulations in the Hoopa Valley Reservation, effective through July 1, 1978 (U.S. BIA 1977). Noting their concern that “[p]resent information indicates that the current level of unregulated fishing, if continued, may have a detrimental effect on the fishery resources of the Reservation,” (U.S. BIA 1977 42 Fed. Reg. at 40905), the regulations limited commercial fishing to no more than 5 anadromous fish per day, placed no limits on subsistence and ceremonial fishing, and permitted the use of gill nets.

In 1978, the Yuroks developed their own set of guidelines that were focused on the restoration of the salmon fishery (Most 2006). The BIA ignored the Yurok guidelines when they published their 1978 regulations effective July 15, 1978 to July 15, 1979 which, while continuing to permit the use of gill nets and unlimited subsistence and ceremonial fishing, limited commercial sales to none for fish caught on the Trinity River and to fish caught during limited fall and spring commercial seasons on the Klamath River.

It is very interesting to note that BIA, in the 1978 fishing regulations, took a strong stance in protection of the federally reserved fishing rights of the Indians of the Hoopa Valley Reservation, (1) rejecting the contention of the State of California that unrestrained fishing by the Indians on the reservation after the May 27, 1975 Mattz decision was dangerously depleting the fishery; and (2) telling both the State of California and the Department of Commerce that they must take Indian fishing rights into consideration when regulating the fisheries within their respective jurisdictions and
that the Indians should not be made the scapegoat for overfishing by others and for upstream environmental degradation (U.S. BIA 1978a).

The Salmon War of 1978. Late in the commercial ocean salmon fishing season in 1978, the federal Fish and Wildlife Service (FWS) – the federal agency responsible for inland fisheries – noted “the fact that the California ocean harvest of chinook salmon was considerably higher in 1978 than [sic] for the same period in 1977, especially for the area around the Klamath River” (U.S. BIA 1978b 43 Fed. Reg. at 39087) and called for an emergency moratorium on salmon fishing.

In response, BIA issued an emergency moratorium effective August 23, 1978 (about 2/3 of the way through the fall commercial season on the Klamath River) that closed the Klamath River below Hwy 101 to all fishing, closed the Klamath River above Hwy 101 to commercial fishing, and restricted subsistence fishing above Hwy 101 to the nights of Wednesday through Sunday. The State of California concurrently closed sport fishing, but, as noted above in the ocean fishing strand, PFMC did not close the offshore fishery.

On the Monday August 27, 1978, “a squad of heavily armed federal Fish and Wildlife agents, backed by sheriff’s deputies and the Coast Guard, raided Indians gill netting in the [Klamath] estuary” (Most 2006, 111). Fish cops with billy clubs chased and arrested Indians, confiscating both their catch and their nets.

The Yuroks refused to be intimidated. “In one meeting, about two hundred Indians told Interior officials that they would continue fishing in defiance of the ban and the federal regulations” (Most 2006, 112). Sportsfishermen cheered the fish cops. Newspapers came to call this the Salmon War.

Wednesday night, August 30, 1978, there was a naval battle on the estuary, with five boatloads of armed federal agents wearing bulletproof vests and carrying weapons versus about twenty boatloads of Yuroks armed with oars plus Yuroks on the beach and south bank, accompanied by cheering sportsfishermen. The federal agents arrested four Indians.

On Thursday night, August 31, the combatants agreed to a truce for the visit to the Klamath of Cecil Andrus, the Secretary of the Interior, who dined at the cookout on salmon that had been caught illegally and flinched under the in-your-face accusations of many angry Indians. The next day a Coast Guard boat with 75 agents on board came into the estuary where they clashed with several young Indians, clubbing them and then arresting them for resisting arrest (Most 2006).

“The federal operation did not confine itself to the Yurok fishing areas on the lower Klamath” (Most 2006, 115). September 11, FWS agents entered Hoopa Valley, where the Indians stopped
them with a roadblock. “Humboldt County sheriff’s deputies helped the agents make their way to Trinity River, where they confiscated three gill nets. The following week, federal agents returned to the Trinity, arrested four Indians, and confiscated more nets. The Hoopa Valley Tribal Business Council responded by declaring an emergency closure of their reservation to law enforcement agents” (Most 2006, 115).

Civil disobedience by the Yuroks occurred every night – someone getting hurt, someone getting clubbed and thrown in a boat, tailing off only mid-September as the fall salmon run tailed off. The animosity, however, remained and colored relations among the Indians, BIA, FWS, and the sports fishing community for years to come.


The 1979 Regulations. For 1979, the State of California banned in-river sports fishing. The BIA held meetings in the reservation during January, February, and March of 1979 prior to issuing the 1979 fishing regulations, which became effective on April 1, 1979 and would remain in effect until rescinded (table 9.1). All commercial fishing was prohibited. Subsistence and ceremonial fishing was permitted 24/7 for salmon, steelhead, and sturgeon. Gill nets were permitted.

In its publication of the its 1979 regulations, BIA once again made the point that both California and the Commerce Department should shoulder their share of the conservation burden with respect to the salmon fishery, but that, because they did not, BIA must make up the difference through restrictions placed upon the Indian fisheries (U.S. BIA 1979a). And, in all its ensuing promulgations of fishing regulations, BIA continued to make the point that all fishing groups must recognize and accept their share of the responsibility for the well-being of the salmon population, rather than indulge in a blame game.

The 1979 Hearings. In May 1979, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on Klamath River Indian Fishing Rights – on May 21 in Washington, DC, and on May 26 in Eureka, CA (U.S. House 1979). I would characterize the testimonies of the hearings as an angry blame game played out within the limbo of the unresolved Short litigation.

Everybody commented on the fact that the unresolved Short litigation and the lack of federally recognized reservation-wide tribal government precluded being able to do anything decisive about much of anything on the reservation (U.S. House 1979). Pressure was put upon the Yurok tribe to
create a separate government for themselves, but they were unwilling to do so out of fear that it would jeopardize their standing in the Short litigation in terms of the distribution of reservation income to all the individuals of the reservation.10

In the hearings in Washington, DC, National Marine Fisheries Service (NMFS) blamed the decline of chinook salmon in the Klamath River in recent years on the degradation of the upstream salmon spawning and rearing habitat, exacerbated by the drought of 1976 and 1977. In the hearings in Eureka, CA, the animosities took center stage. The in-river sports fishing community blamed Indian gill netting for the decline in the salmon populations – their standard story since the 1930s (U.S. House 1979: Testimony of Virginia Bostwick, Klamath River Basin Task Force). The ocean commercial salmon fishing community said that there was no evidence of overfishing by either the commercial troll or ocean sport salmon fishery, and that the blame for the decline in the salmon populations was directly attributable to the destruction of the fish’s inland spawning and rearing habitat (U.S. House 1979: Testimony of Zeke Grader, General Manager of PCFFA).11 The Indians rejected the often made charge that Indians were destroying the fishery, and blamed overfishing, low river flows, and bad logging practices (U.S. House 1979: Testimony of Peter Masten, representative, Hoopa Valley Tribal Council).

The EIS and the KFMC Five-Year Agreement 1987-1991. After the 1979 regulations had been issued, the Hoopa Valley Tribe and others brought suit against the Department of the Interior challenging various aspects of the regulations.12 The parties settled the cases by a stipulation which required the Interior Department to complete an Environmental Impact Statement (EIS) before permitting commercial fishing on the Klamath River.

On November 13, 1981, a notice was published in the Federal Register announcing the intent to prepare an EIS to permit commercial harvest and to establish Indian harvest quotas (U.S. BIA 1981a). BIA attempted a number of times to “establish criteria and procedures for developing a list of persons entitled to vote in the election of an Interim Yurok tribal governing committee” (U.S. BIA 1979b 44 Fed. Reg. at 24536). Attempts at such organization were published in the Federal Register on April 25, 1979 (U.S. BIA 1979b) and on July 23, 1980 (U.S. BIA 1980). In subsequent notices on November 10, 1981 (U.S. BIA 1981a), June 1, 1982 (U.S. BIA 1982a), July 20, 1982 (U.S. BIA 1982b), and finally June 24, 1983 (U.S. BIA 1983a), BIA made mention that their efforts to effect Yurok tribal organization had not met with success, but that they would continue trying. After 1983, BIA made no more mention of their efforts to effect Yurok tribal organization, given that the Yurok obviously had chosen not to create a formal government in order to avoid jeopardizing their standing in the Short litigation.

11 It is interesting to note that as early as 1979 PCFFA was contending that upstream environmental degradation was the root cause of the decline in the salmon population. PCFFA will later join with environmental groups in litigation to force improvements in the salmon spawning and rearing habitat.

1981b). Meetings, meetings, and more meetings ensued until notice was published on April 26, 1985 in the Federal Register that a draft of the EIS was available for review (U.S. BIA 1985).

On October 27, 1986, Congress passed the Klamath River Basin Fishery Resources Restoration Act. The rationale for authorization was clearly stated in the Public Law: “Floods, the construction and operation of dams, diversions and hydroelectric projects, past mining, timber harvest practices, and roadbuilding have all contributed to sedimentation, reduced flows and degraded water quality which has significantly reduced the anadromous fish habitat in the Klamath-Trinity River system” (Klamath River Basin Fishery Resources Restoration Act 100 Stat. at 3080). The Act was authorized for 20 years and created two federal advisory committees to be administered by FWS – the Klamath Fishery Management Council (KFMC) which would make annual recommendations to PFMC and other management agencies, and the Klamath River Basin Fisheries Task Force (KRBFTF) which would advise KFMC.

In 1987, a Five-Year Agreement with KFMC was completed, which allocated approximately 30% of the allowable harvest to the Yurok Tribe (Pierce 2002). In addition, on July 15, 1987, notice was published in the Federal Register that the Final EIS was available (U.S. BIA 1987a). “In 1987, with and [sic] allocation of approximately 30 percent of the allowable harvest under a Five Year Agreement with the Klamath Fishery Management Council, and with the completion of the EIS on commercial fishing, the Yurok Tribe opened the first uncontested commercial fishery in 54 years. Stock abundance predictions allowed for Indian commercial harvest in 1987, 1988, and 1989” (Pierce 2002, Part 7, 6; in addition, see note below table 9.1).

“The Five Year Agreement instituted by the KFMC ended after 1991, and due to depressed salmon populations and predictable harsh closures on all fisheries, a new allocation agreement could not be reached” (Pierce 2002, Part 7, 6).

Just as it seemed that the short-lived step forward was falling apart, however, two key events – the first in 1988 and the second in 1993 – made for dramatic changes in the tribal fishing strand, completely changing the position of the Yurok and Hoopa Valley Tribes with respect to the regulation of the tribal fisheries as well as to the allocation of the allowable harvest and the conservation burden among all fishing groups.

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Meetings seemed to have been never-ending there, convened for a multitude of purposes. When one remembers that there was no direct road connecting the 20 miles from the mouth of the River to the Connecting Strip and the Square, and that therefore the only way to get from the mouth of the River to the Square by car required driving more than 100 miles the long way around each way, attending meetings was no small feat.
Strand No. 4 The HYSA Settlement Strand

On April 8, 1988, a case that had been filed in 1980 was finally decided. In *Puzz v. United States* I,\textsuperscript{14} six of the plaintiffs from the *Short* case wanted to prevent the government’s continued recognition of the Hoopa Valley Tribe as the exclusive governing authority of the trust lands and resources of the Square. The court decided that the Hoopa Valley Business Council should not manage the resources of the Hoopa Valley Reservation, that no single tribe had exclusive authority over any part of the reservation. The court ordered BIA to take over management of the entire reservation. On June 7, 1988, BIA “submitted to the court a plan of operation for the management of the Hoopa Valley Reservation resources, as required by the court’s April 8, 1988 order” (U.S. Senate 1988, 34). While BIA fulfilled the mandate of the court by preparing the plan, it also expressed its belief that the plan did not represent a satisfactory permanent resolution to all the problems on the Hoopa Valley Reservation (U.S. Senate 1988).

In 1988, the *Short* litigation strand leaped across the country into Congress, where the issues relating to the disposition of the 70% *Short* escrow fund were subsumed by a brand new strand – the HYSA settlement strand. On April 26, 1988, H.R. 4469 was introduced in the House of Representatives, and on August 10, 1988, S. 2723 was introduced in the Senate. Two House and two Senate hearings were held in June and September 1988 (Schloesser 2008). The bills were identical, both intended “to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes” (U.S. Senate 1988, 1). Because none of the tribes residing in the Hoopa Valley Reservation had vested property rights in the lands of the reservation, Congress decided to act within its authority to dispose of the reservation lands as it wished.

On October 31, 1988, Congress passed the Hoopa-Yurok Settlement Act (HYSA). In every way thinkable, the passage of this act was a key event in the thread of Lower Basin Tribes fighting for their tribal rights. It completely changed the relationships among everyone from that moment forward. Because of its status as a key event, I will take the time to summarize its key points.

1. **Partitioning of Reservation Lands:** The present Hoopa Valley Reservation would be partitioned into the Square, which would retain the name of Hoopa Valley Reservation, and the Addition (the Connecting Strip and the old Klamath River Reservation), which would be called the

\textsuperscript{14} There is a discrepancy in the listing of this decision; it is dated April 8, 1990 at the beginning of the opinion and April 8, 1988 at the end of the opinion. I have used the ending date, because this opinion was subsequently vacated as moot on December 21, 1988 (*Puzz v. United States II*) because of the passage of the Hoopa Yurok Settlement Act in October 1988.
(2) The Yurok Tribe: The Yurok Tribe would receive (a) their portion of the settlement fund, (b) certain land transfers into the Yurok Reservation, (c) land acquisition authority up to $5,000,000, and (d) tribal organization authority – but for that to happen, the Yurok Tribe Interim Council must pass a waiver of claims against the United States arising out of the provisions of the Act. No date for passage was specified, but the Interim Council would be dissolved two years from its inception, with the inception contingent upon election by those on the settlement roll who elect Yurok, and with the election contingent upon completion of the settlement roll.

(3) The Settlement Roll: All Short plaintiffs who were ultimately determined to be Indians of the Reservation but who were not already enrolled members of the Hoopa Valley Tribe could apply to be on the settlement roll. Others who were not Short plaintiffs could also apply to be on the settlement roll. Successful applicants would be eligible for three settlement options. The approved settlement roll would be published in the Federal Register.

(4) Three Settlement Options for Indians of the Reservation not already enrolled in the Hoopa Valley Tribe:

(a) Hoopa Valley Tribe membership: if someone on the settlement roll met the Hoopa Valley Tribe criteria as well as some additional criteria, s/he could enroll with the Hoopa Valley Tribe.

(b) Yurok Tribe membership: anybody on the settlement roll could elect to become a member of the Yurok Tribe – and would receive $5,000 if less than 50 years old, $7,500 if ≥ 50 years old.

(c) Lump Sum Payment: anybody on the settlement roll could elect to receive a lump sum payment of $15,000. Anybody on the settlement roll who did not make an election or minors on the settlement roll would be treated as having elected to receive the lump sum payment. Anybody who received a lump sum payment would not be an enrolled member of either the Yurok Tribe or the Hoopa Valley Tribe.
(5) The Settlement Fund: All the money in the 7 escrow funds plus $10,000,000 from the United States would be deposited into the Settlement Fund:15

(a) The 70% Escrow Fund into which had been deposited 70% of the timber proceeds from 1974-1979

(b) The balance remaining in the 30% Escrow Fund into which had been deposited 30% of the timber proceeds from 1974-1979 and out of which per capita payments in the amount of $5,293,975 had been made to individual members of the Hoopa Valley Tribe

(c) The 70% portion of the timber proceeds from 1980-1988 (the Hoopa Valley Tribe had been paid their 30% of these proceeds)

(d) The proceeds of labor – Yurok Indians of the Lower Klamath River, CA

(e) The proceeds of labor – Yurok Indians of the Upper Klamath River, CA

(f) The proceeds of the Klamath River Reservation

(g) The proceeds of the Klamath River fisheries

When the settlement roll was finalized, the settlement fund would be distributed as follows:

(a) Lump sum payments to those who so elected

(b) Payments to those who elected to become members of the Yurok Tribe

(c) Distribution to the Hoopa Valley Tribe trust fund according to the following formula:
\[
\frac{\text{# enrolled members Hoopa Valley Tribe (including ones who elected HVT)}}{\text{(# enrolled members HVT [before election] + # settlement roll)}} \text{ equals } \% \times \text{balance remaining in Settlement Fund after paying (a) and (b)}
\]

(d) Distribution to the Yurok Tribe trust fund according to the following formula:
\[
\frac{\text{# settlement roll electing Yurok}}{\text{(# enrolled members HVT [before election] + # settlement roll)}} \text{ equals } \% \times \text{balance remaining in Settlement Fund after paying (a) and (b)}
\]

15 I have to admit that the settlement fund confuses me. I have gone over and over the data. As best I can understand it, with respect to both the timber proceeds of 1974-1979 and the timber proceeds of 1980-1988, the Hoopa Valley Tribe received 30% of the proceeds, and the remaining 70% was put into escrow funds, with the intention, as I understand it, that this 70% would be distributed among the non-Hoopa Valley Tribe Indians of the Reservation as soon as they were determined. The HYSA rolled these 70% remainders into the HYSA Settlement Fund, which ultimately, after deductions, was split proportionately between the Hoopa Valley Tribe (39.552%) and the Yurok Tribe (60.448%) (percentages calculated from data provided on p. 89 of the testimony of Susan Masten, chair, the Yurok Tribe, before the United States Senate Committee on Indian Affairs on August 1, 2002 [U.S. Senate 2002: Hoopa-Yurok Settlement Act Funding History]). I cannot figure out why the Hoopa Valley Tribe, after having already received its 30%, should get an additional 39.552% of the 70% remainders that were intended to be distributed to the non-Hoopa Valley Tribe Indians of the Reservation. I have yet to find anything that explains this to me.
(6) Yurok Organization:

(a) Those on the settlement roll who elected to become members of the Yurok Tribe would become the base membership roll for the Yurok Tribe (prior federal recognition of Yurok Tribe was ratified and confirmed)

(b) The 1934 Indian Reorganization Act would now be made applicable to the Yurok Tribe

(c) A Yurok Transition Team would be appointed by the Interior Department

(d) The base membership roll ≥ 18 years old would vote to elect an Interim Council. The Interim Council could exist for no more than two years from its inception by election. The Interim Council could pass the waiver of claims

(e) A constitution would be drafted and submitted to the Interior Department for approval

(7) Preservation of Short Cases: It was made precisely clear that “[n]othing in this Act shall affect, in any manner, the entitlement established under decisions of the United States Claims Court in the Short cases or any final judgement which may be rendered in those cases” (HYSA 102 Stat. at 2927).

Though the act didn’t say so in so many words, it is apparent that it established vested property rights for each tribe in its respective reservation lands – and as will be seen later, it also established federally-reserved fishing rights for each tribe.

One small aside. I would imagine it did not sit well with the Yurok Tribe when the Senate Select Committee on Indian Affairs, in its 1988 Senate Report, characterized the Hoopa Valley Tribe as the ‘good tribe’ and the Yurok Tribe as the ‘bad tribe’ when it said that it was “the judgment of the Committee that a functioning tribal government fulfilling the Congress’ and the Executive’s policy of self-determination merits a certain financial deference over a group of Indians which has previously elected not to have a functioning tribal government” (U.S. Senate 1988, 15). The Committee seems to have forgotten that both the Hoopa Valley Tribe and the Yurok Tribe voted not to have the 1934 Indian Reorganization Act apply to them, as well as that the Yurok Tribe did have a functioning tribal government, but that the Interior Department did not recognize it. It was interesting to note in reading the testimony of Susan Masten at 2002 hearings on the HYSA, that the Yurok had not forgotten that characterization (U.S. Senate 2002: Prepared Statement of Susan Masten, chair, Yurok Tribe).

On November 28, 1988, the Hoopa Valley Tribe passed Resolution No. 88-115 waiving any claims against the United States arising from the HYSA (U.S. Senate 2002: Prepared Statement of
Neal McCaleb, BIA). On December 7, 1988, the Interior Department published the notice that the Hoopa Valley Tribe had adopted a valid waiver resolution (U.S. BIA 1988). With the publication of this notice in the Federal Register, the partition of the reservation became effective. I would make the assumption that once the partition became effective, the Hoopa Valley Tribe would have taken over the regulation of its fishery according to the mandates of its fishing ordinance. At the time of the partition of the reservation, the Yurok Tribe did not have a formally recognized tribal government, so I would make the assumption that the regulation of the fishery within the new Yurok Reservation would have remained under the authority of BIA.

On December 21, 1988, because of the publication in the Federal Register on December 7, 1988 of the notice that the Hoopa Valley Tribe had adopted a valid waiver resolution (U.S. BIA 1988), the April 8, 1988 decision in Puzz v. United States was vacated and the case was dismissed as moot (Puzz v. United States II).

On May 5, 1989, notice was published in the Federal Register establishing the boundaries of the new Hoopa Valley Reservation and the Yurok Reservation (U.S. BIA 1989).


On March 21, 1991, the initial determination of the HYSA settlement roll was published in the Federal Register (U.S. BIA 1991a). In this notice, 3,020 people were listed as having been initially determined as eligible for inclusion in the settlement roll. I could not find what the final number was after all appeals had been exhausted, but Schlosser talks in his Complaint dated January 31, 2008 about “[n]early 3,000 persons” being approximately 80% of the settlement roll (Schlosser 2008, 6). This would yield an estimate of the final settlement roll of 3,750 persons.16 A notice published in the Federal Register on May 17, 1991 declared that, given the publication of the settlement roll on March 21, 1991, the deadline for electing a settlement option would be July 19, 1991 (U.S. BIA 1991b).

In his federal complaint dated January 31, 2008, Schlosser talks about “[n]early 3000 persons, approximately eighty percent (80%) of those on the Settlement Roll, [selecting] the Yurok tribal membership option” (Schlosser 2008, 6). In his 2002 testimony before the Senate Committee on Indian Affairs, Neal McCaleb, the Assistant Secretary for Indian Affairs, speaks of approximately 708

16 3,000 divided by 0.80 = 3,750.
persons choosing the lump sum payment option (U.S. Senate 2002: Prepared Statement of Neal McCaleb, BIA). With respect to the Hoopa Valley Tribe memberships option, I can find no mention of whether or not anybody on the settlement roll selected that option.

From the Settlement Fund, monies were paid to those who selected the lump sum payment option (approximately $10,600,000) as well as to those who selected the Yurok Tribe membership option (approximately $15,000,000), leaving a balance in the Settlement Fund in 1991 of $85,979,348 (including interest) (U.S. Senate 2002: Hoopa-Yurok Settlement Act Funding History, 89).

When the base membership roll of the Yurok Tribe was established in 1991, the proportion of the settlement fund allocable to each tribe was calculated. Based upon figures provided in the attachment to the 2002 testimony of Susan Masten, then chair of the Yurok Tribe, before the Senate Committee on Indian Affairs, the proportion allocable to the Hoopa Valley Tribe was 39.552% and the proportion allocable to the Yurok Tribe was 60.448% (U.S. Senate 2002: Hoopa-Yurok Settlement Act Funding History).17

On November 25, 1991, the Yurok Interim Council was formed. Its ending date would therefore be November 25, 1993. Per the stipulations of the 1988 HYSA, the Yurok Interim Council, once formed, was tasked with passing a resolution waiving claims against the United States in order that the Yurok Tribe would receive (a) their portion of the settlement fund, (b) certain land transfers into the Yurok Reservation, (c) land acquisition authority up to $5,000,000, and (d) tribal organization authority. By the end of 1991, this waiver of claims had yet to be passed by the Yurok Interim Council, and the first three benefits had not been received by the Yurok Tribe. It seems to me, however, that the Tribe proceeded with effecting its organization.

Following upon the heels of the suits filed, first, by the Karuk Tribe of California (Karuk v. U.S. 1998), and, then, by several individual Indians (Ammon v. U.S. was consolidated with Karuk v. U.S. 1998), on March 11, 1992, the Yurok Interim Council filed suit against the United States contending that the 1988 HYSA had taken their vested property interests in reservation land (Yurok Indian Tribe v. U.S. was consolidated with Karuk v. U.S. 1998). Of course, this was exactly what the 1988 HYSA had attempted to ensure would not happen, by making the passage by the Yurok Tribe of a waiver of claims against the United States arising out of the provisions of the Act, the requirement for the Yurok Tribe to receive (a) their portion of the settlement fund, (b) certain land transfers into the

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17 Total Settlement Fund in 1991 = $85,979,348. Dollars allocated to the Hoopa Valley Tribe = $34,006,551 which is 39.552% of the Total Settlement Fund. Dollars allocated to the Yurok Tribe = $51,972,797 which is 60.448% of the Total Settlement Fund (U.S. Senate 2002: Hoopa-Yurok Settlement Act Funding History, 89).
Yurok Reservation, (c) land acquisition authority up to $5,000,000, and (d) tribal organization authority.

In a letter dated April 13, 1992 to the Hoopa Valley Tribe, the Assistant Secretary-Indian Affairs iterated the requirement that the Yurok Tribe must waive their claims and must dismiss its case against the United States in order to receive the above four provisions (Schlosser 2008).

Even though the Yurok Tribe had not received organization authority because it had not waived its claim, on October 22, 1993, the Yurok Constitution was completed and approved. It was ratified on November 19, 1993.

On November 23, 1993, the Interior Department expressed its willingness to accept the decision of the Yurok Tribe to organize outside the authority of the HYSA, and reminded them that the authority of the Yurok Interim Council to pass a waiver of claims would expire with the Yurok Interim Council on November 25, 1993 (Schlosser 2008).

On November 24, 1993, the Yurok Interim Council submitted to the Interior Department its Resolution No. 93-61, which was a conditional waiver, asserting that if the HYSA did not effect a taking or was not unconstitutional with respect to the rights of the Yurok Tribe, then the Yurok Tribe waived claim versus the United States with respect to the provisions of the HYSA (U.S. Senate 2002: Attachment to Testimony of Susan Masten, chair, Yurok Tribe).

On April 4, 1994, the Interior Department wrote to the Yurok Tribe that the Resolution did not meet the requirements of the HYSA, as it preserved, rather than waived, the Yurok Tribe’s taking claim against the U.S. (Schlosser 2008). On March 14, 1995, in response to a request by the Yurok Tribe that the Interior Department reconsider its decision of April 4, 1994, the Interior Department affirmed the Department’s rejection of the conditional waiver, but also “indicated the tribe could cure the perceived deficiencies with its conditional waiver by ‘subsequent tribal action or the final resolution of the tribes [sic] lawsuit in the U.S. Court of Federal Claims’” (U.S. Senate 2002: Prepared Statement of Neal McCaleb, BIA, 7).

Also during 1996, the three “takings” suits were consolidated. Sometime over the course of the three suits, the Hoopa Valley Tribe had intervened as defendant in all three cases.
additional 2600 acres ‘boundary correction’ to its reservation in H.R. 2710. H.R. 2710 passed and the Hoopa Valley Tribe received the additional acres of trust lands. On November 11, 1997, however, Justice informed the Yurok Tribe that no settlement offer would be forthcoming. Court proceedings resumed (U.S. Senate 2002: Attachment to Testimony of Susan Masten, chair, Yurok Tribe).

On August 6, 1998, the court ruled in the three consolidated “takings” suits that none of them had vested property rights in the lands of the Hoopa Valley Reservation and that, as such, no taking had taken place (Karuk v. U.S. 1998). In 1999, all three cases filed appeals with the U.S. Court of Appeals for the Federal Circuit, and on April 18, 2000, the appeals courts affirmed the original decision (Karuk v. U.S. 2000). All three sets of plaintiffs lost. Resolution of the issue with respect to the waiver of claims by the Yurok Tribe remained unsettled as 2000 came to a close.

It seems that the HYSA settlement strand took up where the Short litigation strand left off – after a heady start, settling down to ooze along ever so slowly, leaving the three remaining benefits to the Yurok Tribe to languish in limbo and leaving the principal in the Settlement Fund to earn interest over the years from 1988 to whenever.

The 1993 Solicitor’s Opinion

In 1993, a key event occurred – the 1993 Solicitor’s Opinion – which had a dramatic impact on the tribal fishing strand as well as on the ocean fishing strand, and for that matter, on fishing by everyone else, and had repercussions everywhere throughout the Klamath Basin. But first, I must describe that which set the context for it. First, in the State of Washington, two court cases established the precedents (1) that federally-reserved tribal fishing rights could entitle tribes to 50% of the allowable harvest (U.S. v. Washington 1974, also referred to as the Boldt decision); and (2) that federally-reserved tribal fishing rights could incorporate an environmental right to have the fishery habitat both on- and off-reservation protected from degradation (U.S. v. Washington 1980, also referred to as the Phase II decision). Second, with the passage of the Hoopa-Yurok Settlement Act in 1988, both the Yurok Tribe and the Hoopa Valley Tribe were vested in federally-reserved fishing rights. Third, on September 16, 1991, the Assistant Secretary – Indian Affairs requested an opinion from the Solicitor of Interior with respect to the fishing rights of the Yurok and Hoopa Valley Tribes. And finally, the drought that had scorched California for 1987-1992 – and contributed to the decline in both salmon population and spawning escapement numbers – finally broke in 1993.

In April 1993, PFMC met to set the 1993 management measures. Subsequent to that meeting, the Secretaries of Interior and Commerce had extensive discussions, and concluded that 1993 offered an
unique opportunity, because of the end of the [1987-1992] drought, to begin to address conservation concerns for Klamath River fall chinook, and to begin to rebuild the stock to levels that will support healthy and sustained harvests by both tribal and non-tribal fisheries. In view of the fact that the Council's ocean fishery regulations have failed to achieve the spawning escapement floor of 35,000 natural Klamath River fall chinook spawners for the past 3 years [from table 9.1, 15,596, 11,649, and 12,028 adult natural spawners, for 1990, 1991, and 1992 respectively], and the fact that the long-term drought in California has ended and the region is enjoying the best water conditions in recent years, the Department of Commerce believes that it is in the best long-term interest of the Klamath River fall chinook resource, the fishing industry, and the tribal fisheries, to achieve as large a spawning escapement as reasonably possible in 1993.

(U.S. NMFS 1993a  58 Fed. Reg. at 26923)

In the Emergency Interim Rule for fishery management measures for the period May 1 through May 31, 1993, published in the Federal Register on May 6, 1993 (U.S. NMFS 1993a), the Secretary of Commerce rejected the management measures recommended by PFMC and committed to raising the spawning escapement from 35,000 to 38,000 natural spawners, and the Secretary of Interior committed to restricting the Klamath tribal catch to 18,500 chinook. For the Commerce Department to accomplish this, the ocean commercial fishery in the KMZ was closed for the period of this measure, and the ocean recreational fishery in the KMZ was opened for May 5-31 W-Sat only, with a one-fish daily bag limit, and subject to closure with attainment of a quota of 8,000 fall chinook.

On June 4, 1993, an amendment to the emergency interim rule for the period of June 1, 1993 through August 4, 1993 (with the expectation of being extended through November 2, 1993) was published in the Federal Register (U.S. NMFS 1993b). The notice alluded to the original conversation between the Secretaries of Interior and Commerce, in which the Department of the Interior explained that it would face serious legal challenges if it was forced to restrict the Klamath River tribal fisheries to less than 50 percent of the harvestable surplus because the Department of Commerce had failed to provide sufficient fish to meet both the tribal share and the spawning escapement. The Department of Commerce explained that since there was no court order or published legal opinion establishing conclusively the magnitude of the tribal fishing rights, it was reluctant to impose a severe burden on ocean fisheries on such informal legal advice. Both Departments agreed, however, that failure to meet minimum spawning escapement goals in the past 3 years was a serious conservation problem that required attention. Both Departments also noted that the end of the drought in northern California afforded an opportunity to compensate for the failure to meet spawning escapement goals in prior years. Finally, both Departments agreed to resolve the underlying legal issues concerning the nature and magnitude of the tribal on-reservation fishing rights in an orderly fashion. (U.S. NMFS 1993b  58 Fed. Reg. at 31664-31665)

PFMC presented alternative recommendations for fishery management measures which the Secretary of Commerce accepted. The alternative measures attempted to distribute the conservation
burden fairly and equitably without discriminating between residents of different states. The KMZ remained closed to ocean commercial salmon fishing. The ocean recreational fishery remained open through June 19 (W-Sat, one fish), then reopened July 14 –August 28 (W-Sat, one fish), with a total quota of 12,500, but the KCZ was closed August 1-31.

On October 4, 1993, the Solicitor of the Department of the Interior, John D. Leshy, issued Solicitor’s Opinion M-36979 on the subject of the Fishing Rights of the Yurok and Hoopa Valley Tribes. This is the key event that changed everything. In this opinion, the Solicitor concluded that when the United States set aside what are today the Hoopa Valley and Yurok Reservations, it reserved for the Indians of the reservations a federally protected right to the fishery resource sufficient to support a moderate standard of living. [He also concluded], however, that the entitlement of the Yurok and Hoopa Valley Tribes is limited to the moderate living standard or 50% of the harvest of the Klamath-Trinity basin salmon, whichever is less. Given the current depressed condition of the Klamath River basin fishery, and absent any agreement among the parties to the contrary, the Tribes are entitled to 50% of the harvest. (U.S. Solicitor 1993, 32)

In footnote 38 on page 23, the Solicitor clarified the choice between the moderate standard of living and the 50% share of the harvestable resource.

Given the current depressed condition of the Klamath basin fishery, this opinion need not address how to calculate the quantities of fish needed to support the Tribes’ moderate living needs. Until the fishery resource is substantially restored to the point that the evidence establishes that a 50% share is more than is needed to support the Tribes’ moderate living needs, the 50% allocation is the appropriate quantification of the Tribes’ rights. (U.S. Solicitor 1993, 23n38)

Although the Tribes’ rights in this case are geographically limited to the on-reservation fishery, it is well-settled that tribal fishing rights have a geographical component that requires that fishing outside of those areas be managed in such a way to permit tribal access to their share of the fishery at those geographical locations. (U.S. Solicitor 1993, 28)

“Proper allocation of the harvest of Klamath River basin stocks is only part of the effort needed to protect the reserved fishing rights of the Tribes” (U.S. Solicitor 1993, 29). He noted the action by the Interior Department in 1991 to increase flows in the Trinity River. He also noted that “[i]n order for both the purpose of the reservations and the objectives of the Magnuson Act to be fulfilled, the fishery resource here must be rebuilt to sustain a viable fishery for all user groups, consistent with sound conservation practices” (U.S. Solicitor 1993, 29). He noted the passage of the Trinity River Basin Restoration Act of 1984, the Klamath River Basin Fishery Resources Restoration Act of 1986, and the Central Valley Project Improvement Act of 1992, all of which “reflect congressional intent to
restore and protect the anadromous fishery in the Klamath and Trinity River basins” (U.S. Solicitor 1993, 29).

In describing the complicated jurisdictional arrangement for regulation of the Klamath River basin anadromous fishery resource, he referenced the concern about the disjuncture among all the authorities in managing the resource, as expressed in 1986 in the opinion by Judge Beezer in *U.S. v. Eberhardt*, and noted that “all parties that manage the fishery, or whose actions affect the fishery, have a responsibility to act in accordance with the fishing rights of the Tribes” (U.S. Solicitor 1993, 30).19

Most importantly, in terms of the implications for PFMC, the Solicitor noted (1) that the Magnuson Act of 1986 provides that any fishery management plans must be consistent with any other applicable law; (2) that the fishing rights of the Yurok and Hoopa Valley Tribes are ‘applicable law’ within the meaning of the Magnuson Act; and (3) that therefore “fishery management plans and ocean fishing regulations must be consistent with those rights” (U.S. Solicitor 1993, 31).

In other words, the Solicitor’s Opinion established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the tribes receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups.

It is hard to overstate the extent to which this requirement represented a complete sea-change for everyone. For decades, the tribes had received the short-end of the stick, from being blamed for the decline in the salmon population, through being arrested for fishing on their reservation, to being forced to bear the bulk of the conservation burden when the only slim chance of making the spawning escapement quota, after the ocean fishers had fished to their fill, was to deny fishing to the tribes. Now, bottom-line, after provision had been made for spawning escapement, federally reserved tribal fishing rights trumped all.

I can only imagine that for the tribes it could not have been anything but a heady moment, moving in a moment from decades of powerlessness, to a position of legitimate clout.

**In summary, then**, over the course of the thread of the Lower Basin tribes fighting for their tribal rights from 1970 through 2000, the Yurok Tribe and the Hoopa Valley Tribe moved from a position of powerlessness in which their tribal rights were ignored to a position of actual clout in which their tribal rights not only were recognized, but were recognized as trumping other rights.

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19 Judge Beezer, while concurring with the decision, had taken the time to add his opinion, chastising the disjointed management between the Departments of Interior and Commerce which forced the Indians to bear most of the burden for conservation (*U.S. v. Eberhardt*).
At the beginning of this period, concerns about the tribal fisheries did not enter into considerations with respect to ocean harvest and ocean regulations. Many considered gill netting by the tribes as the cause of the diminution of the salmon population. In 1934, the State of California had banned commercial fishing and gill netting by the tribes, and regularly impounded gill nets and arrested Indian fishers.

The 1975 Mattz decision was a key event that confirmed that the Klamath River Reservation was indeed Indian country, and thus enabled the Yuroks finally to fish without state intervention within the Klamath River Reservation for the first time since 1933. Unfortunately, this freedom to fish was short-lived, for while the Short litigation did rule that the Klamath River Reservation was part of the Hoopa Valley Reservation, the lack of a federally recognized Yurok tribal government caused BIA to begin regulating the tribal fisheries in 1977. As the ocean fishers fished to their fill and the salmon population dwindled, the tribes were made to bear the burden of conservation of the species by severely limiting their fishing in order to try to meet the escapement quotas. As the years passed, the salmon dwindled to such low levels that ocean fishing became severely limited as well, and fingers began to point away from the tribes and from overfishing and upstream towards degradation of spawning and rearing habitat.

From the perspective of the tribes, this situation could have lingered on and on but for two key events, one in 1988, and one in 1993. In 1988, the Hoopa-Yurok Settlement Act dramatically rearranged relationships among everyone. Now the Hoopa Valley Tribe and the Yurok Tribe each had their own reservations; each had their own federally-recognized constitutions; each had vested property rights; each had vested federally-reserved fishing rights; and each regulated their own tribal fisheries. And in 1993, the Solicitor of the Interior Department issued an Opinion that established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the tribes receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups.

As the year 2000 rolled to a close, for the Yurok Tribe and the Hoopa Valley Tribe, even though some issues still remained to be resolved with respect to the HYSA settlement, they had fought for their tribal rights – and they had won.

But What About the Karuk Tribe?

Life was definitely not as grand for the Karuk Tribe. And it all harkens back to the 1851 McKee treaty that the Karuk signed on November 4, 1851, but that Congress never ratified. As such, a reservation was never established for the Karuk, which means that, even though they have occupied
their aboriginal territory since time immemorial, according to U.S. law, they have no vested right to that land. Most of the 1,015,016 acres of Karuk aboriginal territory was claimed by the Federal government with little compensation (NRC 2004; Stercho 2006). In Stercho (2006), according to information provided by the Land Manager of the Karuk Tribe, the total acreage managed by the Karuk Tribe is a tiny 741 acres – 140 acres owned in fee by the Tribe and 601 acres held in trust by the U.S. for the Tribe – a mere 0.07% of their ancestral territory.

Because the Karuk Tribe does not have a reservation, they do not have federally-reserved fishing, hunting, or gathering rights as well within their aboriginal territory. In order to hunt, to fish, to gather cultural materials and plants, the Karuk must abide by the regulations of both the U.S. Forest Service and the California Department of Fish and Game. This means that they must purchase licenses, must pay fees, must abide by a mind-boggling set of regulations restricting what can be done when and where (including seasons too short and harvests too small for providing adequate food supplies) – and must endure exhorbitant economic consequences (including arrest) if they break any of the regulations (Stercho 2006).

In a 1985 court decision, the State of California designated limited fishing rights for the Karuk only at Ishi Pishi Falls where they are allowed to use traditional dip-nets (Stercho 2006). Finally, the Karuk could fish without threat of arrest at the center of their cultural and religious world – though doing so was no easy task, given that the Falls are steep, requiring those who want to fish to carry their dip nets and equipment and ultimate catch by hand up and down the steep rocks, and allowing only enough room for one or two men to stand and fish at any one time (Stercho 2006).

There were many individual Karuks who were plaintiffs in the Short litigation track, qualified as Indians of the reservation, and received damages. When the HYSA was passed in 1988, the only options available to the individual Karuks who happened to live within the territory of the old joint Hoopa Valley Reservation were to give up membership in the Karuk Tribe and join either the Hoopa Valley Tribe or the Yurok Tribe, or to take a lump sum payment as individuals. I can’t imagine many took the former option.

In 1990, the Karuk Tribe of California filed suit against the United States, claiming that the 1988 HYSA had taken their vested property interests in reservation land (Karuk v. U.S. 1998). In 1991, several individual Indians filed a similar “takings” claim (Ammon v. U.S. was consolidated with Karuk v. U.S. 1998, and in 1992, the Yurok Tribe filed yet another “takings” claim (Yurok Indian Tribe v. U.S. was consolidated with Karuk v. U.S. 1998). During 1996, the three “takings” suits were
consolidated. On August 6, 1998, the court ruled in the three consolidated “takings” suits that none of them had vested property rights in the lands of the old joint Hoopa Valley Reservation and that, as such, no taking had taken place. In 1999, all three cases filed appeals with the U.S. Court of Appeals for the Federal Circuit, and on April 18, 2000, the appeals courts affirmed the original decision (Karuk v. U.S. 2000). All three sets of plaintiffs – the Karuk, the Yurok, and the individuals – lost.

“On January 15, 1979, the government-to-government relationship between the United States and the Karuk Tribe of California was revitalized amounting to federal recognition of the Tribe.

On March 7, 1994, Michael J. Anderson, the Associate Solicitor for Indian Affairs, issued a Solicitor’s Opinion to Bill Shake, Fish and Wildlife Service, in which he concluded (1) that the Karuk did not have a federally reserved fishing right; and thus (2) that the Karuk did not have a right to any share in the 50% tribal allocation specified by the 1993 Solicitor’s Opinion (U.S. House 2000b).

On September 15, 1999, Congressman Herger of California introduced H.R. 2875 in an attempt to accomplish recognition of Karuk federally reserved fishing rights and to secure a share of the 50% tribal allocation to the Karuk Tribe. On May 4, 2000, hearings were held before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Resources Committee. The Karuk Tribe testified that their aboriginal fishing rights had never been ceded by the Tribe nor been abrogated by Congress and should therefore be recognized by the U.S. government (U.S. House 2000a). Testimony in opposition to this recognition was heard from the Interior Department as well as from the Hoopa Valley Tribe and the Yurok Tribe. Ultimately, no action was taken on this measure.

Sometime over the course of the three suits, the Hoopa Valley Tribe had intervened as defendant in all three cases.
As 2000 rolled to a close, for all their efforts, and for all their conscientious management of the fishery that fell within their aboriginal territory, the Karuk had no reservation, no vested property rights beyond the 601 acres held in trust by the U.S., no federally reserved fishing, hunting, or gathering rights, and only limited fishing rights granted by the State of California at Ishi Pishi Falls.

In summary, then, clearly, with respect to the thread of Lower Basin tribes fighting for their tribal rights, while the Yurok Tribe and the Hoopa Valley Tribe ultimately won, the Karuk Tribe lost.

2.2 Ocean Fishing Communities Fight for Their Way of Life

During the Expansion period of 1900-1969, we saw that improvements in equipment and in transportation infrastructure enabled the California fishing industry to expand rapidly and dramatically from a rather sleepy industry at the turn of the century to an industrialized giant (Love 2006), and to join the brotherhood of boom-and-bust with mining and timber. The then-dominant cultural premise that market trumps all and nature is boundless drove all non-Indian fishing sectors – commercial and recreational, ocean and in-river – to take as many fish as they could today with no thought about tomorrow.

“Fishing communities are complex, changing centers of action for fisheries. They are composed of independent people who do not fit easily into neat categories and who rarely, if ever, present themselves as a homogeneous group. Although some see the fishing community as a single entity, it actually consists of many communities based on gear type, fishery, and geography” (Gilden 1999, 1). What they do share in common is that those who were drawn to fishing as a way of life were those “who were drawn to fishing’s independent lifestyle—where hard work, skill, knowledge, and luck determined personal success” (Gilden 1999, 8) – those who were able to navigate the choppy waters of constantly changing market prices, weather, and the endless other factors that pushed the pendulum between success and failure.21

As the Expansion period drew to a close, declining fish populations became an inescapable fact of life for the ocean fishing communities. Fisheries management endlessly chastised the ocean fishing industry for overfishing, but ultimately failed to reduce the harvest and stem the decline in fish populations. Outside the 3-mile limit, fishing was essentially completely unregulated and the industry fished to its fill.

The commercial and recreational ocean fishing communities responded to the declining fish populations and charges of overfishing in a manner which I see as classic for natural resource

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21 In every way, this sounds completely reminiscent of the way of life of the farmer and the rancher.
communities – charges of over-harvesting of the resource are met with a cacophony of denials of personal culpability and assignment of blame to others, with the result that there is no reduction in the rate of harvest as each user group waits for the at-fault other to ‘clean up their act.’

To get a sense of what transpired for ocean fishing communities over the years 1970-2000, envision a drawstring drawing tighter and tighter, squeezing the life out of fishing communities as inexorably as the hangman’s noose squeezes the life out of the dead-man-walking. What had once been an open profession with few regulations and abundant freedom changed to an industry hobbled by regulations, politics, scarcity, economic stress, and gear conflicts (Gilden 1999).

**Regulations.** Before March 1, 1977, there had been no regulation of ocean fishing beyond the 3-mile state line, where both American and foreign fishing vessels trolled. That situation changed when the Fishery Conservation and Management Act (FCMA), passed on April 13, 1976, became effective on March 1, 1977. The passage of this Act was a key event in the thread of ocean fishing communities because “[w]here before federal policy had aimed primarily at expanding the industry’s resource base through research, exploration, and development, the new law brought the national government broadly and squarely into the business of policing fisheries use for the first time” (McEvoy 1986, 242).

The passage of FCMA also encouraged efforts at the state level to manage the fisheries in new ways. Limited entry, for example, had been unthinkable during the 1960s. By 1982, however, California had imposed one form of limited entry or another on several of its fisheries... All three Pacific Coast states adopted programs to limit entry to the salmon fishery after PFMC called for such action. In California this took the form of a moratorium on new licenses to fish salmon, enacted in 1979. [With the passage of this moratorium,] California salmon trollers [for the first time began] to perceive themselves as a closed group with a collective interest in sustaining their livelihoods over the long run. (McEvoy 1986, 243)

The Act established a fishery conservation zone from 3 to 200 miles out. Fisheries off the coasts of California, Oregon, and Washington fell within the jurisdiction of the Pacific Fishery Management Council (PFMC).

In researching the PFMC ocean fishing regulations, I found it to be a most intriguing system. Fisheries management establishes quotas for harvest and escapement based on its projections for the run for the upcoming year. Then it sets configurations of restrictions with respect to season, bag

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22 Fishery Conservation and Management Act of 1976 (FCMA) is also known as the Magnuson Fishery Conservation and Management Act. On October 11, 1996, the Act was amended by the Sustainable Fisheries Act of 1996, and, on January 12, 2007, it was reauthorized as the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.
limit, gear, and such in the hope that the configuration of restrictions will limit the fishing effort sufficiently to achieve the quotas. It reminds me of the difference between just posting a desired speed limit and instead using speed bumps and other such flow impediments to forcibly slow traffic in a particular block. The flow impediments achieve the desired speed limit without actually posting the desired speed limit.

In 1977, PFMC created its first Fishery Management Plan, which basically replicated the extant California regulations for the 0-3 mile zone – commercial salmon fishing for 169 days (April 15 – September 30) with no bag limit, and recreational salmon fishing for the entire year with a bag limit of 3.

Over the subsequent years of 1978-2000, for the commercial ocean fishery, table 9.1 shows us that the regulations set by PFMC went from basically unlimited in 1978, allowing fishing for 169 days in both the KMZ and the KCZ, with no bag limit, through complete closures in 1985 as well as in 1991 through 1995, allowing no fishing at all in both the KMZ and the KCZ, and finally to extremely limited in 1997 through 2000, allowing fishing for 30 days in the KMZ, no days in the KCZ, and a bag limit of 30 chinook per day. Table 9.1 also shows us that the commercial ocean catch declined from 214,804 fish (72.2% of the Total Run) in 1978 to a mere 2,027 fish (1.5% of the Total Run) in 2000.

For the recreational ocean fishery, over the years of 1978-2000, table 9.1 shows us that the regulations set by PFMC went from unlimited in 1978, allowing fishing for 365 days in both the KMZ and the KCZ, with a 3-fish bag limit, through a low in 1993, allowing fishing for only 14 days in both the KMZ and the KCZ, and finally to limited in 2000, allowing fishing for only 85 days in both the KMZ and the KCZ, with a complicated bag limit that hovered around 2 or fewer fish. Table 9.1 also shows us that the recreational ocean catch, with the exception of unusually high catches in 1985-1990, has hovered around the same number of fish, ranging from a low of 2,595 in 1992 to a high of 13,631 in 1995.

PCFFA Takes Up the Fight. In May 1979, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on Klamath River Indian Fishing Rights – on May 21 in Washington, DC, and on May 26 in Eureka, CA (U.S. House 1979). During the Eureka hearings, testimony was heard from Zeke Grader, general manager and counsel of the Pacific Coast Federation of Fishermen's Associations (PCFFA), which was at the time – and still is today – an extremely active trade organization representing California commercial fishermen's associations from Crescent City in the north to San Diego in the south. To give a sense of the size of the commercial
In 1979, the ocean fishing industry testified that “[t]here are approximately 4,000 vessels and 7,000 fishermen involved in the California commercial salmon fishery and many more persons are involved in the onshore processing and distribution of these fish” (U.S. House 1979: Statement of Zeke Grader, General Manager of PCFFA [read into record by Judy Hokman PCFFA], 104). He asserted that there was no evidence of overfishing by either the commercial troll or ocean sport salmon fishery, and that the blame for the decline in the salmon populations was directly attributable to the destruction of the fish’s inland spawning and rearing habitat (U.S. House 1979: Statement of Zeke Grader, General Manager of PCFFA [read into record by Judy Hokman PCFFA]). He was opposed to any type of ocean closure. He supported the continuation of the moratorium on in-river tribal commercial fishing until the Short litigation was decided and until those who had fishing rights could then decide if they wanted a commercial fishery and if there were a sufficient resource to support a commercial fishery. In addition, he contended that gill nets should be banned for any fishery – commercial, subsistence, and ceremonial.

It is most interesting to note that as early as 1979 PCFFA was contending that upstream environmental degradation was the root cause of the decline in the salmon population. He even specifically asserted that the “Bureau of Reclamation should be required to insure that there are adequate water flows from their projects to sustain salmon population to historical levels” (U.S. House 1979: Statement of Zeke Grader, General Manager of PCFFA [read into record by Judy Hokman PCFFA], 106). This is the first recognition of the link between ocean salmon fishing communities and upstream environmental degradation because of the fact that the salmon are anadromous – while they may be caught in the ocean, they are spawned and reared upstream, so what happens upstream has a direct impact on the well-being of those who catch them in the ocean. It is therefore the first recognition of the expansion of the Klamath watershed to include the ocean fishing communities, because actions taken by those who lived within the geographical territory of the watershed both impacted and were impacted by actions taken by those who technically lived outside the geographical territory of the watershed. And finally, it is a hint of a future strategy that PCFFA will embrace in its fight for the survival of the ocean fishing way of life.

**A Great Year, But Then Closures Began.** 1979 was a banner year for the northern California commercial ocean salmon fishing industry, yielding the sector’s highest annual catch for 1978-2000. Table 9.1 shows us the following:
You may remember from the Tribal Fishing strand in the Tribal thread that, in 1978, in response to concerns about the high ocean catch in 1978 coupled with concerns about the repercussions of the 1976-1977 drought on the salmon populations in ensuing years, BIA issued an emergency moratorium cancelling tribal commercial fishing for the remainder of the 1978 season. In support, California closed down sport fishing. The BIA also requested that the Commerce Department close down the ocean fishery, but that did not happen. In 1979, the ocean catch was even larger than it had been in 1978 and the tribes continued to be banned from commercial fishing.

In 1980, PFMC became concerned about the effects of the 1976-1977 drought on salmon populations. On May 1, 1980, PFMC issued emergency regulations (U.S. NOAA 1980) which closed “ocean salmon fishing in California south of Cape Vizcaino from June 1 through June 30, and north of that point from June 1 through July 14” (PCFFA v. Commerce 494 F. Supp. at 627).23

Instantaneously, PCFFA and other fishermen’s associations filed suit against the Secretary of Commerce (PCFFA v. Commerce) – and thus began the use of litigation by PCFFA as a major tool for fighting to preserve the way of life of the ocean fishing communities. PCFFA and the other plaintiffs challenged the 1980 regulations, asserting that the plan did not take economic consequences to commercial fishers into consideration in formulating the 1980 regulations, and claiming that the 1980 plan was invalid because PFMC and the Commerce Department did not regulate the Indian gill net fishing on the Klamath River.

The Court reviewed the 1980 plan and found that economic considerations were examined by PFMC, that the Council was hamstrung by the absence of data on past and existing economic structure of the ocean fisheries as well as on the fish themselves, and that the Secretary of Commerce had acted reasonably in setting the emergency regulations. In addition, the Court noted that it was

23 Cape Vizcaino is south of the KMZ. Closure of points north of Cape Vizcaino is tantamount to a closure of the KMZ and the KCZ.
not within the purview of PFMC to set tribal harvest quotas. On June 4, 1980, the Court rendered its decision, denying plaintiffs’ request to stop the implementation of the emergency interim regulations.

In other words, the ocean fishers lost and the closures were implemented. Table 9.1 shows us that the commercial ocean salmon catch for 1980 decreased to 163,905 from the high of 290,146 that it had been in 1979.

More closures were to follow: in 1985, 1991, and 1992, both the KMZ and the KCZ were closed for the entire year to commercial ocean fishing.

**Repercussions of the 1993 Solicitor’s Opinion.** In 1993, as you may recall from the Tribal thread, the Secretary of Commerce overruled the recommendations from PFMC for the 1993 season, and instituted both a higher spawning escapement quota and more stringent fishing regulations. Of course, PCFFA immediately joined with seven individual commercial fishing men and women plus five commercial fishermen’s associations to take the Interior Department to court, contending that the Secretary’s reduction of the 1993 fall fishing season was improper (*Parravano v. Babbitt*).

While the case was being considered in court, another key event occurred, which effectively closed the door on life as the ocean fishing communities had known it. On October 4, 1993, the Solicitor of the Department of the Interior, John D. Leshy, issued Solicitor’s Opinion M-36979 on the subject of the Fishing Rights of the Yurok and Hoopa Valley Tribes. The Opinion established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the tribes receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups.

The Solicitor’s Opinion was factored into the Court’s consideration in *Parravano v. Babbitt*. The plaintiffs challenged the Solicitor’s Opinion as applicable law under the Magnuson Act. They claimed (1) that the Hoopa Valley and Yurok tribes did not have federally reserved fishing rights; (2) (the same tired old argument) that fishing rights secured by executive or statutory authority did not command the same authority as rights secured by treaty; and (3) that there could be no off-reservation regulation pursuant to an on-reservation fishing right.

In its decision on July 29, 1994, the Court (1) asserted that, pursuant to the executive orders of 1876 and 1891 and to the Hoopa-Yurok Settlement Act of 1988, both tribes had a federally reserved fishing right which included subsistence, ceremonial, and commercial purposes, and which counted as applicable law under the Magnuson Act; (2) rejected the treaty versus non-treaty distinction, as had been done many times before; and (3) asserted that “for the Tribes’ federally reserved fishing right to
have any practical meaning, it must include regulation of activities occurring outside the reservation which negatively impact that right” (Parravano v. Babbitt 861 F. Supp. at 924).

In other words, bottom-line, the commercial ocean fishing industry lost. Of course, PCFFA and the other plaintiffs appealed the decision, but on November 16, 1995, the appeals court affirmed the district court’s decision (Parravano v. Masten).

As heady a moment as the 1993 Solicitor’s Opinion was for the tribes, it and the related loss in court were devastating for the ocean fishing communities, who now could only look forward to receiving a proportion of half of the salmon harvest allowed for any year. Gone were the days of harvesting 85% of the total run; gone were the days of the tribes picking up the slack to try to meet escapement quotas; gone were the days, really, of substantial salmon runs, no matter who was harvesting how much.

The key event of the 1993 Solicitor’s Opinion triggered two major changes in the efforts of the ocean fishing communities to preserve their way of life: (1) changes in the relationship between ocean fishers and the tribes; and (2) changes in the basic litigation strategy employed by PCFFA.

With respect to changes in the relationship between ocean fishers and the tribes, Stephen Most recounts that “[w]ith Yurok fishing rights so clearly confirmed, fishing industry representatives recognized that it was more in their interest to work with the Indians than against them. They knew that the best way to increase the numbers of salmon in the ocean was to restore their habitat in the river. They understood that the river tribes not only had incentive to do this, but they also embraced the responsibility” (Most 2006, 129). Most continues, with Troy Fletcher of the Yurok Tribe recounting the turning point when Nat Bingham, then president of PCFFA, initially questioned the Yuroks’ report concerning their catch of salmon and steelhead, but, after a summer of meetings between the Yuroks and the commercial fishermen, made commitments and resolved never to doubt the Yurok Tribe’s numbers again (Most 2006).

To me, this turning point represents the turning point that occurs in the classic response of natural resource communities – as candidates for the blame game get exonerated in one way or another, as one runs out of others to blame, as the status of the resource continues to worsen, ultimately the communities begrudgingly surrender to the realization that it is not about assigning blame, but is about everyone being forced to change their relationship to the resource and to each other.

With respect to changes in the basic litigation strategy employed by PCFFA, prior to the 1993 Solicitor’s Opinion, PCFFA had employed a two-pronged litigation strategy: (1) fighting the regulations and quotas; and (2) trying to stop actions that might have been detrimental to fish habitats.
1993 Solicitor’s Opinion, PCFFA seems to let go of fighting the regulations and quotas by means of litigation, and joins forces with the environmental movement in a collaboration of certain environmental organizations and an environmental legal defense fund to fight together for whatever would improve the upstream salmon spawning and rearing habitat. This change will have implications that will ripple throughout the Basin. I will delay addressing this strategy until I have first picked up the thread of the environmental movement fighting for the well-being of the environment, and then will look at how the two threads were woven together in litigation strategy.

**Changes in Fisheries Management.** There continued to be events that impacted the ocean fishing communities. In 1996, the FCMA was reauthorized and amended by the Sustainable Fisheries Act (SFA). The Act “redirected U.S. fisheries policy away from promoting fishery growth and toward conservation and sustainability of those fisheries. For the first time, managers were specifically directed to protect essential fish habitat from the adverse effects of fishing. In addition, the SFA required Management Councils to consider the plight of the fishing industry and dependent communities in their management decisions” (Love 2006, 588).

In the 1990s, the evidence of depletion and over-fishing was undeniable. Regulations were now imposed on both commercial and recreational fisheries. “Clearly, for the first time in California history, management of commercial and recreational fisheries was viewed as two sides of the same coin” (Love 2006, 589). In addition, two acts “passed by the California legislature also signaled that a new day had dawned in fisheries management at the state level” (Love 2006, 589). The 1998 Marine Life Management Act was the first act that attempted to create integrated fisheries management in California and to conserve entire ecosystems rather than single species. The Act also “recognized that fisheries management may have negative impacts on fishermen and their communities and provided for minimization of these impacts” (Love 2006, 589). The 1999 Marine Life Protection Act attempted to protect habitats and preserve ecosystem integrity.

A major effect of the SFA, plus the two California acts, was to change the dynamics between the historically always feuding commercial and recreational sectors of ocean fishing. As fisheries managers began to understand that *both* industries contributed to overfishing, with the degree of responsibility varying with the fishery (Love 2006), the two industries found themselves almost equally under siege.

In the face of clear evidence of overfishing, governmental actions in the form of drastically reduced quotas, closed seasons, and area and gear restrictions put severe pressure on both industries, placing their viability into question. (Love 2006, 591)
**Status at 2000.** The question remains to be asked What is the status of the northern California ocean fishing communities at 2000? For an economic perspective, I turned to PFMC and its annual review of ocean salmon fisheries. As part of this review, PFMC estimates the impact of the troll and recreational ocean salmon fishery on California coastal community and state personal income. I looked just at Crescent City and Eureka because they are in the Klamath River watershed, and would be most directly impacted by the decline in the coho and chinook salmon fisheries.

Economic impacts are estimates created by PFMC’s Fishery Economic Assessment Model for the income impacts associated with expenditures in the troll or recreational sectors. In other words, with respect to my two cities of choice, what contribution did the landing of fish in these two cities make towards the economy and personal income of the people in the two cities?

Estimates of economic impact fell from a high of the average of $21,563,000 for an average catch of 220,210 fish over the 5-year period 1976-1980 – to a low of $599,000 for a catch of 5,414 fish in 1998. For the years 1976-1988, commercial fisheries exceeded recreational fisheries in number of fish caught and in economic impact. From 1989 on, however, recreational fisheries have exceeded commercial fisheries in number of fish caught and in economic impact. From the averages for the 5-year period 1976-1980 to the numbers for the year 2000, estimated economic impact has declined 94.8% and number of fish landed has declined 93.0%.

The ripple effect of the decrease in the salmon fishery seems to be painfully obvious. One can only imagine that over the years, the size of the commercial fishery communities in Crescent City and Eureka – not only fishers, but also all the supporting businesses – has shrunk to hardly a shadow of its former self and that most of the people involved have either had to move into other sectors – or simply had to move to where the fish were. The size of the recreational fishery communities in Crescent City and Eureka has shrunk to a bit less than half of its former size. While some of the same businesses would service the recreational fishery community as well as the commercial fishery community, there are some that are unique to the recreational fishery community – such as hotels, tourist agencies, and the like, and there are some that are unique to the commercial fishery community – like bulk fish processing, commercial gear and boat supplies, and the like.

From a social perspective, Gilden notes that “[p]eople in the fishing industry are adept at managing change within certain limits, but when circumstances fluctuate dramatically, they experience enormous stress. The industry’s emergence into the next decade will require adjustments in everything from management strategies to personal business planning. Inevitably, these changes affect all members of fishing families and the fishing community” (Gilden 1999, 11). Bottom-line,
Table 9.2. Number of Klamath Fall Run Chinook Salmon Landed by Commercial and Recreational Boats at Crescent City and Eureka, and Economic Impact of Those Landings, for 1976-2000

<table>
<thead>
<tr>
<th>Year</th>
<th>Total # Fish Caught</th>
<th>Total Economic Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Crescent City &amp; Eureka</td>
<td>Commercial &amp; Recreational $\text{ (000) }^a$</td>
</tr>
<tr>
<td>1976</td>
<td>21,563</td>
<td>21,563</td>
</tr>
<tr>
<td>1977</td>
<td>21,563</td>
<td>21,563</td>
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<td>1988</td>
<td>7,947</td>
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<tr>
<td>1990</td>
<td>4,235</td>
<td>4,235</td>
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<td>1993</td>
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<tr>
<td>1999</td>
<td>1,009</td>
<td>1,009</td>
</tr>
<tr>
<td>2000</td>
<td>1,129</td>
<td>1,129</td>
</tr>
</tbody>
</table>

Note: 1976-1980 average economic impact of $21,563,000 for an average catch of 220,210 fish for the 5 years.
Note: 1981-1985 average economic impact of $8,464,000 for an average catch of 104,368 fish for the 5 years.

\(^a\) Data from PFMC 2002, table IV-16. Estimates of California coastal community and state personal income impacts of the troll and recreational ocean salmon fishery for major port areas, expressed in 2001 dollars.

\(^b\) Data from PFMC 2007b, table A-5, Season total chinook landed by recreational boats at the ports of Crescent City, CA, and Eureka, CA, and from PFMC 2007b, table A-3, Season total chinook landed by commercial boats at the ports of Crescent City, CA, and Eureka, CA.
Table 9.3. Comparison of Estimated Economic Impact of Commercial and Recreational Boats Landing at Crescent City and Eureka between 1976-1980 and 2000

<table>
<thead>
<tr>
<th>Year</th>
<th>Commercial $ (000)</th>
<th>Recreational $ (000)</th>
<th>Total $ (000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976-1980</td>
<td>19,276</td>
<td>2,287</td>
<td>21,563</td>
</tr>
<tr>
<td>2000</td>
<td>79</td>
<td>1,050</td>
<td>1,129</td>
</tr>
<tr>
<td>2000 as % of (1976-1980)</td>
<td>0.4%</td>
<td>45.9%</td>
<td>5.2%</td>
</tr>
</tbody>
</table>


northern California ocean fishing communities have been – and continue to be – forced to completely reconstruct their way of life based on the inability to fish where they used to fish.

**In summary, then,** to get a sense of what transpired for ocean fishing communities over the years 1970-2000, envision a drawstring drawing tighter and tighter, squeezing the life out of fishing communities as inexorably as the hangman’s noose squeezes the life out of the dead-man-walking. What had once been an open profession with few regulations and abundant freedom changed to an industry hobbled by regulations, politics, scarcity, economic stress, and gear conflicts (Gilden 1999).

The passage of the Fishery Conservation Management Act in 1976 was a key event in the Ocean Communities thread because it brought the Federal government squarely into the policing of fisheries (McEvoy 1986). Over the ensuing years, fisheries management – both federal and state – changed from market support to ecosystem support. As the salmon populations declined precipitously, regulations became increasingly stringent, hobbling the ocean salmon fishing effort – both commercial and recreational – to but a shadow of its former self. From the averages for the 5-year period 1976-1980 to the numbers for the year 2000, for the watershed ocean fishing communities of Crescent City and Eureka, CA, the ocean commercial plus recreational salmon catch declined 93.0% and the estimated economic impact declined 94.8%. This caused a major contracting and restructuring of these ocean salmon fishing communities, forcing them either to move into other fisheries in the same ports or to move to different ports or to give up their very precious way of life altogether.

In the face of the drastic decline in the well-being of the ocean fishing communities, PCFFA took up the fight to preserve their endangered way of life. Initially, they brought forward the attitude from the Expansion period that denied culpability for over-fishing and assigned the blame to others,
commercial blaming recreational, in-river sports blaming tribal gill netting, and most especially, ocean blaming upstream for degradation of the salmon’s spawning and rearing habitat.

Their first strategy in the fight to preserve their way of life was to take up litigation (1) to try to fight the regulations and quotas; and (2) to try to stop actions which might have been detrimental to fish habitats. When the key event of the 1993 Solicitor’s Opinion closed the door on fighting the regulations, PCFFA made two major changes in their strategy: (1) they joined forces with the tribes to restore salmon habitat in the Klamath watershed; and (2) they joined what became, in my opinion, a powerful collaboration of certain environmental organizations and an environmental legal defense fund to fight in court for the restoration of the upstream salmon spawning and rearing habitat – which leads us directly to a consideration of the next thread.

2.3 Environmental Activists Fight for the Well-Being of the Environment

At the National Level

By the end of the Expansion period, grassroots public values had genuinely changed, such that the public would no longer accept that public lands and public health could be decimated in the name of profit. On the government track, the possibility of an expanded role for government in environmental regulation was being entertained. And on the public track, alarm about environmental catastrophes armed itself with the tactics of the 60’s activists and by 1969 was primed to use organization, litigation, protest, and legislation to demand and even to force change. The environmental activist was born – one who frames their sense of who they are in terms of the mission they see themselves as having, to protect nature from whatever and whomever they feel might injure it.

1970. April 22. Earth Day. Key event in the environmental thread. Building on grassroots public values, aimed at the more moderate activists, eschewing the actions of the more radical activists, Earth Day drew a participation of at least twenty million across the United States “in celebration of quality-of-life issues and concern for the environment” (Silveira 1991, 507) – and everything was changed. Environmentalism left behind its elite roots, and emerged as a mass social movement embraced by the Silent Majority (Shabecoff 1993; Gottlieb 1993).

The 1970s were hailed as the Environmental Decade, in which law and society were transformed. By the end of the 1970s, the number of environmental organizations grew from several hundred to over 3,000, and by 1972, membership in the twelve largest environmental organizations grew from about 100,000 to more than 1,000,000 (Coglianese 2001). New organizations were formed, particularly those that specialized in litigation, such as the Environmental Defense Fund,
Environmental Action, the Sierra Club Legal Defense Fund, Friends of the Earth, and the Natural Resources Defense Council. Older organizations, such as the Sierra Club, the National Audubon Society, the Wilderness Society, and the National Wildlife Federation, were reinvigorated (Coglianese 2001; Lazarus 2001). “These organizations prodded...legislative, executive, and judicial decision makers to be more responsive to environmental concerns” (Lazarus 2001, 80).

The government track responded with an avalanche of environmental legislation in the 1970s, with the first one signed into law by President Nixon on January 1, 1970:

- National Environmental Policy Act (NEPA) of 1969
- Clean Air Act of 1970
- Clean Water Act (Federal Water Pollution Contract Act Amendments of 1972)
- Coastal Zone Management Act of 1972
- Federal Environmental Pesticide Control Act of 1972
- Marine Protection, Research, and Sanctuaries Act of 1972
- Noise Control Act of 1972
- Endangered Species Act of 1973
- Safe Drinking Water Act of 1974
- Federal Land Policy and Management Act of 1976
- National Forest Management Act of 1976
- Resource Conservation and Recovery Act of 1976 (RCRA)
- Toxic Substances Control Act of 1976 (TSCA)
- Surface Mining Control and Reclamation Act of 1977

These laws effected an economic transformation in the U.S. in that, now, environmental considerations trumped market considerations, and businesses were forced to develop new technologies that did not pollute or degrade the environment. Interestingly, on one hand, much to their surprise, many businesses found that the new technologies actually improved the bottom-line, and on the other hand, a huge pollution control industry was created.

The laws also effected a legal transformation in the U.S., (1) putting the Federal government clearly in the driver’s seat; (2) requiring the environment to be factored into governmental decision making about all major federal activities; (3) requiring the Environmental Protection Agency (EPA) to create and enforce environmental regulations; and (4) authorizing “the filing of citizen suits, enabling environmental groups to take polluting firms directly to court on their own initiative to
enforce federal and state environmental requirements” (Coglianese 2001, 98). The unofficial motto of environmental organizations, as a lawyer for Environmental Defense Fund characterized it (White 2005), was ‘sue the bastards,’ as the organizations used litigation as their tool for environmental protection.

In addition, the federal judiciary took unto itself the role of environmental reformer, seeking to ensure that environmental laws were enforced, by granting standing to environmental organizations in litigation and by interpreting the laws in ways that served to increase the clout of the laws.

In the 1980s and 1990s, first the Reagan administration and then the Republican Contract with America tried to dismantle the environmental laws – and failed. On the one hand, the public clearly did not want the laws dismantled. And on the other hand, environmental organizations came together to mount a coordinated response to the perceived threat to the environmental policy system that had been developed in the 1970s (Gottlieb 1993). In response to the election promise of Reagan, the funders who had been supporting the development of the environmental policy system called together the CEOs of what came to be called the Group of Ten: The National Wildlife Federation, the Izaak Walton League, the National Audubon Society, the Sierra Club, the Wilderness Society, the Natural Resources Defense Council, the Environmental Defense Fund, the Environmental Policy Center, Friends of the Earth, and the National Parks and Conservation Association. In their collaboration, they went from being grassroots outsiders to being beltway insiders, working the halls of government to affect environmental legislation, regulation, and litigation.

Over the course of the 1980s and 1990s, while, on the one hand, the federal judiciary became less reform-minded, and more conservative, thanks to appointments during the 1980s, on the other hand, mainstream environmental groups came to realize that litigation did not fix environmental problems, and that in order to do that, they needed to work collaboratively with people (White 2005). Reform continued to occur, but now more incrementally than previously, “based on the [perceived] need for less absolutism, greater compromise, and increased accommodation of competing concerns” (Lazarus 2001, 105).

There seems to be a cycle – original grassroots organizations become institutionalized mainstream organizations – and then new grassroots organizations are born in criticism of those now institutionalized mainstream organizations, and round and round we go. Not surprisingly then, as the original environmental organizations became mainstream during the 1980s and 1990s, new local grassroots environmental organizations were born, criticizing the mainstream organizations for
moving too slowly, and espousing direct action, litigation, even protest, in order to address what they considered urgent environmental conditions.

At the Local Level

In that context, looking at the evolution of a particular grassroots environmental organization in Oregon provides a perfect way to look at the development of the environmental thread in the Klamath watershed.

By 1974, there were a number of local grassroots organizations in Oregon, each of whom desperately wanted to save the piece of public forest lands in its own backyard from logging (Marsh and Cronon 2007). They felt that, where national organizations like the Sierra Club could opt for the long-run, if they went for the long-run, there would be no forest left. In 1974, they joined together in the Oregon Wilderness Coalition (Fernandez 2001; Marsh and Cronon 2007). Their initial focus was on the aggressive preservation of public forest lands in Oregon; their initial strategy seems to have been to work in the arena of local administrative authorities, but that soon seems to have moved on up to the arena of the federal courts.

In 1982, the group changed its name to Oregon Natural Resources Council (ONRC) and began relentlessly ‘suing the bastards.’ Table 9.4 gives a summary of their stream of litigation for the period 1982-1992, during which the focus of their litigation continuously expanded. For 1982-1985, their focus was trying to stop actions in specific national forests. In 1986, the focus was expanded to trying to stop the construction of a dam. And in 1986, ONRC began what started as a litigation track focused on timber, then expanded the timber focus to include focus on the northern spotted owl that inhabited the timber in question, and then finally evolved into a litigation track focused solely on the northern spotted owl.

1991 began what I see as a shift in focus from forests to species-specific litigation and from complaints based primarily on NEPA to complaints based primarily on ESA. And in 1991, environmental litigation landed squarely within the Klamath watershed, when ONRC, standing alone, filed a complaint of violation of ESA against the Bureau of Reclamation for failure to consult with FWS with respect to the impact on the ESA-listed Shortnose and Lost River suckers of BOR’s proposed actions in managing the Klamath Irrigation Project (ONRC v. BOR). The filing of this case in 1991 was a key event from the perspective of the Project water users, because it made real the potential for the listing of the suckers to negatively impact Project water deliveries. Both the Tulelake Irrigation District and the Klamath Water Users Association intervened as defendants in the litigation.
In 1992, ONRC expanded their focus to the listed salmon species of the Columbia River. And in 1994, in yet a further expansion of focus, ONRC joined with the Northwest Coalition for Alternatives to Pesticides to file a notice of intent to sue over federal failure to enforce pesticide regulations in the Tule Lake National Wildlife Refuge in the Klamath Basin (Blake, Blake, and Kittredge 2000).

Before proceeding with our story, I want to take a moment to address what I am sure that you have noticed – that I have not told you who won in each of the litigation tracks started by the filing of a complaint. That is because, in my opinion, it doesn’t matter who won. As Kittredge wrote in their 2000 book, “It’s the role of radical conservationist groups like the Oregon Natural Resources Council to establish limits. They draw lines in the sand. Cross them, they say, and we’ll sue. They consistently do what they say they are going to do. ...[The] incessant lawsuits...force people to consider important concerns in public forums – in cafes, in the newspapers, on television, and ultimately, sadly, in court” (Blake, Blake, and Kittredge 2000, 128).

As I see it, government agencies as well as private businesses were forced to think twice, even thrice, about everything they were going to do, because they learned the hard way that if it did not meet the standards of NEPA, ESA, and any other environmental law, they were going to have a court case on their hands. And if they had a court case on their hands, they were going to have it on their hands for a very long time, because, as I noted in the section on the Short litigation, court cases have a life of their own, often taking years and years and years to come to a resolution, and sometimes not even then. So, in the long run, I don’t see who ultimately won as all that important, because mindsets were changed and the environment was paid attention to, whether people wanted to or not.

In summary, then, during this period from 1970 through 2000, starting with the key event of Earth Day 1970, environmentalism became institutionalized in both public values and public policy. While the mainstream environmental organizations over time moved from the one-size-fits-all strategy of ‘sue the bastards,’ to a more nuanced strategy of collaborative reform, the local grassroots organizations – like Oregon Natural Resources Council – still ‘sued the bastards’ in a unrelenting stream of litigation that forced everyone in the Klamath Basin and elsewhere to pay attention to how they did things, whether they wanted to or not.

The story of ONRC continues with a move that interwove ONRC and the Environmental thread with PCFFA and the Ocean Communities thread into a powerful collaboration for fighting for the protection and restoration of upstream salmon habitat, and so we segue there right now.
<table>
<thead>
<tr>
<th>Year</th>
<th>Case</th>
<th>ONRC joined with</th>
<th>against</th>
<th>in complaint of violation of</th>
<th>in order to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td><em>Sierra Club v. Block I</em></td>
<td>Sierra Club</td>
<td>Forest Service</td>
<td>NEPA</td>
<td>Stop road construction in Siskiyou National Forest</td>
</tr>
<tr>
<td>1982</td>
<td><em>Sierra Club v. Block II</em></td>
<td>Sierra Club</td>
<td>Forest Service</td>
<td>NEPA</td>
<td>Stop the sale of timber by the Forest Service to a timber company in Willamette National Forest</td>
</tr>
<tr>
<td>1983</td>
<td><em>Earth First v. Block</em></td>
<td>Earth First</td>
<td>Forest Service; timber company</td>
<td>NEPA</td>
<td>Stop changes to a roadless area in the Kalmiopsis Wilderness</td>
</tr>
<tr>
<td>1985</td>
<td><em>ONRC v. Marsh</em></td>
<td>Local organizations</td>
<td>Army Corps of Engineers</td>
<td>NEPA</td>
<td>Stop the construction of a dam on Elk Creek in Oregon</td>
</tr>
<tr>
<td>1986</td>
<td><em>ONRC v. Forest Service I</em></td>
<td>Local community</td>
<td>Forest Service</td>
<td>NEPA</td>
<td>Stop the reselling to a timber company of a returned timber contract for logging in the Willamette National Forest</td>
</tr>
<tr>
<td>1987</td>
<td><em>ONRC v. Forest Service II</em></td>
<td>Local community</td>
<td>Forest Service</td>
<td>NEPA</td>
<td>Assert that the logging of the timber in question would constitute a threat to the northern spotted owl which inhabited that timber</td>
</tr>
<tr>
<td>1987</td>
<td><em>Portland Audubon Society v. Hodel</em></td>
<td>Sierra Club, Wilderness Society, Natural Resources Defense Council, many local Audubon Societies</td>
<td>Interior; multiple timber companies</td>
<td>NEPA</td>
<td>Stop the sale of old-growth timber in national forests managed in Oregon by BLM because the old-growth timber was the habitat of the northern spotted owl</td>
</tr>
<tr>
<td>1988</td>
<td><em>Northern Spotted Owl</em></td>
<td>Sierra Club, Wilderness Society, Natural Resources Defense Council, many local Audubon Societies, local environmental organizations</td>
<td>Interior; FWS</td>
<td>ESA</td>
<td>Challenge the FWS 1988 decision not to list the northern spotted owl under ESA</td>
</tr>
<tr>
<td>1988</td>
<td><em>ONRC v. Lyng</em></td>
<td>Forest Service; timber companies</td>
<td>NEPA</td>
<td>Stop the sale of timber in the Hells Canyon National Recreation Area</td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td><em>ONRC v. Mobila</em></td>
<td>Forest Service; timber companies</td>
<td>NEPA</td>
<td>Stop the sale of old-growth timber in Mt. Hood National Forest</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td><em>ONRC v. BOR</em></td>
<td>BOR</td>
<td>ESA</td>
<td>Assert failure of BOR to consult with FWS with respect to the impact on the ESA-listed Shortnose and Lost River suckers of BOR’s proposed actions in managing the Klamath Irrigation Project</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td><em>Northeast Resource Information Center v. NMFS</em></td>
<td>Sierra Club, Wilderness Society, local environmental organizations</td>
<td>NMFS, BOR, Army Corps of Engineers, Bonneville Power Administration</td>
<td>ESA</td>
<td>Assert that BPA actions with respect to the hydroelectric projects in the Columbia River threatened the ESA-listed Snake River sockeye salmon and Snake River chinook salmon</td>
</tr>
</tbody>
</table>
2.4 Ocean Fishing Communities Team up with the Environmental Movement

In the Ocean Communities thread, I mentioned the original two-pronged litigation strategy of PCFFA: (1) using litigation to fight the fishing regulations and quotas – which I detailed in the Ocean Communities thread; and (2) using litigation to try to stop actions that might have been detrimental to fish habitats – to which we turn now. Over the period 1998-1993, PCFFA joined with environmental organizations, from national to local, to reach out aggressively against anyone whom they saw as engaged in actions that would ultimately diminish ocean fisheries. Table 9.5 lists with whom PCFFA joined, against whom, and with respect to which specific fish habitats.

With the October 1993 Solicitor’s Opinion, PCFFA changed its original two-pronged litigation strategy. It let go of the first prong of using litigation as a tool for fighting fishing regulations and quotas, and concentrated solely on the second prong of using litigation as a tool for stopping actions detrimental to fish habitats. And, in a key event for the Ocean Communities thread, it joined what became, in my opinion, a powerful collaboration of certain environmental organizations with an environmental legal defense fund, to use litigation to fight for the restoration of the upstream salmon spawning and rearing habitat.

The core organizations in this collaboration were ONRC, PCFFA, and the Institute for Fisheries Resources (IFR, PCFFA’s nonprofit research and educational arm). The environmental legal defense fund was the Earthjustice Legal Defense Fund, formerly known as the Sierra Club Legal Defense Fund. Formed in 1971 by a group of attorneys volunteering for the Sierra Club, Earthjustice’s mission was to use litigation to fight for the preservation of the planet (Gunter 2004).

And where I said earlier that cases filed by ONRC seemed to have moved from forests to species-specific litigation, the cases filed by the collaboration seemed to have moved from species-specific litigation to litigation that focused on whether the defendants had followed the rules of the environmental laws. Table 9.6 summarizes the litigation in which the collaboration was involved from 1994 through 1999. The collaboration was as merciless as predator on prey as it relentlessly scoured the landscape and attacked at any sign of weakness in adherence to the rules of the environmental laws.

Before finishing the litany of litigation waged by the collaboration during this period, I want to take a moment to paint a picture. In the collaboration of Earthjustice + PCFFA + ONRC + IFR, we have the fishing men and women of the ocean fishing communities joining hands with environmental activists to reach upstream to fight for the preservation and restoration of salmon spawning and rearing habitats. From the perspective of the fishing men and women, they were
fighting to save their way of life. From the perspective of the environmental activists, they were fighting to save the environment. From the perspective of the ways of life directly impacted by the litigation waged by the collaboration – the farmers and ranchers, the foresters – these outsiders were messing with their ways of life and were not in any way particularly popular throughout the Klamath Basin.

In the Environmental thread, I made the point that, in my opinion, in the long run, it was not all that important who ultimately won the various cases, because mindsets were changed and the environment was paid attention to, whether people wanted to or not. In the Joint Ocean Communities + Environmental thread, I would say that this situation continued to hold – until this next case.

On May 31, 2000, the collaboration of Earthjustice + PCFFA + ONRC + IFR joined with national-level Sierra Club and The Wilderness Society plus three local environmental organizations to file a complaint of violation of NEPA, the Wild and Scenic Rivers Act, and the Reclamation Act against BOR (PCFFA I). On June 20, 2000, the Court denied those three claims. Shortly thereafter, the plaintiffs filed an amended complaint of violation of ESA by BOR, alleging that BOR failed to consult with NMFS concerning the impact of the Klamath Project 2000 Operations Plan as required by ESA and seeking an order to stop BOR from sending “irrigation deliveries from the Klamath Project whenever Klamath River flows at Iron Gate Dam drop below the minimum flows recommended in Dr. Hardy’s Phase I report until NMFS issues a legally valid biological opinion and the Bureau of Reclamations [sic] complies with the terms of it” (PCFFA I 138 F. Supp. 2d at 1240). The Klamath Water Users Association intervened as defendants in the amended litigation and the Klamath Tribe filed a brief as amicus curiae.

The potential for explosive power inherent in this case can hardly be overstated. As we leave 2000, the case remained undecided. When it was decided on April 3, 2001 in the midst of the worst drought in history in the Upper Basin, it put match to bomb and everything blew up in the Klamath Basin. But we have a few more threads to weave before we reach that moment.
Table 9.5. PCFFA Litigation 1988-1993

<table>
<thead>
<tr>
<th>Year</th>
<th>Case</th>
<th>PCFFA joined with</th>
<th>against</th>
<th>in complaint of violation of</th>
<th>in order to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>Wilderness Society v. Tyrrel</td>
<td>Sierra Club, Wilderness Society, local environmental organization</td>
<td>Forest Service; timber company</td>
<td>NEPA, Clean Water Act, Wild and Scenic Rivers Act</td>
<td>Stop the harvesting of burned timber in order to clear the way for the construction of new roads adjacent to the South Fork Trinity River, designated ‘wild and scenic,’ in the Shasta-Trinity National Forest in the Klamath Basin</td>
</tr>
<tr>
<td>1988</td>
<td>NRDC v. Patterson</td>
<td>Sierra Club, Natural Resources Defense Council, National Audubon Society, local environmental and sportfishing organizations</td>
<td>BOR; multiple irrigation and water districts</td>
<td>ESA</td>
<td>Assert that, because the diversion of water from the San Joaquin River in California's Central Valley by BOR to various irrigation and water districts jeopardized fish habitat, BOR had violated ESA by not requesting formal consultation before renewing contracts with these irrigation and water districts</td>
</tr>
<tr>
<td>1993</td>
<td>PCFFA v. Shell Oil</td>
<td></td>
<td>Shell Oil</td>
<td>Clean Water Act</td>
<td>Assert that Shell Oil had discharged selenium in San Francisco Bay in excess of allowable limits</td>
</tr>
<tr>
<td>Year</td>
<td>Case</td>
<td>The collaboration</td>
<td>against</td>
<td>in complaint of violation of</td>
<td>in order to</td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>------------------</td>
<td>---------</td>
<td>-----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>1994</td>
<td><em>American Rivers v. NMFS</em></td>
<td>ONRC + PCFFA + IFR, Sierra Club, environmental and sportsfishing organizations</td>
<td>NMFS, Army Corps of Engineers, BOR, many aluminum companies</td>
<td>ESA</td>
<td>Assert that the operation of the federal power system on the Columbia River jeopardized ESA-listed salmon</td>
</tr>
<tr>
<td>1995</td>
<td>ONRC v. Brown</td>
<td>ONRC, Sierra Club, National Audubon Society; 17 local environmental organizations</td>
<td>NMFS, Commerce</td>
<td>ESA</td>
<td>Assert that there were 6 coho salmon populations that should be listed under ESA</td>
</tr>
<tr>
<td>1997</td>
<td>ONRC v. Daley</td>
<td>ONRC + PCFFA + IFR, Sierra Club, National Audubon Society; 2 local environmental organizations</td>
<td>NMFS, Commerce</td>
<td>ESA</td>
<td>Challenge the NMFS 1997 decision to list only 5 of the 6 coho populations and assert that the not-listed Oregon Coast coho salmon should also be listed under ESA</td>
</tr>
<tr>
<td>1997</td>
<td>KWFU v. Patterson I and II</td>
<td>ONRC + PCFFA + IFR, Wilderness Society, Yurok Tribe, local environmental organizations, Intervened with co-defendants Interior, BOR, PacifiCorp</td>
<td>Klamath Water Users Association, individual Klamath Project irrigators</td>
<td></td>
<td>Challenge the allegation of the Project irrigators that they possessed third-party beneficiary water rights in the 1956 contract between BOR and then Copco, now PacifiCorp</td>
</tr>
<tr>
<td>1998</td>
<td><em>American Rivers v. FERC</em></td>
<td>ONRC + PCFFA + IFR, Sierra Club, Commerce, local environmental and sportsfishing organizations</td>
<td>Federal Energy Regulatory Commission</td>
<td>ESA</td>
<td>Get FERC to consult with NMFS about FERC’s authority over the operations of the Idaho Power Company in Hell’s Canyon</td>
</tr>
<tr>
<td>1999</td>
<td>PCFFA v. NMFS</td>
<td>ONRC + PCFFA + IFR, 3 local environmental organizations</td>
<td>NMFS, two forest organizations</td>
<td>ESA</td>
<td>Challenge four Biological Opinions from NMFS which had concluded that there would be no jeopardy to the ESA-listed Umpqua cutthroat trout and the Oregon coastal coho salmon from 24 federal timber sales in the Umpqua River Basin</td>
</tr>
<tr>
<td>1999</td>
<td>National Wildlife Federation v. Army Corps of Engineers</td>
<td>PCFFA + IFR, Sierra Club, National Wildlife Federation, 4 local environmental organizations</td>
<td>Army Corps of Engineers</td>
<td>Clean Water Act</td>
<td>Assert that the Corps had violated the Clean Water Act in its operation of four dams on the Lower Snake River</td>
</tr>
<tr>
<td>1999</td>
<td>American Oceans v. Daley</td>
<td>PCFFA + IFR, National Audubon Society, Natural Resources Defense Council, 5 local environmental and fishing organizations</td>
<td>NMFS</td>
<td>NEPA, Fishery Conservation and Management Act</td>
<td>Assert that NMFS should not have accepted the recommendations of the regional Fishery Management Council and that inadequate environmental assessments by NMFS violated NEPA.</td>
</tr>
</tbody>
</table>
2.5 Tribes in the Upper Basin Fight for Their Tribal Rights

When we last left the Klamath Tribes in 1969, they were in the abyss looking back up at where the termination train had plunged over the cliffs to leave them in disaster below. The Expansion period from 1900 to 1969 was a story of loss for the Klamath Tribes – loss of ancestral lands, loss of federal recognition, loss of tribal identity.

From the nadir at which the Klamath Tribes found themselves at the beginning of the Breakdown period of 1970-2000, they began to scratch and claw their way back to tribal pride, to federal recognition, to assertion of tribal rights – by, as Kittredge said in their book about the Upper Basin, hiring some lawyers and taking the battles to the battleground of the dominant culture, the courts (Blake, Blake, and Kittredge 2000).

I see five strands to this thread of the Klamath Tribes fighting for their tribal rights. Interestingly, each strand can be seen as moving forward separately from the other strands, in the sense that progress on one strand was not directly contingent upon progress in any of the other strands.

Strand No. 1. Settlement of Claims Filed in 1951

In 1951, the Klamath Tribes had filed a series of claims with the Indian Claims Commission. These were claims with respect to inadequate compensation for the 20 million acres ceded and for the 621,824 acres omitted, as well as with respect to a general accounting of how the Federal government had been handling the resources of the Klamath reservation.

With respect to the claim filed on March 9, 1951, that alleged that the tribes had been paid too little for the 20 million acres ceded in the 1864 treaty, on January 31, 1964, the Indian Claims Commission awarded the tribes $2,500,000 (Klamath v. U.S. Docket 100).

With respect to a second claim filed on March 9, 1951, that alleged that the tribes had been paid too little for the 621,824 acres omitted from the reservation, on September 2, 1969, the Indian Claims Commission awarded the tribes $4,700,000 less the $537,007.20 already paid on June 21, 1906, for a net award of $4,162,992.80 (Klamath v. U.S. Docket 100-A).

On August 10, 1951, three claims were filed that demanded a general accounting of how the Federal government had handled the resources of the Klamath Reservation from the 1864 treaty date to the 1961 termination date.

On October 31, 1975, the Indian Claims Commission settled the grazing portion of the claim for $750,000 and the rights-of-way portion of the claim for $35,000 (Klamath v. U.S. Docket 100-C).
On January 21, 1977, the Indian Claims Commission determined that $4,667,500 in expenses deducted from the Klamath Reservation revenues were disallowed, and that $150,000 in revenue was lost to the Klamath Reservation because of federal delay in making deposits. In compensation, the Commission awarded the Klamath Tribes $18,000,000 (*Klamath v. U.S.* Docket 100-B-1).

And finally on December 20, 1982, the Indian Claims Commission awarded the Klamath Tribes $16,500,000 in settlement of their claim with respect to the handling of the forest resources of the reservation (*Klamath v. U.S.* Docket 100-B-2).

On October 1, 1965, after settlement of the first of the five claims, Congress passed Public Law 89-224, which established a procedure for paying judgements for all claims with respect to docket numbered 100. Costs would be subtracted from the award and would include attorney fees (9% of the award), payments for rights-of-way, trespass damages, plus costs of distribution of the payments. Interest would be added to the net award until finally paid out. Recipients would be the 2,133 on the 1954 tribal roll. In the same manner as proceeds had been paid to the withdrawing members, living adults considered competent as well as heirs of deceased members would receive their payments directly, while the funds payable to minors as well as to adults considered incompetent or legally disabled would be paid to the appropriate trustee (parent, legal guardian, or legal representative). While the distributions were exempt from federal or state income tax, before they were actually distributed to a particular member, they would be used to satisfy any other outstanding federal or state liabilities that the member might have before anything was actually paid out to the member.

I don’t know what the actual distributions were. I wanted, however, to provide some sort of measure of just about how much each of the 2,133 tribal members might have received. In order to do this, I took the fact that the attorneys for the tribes were entitled by contract to 9% of the award; I doubled it to take into consideration the other expenses that might also be subtracted from the award; and then I divided the remainder by 2,133. By this calculation, each member of the 1954 final tribal roll might have received somewhere in the neighborhood of $16,126 over the years from 1964 to 1982 – and this would be before any deductions to satisfy other liabilities as well as deductions to pay various trustees.
Table 9.7. Disposition of Claims Filed by Klamath Tribes with Indian Claims Commission

<table>
<thead>
<tr>
<th>Date decided</th>
<th>Docket no.</th>
<th>Claim Description</th>
<th>Award</th>
<th>Tribes’ Attorneys’ Fees (f)</th>
<th>Estimate of distribution to 1954 final tribal roll, per person (g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/31/1964</td>
<td>100</td>
<td>Claim filed 3/9/1951 re: amount paid for 20 million acres ceded in 1864 treaty (a)</td>
<td>$2,500,000.00</td>
<td>$225,000.00</td>
<td>$961.09</td>
</tr>
<tr>
<td>9/2/1969</td>
<td>100-A</td>
<td>Claim filed 3/9/1951 re: amount paid for 621,824 acres omitted from reservation (b)</td>
<td>$4,162,992.80</td>
<td>$374,669.35</td>
<td>$1,600.40</td>
</tr>
<tr>
<td>10/31/1975</td>
<td>100-C</td>
<td>Grazing claim &amp; Rights-of-way claim filed 8/10/1951 re: period 10/14/1864 to 8/12/1961 (c)</td>
<td>$785,000.00</td>
<td>$70,650.00</td>
<td>$301.78</td>
</tr>
<tr>
<td>1/21/1977</td>
<td>100-B-1</td>
<td>Delayed Deposits claim &amp; Disallowed Expenses claim filed 8/10/1951 re: period 10/14/1864 to 8/12/1961 (d)</td>
<td>$18,000,000.00</td>
<td>$1,620,000.00</td>
<td>$6,919.83</td>
</tr>
<tr>
<td>12/20/1982</td>
<td>100-B-2</td>
<td>Forest harvest claim filed 8/10/1951 re: period 10/14/1864 to 8/12/1961 (e)</td>
<td>$16,500,000.00</td>
<td>$1,485,000.00</td>
<td>$6,343.18</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$41,947,992.80</td>
<td>$3,775,319.35</td>
<td>$16,126.28</td>
</tr>
</tbody>
</table>

\(a\) Source: Klamath v. U.S. Docket 100
\(b\) Source: Klamath v. U.S. Docket 100-A
\(c\) Source: Klamath v. U.S. Docket 100-C
\(d\) Source: Klamath v. U.S. Docket 100-B-1
\(e\) Source: Klamath v. U.S. Docket 100-B-2
\(f\) Attorneys had contracts with the Klamath Tribes that were approved by Solicitor of the Department of the Interior and that stipulated a contingency fee at 9% of the amount awarded. All attorneys’ fees — $3,775,319.35 — were paid to the firm of Wilkinson, Cragun & Barker.
\(g\) Awards were reduced by costs of litigation and distribution and sundry other expenses associated with the tribes and were increased by interest from date of award to date of actual distribution. I do not know the actual amounts distributed. In order to come up with an estimate, I reduced the award by double the 9%, and then divided by 2,133, the number of tribal members on the 1954 final tribal roll.

The total award to the Klamath Tribes for these five claims — $41,947,992.80 — sounds like a staggeringly huge amount, but when reduced by costs, distributed among 2,133 people, and spread over 18 years, it comes down to not so much per person.

Just by way of contrast, the legal firm of Wilkinson, Cragun & Barker received $3,775,319.35 over the years from 1964 to 1982.

Putting aside the money, however, in winning these claims, the Klamath Tribes forced acknowledgement by the dominant culture of the fact that they had been dealt with unfairly from the treaty of 1864 onwards. Granted that they had to couch the claims of unfairness in economic terms, because those were the terms that the dominant culture would pay attention to, rather than in terms of the cultural and demographic devastation in which they had lived the unfairness. That aside, I can only think that such acknowledgement, after more than a century of getting the short end of the
stick, could only have been something of a positive balm to a tribal identity still reeling from the repercussions of termination.

**Strand No. 2. Sale of Remaining Trust Lands**

And speaking of termination, at the end of the Expansion period from 1900 through 1969, we last left the 474 remaining members after their election in 1969 in which 54% voted to end the trust agreement and after the bank interpreted their vote to end the trust agreement as a mandate to end the trust and to sell the land. Whether it was what the remaining members actually wanted or not, as 1969 drew to a close, the last of the Klamath lands was up for sale.

With respect to the actual number of acres up for sale, please refer back to note e of table 8.3, in which I discuss the acreage in the trust. At this point, I am simply going to say that somewhere in the neighborhood of 8,000 acres was sold to private persons,24 and that somewhere in the neighborhood of 135,000 acres was ultimately purchased by the Federal government and included in the Winema National Forest. Public Law 93-102 was signed into law on August 16, 1973, authorizing the Secretary of Agriculture to acquire by eminent domain all the Klamath Indian forest lands that the trust was selling and to include them in the Winema National Forest, and to not spend more than $70,000,000 to do so.

“In 1974, President Gerald Ford signed an appropriation of $49 million to pay for [the land]” (Darling 2005c, p. 3 of download). “The government deposited $49 million with the bank as payment for the lands taken,” wrote Robert Mezger, a former U.S. Bank forest manager when the bank held parts of the former reservation in trust, in a Letter to the Editor of the Herald and News published on February 13, 2004 (Mezger 2004, 1 of download).

On December 5, 1974, distributions were paid out to the 474 “remaining members” by the bank. Most references to the distribution use the amount of $103,000 per “remaining member,” though author Stephen Most refers to $103,594 as the amount that Edison Chiloquin refused to take (see below for more on that story) (Most 2006).

The $49 million “was not considered a fair price, and was challenged by the bank and the tribe” (Mezger 2004, p. 1 of download). “In 1980, after years of litigation, the court ruled in favor of the trust” (Darling 2005c, p. 4 of download). “As a result, an additional $54 million was deposited plus $27.5 million in interest for the delay in payments. These amounts were available for distribution to beneficiaries of the trust” (Mezger 2004, p. 1 of the download).

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24 Including Crown Zellerbach, according to Most (2006).
On September 15, 1980, the bank distributed payments averaging $170,000 to the beneficiaries. “After watching the experiences of the withdrawing members, many of the remaining members invested well, putting the money in trust funds, buying land and using other secure investments” (Darling 2005c, p. 4 of download). Tribal members had formed Southern Oregon Indian Research to organize financial planning workshops, and the group held counseling sessions for the beneficiaries (Associated Press 1980).

Given that the Klamath Tribes had been federally terminated and thus had lost their exemption from federal and state taxes, it is much more than likely that these distributions were taxed, though how much and when they were ultimately taxed would have been dependent upon the valuation of the lands sold, and that seemed to have taken at least until settlement of the litigation in 1980 to be determined.

Interestingly, while the remaining members seemed to have fared better economically than did the withdrawing members, the remaining members were not necessarily happy about having the last of the Klamath Reservation sold off.

In fact, one person, Edison Chiloquin refused to take his 1974 payment of $103,594, explaining that for him the land was sacred and money could not replace it (Most 2006). Instead, “[h]is idea was to demand Chief Chiloquin’s village site as an alternative to the money in the bank” (Most 2006, 224). On April 18, 1976, a fire was lit at this site which was called Arrowhead because of its shape and which comprised 800 acres within a 3½-mile bend of the Sprague River (Most 2006). “Edison proclaimed that the fire was sacred and that it would keep burning until the land of his grandfather [Chief Chiloquin] was restored to his people” (Most 2006, 224). “Bob Chadwick, the supervisor for the Winema National Forest, gave Chiloquin a special use permit that allowed him to build a traditional village on his grandfather’s land. Soon work began on an earthlodge and, beside the Sprague, a sweatlodge” (Most 2006, 224-225). The site became a magnet for Indians – Klamath and non-Klamath – and non-Indians alike.

On August 19, 1980, Oregon Representative Al Ullman introduced H.R. 7960 for setting aside in special trust status certain lands in the Winema National Forest for Edison Chiloquin. On September 15, 1980, Edison Chiloquin refused the second distribution of about $170,000. H.R. 7960 passed both the House and the Senate and on December 5, 1980, President Jimmy Carter signed Private Law 96-68, which directed the Secretary of Agriculture to set aside in a special trust for Edison Chiloquin the beneficial use and occupancy of 580 acres (which is now known as Pla-ik-ni Village) and required the Secretary to use the moneys which Edison Chiloquin had refused, to
purchase lands within the former boundaries of the Klamath Indian Reservation to become part of the Winema National Forest.

“According to former tribal chair Jeff Mitchell, the legislation set in motion the process that led to the reestablishment of tribal status in 1986” (Most 2006, 226). As I interpret this development, for the Klamath Tribes, their identity is defined by their relationship to their land and its resources. Strip away the land and the identity is stripped away – and no amount of money can compensate for that loss of identity. However, Chiloquin’s re-establishment of a traditional village on his grandfather’s land provided an opportunity for tribal members to once again live with the land and its resources and to reinvigorate their sense of tribal identity and tribal pride, which, in turn, fueled the birth of a desire to restore the tribes’ status as a federally recognized Indian nation.

And this segues very neatly into consideration of the third strand of this thread.

Strand No. 3. Restoration of Federal Recognition and of Economic Self-sufficiency

In 1980, the Tribes began to work in earnest for the restoration of federal recognition. In 1982, the Tribes established a new Constitution and By-Laws with a 10-member Executive Committee, and in 1984, the Klamath Tribes General Council appointed a Restoration Committee of tribal members to work to fulfill the set of criteria that the Federal government had established for such restoration. “The committee’s work became a reality with the enactment of Public Law 99-398 with the support of Oregon Senators Mark Hatfield and Bob Packwood. Oregon Representative Bob Smith introduced the legislation. The bill was sponsored by the entire Oregon delegation and passed unanimously in both Houses. President Ronald Reagan signed the [Klamath Indian Tribe Restoration Act] into law on August 27, 1986” (Klamath Tribes 2000a, 17 of download).

The Act – a powerful key event for the Tribes – restored the Klamath Tribes to federal recognition, restored their government-to-government relationship with the Federal government, restored all rights and privileges that had been terminated by the 1954 Termination Act, recognized the Tribes’ current Constitution and Bylaws, provided for the adoption of a new constitution, reaffirmed hunting, fishing, trapping, gathering, and water rights of the tribes and their members, provided for the transfer of land to be held in trust for the tribes, and required that the Interior Department and the Tribes should establish a plan for the economic self-sufficiency of the Tribes (Public Law 99-398).

After the restoration in 1986, the Klamath Tribes conducted a comprehensive needs assessment, which revealed the grinding poverty of the Tribes. In order to fulfill the mandate for establishing an economic self-sufficiency plan, “[n]umerous experts, including tribal members, economists,
historians, lawyers, and scientists consulted together in countless hours of meetings, research, interviews, writing and rewriting a plan” (Klamath Tribes 2000a, 19 of download). In 1995, the Klamath Tribes submitted a draft of the mandated Economic Self-Sufficiency Plan to BIA.

In December 1996, the Klamath Tribes broke ground for the construction of the Kla-Mo-Ya Casino, and in June 1997, “we opened the doors to our first enterprise in 45 years since termination” (Klamath Tribes 1999-2003a, 3).

Unfortunately, the 2000 Census painted a bleak picture of the poverty status in Chiloquin, OR, in 1999.

Table 9.8. Poverty Status in 1999

<table>
<thead>
<tr>
<th></th>
<th>Percent below poverty level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nation a</td>
</tr>
<tr>
<td>Families</td>
<td></td>
</tr>
<tr>
<td>With related children under 18 years</td>
<td>9.2%</td>
</tr>
<tr>
<td>Families with female householders, no husband present</td>
<td>13.6%</td>
</tr>
<tr>
<td>With related children under 18 years</td>
<td>26.5%</td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
</tr>
<tr>
<td>With related children under 18 years</td>
<td>34.3%</td>
</tr>
<tr>
<td></td>
<td>12.4%</td>
</tr>
<tr>
<td></td>
<td>16.1%</td>
</tr>
</tbody>
</table>

a Source: U.S. Census 2000i
b Source: U.S. Census 2000j
c Source: U.S. Census 2000k
d Source: U.S. Census 2000m

On October 31, 2000, the Klamath Tribes presented their Economic Self-Sufficiency Plan to the Interior Department. In the plan, the tribes noted that, while restoration to federal recognition did enable the tribes to provide services to tribal members living in Klamath County – programs to create jobs, assist in health care, social services, housing, education, and employment – it was difficult to provide adequate services without a land base and without finance capital, and as a result there were many needs that languished unmet (Klamath Tribes 2000a).

It is the stated policy and position of the Klamath Tribes that, in order to reestablish the economic well being and self-sufficiency of the Tribes and its people, it is also necessary to re-establish the cultural, spiritual and social fabric of the nation. The experience of the termination period has shown, in no uncertain terms, that the re-establishment of ancestral homelands is the essential foundation to that economic, cultural, spiritual and economic [sic] self-sufficiency and well being. (Klamath Tribes 2000a, 59 of download)

The 2000 plan offered a variety of configurations for accomplishing the re-establishment of their ancestral homelands on approximately 690,000 acres within the Winema and Fremont National
Forests, ranging from an act of Congress returning the acreage to trust status, to long-term or permanent land management contracts, to long-term leases with or without an option to purchase, to direct purchase acquisition, and/or to inter-departmental transfer of federal jurisdiction and authority (Klamath Tribes 2000a). The Tribes acknowledged that this would be a long-term, staged process, requiring many years and steps toward implementation (Klamath Tribes 2000a).

In the Klamath Constitution of November 25, 2000, the Klamath Tribes state forcefully “to all people that the Klamath Tribes never ceased to exist” (Klamath Tribes 2000b, 1) – that termination did not terminate the tribe, only the eligibility of their members to receive services from the Federal government. In every way, I can only see this resurgence of tribal pride, this determination to achieve self-sufficiency, this “attitude of hope and...renewal of spirit” (Klamath Tribes 2000a, 16 of download) as a phoenix risen by 2000 from the ashes into which termination had plunged them in 1961.

I’m not saying by this that everything was rosy for the Klamath Tribes in 2000 – it wasn’t – rather I am saying that, by 2000, the Klamath Tribes were back and they were not going away.

Strand No. 4. Status of the C’waam and Qapdo

When we left the sucker fishery in the Upper Basin in 1969, it was in a bad way, and in this period, it only went from bad to worse – but with a twist.

Through the 1960s and 1970s, “runs of suckers moving from Upper Klamath Lake up into the Williamson and Sprague Rivers were great enough to provide a major sport fishery that annually attracted many people from throughout the West” (U.S. FWS 1988). The Klamath Tribes continued their subsistence take and there was no commercial take of suckers.

However, “[o]ver the period from 1966 to 1986, the annual harvest of fish declined 95 percent from about 12,500 to 687 fish and several spawning groups went extinct” (U.S. BOR 2002, 16). For the period 1966-1978, Oregon Department of Fish and Wildlife (ODFW) data files showed a decline in the average number of suckers harvested per fisher, as well as declines in average weight and average length (Markle and Cooperman 2002).

On December 30, 1982, USFWS included both species of sucker in a category for consideration for listing, and set about accumulating the necessary data for making the decision. In 1983, prompted initially by concern for the declining catches in the popular seasonal snag fishery, “the Klamath Tribes, ODFW, and the USFWS jointly initiated a series of studies of Klamath suckers” (Markle and Cooperman 2002, 98). Survey work performed in 1984, 1985, and 1986 showed drastic
precipitous declines in the largest remaining populations of both species in Upper Klamath Lake (U.S. FWS 1988, 53 FR at 27130-27131). Additional data showed “that neither species of sucker has successfully spawned in Oregon for approximately 18 years” (U.S. FWS 1988, 53 FR at 27130).

In 1985, the Klamath Tribes voluntarily curtailed their own fishery for both species. In 1986 there was a major die-off of both species of suckers, caused by blue-green algal blooms in Upper Klamath Lake (U.S. FWS 1988). That year, the Klamath Tribes voluntarily closed their own sucker fishery.

In 1987, the Oregon Fish and Wildlife Commission closed the fishery (recreational as well as commercial) for both species and placed them on Oregon’s list of protected species (U.S. FWS 1988). And at some point prior to the final federal listing in 1988, California listed both suckers as endangered, under the California Endangered Species Act.

On July 18, 1988, in a key event, USFWS listed the Lost River (c’waam) and shortnose (qapdo) suckers as endangered species under the Endangered Species Act, effective August 17, 1988 (U.S. FWS 1988). In their final rule, FWS asserted that “[d]ams, draining of marshes, diversion of rivers and dredging of lakes have reduced the range and numbers of both species by more than 95 percent. Remaining populations are composed of older individuals with little or no successful recruitment for many years. Both species are jeopardized by continued loss of habitat, hybridization with more common closely related species, competition and predation by exotic species, and insularization by remaining habitats” (U.S. FWS 1988 53 Fed. Reg. at 27130).

From 1988-1995, the sucker population seemed to be increasing, but those gains were diminished by a series of massive fishkills in Upper Klamath Lake in 1995, 1996, and 1997, caused by low oxygen levels exacerbated by bacterial infection (Markle and Cooperman 2002, 96).

The twist in this story is comprised of the fact that, while the sucker populations were decimated and while the Klamath Tribes lost not only a major subsistence resource but also access to the heart and soul of their culture, because both species of suckers were listed as endangered under the Endangered Species Act, they gained the power to make federal agencies stop in their tracks.

FWS surmised that the listing of the Lost River and shortnose suckers could affect federal actions by the Federal Energy Regulatory Commission in terms of the issuances of licenses or permits for dam projects, by the Forest Service in terms of grazing or timber harvesting practices on Forest Service land in the Upper Klamath Lake and Clear Lake Reservoir watersheds, and by the Bureau of Reclamation in terms of their management of canals and diversion structures in the Klamath Project (U.S. FWS 1988). As of August 17, 1988, every federal agency – including, but not
limited to, BOR about the Klamath Project, the Forest Service about the National Forests throughout the Basin, and FERC about the renewal of the license for all the dams on the Klamath River – would have to evaluate whether the actions they wanted to do would jeopardize the suckers, and would have to change their actions if it was determined that there would be jeopardy. As we shall see in ensuing sections, the impact of the key event of listing of the suckers as endangered will ripple powerfully throughout the Klamath Basin.

Strand No. 5. The Fight for their Hunting, Trapping, Fishing, and Gathering Rights

In the 1970s, the Klamath Tribes partnered with the Native American Rights Fund (NARF) in a fight for recognition of their tribal rights. Some background about NARF is warranted to place this fight and this partnership in a larger context.

In my section above on the Self-Determination Period, I spoke about a cadre of professional Indians beginning to use the spoken and written word of the dominant culture, and, outside of the glare of the public eye on protests, new organizations forming and new tactics being used to fight for Indian rights. As part of the War on Poverty in the mid-1960s,

government funded legal services programs were established around the country to provide legal services to poor and disadvantaged people. Many of these programs were located on or near Indian reservations [– such as, for example, California Indian Legal Services]. As these programs began working with their Indian clients, a common realization soon developed among them that Indians had special legal problems which were, for the most part, governed and controlled by a specialized and little-known area of the law known as 'Indian Law' – a complex body of law composed of hundreds of Indian treaties and court decisions, and thousands of federal Indian statutes, regulations and administrative rulings. (NARF n.d., no page number)

In 1970, California Indian Legal Services implemented a pilot project to provide legal services to Indians on a national level. That project became known as the Native American Rights Fund. In 1971, NARF separated from California Indian Legal Services and incorporated separately (NARF n.d.), taking up litigation as a tool in the fight for Indian rights. One of the first matters that NARF took up was a fight to be waged by the Klamath Tribes for recognition of rights that they had always had, but which had up until now been ignored by everyone. Now the Tribes were determined to exercise these rights.

In 1973, in the first move of what became a key event in the Upper Basin Tribal Rights thread, five Klamath Indians, represented by NARF, filed suit in the District Court of Oregon against various fish and game officials of the State of Oregon, seeking the right under the Treaty of 1864 to hunt, trap, and fish within their ancestral Klamath Reservation, free of state fish and game
regulations. On March 16, 1973, the District Court dismissed the suit. Immediately, the plaintiffs filed an appeal with the Ninth Circuit Court of Appeals. On February 26, 1974, a decision was rendered in the case which became known as *Kimball I*. Basing its decision on the language of both the Treaty of 1864 and the Termination Act of 1954, *Kimball I* affirmed the right of the withdrawing members to exercise their treaty hunting, trapping, and fishing rights free of state fish and game regulations on the lands constituting their ancestral Klamath Reservation, including the public lands now constituting U.S. national forest land and the private lands on which landowners have granted permission to the Klamath Indians to hunt, trap, and fish;25 reversed the decision of the District Court; and remanded the case to the District Court.

In 1975, subsequent to the decision in *Kimball I*, the Klamath Tribes established the Klamath Indian Game Commission – and filed a supplemental claim with the District Court, in which the Klamath Indian Game Commission joined the original five Klamath Indians as plaintiff. On September 10, 1976, the District Court decided “(1) that the rights of Indians to fish, hunt, and trap, free of state regulations, extended to the descendants of persons on the final tribal roll; and (2) that the [district] court had no authority to approve the plaintiffs-appellees’ offer to permit state regulation under specified conditions for conservation purposes. The court did suggest that the defendants-appellants approve the Tribe’s proposal or negotiate with representatives of the Klamath Indians in an effort to promulgate mutually satisfactory regulations” (*Kimball II* 590 F.2d at 771).

Of course, the defendants filed an appeal in 1977. On January 26, 1979, a decision was rendered in the case which became known as *Kimball II*. The Appeals Court affirmed the decision of the District Court that withdrawing members and their descendants retain their treaty rights to hunt, fish, and trap on the former Klamath Reservation and that the State of Oregon has the authority to regulate the exercise of those treaty rights on the former Klamath Reservation for conservation purposes; and ruled that “in the event that the parties are unable to agree upon mutually satisfactory regulations, the district court shall determine the scope of the State’s authority in the light of the evidence presented and standards set forth in applicable cases” (*Kimball II* 590 F.2d at 778).

The Klamath plaintiffs had wanted the court to stipulate limitations on the state’s authority that secured the right of the Klamath Indians to exercise their treaty rights while providing adequate protection for reservation wildlife, but the court put it back upon the parties to work it out among themselves.

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25 On private lands on which permission has not been granted by the landowners, Klamath Indians would not exercise treaty rights.
After negotiations, a federal court Consent Decree was finalized in 1981, settling the issues that remained from *Kimball II*. The parties to the Consent Decree were the Klamath Tribes, the Federal government, and the State of Oregon. “The purpose of this agreement was to protect the fish and wildlife resources and to identify responsibilities to protect the treaty hunting, fishing, trapping and gathering rights” (Klamath Tribes 2000a, 15). The Consent Decree “confirmed the tribe’s retention of management responsibilities for fishing and habitat management on the former Reservation. It currently has biologists, technicians, game management officers, and water rights attorneys on its staff” (KRBFTF 1991, Chapter 7, 20). “The Klamath Indian Game Commission conducts the setting of seasons. Tribal harvest is monitored by both the tribal biological staff and tribal Regulatory Enforcement Officers through frequent bag checks and hunter interviews” (U.S. FWS 1998 63 FR at 43859). In accordance with the Consent Decree, all federal agencies managing public lands lying within the former Klamath Reservation – such as the Forest Service and the Bureau of Land Management – have the legal responsibility to consult with the Klamath Tribes regarding land management activities on those lands.

In 1982, the Klamath Tribes, in collaboration with NARF, continued the fight for their tribal rights by filing in District Court to seek the right of the tribe to regulate tribal members’ hunting, fishing, and trapping on the 621,824 acres that had been omitted from the survey of the Klamath Reservation and then ceded to the United States in 1901 in return for compensation (see sections above). In a litigation track that, by now, seems familiar in character, the District Court decided in favor of the tribes, the Appeals Court affirmed the decision of the District Court (*Klamath Tribe v. ODFW 1984*), but the Supreme Court reversed the decision of the Appeals Court (*ODFW v. Klamath Tribe*). The Appeals Court reversed its decision, and remanded the case back to the District Court, with instructions that it decide the case according to the interpretation made by the Supreme Court (*Klamath Tribe v. ODFW 1985*). I could find no further litigation in this track, but given that the decision of the Supreme Court said that the treaty rights were *not* preserved in lands ceded from the original reservation, I can only imagine that the Klamath Tribe and their NARF lawyers packed up their briefs, admitted defeat, and moved on to the next fight.

In summary, then, in the period from 1970 through 2000, the Klamath Tribes rose from the ashes of termination and became a force to be reckoned with in the Klamath Basin. Granted, everything was not rosy in 2000 – the last of the Klamath Reservation had been sold off, the sucker population was decimated, and the poverty was grinding. But on the decidedly plus side, the Tribes
received economic acknowledgement of a century of unfair treatment. The sale of the trust lands unexpectedly begot a reinvigoration of tribal identity and tribal pride, which, in turn, gave birth to efforts that successfully restored federal recognition and that were determined to restore economic self-sufficiency. The listing of the suckers as endangered under the ESA stopped everyone in their tracks, as the well-being of the suckers now trumped market considerations and agency activities. The affirmation of the rights of Klamath Indians to hunt, fish, trap, and gather within their former reservation free of state regulation begot the inclusion of the Klamath Tribes in the co-management of the public lands within their former reservation.

The Klamath Tribes fought for their tribal rights – and won – and the world was turned upside down. No longer could the Tribes be ignored, even dismissed. Activities must be geared to the survival of the suckers. The treaty rights for hunting, fishing, gathering, and trapping must be recognized and upheld. The Tribes must be consulted with respect to land and habitat management.

And, in a perfect segue to the next thread, the Klamath hunting and fishing rights become a foundation for sorting out water rights in the former Klamath reservation.

2.6 Oregon Tries to Adjudicate Water Rights

Background

I often wonder if people who conceptualized the environment as something with which they lived in sustainable harmony would ever have come up with the notion of water rights as it was developed in America. I don’t think so. The notion of water rights was developed by people who conceptualized the environment as an inexhaustible commodity that was there to be appropriated by them for their individual use. Within that context, it is not surprising that there is nothing in the arrangement about leaving water in the river or the lake in order to sustain the environment and that the first consideration was who got first dibs to take the water out of the river or the lake. The right to take water from its natural course was tied to ownership of the land to which the water was diverted and to whether the water was put to beneficial use on that land. And priority in the right to divert water was determined by the order in which people had acquired their land. Those who acquired their land first got first dibs at the water. Those who acquired their land later got their water only after all those who were senior to them got all of theirs first. And if someone ceased to divert water for beneficial use, they lost their right to that water. This configuration – “first in time, first in right” – came to be called the doctrine of prior appropriation.

“In the nineteenth century, water rights in Oregon were acquired by appropriation or riparian rights, or accrued to the United States and Indian tribes under federal reserved rights” (U.S. v.
On February 24, 1909, Oregon enacted its first comprehensive water code, setting up a permit process which authorized to permitholders a certain amount of water to be taken from its natural course and put to a specified ‘beneficial use.’ Oregon issued their water permits without regard to prior water commitments to the tribes, or to federal reserved water rights (Ullman 2002).

In addition, the Oregon water code established that “any use of water that began prior to February 24, 1909, is deemed to be a vested water right subject to quantification in an adjudication proceeding. Pre-1909 and federal reserved water rights are verified, quantified, and documented through adjudication proceedings in the circuit court of the county in which the water use is located” (Marbut 2002, 77). Pre-1909 water rights were vested by beneficial use. Federal reserved water rights were created when the Federal government set aside land from the public domain.

Reservation water rights were created on the date of the treaty or executive order creating the reservation.

Oregon refused to manage unadjudicated water rights, leaving the claimants to fend for themselves until their rights are adjudicated, which, of course, mitigated for the status quo and against recognition of unsatisfied rights (Benson 2002).

In Oregon, the Adjudication Process is an adversarial process that looks to the formal legal system for a determination of individual rights. When an adjudication has been initiated for an unadjudicated basin, in what OWRD terms the Administrative Phase of the Adjudication Process, claimants must file claims for the amount of water to which they believe they have a right, must file proof of claims, must pay fees, must contest evaluations of their claims or of other claims as they deem necessary, and more than likely, must hire attorneys to represent them as needed throughout the process. Not an inexpensive process, I would imagine.27

Ultimately, the Adjudicator will forward all the findings to the circuit court in the county in which the water use is located, which will commence the Judicial Phase of the Adjudication Process. Once the Adjudicator has forwarded the findings to the circuit court, the State of Oregon, through its Water Resources Department, will commence managing all those rights. If claimants take

26 The law of riparian rights preceded the law of prior appropriation. It said that all owners of riparian land had equal rights and “[n]one could diminish the natural flow of the river or divert the water for use beyond the lands bordering the river” (Doremus and Tarlock 2008, 38). As the call of profit begot the desire to divert waters beyond the river’s edge, the law of riparian rights gave way to the law of prior appropriation. California continued to recognize pre-1909 riparian rights, but Oregon terminated unused riparian rights (Doremus and Tarlock 2008).

27 In the July 14, 1998 ADR Meeting Summary, the Klamath Project Irrigators noted that the total cost of preparing and filing claims had run them $1 million (Oregon WRD 1998c).
exception to the findings forwarded to the circuit court, attorneys representing claimants will argue their case before the judge and the judge will render a decision. Once the circuit court decides all exceptions taken to the findings, and all claims and contests are settled, the judge will issue a water rights decree.

Within the Upper Klamath Basin, Oregon has completed adjudications in the sub-basins of the Lost River; Cherry, Sevenmile, and Annie creeks; the North and South forks of the Sprague River; and portions of the Wood River (Marbut 2002, 79n22).28

In 1975, the Oregon Water Resources Department (OWRD) initiated the Klamath Basin Adjudication (KBA) by sending out letters to over 30,000 property owners instructing them to file a “notice of intent” if they intended to file a claim in the KBA. The territory of “the KBA is confined to the area of the former Klamath Indian Reservation, along with that portion of the Basin between Upper Klamath Lake and the Oregon-California state line (roughly the area receiving water from Upper Klamath Lake, Link River, Lake Ewauna, and the Klamath River)” (Marbut 2002, 79n22).

Impact of Kimball and Adair on the KBA

Meanwhile, as Carl Ullman, attorney for the Klamath Tribes, recounted in 2002, things were brewing elsewhere that would have a huge impact on the KBA. “Termination had changed part of the former Klamath Indian Reservation into [the Klamath Forest] National Wildlife Refuge. Diversions of water upstream from the Refuge were drying the Refuge” (Ullman 2002, 78). In September 1975, the United States brought suit against some 600 individual owners of land within the former Klamath Reservation, seeking “a declaration of water rights within an area whose boundaries roughly coincide with the former Klamath Indian Reservation” (Adair II 723 F.2d at 394). The case came to be called Adair I,29 and was the first step in a litigation track that became a key event in the Klamath Basin Adjudication thread.

“In January 1976, the State of Oregon initiated formal proceedings under state law to determine water rights in the Klamath Basin including that portion of the Williamson River drainage covered by the Government’s suit. Later in 1976, the State of Oregon moved to intervene as a defendant in the

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28 In case you were wondering, “[t]he State of California has completed four adjudications of Klamath River tributaries in California (Shasta River in 1932, Scott River in 1980, Willow Creek in 1972, and Cold Creek in 1978). ...There are no ongoing or planned adjudications of the Klamath River Basin in California” (Marbut 2002, 79n22).

29 Interestingly, referencing back to a point made in the Klamath Tribes thread, the Native American Rights Fund represented the Klamath Tribes in all the Adair cases, as well as in all the U.S. v. OWRD cases, and throughout the Klamath Basin ADR Process (both of which I will deal with below).
United States suit. The Klamath Tribe also moved to intervene in the federal suit as a plaintiff. Both motions were granted” (*Adair II* 723 F.2d at 1398-1399).³⁰

While the decision was pending in *Adair I*, within the Klamath Tribes thread, *Kimball II* was decided on January 26, 1979, affirming that withdrawing members of the Klamath Tribes and their descendants retained their treaty rights to hunt, fish, and trap on the former Klamath Reservation. When *Adair I* was decided on September 27, 1979, it took the *Kimball I* and *Kimball II* decisions as foundational.

*Adair I* decided the characteristics of the various contending water rights in the territory of the former Klamath Indian Reservation and left the quantification of these rights to Oregon in its Klamath Basin Adjudication. The district court also kept the case open so that future issues that might arise could be litigated as part of the original case.³¹

An appeal to *Adair I* – i.e., *Adair II* – was filed in 1980, and decided on November 15, 1983. Together, *Adair I* and *Adair II* decided the following characteristics of water rights:

1. **The Tribe and its members** had water rights sufficient to maintain their treaty rights to hunt and fish on the former reservation. Priority date is time immemorial. Not attached to land. Not subject to use to maintain. A nonconsumptive right for instream flow not based on the doctrine of prior appropriation.

2. **Individual Indian allottee landowners** have water rights, subject to the paramount rights of the Tribe, sufficient to maintain agriculture on their lands. Priority date for Indian irrigation rights is 1864. Attached to the land. Not subject to use to maintain. Indian successors to the Indian allottees acquire the allottees’ water rights to the same extent as if the allottees still possessed the land. However, the water rights to preserve hunting and fishing on the Reservation lands trump the water rights for Indian agricultural appropriation.

3. **Individual non-Indian landowners** could acquire the water rights of the predecessor Indian landowners. Priority date for successor non-Indian owners of Indian allotments is 1864. Attached to the land. Right can be lost through non-use. The non-Indian also acquires a right, with an 1864 priority date, to water for additional acreage which he, with reasonable diligence, may place under irrigation.

³⁰ OWRD said 1975 and *Adair II* said January 1976. I have decided that the issue is too small to fret about.

³¹ This occurred in 2001 with powerful repercussions (see Chapter Twelve).
The Government’s water rights

(a) With respect to the Refuge and Forest lands within the former Reservation:

“The Indians’ use of their rights to that streamflow will ensure that enough water flows through the Refuge and through the Winema National Forest within the former Reservation to fulfill the Government’s purposes for these lands [which are the same purposes as the Indians had when the Reservation existed]” ((Adair I 478 F. Supp. at 347). Unnecessary to determine the priority date in this instance.

(b) With respect to Forest lands outside the Reservation: Prior to the 1960 Multiple Use Sustained Yield (MUSY) Act, the only uses for national forests were conservation of water flows and supply of timber for harvesting. The MUSY Act is not retroactive; therefore, national forest lands acquired prior to the 1960 MUSY Act only have water rights associated with the original two uses. “The Government is only entitled to water which was unappropriated when the forest lands were reserved and which is essential for timber production and conservation of water flow” ((Adair I 478 F. Supp. at 348). Priority dates are the dates of the reservation of the lands: 1893, 1906, 1907, and 1930.

Table 9.9. Summary of Adair I and Adair II decisions

<table>
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<tr>
<th>Claimant within former Klamath Reservation</th>
<th>Priority Date</th>
<th>Attached to land?</th>
<th>Requires use to sustain?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tribes &amp; members</td>
<td>Time immemorial</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Indian allottees</td>
<td>1864</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Non-Indian successors to Indian allottees</td>
<td>1864</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>U.S. successor to Indian allottees</td>
<td>1864</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>U.S. in NF and NR</td>
<td>Participate in Tribes’ rights</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Adair I and Adair II.

a The U.S. acquired Indian allotments either by direct purchase of the allotments from Indian allottees or by eminent domain of land held in trust for Indian allottees.

Not unexpectedly, the ruling that raised the most controversy was the decision that water rights attached to the tribes’ hunting and fishing rights – and not just because there were water rights attached, but that the water rights were nonconsumptive and with a priority date of time immemorial.
Up until now, while there were extant federal instream water rights, they had priority dates subsequent to earlier consumptive water rights. This meant that all the rights for taking water out got filled before any rights for leaving water in could come up for consideration.

The Adair decisions changed that, for now, the rights for leaving water in had priority rights that predated all the rights for taking water out, and so the rights for leaving water in would get filled before any rights for taking water out would come up for consideration. Once again, the world was turned on its head, and it made the holders of later consumptive water rights very nervous.

KBA Restarted

During the Adair litigation, the Klamath Basin Adjudication was essentially dormant. OWRD says that between 1975 and 1990, the Department mapped all of the water use claimed in 108 townships (Oregon WRD 1999c). In 1990, OWRD reissued notices of its intention to adjudicate water rights in the Klamath Basin and set the claiming period for all non-federal claims to run from October 1990 through February 1991 (U.S. v. OWRD III).

Lest one might think things would run smoothly this time, in response to this notice from OWRD about adjudication, on December 20, 1990, the United States took the first step in what became a key event, filing suit on behalf of BOR and other federal agencies that managed land in the Upper Basin against OWRD, seeking both a temporary restraining order and a permanent injunction to prohibit Oregon from requiring the Federal government to file claims in the Klamath adjudication. The Klamath Tribes were granted permission to intervene as plaintiff, but individual Klamath Indian allottees were declined permission to intervene as plaintiff.

Decisions to U.S. v. OWRD were rendered on March 14, 1991, and then again on September 30, 1991 (U.S. v. OWRD I). The de rigueur appeal was filed in 1992, and the appeals court rendered a decision on December 28, 1994 (U.S. v. OWRD III). Bottom line, both the United States and the Klamath Tribes must file claims, but neither has to pay fees to file the claims. The Klamath Indian allottees eventually settled with the State of Oregon and filed claims in the Klamath Basin Adjudication.

On September 7, 1991, OWRD mailed a letter to all individuals who had filed notices of intent, instructing them to file statements and proofs of claim (Marbut 2002). “Upon final resolution of the U.S. v. Oregon case in August 1996, the Director provided notice to the United States, the Klamath
Tribes, and the Klamath Reclamation Project irrigation districts to file statements and proofs of claim” (Marbut 2002, 79n20).32

All adjudication claims were filed by April 30, 1997 (Oregon WRD 2007). Per OWRD, 730 claims were filed. Of those, 29 were withdrawn, 24 were uncontested claims, 313 were federal reserved claims filed by federal agencies with respect to lands they managed, 64 were claims filed in duplicate by both BIA and the Klamath Tribes, and 300 were claims filed by individuals for pre-1909 claims, allottee claims, and Walton claims (Oregon WRD 2008).33 OWRD noted that the Klamath Basin Adjudication was “the first Oregon general stream adjudication in which large, complex federal claims have been filed” (Reeves 2002, 48).

**KBA’s Alternative Dispute Resolution**

In 1996, the Klamath tribes took proactive steps to resolve their water rights claims by negotiation. The tribes proposed that the ODWR [i.e., OWRD] either replace or supplement the water rights adjudication in the basin with a negotiation process. ...The tribes’ proposal was the catalyst for ODWR’s decision to sponsor an innovative process – known as the Klamath basin alternative dispute resolution (ADR) process – for negotiating all water rights claims. (Snyder 2005, 147)

Before telling you anything more about the progress of both the Adjudication and the ADR Process, I want to take a moment to locate both within the matrix of customary American conflict resolution practice that I outlined in Chapter Two. Both are quintessential examples of customary American conflict resolution practice.

In the formal legal system, the orientation to conflict has it that conflict consists of the problem of competing claims about the denial or infringement of non-negotiable individual rights and/or the breaking of contractual rules that govern interactions between individuals. The appropriate response to the problem is the solution of a coercive decision of who is right and who is wrong.

This is exactly the procedure established in the Oregon water code for adjudication of pre-1909 and federal reserved water rights – an adversarial process in which individuals and organizations (agencies and tribes) present claims and contests which ultimately are argued by attorneys before, and decided by, a circuit court judge.

In the informal system of alternative dispute resolution, the orientation to conflict has it that conflict consists of a problem of incompatible individual interests. Interests are understood as

32 Firstly, *U.S. v. Oregon* is the *U.S. v. OWRD* case; secondly, I can find no litigation in LexisNexis Academic about a subsequent ruling in the *U.S. v. OWRD* case in August 1996, but that does not mean it did not exist.

33 Walton claims are claims by current non-Indian owners of Indian allottee land.
negotiable, and as such amenable to collaborative rational problem-solving. The appropriate response to the problem is the solution of a collaborative construction of a mutually satisfying agreement.

This is exactly the process that was sponsored by OWRD. According to the Operating Principles that the Administrative Subcommittee of the ADR Process took ten months to develop,

The ADR Process will be conducted in two phases to coordinate with the Adjudication schedule. For purposes of these Operating Principles, the phases will be identified as Phase I and Phase II.

(1) Phase I of the ADR Process will be conducted [during the Administrative Phase of the Adjudication] before the Adjudication open inspection and the contest filing periods. During Phase I, participants will attempt to reach agreements to be incorporated into the Adjudicator’s summary of claims for the open inspection.

(2) Phase II of the ADR Process will be conducted after the contest filing period [both during the remainder of the Administrative Phase of the Adjudication as well as during the Judicial Phase of the Adjudication as needed]. Phase II will serve as a dispute resolution forum for settlement of contests. All claimants and contestants will be provided an opportunity to participate in the ADR Process. If such claimants and contestants choose to use the ADR Process, negotiating groups shall be formed and negotiations conducted in accordance with these Operating Principles. (Oregon WRD 1998d, Section 7.3.4)

Finally, in both the formal and informal systems, the role of scientific expertise is central. Disputants and third parties expect science to provide the truth, definitive answers, incontrovertible facts, that they can use to determine the rightness and wrongness of their and others’ positions.

This is exactly what transpired both in the Adjudication process wherein claimants spent tons of money hiring their own scientists and consultants to provide data that supported their claims and contests, as well as in the ADR Process where a hydrologist was hired by OWRD and funded by BOR to work with the Hydrology Subcommittee of the ADR Process to provide data to the ADR Process. Of course, not unexpectedly in a bottom-line adversarial process, there was instant concern expressed by ADR participants about who might be able to use the information that the ADR hydrologist provided, and it was determined that the ADR hydrologist would not provide information to the adjudication, and the analysis done by the ADR hydrologist could not be used by the ADR participants in the Adjudication Process (Oregon WRD 1998c).

It was determined that there would be a monthly meeting of the ADR participants, complemented by subcommittees working on specific areas of concern, by interest groups comprised of folks with the same interest, and by negotiating groups comprised of various sets of stakeholders
negotiating agreements that could be taken forward into the Adjudication Process for incorporation into the final Adjudication Decree by the circuit court.

The first monthly ADR meeting occurred in September 1997. Judging by comments by a couple of participants expressing concern that the times of the meetings precluded attendance by farmers and ranchers (Oregon WRD 1998b), as well as by comments by the Director of OWRD that she did not want people to feel that they needed a lawyer to attend the ADR meetings (Oregon WRD 1998a), as well as by noting the occupations of participants, I don't feel out of place in concluding that participants in the ADR Process were predominantly attorneys representing claimants and agency staff representing agencies, complemented by those individual participants whose lives permitted their attendance. In my estimation, those individuals who were not represented organizationally and/or could not afford attorneys to represent them probably did not participate.

For monthly meetings #4 through #6 (December 17, 1997 through February 11, 1998), OWRD hired a well-respected mediator experienced in environmental conflicts, who, in essence, trained the participants in the ADR Process in the skills and principles of interest-based collaborative rational problem-solving.

Subcommittees were formed, each to focus on concerns of the ADR participants: Operating Principles, Hydrology, Settlement Concepts, Confidentiality and Admissibility, Mediator, and Administrative. Caucuses (i.e., interest groups) were formed: State agencies, Federal Agencies, Project Water Users, Non-Project Water Users, Klamath Tribes and Allottees, Environmental Organizations, and the Greater Klamath Basin Community.34

Claimants made presentations about their claims. Agencies made presentations about scientific data with respect to water and related issues in the Upper Basin. Subcommittees made reports on the work they were doing.

Negotiating groups were slower to form. The first group that began to work toward agreements was the Klamath Tribes. During the May 17, 1998 monthly meeting, Walter Echo-Hawk, a NARF attorney representing the Klamath Tribes, discussed the Tribal Settlement Concept, which established sub-basin committees and a timeline for negotiating settlements (Oregon WRD 1998a). During the July 14, 1998 monthly meeting, mention was made that the Klamath Tribes and the Project water users had been meeting for the past few months to identify joint projects that were attractive and feasible (Oregon WRD 1998c).

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34 I need to call your attention to the word “Basin.” Routinely, the folks in the Upper Basin refer to it as The Basin. As such, it is important to clarify the use of the word Basin, to know whether the user is referring to the entire Klamath watershed or just to the Upper Basin. In the ADR and Adjudication processes, much more often than not, the word Basin refers to the Upper Basin.
During the October 14, 1998 monthly meeting, Bud Ullman, an attorney representing the Klamath Tribes, reported on a meeting that had been held in September in Chiloquin, OR, about a settlement proposal that the Tribes put forth. Comments in the ADR meeting revealed that some participants felt that their way of life was threatened because they were afraid that the Tribes would take all the water for instream flow and leave none for irrigators.

Another negotiating group was formed on October 14, 1998, when the National Park Service met with people from the Annie Creek, the Wood River, and the Williamson River sub-basins with respect to the NPS claim.

During the January 12, 1999 monthly meeting, the National Park Service reported that their negotiations were on-going. In addition, Bud Ullman reported that the Klamath Tribes have been holding a variety of meetings. For example, tribal representatives have met with the project irrigators. A number of participants indicated that these meetings are very productive. The hope is that mutually shared problems will result in mutual solutions. Personal relationships seem to be building, the proof being that people keep coming back. Bud stated that even though progress has been made on general concepts, the devil is in the details; however, the Tribes hope to have some settlement concepts available for the participants in the next few months. Paul Simmons [, attorney representing the Project water users,] noted that one of the purposes of this process is to foster understanding. Bud concurred that this seems to be happening. When the Tribes were questioned about whether the spirit of compromise from the Tribes had changed, Jeff Mitchell, chairman of the Klamath Tribes, offered that the Tribes continue and will continue to sit down with any interested ADR participant, or group of participants. (Oregon WRD 1999b, 5)

Jeff Mitchell noted that a lot of [negative] comments and characterizations [about the Tribes] had been made. Despite this, the Tribes will continue to reach out. The Klamath Tribes fought for the ADR as a means to address the issues facing everyone. The Tribes have committed significant resources to work with the community – it has not been an easy process. Future success will come because the parties agreed to sit down and talk. On the other hand, the Tribes have reached out to other participants and wish now that more progress had been made. In some cases, there is little participation or cooperation. This is a community matter, not just a Tribal or Project issue. The Tribes are trying to protect their resources and find solutions for the community as a whole.

Sam Hanzel [, a Project water user,] noted that Klamath Drainage District has developed a good relationship with the Tribes and have found working with them to be a positive experience. (Oregon WRD 1999b, 8)\(^3\)

During the April 13, 1999 monthly meeting, the National Park Service noted that they were still meeting with the Annie Creek water users. In addition, Becky Hyde, a member of one of the prominent families in the Upper Basin, reported that a negotiating group was formed in the

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3\(^3\) The Project water user’s name is spelled incorrectly in this source. It should read “Sam Henzel.”
Williamson River sub-basin, involving the people of the sub-basin and the Klamath Tribes. “Becky said that it was a positive meeting. People in the Upper Williamson would like to settle their issues in the ADR process if possible. Out of the attendees at that meeting, all but two are interested in coming up with a settlement. The Tribal presentation was powerful and worth hearing. Reed [Marbut, attorney for OWRD] felt encouraged by the fact that people are willing to sit down and discuss issues. The question of instream flows [– water rights claims by the Klamath Tribes –] remains a large issue” (Oregon WRD 1999c, 4).

Phase I of the ADR Process ended and Phase II began when the Adjudicator mailed out the preliminary evaluation of all the claims on October 4, 1999. Open inspection of all of the claims was held from October 4, 1999 to November 5, 1999 in Klamath Falls, OR, and from November 15, 1999 to March 31, 2000 in Salem, OR. None of the three negotiating groups had reached an agreement by the end of Phase I of the ADR Process, so there were no agreements available to be incorporated into the Adjudication, as had been hoped.

During the November 9, 1999 meeting, while the National Park Service/Annie Creek negotiation group reported that they had discontinued their negotiations, both the Williamson River/Klamath Tribes and the Project Water Users/Klamath Tribes negotiating groups reported that they were continuing their negotiations.

During the February 8, 2000 monthly meeting, OWRD asked the group if they might want someone to assemble a basin-wide settlement template. Comments yet again revealed a defensiveness by those participants who were afraid that such a template might be biased against them and thus threaten their way of life.

Also during this meeting, information was given about a workshop by an organization called Dividing-The-Waters that had been scheduled for June and that was intended to provide dispute resolution training to participants in the ADR Process. One of the trainers from Dividing-The-Waters was present and “stated that the training approach will be relevant to ADR participants rather than just general in nature. The program will provide ideas for problem-solving, useful processes, and insight into negotiation. A round-table discussion will be designed so that participants facing similar issues can work together on negotiation concepts” (Oregon WRD 2000a, 5).

After the close of the open inspection period, the contest filing period was set to run from April 3, 2000 to May 8, 2000. Contests could be about either the preliminary evaluation of one’s own
claim or the preliminary evaluation of someone else’s claim. During the contest period, 5,664 contests were submitted.

Table 9.10. Claims and Contests filed in the Klamath Basin Adjudication

<table>
<thead>
<tr>
<th>Claim Type</th>
<th>Claims</th>
<th>Contests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Reserved Claims</td>
<td>313</td>
<td>4,355</td>
</tr>
<tr>
<td>BIA/Tribal Claims</td>
<td>64</td>
<td>340</td>
</tr>
<tr>
<td>Other Claims (pre-1909, Allottee, Walton)</td>
<td>300</td>
<td>969</td>
</tr>
<tr>
<td>Withdrawn Claims</td>
<td>29</td>
<td>---</td>
</tr>
<tr>
<td>Uncontested Claims</td>
<td>24</td>
<td>---</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>730</td>
<td>5,664</td>
</tr>
</tbody>
</table>

Source: Oregon WRD 2008

During the June 13, 2000 monthly meeting, the Administrative Subcommittee presented a draft of a settlement template – which was again met with resistance from a number of the participants.

During the July 11, 2000 monthly meeting, Dividing-the-Waters trainers reported that many ADR participants had attended the June training workshop and stated that their organization was very interested in doing a follow-up intensive structured negotiating session with the ADR group. Also at this meeting, another draft of a settlement template met even more resistance from a number of the participants.

During the August 8, 2000 monthly meeting, both the Williamson River/Klamath Tribes and the Project Water Users/Klamath Tribes negotiating groups reported that they were close to agreements-in-principle.

During the final monthly meeting of 2000, on November 14th, it was noted that both negotiating groups had achieved their agreements-in-principle. The Administrative Subcommittee said that it would have a draft basin-wide settlement template prepared by February 1, 2001. The negotiating session to be run by Dividing-the-Waters was scheduled for April 2001. The feeling about the negotiating session was that “when the negotiating session is completed at the end of April, everyone should know where the ADR is heading or, in the alternative, the ADR is stalled” (Oregon WRD 2000b).

Way back in September 1997, Jeff Mitchell, then chairman of the Klamath Tribes, in an open letter to the Klamath Basin community published in the Klamath Falls Herald and News said
The water adjudication process is a zero sum game with only a narrow focus on ‘winner’ and ‘losers.’ Without a broader mandate to deal with water shortages, resource depletion, and habitat restoration, the adjudication process will not address the continuing threat to our Basin’s economy, community and natural resources brought about by inadequate water supply.

Resolution of water rights alone will never lead to real solutions that meet all parties [sic] water resource interests.

Negotiations have the potential to break down walls of distrust, and build better relationships among the participants because of their cooperative structure.

Ultimately, the Klamath Tribes believe the water settlement negotiation process is the best available forum for resolving Basin water issues. (Blake, Blake, and Kittredge 2000, 93-94)

The ADR Process, by 2000, had not achieved as much as they had hoped they would. While a goodly amount of training had been done in interest-based collaborative rational problem-solving, dreams of swarms of agreements that could be brought forward to the final Court Decree dwindled down to two agreements-in-principle, and fear continued to run as an undercurrent that bubbled up in the form of accusations about and resistance to anything that participants perceived as a possible threat to their way of life.

In 2002, the Deputy Director of the OWRD, in a presentation to the annual American Bar Association conference on Water Law, acknowledged that adjudication would not create water, would not improve water quality, would not restore habitat, and would not balance the water budget in the Basin. All it would do is establish who is entitled to how much water, with which priority date, under Oregon state law (Reeves 2002). She goes on to say that “it is ever more apparent that global resolution of water allocation issues in the Klamath Basin will require the participation of all water users in the Basin, including those upstream of the Klamath Project in Oregon and downstream in California. No clear means has emerged for securing that participation” (Reeves 2002, 50).

In summary, then, during the period from 1970 through 2000, water rights in the Upper Klamath Basin became the watched pot that never boiled.

In 1975, the Oregon Water Resources Department put the pot on the stove when it initiated a general stream adjudication of unadjudicated pre-1909 and federal reserved water rights in the area of the former Klamath Indian Reservation as well as of a portion of the Upper Basin below Upper Klamath Lake and the Oregon-California state line. Almost immediately the flame under the pot went out as parties plodded through the Adair litigation track which characterized the water rights of various claimants within the former Klamath Indian Reservation, and the U.S. v. OWRD litigation
track which ruled that the U.S. and the Klamath Tribes must file claims in the Klamath Basin Adjudication, but they would not have to pay fees to file the claims.

A tiny flame sprang to life under the pot when OWRD reinitiated the KBA in 1991. By April 30, 1997, 730 individual and federal claims had been filed. By the close of the contest filing period on May 8, 2000, 5,664 contests to claims had been filed.

In September 1997, OWRD initiated an ADR Process intended to provide a forum in which claimants could reach settlement agreements by means of interest-based collaborative rational problem-solving guided by scientific expertise. By the end of 2000, many people had met faithfully, not only at the monthly ADR meetings, but also in however many other meetings they had to go to for subcommittees, for caucuses, and for negotiating groups. For their efforts, however, there was less to show than had been hoped for by those who initiated the ADR Process – only two agreements-in-principle accompanied by fear that continued to run as an undercurrent that bubbled up in the form of accusations about and resistance to anything that participants perceived as a possible threat to their way of life.

As the year 2000 drew to a close, after much work and much money, pre-1909 and federal reserved water rights remained as they had been in 1970 – unadjudicated. And there were those who were by 2000 acknowledging that adjudication of water rights – whether by the formal legal system or the informal alternative dispute resolution system – would not solve the water problems of the Upper Basin.

2.7 Summary

When I summarized the Expansion period 1900-1969, I painted a picture of ways of life living in the illusion of isolation from each other and of non-Indian ways of life taking for granted that the environment was inexhaustible, that the market trumped all, that the environmental movement was something that happened somewhere else, and that the Indians were irrelevant.

Now, when I summarize the five threads of the Breakdown period 1970-2000, I paint a picture of a world turned upside down, a world where the taken for granted was no more, where the environment was degraded, where environmental considerations now trumped market considerations, where the environmental movement was in your face in your own neighborhood, where the Indians were anything but irrelevant – and most especially, where the illusion of isolation was shattered and every way of life was revealed as indissolubly linked to every other way of life, whether they wanted them to be or not.
Tribal Rights in the Upper Basin and the Lower Basin

Throughout the Klamath watershed, throughout the years 1970-2000, tribes fought for their tribal rights – and three of the four tribes won. The Yurok Tribe and the Hoopa Valley Tribe of the Lower Basin moved from a position of powerlessness in which their tribal rights were ignored to a position of actual clout in which their tribal rights not only were recognized, but were recognized as trumping other rights. In 1988, the Hoopa-Yurok Settlement Act dramatically rearranged relationships among everyone. Now the Hoopa Valley Tribe and the Yurok Tribe each had their own reservations; each had their own federally-recognized constitutions; each had vested property rights; each had vested federally-reserved fishing rights; and each regulated their own tribal fisheries. And in 1993, the Solicitor of the Interior Department issued an Opinion that established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the Hoopa Valley Tribe and the Yurok Tribe receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups.

In the Upper Basin, the Klamath Tribes rose from the ashes of termination and became a force to be reckoned with in the Klamath Basin. A reinvigoration of tribal identity and tribal pride gave birth to efforts that successfully restored federal recognition and that were determined to restore economic self-sufficiency. The Kimball litigation track affirmed the rights of Klamath Indians to hunt, fish, trap, and gather within their former reservation free of state regulation, which, in turn, begot the inclusion of the Klamath Tribes in the co-management of the public lands within their former reservation. The Adair litigation track ruled that the Klamath Indian treaty rights to hunt and fish on their former reservation attached to nonconsumptive water rights sufficient to maintain those treaty rights, which, in turn, threw a monkey wrench into the attempt to adjudicate water rights in the Upper Basin within a framework of water rights based upon consumption.

Sadly, the Karuk Tribe of the Lower Basin was completely unsuccessful in their fight for their tribal rights. As 2000 rolled to a close, for all their efforts, and for all their conscientious management of the fishery that fell within their aboriginal territory, the Karuk had no reservation, no vested property rights beyond the 601 acres held in trust by the U.S., no federally reserved fishing, hunting, or gathering rights, and only limited fishing rights granted by the State of California at Ishi Pishi Falls.
Ocean Fishing Communities

Over the years 1970 through 2000, the life was squeezed out of the ocean fishing communities that lay within the Klamath watershed as inexorably as the hangman’s noose squeezes the life out of the dead-man-walking. What had once been an open profession with few regulations and abundant freedom changed to an industry hobbled by regulations, politics, scarcity, economic stress, and gear conflicts (Gilden 1999).

Their first strategy in the fight to preserve their way of life was to take up litigation (1) to try to fight the regulations and quotas; and (2) to try to stop actions which might have been detrimental to fish habitats. When the 1993 Solicitor’s Opinion closed the door on fighting the regulations, PCFFA made two major changes in their strategy: (1) they joined forces with the tribes of the Lower Basin to restore salmon habitat in the Klamath watershed; and (2) they joined what became, in my opinion, a powerful collaboration of certain environmental organizations and an environmental legal defense fund to fight in court for the restoration of the upstream salmon spawning and rearing habitat.

Environmental Rights

During this period from 1970 through 2000, environmentalism became institutionalized in both public values and public policy. Environmental laws were passed. Now the environment trumped the market. Laws could not be ignored. Species listed as endangered or threatened – such as the two species of suckers in the Upper Basin and the coho salmon in the Lower Basin – could not be ignored. And, while mainstream environmental organizations over time moved from the one-size-fits-all strategy of ‘sue the bastards,’ to a more nuanced strategy of collaborative reform, local grassroots organizations – like Oregon Natural Resources Council – still ‘sued the bastards’ in an unrelenting stream of litigation that forced everyone in the Klamath Basin and elsewhere to pay attention to how they did things, whether they wanted to or not.

And in the collaboration of PCFFA with ONRC and Earthjustice, the fishing men and women of the ocean fishing communities joined hands with environmental activists to reach upstream to fight for the preservation and restoration of salmon spawning and rearing habitats.

Water Rights Adjudication

In my opinion, the Klamath Basin Adjudication is a relic based upon the notions that prevailed during the Expansion period 1900-1969 – that water is an inexhaustible resource and that rights to the water are based upon consumption and attach to individuals living and working in isolation from one another.
Claims were filed. Contests were filed. The Klamath Tribes suggested a negotiation process in lieu of a litigation process. An ADR Process was started in 1997. By the end of 2000, many people had met faithfully, not only at the monthly ADR meetings, but also in however many other meetings they had to go to for subcommittees, for caucuses, and for negotiating groups. For their efforts, however, there was less to show than had been hoped for by those who initiated the ADR Process – only two agreements-in-principle, both involving the Klamath Tribes.

Again in my opinion, what worked against success was an undercurrent of fear. Let me paint a picture. From the perspective of the tribes, they were fighting for their tribal rights. From the perspective of the fishing men and women, they were fighting to save their way of life. From the perspective of the environmental activists, they were fighting to save the environment. However, from the perspective of the ways of life directly impacted by these fights – the farmers and ranchers, the foresters who had lived for a long time quite comfortably in isolation from each other – these fights were experienced as threats to their ways of life. Throughout the ADR Process, this fear quickly bubbled up in the form of accusations about and resistance to anything that participants perceived as a possible threat to their way of life.

As the year 2000 drew to a close, after much work and much money, pre-1909 and federal reserved water rights remained as they had been in 1970 – unadjudicated. And there were those who were by 2000 acknowledging that adjudication of water rights – whether by the formal legal system or the informal alternative dispute resolution system – would not solve the water problems of the Upper Basin.

It is only appropriate that we turn now to a consideration of how these threads became ropes of steel that wrapped themselves around BOR in its role as a federal agency, severely constraining its relationship with the farmers and ranchers within the Project – and of how the Project farmers and ranchers responded by fighting for their way of life.

3. The World Turned Upside Down for BOR and for Project Water Users

3.1 The Way Things Were at the Beginning for BOR and for Project Water Users

Above, in section 1.3, I painted a picture of the way things were at the beginning. I will bring those words forward to here in order to refresh the memory.

From the very beginning of the Bureau of Reclamation in 1902, the agency had seen its role as one of delivering water to farmers and ranchers so that otherwise unproductive arid land could be reclaimed and put to productive use for agriculture and ranching. In the Klamath basin, BOR saw its
role as delivering water to the Klamath Reclamation Project. The repayment contracts between BOR and water users in the Project obligated the United States to provide water for beneficial use on specified lands, subject to the availability of the water. The contracts stated that the availability of water could be compromised by drought, canal breaks, inaccuracy in distribution, or other causes (*KWUA v Patterson* 1998 15 F. Supp. 2d at 992). Allocation of water to irrigators was based on a system of contract priorities, with senior contracts supposed to receive all they could beneficially use before junior contracts received anything.

In reality, from the first water delivery in 1907 to the beginning of this period in 1970, BOR delivered water to everyone in full without fail.

From the perspective of the water users in the Project, the delivery of water to their fields was an unquestioned given. As they saw it, BOR existed to deliver water to them, and they had a right to receive it. And they received it, come rain or come drought. And they took it for granted that they would always receive it.

And BOR took it for granted that they would always deliver it. The fact that federal responsibilities and/or other water rights could limit BOR’s ability to deliver water to the Project or the possibility that the diversion of water to the Project could have deleterious effects on others throughout the Basin were not considerations that crossed anyone’s mind.

And, as such, by delivering water without fail in full to everyone, BOR insulated “Klamath Reclamation Project growers from climatic variability, competing federal commitments, and the effects on others of agricultural water diversions” (Woodward and Romm 2002, 337).

In general then, BOR was the master of its own fate, and the Project Water Users knew that they would always receive water from BOR.

### 3.2 Impact of the Five Threads on BOR.

The events of the five threads served to significantly constrain the playing field for BOR.

**Tribal Rights in the Lower Basin and the Upper Basin**

Throughout the Klamath watershed, throughout the years 1970-2000, tribes fought for their tribal rights. Thanks to the key events in the Lower Basin of the 1988 Hoopa-Yurok Settlement Act and the 1993 Solicitor’s Opinion and in the Upper Basin of the 1979 decisions in the *Kimball* and *Adair* litigation tracks, three of the four tribes won – and the world was turned upside down for federal agencies. While, in the past, federal agencies had always had, in theory, the obligation to honor tribal rights, in practice those tribal rights had been ignored. Now, the tribes had fought for
the recognition of those tribal rights in both theory and in practice – and had won – and any federal
agency – including BOR – which took or proposed to take an action which threatened to ignore
those tribal rights learned that they would be greeted with a quick legal response by the tribes.36

Environmental Rights

During this period from 1970 through 2000, environmentalism became institutionalized in both
public values and public policy. Environmental laws were passed. Now the environment trumped
the market. Laws could not be ignored. Species listed as endangered or threatened under ESA could
not be ignored. And, throughout the Klamath watershed, local grassroots organizations – like the
Oregon Natural Resources Council – engaged in an unrelenting stream of litigation that forced
everyone in the Klamath Basin – including BOR – to pay attention to how they did things, whether
they wanted to or not.

While plaintiffs seemed to pluck from the grab-bag of environmental laws however many of the
laws that could be construed as applying to the situation at hand, the law most often used was the
1973 Endangered Species Act, and particularly the rules for the Section 7 interagency consultation
process with respect to federal actions that might impact listed species. I want to take a moment
here to spell out the rules for that consultation process, because so often federal agencies were
brought to court to respond to a complaint that they had broken those rules.

Section 7 of the ESA calls for Interagency Cooperation, requiring federal agencies to ensure that
actions under their jurisdiction do not jeopardize listed species or the critical habitat of those
species.37 In the Code of Federal Regulations, Title 50 Parts 402.11 through 402.16 spell out the
specific procedure that must be followed in order to fulfill the requirement for Interagency
Cooperation.

There are two federal agencies – Fish and Wildlife Service (FWS) for land-based species and
National Marine Fisheries Service (NMFS) for marine species – that are responsible for listing
species and their critical habitats, as well as for determining whether other federal actions would or
would not be detrimental to listed species and/or their critical habitats. FWS and NMFS are called

36 Of course it must be noted, that “in practice,” while tribal rights could no longer be ignored, they might very
likely not be fulfilled – in other words, yes, you have water rights, but no, you didn’t get any water because the
other guys continued to get what they had always gotten. This is especially true for the Klamath Tribes where
their nonconsumptive water rights have not been quantified and consumptive rightsholders continue to
appropriate what they always have.
37 Section 7 of the Public Law presents the principles of interagency cooperation. 16 USCS § 1536 presents
interagency cooperation in greater detail (available from Lexis Nexis Congressional United States Code
Service). 50 CFR 402.11-402.16 present interagency consultation in greatest detail (available from Lexis Nexis
consulting agencies and the other federal agencies who must consult with FWS and NMFS about proposed actions are called action agencies.

1. The action agency must request from the appropriate consulting agency a list of endangered and threatened species that fall within the proposed action area of the action agency.

2. The consulting agency has 30 days to reply to the request. If there are no listed species in this area, then no consultation has to take place. If there are listed species in this area, then the date on which the consulting agency provides the list begins the Biological Assessment period.

3. The action agency has 180 days to prepare and submit a Biological Assessment (BA) to the consulting agency. In this assessment, the action agency must use the best scientific and commercial data available to estimate the likely impact of the proposed action upon the listed species and critical habitat in the action area.

4. The action agency can request informal consultation with the consulting agency, to help the action agency determine the likely impact of the proposed action on listed species and critical habitat in the action area. If, during the informal consultation, the action agency determines there would be no jeopardy — and the consulting agency concurs — then the consultation process is terminated.

5. If the BA determines that there are no listed species or critical habitat present in the action area that are likely to be jeopardized by the proposed action — and the consulting agency concurs — then formal consultation is not required.

6. If the BA makes a jeopardy determination, then formal consultation is required. The initiation of formal consultation requires that the action agency complete and submit the BA to the consulting agency, and then make a written request to the consulting agency for formal consultation.

7. Once formal consultation has been initiated, the consulting agency has 90 days in which to reply with a Biological Opinion (BO) expressing the opinion of the consulting agency as to whether the proposed action will or will not jeopardize the listed species or critical habitat in the action area.

8. If formal consultation has been initiated, the action agency may not take any action which could ultimately preclude the implementation of alternative measures that may be proposed by the consulting agency in the BO.

9. If the consulting agency issues a Jeopardy BO, it will include reasonable and prudent alternatives (RPAs) which are alternatives to the originally proposed action which the consulting agency feels will not jeopardize the listed species or critical habitat.
10. Depending upon the nature of the proposed action, the BO may also involve an *incidental take statement*, which specifies the extent of allowable *take* of the listed species as well as proposes *reasonable and prudent measures* (RPMs) which are intended to ensure that the incidental take does not exceed the allowable limits.

11. If the *action agency* receives a Jeopardy BO, it must notify the *consulting agency* whether it will abide by the BO or whether it will apply for an exemption because it does not feel it can abide by the BO (50 CFR 402.11-402.16).38

Clearly, gone were the days in which BOR could take action as it pleased without having to consult with anybody.

**Ocean Fishing Communities Team Up With the Environmental Movement**

Thanks to the key event of the 1993 Solicitor's Opinion, PCFFA joined a powerful collaboration of ONRC and Earthjustice Legal Defense Fund to fight in court for the restoration of the upstream salmon spawning and rearing habitat. Within the Klamath watershed, if you were a federal agency, such as BOR, and if your actions could be seen as possibly impacting the spawning and rearing habitat of any listed salmon species, you came to know that you would be quickly slapped with a lawsuit if the collaboration found even the tiniest of faults with your following of the rules of any applicable environmental laws. And once that dog had sunk its teeth into your federal backside, you found that getting it to let go was nigh on to impossible.

**Water Rights Adjudication**

In every way, the Bureau of Reclamation is a quintessential expression of the notion of water rights. When the Klamath Reclamation project was approved by Congress in 1905, the United States filed with both California and Oregon its notice of its intent to appropriate all of the waters of the Klamath Upper Basin. In addition, the U.S. purchased water rights from individuals with private irrigation works. By a combination of appropriation and purchase, BOR “had full control of all of the rights to the use of water in the basin to facilitate Project operation” (U. S. BOR 2000a, 34).

When Oregon initiated the Klamath Basin Adjudication, the United States protested, asserting that it was not required to file claims. Of course, litigation ensued. Bottom-line, the United States lost the *U.S. v. OWRD* litigation track, when the decision rendered on December 28, 1994 ruled that the United States must file claims in the Klamath Basin Adjudication.

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38 Exemption is a whole 'nother process; if you are interested, see 50 CFR 451.
By April 30, 1997, BOR had filed seven consolidated claims for the Klamath Project, seeking diversion of 3,505 cfs\(^{39}\) for irrigation of 218,654 acres as well as storage in Upper Klamath Lake (486,830 acre feet), in Gerber Reservoir (92,300 acre feet), and in Clear Lake (481,300 acre feet) (Reeves 2002). When the ADR process was initiated in September 1997, BOR was a participant in the monthly meetings.

Where heretofore BOR had taken its water rights for granted, now it was required to make its case for its water rights in competition against other claimants.

In summary, then, where heretofore BOR had metaphorically danced with abandon in a field of flowers, now, with the advent of tribal rights, of environmental laws, of environmental litigation, of focus on upstream salmon habitat, and of adjudication of water rights, BOR increasingly found itself with a target on its back, tiptoeing a narrow gauntlet through a minefield.

### 3.3 Walking That Gauntlet

From the perspective of the person upon whom the bombs are falling, it is a bit much to ask that person to sort the bombs by color. Bombs started falling on BOR in 1988 and continued on through 2000 – and beyond. Just listing the bombs in chronological order would not give much of a sense of what was going on. Instead, I have sorted the events into six tracks, because the events in each track hang together in a meaningful fashion.

**The Sucker Track** began with the listing of the suckers in 1988, moved through a court decision in 1998, and then the wheels fell off in 2000. **The Klamath Basin Adjudication Track** started with the 1991 *U.S. v. OWRD* – and, well, is still ongoing at the end of 2000. **The Solicitor’s Opinion Track** spanned 1995 through 1997. **The KPOP Track** started with the first KPOP (Klamath Project Operations Plan) in 1995 and moves through the last KPOP in 2000. **The Coho Track** started with the listing of the coho salmon in 1997. In all tracks, there are both events involving BOR and reactions to events by the Project water users. And finally **the Drought and Die-Off Track** ran like an obligato under all the other tracks. Instances of drought and die-off will be indicated by bolding within the other five tracks.

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\(^{39}\) cfs ≡ cubic feet per second
The Sucker Track

The Sucker Track began with the key event on August 17, 1988 when both the shortnose and Lost River suckers were listed as endangered species (U.S. FWS 1988). For the first time ever, BOR was required to get approval of their actions from FWS before they could undertake their actions. Consultations were now a full-time job, required with respect to the possible impact on suckers from (1) specific individual actions, (2) the actions of a year’s operations plan, and (3) the actions of a long-term operations plan, and yielded a steady stream of BAs, BOs, and amendments to BOs.

And then, to make matters even worse, every time a document was produced from a consultation, BOR would hold its breath to see if someone was going to hit them with a lawsuit about that document. And there was a steady stream of lawsuits.

The 1991 Operations Year and ONRC v. BOR. In February 1991, BOR requested formal consultation with FWS regarding BOR’s 1991 operations plan for the Klamath Project. By July 1991, which would have been towards the end of the 180-day period, FWS had not issued its final BO for this consultation. Not wasting a moment, on July 10, 1991, Oregon Natural Resources Council (ONRC) filed a complaint of violation of ESA against the Bureau of Reclamation for failure to consult with FWS with respect to the impact on the suckers of BOR’s proposed actions in managing the Klamath Irrigation Project (ONRC v. BOR). This was a key event for the Project water users because it made real the possibility that the listing of the suckers could result in reduced Project water deliveries.

On August 14, 1991, FWS issued a Jeopardy Biological Opinion (BO), including RPAs that BOR would have to incorporate into the implementation of its 1991 operations plan, as well as an Incidental Take Statement, with RPMs that BOR would have to incorporate into the implementation of its 1991 operations plan. On August 19, 1991, BOR notified FWS that it accepted the BO and that it would implement the RPAs and the RPMs. On the same date, BOR requested that the court case be dismissed because it had completed the formal consultation.

40 Because dams of various rivers in the Upper Basin blocked access to what would have been the spawning habitat for the suckers, a critical habitat could not be determined at the time when the suckers were listed (U.S. FWS 1988).
41 In addition, there were other listed species that fell within the action area of BOR – the Bald Eagle, the American Peregrine Falcon, and the Applegate’s Milk-vetch – with respect to which BOR was required to consult with FWS. Some of the BOs also dealt with the other listed species; all of the BOs dealt with the suckers.
But, on August 26, 1991, ONRC amended its complaint, alleging that no critical habitat had been specified and that BOR must consult about the effects of the long-term operation of the Klamath Project. On November 1, 1991, the court dismissed all complaints except the requirement for consultation about the long-term effects. On November 15, 1991, BOR provided proof that it had requested formal consultation with FWS concerning the effects of the long-term operation of the Klamath Project. ONRC then moved for a temporary restraining order against BOR. On December 11, 1991, the court dismissed all remaining claims as moot, as well as stayed any further proceedings pending completion of the consultation about the effects of the long-term operation of the Klamath Project which was begun by BOR on November 15, 1991.

Not to be thwarted, ONRC continued waging its battle against BOR in court, seemingly operating on the premise that if at first you don’t succeed, try, try again. On February 13, 1992, ONRC sought an injunction against BOR. On April 4, 1992, the court denied their motion, and once again told them to wait until the consultation about the effects of the long-term operation of the Klamath Project was completed. Not to be put off, on July 6, 1992, ONRC filed yet another complaint, realleging the ESA claims, as well as alleging de novo claims under NEPA, the Migratory Bird Treaty Act, and California state law.

The water users in the Klamath Project were paying close attention to the ONRC v. BOR district court case. In 1991, the Tulelake Irrigation District (TID) as well as the Klamath Water Users Association (KWUA) petitioned for permission to intervene as defendants in the case, on the premise that the threatened restrictions to the water supply in the Klamath Project would severely impact the contracts between the water users in the district and in the association respectively and BOR (ONRC v. BOR and KWUA). Upon denial by the district court, both TID and KWUA appealed. On November 24, 1992, TID was granted permission to intervene (ONRC v. BOR and TID), and on November 25, 1992, KWUA was granted permission to intervene (ONRC v. BOR and KWUA). This litigation track was finally laid to rest on April 7, 1995, when the decision in ONRC v. BOR, KWUA and TID dismissed all remaining complaints.

The 1992 Long-term Operations Plan and the Bennett Litigation Track. Meanwhile, on July 22, 1992, FWS issued a Jeopardy BO with respect to the effects of the long-term operation of the Klamath Project. The BO included the specification of minimum lake levels in Upper Klamath Lake, in Clear Lake Reservoir, and in Gerber Reservoir.
Among the water users in the Klamath Project, Langell Valley Irrigation District and Horsetly Irrigation District are served by the waters stored in Clear Lake Reservoir and Gerber Reservoir. In 1993, upon the heels of the July 22, 1992 BO which set minimum lake levels in those two reservoirs, Langell Valley Irrigation District and Horsetly Irrigation District filed suit in district court to have those portions of the July 22, 1992 BO which set minimum lake levels in those two reservoirs withdrawn from the BO (Bennett v. Plenert I). On November 18, 1993, the court ruled that the plaintiffs did not have standing under ESA to seek their claim against BOR (Bennett v. Plenert I).

And thus began the Bennett track – yet another track of litigation bouncing from court to court. In 1995, the appeals court affirmed the district court; in 1997, the U.S. Supreme Court reversed the appeals court and remanded the case back to them; and 1997, the appeals court remanded the case back to the original district court.42

Back in the district court in 1997, the plaintiff irrigation districts now challenged not only the original July 22, 1992 BO as it related to Gerber Reservoir, but now also the subsequent August 11, 1994 BO as it related to Clear Lake Reservoir (Bennett v. Spear II). The decision rendered on January 16, 1998 interrogated the two BOs in terms of (1) the interrelatedness or interdependence of the two reservoirs to the Klamath Project as a whole; and (2) whether the RPA of minimum lake levels in the two reservoirs actually avoided jeopardy. The court ruled that the challenged RPAs and regulations would remain in effect until FWS issued their answers to the above questions. Bottom-line, the irrigation districts made their point, and on April 13, 1999, a subsequent court decision granted the plaintiffs’ motion to invalidate RPAs for Clear Lake and Gerber reservoirs in the BOs issued by FWS on July 22, 1992 and August 11, 1994 (U.S. BOR 2001b). What this meant was that the minimum levels in the reservoir that had been specified in the RPAs would not be implemented, which would in turn mean that the irrigation districts served by Clear Lake and Gerber reservoirs would not be receiving reduced water deliveries.

Flowing as a dark undercurrent to the sucker track, in 1995, 1996, and 1997, there were major die-offs of suckers in Upper Klamath Lake and in the lower reaches of rivers emptying into Upper Klamath Lake (U.S. BOR 2001b).

**The 2000 Long-term Operations Plan.** On December 18, 1999, BOR requested reinitiation of formal consultation with FWS with respect to the effect of the long-term operations of the Klamath Project on the suckers (U.S. FWS 2001a). The prior BOs issued by FWS with respect to this action

42 Bennett v. Plenert II → Bennett v. Spear I → Bennett v. Plenert III.
had been the two BOs that were the target of the *Bennett* litigation track (July 22, 1992 and August 11, 1994) as well as the BO on February 22, 1993,\(^\text{43}\) and four amendments to the BOs in 1998 and 1999.

I would imagine that BOR's goal would have been to have had the new BO issued by FWS prior to the inception of the 2000 plan year (April 1, 2000 through March 31, 2001), but that did not happen. In fact, I would characterize 2000 as the year that the wheels fell off for BOR on the **Sucker track**. Up till now, BOR had followed the timeline in the consultation protocol (see above). In 2000, that did not happen – both with respect to the suckers as well as with the coho salmon (which I shall deal with below).

On April 26, 2000 BOR sent a memo to FWS promising the BA by June 1, 2000 (U.S. FWS 2001a), but this did not happen. On September 2, 2000, BOR sent another letter to FWS, this time promising the BA by October 1, 2000 (U.S. FWS 2001a), but this did not happen either.

During 2000, the only issuances from FWS were an August 19, 2000 amendment to the 1994 BO, allowing additional water releases during August and September 2000, and a September 4, 2000 determination allowing BOR to maintain a minimum September 30th elevation of 4139.0 ft to avoid violation of section 7(d) of the Act about irreversible and irretrievable commitment of resources (U.S. BOR 2001b).

On November 8, 2000, BOR finally submitted a first draft of the long-promised BA. After FWS comments were delivered on November 21, 2000, BOR submitted a second draft of the BA on November 22, 2000. FWS supplied comments on the second draft on December 19, 2000 – and twelve days later 2000 drew to a close without a final BA having been submitted and no BO having been issued. This means that the Project operations for the 2000 plan year, which had been part of the action about which formal consultation was reinitiated, were being implemented without FWS sanction.

Amazingly, no court cases leaped onto the scene, taking BOR to task for not following the ESA consultation rules with respect to the suckers. Such would *not* be the case with respect to the coho salmon (again, which I shall deal with below).

**In summary, then**, from the moment in 1988 when the suckers were listed as endangered species, every action of BOR with respect to the suckers was subject not only to the scrutiny of FWS who delivered a steady stream of BOs, but also to the scrutiny of those with a stake in BOR’s actions, who took BOR to court if they thought that BOR was doing it wrong – the environmental

\[\text{43} \text{ On February 22, 1993, FWS issued a modification of its July 22, 1992 Jeopardy BO with respect to levels in Upper Klamath Lake.}\]
litigants who accused BOR of doing ESA wrong, and the Project water user litigants who accused BOR of doing them wrong in doing ESA. Very much damned if you do and damned if you don’t.

The Klamath Basin Adjudication Track

The Klamath Basin Adjudication track began for BOR when, on December 20, 1990, the United States, on behalf of BOR and other federal agencies that managed land in the Upper Basin, filed suit against OWRD, seeking both a temporary restraining order and a permanent injunction to prohibit Oregon from requiring the Federal government to file claims in the Klamath adjudication. Decisions to U.S. v. OWRD were rendered on March 14, 1991, and then again on September 30, 1991 (U.S. v. OWRD I). The de rigueur appeal was filed in 1992, and the appeals court rendered a decision on December 28, 1994 (U.S. v. OWRD II). Bottom line, both the United States and the Klamath Tribes must file claims, but neither had to pay fees to file the claims.

By April 30, 1997, BOR had filed seven consolidated claims for the Klamath Project, seeking diversion of 3,505 cfs for irrigation of 218,654 acres as well as storage in Upper Klamath Lake (486,830 acre feet), in Gerber Reservoir (92,300 acre feet), and in Clear Lake (481,300 acre feet) (Reeves 2002).

When the ADR process started in September 1997, BOR was a regular participant in the monthly meetings, presenting information about their claims and routinely providing updates about operations in the Klamath Project.

With respect to the Project water users, from some time just after the very beginning of the ADR process in 1997, the Project water users worked in a negotiating group with the Klamath Tribes, and by the end of 2000, had reached an agreement-in-principle.

In summary, then, as 2000 drew to a close, the Klamath Basin Adjudication track remained up in the air, with nothing settled for either BOR or the Project water users: BOR claims with respect to the Klamath Project remained unadjudicated; BOR and the Project water users continued to participate in the monthly ADR meetings; and the Project water users continued to negotiate with the Klamath Tribes.

The Solicitor’s Opinion Track

The Solicitor’s Opinion track actually began with the first Klamath Project Operations Plan (KPOP) that BOR issued on April 7, 1995 for the 1995 plan year (April 1, 1995 through March 31, 1996). In the 1995 KPOP, BOR stated that the plan was based on principles and objectives that would meet responsibilities in the following order: (1) the Endangered Species Act, (2) federal
protection of tribal trust resources, (3) the Klamath Project, and (4) the four National Wildlife Refuges within the boundaries of the Klamath Project (Benson 2002, 218). In addition, BOR promised that a long-range plan would be forthcoming (Benson 2002).

Close on the heels of the 1995 KPOP, in a **key event** on July 25, 1995, the Regional Solicitor issued an Opinion with respect to the legal rights and obligations related to BOR and the Klamath Project, to be used in preparation of the KPOP. In essence, the 1995 Solicitor’s Opinion laid out in detail the protocol upon which the 1995 KPOP had been based. It established the following order of rights (from senior to junior) to the waters in the drainages affected by the Klamath Project and the obligations of BOR with respect to those rights:

1. **Endangered Species Act.** Bottom-line, the ESA trumps water rights and obligations, in that "Reclamation has an obligation not to engage in any action that is likely to jeopardize the continued existence of a listed species" (U.S. Solicitor 1995, 9).

2. **Tribal Water Rights.** The Klamath Tribes have a priority date of time immemorial and the Yurok and Hoopa Valley Tribes have a priority date of 1891 or earlier. All three tribes have water rights that are attached to their fishing rights. Their federally reserved rights include the right to an instream flow sufficient to protect their rights to take fish within their reservations; the right to certain conditions of water quality and flow to support all life stages of fish; the right to prevent other appropriators from depleting the streams’ waters below a protected level; and the right in off-reservation areas to the extent necessary to support the tribes’ on-reservation fisheries (U.S. Solicitor 1995, 9). “Reclamation must...prevent activities under its control that would adversely affect [the tribes’ fishing] rights, even though those activities take place off-reservation” (U.S. Solicitor 1995, 8).

3. **Klamath Project.** The Klamath Project has a priority date of 1905. The individual water users have contracts with BOR and hold a beneficial interest in that portion of the project right that they actually put to beneficial use. BOR “has an obligation to deliver water to the project water users in accordance with the project water rights and the contracts between Reclamation and the water users (which may be through a water district) subject to the availability of water. ...Water would not be available, for example, due to drought, a need to forego diversions to satisfy prior existing rights, or compliance with other federal laws such as the Endangered Species Act” (U.S. Solicitor 1995, 7).

3. **Irrigated Lands within the Lower Klamath and Tule Lake National Wildlife Refuges.** These lands have the same 1905 priority date as the Klamath Project.
4. **National Wildlife Refuges within the Boundaries of the Klamath Project.** The Lower Klamath NWR has a priority date of 1908; Clear Lake NWR 1911; and Tule Lake and Upper Klamath NWRs 1928. “Reclamation has an obligation to ensure that the refuges receive adequate water to fulfill their federal reserved water rights (i.e., the amount of water necessary to fulfill the primary purposes of the refuges) when in priority and when water is available. ...The Kuchel Act...requires that the refuge lands be used primarily for waterfowl purposes but with full consideration given to optimum agricultural use so far as agricultural use is consistent with the refuge purposes” (U.S. Solicitor 1995, 7).

Most importantly, the Solicitor’s Opinion stated very clearly that, even though none of these rights had yet been quantified through the Klamath Basin Adjudication process, “Reclamation is not free to disregard these rights, and its discretion to determine the necessary means to protect and fulfill each of these rights is limited” (U.S. Solicitor 1995, 9-10).

If BOR and the Project water users had been feeling that the taken-for-granted was being turned on its head, the 1995 Solicitor’s Opinion said, yes, it is, and it codified that chaos, laying it all out in very clear black and white. The world was different, and not happily so, for BOR and the Project water users. And BOR was stuck with having to make best guesses about how much water went where (Doremus and Tarlock 2003) – which only served to enlarge the target on their back as they walked the gauntlet through the minefield, because for every guess made there is always someone who will argue that you guessed wrong.

The 1995 KPOP “touched off a dispute between the United States Interior Department and the State of Oregon as to whether USBR had the legal authority to manage the project for fishery, tribal, and wildlife refuge purposes” (Benson 2002, 218n149). I am sure that the 1995 Solicitor’s Opinion only further fueled the dispute.

On March 18, 1996, in response to a request from OWRD for “ ‘an analysis of water management authority in the basin pending the completion of the adjudication’” (U.S. Solicitor 1997, 1, quoting from the 1996 Oregon letter), Stephen Sanders, Oregon’s Assistant Attorney General, sent a letter to OWRD, expressing the legal opinion that BOR “had little authority to do anything but deliver Klamath Project water for irrigation” (Benson 2002, 218n149). In essence, the letter asserted that, by creating a Klamath Project Operations Plan, the United States was seeking to take over Oregon’s role in adjudicating and regulating water uses, and concluded that, once the adjudication was complete and Oregon started administering the water rights, the United States would no longer need to manage the Project.
On January 9, 1997, the Regional Solicitor issued an opinion refuting many of the allegations within the March 18, 1996 letter. “While Reclamation does not adjudicate water rights, the absence of a completed adjudication and Reclamation’s legal obligation to manage the project in accordance with law require that Reclamation use its best efforts to operate the project consistent with existing water rights” (U.S. Solicitor 1997, 5). “In sum, the operations plan is not an attempt to regulate water uses in the Klamath Basin. Rather, it reflects Reclamation’s effort to exercise its authority to manage the project consistent with all of its obligations, including senior Indian water rights, contractual obligations, and ESA requirements” (U.S. Solicitor 1997, 7).

“While the 1996 Sanders letter remains its official position, the state of Oregon has never taken legal action to carry it out” (Benson 2002, 218n149).

**In summary, then,** the Solicitors’ Opinions made inescapable the fact that BOR had gone from being the master of its own fate, to being the servant of many masters, and with two of the masters even arguing over what the servant must do. Certainly a real come-down-ance for the once king-of-the-hill institutional identity of BOR. And the Solicitors’ Opinions did everything to exacerbate in the Project water users a growing perception of threat to their way of life that up till now had been insulated “from climatic variability, competing federal commitments, and the effects on others of agricultural water diversions” (Woodward and Romm 2002, 337).

**The KPOP Track**

The KPOP track starts with the first KPOP (Klamath Project Operations Plan) in 1995 and moves through the last KPOP in 2000. This track looks not at the BAs and BOs which may have been issued with respect to the KPOPs, but rather looks at the issuance of the KPOPs by BOR and the reaction of the Project water users to those KPOPs.

But first, some clarification about the terms and times.
This means that the snowpack will be measured in order to estimate the inflow to Upper Klamath Lake for the period Apr-Sep 1995. This estimate will be used to characterize the 1995 Water Year (which runs Oct 1994 through Sep 1995). In turn, the characterization of the Water Year will be used by BOR to determine the actions to be undertaken during its operations period of Apr-Sep 1995, during which time water would be diverted to the Klamath Project. All of this information is presented in the KPOP for the plan year of Apr 1995-Mar 1996.

The spectrum of characterizations of Water Year runs from Above Average, Below Average, Dry, to Critically Dry (or in other words, drought).

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44 Yes, the Water Year is named by the ending year of the period Oct-Sep, while the Plan Year is named by the beginning year of the period Apr-Mar. I am grateful to Mike Neuman, Data Manager for BOR in Klamath Falls for explaining how all the periods are figured and named (email communication January 11, 2009).
Table 9.11. Water Year Classifications and Water Allocations from Upper Klamath Lake for 1990 through 2001

<table>
<thead>
<tr>
<th>Water Year Period</th>
<th>Water Year</th>
<th>Upper Klamath Lake Water Allocations</th>
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<tr>
<td>(Inflow Apr-Sep)</td>
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<td>acre feet (000)</td>
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<tr>
<td></td>
<td></td>
<td>Apr-Sep</td>
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<td></td>
<td></td>
<td>Calendar Year</td>
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<tr>
<td>Oct 89 - Sep 90</td>
<td>1990</td>
<td>Jan-Dec 1991</td>
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<tr>
<td>Oct 91 - Sep 92</td>
<td>1992</td>
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<td>1993</td>
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<tr>
<td>Oct 00 - Sep 01</td>
<td>2001</td>
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</tbody>
</table>

Source: U.S. BOR 2000a; Rykbost and Todd 2002.

1995 KPOP (Apr 95-Mar 96) for an Above Average Water Year. Issued on April 7, 1995, the plan stated that it was based on principles and objectives that would meet the following responsibilities in the following order: (1) ESA, (2) tribal trust, (3) Project, and (4) refuges (Benson 2002, 218). The KPOP also promised a plan for the long-range. Shortly after the 1995 KPOP was issued, the 1995 Solicitor’s Opinion was issued, which formally established that the above protocol must govern all Project operations.

1996 KPOP (Apr 96-Mar 97) for an Above Average Water Year. Issued on May 7, 1996, the 1996 plan called for somewhat higher lake and flow levels than had the 1995 plan. BOR continued to promise the long-term KPOP (Benson 2002).

1997 KPOP (Apr 97-Mar 98) for an Above Average Water Year. Issued on May 1, 1997, it was a key event in that it was different from the 1995 and 1996 KPOPs, in that (1) it described operations for 1997 under three different scenarios: the current water supply forecast, wetter than the forecast, and drier than the forecast; and (2) while it anticipated adequate water supplies for irrigation and the wildlife refuges based on the current forecast, the 1997 plan made it clear that a drier-than-expected year could result in reduced deliveries for irrigation and the refuges, as well as somewhat lower lake and river levels. “In other words, USBR had plainly shifted the risk of a dry year from the fish and tribes to the irrigators and refuges” (Benson 2002, 220). So, even though the
water delivery was higher in 1997 than it had been in 1996, clearly the playing field had changed. In
addition, BOR also no longer promised a long-term KPOP.

The ink had barely dried when PacifiCorp said that it would not implement the 1997 KPOP
because to do so would violate their FERC license. To deal with this issue, on June 3, 1997,
PacifiCorp and BOR temporarily modified their agreement so that PacifiCorp could operate the dam
in accordance with the 1997 KPOP, contingent upon FERC concurrence.

It took the Project water users a mere day to react to this contract modification and to the fact
that they had not been consulted about the negotiations. On June 4, 1997, they filed suit with
respect to the 1997 KPOP, over the period June 17 through September 25, 1997, “seeking a
temporary restraining order and alleging four claims, including a claim for breach of the 1956
contract based on their third party beneficiary status” (KWUA v. Patterson I 15 F.Supp.2d at 993).
The plaintiffs were KWUA as well as the Klamath Drainage District, Sam Henzel, and Henzel
Properties, Ltd., and the defendants were BOR and PacifiCorp. In addition, multiple parties
intervened as defendants in the case: Yurok Tribe, PCFFA, ONRC, Northcoast Environmental
Center, Institute for Fisheries Resources, Klamath Forest Alliance, Mazamas, Wilderness Society, and
Waterwatch of Oregon.45 On June 17, 1997, the court denied the plaintiff’s motion for a temporary
restraining order. Over the next few months, the plaintiffs’ original four claims were dismissed,
appeals were filed, and PacifiCorp filed a counterclaim, “seeking a declaration of rights with respect
to plaintiffs’ standing under the 1956 contract” (KWUA v. Patterson I 15 F.Supp.2d at 993).

On April 24, 1998, a decision was rendered in KWUA v. Patterson I, ruling that irrigators were not
third-party beneficiaries to the underlying contract between PacifiCorp and BOR.46 Their rights to
Klamath Project water arose from their repayment contracts with BOR, not from the 1956 dam
operations contract. And the repayment contracts all had clauses about water delivery being subject
to water availability. From the perspective of BOR, the court affirmed BOR’s duty to protect
endangered species and tribal water rights. From the perspective of the Project water users, the
judge stated that their rights to water in the basin were subservient to senior tribal water rights and to
subsequent legislative enactments by Congress, such as the ESA.

Clearly, the world had turned upside down for the Project water users. From decades of water-without-fail,
come rain or come drought, now, as they put it, they got the left-overs (Simmons 2002). As an
indicator of change, one has only to look at data from table 9.11 above for drought years 1992 and

45 And not unexpectedly, Earthjustice Legal Defense Fund was one of the attorneys representing the
intervening environmental collaboration.
46 The obligatory appeal was filed but, bottom-line, the decision stood (KWUA v. Patterson II).
2001. In drought year 1992, agriculture received 44% of water allocations from Upper Klamath Lake – the highest proportionate water allocation to agriculture over the years 1991-2001 – while Iron Gate flow received 48% of water allocations from Upper Klamath Lake – the lowest proportionate water allocation to Iron Gate flow over the years 1991-2001. There wasn’t much water, but Project water users got what they needed, and others did without. In drought year 2001, in a complete reversal of fortunes, agriculture received but 6% of water allocations from Upper Klamath Lake – the lowest proportionate water allocation to agriculture over the years 1991-2001 – while Iron Gate flow received 88% of water allocations from Upper Klamath Lake – the highest proportionate water allocation to Iron Gate flow over the years 1991-2001. There wasn’t much water, but others got what they needed, and Project water users did without. To state that Project water users experienced an increasing sense of threat to their way of life would be to state the obvious.

1998 KPOP (Apr 98-Mar 99) for an Above Average Water Year and the 1999 KPOP (Apr 99-Mar 00) for an Above Average Water Year. There was enough water to go around, and BOR made regular water deliveries to the Project water users. In essence, Mother Nature was delaying the inevitable.

2000 KPOP (Apr 00-Mar 01) for a Below Average Water Year. BOR delivered regular water deliveries to the Project water users. However, BOR also announced plans to release water from Clear Lake and Gerber Reservoir in the east to benefit the west side of the Klamath Project. Lost River Irrigators filed suit to seek preliminary injunction to keep the water in storage for their uses. In LVID v. Babbitt, Langell Valley Irrigation District challenged BOR releases from Clear Lake, in the Lost River side of the Klamath Basin, for delivery to various uses on the Klamath side (Marbut 2002). Plaintiffs claimed that the purpose of BOR was to provide water to irrigators, and that BOR had no authority to release water to benefit fish and wildlife. The request for injunction was denied because court affirmed that BOR had the responsibility to meet requirements of ESA which trump the water rights of the irrigators. The case was dismissed without prejudice (Marbut 2002; Benson 2002). This means that the water went from east to west, a move which I can only imagine angered the eastern Project water users.

In summary, then, BOR prepared KPOPs for 1995 through 2000 when nature blessed them with enough water to go around, and water deliveries were made. However, the priority of water allocations had changed completely, with multiple other rights coming to trump the Project water rights, and Project water users reduced to left-overs. By the end of 2000, it seemed quite clear that Klamath Project water users could not count on the federal courts to protect their irrigation water
supplies (Benson 2002). And to make matters even worse, the weather turned very dry in the spring and summer of 2000. The inevitable was on its way.

**The Coho Track**

The Coho track started with the proposed listing of the Southern Oregon/Northern California Coast (SO/NCC) Evolutionarily Significant Unit (ESU) of coho salmon as threatened on July 25, 1995 (U.S. NOAA 1995) and the subsequent key event final listing of the SO/NCC coho salmon as threatened on May 6, 1997 (U.S. NOAA 1997). The final rule estimated that “[p]opulations in the California portion of this ESU could be less than 6 percent of their abundance during the 1940s” (U.S. NOAA 1997 62 FR at 24588). The coho were decimated not only by overfishing by commercial interests, but also by degradation of their upstream spawning and rearing habitat – degradation to such an extent that die-offs of salmon in the Klamath River were routine. Flowing as a dark undercurrent to the Coho track, salmon die-offs in the Klamath River were noted in 1994, 1995, 1997, 1998, 1999, and 2000 – or in other words, every year but 1996 (U. S. BOR 2001a; Grader and Spain 2001).

When I spoke earlier about the Sucker track, I noted that BOR essentially got the wheels on the consultation car, and toodled along in compliance, until the wheels fell off in 2000. With respect to the Coho track, it looks to me as if BOR never even got the wheels on the consultation car.

I keep thinking about the differences between the Sucker scenario and the Coho scenario for BOR. The suckers lived in the Upper Basin and were a known commodity, but the coho did not live in the Upper Basin at all (thanks to Iron Gate Dam) and were an unknown commodity. Metaphorically, I can see being held responsible with respect to the suckers as tantamount to my being held responsible for the ring in the bath tub after I take a bath – OK, I can see the direct link between the cause and the effect; I get it; I know how to take care of it – while I can see being held responsible with respect to the coho as tantamount to my being held responsible for the impact of the water that goes down my drain, after my bath, on wildlife in the next state – I don’t see the direct link between the cause and the effect; I don’t get it; I have no idea how to take care of it.

Prior to the listing of the coho, BOR had never had to pay attention to how much water flowed down the Klamath River, beyond the requirements for PacifiCorp. They only paid attention to how much water they had to leave in the lakes for the suckers and how much water they could divert to the Project water users. Now with the listing of the coho, they had to pay attention to how much water flowed down the Klamath River, in terms not only of the requirements for PacifiCorp, but also of the requirements for the coho. The listings of both the suckers and the coho effectively squeezed
BOR from both ends, requiring them to maintain minimum lake levels for suckers as well as to maintain minimum water flows for coho salmon – and there could be the real possibility that maintaining both could leave little for irrigation withdrawals.

To deal with BOR’s lack of scientific data to use in formulating their operations plans, to their credit, in my opinion,

[i]In 1998, the Department of the Interior commissioned Dr. Thomas Hardy of Utah State University to provide a comprehensive review of the historical and existing status of the anadromous fish, including the coho salmon, within the lower Klamath River (i.e., below Iron Gate Dam). ...Dr. Hardy was asked to make recommendations in two steps. The first step (‘Phase I’) was intended to supply initial recommendations for use in developing annual operations plans, while the second step of the study (‘Phase II’) was underway. ...Because necessary site-specific information for the Klamath River was not available at the time, Dr. Hardy conducted an extensive literature review of the historical and current status, as well as life history traits, of the Klamath River fishery. (PCFFA I 138 F.Supp.2d at 1232)

In preparing the Phase I report, Hardy collaborated with a Technical Review Team comprised of representatives from FWS, BOR, BIA, U.S. Geological Survey, NMFS, the Yurok, Hoopa and Karuk Tribes, and California’s Department of Fish and Game (PCFFA I) – a collection of folks who could bring to the task the experience and knowledge that BOR did not have and thus sought.

Again in my opinion, I think the fact that the years 1995-1999 were above average water years deferred BOR’s having to deal with flow requirements in drier water years. It is interesting to note that, even though those years were above average water years – years in which there was enough water for the Project water users and enough water to satisfy FWS with respect to the suckers and in which Iron Gate flow was higher in 1996-1999 than in surrounding years (see table 3.10 above), something was still not right for the coho because there were salmon die-offs in the Klamath River in every one of those above average water years except for 1996.

In the years between proposed and final listings – 1996 and 1997, BOR coordinated with NMFS with respect to the operation of the 1996 and 1997 KPOPs (U.S. BOR 2001a). With the 1997 listing, the 1998 KPOP would have been the first plan year (i.e., April 1998 – March 1999) that BOR would have been required to consult with NMFS with respect to the impact of proposed BOR actions on the now listed coho.

With respect to the 1998 KPOP, BOR submitted a final BA to NMFS on June 2, 1998, and requested formal consultation (U.S. NMFS 2002). NMFS concluded, however, that, because the BA arrived late in the water year such that little flexibility would remain to modify the 1998 KPOP,
formal consultation would be deferred for preparation of BOR’s 1999 KPOP (U.S. NMFS 2002). So, in other words, the 1998 KPOP was implemented without consultation having been done.

With respect to the 1999 KPOP (and without benefit of any results from Dr. Hardy yet), BOR submitted a draft BA on March 9, 1999 and requested formal consultation. On June 18, 1999, BOR submitted an amended BA, and on July 12, 1999, NMFS issued a BO for the remainder of the 1999 KPOP year through March 2000, finding that BOR’s actions were not likely to jeopardize the coho (*PCFFA I*). In addition, NMFS stressed that the completion of a long-term plan to guide operations was very important.

On August 5, 1999, the eagerly awaited Phase I report by Dr. Hardy was released. The report recommended interim minimum monthly flow levels for mainstem Klamath River below Iron Gate Dam for the period January 2000 through September 2000 (*PCFFA I*). BOR had hoped to have the Phase II report in addition to the Phase I report to use in preparing 2000 KPOP, but completion of the Phase II report was delayed, so BOR was compelled to prepare the 2000 KPOP for a below average water year without the benefit of the Phase II report (*PCFFA I*).

In early March 2000, BOR released a draft 2000 KPOP for plan year Apr 00-Mar 01. The flow recommendations were lower than those in the Hardy Phase I report. Both the Yurok Tribe and the California Department of Fish and Game disagreed with the KPOP flow recommendations, asserting the the Hardy Phase I report was the best available science and should be adhered to (*PCFFA I*).

BOR issued a revised draft on April 4, 2000, to which the Technical Review Team immediately responded, again objecting to the proposed flow levels, and again urging BOR to use the Hardy Phase I recommendations. BOR turned to Dr. Hardy who issued a set of flow recommendations on April 12, 2000 – and then, after conferring with the Technical Review Team concerning their critique of those recommendations, issued a revised set of flow recommendations on April 14, 2000 (*PCFFA I*).

On April 26, 2000, BOR issued its final 2000 KPOP, with flow recommendations that were not only lower than the original Phase I recommendations, but also lower than Hardy’s April 14, 2000 recommendations. Delivery to the Klamath Project was in full, while flow from Iron Gate Dam was about 30% lower than it had been for 1999 (see table 3.10 above).

But what about consultation with NMFS with respect to the 2000 KPOP? Bottom-line, it never happened. BOR alleged that it began informal discussions with NMFS during mid-March 2000 concerning the 2000 KPOP (*PCFFA I*). By April 4, 2000, BOR had completed a draft BA for the
2000 KPOP, but they never released the draft, and they never completed a final BA for the 2000 KPOP (*PCFFA I*).

On April 4, 2000, NMFS sent a letter to BOR reminding them that their 1999 BO expired on March 31, 2000 and telling them to request formal consultation for the 2000 KPOP (U.S. NMFS 2002). On April 7, 2000, BOR responded to the letter from NMFS, saying that it was consulting on the long-range operations rather than on the 2000 KPOP, and that they hoped to have a BA by June 16, 2000 and to receive a BO by August 25, 2000. BOR made no mention of any plan to consult with NMFS about the 2000 KPOP (*PCFFA I*).

Enter the litigants. On May 31, 2000, the collaboration of Earthjustice + PCFFA + ONRC + IFR initiated a key event when they joined with national-level Sierra Club and The Wilderness Society plus three local environmental organizations to file a complaint of violation of NEPA, the Wild and Scenic Rivers Act, and the Reclamation Act against BOR (*PCFFA I*). On June 20, 2000, the Court denied those three claims. Shortly thereafter, the plaintiffs filed an amended complaint of violation of ESA by BOR, alleging that BOR failed to consult with NMFS concerning the impact of the Klamath Project 2000 Operations Plan as required by ESA and seeking an order to stop BOR from sending “irrigation deliveries from the Klamath Project whenever Klamath River flows at Iron Gate Dam drop below the minimum flows recommended in Dr. Hardy’s Phase I report until NMFS issues a legally valid biological opinion and the Bureau of Reclamations [sic] complies with the terms of it” (*PCFFA I* 138 F. Supp. 2d at 1240). Shortly thereafter, and not unexpectedly, given the prospect of minimum flows precluding diversion to the Project, the Klamath Water Users Association intervened as defendant and submitted a brief as amicus curiae (*PCFFA I*).

With the court case simmering beneath, and still without having received the Hardy Phase II report, BOR took steps to resume the consultation on the long-range project operations. In September 2000, BOR took the obligatory first step, requesting a list of protected species from NMFS. On November 22, 2000, BOR released a draft BA for review.

And forty days later the year 2000 came to a close, with no consultation ever having been done for the 2000 KPOP, with a court case pending, with the Hardy Phase II report still not completed, and with only a draft BA released with respect to BOR’s long-term operations.

**In summary, then**, in my opinion, the listing of the coho was the straw that broke the camel’s back and threw BOR into disarray. The listings of *both* the suckers *and* the coho effectively squeezed BOR from both ends, requiring them *both* to maintain minimum lake levels for suckers *as well as to*
maintain minimum water flows for coho salmon – and there could be the real possibility that maintaining both could leave little for irrigation withdrawals. In addition, BOR was made responsible for the well-being of a species with which they had no prior experience or knowledge. This lack of data was effectively camouflaged by the serendipity of above average water years in 1998 and 1999, deferring to the future the inevitable dilemma of what to do in a drier year. That inevitable dilemma came crashing home in 2000 with the prospect of a below average water year. While BOR had invested in 1998 in an effort to acquire data, ultimately, in crafting the 2000 KPOP, BOR chose not to use that data, coming up with flow recommendations that, again in my opinion, probably enraged everybody but the Project water users. In addition, BOR implemented the 2000 KPOP without having consulted with NMFS with respect to the 2000 KPOP. The ever-vigilant collaboration of Earthjustice + PCFFA + ONRC immediately jumped into the fray, taking BOR to court ultimately for failure to follow the ESA rules with respect to the 2000 KPOP.

And with respect to the Project water users, I can only imagine that they were attentive to the possibility for reduced Project water deliveries implicit within the ramifications of the coho listing and when that possibility inched closer to reality with the PCFFA v. BOR case, they were quick to intervene as defendants alongside BOR.

As 2000 drew to a close, everyone on the coho track was holding their breath waiting for the decision in a case that would determine their fates.

### 3.4 Summary

From 1970 through 2000, over a dark undercurrent of drought and die-offs, the world turned upside down for BOR and for the Project water users.

**With respect to BOR**, the Bureau went from master of its own fate, metaphorically dancing with abandon in a field of flowers, to servant of many masters, metaphorically tiptoeing through a minefield with an ever-growing target on its back.

How did this happen? Tribal rights that could no longer be ignored, and potentially trumped Project water rights. Environmental laws that had rules about what the Bureau could and could not do. Environmental litigation that punished the Bureau for not following those rules to the letter. Environmental litigation that focused on restoring upstream salmon habitat. Water rights that had to be competed for in the Klamath Basin Adjudication. Solicitors’ Opinions that codified the world turned upside down, laying out an order of rights (from senior to junior) to the waters in the drainages affected by the Klamath Project and the obligations of BOR with respect to those rights (adjudicated or not). The path for BOR became very tight indeed.
To navigate this tight path, as first the suckers and then the coho were listed under ESA, BOR submitted their action plans to FWS and NMFS respectively for assessment and incorporated into their plans whatever alternatives were suggested if the consulting agency determined that the action plans would jeopardize the species.

And then they ducked – in expectation of incoming litigation, from environmental litigants who accused BOR of doing ESA wrong, and from Project water users who accused BOR of doing them wrong in doing ESA. Very much damned if they did and damned if they didn’t.

**With respect to the Project water users,** these farmers and ranchers went from first in line for water to almost last in line for water, and the potential for reduced and even nonexistent water deliveries loomed larger and larger.

How did this happen? Litigation that ruled that Project water users did not have third-party beneficiary rights to the underlying contract between BOR and PacifiCorp. Solicitors’ Opinions that codified that ESA obligations and tribal water rights trumped Project water rights and that BOR must abide by that order of priority. BOR annual operations plans that “shifted the risk of a dry year from the fish and the tribes to the irrigators and the refuges” (Benson 2002, 220).

The Project water users used litigation to try to protect their way of life from the perceived threat – litigation against BOR whenever BOR did something that did not meet their expectation of full water delivery from BOR, and litigation in which they joined with BOR against environmental organizations that threatened their expectation of full water delivery.

Even though they received their water deliveries during this period, as the year 2000 drew to a close, the possibility of reduced water delivery loomed larger and larger, delayed only by the serendipity of above average water years.

4. **That Moment before Everything Exploded**

I want to take a moment here to paint a picture of how things stood as the year 2000 drew to a close, when everything had changed for everyone. From the perspective of the tribes, they were fighting for their tribal rights. From the perspective of the fishing men and women, they were fighting to save their way of life. From the perspective of the environmental activists, they were fighting to save the environment. The more successful they all were, the more constrained were the options available to BOR with respect to the Klamath Project. And the more constrained was BOR, the more vulnerable became the position of the Project water users in relationship to BOR. Project farmers and ranchers had lived for a very long time taking for granted that they would always receive
water in full without fail, come rain or come drought. Now their world was unexpectedly turned upside down and the taken-for-granted became the not-sure-at-all. There was an actual possibility that water deliveries to the Project could be reduced or even non-existent. Project water users drew the boundaries more and more tightly around themselves, ready to do battle to preserve their way of life against what they experienced as a direct and undeserved attack against them. Losses in court notwithstanding, the Project water users still believed that they had the superior right to water, and that other rights were secondary to their right (PCFFA I).

Thanks to the serendipity of above average water years from 1995 through 1999, the possibility of reduced water delivery did not become reality for the Project water users during those years. And even in the below average water year of 2000, the Project received full water deliveries.

When, however, BOR projected that 2001 could be the driest water year in history in the Upper Basin, there might have been some small hope among the Project water users that BOR would deliver water as they had in the droughts of prior years. But when PCFFA and the rest of the environmental collaboration filed suit against BOR in 2000, there loomed the very real possibility that the decision in that case could actually result in reduced water deliveries to the Project – deliveries reduced in the midst of the projected worst drought in the history of the Upper Basin. The Project water users saw the repercussions of such a decision as a cataclysmic threat to their way of life. The explosive potential of this case can hardly be overstated.

2000 came to a close with Project water users holding their breath, nervously monitoring the snow pack in the Cascades, nervously awaiting the decision of the court, and poised to do battle to preserve their way of life.
Summary and Discussion of Chapter Nine

Summary

The period from 1970 through 2000 was a time of the breakdown of everything that had been taken for granted. The world was turned upside down.

Rather than just summarize what I’ve written in Part Seven, I would rather take a look at it all from a different perspective: in terms of the key events – events which changed the taken-for-granted – and in terms of those who fought for the change and those who had change thrust upon them.47

**Key Event: 1970.** Earth Day drew a participation of at least twenty million across the United States – and everything was changed. Environmentalism emerged as a mass social movement. Government launched an avalanche of environmental legislation in which – *world turned upside down* – environmental considerations trumped market considerations. Environmental organizations *fought for change*, taking up the hammer of litigation to force adherence to the environmental laws. *Change was thrust upon* the market and upon government agencies – follow the rules or get sued.

**Key Event: 1975.** Raymond Mattz and the Yurok Tribe started *fighting for recognition of their* fishing rights in 1969. The court decision in 1975 declared that the Klamath River Reservation was Indian country – and for the first time since January 1, 1934 – *world turned upside down* – Indians were now legally able to fish with gill nets and for commercial as well as subsistence and ceremonial purposes in the lower twenty miles of the Klamath River. And the State of California – *change thrust upon them* – could not regulate Indian fishing on the reservation.

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47 One might reasonably ask why I have not dealt with mining and timber during the Breakdown period. My thought was that the world had already turned upside down for them during the Expansion period and the Breakdown period was simply a continuation of the change thrust upon them during the Expansion period. For the logging industry, the rise in environmental awareness and environmental legislation resulted in even more regulation with respect to forestry practices and environmental protection, and the exhaustion of timber resources resulted in harvests dropping below the highs of the Expansion period. For the mining industry, as with logging, the rise in environmental awareness and environmental legislation resulted in regulations that decreased commercial placer mining. Mining in general, while still going through its boom and bust cycles, never achieved the height of the booms that had characterized its earlier days. Interestingly, however – and very much in the spirit of mining as survival that characterized Siskiyou county – there was an upsurge of interest in small-scale suction dredging – machinery that one person could use to dredge for gold. Statewide suction dredge resident permits jumped to 12,763 in 1980 and 11,436 in 1981, then dwindled down to 2,727 by 2000 (California DFG 1979, 1989, 1999, 2008).
Key Event: 1977. Environmental organizations played a significant role in fighting for the passage in 1976 of the Fishery Conservation and Management Act. When the Act became effective on March 1, 1977, where government policy had heretofore been aimed at supporting market considerations, now – world turned upside down – both federal and state governments jumped squarely and broadly into the business of policing fisheries (McEvoy 1986). Change was thrust upon the ocean salmon fishing community – and what had once been an open profession with few regulations and abundant freedom changed to an industry hobbled by regulations, politics, scarcity, economic stress, and gear conflicts (Gilden 1999).

Key Event: 1979. In 1973, five Klamath Indians, represented by NARF, started fighting for their right to hunt, trap, and fish within their ancestral Klamath Reservation, free of state fish and game regulations. In 1974, the decision in Kimball I affirmed those rights, and in 1979, the decision in Kimball II not only affirmed the decision in Kimball I, but also set efforts in motion which culminated in the 1981 Consent Decree which – world turned upside down – mandated that all federal agencies – change thrust upon them – had the legal responsibility to consult with the Klamath Tribes about the management of public lands lying within the former Klamath Reservation.

Key Event: 1979. In 1975, the United States filed suit versus some six hundred individual owners of land within the former Klamath Reservation, seeking a declaration of water rights within that area. The Klamath Tribes intervened as plaintiffs and the State of Oregon as defendant. In 1979, the decision in Adair I took the decisions in Kimball I and II as foundational and ruled – world turned upside down – that the Klamath Tribes had time immemorial instream nonconsumptive water rights attached to their hunting and fishing rights in their former reservation. Change was thrust upon the Klamath Basin Adjudication, upon federal agencies in general, upon BOR in specific, and upon the Project water users serviced by BOR – not only because nonconsumptive water rights had standing in a world defined by consumptive water rights, but also because the priority date of those water rights trumped the water rights of those who had assumed they would always be first in line.

Key Event: 1986. Thanks to the 1954 Termination Act, the Klamath Tribes suffered the loss of ancestral lands, the loss of federal recognition, the loss of tribal identity, the loss of tribal pride. In 1980, the Klamath Tribes began to fight for restoration of federal recognition. In 1986, – world turned upside down – the Klamath Indian Tribe Restoration Act restored the Klamath Tribes to federal recognition, restored their government-to-government relationship with the Federal government, restored all rights and privileges that had been terminated by the 1954 Termination Act, recognized the Tribes’ current Constitution and Bylaws, provided for the adoption of a new constitution, reaffirmed hunting, fishing, trapping, gathering, and water rights of the tribes and their members,
provided for the transfer of land to be held in trust for the tribes, and required that the Interior Department and the Tribes should establish a plan for the economic self-sufficiency of the Tribes (Public Law 99-398). Change was thrust upon all federal agencies in the Upper Basin whose actions now had to take into consideration their trust responsibilities to the Klamath Tribes.

**Key Event: 1988.** In 1963, Jessie Short and other Indians of the Hoopa Valley Reservation who were not members of the Hoopa Valley Tribe filed suit in the United States Claims Court, fighting for their contention that they were entitled to their share of the revenue from the sale of the timber of the Hoopa Valley Reservation and that the government was wrong in distributing those funds only to the Hoopa Valley Tribe (*Short Original*). The anything but *Short* litigation track oozed forward without resolution, until, in 1988, change was thrust upon all the Indians of the Reservation by the United States Congress which passed the Hoopa Yurok Settlement Act. The Act – world turned upside down – partitioned the original reservation into the Hoopa Valley Reservation and the Yurok Reservation and set up settlement options that forced the Indians of the reservation to decide whether to enroll in one of the two tribes or to cash out. While the Hoopa Valley Tribe and the Yurok Tribe now each had their own reservations, had their own federally-recognized constitutions, had vested property rights, had vested federally-reserved fishing rights, and regulated their own tribal fisheries, the Karuk Tribe got nothing.

**Key Event: 1988.** The Klamath Tribes were continuously fighting for the well-being of the sucker populations in the face of precipitous declines and die-offs. In 1988, USFWS listed the Lost River (*c’waam*) and shortnose (*qapdo*) suckers as endangered species under the ESA. The world turned upside down as change was thrust upon every federal agency in the Upper Basin – including, but not limited to, BOR about the Klamath Project, the Forest Service about the National Forests throughout the Basin, and FERC about the renewal of the license for all the dams on the Klamath River – because they would now have to evaluate whether the actions they wanted to do would jeopardize the suckers, and would have to change their actions if it was determined that there would be jeopardy. In addition, the potential for the world being turned upside was thrust upon the Project water users, because whatever changes the sucker listing might impose upon BOR in its management of the Klamath Project could very well then directly impact water deliveries to the Project water users – and indeed would do so in the next key event.

**Key Event: 1991.** In 1991, in its unrelenting fight for the environment, ONRC filed a complaint of violation of ESA against BOR for failure to consult with FWS with respect to the impact on the suckers of BOR’s proposed 1991 actions in managing the Klamath Project. The case went on seemingly forever as ONRC continuously countered with amended complaints, only ending in 1995
with a dismissal of all remaining complaints. For the Project water users, the potential for the world being turned upside down that the listing of the suckers in 1988 created was made reality by the filing of ONRC v. BOR in 1991. The Project water users – change thrust upon them – intervened as defendants alongside BOR, claiming that threatened restrictions to the water supply in the Klamath Project would severely impact the contracts between the water users and BOR. Whatever the outcome of the case, gone for the Project water users was the illusion that water delivery was a given; from now on, they would need to be ever vigilant against any threat they perceived to their way of life from reduced or even non-existent water deliveries.

**Key Event: 1993.** Both the Yurok Tribe and the Hoopa Valley Tribe had been fighting for their fishing rights for years. While the 1975 Mattz decision and the 1988 Hoopa Yurok Settlement Act established those rights and required federal agencies to honor those rights, PFMC precluded their actually being able to exercise those rights because PFMC made the tribes the scapegoat for trying to achieve the goals for salmon spawning escapement. In 1993, the Solicitor of the Interior Department issued an Opinion – world turned upside down – that established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the tribes receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups. Change was thrust upon both PFMC who had to completely reconfigure their allocations and the ocean salmon community who not only had to share responsibility for the spawning escapement and to ‘make do’ with only 50% of the allowable harvest, but also had to accept that the door was closed to litigation fighting the regulations.

**Key Event: 1994.** When the key event of the 1993 Solicitor’s Opinion closed the door on fighting PFMC’s regulations, PCFFA made two major changes in their strategy: (1) they joined forces with the tribes to restore salmon habitat in the Klamath watershed; and (2) they joined what became a powerful collaboration of ONRC + IFR + the Earthjustice Legal Defense Fund to fight for the restoration of the upstream salmon spawning and rearing habitat – and as such for the preservation of the way of life of the ocean salmon fishing community. In 1994, the collaboration filed the first in what became a long line of unrelenting lawsuits. The world turned upside down for anybody whose actions could be construed as adversely impacting upstream salmon spawning and rearing habitat – including BOR and thus by extension the Project water users. In my opinion, it did not matter who won, because – change thrust upon them – mindsets were changed and the habitat was paid attention to, whether they wanted to do so or not.

**Key Event: 1994.** In 1991, the United States filed a suit against OWRD, seeking to prohibit Oregon from requiring the Federal government to file claims in the Klamath Basin Adjudication.
The Klamath Tribes intervened as plaintiffs. In 1994, the final decision ruled that both the United States and the Klamath Tribes had to file the claims. *The world was turned upside down as change was thrust upon* both BOR who now had to compete for quantification of water rights they had heretofore taken for granted, and the Klamath Tribes who now had to compete for the quantification of water rights which had been recognized in the key event of 1979, but still languished unfulfilled. Both BOR and the Klamath Tribes participated in the ADR Process in the Adjudication, and the Tribes worked to negotiate agreements with other claimants, including the Project water users.

**Key Event: 1995.** Against a background of environmental organizations *fighting in court for* adherence to ESA and the other environmental laws and the Klamath Tribes *fighting for recognition of* their water rights, in 1995, the Regional Solicitor of the Interior Department released an Opinion which laid out for BOR an order of water rights (from senior to junior) to the waters in the drainages affected by the Klamath Project and the obligations of BOR with respect to those rights (adjudicated or not). While this Opinion codified the rules under which BOR had been operating for a number of years, *the world was turned upside down as change was thrust upon* the Project water users who were demoted from their long taken-for-granted first in line to a mere third or fourth in line with prospects of only getting left-overs or even nothing at all. While the actual clout of the tribal rights was muted by the lack of completion of the Klamath Basin Adjudication, the actual clout of the ESA was real and powerful.

**Key Event: 1997.** In 1997, BOR issued a KPOP that – *world turned upside down* – made it clear that a drier-than-expected water year could result in reduced deliveries for irrigation and the refuges. *Change was thrust upon* the Project water users as the risk of a dry year was shifted from fish and tribes to irrigators and refuges.

**Key Event: 1997.** In 1995, environmental organizations filed suit, *fighting for* the listing of 6 coho salmon populations under ESA. In 1997, the Southern Oregon/Northern California Coast coho was listed as threatened – and *the world turned upside down* for BOR and thus for the Project water users. The *change thrust upon* BOR was like the straw that broke the camel’s back, squeezing BOR from both ends, making them responsible for maintaining lake levels for suckers as well as for maintaining minimum water flows for coho salmon – which meant that there was, even more so than before, a real possibility that maintaining both could leave little if anything for the Project water users.

**Key Event: 1998.** As *the world turned upside down* for the Project water users, they took up litigation to *fight against* what they increasingly experienced as a direct and undeserved attack against them. They still believed that they had the superior right to water, and that other rights were
secondary to their right. In response to negotiations between PacifiCorp and BOR with respect to the 1997 KPOP, the Project water users filed suit against BOR and PacifiCorp, alleging a claim for breach of the 1956 contract based on their third party beneficiary status. The environmental collaboration as well as the Yurok Tribe intervened as defendants. In 1998, the decision in *KWUA v. Patterson* I ruled that the Project water users were not third party beneficiaries to the underlying contract between PacifiCorp and BOR, and affirmed that their rights to water in the basin were subservient to senior tribal water rights and to legislation such as the ESA.

**Key Event: 2000.** Looking back over the period from 1970 through 2000, more often than not the tribes and the environmental organizations were fighting for change – as was the ocean salmon fishing community after rebounding from having change thrust upon them. And more often than not, change was thrust upon federal agencies in general, upon BOR in specific, and upon the Project water users. For the Project water users, from 1979 on, their world turned upside down with increasing frequency, as the insulation that BOR had provided since the first days of the Project was shattered, and the taken-for-granted became the not-sure-at-all. Thanks to the serendipity of above average water years from 1995 through 1999, the possibility of reduced water delivery did not become reality for the Project water users during those years. And even in the below average water year of 2000, the Project received full water deliveries.

In 2000, when the collaboration of environmental organizations and the ocean salmon fishing community, coupled with the Klamath Tribes, filed suit against BOR, coupled with the Project water users, all of the changes wrought over thirty years came to a head. I keep thinking about the *PCFFA v. BOR* case as almost a mythic confrontation between those who had been fighting for their ways of life by fighting for change and those who were fighting for their way of life by fighting against the change that was being thrust upon them. Add to this confrontation the specter of 2001 being the driest water year in history in the Upper Basin, and the Breakdown period came to a close in 2000 with everyone holding their breath, nervously monitoring the snow pack in the Cascades, nervously awaiting the decision of the court, and poised to do battle to preserve their ways of life.

**Discussion**

It is time to take stock of the well-being of the Indian and non-Indian ways of life and of the watershed during the period 1970-2000. Please take a moment to look back at figure 6.1, to review my subjective visual depiction of the well-being of these three players during this period.

**With respect to the watershed,** even though during this period more and more people were paying attention to the environment (whether by concern or by force), the well-being of the
watershed slid even further down the slope into degradation that exceeded the capacity of the environment to compensate for it – and “the bill” for environmental degradation was delivered to all ways of life – Indian and non-Indian alike – throughout the Basin, who now had to “pay up.”

**With respect to the Indian ways of life,** three out of four of the tribes won recognition of their rights and moved from a position of powerlessness to a position of actual clout. The Yurok and the Hoopa Valley Tribe gained their own reservations, gained vested property rights, had their federally reserved fishing rights recognized, and were apportioned 50% of the allowable salmon harvest. The Klamath Tribes successfully restored their federal recognition, won recognition of their tribal rights to hunt, fish, trap and gather within their former reservation free of state regulation, won recognition of water rights attached to their fishing rights, won monetary recognition of mistreatment by the Federal government from the Treaty of 1864 on. The Karuk, unfortunately, were completely unsuccessful in their fight for their tribal rights. And all four of the tribes languished at a level of poverty that fell far below that of the nation, bereft of adequate infrastructure, employment, health care, social services, and education. While many things had improved, many things also stayed the same, which is why I characterized the well-being of the Indian ways of life during this period as a net flat-line, no better, no worse than the preceding period.

**With respect to the non-Indian ways of life,** while the mining and timber industries continued to feel the sting that had begun during the prior period, of the repercussions of environmental degradation in the form of decreased harvests and increased regulations, the bill came home to ocean salmon fishing and to Project farming and ranching. Ocean salmon fishing went from fishing to their fill with complete freedom to being hobbled by regulations and crippled by harvests reduced down to zero. While Project farming and ranching still received their water deliveries from BOR during this period, the illusion that BOR had created of first in line, taken-for-granted water deliveries, come rain or come drought, was shattered and the specter of the impact of possibly reduced and even non-existent water deliveries on their way of life increasingly haunted the Project water users as the period drew to a close amidst expectations of the worst drought in the history of the Upper Basin.

**In summary, then,** during the period from 1970 through 2000, the well-being of the watershed slid down the slope of degradation to the point where all ways of life – Indian and non-Indian alike – had to pay the price, the well-being of the Indian ways of life did not improve even with victories recognizing their rights, and the well-being of the non-Indian ways of life plummeted precipitously as the bill for environmental degradation exacted its toll.
Summary of Part One

In the health care analogue that structures this saga, in Part One, I have presented, in the role of the person who is not well, a history of the Klamath watershed, from historic times of pristine environmental well-being to the current times of environmental degradation. I started with geography to give a sense of the place, especially historically. I moved to talking about the tribal peoples who lived in the basin prior to the incursion of non-Indians in the early 19th century. Then I took a lengthy trip through the years from the arrival of non-Indians in the basin up through the year 2000, noting those happenings which impacted both the environment and the peoples who lived in the environment.

Now it is time to pull the pieces together in a picture as the year 2000 drew to a close of the status of the ecosystem and the people whose ways of life are indissolubly intertwined with the ecosystem and therefore per force with each other.

But before I do that, I want to take a moment to address what may be a nagging question for some – why so much history? On one hand, when I began looking at the history, I had no idea how rich and complex a lode I would be mining. What I ultimately wrote became the only way to do justice as best I could to that wealth.

On the other hand, in the very first words of this journey, I took the stance with respect to environmental conflict that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource. And I said that when multiple ways of life are dependent upon the same resource – and that resource is threatened – and all wish to sustain their ways of life – then the manner in which they all relate to the resource and to each other must be transformed, such that both the resource is restored and the ways of life are sustained. In other words, it is a situation of conflict transformation, rather than of conflict resolution.

In the Klamath watershed, multiple ways of life have been forged in relationship with the Klamath ecosystem. When conflict erupted in 2001, it was about far more than rules, rights, or interests. It was about a clash of ways of life, each of whom was rooted in a long history filled with pride, passion, and pain, with wins and losses, with joy and fear. It is that history that I wanted to present as best I could, because it is that history that must be recognized and reconciled before the
Klamath ecosystem can be restored and the ways of life indissolubly linked to it and each other can be sustained.

So, back to my picture. I am going to use the graphic I established earlier in the chapter as my means for drawing this picture – and I will replicate that graphic here for the sake of easy review.

And just to make sure we are all on the same page with respect to this graphic, I will bring forward what I said when I introduced the graphic earlier. In this graphic, I created a completely subjective visual depiction of the status of the well-being of the Indian and non-Indian ways of life and of the watershed from the time of the Gold Rush to the present. The notion of ‘well-being,’ the character of the lines, and the character of the relationship among the lines are completely subjective. I understand that probably someone could contest every feature of the visual depiction, but my purpose is not ‘scientific accuracy,’ but rather to give a sense of things over time.

There are three ‘players,’ if you will, in my visual depiction: the ways of life of the tribes in the watershed; the ways of life of everyone other than the tribes who have entered the watershed and made ways of life for themselves in the watershed – which for short and in avoidance of all kinds of minefields, I have called ‘non-Indian;’ and the watershed itself. The watershed itself is a player because all the ways of life are recursively linked to the watershed, meaning that the ways of life
within the watershed impact the well-being of the watershed and the watershed impacts the well-being of the ways of life.

Prior to the incursion of non-Indians into the Klamath watershed, there were many tribes that lived in the watershed. While each tribe had unique cultural, economic, political, and spiritual systems, all the systems of all the tribes were grounded in the value-orientation of harmony-with-nature (Kluckhohn and Strodtbeck 1961). The spiritual beliefs of each tribe articulated, affirmed, and continuously reminded them of the ineluctable interdependence between themselves and their environment. All actively manipulated their environment in order to enhance its stability and productivity. Each of the tribes lived well within the carrying capacity of its respective territory, such that both they and their environments were sustained for millennia (Bearss 1982a; Beckman 1998a; Benzinger et al. 1995; McEvoy 1986; Most 2006; NRC 2004; Norton 1979). In essence, then, awareness of and adherence to the recursivity of the relationship between themselves and the Klamath watershed were central to the Indian ways of life – and both the tribes and the watershed flourished together for millennia.

With the Gold Rush, there was a brutal collision between an indigenous way of life that sought to make a life in harmony with nature and the way of life of the American invaders that sought to make a living by conquering nature (McEvoy 1986; Blake, Blake, and Kittredge 2000; Most 2006). I have looked at the history of the Klamath watershed as the playing out of the consequences of that brutal collision on both the ways of life in the Klamath watershed as well as on the Klamath watershed itself.

1. The Well-being of the Watershed from 1848 through 2000

During the Gold Rush Period (1848-1855), the watershed – in particular the Lower Basin of the watershed, where the gold was found – was seriously degraded by the effects of the wanton resource extraction and manipulation by the non-Indian ways of life. Land, river, habitat, flora, and fauna were degraded by mining that demolished land, diverted rivers, and contaminated both with mercury, by logging that was responsible for deforestation and erosion that contaminated the rivers with sediment, by farming and ranching that stripped land, drained wetlands, diverted and dammed rivers.

During the Consolidation Period (1856-1899), as resource capitalism took root, as commerce expanded, as towns grew, as infrastructure expanded, the watershed slid even further down the slope of degradation. While the Indian ways of life experienced the degradation directly because they lived
in interdependence with the watershed, the non-Indian ways of life did not experience the
degradation directly because they saw the resources of the watershed as something to be used and the
capacity of the watershed to offer up its resources as limitless. What they did not see, however, was
that their ways of life were indissolubly linked to the well-being of the watershed, that the ability of
the environment to compensate for the extraction and manipulation of its resources was not
limitless, and that the degradation they wrought upon the watershed was being totted up on a bill
that would come due when the extraction and manipulation exceeded the capacity of the
environment to compensate. During this period, however, life was grand and the bill was nowhere in
sight.

During the Expansion Period (1900-1969), the more that resource capitalism recursively
fueled and fed upon technological and infrastructural improvements, the more the well-being of the
environment slid down the slope of degradation – beyond the capacity of the environment to
compensate for the degradation. And while the Indian ways of life continued to experience this
degradation directly because they lived in interdependence with the watershed, for the first time non-
Indian ways of life began to experience the repercussions of the environmental degradation – the bill,
hidden through the last period, began to become due during this period. Interestingly, though, while
the timber and the fishing industries were negatively impacted, the connection of this negative impact
to the environmental degradation was not recognized by these industries. For the timber industry, it
was regulations that they now had to deal with – without recognizing that their forestry practices had
contributed to the degradation which in turn prompted the regulations to alter their forestry
practices. For the fishing industry, commercial and recreational sectors threw blame back and forth
for overfishing – without recognizing that environmental degradation also contributed significantly
to the declines in fish populations. There were tiny voices in the timber and fishing industries who
called into question the prevailing assumption that the environment was boundlessly malleable, but
they were generally drowned out by the call of profit. It was environmental activists outside the
watershed who would recognize environmental degradation and who, by the end of this period, were
gearing up to fight for the well-being of the watershed.

During the Breakdown Period (1970-2000), even though during this period more and more
people were paying attention to the environment (whether by concern or by force), the well-being of
the watershed slid even further down the slope into degradation that far exceeded the capacity of the
environment to compensate for it – and “the bill” for environmental degradation was delivered to all
ways of life – Indian and non-Indian alike – throughout the Basin, who now had to “pay up.”
2. The Well-being of the Indian Ways of Life from 1848 through 2000

During the Gold Rush Period (1848-1855), devastation was wreaked upon the tribes of the Klamath watershed. The invaders experienced the Indians as threats to their way of life and sought to exterminate them. The Indians were decimated by disease, massacre, murder, slavery, and either degradation or outright loss of their food resources.

During the Consolidation Period (1856-1899), their numbers albeit drastically reduced, the Indian tribes put the brakes onto their plummet to potential extinction and fought to survive and to preserve their ways of life through various degrees of resistance and of accommodation in the equation of survival. Tribes rose in resistance to policies and actions by both governments and citizens that ranged from oppressive to murderous. By a mind-boggling series of acts, rulings, orders, and treaties, peace of a sort was achieved, and most of the tribes managed to occupy portions of their ancestral territory – but this did not absolve them from seemingly never-ending attempts by settlers to wrest these lands from them. Tribes also learned how to accommodate the newcomers, either by developing their own businesses that serviced the settlers or by getting non-Indian companies to only hire Indians. At the same time, while the tribes continued to hunt, fish, and gather for their sustenance, they had to contend with either degradation of, denial of access to, or outright loss of their food resources.

During the Expansion Period (1900-1969), the Indian ways of life struggled to not lose more than they did, and planted seeds for the improvement of their well-being that held promise of blooming in the next period. I find myself thinking of the tribes during this period as, in general, continually having the rug pulled out from under their feet. Whatever steps they tried to take to improve their lot, to protect and promote their identities, something – laws, termination, regulations, rules, litigation, legislation – seemed to get in their way. But they did not go away, and began to arm themselves with tactics inspired by the activism of the 1960s – litigation, legislation, and even physical confrontation – that they would use in the 1970s and beyond.

During the Breakdown Period (1970-2000), three out of four of the tribes won recognition of their rights and moved from a position of powerlessness to a position of actual clout. The Yurok and the Hoopa Valley Tribe gained their own reservations, gained vested property rights, had their federally reserved fishing rights recognized, and were apportioned 50% of the allowable salmon harvest. The Klamath Tribes successfully restored their federal recognition, won recognition of their tribal rights to hunt, fish, trap and gather within their former reservation free of state regulation, won recognition of water rights attached to their fishing rights, and won monetary recognition of
mistreatment by the Federal government from the Treaty of 1864 on. The Karuk, unfortunately, were completely unsuccessful in their fight for their tribal rights. And all four of the tribes languished at a level of poverty that fell far below that of the nation, bereft of adequate infrastructure, employment, health care, social services, and education. While many things had improved, many things also stayed the same, which is why I characterized the well-being of the Indian ways of life during this period as a net flat-line, no better, no worse than the preceding period.

3. The Well-being of the Non-Indian Ways of Life from 1848 through 2000

   During the Gold Rush Period (1848-1855), the Americans who invaded the watershed in their lust for gold claimed the land in the watershed as theirs by right of Manifest Destiny, which proclaimed that it was America’s destiny to alter land, water, mountains, geography itself, in order to bring progress, democracy, and Christianity to the American continent. Nature was to be conquered in the service of profit. Natural resources were there to be used – either to be extracted and sold at a profit, or to be manipulated to produce products to be sold at a profit. No consideration was given to the impact of the resource extraction – mining, logging – and resource manipulation – ranching, farming – on the watershed.

   During the Consolidation Period (1856-1899), the non-Indian newcomers consolidated their conquest of the lands that had been claimed during the Gold Rush, by establishing their way of life as the dominant way of life and by extinguishing the threat to this way of life that the Indians posed. The more the “Indian problem” was “taken care of,” and, as such, the more safe the settlers felt, the more settlers came to the Klamath, and the deeper and the more extensive were the roots they sank into their new lives. Families were started; homes were built; towns were founded; railroads were laid; roads were built; government was instituted; identities were constructed wrapped around bonds to family, home, land, way of life. From a pre-Gold Rush population count of zero, by 1900, the census count of the six counties within which the Klamath watershed lies totaled 59,903.48

   Ways of life were based upon ways of making a living. Commerce changed from get-rich-quick to resource capitalism. Livings were made by extracting and manipulating the natural resources of the Klamath watershed. Mining waxed and waned, as it focused on the harder-to-get placer deposits. Logging and ranching expanded, moving from food for the miners to commercial enterprises. An

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48 Klamath County, OR  3,970; Modoc County, CA  5,076; Siskiyou County, CA  16,962; Trinity County, CA  4,383; Humboldt County, CA  27,104; and Del Norte County, CA  2,408, for a total of 59,903 (U.S. Bureau of the Census 1901).
in-stream commercial fishing industry was begun. And local people funded the beginning stages of their own hydroelectric infrastructure.

**During the Expansion Period (1900-1969),** while in general the well-being of non-Indian ways of life soared from the foundation consolidated during the prior period, it did not do so uniformly for all non-Indian ways of life at all times – hence the bit of a down-turn in the graphic. Infrastructure expanded exponentially within the Basin, providing hydroelectric power and roads and railroads that fueled the concomitant expansion of resource capitalism. On one hand, farming and ranching communities point to generations’ worth of blood, sweat, and tears invested in the more than half a million acres that they see themselves as having turned from unproductive wilderness to productive farm and range land. On the other hand, mining, timber, and fishing communities were at the mercy of the boom-and-bust cycles of their respective industries. When it was boom, life was exceptionally grand and bust was a forgotten memory. When it was bust, life wasn’t as grand.

Mining companies folded, and individual miners looked to small-scale placer mining for survival. As the timber resource was depleted or as timber demand dried up, timber companies shrunk or folded – or had to change their forestry practices in the face of regulations to curtail environmental degradation. Those whose ways of life were wrapped around everything that was involved in felling trees, moving them, milling them, and getting them to market had to follow the work wherever boom or bust took them. For those for whom fishing was their way of life, fishing rose from a sleepy industry to an industrialized giant, but overfishing to the point of extinction plus habitat degradation turned boom into bust for some, as fishing in some instances was deeply curtailed or, in other instances, was downright banned.

**During the Breakdown Period (1970-2000),** while the mining and timber industries continued to feel the sting that had begun during the prior period, of the repercussions of environmental degradation in the form of decreased harvests and increased regulations, the bill came home to ocean salmon fishing and to Project farming and ranching. Ocean salmon fishing went from fishing to their fill with complete freedom to being hobbled by regulations and crippled by harvests reduced down to zero. While Project farming and ranching still received their water deliveries from BOR during this period, the illusion that BOR had created of first in line, taken-for-granted water deliveries, come rain or come drought, was shattered and the specter of the impact of possibly reduced and even non-existent water deliveries on their way of life increasingly haunted the Project water users as the period drew to a close amidst expectations of the worst drought in the history of the Upper Basin.
In summary, then, over the period from 1848 through 2000, the well-being of the watershed was seriously degraded during the Gold Rush, beginning then a decline that has continued over the next 160 plus years to the present. As the watershed slid down the slope of degradation, a bill was totting up that was initially only delivered to the Indian ways of life, remaining hidden to the non-Indian ways of life, but that over time, as the degradation increasingly exceeded the capacity of the environment to compensate for it, was delivered to all ways of life – Indian and non-Indian alike – throughout the basin, who now had to “pay up.”

The well-being of the Indian ways of life initially plummeted precipitously towards extinction, then struggled over the decades to stay afloat in the face of concerted efforts to get rid of them, one way or another. By 2000, even though three of the tribes had finally won recognition of some of their tribal rights, gaining some actual clout that could not be ignored, all still languished at a level of poverty that fell far below that of the nation, not only bereft of adequate infrastructure, employment, health care, social services, and education, but also bereft of the ability to rely upon the resources of the watershed that had sustained them for millennia because those resources had been decimated by the degradation of the watershed.

The well-being of the non-Indian ways of life rose as they conquered the lands they claimed during the Gold Rush, thrived as they consolidated their mastery of their new lands, and soared as they expanded on a foundation of technological and infrastructural improvements. Initially mindless to the repercussions of their ways of life on the Klamath ecosystem, they began to have to pay the price, first just for mining and timber, then with increasing ferocity for ocean fishing and agriculture and ranching, such that as 2000 drew to a close, all the non-Indian ways of life in the Klamath ecosystem were threatened because the resource upon which they were dependent was deeply degraded.

As the last seconds of 2000 ticked down on New Year’s Eve, the patient in my health care analogue – the Klamath ecosystem and the ways of life dependent upon the Klamath watershed – was clearly not well. The Klamath ecosystem was degraded beyond the capacity of the environment to compensate for the degradation, and all the ways of life whose identities had been forged over time in their relationship with the watershed were threatened by the degradation of the Klamath ecosystem.
PART TWO

History of Conflict Resolution in the Klamath Watershed

In the role of the history of unsuccessful first-order changes...

In the role of second-order change...
Introduction to Part Two

My goal for Part Two is not only to present a history of conflict resolution in the Klamath, but also to see whether this history reflects my expectations. I am going to construct an overarching pattern over time that I expect to obtain and then I am going to analyze the history in terms of this expectation.

Now, for an extremely important note. I constructed this expected overarching pattern before I knew what transpired after my attendance at the June 2005 Chadwick workshop at Chiloquin, OR. In other words, I constructed this pattern in foresight, not in 20/20 hindsight.

When I began mapping out this dissertation in 2006, I fully expected that Part Two of Volume Two would be primarily a history of failed first-order changes in customary conflict resolution, capped by a second-order change in the Chadwick workshops of 2004-2005, which would enable the beginning of conflict transformation in the Klamath.

From the time of the last Chadwick workshop in June 2005 on up to November 2009 when I started working on Chapter Fifteen about the period from the last Chadwick in 2005 to “The Present,” I was basically out of the loop with respect to what was happening in the Klamath.

While out of the loop, in July 2009, I constructed the overarching pattern that I expected to find as the history of conflict resolution in the Klamath watershed played out.

In November 2009, when I set out to ‘catch up’ on what had been happening since the last Chadwick in June 2005, I discovered that a lot had been happening – and was happening now, minute by minute. I discovered that the conflict in the Klamath had indeed been transformed. I also came to the conclusion that things had played out as I had expected them to. One of life’s amazing moments, I must say.¹

So, now, to construct this overarching pattern, I will first construct three frames of reference: the frame of the Rural Middle Class in the Klamath watershed; the frame of notions about social

¹ Just to confirm my methodological position, every bit of my ‘catching up’ was done archivally, in the sense of relying upon publicly available documents for everything. While I would have loved to have touched base with friends in the Klamath when I realized what was happening, I was honorbound to respect my methodological position and so relied instead upon minute by minute monitoring of news feeds on the internet.
identity interwoven with notions about the pattern of conflict from escalation through stalemate to de-escalation; and the frame of conflict transformation.

Drawing upon these three frames of reference, I will construct the ethnoconflict theory and ethnopraxis of the Klamath watershed. I will present this ethnoconflict theory and ethnopraxis as an overarching pattern of talk-boundaries-action-face-and-transformation that I expect to obtain over time in the Klamath watershed – specifically, a pattern over time of (a) how people talk about themselves and others; (b) how people construct the boundaries of social identity between Us and Them; (c) how people deal with problems and conflict; (d) the public face and the private face of each player group; and (e) how people transform the conflict.

In addition to presenting the expected pattern, I will also present an observed pattern – the World Turned Upside Down pattern – constructed in hindsight from observing the playing out of the history of conflict resolution in the Klamath.

Armed with the architecture of my expected overarching pattern, I will then look at how the history of conflict resolution in the Klamath hangs on this architecture. And I will do this in terms of two sets of tracks across a number of time periods.

In my expected overarching pattern, I will propose that there will be a transition from the default use of the tools of mainstream conflict resolution to a transformation that would use the practices of collaboration and reconciliation on a watershed-wide basis. Given that proposal, one set of tracks will be comprised of the track of the use of the tools of mainstream conflict resolution over time and the track of the use of the tools of collaboration and reconciliation over time.

A second set of tracks will be comprised of five player group tracks plus an obligato track beneath the player group tracks, in terms of changes in talk-action-boundaries-face-and-transformation over time.

I will divide the history of conflict resolution in the Klamath into the following time periods: Chapter Eleven – before 2001, Chapter Twelve – the events of 2001, Chapter Thirteen – 2002 through June 2004, Chapter Fourteen – the Chadwick workshops from July 2004 through June 2005, and Chapter Fifteen – from the Chadwick workshops to “the present.”

Finally, in Chapter Sixteen, I will look in detail at the Chadwick experience itself. I will look at the epistemology of the Chadwick process. I will look at the experience of the Chadwick process from the point of view of the participant. And finally I will look at the appropriateness of the Chadwick process to the people and the situation in the Klamath.
1. Three Frames of Reference

1.1 The Rural Middle Class in the Klamath Watershed

Recapitulation of Analysis of American Culture from Chapter Two

To begin, I want to bring forward from Chapter Two a very brief recapitulation of the results of my analysis of American culture.

Drawing upon Bellah, Putnam, Schneider and Smith, and Hummon, I configured the following classes and class characteristics:

- The **Metro Middle Class** which resides in the most dense of locations – the Metropolitan Central City and the Metropolitan Residual Urban loci, tends to be younger than the national median age, and has the lowest proportion of the population forty-five and older, which expresses paradigmatically the dominant characteristics of modern individualism, and which is the source of the construction of the *ethnoconflict theory* and *ethnopraxis* that is the basis of customary American conflict resolution practice.

- The **Rural Middle Class** which resides in the least dense of locations – the Metropolitan Residual Rural and the Nonmetropolitan Rural loci, tends to be older than the national median age, and has the highest proportion of the population forty-five and older, and which expresses paradigmatically the non-dominant characteristics of civic individualism.

- The **Micropolitan Middle Class** which resides in locations of middling density – the Nonmetropolitan Urban loci, tends to be of middling age between the Metro Middle Class and the Rural Middle Class, and whose proportion of the population forty-five and older falls between the Metro Middle Class and the Rural Middle Class, and which expresses the individualism of either the Metro Middle Class or the Rural Middle Class depending upon the history of the particular Nonmetropolitan Urban locus.

- The **Lower Class** which can reside anywhere, looks to security, to tradition, and to a wide network of relationships as authority about what should be done, and looks to survive circumstances which are uncontrollable.
• The **Working Class** which can reside anywhere, looks to security, to tradition, and to a wide network of relationships as authority about what should be done, and looks to achieve greater security in their lives.

• The **Upper Class** which can reside anywhere, looks to tradition and relationships as authority about what should be done, and looks to preserve the family wealth.

**With respect to ethnoconflict theory and ethnopraxis,** the Metro Middle Class constructs conflict as a consequence of the breaking of rules, the abrogation of contractual obligations, the infringement of individual rights, and/or differences in individual interests, and constructs conflict resolution as the application of technical expertise and rationality to create neutral technical solutions that satisfy the interests of all.

The Rural Middle Class constructs conflict as the consequence of the disruption of harmonious relationships, as a tear in the web of relationships, and conflict resolution as a mending of that tear.

And I would conjecture that the Lower Class, the Working Class, and the Upper Class, given the central role of relationships in their lives, would as well construct conflict as the consequence of the disruption of harmonious relationships, as a tear in the web of relationships, and conflict resolution as a mending of that tear.

The values of the Metro Middle Class are deferred to as inherently superior by the Rural Middle Class, the Lower Class, the Working Class, and the Upper Class, even though these classes may not embrace the values of the Metro Middle Class (Schneider and Smith 1973). By extension, then, I would posit that these classes would default to the *ethnoconflict theory* and *ethnopraxis* of the Metro Middle Class, even though this practice may not address concerns and values important to them.

The Micropolitan Middle Class will either express or default to the values of the Metro Middle Class, depending upon the history of a particular Nonmetropolitan Urban locus.

In addition, there are also non-dominant cultural groups such as tribal nations that on the one hand culturally express high-context *ethnoconflict theories* and *ethnopraxes*, but on the other hand have deliberately and strategically become skilled in the *ethnoconflict theory* and *ethnopraxis* of the Metro Middle Class in order to be able to win in the battle to improve their lot in relation to the dominant society.

**With respect to with whom and in what situations the American model might or might not be appropriate,** in Chapter Four, I asserted that the American model would be appropriate within America when everything about the situation and the people involved in the situation was in
agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based. I proposed the Metro Middle Class professional as the quintessentially appropriate disputant, and proposed situations that involved rights, rules, and/or interests that Metro Middle Class professionals could deal with by means of technical rationality and scientific expertise as candidates for quintessentially appropriate situations.

And I asserted that the American model would be inappropriate when something about the situation and the people involved in the situation was not in agreement with the ethnoconflict theory and ethnopraxis upon which the American model is based. I proposed that this ‘something’ could be that the people involved in the situation had a different ethnoconflict theory and ethnopraxis. I also proposed that it could be that, even if the people involved in the situation happened to share or default to the ethnoconflict theory and ethnopraxis upon which the American model is based, the situation was not about rights, rules, and/or interests, and so as such not appropriate for the American model. For example, threat to identity, to way of life, cannot be solved through the application of technical rationality and scientific expertise.

The 2000 Census and the Klamath Watershed

For my next step, I want to use the 2000 Census to take a look at the population of the Klamath watershed, and then, meshing what I find there with my analysis of American culture and the customary American model of conflict resolution, conjecture what I might possibly expect to see with respect to efforts at conflict resolution in the Klamath watershed.

In order to use the data of the 2000 Census, I have to reconcile the geographies that the Census pays attention to with the actual geography of the Klamath watershed. In a nutshell, the Census pays attention to boundaries such as state, county, and urban area, while the watershed ignores such boundaries with abandon. Therefore I have to craft a way of extracting Census data that allows me to cover the actual watershed geography.

I started with looking at the counties in which any portion of the Klamath watershed fell. Then I looked at whether the counties were Metropolitan, Micropolitan, or Rural. Then, if Metropolitan or Micropolitan, I identified the urban areas within the county (whose individual populations summed up to the total urban population of the county). Then I determined whether the urban area in the county fell inside or outside the Klamath watershed. Lastly, I determined which census data to use in the calculating the watershed population.
Table 10.1. Reconciliation between Census data and Klamath Watershed Geography

<table>
<thead>
<tr>
<th>Counties in Klamath Watershed</th>
<th>Urban Areas in County</th>
<th>Proportion of County in Klamath Watershed</th>
<th>Census Data to Use in “Klamath Watershed”</th>
<th>Service Urban (= urban area not in watershed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Klamath</td>
<td>Micropolitan</td>
<td>Klamath Falls Urban Cluster</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Jackson</td>
<td>Metropolitan</td>
<td>Medford Urbanized Area</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Lake</td>
<td>Micropolitan</td>
<td>Lakeview Urban Cluster</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Modoc</td>
<td>Micropolitan</td>
<td>Alturas Urban Cluster</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Siskiyou</td>
<td>Micropolitan</td>
<td>Yreka, Weed, Mt. Shasta Urban Clusters</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Del Norte</td>
<td>Micropolitan</td>
<td>Crescent City Urban Cluster</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Humboldt</td>
<td>Micropolitan</td>
<td>Eureka, Fortuna, Arcata, Rio Dell</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Trinity</td>
<td>Rural</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

In Oregon, the watershed falls in three counties. It covers almost all of Klamath County (a Micropolitan county) and includes the urban cluster of Klamath Falls. It falls in a tiny rural section of southeast Jackson County (a Metropolitan county) and excludes the urbanized area of Medford. And it falls in a tiny rural section of western Lake County (a Micropolitan county) and excludes the urban cluster of Lakeview. For the Oregon portion of the Klamath watershed, therefore, I decided to use the full County census data – both urban and rural – for Klamath County, and to use none of the census data for either Jackson or Lake counties.

In California, the watershed falls in five counties. It covers all of Siskiyou County (a Micropolitan county) and includes the urban clusters of Yreka, Weed, and Mount Shasta which cling to I-5 as it cuts north to south through the county. It covers almost all of Trinity County (a Rural county) which has no urban areas. It covers the northwest rural quadrant of Modoc County (a Micropolitan county) and excludes the urban cluster of Alturas. It covers the southern rural portion of Del Norte County (a Micropolitan county) and excludes the urban cluster of Crescent City. And it

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2 I define Service Urban Areas as urban areas that ring the Klamath watershed and that may be the source of goods and services that might not be readily available within the watershed. I identify Medford in Jackson County, OR; Redding in Shasta County, CA; Eureka, Arcata, Fortuna, and Rio Dell in Humboldt County, CA; Crescent City in Del Norte County, CA; and Alturas in Modoc County, CA as the Service Urban Areas for the Klamath watershed. The Service Urban Areas have a total population of 343,817 (U.S. Census 2000s) in 193.95 square miles (U.S. Census 2000n, 2000o), for a density of 1,773 ppsm, compared to a population of 174,802 in 23,869.36 square miles for a density of 7 ppsm for the “Klamath watershed.” The proportion of the total population of the Service Urban Areas that is 45 and older is 37.0% (U.S. Census 2000u), compared to the proportion of the “Klamath watershed.” And the median 1999 household income for the Service Urban Areas as a whole ranged from a low of $24,250 in Alturas, CA to a high of $35,280 in Medford, OR (U.S. Census 2000x), compared to the range of $27,522 to $31,537 for the “Klamath watershed.”
### Table 10.2. “Klamath Watershed” and Nation by Population, Land Area, Density, and Proportion Forty-Five and Older

**“KLAMATH WATERSHED”**

<table>
<thead>
<tr>
<th>County</th>
<th>Type</th>
<th>Population</th>
<th>Square Miles</th>
<th>Density (ppsm)</th>
<th>% 45 &amp; older</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td>Klamath</td>
<td>41,153</td>
<td>22.01</td>
<td>1,870</td>
<td>37.2</td>
</tr>
<tr>
<td></td>
<td>Micropolitan</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>Modoc</td>
<td>6,618</td>
<td>3,941.95</td>
<td>2</td>
<td>47.5</td>
</tr>
<tr>
<td></td>
<td>Micropolitan</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Siskiyou</td>
<td>28,757</td>
<td>6,273.86</td>
<td>5</td>
<td>48.7</td>
</tr>
<tr>
<td></td>
<td>Del</td>
<td>8,695</td>
<td>990.43</td>
<td>9</td>
<td>44.0</td>
</tr>
<tr>
<td></td>
<td>Norte</td>
<td>38,391</td>
<td>3,527.40</td>
<td>11</td>
<td>42.1</td>
</tr>
<tr>
<td></td>
<td>Humboldt</td>
<td>13,022</td>
<td>3,178.61</td>
<td>4</td>
<td>49.3</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>56,697</td>
<td>34.93</td>
<td>1,623</td>
<td>38.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County</th>
<th>Type</th>
<th>Population</th>
<th>Square Miles</th>
<th>Density (ppsm)</th>
<th>% 45 &amp; older</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban/Rural Proportions</td>
<td>32.4%</td>
<td>0.1%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NATION**

<table>
<thead>
<tr>
<th>Nation</th>
<th>Population</th>
<th>Square Miles</th>
<th>Density (ppsm)</th>
<th>% 45 &amp; older</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>222,360,539</td>
<td>92,507.77</td>
<td>2,404</td>
<td>33.4</td>
</tr>
</tbody>
</table>

| Urban/Rural Proportions | 79.0% | 2.6% |

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*a Source: Data adapted from U.S. Census 2000q.*

*b Source: Data adapted from U.S. Census 2000r.*

*c Source: Data adapted from U.S. Census 2000n, 2000o.*

*d Source: Data adapted from U.S. Census 2000u.*

*e Source: Data adapted from U.S. Census 2000r.*

*f Calculated by subtracting Urban Land Area from Total Land Area.*

*g Calculated by subtracting Urban Population 45 & Older from Total Population 45 & Older, then calculating Percentage.*

*h Source: Data adapted from U.S. Census 2000r.*

*i Source: Data adapted from U.S. Census 2000p.*

*j Source: Data adapted from U.S. Census 2000t.*

*k Source: Data adapted from U.S. Census 2000a, 2000b, table 10.*
### Table 10.3. “Klamath Watershed” and Nation by Intervals of 1999 Household Income and by Median 1999 Household Income

#### “KLAMATH WATERSHED”

<table>
<thead>
<tr>
<th>County</th>
<th>Less than $15,000</th>
<th>$15,000 to $34,999</th>
<th>$35,000 to $99,999</th>
<th>$100,000 and above</th>
<th>Less than $15,000</th>
<th>$15,000 to $34,999</th>
<th>$35,000 to $99,999</th>
<th>$100,000 and above</th>
<th>Less than $15,000</th>
<th>$15,000 to $34,999</th>
<th>$35,000 to $99,999</th>
<th>$100,000 and above</th>
<th>Median 1999 Household Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Klamath</td>
<td>22.7%</td>
<td>34.4%</td>
<td>38.6%</td>
<td>4.3%</td>
<td>18.4%</td>
<td>31.9%</td>
<td>43.5%</td>
<td>6.2%</td>
<td>21.3%</td>
<td>33.5%</td>
<td>40.3%</td>
<td>4.9%</td>
<td>$31,537</td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Modoc</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Siskiyou</td>
<td>26.8%</td>
<td>33.3%</td>
<td>34.4%</td>
<td>5.5%</td>
<td>24.1%</td>
<td>31.3%</td>
<td>38.8%</td>
<td>5.8%</td>
<td>25.0%</td>
<td>32.0%</td>
<td>37.3%</td>
<td>5.7%</td>
<td>$29,530</td>
</tr>
<tr>
<td>Del Norte</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Humboldt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trinity</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>20.4%</td>
<td>30.6%</td>
<td>40.9%</td>
<td>8.1%</td>
<td>20.4%</td>
<td>30.6%</td>
<td>40.9%</td>
<td>8.1%</td>
<td>$31,226</td>
</tr>
<tr>
<td>Totals</td>
<td>23.9%</td>
<td>34.1%</td>
<td>37.4%</td>
<td>4.6%</td>
<td>21.7%</td>
<td>31.6%</td>
<td>40.0%</td>
<td>6.7%</td>
<td>22.4%</td>
<td>32.4%</td>
<td>39.1%</td>
<td>6.1%</td>
<td>$27,711</td>
</tr>
<tr>
<td>Nation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nation</td>
<td>16.3%</td>
<td>25.2%</td>
<td>45.5%</td>
<td>13.0%</td>
<td>14.0%</td>
<td>27.4%</td>
<td>49.3%</td>
<td>9.3%</td>
<td>15.9%</td>
<td>25.6%</td>
<td>46.2%</td>
<td>12.3%</td>
<td>$41,994</td>
</tr>
</tbody>
</table>

*a Source: Data adapted from U.S. Census 2000x.

*b Calculated in each interval by subtracting numbers of urban households from numbers of total households and then calculating percentage of total rural households.

*c Source: Data adapted from U.S. Census 2000w.

*d Source: Data adapted from U.S. Census 2000w.

*e Source: Data adapted from U.S. Census 2000v. Urban figures are the total of All Urban Areas. Rural is Total minus Urban.
falls in a northeastern rural portion of Humboldt County (a Micropolitan county) and excludes the urban clusters of Eureka, Fortuna, Arcata, and Rio Dell. For the California portion of the Klamath watershed, therefore, I decided to use the full County census data – both urban and rural – for Siskiyou and Trinity counties, and only the rural census data for Modoc, Del Norte, and Humboldt counties.

There is no way to secure the precise population of the Klamath watershed, so it is my choice to allow the above-selected census data to represent the population of the Klamath watershed. I believe it gives a fair representation of the actual population of the Klamath watershed. In order to make it continually clear that I am presenting data for a “representative” Klamath watershed, I will put quotation marks around “Klamath watershed” in this section. And after collecting the data, I will make a ballpark estimate of how much the representative data may misstate the actual Klamath watershed.

Now, with the procedural details and caveats accounted for, I can proceed to looking at the population of the Klamath watershed as represented by the selected census data.

Before pulling data from the tables about the “Klamath watershed,” I want to take a moment as promised to point out the disparities between my representative “Klamath watershed” and the actual Klamath watershed.

**Overstated Land Area.** At the beginning of Chapter Five, I stated that the land area of the actual Klamath watershed is 15,688 square miles. The land area in my representative “Klamath watershed” totals up to 23,869.36 square miles, which overstates the actual land area by a little over 50%. The locus of this disparity resides predominantly in the data for Humboldt, Del Norte, and Modoc counties. Given that the actual Klamath watershed covers only about 25% of the rural land area in Humboldt, Del Norte, and Modoc counties, using 100% of the rural land area overstates the land area in the representative “Klamath watershed” by at least 6,345 square miles.3

**Overstated Rural Population.** The rural population that occupies the actual Klamath watershed in Humboldt, Del Norte, and Modoc counties is substantially less than the total rural population for those counties. I estimate in the roughest of all possible ways that the actual Klamath watershed rural population in Humboldt County is just 15% of the total rural population in Humboldt County, and just 10% for both Del Norte and Modoc counties. This means that the total rural population in my representative “Klamath watershed” is overstated by about 46,415.

3 The rural land areas of the three counties multiplied by 75%.
Interestingly, reducing land area and population by these estimated overstatements continues to yield the same density that my representative data does – 7 ppsm.\(^4\)

Even with the overstatements, I will continue to use the representative data because I am constrained by the geographies for which 2000 Census data is available – the configuration of “Klamath watershed” geographies is the only configuration that will allow me to get data from the 2000 Census.

So that all being said, let’s move on to seeing what the data about my representative “Klamath watershed” have to say.

**Population and Density.** While the nation as a whole has a density of 80 ppsm, the “Klamath watershed” as a whole has a density of just 7 ppsm.

While 79.0% of the national population lives in an urban land area that is just 2.6% of the nation’s total land area, with a density of 2,404 ppsm, in the “Klamath watershed,” just 32.4% of the “watershed” population lives in an urban land area that is but a tiny speck – 0.1% of the total land area in the “watershed,” with a density of 1,623 ppsm.

And while 21.0% of the national population lives in a rural land area that is 97.4% of the nation’s total land area, with a density of 17 ppsm, in the “Klamath watershed,” a full 67.6% of the “watershed” population lives in a vast rural land area – 99.9% of the total land area in the “watershed,” with a density of just 5 ppsm.

**Age Forty-Five and Older.** While 34.4% of the nation as a whole is forty-five and older, in the “Klamath watershed” as a whole, 43.4% of the “watershed” population is forty-five and older.

While 33.4% of the national urban population is forty-five and older, 38.7% of the urban “watershed” population is forty-five and older.

And while 38.3% of the national rural population is forty-five and older, 45.6% of the rural “watershed” population is forty-five and older.

**Household Income.** I chose to aggregate the number of households in four intervals of household income: Less than $15,000; $15,000 to $34,999; $35,000 to $99,999; and $100,000 and above. I am in no way making any claim that these intervals can be labeled Lower Class, Working Class, Middle Class, and Upper Class – nor would I need to do so, given that each class identity is more about the rank-ordering of rationality, security, tradition, and relationship than it is about levels.

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of income and consumption (Schneider and Smith 1973). Rather, I constructed these intervals simply to enable comparison of “Klamath watershed” proportions with national level proportions.

That said, while 41.5% of the total number of households in the nation had 1999 household incomes less than $35,000, a significantly greater proportion of the total number of households in the “Klamath watershed” – 54.8% – had 1999 household incomes less than $35,000. And while the median 1999 household income for the nation was $41,994, the median 1999 household income for the counties in the “Klamath watershed” was significantly lower than the national median, ranging from $27,522 to $31,537.

While 41.5% of the total number of urban households in the nation had 1999 household incomes less than $35,000, a significantly greater proportion of the total number of urban households in the “Klamath watershed” – 58.0% – had 1999 household incomes less than $35,000.

And while 41.4% of the total number of rural households in the nation had 1999 household incomes less than $35,000, a significantly greater proportion of the total number of rural households in the “Klamath watershed” – 53.3% – had 1999 household incomes less than $35,000.

While 58.5% of the total number of households in the nation had 1999 household incomes $35,000 and above, only 45.2% of the total number of households in the “Klamath watershed” had 1999 household incomes $35,000 and above.

While 58.5% of the total number of urban households in the nation had 1999 household incomes $35,000 and above, only 42.0% of the total number of urban households in the “Klamath watershed” had 1999 household incomes $35,000 and above.

And while 58.6% of the total number of rural households in the nation had 1999 household incomes $35,000 and above, only 46.7% of the total number of rural households in the “Klamath watershed” had 1999 household incomes $35,000 and above.

Clearly, household income at the national level tipped to the higher side of $35,000 and above, while household income in the “Klamath watershed” tipped to the lower side of less than $35,000.

Putting it all together, in comparison with the nation, in the “Klamath watershed” there is a proportionately greater number of older people living in the least of densities in a vast rural space, with less household income.

**The Rural Middle Class and the Klamath Watershed**

Positioning this data in relation to the configuration of classes and class identities I proffered at the beginning of this section, I would not feel out of line in asserting that the population of the
Klamath watershed was Rural Middle Class, Working Class, and Lower Class. In addition, I would assert that the history of the Micropolitan Middle Class in the Klamath watershed was such that it would express the civic individualism of the Rural Middle Class. Or putting it another way, in the Klamath watershed, there is no Metro Middle Class to be found.

Given this, I would expect to find the Klamath watershed a tapestry of ways of life that has the characteristic civic individualism of the Rural Middle Class interweaving extensively with the characteristic concern with security and relationship by the Working and Lower Classes and with the characteristic high-context collectivistic culture of the four tribal nations.

The concerns of the Working and Lower classes and the cultures of the tribal nations, while not coterminous with, overlap extensively with the characteristics of the Rural Middle Class, such that, I feel, looking through the framework of the Rural Middle Class will not do a disservice to the Working and Lower classes and the tribal nations.

The Rural Middle Class expresses the non-dominant characteristics of American culture paradigmatically. The non-dominant characteristics of American culture are the characteristics of civic individualism. The emphasis is on the group. A person’s identity is based upon group affiliation. Civic individualism seeks to realize one’s individuality within the context of community.

The individual is constrained by duties to group, to family and community, and engages in practices meant to build and maintain webs of connections among people. It is the individual’s responsibility to participate in defining and maintaining community, in webs of particularized reciprocity. Success or failure is embedded within the community – the self-sufficient individual participating within the larger social context.

Communication for the Rural Middle Class is grounded upon the assumption of shared context between interlocutors. Interactions are between contextualized individuals within a web of personal relationships. In one’s interactions, one is past-oriented, tradition-oriented, and long-term oriented, willing to persevere as things work themselves out over time. One has a personal bond to the environment with which one interacts within the context of one’s way of life.

Business is personal; transactions are conducted within the framework of face-to-face personal relationships, group affiliation, and past favor. Relationships trump results. Outsiders are mistrusted. Before a transaction can happen with an outsider, a personal relationship must be built.

Concerns about technical rationality are subordinated to the dictates of tradition and relationship. Success is measured as the realization of personal well-being within the context of community.
Conflict is seen as the consequence of the disruption of harmonious relationships, as a tear in the web of relationships.

Conflict analysis locates the problem as embedded within and inseparable from the interpersonal or intergroup context; both the problem and the solution are about relationships among people.

Conflict resolution is understood as mending the tear in the web of relationships. Problems can be solved through reconciliation. Problems can also be solved through the application of technical expertise that serves to mend the tear in the web of relationships. Relationships trump expertise, trump results. A third party is an insider, connected to the people and the situation, who can listen to the people’s relational accounts of the situation and who offers technical expertise only as requested and as it serves to mend the web of relationships.

1.2 Social Identity and Conflict Escalation

Having first constructed a frame drawn from my analysis of American culture, now I want to construct a frame from notions about social identity interwoven with notions about the pattern of conflict from escalation through stalemate to de-escalation. In constructing this frame, I have woven a tapestry of threads culled from an extensive number of sources. I have chosen to cite all of those references here in the beginning, because I found that trying to unravel the parentage of a single sentence was truly impossible. I honor here the contributions of all of these sources – and take full responsibility for how I have taken from them and woven them together. With respect to notions of social identity, I have drawn from Avruch 2003a, 2003b, Black 2003, Brewer 2003, Burton 1990a, 1990b, 2001, A. Cohen 1986, 1989, 1993, 2000, Deaux and Martin 2003, R. Jenkins 1997, Rubenstein n.d., Rubenstein and Crocker 1994, and Stets and Burke 2000. With respect to notions of the pattern of conflict, I have drawn from Lewicki and Stevenson 1997, Mitchell 1995, and Pruitt and Kim 2004.

A social identity is constructed when We feel the need to make a distinction between Us and Not-Us (or in other words, Them) whom We confront in social interaction. The saliency of Our social identity to Us is less about the substance of the supposed distinction and more about Our need to make the distinction – in other words, less about who We are; more about who We are not. The line of demarcation between Us and Them constitutes a symbolic boundary constructed by Us between Us and Them.

There is a repertoire of symbols – words, social behaviors, gestures, dress, icons, etc. – which all of Us share. On one hand, the symbols represent the public or typical face of the distinction between Us and Them – Our sense of how They typically perceive Us and of how We present
Ourselves to Them. On the other hand, there is a **private or idiosyncratic face** of Us, in that while We would all agree that We share the symbols, We would not necessarily agree on the meanings attached to those symbols. We can experience the semblance of uniformity among Us when We are engaged with Them, and the differences among Us when engaged with each other.

The character of the boundary We construct between Us and Them changes with Our perception of threat to Us by Them.

In those situations in which the perceived threat is less – or even absent – We focus more on Our internal differences, because We don’t have to protect the boundary. Perceptions and attitudes, norms and goals with respect to Them are neutral or maybe even benevolent. The issues between Us and Them, if any, are small in number and limited in scope. Some of Us may even span the boundary between Us and Them without problem, forming bonds across boundaries.

The degree of change in the character of the boundary is a function of the degree of the perceived threat, which can range from actions that are perceived as resulting in a minor inconvenience all the way to actions that are perceived as resulting in the extinction of Our way of life. The tactics that We use to deal with the perceived threat can range from the light touch of argumentation all the way to the heavy hand of threats, of coercion, of nonviolent resistance, and even of violence.

The more the threat is perceived to increase, the more We ‘circle the wagons’ to protect the boundary and focus more on a united public face, putting internal differences on the shelf for another less-threatening moment. By the time We reach the perception of the threat of extinction to Our way of life, perceptions and attitudes, norms and goals with respect to Them have become hostile. Our characterizations of Us and Them have become polarized and We have demonized Them. The issues between Us and Them have become huge in number and mythic in scope. Those of Us who would continue to span the boundary between Us and Them may now be treated as traitors by others of Us, and the cross-boundary bonds may be broken.

The escalation to the extremes can be mitigated (1) by the bonds that had previously been forged between Us and Them by the boundary spanners among Us, the deeper and/or more extensive the bonds, the less extreme the escalation; and (2) by whether We and/or They construct conflict as a tear in the web of social relationships, blaming both Us and Them mutually, and construct conflict resolution as the mending of that tear.
The escalation to the extremes can be exacerbated (1) by the intrusion of outside organizations in support of Us and/or of Them; (2) by a history of prior escalations between Us and Them, such that both We and They are primed for escalation; (3) by the emergence of militant leaders among Us who take it as their mission to be victorious over Them; and (4) by whether We construct conflict as arising out of the infringement of Our rights and/or interests, blaming Them unilaterally, and construct conflict resolution as the satisfaction of Our rights and/or interests.

And the escalation to the extremes can persist for as long as We (1) refuse to communicate with Them; (2) construct the boundary between Us and Them in terms of polarizations and heavy-handed contentious tactics; and (3) dismiss as anomalous any one of Them who does not match Our polarized characterization of Them.

The degree of the perceived threat can wax and wane, and the character of the boundary can follow suit. However, there are times when, even though the degree of perceived threat may have waned to a lower level, the boundary can stall at a level still close to the extremes of escalation, because We do not feel safe enough to relinquish the polarized identities and heavy-handed tactics. We may communicate more with Them, but Our trust is calculated and contingent, primed to be proven ‘right’ that all along They really were untrustworthy.

Sometimes conflict can deadlock at a hurting stalemate, in which We and They continue to employ heavy-handed contentious tactics against each other, but reap only increasing costs and no or decreasing gains. And sometimes conflict can move towards a resolution when both We and They perceive that there are more gains to be had from resolution than from continuing the hurting stalemate.

We can move back from the extremes (1) by re-constructing the boundary between Us and Them, moving back from Our polarized characterization of Them to a more personalized characterization of Them, and ratcheting Our tactics back to a lighter-hand; (2) by communicating more with Them; (3) by reaching across to build cross-boundary bonds and to build trust based upon those cross-boundary bonds; and (4) by constructing a superordinate identity and/or superordinate goals which both We and They can support.
1.3 Conflict Transformation

In my Master’s thesis, I constructed an interdisciplinary framework for human events which interwove the complexity sciences with the social sciences (Messier 1998). I concluded that actors continuously construct and re-construct routinized interactions, from which emerges a pattern of routinized interactions. This pattern of routinized interactions exhibits the properties of complex adaptive systems. As such, once the pattern has emerged, the pattern has properties and dynamics of its own that are not reducible to the level of the actors doing the routinized interactions and that can both constrain and enable what the actors can do in the routinized interactions. The emergent pattern is strongly resistant to change, either from elements external to the pattern or from components internal to the pattern. When an event, either external or internal to the pattern, is of an impact sufficient to overcome the inherent resistance to change and thus to force [external event] or enable [internal event] the actors to re-configure their interactions, the current pattern of interactions will be irreversibly replaced by a new pattern of interactions. While it is by definition impossible to know ahead of time what the new pattern of interactions will be, if the people share a vision of where they might like things to go, those shared visions have the potential to tilt the construction of the new pattern of interactions towards the realization of that shared vision.

Here in my dissertation, I am going to draw upon the above conclusions from my Master’s thesis, to propose a way of thinking about conflict and conflict transformation. I propose that conflict is a pattern of routinized interactions and that, as such, it is strongly resistant to change, either from elements external to the conflict or from components internal to the conflict.

And I propose that a conflict is transformed by an internal event of an impact sufficient to overcome the inherent resistance to change and thus to enable the actors to re-configure their interactions.5

I want to take a moment to inquire whether there is any difference between how I am describing conflict transformation and how Lederach describes conflict transformation (Lederach 1997). I am talking above about conflict transformation as the internal event which enables actors to re-configure their interactions. Lederach does not talk about what might enable actors to re-configure their interactions, and instead talks about conflict transformation as the emergent pattern of re-configured interactions. I feel that it is insufficient to talk about conflict transformation as the emergent pattern

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5 While it is by definition impossible to know ahead of time what the new pattern of interactions will be, if the actors happen to share a vision of where they might like things to go, those shared visions have the potential to tilt the construction of the new pattern of interactions among the actors towards the realization of that shared vision in the wake of the transformative event.
of re-configured interactions without also talking about what enabled people to re-configure their interactions. I have no problem with expanding the notion of conflict transformation to include both the transformative internal event and the emergent pattern of re-configured interactions, and so my use of the term conflict transformation in this dissertation shall reference both the transformative internal event and the emergent pattern of re-configured interactions.

2. Expected Overarching Pattern in the Klamath Watershed

Given the frames of the Rural Middle Class in the Klamath watershed, of social identity and conflict escalation, and of conflict transformation, I present the following ethnoconflict theory and ethnopraxis of the Klamath watershed as an overarching pattern of talk-boundaries-action-face-and-transformation that I expect to obtain over time in the Klamath watershed – specifically, a pattern over time of (a) how people talk about themselves and others; (b) how people construct the boundaries of social identity between Us and Them; (c) how people deal with problems and conflict; (d) the public face and the private face of each player group; and (e) how people transform the conflict.

When We speak of Us to Ourselves, We speak in the language of relationships, because We see Ourselves as living in a web of relationships.

When We do not default to the adversarial practices of mainstream conflict resolution, We define a problem as a tear in the web of relationships and We resolve the problem by the practices of collaboration and reconciliation in order to mend the tear in the web of relationships. The public face of Us is one of collaboration and reconciliation.

When We perceive the level of threat to Us to be increasing, We widen the boundary between Us and Them; Our characterizations of Us and Them become progressively polarized and expressed in mythic terms; We ultimately demonize Them; and We justify Our defaulting to the adversarial practices of mainstream conflict resolution.

When We default to the adversarial practices of mainstream conflict resolution, We translate Us into the language of rules and We work to win against Them – which serves to tear asunder the web of relationships and to mitigate against collaboration and reconciliation to mend the tear. The adversarial practices of mainstream conflict resolution become the public face of Us, and the practices of collaboration and reconciliation are demoted to the private face of Us.

And finally, no matter how much We wield the adversarial practices of mainstream conflict resolution, the problem will never be resolved until We and They create a watershed-wide sense of
Us and Them and mend the tear in the watershed-wide web of relationships by means of the practices of reconciliation and collaboration. It will take a second-order change to enable Us and Them to accomplish this transformation of the conflict.

3. The World Turned Upside Down Pattern of Conflict Escalation

In Chapter Nine, I characterized the period from 1970 through 2000 as a time of the breakdown of everything that had been taken for granted. Three of the player group tracks reflect a particular pattern of the World Turned Upside Down.

In the Klamath watershed, non-Indian ways of life are based upon ways of making a living, and livings are made by extracting and/or manipulating the natural resources of the watershed. When the non-Indian ways of life took root in the watershed a century or so ago, they did so armed with the mindset dominant in America at that time that saw the resources of the watershed as something to be used and the capacity of the watershed to offer up its resources as limitless. Within this mindset, there was no thought that there was any such thing as a price associated with this use of the environment, and certainly no realization that this price was being paid by the Indian ways of life in the watershed and that an environmental bill was being totted up that the non-Indian ways of life would have to pay at some future date.

When that future day dawned, when the resource was depleted and/or when others began to demand payment of the long over-due bill, it came as a shock, a bolt out of the blue, that was experienced not only as threatening their ways of making a living, but also as threatening their very sense of who they were. In response to this perceived threat, these ways of life constructed the boundaries between Us and Them in terms of extreme polarization, pointed fingers of blame at any and all of Them whose fault it was, and took up heavy-handed contentious tactics in order to defend and preserve their ways of life and make things go back to the way they had always been.

In searching for how people talked about what they had perceived as having happened to them, I was struck with how many times they spoke of it as betrayal. To speak of betrayal is to speak in the language of relationships about the failure of another within one's web of relationships to live up to a taken-for-granted expectation of behavior. And to experience betrayal is to experience pain and anguish and anger as the world one took for granted obtains no longer.
Chapter Eleven

Time Period: Before 2001

Have you ever listened to Ravel’s *Boléro*? Listened to it start out with one instrument and one simple melodic line? Listened to it expand to ever more instruments and ever more complex melodic lines, until finally every instrument is playing, the melodic lines thrash and tangle chaotically, and it explodes in a climactic finale? Then you have “listened to” the evolution of the conflict tracks in the Klamath watershed.

As is my wont, given that I am an intensely visual person, I have created in figure 11.1 a completely subjective rendition of conflict escalation prior to 2001.

![Figure 11.1. Graphic of Conflict Escalation Prior to 2001](image-url)
By Degree of Conflict Escalation, I mean the level of response to perceived threat. The value None refers to either there is no perceived threat, or there was no response to a perceived threat. The value High means that the level of response to a perceived threat has escalated to the extremes.

1. Obligato and Player Group Tracks

1.1 Obligato of Science-driven Boundary-spanning Collaborative Efforts

Beneath the various tracks of conflict response, there beat, in my opinion, a continuing refrain of effort to use science to solve the environmental problems and of effort to reach across boundaries to work together in doing so. To my mind, neither comes as a surprise. *On the one hand*, the reliance upon science to solve the environmental problems comes as no surprise, given the central role of scientific expertise in mainstream American culture. Science is expected to provide the truth, definitive answers, incontrovertible facts which can be used to solve problems. It is important to remember, however, that, like religion, science is a tool that can be picked up in the service of many different intentions. It can be picked up to serve as a weapon in a conflict, which instance would fall in the arena of mainstream conflict resolution. It can also be picked up to serve as a tool of collaboration, which instance falls within the obligato of science-driven boundary-spanning collaborative efforts in the Klamath watershed.

And *on the other hand*, the effort to reach across boundaries to work together to solve environmental problems comes as no surprise, given that such boundary-spanning emerges from and/or is supported by the more collectivistic approach that characterizes both the Rural Middle Class and the Tribal Nations who reside in the Klamath watershed. People who see themselves as living in a web of relationships are, to my mind, more likely to make the effort to reach across boundaries, than are those who see themselves as living in autonomous isolation from each other.

Let me provide you with an ever so brief litany of such efforts. I am sure that, for as many as I list, people would be able to provide me with countless others, all of whom deserve mention. Please allow this brief list to stand as representative of all the unmentioned but deserving others.

<table>
<thead>
<tr>
<th>Table 11.1. Obligato of Science-Driven Boundary-Spanning Collaborative Efforts</th>
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</thead>
<tbody>
<tr>
<td><strong>Klamath River Inter-Tribal Fish and Water Commission</strong></td>
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<tr>
<td>Each of the four tribal nations in the Klamath watershed developed their own fishery departments and implemented research, monitoring, and restoration projects. In 1995, they joined together to form the Klamath River Inter-Tribal Fish and Water Commission, a 501(c)(3), in order to develop and advocate policy and to fund projects for salmon recovery undertaken by each of the four tribal nations.</td>
</tr>
</tbody>
</table>
### Nature Conservancy

The Nature Conservancy “is an organization dedicated to the twin goals of preserving both the environment and agricultural lands” (Blake, Blake, and Kittredge 2000, 12). In 1980, Simplot Corporation sold 24,000 acres at **Sycan Marsh** to the Nature Conservancy, “while retaining the right to lease the meadows and graze cattle there until the year 2020” (ibid., 12). At the Sycan Marsh, the Conservancy works in partnership with federal and state agencies, a private foundation, an environmental organization, a private consultant, a timber company, and a cattle ranch (Oregon Habitat Joint Venture 2002). In 1996, the Nature Conservancy bought acreage at the **Williamson River Delta** at Upper Klamath Lake. Working in partnership with federal agencies, the Klamath Tribes, PacifiCorp, private business, and another environmental organization, the Nature Conservancy set out to restore the wetlands there while allowing a number of acres to remain in organic alfalfa farming (Nature Conservancy n.d., Oregon Habitat Joint Venture 2002).

### Trinity Adaptive Management Working Group

In 1984, the Trinity River Basin Fish and Wildlife Management Act established the 14-member Trinity River Basin Fish and Wildlife Task Force, comprised of local representatives of seven federal agencies, six California agencies, and the Hoopa Valley Tribe. The Task Force was charged with developing restoration plans for the Trinity River. This Task Force expired in 2000, when it was replaced by Trinity Adaptive Management Working Group, which was charged with the same restoration goals as the original Task Force. The Working Group became a Federal Advisory Committee in 2002. The 16-member Working Group, broadening its span beyond the inter-agency composition of the original Task Force, is comprised of representatives of two federal agencies, a California Resource Conservation District, a Community Services District, five environmental organizations, two groups of local landowners, a local community development group, and four self-advocacy groups.

### Klamath River Basin Fisheries Task Force (KRBFTF)

In 1986, the Klamath Act established this Federal Advisory Committee and authorized its existence through 2006. At its initiation, the membership on the Task Force was drawn solely from the Lower Basin, comprised of representatives of three federal agencies, one California state agency, four California counties, three tribal nations, and two groups from the fishing community. The Task Force chose to operate under a consensus rule. In 1991, KRBFTF published a Long Range Plan for the Klamath River Basin Conservation Area Fishery Restoration Program (KRBFTF 1991) which focused strictly on the Lower Basin. Also in 1991, KRBFTF prepared a Draft Upper Basin Amendment in order to look at the relationship of the Upper Basin to salmon recovery. In 1991, Representative Smith (OR-Rep) pushed through federal legislation which added representatives from Oregon to KRBFTF: Klamath County, the Klamath Tribes, and the Oregon Department of Fish and Wildlife. KRBFTF funded habitat restoration projects undertaken by local organizations and the three tribal nations in the Lower Basin. In 1999, KRBFTF published a midterm evaluation of the Klamath River Basin Fisheries Restoration Program (KRBFTF 1999). The consultants who prepared the evaluation found, among other things, that the Upper Basin Amendment not only had not been passed, but that it had been on the agenda of almost all of the Task Force meetings, and that those sessions had been divisive. In addition, the evaluation found that while the Task Force had been able to reach consensus on the easy issues, the harder issues of water and land use languished unresolved.

### Shasta River CRMP (Coordinated Resources Management and Planning)

Formed in response to the KRBFTF Long-Range Plan, it was started in 1991 as a pro-active boundary-spanning effort before any anadromous fish were listed by ESA, and sought to restore the Shasta River in order to sustain both agriculture and the fishing industry (Shasta CRMP 2000). It is a loose-knit organization open to any individual who owns land in the Shasta River sub-basin as well as representatives from KRBFTF, three irrigation districts, two federal agencies, and one California state agency.

### Salmon River Restoration Council

Starting as a community meeting in 1992 in response to the KRBFTF Long-Range Plan and becoming a 501(c)(3) in 1995, the Salmon River Restoration Council is a pro-active boundary-spanning effort to focus on the restoration of the anadromous fisheries resource and the development of a sustainable economy in the Salmon River sub-basin (Salmon River Restoration Council, n.d.).
Table 11.1 continued

Scott River Watershed Council

In 1992, the Scott River Watershed CRMP was formed in response to the KRBFTF Long-Range Plan, and then in 1999 was superseded by the Scott River Watershed Council, which defines itself as a grassroots organization in the Scott River sub-basin. While the Executive Committee is made up of representatives from priority interest groups, it invites participation by any and all (Scott River Watershed Council 2009).

Eureka High School

In their sophomore year, six students at Eureka High School in Eureka, CA, began studying the Klamath River and its declining state as part of their Advanced Biology Honors course. Over the course of three years, they not only studied, but traveled throughout both the Upper and Lower Basins interviewing residents and experts alike. In March 1995, their findings were published in a report entitled *The Klamath River Basin: Interconnections within a Watershed Ecosystem* (Benzinger et al. 1995).

Ore-Cal Resource Conservation and Development Council

Established in 1993, its service area spans a large area: in Oregon, Klamath and Lake counties, and in California, Siskiyou County and part of Modoc County. Ore-Cal’s mission is to “encourage economic diversity and community prosperity through conservation, promotion and development of the continued and sustainable use of natural resources” (Ore-Cal RC&D 2004, 1). The Council consists of dues-paying sponsors from tribal nations, elected officials, multiple units of local government, and non-profit organizations whose work is focused on Ore-Cal’s service area.

Klamath Basin Ecosystem Restoration Office (ERO)

In 1993, the ERO was created by U.S. Fish and Wildlife Service so that people who were impacted by the Klamath watershed issues could work together face-to-face as a team to craft collaborative solutions (U.S. Senate 1994a: testimony of H. Dale Hall). Not only were local representatives of federal agencies – FWS, BOR, Forest Service, BLM, Park Service, and BIA – working face-to-face, side-by-side, but also representatives from the tribal nations, state agencies, and local interests from both the Upper and Lower Basins were involved in the discussions.

Conferences hosted by ERO

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
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</table>
| 1995 | **The First Klamath Basin Ecosystem Research and Restoration Coordination Meeting**
|      | Reports on research and monitoring projects being done in both the Lower and Upper Basins were presented by state and federal agencies, educational institutions, the Klamath Tribes, private consultants, and PacifiCorp. Reports on restoration projects being done in both the Lower and Upper Basins were presented by KRBFTF, state and federal agencies, KWUA, the Nature Conservancy’s Sycan Marsh, and private businesses. |
| 1997 | **The Second Klamath Basin Restoration and Management Conference**
|      | Reports on research, monitoring, and restoration projects being done in both the Lower and Upper Basins were presented by federal and state agencies, local units of government, educational institutions, the Yurok Tribe, the Salmon River Restoration Council, the Scott River Watershed CRMP, the Shasta CRMP, the Nature Conservancy, a timber company, private consultants, environmental organizations, and a Project farmer. |

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1 I want to acknowledge the very great kindness of Dave Ross at the Klamath Falls Fish and Wildlife Office who took the time to scrounge up and mail to me copies of the abstracts presented at the 1995, 1997, and 1999 conferences that ERO hosted.
Table 11.1 continued

<table>
<thead>
<tr>
<th>1999 The Third Klamath Basin Watershed Restoration and Research Conference</th>
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<tbody>
<tr>
<td>Reports on research, monitoring, and restoration projects being done in both the Lower and Upper Basins were presented by federal and state agencies, the Yurok Tribe, the Klamath Tribes, educational institutions, private consultants, the Running Y Ranch Resort, the Nature Conservancy’s Williamson River Delta project, a private business, and an environmental organization. Reports on progress in technology were presented by Scott River CRMP, individual ranchers, private consultants, the Nature Conservancy, federal agencies, educational institutions, and environmental organizations. Reports on partnerships in both the Lower and Upper Basins were presented by the Hatfield Upper Klamath Basin Working Group, the Klamath River Compact Commission, the Scott River Watershed CRMP, the Salmon River Restoration Council, and federal and state agencies.</td>
</tr>
</tbody>
</table>

Klamath Watershed Council

In 1995, the State of Oregon passed legislation supporting the establishment of watershed councils in Oregon. “Watershed councils are locally organized, voluntary, non-regulatory groups established to improve the condition of watersheds in their local area. ...Watershed councils offer local residents the opportunity to independently evaluate watershed conditions and identify opportunities to restore or enhance the conditions ...Councils bring varied interests together in a non-regulatory setting to form a common vision for the ecological and economic sustainability of their watershed” (Oregon WEB 2000, 1-2 of download). The councils serve as a bridge between local landowners, agencies, and other groups. The Klamath Watershed Council was formed in 1996, serving the Oregon portion of the Upper Klamath Basin.

Klamath River Compact Commission

In 1995, Alice Kilham was appointed as Chair of the Commission. In 1996, under her leadership, the Compact Commission began to reach out to the public, posing to them the question of “whether the Klamath River Compact Commission [should] take the lead in convening a voluntary consensus process for the purpose of developing an integrated water management plan for the entire Klamath Basin. The majority said yes, especially the Upper Basin” (Klamath River Compact Commission 2007, 2 of download). Through public meetings, the Compact Commission developed a list of the Basin’s needs, which ranged across legal, scientific, demographic, historic, and other variables and ended with the wonderful recommendation: “9. Be humble” (ibid., 3).

In 1997, the Commission hosted a convention of BOR, OWRD, and CDWR to address water supply issues. Over the next couple of years, the Commission served “as a forum to discuss and help formulate consensus based processes for solving current water resource issues [in] the Klamath Basin. A primary role of the Compact Commission has been to provide a forum for public input into the Water Supply Initiative (WSI) process, a partnership among the Bureau of Reclamation, Klamath Compact Commission, and the States of Oregon and California” (U.S. ERO 1999: Water Supply Initiative, 35).

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2 Interestingly, Jeffy Davis Marx of Scott River Watershed CRMP, in talking about their effort to reach the community, noted that “[r]ural people have a very different outlook from urban folks, especially those whose families have inhabited the land for generations. There is a shyness and sometimes a distrust which is difficult to breach. ...Rural populations more than any other are sensitive to the workings of nature and can be brought into the effort best by respecting and listening to them first and, then, including them in as much of the process of protection and restoration as possible. The responsibility ultimately needs to be handed over to those people living and working in the riparian areas” (U.S. ERO 1999: Reaching the Community, 36).

And most presciently, the very last plenary session on the very last day of the conference, chaired by Mike Connelly of the Cloverleaf Watershed Council in Bonanza, OR, was entitled “Property, Community, and the Limits of Science” (U.S. ERO, 1999).
In 1995, Senator Mark Hatfield of Oregon “asked the federal land and fish and wildlife management agencies to convene and participate in a citizen-led working group to develop a set of consensus based actions for ecosystem restoration in the [Upper] Klamath Basin. This initial group of 25 stakeholders drawn from a cross section of community interests has been meeting monthly ever since” (U.S. ERO 1999: Upper Klamath Basin Working Group, 34).

In 1996, the Omnibus Parks and Public Lands Management Act formally authorized the Klamath Basin ERO as a collaboration among FWS, BOR, BLM, and the Forest Service, and established the UKBWG. The Working Group – still to this day referred to locally as the Hatfield Group – is a Federal Advisory Committee comprised of three tribal members, one representative of the City of Klamath Falls, one representative of Klamath County, four representatives of the environmental community (including at least one from California), four representatives of local businesses and industries (including at least one from timber and one from fishing), four representatives of the ranching and farming community (including both Project and non-Project farmers and ranchers), two representatives from the State of Oregon (including ODFW and OWRD), four representatives from the local community, one representative each from eight federal agencies (FWS, BOR, BLM, BIA, Forest Service, NRCS, NMFS, and ERO), and one representative from Klamath County Soil and Water Conservation District (UKBWG 1996a). The Working Group is mandated to “propose ecological restoration projects, economic development and stability projects, and projects designed to reduce the impacts of drought conditions in the Upper Klamath Basin” (UKBWG 1996a, 2 of download).

The enabling legislation stipulated that all funding recommendations developed by the UKBWG would be based on a consensus of Working Group members, and authorized $1,000,000 per year for five fiscal years for matching funding for restoration projects. After the expiration of the five fiscal years, the UKBWG was on its own for finding funding.

The law that established the Working Group also stipulated that a Klamath Basin Coordination Group would be formally established among UKBWG, KRBFTF, the Trinity River Basin Fish and Wildlife Task Force, and the Klamath River Compact Commission to enable coordination between the Upper and Lower Basins (UKBWG 1996a). As best I can tell, the Coordination Group was initially active, but their attempts to draft a cooperation agreement were never successful and were ultimately rendered moot by the expiration of the Trinity River task force in 2000 and the sunseting of KRBFTF in 2006.

In 1996, members of the UKBWG started KBEF as a nonprofit arm to help with project implementation and to work with the Klamath Watershed Council on community-driven watershed assessments (Cooperative Conservation 2009).

“In 1998, the Department of the Interior commissioned Dr. Thomas Hardy of Utah State University to provide a comprehensive review of the historical and existing status of the anadromous fish, including the coho salmon, within the lower Klamath River (i.e., below Iron Gate Dam)” (PCFFA I 138 F.Supp.2d at 1232). He was asked to make recommendations in two phases. In preparing the Phase I report, Hardy collaborated with a Technical Review Team comprised of representatives from FWS, BOR, BIA, U.S. Geological Survey, NMFS, the Yurok, Hoopa and Karuk Tribes, and California’s Department of Fish and Game (PCFFA I). The Phase I report was released in 1999, but rather than being accepted as scientific truth, it instantaneously became the first of a goodly number of research studies that would be fought over in the coming years.

I would be deeply remiss if I did not mention that countless restoration projects were undertaken by individual farmers and ranchers and businesses throughout the Klamath watershed – unsung, on their own or in collaboration with neighbors, just because, for whatever their reasons, they felt it was
the right thing for them to do. Kittredge writes of many such stories in their 2000 book *Balancing the Water: Restoring the Klamath Basin* (Blake, Blake, and Kittredge).

In summary, then, looking back over this obligato as it spanned the years before 2001, it can be said that there was absolutely no dearth of science and no dearth of attempts at boundary-spanning collaboration. I am deeply respectful of – indeed, awed by – the amazing amount of effort people throughout the watershed have put and continue to put into trying to make things better – year after year after year, they keep showing up.

With respect to the science, while there was no dearth of research, and of monitoring and restoration projects based upon that research, and while there were bright splashes of success spattered like a Jackson Pollock painting throughout the watershed, as 2000 rang to a close, not only was the watershed as a whole still seriously degraded, but also people were beginning to fight over whose science was the right science. The response to this “failure” of science to be the solution was to do more science – and to get it right this time.

With respect to the boundary-spanning, while there was no dearth of effort, the success or failure of the effort seemed to be a function of the scope of the effort. The more narrow the focus of the effort – the fewer the boundaries to span, the smaller the gap between groups, the more narrow the project parameters – the more likely the success of the effort. Witness the Sycan Marsh restoration, the restoration projects in the Salmon, Scott, and Shasta sub-basins, the salmon recovery projects of the tribal nations, the projects by individual farmers and ranchers – the list could go on.

However, when the focus of the effort was expanded – the more boundaries to span, the greater the gap between groups, the larger the project parameters – the more likely the effort would not succeed. Witness, for example:

- the failure of the Lower Basin KRBFTF to come to consensus on an Upper Basin Agreement, the response to which was to keep trying at what were divisive meetings, and the recommendation to hire a facilitator (KRBFTF 1999); and
- the failure of the Klamath Basin Coordination Group to finalize an agreement among the four collaborating organizations that spanned the Klamath watershed before two of the organizations faded into the sunset, rendering moot the attempt.
1.2 Player Group Tracks

The Siskiyou County Track

The Siskiyou County track stands for me as representative of the first instance of the playing out of the *World Turned Upside Down* pattern in the mining and logging ways of life, and catches them far into the pattern, where polarization and blame have become the way of life.

From the very first settlement by non-Indians in what became Siskiyou County, folks came there to be left alone to do what they wanted to do. Miners, loggers, farmers, fishers came to harvest the abundance of natural resources there. Because the terrain there is so rugged and remote, the problem was always one of connecting harvest to market. Roads were built, but locals said the roads were completely inadequate to bring harvest to market. As resentment built among the locals because of this perceived threat to their ways of life, the distinction between Us and Them became more polarized, with locals characterizing themselves as double-crossed by a state government that broke its promises to “fund sufficient highway projects in the region while building campgrounds in the cities where there were more votes” (Jefferson Enterprises 2000-2007, 1 of download).

On Thursday, November 27, 1941, Siskiyou County joined with Shasta, Del Norte, and Modoc counties in California and with Curry County in Oregon to secede from California and Oregon and to declare themselves the State of Jefferson. Barricades were thrown up on Highway 99 and the State of Jefferson Citizen’s Committee handed their Proclamation of Independence to travelers (Jefferson Enterprises 2000-2007), declaring that they would be “forced to rebel each Thursday and act as a separate State” (State of Jefferson.com Since 1997 [sic], 1). The state flag was two X’s on a mining pan – X X – to symbolize the double cross people felt they were getting from “The Government.”

With the attack on Pearl Harbor on December 7th, “the State of Jefferson rebellion of 1941 came to an end. The people of the region went to work for the war effort and good roads were eventually built into the backcountry to access strategic minerals and timber” (Jefferson Enterprises 2000-2007, 2 of download).

The rebellion may have been over, but the polarized social identities remained – We who are neglected and sidelined by The Government, and The Government who caters “to areas with more people, bigger political contributions, and heftier clout” (Kleffman 2000, 1 of download). The hostile attitudes, the seething resentment, roiled just beneath the surface – like molten lava just below the crust of the “dormant” volcano – primed to break through any time The Government did them wrong again.
And from their perspective The Government did them wrong over and over and over in the ensuing years. The regulations that tied the hands of first the mining industry and the timber industry, and then the in-river recreational fishing industry, the regulations that increasingly hemmed them in in service of listed species, the plummeting economy, the high unemployment rate, the high poverty – “‘the thousand cuts that local people have endured’” (McCabe 1998, 4 of download) – did nothing to slake the fires that burned.

In May 1997, the coho salmon that called the Klamath River home were listed as threatened by the National Marine Fisheries Services. In November 1997, NMFS disseminated proposals for restrictions on land within coho salmon critical habitat – restrictions that would “affect land along the riparian ways extending 300 feet from any river or creek edge to the high water mark” (McCabe 1998, 2 of download).

Instantaneously, the level of perceived threat skyrocketed. The long-steaming volcano of seething resentment erupted. People united behind the public face of the State of Jefferson. Hostile attitudes and perceptions consumed everyone. Symbols were wielded to escalate the polarization to the point of demonization of The Government. Fingers were pointed at those whose fault it really was, not theirs. More than 5,000 letters and emails, most of them negative, were sent to NMFS in Long Beach (McCabe 1998). Threats of secession, of violence were thrown around.

Even though NMFS ultimately abandoned the proposed 300-foot rule, and implemented restrictions that only applied to areas that were an essential part of the salmon habitat (Kleffman 2000), the escalated polarization froze in place.

Two years later, the public face was still visible – the signs with a slash through the letters NMFS, the sign on the barn, State of Jefferson paraphernalia still for sale, websites springing up and reaching out for supporters. “The dream of seceding and forming a new state, dubbed Jefferson, refuses to die in this rugged, remote country. It’s an idea...born from a belief that folks here have been neglected and sidelined by politicians who cater to areas with more people, bigger political contributions and heftier clout. ...[With respect to regulations imposed on everything,] ‘up here it's a completely different world, and the laws that they make down there don't work here’” (Kleffman 2000, 1 of download).

The wagons have been un-circled, however, as the threat has waned, with the result that the internal differences among members of the State of Jefferson social identity, once put on the shelf for another less-threatening moment, now began to surface. “Not all local folks are enamored of the Jefferson movement. Some argue that it has taken on a more political tone in recent years, with a decidedly anti-environmental spin. ‘What started out being a rather fun kind of attention-getting
situation has become a fairly polarizing movement that is pretty intolerant,’ said Carol Wright of the Klamath Forest Alliance, a grass-roots environmental organization. ...One of the problems with the Jefferson movement, Wright argued, is that it prevents people from listening to other ideas about how things should be done. ‘Many, many people come here with new ideas and progressive thoughts about business and the environment and they get shot down time after time,’ she said” (Kleeffman 2000, 2-6 of download).

In summary, then, as the year 2000 draws to a close in Siskiyou County, the polarized public face of The State of Jefferson is frozen in place, staring across a seemingly unbridgeable chasm at The Government, while the private face of The State of Jefferson wrestles with differences of opinion.

The Tribal Nations Track

From the moment the first non-Indians invaded the Klamath watershed during the Gold Rush, the tribal nations there have known threat as a fact of every day of their lives. Quite simply, from the perspective of the non-Indians, the Indians were in the way and whatever could be done to get rid of them would be done – and was done. During the Gold Rush period (1848-1855), the Indians were pushed to the brink of extinction by disease, massacre, murder, slavery, and either degradation or outright loss of their food resources. Treaties that were drawn up with the United States and honored by the tribes became but the first step in a long trail of broken promises. Over the next century, while the Indians tried various degrees of resistance and of accommodation in their fight to survive and to preserve their ways of life, the non-Indians fought with the full arsenal of their legal and political systems – laws, rulings, executive orders, termination, regulations, rules, litigation, legislation – and the Indians lost miserably.

Finally, after World War II and into the cultural upheaval of the 1960s, the dominant non-Indian culture began to flirt with the idea of Indian self-determination. And, in the 1960s, inspired by the activism of the times, the Indians began to learn how to fight with the white man’s weapons – litigation, legislation, political influence – in the white man’s battlegrounds – the courts, the halls of government – because it was the only way for them to be heard and to win in the white man’s world.

If one were talking about the Metro Middle Class in the above scenario, one would expect escalation of the conflict up to polarized identities employing heavy-handed contentious tactics to beat the other guy. That is not what I find when I look at the conflict track for the tribes in the Klamath watershed over the years 1970-2000. Instead I find a most unique pattern. I call it a pattern
of Both/And, and I believe it takes its origin in the fact that the tribes are high-context collectivistic cultures, who became very proficient in the strategic employment of the low-context individualistic legal processes that are the customary American model of conflict resolution practiced by the Metro Middle Class.

When analyzing conflict in their own cultural terms, the tribes tell the story of the centrality of the fisheries and the forests and the water and the land to their cultural, social, economic, and spiritual ways of life. People and the environment are interwoven in a web of relationships. Conflict is a tear in the web of relationships and conflict resolution is the mending of that tear.

This collectivistic high-context ethnoconflict theory and ethnopraxis leads the tribes to continuously reach out to others in the watershed to try to build partnerships in stewardship of the ecosystem. At the very same time, if the tribes perceive a threat to their tribal rights, they will pick up the weapons of the customary American model of conflict resolution and fight to win against that threat in the adversarial world of litigation and legislation.

There is a private face of the tribal nations which expresses, in my opinion, the pain and anger at the white man for more than a century of threat and betrayal – but it lives at home, if you will, behind the public face of the tribal nations which is at one and the same time both eager to collaborate with anyone and alert to threat and ready to fight if they must. In figure 11.1, I used the straight line hovering at the halfway mark to represent that the tribes’ alertness to threat and readiness to fight is continuously tempered by their readiness to collaborate.

Fighting for Tribal Rights.

- Upper Basin – Klamath Tribes. The claims litigation track, begun in 1951, was finally settled in the 1960s, 1970s, and 1980s. Even though the tribes had to couch the claims of unfairness in economic terms, because those were the terms that the dominant culture would pay attention to, rather than in terms of the cultural and demographic devastation in which they had lived the unfairness, winning these claims forced acknowledgement by the dominant culture of the fact that they had been dealt with unfairly from the treaty of 1864 onwards.

The Kimball litigation track, begun in 1973, affirmed their treaty rights to fish, hunt, and trap free of state regulations in the territory that had been their original reservation – and culminated in the 1981 Consent Decree among the Klamath Tribes, the Federal government, and the State of Oregon which confirmed the tribes’ retention of management responsibilities for fishing and habitat management on the former reservation.
The Adair litigation track, begun in 1975 and using the decisions of the Kimball litigation track, affirmed that the Klamath Tribes had non-consumptive water rights sufficient to maintain their treaty rights to hunt and fish on the former reservation, and that these rights had a priority date of time immemorial, were not attached to land, and not subject to use to maintain. In other words, the tribes had rights to instream flow that trumped all the subsequent consumptive water rights.

Efforts begun by the Klamath Tribes in 1980 culminated in 1986 when the Klamath Indian Tribe Restoration Act restored the Klamath Tribes to federal recognition, restored their government-to-government relationship with the Federal government, restored all rights and privileges that had been terminated by the 1954 Termination Act, and reaffirmed hunting, fishing, trapping, gathering, and water rights of the tribes and their members.

In 1988, the c’waam and qapdo were listed by the EPA as threatened species. With this listing, every federal agency – including, but not limited to, BOR about the Klamath Project, the Forest Service about the National Forests throughout the Basin, and FERC about the renewal of the license for all the dams on the Klamath River – would have to evaluate whether the actions they wanted to do would jeopardize the suckers, and would have to change their actions if it was determined that there would be jeopardy.

In 1994, at Congressional hearings about the Ecosystem Restoration Office convened by Senator Mark Hatfield in Klamath Falls, OR, the Klamath Tribes testified that while it was commendable that ERO had been instituted, they could not support the ERO if all it were to mean was a continuation of the denial about the changes that needed to happen, and that “an honest evaluation of the basin’s problems will require changes, and those changes can no longer be imposed on the tribes because we have given all we can” (U.S. Senate 1994a: Testimony of Marvin Garcia, chairman, the Klamath Tribes, 32).

In 1995, in a perfect example of litigation as a coercive tactic, the Klamath tribes, using the listing of the suckers as weapon, “filed a notice of intent to sue the federal government unless it does more to protect endangered sucker fish from losing habitat to agricultural irrigation” (Associated Press 1995, 1 of download).

In 1995, the Regional Solicitor of the Interior Department issued an Opinion that established the order of rights (from senior to junior) to the waters in the drainages affected by the Klamath Project and the obligations of BOR with respect to those rights. Within that order, the Klamath Tribes had federally-reserved rights that were junior only to the Endangered Species Act, had a priority date of time immemorial, and included the right to an instream flow sufficient to protect their rights to take fish within their reservations; the right to certain conditions of water quality and flow to support all
life stages of fish; the right to prevent other appropriators from depleting the streams’ waters below a protected level; and the right in off-reservation areas to the extent necessary to support the tribes’ on-reservation fisheries. “Reclamation must...prevent activities under its control that would adversely affect [the tribes’ fishing] rights, even though those activities take place off-reservation” (U.S. Solicitor 1995, 8).

In 1996, in response to a request from OWRD for “an analysis of water management authority in the basin pending the completion of the adjudication” (U.S. Solicitor 1997, 1, quoting from the 1996 Oregon letter), Oregon’s Assistant Attorney General sent a letter to OWRD, expressing the legal opinion that BOR “had little authority to do anything but deliver Klamath Project water for irrigation” (Benson 2002, 218n149). In 1997, the Regional Solicitor responded in an Opinion that BOR was mandated to manage the Klamath Project water in a manner consistent with all its obligations, including senior Indian water rights, contractual obligations, and ESA requirements” (U.S. Solicitor 1997, 7). I include the two Solicitor’s Opinions here, not because the Klamath Tribes wrote the Opinions – they didn’t – but because the Opinions would not have been written if the Tribes had not won affirmation of their tribal rights in the Kimball and Adair litigation tracks.

In 1997 the tribes filed claims in the Klamath Basin Adjudication seeking instream flow rights to support their fishing, hunting, trapping, and gathering rights, with a priority date of time immemorial. The claims sent tidal waves of concerns through water user claimants who were afraid that the tribes would take everything and they would be left with nothing.

- **Lower Basin – Yurok, Karuk, Hoopa Valley Tribe.** In the Lower Basin, the fight for tribal rights started in 1969 when the Yurok Tribe decided it was time to go to court to fight for their tribal fishing rights. It took until 1975 and trips through various courts including the Supreme Court, for a decision to be rendered that the Klamath River Reservation was Indian country and that the State of California had no right to regulate fishing there.

The victory was short-lived as, beginning in 1977, BIA determined that their trust responsibility required them to provide fishery regulations on a temporary basis until the limbo created by the lingering Short litigation track was resolved and the Yuroks had a federally recognized tribal government that could regulate their own fishery.

After the 1979 regulations had been issued, the Hoopa Valley Tribe and others brought suit against the Department of the Interior challenging various aspects of the regulations.3 The parties

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settled the cases by a stipulation which required the Interior Department to complete an Environmental Impact Statement (EIS) before permitting commercial fishing on the Klamath River.

In May 1979, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on Klamath River Indian Fishing Rights (U.S. House 1979). I would characterize the testimonies of the hearings as an angry blame game played out within the limbo of the unresolved *short* litigation. The Indians rejected the often made charge that Indians were destroying the fishery, and instead blamed overfishing, low river flows, and bad logging practices (U.S. House 1979: Testimony of Peter Masten, representative, Hoopa Valley Tribal Council).

In 1987, the completion of the EIS coupled with the completion of a Five-Year Agreement with the KFMC enabled the Yurok Tribe to open the first uncontested commercial fishery in fifty-four years. “The Five Year Agreement instituted by the KFMC ended after 1991, and due to depressed salmon populations and predictable harsh closures on all fisheries, a new allocation agreement could not be reached” (Pierce 2002, Part 7, 6).

In 1988, the Hoopa Yurok Settlement resolved many of the issues that had been languishing in the Lower Basin. It established federally-reserved fishing rights for both the Yurok Tribe and the Hoopa Valley Tribe as well as vested property rights for the Yurok Tribe and the Hoopa Valley Tribe in their respective reservations. Not everyone, however, was happy about how the land had been distributed by the HYSA. In 1990, the Karuk Tribe of California filed suit against the United States, claiming that the 1988 HYSA had taken their vested property interests in reservation land. In 1991, several individual Indians filed a similar “takings” claim, and in 1992, the Yurok Interim Council filed yet another “takings” claim. In 2000, the appeals court affirmed the lower court decision that ruled none of them had vested property rights in the lands of the Hoopa Valley Reservation and that, as such, no taking had taken place.

The Lower Basin tribes had been complaining to the Interior Department for years that the fishing regulations, first by BIA and then by PFMC, continuously gave them the short-end of the stick, forcing them to bear the bulk of the conservation burden when the only slim chance of making the spawning escapement quota, after the ocean fishers had fished to their fill, was to deny fishing to the tribes.

Finally, in 1993, the Solicitor of the Interior Department issued an Opinion that established the requirement that PFMC, after calculating the spawning escapement quota, must then calculate harvest quotas in a manner that ensured that the tribes receive 50% of the allowable harvest, and then apportion the remaining 50% among all the other fishing groups. Now, bottom-line, after
provision had been made for spawning escapement, federally reserved tribal fishing rights trumped all.

Prior to the 1993 Solicitor’s Opinion, the fishing industry had brought suit in protest of PFMC’s 1993 regulations. When *Parravano v. Babbitt* was decided in 1994, the Court asserted (1) that, pursuant to the executive orders of 1876 and 1891 and to the Hoopa-Yurok Settlement Act of 1988, both tribes had a federally reserved fishing right which included subsistence, ceremonial, and commercial purposes, and which counted as applicable law under the Magnuson Act; and (2) that “for the Tribes’ federally reserved fishing right to have any practical meaning, it must include regulation of activities occurring outside the reservation which negatively impact that right” (*Parravano v. Babbitt* 861 F. Supp. at 924). The Yurok Tribe intervened as defendant in the appeal, which in 1995 affirmed the district court’s decision.

Sadly, the Karuk Tribe of the Lower Basin was completely unsuccessful in their fight for their tribal rights. As 2000 rolled to a close, for all their efforts, and for all their conscientious management of the fishery that fell within their aboriginal territory, the Karuk had no reservation, no vested property rights beyond the 601 acres held in trust by the U.S., no federally reserved fishing, hunting, or gathering rights, and only limited fishing rights granted by the State of California at Ishi Pishi Falls.

In summary, then, throughout the Klamath watershed, throughout the years 1970-2000, tribes fought for their tribal rights – and three of the four tribes won. The Yurok Tribe, the Hoopa Valley Tribe, and the Klamath Tribes rose from a position of powerlessness in which their tribal rights were ignored to a position of actual clout in which their tribal rights not only were recognized, but were recognized as trumping other rights. All federal agencies which took or proposed to take an action which threatened to ignore those tribal rights learned that they would be greeted with a quick legal response by the tribes.

**Reaching Out to Collaborate.** What I present here is what I *know* about, and probably only scratches the surface. Evidence of the reaching out only increases after 2000.

*In terms of organizations,* all the tribes are extremely active: In the Lower Basin, all three of the tribes are members of the Klamath River Basin Fisheries Task Force and the Inter-Tribal Fish and Water Commission. In addition, the Karuk serve as sponsors with Ore-Cal RC&D, and the Hoopa Valley Tribe participated in the original Trinity River Restoration Task Force and participates in the
successor Trinity Adaptive Management Working Group. Finally, all three tribes participated in the Technical Review Team for the Hardy study about flows in the Klamath River below Iron Gate Dam. In the Upper Basin, the Klamath Tribes participate in the Upper Klamath Basin Working Group, the Inter-Tribal Fish and Water Commission, and the Klamath River Basin Fisheries Task Force, and in addition, serve on the board of the Klamath Basin Ecosystem Foundation.

In terms of conferences, the Klamath Tribes co-sponsored the fifth annual conservation conference, which focused on restoration strategies with respect to salmon habitat (Shotwell 1991). The Yurok presented at the 1997 and 1999 ERO-sponsored watershed conferences and the Klamath Tribes presented at the 1995 and 1999 ERO-sponsored watershed conferences.

In terms of plans and projects, the Yurok partnered in the 1987 Five-Year agreement with KFMC, and partners with PCFFA in salmon recovery projects. The Klamath Tribes partner with the federal and state governments in the 1981 Consent Decree in managing the fishing and habitat on their former reservation, and partner with the Nature Conservancy in the Williamson River Delta project.

In 1996, the Klamath tribes pushed for Alternative Dispute Resolution within the Klamath Basin Adjudication. “We’re partners here,” said Gordon Bettles, a culture and heritage specialist for the tribes. “If you invite ranchers and farmers to sit at the table and truly work with a good heart, there can be ways that people, fish and wildlife coexist” (Gorski 1997, 2 of download). “Tribal Chairman Jeff Mitchell said...that the Klamath Tribes ‘are committed to working with all basin water interests to find a peaceful, logical way to balance supply and demand.’ The alternative, he said, is ‘10 or 20 years of water wars’” (Associated Press 1997, 2 of download).

The first monthly ADR meeting was held in September 1997. The Klamath Tribes attended all the meetings, and worked in two negotiating groups – one with the Project water users, and one with Williamson River water users – to prepare two agreements-in-principle. They proposed a template for agreements among claimants. Even when a lot of negative comments and characterizations were made about the Tribes during the meetings, they continued to reach out and to fight for the ADR as a means to address the issues facing everyone (Oregon WRD 1999b).

In May 1999, Klamath Tribes signed an agreement with the Forest Service “that gives them a voice in what happens on 1.2 million acres of former reservation land in south-central Oregon. ...[Jeff Mitchell, chairman of the Klamath Tribes said,] ‘It’s a real milestone to the tribes....I think, generally, there has been a change and a shift in the recognition of tribes’ treaties, and treaty rights and treaty resources. ...That provided a framework for tribes to sit down with the state of Oregon and work through issues, whereas 10 years before, the only recourse would have been to go to court. So, we're
seeing a shift not only on the federal level, but the state level as well” (Thompson 1999a, 2 of
download).

In 1999, the Klamath Tribes began holding public meetings with respect to the plans they were
developing for their economic self-sufficiency and their goal of re-acquiring their former reservation
(Thompson 1999b, 3 of download). The final public hearing on the Klamath Tribes’ economic self-
sufficiency plan was held on September 21, 2000, after which the tribes sent the plan to the Interior
Department for submission to Congress. The tribes are considering not only Congressional action,
but also permanent contracts for land management, long-term leases with purchase options, and
buying back land (Quinn 2000a).

In summary, then, as the year 2000 draws to a close in the Klamath watershed, while the
private face of the tribal nations still feels the pain of a century of betrayal, the public face of the
tribal nations stands both alert to threat and ready to fight and eager to collaborate with anyone. Jeff
Mitchell of the Klamath Tribes summed it up most succinctly when he said, “The Tribes are trying to
protect their resources and find solutions for the community as a whole” (Oregon WRD 1999b, 8).

The Environmental Track

ONRC – the militant, in-your-face, environmental organization – was the public face of the
environmental movement in the Klamath Basin during this period. I find that the more I reflect on
ONRC, the more I am reminded of Vietnam in America – specifically of those radical organizations
that believed that the system was fundamentally and fatally flawed and that the only cure was its
complete overthrow – and that at the same time in the larger picture served an essential role in
awakening the mainstream and widening the realm of acceptable mainstream options for reform.

ONRC was born in war, if you will, of parent organizations that were fighting to preserve public
forest lands from extinction. There was no escalation; they were born already at the extremes of
conflict. A deep and unbridgeable boundary was constructed between polarized characterizations of
We who are the environment and those who speak for the environment because it cannot speak for
itself, and They who were perceived as intent upon destroying the environment. The only acceptable
resolution was that They must be vanquished so that We may be saved. Victory was defined as the
requirements of environmental well-being trumping any and all human uses of the environment. The
suffering of the vanquished was but the price for the preservation of the environment.

ONRC was born at the extremes of conflict and never wavered from that extreme position from
its birth in 1974 through 2000. They ‘sued the bastards’ in an unrelenting stream of litigation that
forced everyone in the Klamath Basin and elsewhere to pay attention to how they did things, whether they wanted to or not. I have already dealt in some detail about the litigation that they did. What I want to pay attention to here is (1) how they talked about themselves and about their enemies; and (2) how they went about employing the tactic of litigation.

**How ONRC Talked About Themselves And About Their Enemies.** I have looked specifically at their language with respect to the Klamath watershed. ONRC’s first foray into the Klamath came in 1991 when they began to file lawsuits on behalf of the endangered suckers. For example, when ONRC sought an injunction to require FWS to designate a critical habitat for the suckers and to develop a recovery plan for the fish (which was not done when the suckers were listed in 1988), Wendell Wood, soon-to-be-infamous regional director for ONRC, said that “[t]he sucker...is an indicator species on the health of the entire habitat. ‘This wildlife display should not be destroyed for the sake of hay, horseradish and potatoes,’ he said” (Scarbrough 1991, 2 of download).

Also in 1991, ONRC filed a motion seeking “a temporary restraining order to save the Lost River and short-nosed suckers from what it alleges is a bungled salvage operation. ... The evidence shows the bureau ‘is not even making a half-hearted attempt’ to salvage the fish... ‘What we’re saying is, ‘They’ve botched it,’ said Wendell Wood, Western regional director for the Oregon Natural Resources Council. ‘We’ve asked the court to issue an emergency restraining order that forbids them to further drain any canals until they are assisted with people who have more expertise’” (Durbin 1991, 1-2 of download).

In April 1993, when ONRC’s 1991 lawsuit against BOR for failure to consult with FWS was dismissed because FWS had finally provided the court-mandated Biological Opinion, Wendell “Wood added that the Bureau of Reclamation probably never would have consulted with Fish and Wildlife without the lawsuit” (Associated Press 1993b, 1 of download).

In July 1993, Andy Kerr, Conservation Director of ONRC, was invited by Upper Basin farmers to speak to them at the Rotary Club in Tulelake, CA. In his speech, Kerr threw down the gauntlet, vowing a fight to restore an ecosystem that he said had been destroyed by agriculture and challenging the farmers to a battle (Associated Press 1993c).

‘The Basin is going to become a major priority of the ONRC.’...Kerr compared the farmers...to the timber industry. He said the old-growth timber industry ‘fought change. See how they’ve failed.’ If farmers fight, it’s going to be the same situation, he warned. The ONRC will continue to litigate until salmon return to Upper Klamath Lake and will continue to fight until Lost River and short-nose sucker fish have recovered and are removed from the endangered species list, Kerr said. The group will continue to fight grazing on all federal lands and will work to return
100,000 to 150,000 acres in the Klamath Basin to protected status. ...Agriculture, Kerr told the farmers, has ruined the Klamath Basin. ...He warned the farmers the American public is not on their side. ‘The U.S. has more farmers than they need.’ he said. (Associated Press 1993c, 1-2 of download)

As Kerr was having coffee in a café prior to his speech, “he was slapped with a lawsuit by a farmer who says ONRC policies are interfering with his water rights. ... ‘I’ve been sued many times before. ...You’ll hear from my attorneys and you’ll wish you hadn’t’” (Associated Press 1993c, 2 of download).

In August 1993, Wendell Wood took the first step on the promise that the Basin would become an ONRC major priority, by moving to Chiloquin, OR, and opening an ONRC field office there. Friend and foe alike characterize Wood as a bulldog, who sinks his teeth into something and won’t let go until he shakes it to death (Monje 1993). Kittredge interviewed Wood for their 2000 book, and provides us with a compelling portrait.

In 1993 a man named Wendell Wood moved into a house on Lakeshore Drive along Klamath Lake just north of Klamath Falls. Wood represents the Oregon Natural Resource Council (ONRC), a group self-described as an ‘Aggressive Defender of Oregon’s Wild Lands.’ Through his work and his willingness to sue any environmental offender, Wood has become the most reviled and resented man in the Klamath Basin. He doesn’t seem to care. His indifference to local politics makes him enormously powerful. The source of his power, his environmentalist constituency, mostly lives outside the basin.

A small, intense man, Wendell Wood...is a professional environmentalist. Hard-line. He asked what kind of story I was intending to tell. About citizens seeking agreement, I said, about ways of solving intertwined ecological and social problems. ...‘You’ve been talking to the compromisers,’ Wendell Wood said. The action I’d guess Wendell Wood finds most deplorable is compromise in regard to preserving natural processes. (Blake, Blake, and Kittredge 2000, 120-122)

The ONRC and Wendell Wood have declined a role in Klamath Basin environmental decision-making groups for a simple reason. They want to avoid being tempted to compromise through involvement with a group that is attempting to salvage both the local economy and the environment, rather than physical ecologies only. Which is ONRC’s single concern. ...Wendell Wood lives an adversarial life. It would not be anything I could stand, but he seems to consider his isolation in the community simply part of the price he is willing to pay in order to serve his purposes. (Blake, Blake, and Kittredge 2000, 128-129).

I don’t think I need to pile on more examples in order to make the point that the language employed by ONRC served to maintain their conflict track at its escalated extremes. They speak of themselves as having a personal and self-sacrificing mission to vanquish those who would destroy the
environment. Pruitt and Kim (2004) define such people as militant leaders and assert that their emergence exacerbates conflict to its extremes.

ONRC speaks of their enemies in terms that are dismissive, disparaging them as unworthy of continued existence, and painting a target on them for vanquishment. Actions taken by their enemies are characterized within the expectation that their enemies will by definition do ‘wrong’ unless ONRC forces them to do ‘right.’ And they dismiss any attempts at boundary-spanning with their enemies as traitorous to the cause.

**How ONRC Went About Employing the Tactic of Litigation.** I would say that ONRC stalked their enemies like predator on prey, expecting their enemies to take actions that would fail to meet ONRC’s criteria for what should be done on behalf of the environment, pouncing upon any such failures, sinking their teeth in and not letting go until either they got what they wanted either in court or through out-of-court settlements, or the court ruled against them.

I will let details about one case serve as representative of this pattern. On July 10, 1991, ONRC filed a complaint of violation of ESA against the Bureau of Reclamation for failure to consult with FWS with respect to the impact on the suckers of BOR’s proposed actions in managing the Klamath Irrigation Project (*ONRC v. BOR*). On August 14, 1991, FWS issued a Jeopardy Biological Opinion (BO), and on August 19, 1991, BOR notified FWS that it accepted the BO and requested that the court case be dismissed because it had completed the formal consultation. But, on August 26, 1991, ONRC amended its complaint, alleging that no critical habitat had been specified and that BOR must consult about the effects of the long-term operation of the Klamath Project. On November 1, 1991, the court dismissed all complaints except the requirement for consultation about the long-term effects. On November 15, 1991, BOR provided proof that it had requested formal consultation with FWS concerning the effects of the long-term operation of the Klamath Project. ONRC then moved for a temporary restraining order against BOR. On December 11, 1991, the court dismissed all remaining claims as moot, as well as stayed any further proceedings pending completion of the consultation about the effects of the long-term operation of the Klamath Project which was begun by BOR on November 15, 1991. On February 13, 1992, ONRC sought an injunction against BOR. On April 4, 1992, the court denied their motion, and once again told them to wait until the consultation about the effects of the long-term operation of the Klamath Project was completed. Not to be thwarted, on July 6, 1992, ONRC filed yet another complaint, realleging the ESA claims, as well as alleging *de novo* claims under NEPA, the Migratory Bird Treaty Act, and California state law. On July 22, 1992, FWS issued its BO on the long-term effects of the Klamath Project’s operations
on the listed sucker species. On April 5, 1993, the court dismissed ONRC’s claims. ONRC immediately filed an appeal with respect to two NEPA claims. On April, 7, 1995, the appeals court affirmed the district court on one NEPA claim and dismissed as moot on the second NEPA claim (ONRC v. BOR, KWUA and TID).

I have no idea how many notices of intent to file a lawsuit were produced by ONRC. I have no idea how many settlements were reached out-of-court such that the lawsuit was never actually filed. I have no idea how many lawsuits were filed that were settled out-of-court and thus dismissed. I only know about lawsuits that were actually filed and went through the above unrelenting pattern of legal tactics. I can only imagine that being prey to ONRC’s predator would have felt like living with a swarm of killer bees in one’s living room.

As Marshall Staunton, president of the Tulelake Growers’ Association, said after listening to Kerr’s speech in July 1993, “ ‘He scares the hell out of you with regards to his comments, especially when he compares farmers to what they’ve done with timber,’ he said. But, he added, Kerr is right about environmentalists. ‘They’re very powerful and the farmers need to be aware of them,’ Staunton said” (Associated Press 1993c, 2 of download).

In keeping with my analogue with Vietnam-era radical organizations, I think it appropriate to include what Kittredge had to say about ONRC, with which I happen to agree.

It’s the role of radical conservationist groups like the Oregon Natural Resources Council to establish limits. They draw lines in the sand. Cross them, they say, and we’ll sue. They consistently do what they say they are going to do. Their existence constitutes a backboard for the rest of society to play against. ...The Klamath Basin is lucky to have Wendell Wood. Not because he’s necessarily correct, or incorrect, on any issue, but because his actions, those incessant lawsuits, force people to consider important concerns in public forums – in cafes, in the newspapers, on television, and ultimately, sadly, in court. (Blake, Blake, and Kittredge 2000, 128-129)

The Private Face of the Environmental Movement in the Klamath. The private face of environmentalism in the Klamath Basin was comprised of those organizations and those individuals who did not subscribe to the radical modus operandi of ONRC, who worked for the environment in different ways, boundary-spanning ways that ONRC would reject – and who had to live with being branded by many as being the same as ONRC because they were associated with the environmental movement.

For example, when Wendell Wood spoke of the compromisers, he was referring to the Upper Klamath Basin Working Group (Blake, Blake, and Kittredge 2000), which included four
representatives of the environmental community, including at least one from California. The Trinity Adaptive Management Working Group included representatives from five environmental organizations. The Klamath Basin Ecosystem Foundation had members of their Board of Directors from two environmental organizations. The Nature Conservancy partnered with the National Fish and Wildlife Foundation on both the Williamson River Delta and the Sycan Marsh restoration projects. Environmental organizations made presentations at all three of the ERO-sponsored Klamath watershed conferences.

This short list probably just scratches the surface of the involvement of the more mainstream environmental organizations at the organizational level in the watershed – and says nothing at all about the involvement of individuals in ecosystem restoration projects throughout the watershed simply because they felt it was the right thing to do.

**In summary, then,** as the year 2000 draws to a close in the Klamath watershed, ONRC sits as it had been from its birth, at the extremes of conflict, positioned as a militant leader of the environmental movement in the Klamath watershed, committed to vanquishing those whom they perceive as destroying the environment, its radical **public face** masking the **private face** of a more moderate environmentalism in the watershed.

**The Coastal Salmon Fishing Track**

The Coastal Salmon Fishing Track represents the second instance of the playing out of the pattern of the *World Turned Upside Down*. There are three stages in this track – the first stage 1970-1978 that represents life prior to the world turning upside down, the second stage 1979-1992 that represents a response to threat that escalated but not to extremes, and the final stage 1993-2000 that represents an escalation to the extremes of conflict.

**The First Stage – 1970-1978.** When we start looking at the track in 1970, we catch them at the very beginning of the pattern, when the coastal salmon commercial fishing way of life was grounded upon the mindset that the environment was a limitless resource. This way of life was an open profession with few regulations and abundant freedom, peopled by those who were drawn to an independent lifestyle “where hard work, skill, knowledge, and luck determined personal success” (Gilden 1999, 8).

As the Expansion period had drawn to a close, declining fish populations had become an inescapable fact of life for the ocean fishing communities. Fisheries management chastised the ocean fishing industry for overfishing and endlessly reconfigured restrictions within the 0-3 mile zone on
everything *but* the number of fish caught and the number of people fishing, but ultimately failed to reduce the harvest and stem the decline in fish populations. Outside the 3-mile limit where both American and foreign fishing vessels trolled, fishing was essentially completely unregulated and the industry fished to its fill.

The boundary of *us* as commercial salmon fishermen was not drawn adversarially. In 1976, port and fishermen's marketing associations that spanned the U.S. West coast from San Diego to Alaska joined together to form the Pacific Coast Federation of Fishermen’s Associations (PCFFA). At the time, it was formed as a self-advocacy group in which *we* make the distinction between *we* who are commercial fishermen and *they* who are not, in order to ensure that *we* are heard when everyone is talking at the same time. They spoke of themselves as “people of the sea... That is, in our hearts, where we live” (U.S. Senate 1978: Testimony of Nat Bingham, 134).

The coastal fishing communities expressed the characteristics of the Rural Middle Class, in that people saw themselves as living within and maintaining webs of connections among people, webs of personal relationships and particularized reciprocity. For example, the September 2001 PCFFA newsletter noted that “in isolated rural communities there is always pressure to get along well with your neighbors and not rock the boat” (Parravano, Grader, and Spain 2001b, 2 of download).

They spoke of problems as located within and inseparable from the interpersonal or intergroup context. For example, during 1978 Congressional hearings, Nat Bingham, then vice president of Fort Bragg Salmon Trollers Marketing Association, made the point that because salmon fishermen were convinced that habitat degradation rather than overfishing was the reason why salmon runs had declined, they had long been collaborating with others in restoration projects to restore natural runs from streams where they had been lost (U.S. Senate 1978: Testimony of Nat Bingham).

They looked to collaboration and reconciliation, through consensus, to resolve problems. For example, during 1977 Congressional hearings, Zeke Grader, general manager of PCFFA, testified that the 22 members of the Salmon Advisory Panel had come to consensus on a number of proposals that they then presented to the Pacific Fisheries Management Council – only to be told by PFMC that the Council did *not* want the Panel to collaborate to achieve consensus, but rather only wanted the individual members of the Panel to argue the positions of their constituencies (U.S. Senate 1977: Testimony of Zeke Grader). Grader characterized this as a policy of ‘divide and conquer’ by keeping the user groups fighting amongst one another (U.S. Senate 1977: Testimony of Zeke Grader).
The Second Stage 1979-1992. The second stage was triggered in 1979 by PFMC ordering the first time ever closures in the Klamath salmon fishing season. In the Klamath Management Zone, the commercial ocean salmon season was reduced by 31 days, from 169 days to 138 days, and the recreational ocean salmon season was reduced by 125 days, from 365 days to 240 days (see table 11.2 below). In addition, the State of California enacted a moratorium on new licenses to fish salmon. And finally, BIA banned commercial fishing for the tribes, and the State of California banned in-river sports fishing. The tribes could still engage in subsistence and ceremonial fishing and could use gill nets to do so.

<table>
<thead>
<tr>
<th>Year</th>
<th>Recreational Ocean</th>
<th>Commercial Ocean</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Days can fish in KMZ a including KCZ b,c</td>
<td>Bag limit per day c</td>
</tr>
<tr>
<td>1978</td>
<td>365</td>
<td>3</td>
</tr>
<tr>
<td>1979</td>
<td>240</td>
<td>2</td>
</tr>
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<td>1980</td>
<td>240</td>
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<td>1981</td>
<td>275</td>
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<td>1982</td>
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<td>1984</td>
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<td>1985</td>
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<td>1986</td>
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<td>1987</td>
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<td>≤2</td>
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<td>1988</td>
<td>107</td>
<td>≤2</td>
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<td>1989</td>
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<td>1993</td>
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<td>1994</td>
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<td>1997</td>
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<td>≤1</td>
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<tr>
<td>1998</td>
<td>68</td>
<td>≤1</td>
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<tr>
<td>1999</td>
<td>85</td>
<td>≤1</td>
</tr>
<tr>
<td>2000</td>
<td>85</td>
<td>≤2</td>
</tr>
</tbody>
</table>

a KMZ ≡ Klamath Management Zone  
b KCZ ≡ Klamath Control Zone  
c Data adapted from PFMC 2001, Table C-2, Recreational regulations in State and Federal waters  
d Data adapted from PFMC 2001, Table C-1, Commercial regulations in State and Federal waters.
The plethora of regulations coupled with a dearth of salmon squeezed the life out of coastal salmon fishing communities, reducing them to earnings that were but a miniscule percentage of what they had earned before, and completely changing their way of life.

‘I've already been driven out of my home. ...They’ve made it impossible. I have to go 100 miles south and stay away from my family for four to six months.’ (McGrath 1988, 1 of download)

‘You not only are destroying our economy,...you are tearing the heart out of our community.’ (Koberstein 1992b, 1 of download)

‘It looks like death. ...There’s been a salmon season every year for the past hundred years. ...Now you'll see ‘for sale’ signs blooming like daisies on the boats.’ ... ‘Every boat down here is worthless now. ...A lot are for sale already – cheap. I’d sell my boat right now, and it’s the only thing I own. I already sold my mobile home to one of my deck hands.’ Like many of the North Coast’s fishermen, Morris does not have an inkling of how he will now support himself. (Martin 1992, 1-2 of download)

Boundaries were drawn more starkly between commercial salmon fishermen and the tribes, and relations were extremely tense. “‘When we first started out,’ [Susan] Bowers [Masten] recalled, ‘the commercial fishery couldn’t even stand to sit at the same room with Yurok fishermen. Emotions were so high and so intense that we tried to do a meeting in 1979 and it lasted maybe five minutes and people left the room’” (Most 2006, 123).

For all the change, the community seems to have responded by continuing to try to work within the system, rather than to try to change it.

They protested. In July 1981, salmon fishermen formed a picket line “directly under the Golden Gate Bridge, a bobbing, close-order flotilla of fishing boats blocking passage in or out for freighters, oil tankers and even naval craft. The protesters were...complaining about the federal government’s decision to close the waters off California for a month” (The Economist 1981, 1 of download).

They testified at Congressional hearings. The 1979 Congressional hearings on the Salmon Conservation Problem on the Klamath and Trinity Rivers in Northern California and the Rights of the Indians in that Area were an angry blame game played out within the limbo of the unresolved Short litigation. In the hearings held in Eureka, CA, the animosities took center stage. The ocean commercial salmon fishing community continued to make the argument they had first made in the 1977 oversight hearings – that there was no evidence of overfishing by either the commercial troll or ocean sport salmon fishery, and that the blame for the decline in the salmon populations was directly attributable to the destruction of the fish’s inland spawning and rearing habitat (U.S. House 1979: Testimony of Zeke Grader, General Manager of PCFFA). Grader was opposed to any type of ocean closure. He
supported the continuation of the moratorium on in-river tribal commercial fishing until the Short litigation was decided and until those tribes who had fishing rights could then decide if they wanted a commercial fishery and if there were a sufficient resource to support a commercial tribal fishery. In addition, he contended that gill nets should be banned for any tribal fishery – commercial, subsistence, and ceremonial.

They went to public hearing after public hearing before PFMC making their points about hardship to their way of life and about environmental degradation. They testified over and over and over that it was not overfishing but environmental degradation that was responsible for the decline in salmon runs, that curtailing their fishing was not sufficient to restore the salmon.

In 1991, PFMC said that “We regret this situation, and we know the fishermen are not the cause of the decline in the abundance’ of chinook salmon returning next fall to the Rogue and Klamath rivers” (Griffith 1991, 1 of download), but this did not sit well with salmon fishermen. “If they have a problem in the Klamath River,...it’s because they have no water in it. They sent it away to grow lettuce in the central part of the state. It’s California’s problem. Let them fix it.’ ...Some trollers argued that if they can’t fish, no other fisheries that kill salmon [i.e., the ocean sports salmon fishers] should be allowed to operate in the closed areas” (Griffith 1991, 1-2 of download).

At PFMC public hearings prior to setting the 1992 regulations, fishermen protested the salmon curbs. Greg Mueller said that “The dams and the developers have killed all the fish. ...We get the leftovers.’ He and dozens of others told a federal public hearing of their anger and sadness. They face severe economic hardship and, for many, an end to their way of life. ... Chet Lounsbury of Gearhart saved some blame for the fishery managers. “When you take away a man’s livelihood, that’s one thing. ...But when you take away a way of life, that’s absurd, gross mismanagement” (Koberstein 1992a, 2 of download).

At another PFMC public hearing, “Carol Davis, a Brookings, Ore., commercial troller, said she’s concerned about overfishing but believes it’s time for someone besides harvesters to bear the rehabilitation burden. ‘If we thought a zero-fishery would fix this problem, we’d be more than willing to go along with it,’ she said, her voice wavering. ‘We’re asking for survival. Don’t kill us off’” (Judd 1992, 2 of download).

Interestingly, they did not resort very often at all to the mainstream weapon of litigation. They used it only once to try to stop the regulations in 1979 – and lost.4 Joining with others, they used it

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4 In 1980, the commercial ocean salmon fishing season in the Klamath Management Zone and in the Klamath Control Zone were reduced even further than they had been in 1979. Instantaneously, PCFFA and other fishermen’s associations filed suit against the Secretary of Commerce to try to have the 1980 regulations
only three times to try to do something about environmental degradation – and while they won one and lost one, the decision for the third was so long in coming as to be irrelevant to surviving in the
today that obtained at the date of filing.  

Underneath, however, the emotions were growing. The pain, the anger, the sadness with respect to the decimation of their way of life were growing and were increasingly venting like steam from a supposedly dormant volcano. They spoke of themselves in the language of relationships, not in the language of rules, appealing as one human to another to understand and do something about the threat to their way of life. Boundaries were being drawn increasingly wider between the commercial ocean salmon fishing community and many others whom the community experienced as threats to their way of life, resulting in much finger-pointing at the tribes, PFMC, the dams, the developers, ocean sports salmon fishers, gill-netters, the State of California, the Commerce Department. Boundary-spanning became suspect.

But it had not escalated to the extremes of conflict. That would change in 1993.

The Third Stage 1993-2000. The third stage was triggered by the conflict among fishing groups that erupted over the setting of the 1993 regulations. In 1992, for the second year in a row, the commercial salmon fishing season in the KMZ and KCZ had been completely closed. The possibility for a third year in a row loomed large in 1993. Add to this the effort by the tribes through the Interior Department to have their allocation of the harvestable run increased to 50%, and conflict erupted and quickly escalated to the extremes.

Over the course of the public hearings, everybody spoke passionately about themselves and their situations. The coastal salmon fishing community said that they should not be made to pay for the massive problems in the river that were killing the chinook, and that if the tribes were given 50% of the harvestable chinook, “ocean fishermen will ‘lose the heart of our fishing grounds,’ said Bitts. ‘It appears that nothing short of eliminating the troll fishery from the ocean will satisfy the tribes’” (Finley 1993a, 2 of download). The tribes countered that they should not be made to pay for the
stopped (PCFFA v. Commerce), but on June 4, 1980, the Court denied the ocean fishers’ request and the closures were implemented.

5 In 1988, PCFFA joined with other environmental organizations to try to stop the Forest Service from taking actions which they felt would degrade the South Fork Trinity river which was a spawning and rearing habitat of the salmon (Wilderness Society v. Tyrrel). In 1990, they lost their case.

Also in 1988, PCFFA joined with other environmental organizations to file against a BOR project in the Central Valley of California an ESA claim with respect to a number of listed species (NRDC v. Patterson). As best I can tell, that case was still bouncing around the courts in 2005.

In 1992, PCFFA joined with CALPIRG to file a lawsuit making a Clean Water Act claim against Shell Oil for discharging into San Francisco Bay selenium in excess of allowable limits. In 1993, they won their case (CALPIRG v. Shell Oil).
massive problems in the river that were killing the chinook and that the ocean fisheries should not be allowed “to continue to harvest at the expense of the tribes’ river subsistence fishery” (Finley 1993a, 2 of download). The coalition that the fishermen had “forged with the tribes to push for more water to be released from irrigators and farmers, to allow more fish to spawn” (Finley 1993b, 2 of download) was increasingly in jeopardy as both sides felt themselves backed into a corner and forced to do whatever they felt was necessary to protect their ways of life (Associated Press 1993a). “Both sides are making noises about going to court” (Finley 1993a, 2 of download).

When PFMC submitted to the Commerce Department their recommendations for the 1993 regulations, they did not give the tribes 50% of the harvest. Subsequent to the receiving of these recommendations from PFMC, however, the Secretaries of Interior and Commerce had extensive discussions, with the result that (1) the spawning escapement was increased; (2) the tribal catch, while not 50%, was set at 18,500 chinook; and (3) the commercial ocean fishery was once again severely limited.

Immediately, PCFFA joined with seven individual commercial fishing men and women plus five commercial fishermen’s associations to take the Interior Department to court (Parravano v. Babbitt).

A salmon war was brewing yesterday between commercial salmon fishermen, the federal government and the Indians of the Klamath River. ‘Fishermen feel betrayed,’ said Pietro Parravano of Half Moon Bay, president of the Pacific Coast Federation of Fishermen’s Associations. Parravano was one of a dozen plaintiffs who sued the government in U.S. District Court this week charging that commercial fishermen were being ‘discriminated against only because they are ‘non-Indian’ of race.” (Zane 1993, 1 of download)

In yet another perfect example of the translation from the language of relationships to the language of rules, in filing the suit, claims of betrayal became claims of the violation of the rules of the FCMA, the Administrative Procedures Act, the Freedom of Information Act, the Klamath River Basin Act, and the Trinity Basin Act, and claims of discrimination became claims of violation of the equal protection clause of the U.S. Constitution.

On October 4, 1993, the Solicitor of the Interior Department issued the Opinion that permanently allocated 50% of the harvestable surplus to the tribes. The Solicitor’s Opinion was factored into the court’s consideration of Parravano v. Babbitt and in the court’s decision of the case on July 24, 1994, bottom-line, the commercial ocean fishing industry lost. Of course, PCFFA and the other plaintiffs appealed the decision, but on November 16, 1995, the appeals court affirmed the district court’s decision (Parravano v. Masten).
Pain and anguish rippled through the coastal salmon fishing community. The headline of an October 3, 1999 Associated Press article says it all: “Salmon fishing industry’s demise evokes sadness, anger on North Coast” (Associated Press 1999a, 1 of download). “The boats are a floating ghost town. ...‘I don’t know how they still manage to hang on.’ ...‘It’s gone and I can’t believe it will ever come back. ...It’s over’” (Associated Press 1999a, 1 of download).

In 1994, PCFFA set out to change the system, grabbing up the weapon of litigation, and joining what became a powerful collaboration of ONRC, other environmental organizations, and an environmental legal defense fund, to use aggressive litigation to fight for the restoration of the upstream salmon spawning and rearing habitat. The first lawsuit filed by the collaboration was *American Rivers v. NMFS* in 1994. In the ensuing years, lawsuits were filed wherever habitat was threatened or degraded and were litigated with relentless aggression (see my earlier discussion of ONRC in the environmental track).

In 1997, the SO/NCC coho was listed as threatened by NMFS. PCFFA and the environmental collaboration embraced it as leverage for litigation.

Also in 1997, PCFFA and the environmental collaboration intervened as defendant in *KWUA v. Patterson*, because, I would presume, it was connected to BOR and the Klamath Project and the water allocations which PCFFA considered as directly responsible for the environmental degradation in the Klamath River and the resulting devastating decline in the salmon runs.

On May 31, 2000, PCFFA and their environmental allies for the first time took their fight directly to BOR and the Klamath Project (*PCFFA I*). They claimed violation of NEPA, the Wild and Scenic Rivers Act, and the Reclamation Act by BOR. On June 20, 2000, the Court denied those three claims. Shortly thereafter, the plaintiffs filed an amended complaint of violation of ESA by BOR, alleging that BOR failed to consult with NMFS concerning the impact of the Klamath Project 2000 Operations Plan as required by ESA and seeking an order to stop BOR from sending “irrigation deliveries from the Klamath Project whenever Klamath River flows at Iron Gate Dam drop below the minimum flows recommended in Dr. Hardy’s Phase I report until NMFS issues a legally valid biological opinion and the Bureau of Reclamations [sic] complies with the terms of it” (*PCFFA I* 138 F. Supp. 2d at 1240).

The 1993 Solicitor’s Opinion triggered the escalation to the extremes of conflict on the Coastal Salmon Fishing track. The enemy of the fishing community – environmental degradation – coalesced in the Klamath into the Them of BOR and the Klamath Project. Boundaries widened to
the point of polarization and demonization of Them. Talk about Us and Them was now in mythic terms. PCFFA took on the role of militant leader with the mission of being victorious over Them, and armed themselves from the arsenal of mainstream conflict resolution with the weapon of aggressive litigation and the hammer of the ESA. When wielding the weapons of mainstream conflict resolution, PCFFA characterized the fishing community in terms of rules, rights, interests, and economics. Interestingly, PCFFA still espoused and participated in collaborative restoration projects, but the relationship of collaboration to litigation was different than, say, it was for the tribes. Where for the tribes, it was always try to collaborate, and litigate if we must, for PCFFA, it became collaborate if we can, but we must win – and after we win, we will lend a helping hand to the vanquished.

Two PCFFA newsletters from 2001 paint a compelling portrait of this position. I am going to take the liberty of quoting extensively from the two newsletters because they speak for themselves far better than I could speak for them.

Make no mistake – the west coast commercial salmon industry is in a pitched battle to restore salmon to the Klamath. We are in a fight for our lives. To our once proud salmon fleet, the outcome of this struggle will mean the difference between renewed jobs and prosperity, or economic extinction. (Grader and Spain 2001, 2 of download)

By 2000 it became clear that downriver fishermen, salmon-dependent industries and the Tribes were threatened with extinction along with the fish. (Grader and Spain 2001, 4 of download)

And one major key to restoring salmon to the Klamath Basin is to reform the gross over-appropriation of the basin’s limited water supply by the bloated and overdeveloped Klamath Irrigation Project. The fight for the Klamath is therefore not only a fight to prevent extinction for coho salmon, but for all salmon in the Klamath Basin river system, and thus to protect many of our coastal communities and our livelihoods from economic extinction. (Grader and Spain 2001, 4 of download)

At root, the Klamath Project is just another bloated, federally subsidized and over-extended federal water project. (Grader and Spain 2001, 5 of download)

What is NOT an option is for a whole downriver fishing industry to be economically strangled, and their communities deliberately sacrificed, just to grow more potatoes in a desert. The days of bloated federal water projects are at an end. There are lots of places farmers can grow potatoes, but there is only one Klamath River for the salmon. (Grader and Spain 2001, 5 of download)

We simply refuse to die! PCFFA was founded on that refusal to die. PCFFA inherited a great cultural tradition, going back hundreds of years, of fishermen fighting for their survival and winning, often against great odds. (Parravano, Grader, and Spain 2001b, 1 of download, italics in original)
Most of us know that we have to fight for our communities and our livelihoods if we are to keep either. Unfortunately, there are also those within our own industry who are so timid, and so easily intimidated by the aggressive political opposition of our usually much better funded opponents, that they would not only go away willingly, but turn on their fellows in the bargain. (Parravano, Grader, and Spain 2001b, 2 of download)

It’s also emotionally difficult to take positions that are sometimes unpopular with friends, neighbors and other family food providers. However, the alternative to speaking out is the ultimate extinction of the family fisherman as we know it. For us here at PCFFA, and for most fishermen, their own cultural extinction is not an option. ...Our job at PCFFA is to make sure they hear our dissent loud and clear and cannot get around us, push us around or remain in denial. (Parravano, Grader, and Spain 2001b, 4 of download)

We could not have accomplished many of our successes as an industry without a healthy mix of both collaboration and confrontation. However, the bottom line is that we can never just roll over and play dead. ...Collaboration is always a good goal, if possible, but the possibility of win-win solutions through compromise is often a myth. Compromise can sometimes work to everyone’s advantage, but there are some fights that just have to be won. You cannot compromise by half a dam, for instance, nor can you compromise on extinction. Sometimes you just have to beat the bastards. They don’t have to like you, just respect you. Then you can negotiate as equals. (Parravano, Grader, and Spain 2001b, 4 of download)

Of course, playing to win also carries a heavy moral obligation to assist the loser graciously and compassionately. (Parravano, Grader, and Spain 2001b, 4 of download)

The Private Face of the Coastal Salmon Fishing Track. As the year 2000 drew to a close with PCFFA waging war in court against BOR and the Klamath Project, it is very important to also note that behind the aggressive public face of the coastal salmon fishing community expressed by PCFFA lay a private face of continuing collaboration and boundary-spanning. And it was collaboration and boundary-spanning that was not contingent upon winning in court.

As expression of this private face, I would like to draw upon the life path of Paula Yoon, whom I came to know after meeting her at one of the Chadwick workshops in the Klamath watershed. Paula was good enough after our first meeting in 2005 to send me a copy of her master’s thesis and of her resume which was included as an appendix to her thesis.

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6 I take note of the fact that in speaking of themselves to themselves in the language of relationships in the above selection of quotes, the authors of the newsletters – Zeke Grader and Glen Spain in August and Pietro Parravano plus Grader and Spain in September – used the word ‘extinction’ seven times to characterize the threat to their way of life. Interestingly, by contrast, when, in August 1993, Glen Spain submitted testimony to a Congressional hearing held in Portland, OR on the decline of the Pacific salmon and the reauthorization of FCMA, his argument for a stronger FCMA as well as for the strongest possible ESA in order to accomplish habitat protection and restoration was couched entirely in the language of economics (U.S. House 1993: Testimony of Glen Spain) – thus translating the threat to their way of life into the language of rules in order to be heard in the Congressional hearings.
Paula and her husband Jeff Yoon entered the salmon industry as young newlyweds in the late 1970s. “Life was good and looked like it was going to get better; fishing families were making middle class incomes through the ups and downs that accompany all family food production businesses” (Yoon 2005, vi). Not only did they own and operate a fishing vessel catching salmon, crab, rock cod, and albacore; they also were involved in various fishermen’s associations, cooperatives, advisory committees, and salmon restoration projects (Yoon 2005).

Then everything changed. They could not “understand why the salmon season was being cut back to increase the salmon stocks. The California industry had self-imposed limited entry and created a landing tax to restore watersheds. At the same time no responsibility for salmon stock status was being required by those living within watersheds, where, from our perspective, land use practices including water diversion were clearly major factors” (Yoon 2005, vi).

“At that point, I went to college to try and piece it together; and developed a multi-discipline special major, bachelor of science, focused on all of the pieces of the puzzle” (Yoon 2005, vi). Paula received her Bachelor’s degree from Humboldt State University in 1989.

“In 1991, the salmon season was near non-existent due to stock status. My husband, Jeff, went to Alaska in 1991 to crab fish on a vessel that was to be our next boat – Miss Humboldt. Jeff drowned in the midst of an unpredictable storm, and I realized shortly after that there was no reason good enough for a father to leave his 11 year old son to fish thousands of miles away. If we were taking care of our resources in a sustainable manner, fishermen and women would be fishing off of the coasts that we live on, sharing fish with the Tribes, sharing water with the farmers and ranchers in the basin and finding ways to work together” (Yoon 2005, vii).

In the ensuing years, Paula:

- received mediation training certification at the local, state and international levels
- developed and administered a program to hire and train displaced salmon fishermen and women into watershed restoration jobs
- served as fishery education consultant for that Eureka High School project that resulted in the publication of *The Klamath River Basin: Interconnections within a Watershed Ecosystem* by Benzinger et al. in 1995
- facilitated the regional workshops convened by the Klamath River Compact Commission (see above)
- worked with the Humboldt Bay Watershed Advisory Committee
- began development of the Redwood Creek National Watershed Center
• completed her master’s degree at HSU (Yoon 2005)
• attended four of the five Chadwick workshops in 2004 and 2005
to list but a few of her activities.

In every way, Paula’s life path expresses the massive changes wrought upon the coastal commercial salmon communities from the 1970s on. It also expresses the characteristics of the Rural Middle Class, with her building and maintaining a web of relationships not only within her coastal fishing community but also throughout the entire Klamath watershed.

**In summary, then,** as the year 2000 draws to a close in the Klamath watershed, PCFFA stands as the militant leader of the coastal salmon fishing community at the extremes of conflict, waging war in court with the bomb – fuse lit – that will explode in 2001, its radicalized public face overshadowing the enduring private face of collaboration and boundary-spanning both within the coastal salmon fishing community and reaching out to the watershed.

**The Upper Basin Agriculture Track**

The Upper Basin Agriculture player group is comprised of Project water users – those inside the Klamath Project who irrigate their land with water drawn from the Project – and non-Project water users – those outside the Project who irrigate their land with water drawn from sources outside of the Project. Sometimes the track involves all water users, sometimes just a segment of the water users, but the track always involves the relationship of agriculture to water.

The Upper Basin Agriculture Track represents the third instance of the playing out of the pattern of the *World Turning Upside Down*. There are two stages to this track – the first stage that represents life prior to the world turning upside down, and a second stage that represents the private face of an escalating siege mentality pushing against the public face of collaboration, until it blows through and explodes in fury in 2001.

**The First Stage 1970-1989.** When we start looking at the track in 1970, we catch the Project water users at the very beginning of the pattern, when BOR delivered water without fail, insulating “Klamath Reclamation Project growers from climatic variability, competing federal commitments, and the effects on others of agricultural water diversions” (Woodward and Romm 2002, 337). From the perspective of the water users in the Project, the delivery of water to their fields was an unquestioned given. As they saw it, BOR existed to deliver water to them, and they had a right to receive it. And they received it, come rain or come drought. And they took it for granted that they would always receive it.
The Project water users did not pay for the water they received, but were obligated to repay the Project construction costs. “By the 1950’s much of the construction costs of the project had been reimbursed to the United States” (Keppen 2004a, 2). The Project water users paid less than 10% of the going commercial rate for the electricity that they used to pump water (Doremus and Tarlock 2003), and would continue to pay this rate until the contract with PacifiCorp expired in 2006, at which time the rates would be recalculated.

Project water users formed self-advocacy groups. “The original Klamath Water Users Association was organized on March 4, 1905 under Oregon statute... That Association was created by local farmers, livestock producers, businessmen, bankers, attorneys, and community leaders interested in seeing the Klamath Reclamation Project constructed with the least amount of cost and for the lasting benefit of the entire Klamath community” (Keppen 2004a, 2). By the 1950s when most of the construction costs had been repaid, “irrigation districts assumed the contractual obligations for maintaining and operating the Project” (ibid.). In 1953, the Klamath Water Users Protective Association was organized and incorporated as a nonprofit in order “to address water right and electrical power issues for Klamath Basin irrigators” (ibid., 2) – and “remained a low-budget, low-profile organization for 39 years” (U.S. Senate 1994a: Testimony of David Zepponi, 75).

“The Tulelake Growers Association is a non-profit organization formed by farmers in 1942 to assist with agricultural related issues” (Tulelake Growers Association n.d., 1). Their mission is “to promote and maintain successful family farms in the Klamath Basin” (Tulelake Growers Association n.d., 1).

And very much in keeping with the characteristics of the Rural Middle Class, as one rancher said to Kittredge, “locals...have always talked to one another, working out practical problems in practical ways” (Blake, Blake, and Kittredge 2000, 21). And as another farmer said to a reporter, “We would rather sit down and use some of our historic information to work things out” (Kataoka 1997, 2 of download).

During this stage, Project water users received their water independently of the vagaries of weather – come rain or come drought, they received their water from BOR. However, things were happening under the radar, if you will, that would soon coalesce to make the Project water users’ receipt of water completely subject to the vagaries of weather – and to turn their world upside down.

In 1973, the Endangered Species Act was passed. While the litigation with respect to the Northern spotted owl was certainly the hot topic of conversation while it was going on, during this first stage, no one had as yet wielded the ESA-as-weapon against the Project water users.
In 1979, the final decision was rendered in the *Kimball* litigation track, and in 1983 the decision was rendered in *Adair II*. Putting these two litigation tracks together, the Klamath Tribes were determined not only to have treaty rights to hunt and fish on their former reservation, but also to have instream water rights sufficient to maintain those treaty rights and with a priority date of time immemorial. During this first stage, however, the repercussions of this determination had not yet hit the Project water users.

In 1988, the Lost River and shortnose suckers were listed as endangered species under the ESA, thus creating the ammunition for wielding ESA-as-weapon in the Upper Basin. But in 1988, during this first stage, this listing was essentially a non-event for Upper Basin Agriculture.7

But these events were, as I said, below the radar, and the taken-for-granted was alive and well for the Project water users.

**The Second Stage 1990-2000.** Interestingly, I am very much reminded of the coastal salmon fishing communities, in that the folks who came to homestead the Klamath Project were folks who valued their way of life and their freedom from outside constraints very highly, only to unexpectedly have their way of life and their freedom increasingly hobbled by outside constraints, and the taken-for-granted become the not-so-sure-at-all. During the period 1990 through 2000, as the outside constraints became more and more, the siege mentality that was the private face of the Upper Basin Agriculture steadily increased, with peaks and valleys that were directly tied to the status of the availability of water, spiking during years of drought and waning to some degree during years of sufficient water, pushing harder and harder against the public face of collaboration, until it blew through and exploded in fury in 2001.

It started with a tickle to people’s attentions in 1990, when KRBFTF held public hearings in Klamath Falls about plans to restore the Upper Basin in order to improve conditions for the salmon downstream. In 1991, KRBFTF “released a draft plan documenting severe water quality problems in the Upper Klamath. But as the draft plan circulated, some Klamath County residents claimed they had been blindsided. The task force included no county representatives. ...In August [1991], [Senators] Packwood and Hatfield wrote to Interior Secretary Manuel Lujan Jr. asking him to ‘place a hold on the Upper Klamath Basin Amendment’ until they’d had time to review it. [Representative] Smith pushed through legislation adding representatives of Klamath County and the Klamath Indian

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7 “Rod Blackman can’t help thinking about one spring back in the late 1980s ...Stopping in a store, he got to talking with a member of the Klamath Tribes who had a job radio-tracking the suckers on their spawning run up the river. ‘He’d tell us in the store that they were going to list these fish,’ as an endangered species, Blackman recalled. ‘We’d all laugh. Who cares about that?’” (Barnard 2001a, 3 of download)
Also in 1991, the listing of the suckers hit home for the first time. In February, BOR requested formal consultation with FWS regarding BOR’s 1991 operations plan for the Klamath Project. By July 1991, FWS had not issued its final BO for this consultation. Not wasting a moment, on July 10, 1991, ONRC filed a complaint of violation of ESA against the Bureau of Reclamation for failure to consult with FWS with respect to the impact on the suckers of BOR’s proposed actions in managing the Klamath Irrigation Project (ONRC v. BOR).

This filing made real for the Project water users the possibility that the listing of the suckers could result in reduced Project water deliveries. In response, the Klamath Water Users Association (KWUA) hired lawyers and scientists, and joined the Tulelake Irrigation District (TID) to intervene as defendants in the case, on the premise that the threatened restrictions to the water supply in the Klamath Project would severely impact the contracts between the water users in the district and in the association respectively and BOR (ONRC v. BOR and KWUA). ONRC sunk its teeth into the case in their customary aggressive and relentless manner. On July 22, 1992, FWS issued its BO on the long-term effects of the Klamath Project’s operations on the listed sucker species – as had been mandated by the court – but ONRC did not let go, filing an appeal. And so began another litigation track that would bounce through the courts for the next few years.

Whatever the outcome of the case, gone for the Project water users was the illusion that water delivery was a given; from now on, they would need to be ever vigilant against any threat they perceived to their way of life from reduced or even non-existent water deliveries.

1992 was touted as the worst drought of the century. “The Bureau of Reclamation, for the first time since the formation of the district, had to restrict and in some cases cut off water to irrigators in the lower end of the basin” (Blake, Blake, and Kittredge 2000, 136), with the result that 10,000 acres got no water and 60,000 acres got only half of their allocation (Durbin 1993). “The Bureau, in order to avoid having to cut irrigators even more, drained Clear Lake Reservoir to the lowest levels ever” (Blake, Blake, and Kittredge 2000, 136). Predictions of dire consequences abounded. “In a worst-case scenario – if farmers can't raise crops because of the loss of water normally delivered from Upper Klamath Lake, 3,116 jobs and $104.5 million in income could be lost” (Associated Press 1992, 1 of download). “It's grim,” [the BOR representative] said. ‘Small, family farms, with four and five children, have said they will go broke’” (Danks 1992, 3 of download).
For the first time, Upper Basin water users were faced with the fact that there was just not enough water to go around, and they were not happy about it. “In 1992, disputes erupted between Klamath Basin irrigators. ...Like a small civil war, neighbor was pitted against neighbor. Deeded Class B private land versus Federal leaseland. Upstream Klamath Lake unadjudicated irrigators versus Klamath Project irrigators” (U.S. Senate 1994a: Testimony of Marshall Staunton, 54).

At the same time, people continued to turn to collaboration to address the problems the drought created.

If there is a ray of hope on the Upper Klamath, it comes from the dawning awareness that a coordinated basinwide approach to water management is long overdue. ‘The first step is to get people talking in the same room,’ Chesney [biologist for CDFG] said. ‘You can’t respect the other person until you walk in his shoes a while.’ The first step was taken last spring, when a citizens’ conservation group, the Oregon River Council, put on a Klamath River Symposium in Klamath Falls. The second step will come with the Klamath Watershed Salmon & Steelhead Symposium & Festival scheduled for October 17 and 18 at the Yreka fairgrounds. A surprising harbinger of this cooperative approach occurred last week. The Tulelake Irrigation District, which represents most of the farms using Klamath water in California, announced that it would suspend all water use a month early, by September 15, so that more water could go downstream for fish and waterfowl. (McHugh 1992, 3 of download).

The Klamath Basin Water Users Protective Association emerged as a united organization, galvanized by the very real threat of lost water supplies and, thus, foreclosure of family farms and ranches. The local community...was united with the conviction that solutions to the sucker issue and other environmental concerns must be managed locally. (U.S. Senate 1994a: Testimony of David Zepponi, 75)

In 1992, the Association invested significant resources to prepare a report on the upper basin environment. ...The IERP8 succeeded in directing resource management efforts toward a holistic approach, incorporating the concerns of all parties. It also elevated the decision making process to a level of the best available, objective science. The IERP demonstrated the Water Users’ commitment to participate in constructive environmental solutions and to contribute to the scientific pool for informed resource management decisions. (U.S. Senate 1994a: Testimony of David Zepponi, 75)

1993 was an above average water year. “Efforts that winter by the Bureau to review the allocation process didn’t get far. ‘There was a heavy snowpack in 1993,’ the head of the Bureau said, ‘and the farmers were in denial’” (Blake, Blake, and Kittredge 2000, 136).

In January 1993, KRBFTF held yet another public meeting in Klamath Falls about its proposed Upper Basin Amendment. “Some [in] Klamath County see in the salmon plan a thinly disguised plot by California to steal Oregon’s water” (Durbin 1993, 2 of download). “Francis Landrum, a retired

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8 Initial Ecosystem Restoration Plan For The Upper Klamath River Basin With Focus On Endangered Species Recovery and Water Management Improvements (IERP)
Klamath Falls engineer who has been the [salmon recovery] project’s most outspoken critic, accused the task force of plotting a ‘California water grab’ that could threaten the county’s economy. ... ‘This is probably the roughest fight Klamath County will ever be involved in. ...If we lose it, our agriculture is gone’” (Durbin 1993, 4 of download).

In July 1993, Upper Basin farmers invited Andy Kerr, Conservation Director of ONRC, to speak to them at the Rotary Club in Tulelake, CA. In his speech, Kerr threw down the gauntlet, vowing a fight to restore an ecosystem that he said had been destroyed by agriculture and challenging the farmers to a battle (Associated Press 1993c).

‘The Basin is going to become a major priority of the ONRC.’...Agriculture, Kerr told the farmers, has ruined the Klamath Basin. ...He warned the farmers the American public is not on their side. ‘The U.S. has more farmers than they need.’ he said. (Associated Press 1993c, 1-2 of download)

Kerr’s speech was met with steely stares and very little applause. ‘Completely wrong? No. Completely informed? No,’ Marshall Staunton, president of the Tulelake Growers’ Association, said later of Kerr’s speech. ... ‘He scares the hell out of you with regards to his comments, especially when he compares farmers to what they’ve done with timber,’ he said. But, he added, Kerr is right about environmentalists. ‘They’re very powerful and the farmers need to be aware of them,’ Staunton said. (Associated Press 1993c, 2 of download)


In August 1993, Wendell Wood took the first step on the promise that the Basin would become an ONRC major priority, by moving to Chiloquin, OR and opening an ONRC field office there.

The blessings of sufficient water in 1993 were shortlived, as 1994 was yet another year of drought.

The Bureau cut water to irrigators a second time, ultimately to all irrigators for periods ranging from two to six weeks. As the head of the Bureau said, ‘Some were just enraged.’ The fury of farmers on lands served by the enormous run of irrigation projects developed by the Bureau of Reclamation was understandable. They had been promised all the water they could use. No one imagined the supply would ever run short. (Blake, Blake, and Kittredge 2000, 136)

In 1994, Senator Mark Hatfield convened hearings in Klamath Falls, OR. Senator Hatfield wanted to sponsor legislation about interagency collaboration and wanted to hear about the successes
of the Ecosystem Restoration Office that FWS had set up in Klamath Falls in August 1993. Witness after witness testified to the collaborative efforts being undertaken in the Upper Basin.

David Zepponi, the executive director of the Klamath Basin Waters Users Protective Association, wrote that “The Klamath Basin Waters Users Protective Association believes that we must work together through partnerships and affiliations to achieve long-lasting results” (U.S. Senate 1994a: Testimony of David Zepponi, 77).

Wes Sine, chairman of the Klamath County Board of Commissioners, testified that “[m]embers of our community have banded together to assist in enhancement and restoration activities in the Upper Klamath Basin” (U.S. Senate 1994a: Testimony of Wes Sine, 28). “Importantly, our agriculture community has been proactive in providing science-based solutions to our socioenvironmental problems. ...The cooperation between historically divided groups [such as KWUA and the Klamath Tribes] is a sign of common interest in ecological and economic resilience of the community” (U.S. Senate 1994a: Testimony of Wes Sine, 29).

David Solem, manager of the Klamath Irrigation District, vice-president of KWUA, and member of KRBFTF, testified that “[t]he drought conditions of 1994 have limited the management flexibility of water in the watershed, but have not limited the desire to work on solutions” (U.S. Senate 1994a: Testimony of David Solem, 41). “We are moving in the right direction. We have worked hard to build momentum and support for ecosystem restoration activities” (U.S. Senate 1994a: Testimony of David Solem, 42).

Donovan C. Zupan, Regional Resource Director of the environmental organization Oregon Trout, testified that “[w]e have made great strides in the basin so far. We have agriculture, forestry, and recreationists working close together. I know that it must start at the grass-roots level” (U.S. Senate 1994a: Testimony of Donovan C. Zupan, 44). “I think people here in the Klamath Basin have done a very good job of attempting to work together. I really believe that. There are ranchers in this area who have started riparian fencing projects pretty much on their own” (U.S. Senate 1994a: Testimony of Donovan C. Zupan, 49).

John Crawford, president of KWUA, testified that “[o]ne of the primary goals of the Water Users is to provide an increased quantity of improved quality water for our farms and ranches, for the six wildlife refuges in the basin, and for all downstream needs including the anadromous fishery and the people who depend upon that resource” (U.S. Senate 1994a: Testimony of John Crawford, 45). “We plan to move ahead to enhance, maintain, and restore our ecosystem. In order to be successful, we must keep this effort a well-coordinated local, community, and multiagency endeavor” (U.S. Senate 1994a: Testimony of John Crawford, 46).
Adding a less than celebratory note to this paean of collaboration was a letter from Joan F. Riker, president of Klamath Consulting Service, Inc., in which she wrote that “[a]s a native of the Basin and a quarter century resident of Klamath Falls, and as an environmental consultant for the area for the past 17 years, I feel my opinions reflect the feelings of the majority of the local residents. ...The Upper Klamath River watershed basin is a unique ecosystem, that has been managed by us humans, and managed very well, over the past 96 years under the Klamath Irrigation Project. If it isn’t broke – don’t fix it. ...The Indians have water rights, but so do we whites. Our custom and culture may not have been in effect as long as theirs as a race here in the Basin but it has certainly been in effect as long in our lifetimes as it has in theirs, and we deserve just as much consideration” (U.S. Senate 1994a: Testimony of Joan F. Riker, 80).

On a similar note, in February 1994, farmer Marion Palmer slapped a suit against ONRC accusing them of conspiring against him and other farmers who depend on water from the Tulelake Irrigation District. “The council’s ‘conspiracy’ cost him $40,000 in failed crops and soil erosion, Palmer claims, and was part of a ‘campaign to bolster a flagging and disorganized’ organization” (Laatz 1994, 1 of download). He claimed that ONRC’s 1991 suit versus BOR about the suckers “created ‘hysteria’ in the bureau, causing it to restrict water to farmers” (Laatz 1994, 1 of download). In yet another instance of the classic difference between the language of relationships and the language of rules, Palmer’s lawyer translated Palmer’s claims of conspiracy into claims of property damage.

On April 7, 1995, BOR issued the first annual Klamath Project Operations Plan (KPOP) for the 1995 plan year (April 1, 1995 through March 31, 1996) for an above average water year. In the 1995 KPOP, BOR stated that the plan was based on principles and objectives that would meet responsibilities in the following order: (1) the Endangered Species Act, (2) federal protection of tribal trust resources, (3) the Klamath Project, and (4) the four National Wildlife Refuges within the boundaries of the Klamath Project (Benson 2002, 218). Close on the heels of the 1995 KPOP, on July 25, 1995, the Regional Solicitor of the Department of the Interior issued an Opinion with respect to the legal rights and obligations related to BOR and the Klamath Project, to be used in preparation of future KPOPs. In essence, the 1995 Solicitor’s Opinion laid out in detail the protocol upon which the 1995 KPOP had been based. It established the following order of rights (from senior to junior) to the waters in the drainages affected by the Klamath Project and the obligations of BOR with respect to those rights: (1) ESA, (2) tribal water rights, (3) Klamath Project, (4) irrigated
lands within Lower Klamath and Tule Lake National Wildlife Refuges, and (5) the four National Wildlife Refuges within the boundaries of the Klamath Project.

The Solicitor’s Opinion turned the world upside down for the Project water users, demoting them from their long taken-for-granted first in line to a mere third or fourth in line with prospects of only getting left-overs or even nothing at all – and exacerbating a growing perception of threat to their way of life.

The blessing of an above average water year probably muted the expression of complaints, and collaboration continued to be the order of the day. In 1995, the State of Oregon passed legislation supporting the establishment of watershed councils in Oregon, and farmers and ranchers participated on the watershed councils in their regions. “[Mike] Connelly’s community work centers on the Clover Leaf Watershed Council, a volunteer group trying to develop consensus solutions to problems along a reach of the Lost River they think of as being in the neighborhood. ‘It goes slowly, trying to figure out what consensus means.’ Connelly said. ‘We’re all fighting wars in our heads’” (Blake, Blake, and Kittredge 2000, 155).

1996 was yet another above average water year. BOR felt that they had “done a pretty good balancing job this year, meeting downstream commitments and maintaining lake levels, and still getting full supplies to the irrigation contractors and refuges” (Associated Press 1996b, 1 of download), but that did not prevent farmers from being outraged “that despite a good water year, they will be seeing irrigation cutbacks from a federal water project in order to protect endangered fish” (Associated Press 1996a, 1 of download).

As a further indicator of unrest in the community, public comment during July 11, 1996 meeting of the Upper Klamath Basin Working Group (UKBWG) noted that there was a fair amount of suspicion in the community about the working group (UKBWG 1996b).

1997, while yet another above average water year, was also an extremely eventful year. On May 1, 1997, BOR issued a KPOP that clearly changed the playing field for the Project water users when it made it clear that a drier-than-expected year could result in reduced deliveries for irrigation and the refuges, as well as somewhat lower lake and river levels. Change was thrust upon the Project water users as the risk of a dry year was shifted from fish and tribes to irrigators and refuges.

The ink had barely dried when PacifiCorp said that it would not implement the 1997 KPOP because to do so would violate their FERC license. To deal with this issue, on June 3, 1997,
PacifiCorp and BOR temporarily modified their agreement so that PacifiCorp could operate the dam in accordance with the 1997 KPOP, contingent upon FERC concurrence.

It took the Project water users a mere day to react to this contract modification and to the fact that they had not been consulted about the negotiations. On June 4, 1997, they filed suit with respect to the 1997 KPOP, over the period June 17 through September 25, 1997, “seeking a temporary restraining order and alleging four claims, including a claim for breach of the 1956 contract based on their third party beneficiary status” (KWUA v. Patterson I 15 F.Supp.2d at 993). The plaintiffs were KWUA as well as the Klamath Drainage District, Sam Henzel, and Henzel Properties, Ltd., and the defendants were BOR and PacifiCorp. On June 17, 1997, the court denied the plaintiff’s motion for a temporary restraining order. Over the next few months, the plaintiffs’ original four claims were dismissed, appeals were filed, and PacifiCorp filed a counterclaim, “seeking a declaration of rights with respect to plaintiffs’ standing under the 1956 contract” (KWUA v. Patterson I 15 F.Supp.2d at 993). And thus began yet another litigation track that would bounce through the courts for the next few years.

On May 6, 1997, the Southern Oregon/Northern California Coast coho was listed as threatened, turning the world upside down for BOR and thus for the Project water users. It was like the straw that broke the camel’s back, squeezing BOR from both ends, making them responsible for maintaining lake levels for suckers as well as for maintaining minimum water flows for coho salmon – which meant that there was, even more so than before, a real threat that maintaining both could leave little if anything for the Project water users.

Amidst the ups and downs of 1997, collaboration yet again continued to be the order of the day. “Amid all the jousting over laws and science, some key players have managed to agree on a few common efforts to help revive the troubled basin. … ‘We’re real proud of what we’ve done, said Ambrose McAuliffe, a rancher who lives in the valley to the north of Upper Klamath Lake. ‘It’s improved our property values and been a real win-win situation’” (Bernton 1997, 4 of download).

In March 1997, at the Second Klamath Basin Restoration and Management Conference, Marshall Staunton made a presentation entitled “Exploring Klamath River Drought/Power Planning.” His characterization of the polarized extremes of the Klamath water wars is wonderful. “Present Western water debate revolves around two polarized extremes: one is the ‘criminal-polluter subtype,’ where irrigators are seen as enemies of salmon wholly liable for aquatic ecosystem destruction. The opposite extreme is the ‘Lincoln with slaves syndrome subtype’ which sees irrigators as innocent yeoman
farmers who need water supplies to feed a hungry world and to whom environmental advocates are urban hypocrites. My wish is to rise above partisanship and meet on common ground to craft solutions. In this spirit I offer the concept drought-power plans” (U.S. ERO 1997: Exploring Klamath River Drought, 27, bold and italics in original).

Kittredge recounts that

I’d met Marshall Staunton months before, at a meeting of watershed scientists in Yreka, California, when he’d grinned and introduced himself as a ‘green farmer.’ What he meant by that, I came to realize, was that he was an on-the-ground farmer who knew that he faced environmental problems. And that he was trying to figure out solutions. Many farmers and ranchers in the Klamath Basin were in belligerent denial. Staunton was enthusiastic about the idea of farming the sumps. ‘We can show the world that wildlife and development are compatible,’ he said. ‘That would be a beginning. ...We’ve got to figure something out,’ Marshall Staunton told me. ‘Farmers are down to hiring lawyers. That’s all they can think of. They’re settling into a siege mentality.’ (Blake, Blake, and Kittredge 2000, 150)

And as evidence of this increasing siege mentality,

And if the fields again go dry, there have been threats that the Klamath water war could turn violent. ‘I have been frequently cautioned if we curtailed (farm) water deliveries to protect fish...that we would meet armed people,’ said Karl Wirkus, who heads the Klamath office of the Bureau of Reclamation. Some irrigators admit to contemplating such action. (Bernton 1997, 1-2 of download)

All the claims in the Klamath Basin Adjudication were filed by April 30, 1997, and the first monthly ADR meeting occurred in September 1997. While collaboration was still the public face of the Upper Basin Agriculture, the private face revealed increasingly polarized characterizations of Us versus Them.

[M]any citizens in the Klamath Basin are not accustomed to listening when the tribes speak. They want to blame their troubles on the Indians. ...‘They shoot pregnant does out of season,’ a white rancher told me. ‘Traditional people never did that.’ ‘They don’t give a damn about conservation. They catch enough trout to fill a barley sack.’ It’s said white lawyers are manipulating the tribes. (Blake, Blake, and Kittredge 2000, 94-95)

Clearly the water war that the private face saw themselves as engaged in was beginning to impact the ability of the public face to engage in collaboration.

1998 was yet another above average water year – the fourth year in a row – but spirits were dampened by the decision rendered on April 24th in the KWUA v. Patterson I case. The Project water users still believed that they had the superior right to water, and that other rights were secondary to their right, but the court did not agree. The decision ruled that the Project water users were not third
party beneficiaries to the underlying contract between PacifiCorp and BOR, and affirmed that their rights to water in the basin were subservient to senior tribal water rights and to legislation such as the ESA. 9

At the April 24th meeting of the UKBWG, it was noted that the Working Group would not be there without the support of agricultural interests, but that now those “interests are beginning to feel a sense that they have lost ground because of their support for this process” (UKBWG 1998).

And while it was reported in the July 14th monthly ADR meeting made that the Klamath Tribes and Upper Basin Agriculture had been meeting for the past few months to identify joint projects that were attractive and feasible (Oregon WRD 1998c), during the October 14th monthly ADR meeting, comments revealed that some participants felt that their way of life was threatened because they were afraid that the Tribes would take all the water for instream flow and leave none for irrigators (Oregon WRD 1998c).

1999 was yet another above average water year – the fifth year in a row, but that did not keep the water war from continuing to heat up. During the January 12th monthly ADR meeting, while, on the one hand, Sam Henzel of the Klamath Drainage District reported that they had found working with the Klamath Tribes to be a positive experience, on the other hand, mention was made of a battle of guest opinions in the newspaper about issues in the ADR (Oregon WRD 1999b).

At the April 12th meeting of the UKBWG, Alice Kilham, co-chair, “raised the question of dealing with recent negative press. ONRC has referred to the group as ‘the infamous Hatfield group.’ Others are objecting to any projects that extend beyond restoration into economic development and drought proofing. Jim [Carpenter, co-chair] added that not since the early days has the group been so heavily attacked by groups that are misrepresenting the working group and its work. He added that he did not believe an in-kind response would be productive and suggested that instead the group focus on publicizing what the group does as a way to set the record straight” (UKBWG 1999a).

On April 13th, 1999, the Bennett litigation track that had begun in 1993 and had bounced since then from district court to U.S. Supreme Court and back to district court (Bennett v. Plenert I; Bennett v. Spear II) finally came to end, as a court decision granted the plaintiffs’ motion to invalidate RPAs for Clear Lake and Gerber reservoirs in the BOs issued by FWS on July 22, 1992 and August 11, 1994 (U.S. BOR 2001b). What this meant was that the minimum levels in the reservoir that had been specified in the RPAs would not be implemented, which would in turn mean that the irrigation

9 The obligatory appeal was filed but, bottom-line, the decision stood (KWUA v. Patterson II).
districts served by Clear Lake and Gerber reservoirs would not be receiving reduced water deliveries. Score one for the Project water users – the first and only win in a line of increasing loss and threat.

At the September 14th monthly ADR meeting, Alice Kilham of UKBWG passed out copies of a Draft Settlement Concept/Habitat Conservation Plan for the Upper Klamath Basin that had been prepared by the Tulelake Growers Association and invited people to come to the October 1st meeting of the UKBWG when the draft proposal would be discussed. The plan included returning much of the Winema National Forest to the Klamath Tribes, as well as re-engineering the Project, stepping up conversion of farmland into marshes, guaranteeing adequate water for the basin's six refuges, protecting commercial farming on the 22,000 acres of leased lands in one refuge, and managing irrigation cutoffs in drought years (Associated Press 1999b). “Although the talks are still in the ‘brainstorming phase,’ news of the discussion set off a ‘furor’ in Klamath County, OR, late last month” (Greenwire: Quinn 1999, 1 of download).

At the October 1st meeting of the UKBWG, Marshall Staunton presented the draft proposal. The public comments at the meeting revealed that the plan pushed many, many negative buttons. Staunton reiterated his concern that when the fight went to the courts, there would be “no going back to the table to develop broader solutions as suggested here” (UKBWG 1999b).

Collaboration was increasingly running up against internal dissension and the intransigence of fear and polarized positions.

The serendipity of above average water years from 1995 through 1999 came to an end in 2000 with the prediction that it would be a below average water year. BOR delivered regular water deliveries to the Project water users. However, BOR also announced plans to release water from Clear Lake and Gerber Reservoir in the east to benefit the west side of the Klamath Project. Lost River Irrigators filed suit to seek preliminary injunction to keep the water in storage for their uses. In LVID v. Babbitt, Langell Valley Irrigation District challenged BOR releases from Clear Lake, in the Lost River side of the Klamath Basin, for delivery to various uses on the Klamath side (Marbut 2002). Plaintiffs claimed that the purpose of BOR was to provide water to irrigators, and that BOR had no authority to release water to benefit fish and wildlife. The request for injunction was denied because the court affirmed that BOR had the responsibility to meet requirements of ESA which trump the water rights of the irrigators. The case was dismissed without prejudice (Marbut 2002; Benson 2002). This means that the water went from east to west, a move which I can only imagine angered the eastern Project water users – and in some ways could be thought of as negating some portion of the 1999 victory from the long-fought Bennett litigation track.
During the February 8th monthly ADR meeting, OWRD asked the group if they might want someone to assemble a basin-wide settlement template. Comments revealed a defensiveness by those participants who were afraid that such a template might be biased against them and thus threaten their way of life.

In July 2000, a group of Klamath Basin farmers announced that they were willing to sell 30,300 acres to the Federal government, for $5,000 per acre. “But peace could prove elusive because farmers who want to remain on the land vow to derail any buyout that reduces water for agriculture, arguing that reductions in farming could wreck – and already have harmed – their small towns economically, socially, and educationally” (Quinn 2000b, 1 of download).

By the time 2000 had rolled around, from the perspective of Upper Basin Agriculture, threat to their way of life had been piling upon threat for a decade. Throughout this decade, the public face – the face one routinely finds in news articles, meeting notes, presentations, hearings, and other such public documents – continued to look to local collaboration as the way to deal with the threats and the problems. But for the private face behind the public face – the face that was referred to in public documents, that expressed itself in conversations with one’s neighbors, in public comments at public meetings, in battling guest opinions in the newspapers, in trips to one’s lawyer – the perception of escalating threat begot an escalation in polarized characterizations of Us and Them, with Them becoming anybody whom We perceived as threatening Us, be it BOR, ONRC, KRBFTF, Klamath Tribes, ESA, salmon fishers, or even one of Us. By 1997, Upper Basin Agriculture was referring to the increase in perceived threat as a water war. They had settled into a siege mentality, backed into a corner, defensive against any suggestions of collaboration with Them, threatening violence. They went to court – and repeatedly lost. Yes, they won recognition of economic interest as legitimate standing to sue with respect to ESA (Bennett v. Spear II), but ultimately whatever victory about water allocation was won in 1999 was partially lost in 2000.

Given such a decade, the filing of the PCFFA I case in 2000 became a mythic confrontation on two fronts. On one front, it was a mythic confrontation between those who had been fighting for their ways of life by fighting for change and those who were fighting for their way of life by fighting against the change that was being thrust upon them. On another front, it was a mythic confrontation within the Upper Basin Agriculture community between the public face of collaboration and the private face of an escalating siege mentality.
In summary, then, as the year 2000 draws to a close in the Klamath watershed, the private face of an escalating siege mentality in the Upper Basin Agriculture community is pushing against the public face of collaboration, while everyone is nervously awaiting the decision of the court and nervously monitoring the snow pack in the Cascades under the specter of 2001 being the driest water year in history in the Upper Basin.

2. Tracks of Tools of Conflict Resolution

Below is a figure that completely subjectively maps out the progression of the track of the use of the tools of mainstream conflict resolution over time and the track of the use of the tools of collaboration and reconciliation over time. I will refer back to this figure in the later sections dealing with subsequent periods of time.

![Figure 11.2. Graphic of the Track of the Use of Tools of Mainstream Conflict Resolution and the Track of the Use of Collaboration and Reconciliation](image)

2.1 Tools of Mainstream Conflict Resolution

The tools taken up from the toolbox of mainstream conflict resolution before 2001 were (1) litigation, (2) political influence through Congressional hearings, public hearings, lobbying, legislation, and regulation, and (3) Alternative Dispute Resolution.
Litigation

Litigation was taken up by three of the player groups to try to force change upon others, and by one of the player groups to try to stop the change being forced upon them.

The Tribal Nations used litigation to fight using the white man’s tools in the white man’s world in order to force recognition of their tribal rights. The Yurok Tribe, the Hoopa Valley Tribe, and the Klamath Tribes used litigation to force a change from a position of powerlessness in which their tribal rights were ignored to a position of actual clout in which their tribal rights not only were recognized, but were recognized as trumping other rights. All federal agencies which took or proposed to take an action which threatened to ignore those tribal rights learned that they would be greeted with a quick legal response by the tribes. Sadly, the Karuk Tribe of the Lower Basin was completely unsuccessful in their fight for their tribal rights.

ONRC – the militant public face of the Environmental movement in the Klamath – used litigation as a weapon against anyone that failed to meet ONRC’s criteria for what should be done on behalf of the environment. They stalked their enemies like predator on prey, sinking their teeth in and not letting go until either they got what they wanted either in court or through out-of-court settlements, or the court ruled against them. In the Klamath, their usual prey were BOR and the Klamath Project and Upper Basin Agriculture, especially the Project water users.

The Coastal Salmon Fishing community started out using litigation to try to stop change that was being thrust upon them – regulations, closures, etc. – without much success. But when the 1993 Solicitor’s Opinion laid down the law about how much commercial ocean salmon fishing would get of the salmon harvest, PCFFA took up litigation as weapon and joined in collaboration with ONRC to try to force others to stop the environmental degradation that was decimating the salmon fishery in the Klamath.

Upper Basin Agriculture took up litigation to try to stop the change that was being thrust upon them. Sometimes as plaintiff, sometimes as defendant, sometimes joining in one case with those whom they had been against in another case, always fighting for the water that they believed belonged to them before all others. The litigation tracks usually dragged on for years. More often than not, they lost.

Political Influence

I have included under this general heading Congressional hearings, public hearings, lobbying, legislation, and regulations, all of which were used in attempts to solve problems.
I want to take a moment to make my case for including as a tool in the customary American model of conflict resolution something that may give you pause. I am going to include testimony at Congressional and public hearings, because I have come to the conclusion that Congressional and public hearings have very much in common with litigation.

Like litigation:

• Congressional and public hearings are adversarial in the contest for winning or losing political support.

• Congressional and public hearings are governed by strict rules that govern how the hearing is conducted.

• Witnesses who testify at Congressional and public hearings present argumentation in support of their positions.

• There is nothing in the hearings procedure that encourages or enables collaboration among parties involved in the situation.

Public hearings are also like litigation in that the organizations and/or agencies who hold the public hearings are ostensibly neutral with respect to the issue, seeking public input before they make their decision.

Congressional hearings, however, are unlike litigation in that the politicians who convene the Congressional hearings have political agendas, are definitely not neutral with respect to the issue, and cross-examine witnesses in terms of those agendas.

Therefore, testimony by witnesses at Congressional and public hearings is a weapon in the contest for winning or losing political support for the witnesses’ positions. And all ways of life in the Klamath watershed not only have testified at what must seem like countless Congressional and public hearings – which are sometimes held locally, but very often held in Washington, DC, thereby necessitating the time and expense of travel across the country – but also always have to have their fingers on the political pulse to make sure they are present whenever and wherever they must be in order to argue their positions in that contest for political support.

The Tribal Nations continuously testified at Congressional and public hearings and lobbied for political support in their fight for their tribal rights. Their efforts were rewarded with the 1993 Solicitor’s Opinion that allocated 50% of the annual salmon harvest to the Yurok and the Hoopa Valley Tribe, the Hoopa Yurok Settlement Act which created the Yurok reservation and the Hoopa Valley Tribe reservation, and the reinstatement of the Klamath Tribes as a federally recognized tribe.
The Coastal Salmon Fishing community testified at countless public hearings before the Pacific Fishery Management Council (PFMC) in their fight to preserve their way of life in the face of severe limitations on their ability to fish. PCFFA testified at countless Congressional hearings, arguing that environmental degradation was the cause of the decimation of the salmon fishery in the Klamath. I must add the comment that PCFFA was particularly adept at translating the language of relationships into the language of rules in order to be heard at the Congressional hearings – translating talk of betrayal into talk of economics.

Upper Basin Agriculture testified at Congressional hearings, continuously stating their position not only that the Klamath Project was not to blame for the decline in sucker or salmon populations, but also that they were involved in countless restoration projects throughout the Upper Basin. They participated continuously in public meetings held by KRBPTF and UKBWG.

**Alternative Dispute Resolution**

In 1996, the Klamath tribes took proactive steps to resolve their water rights claims by negotiation. The tribes proposed that the ODWR [i.e., OWRD] either replace or supplement the water rights adjudication in the basin with a negotiation process. ...The tribes' proposal was the catalyst for ODWR's decision to sponsor an innovative process – known as the Klamath basin alternative dispute resolution (ADR) process – for negotiating all water rights claims. (Snyder 2005, 147)

The Klamath ADR process was based upon the default model of American conflict resolution. Conflict was understood as a problem of incompatible individual interests. Interests were understood as negotiable, and as such amenable to collaborative rational problem-solving. The appropriate response to the problem was the solution of a collaborative construction of a mutually satisfying agreement. Science was expected to provide the truth, definitive answers, incontrovertible facts, that would be used in the negotiations.

It was determined that there would be a monthly meeting of the ADR participants, complemented by subcommittees working on specific areas of concern, by interest groups comprised of folks with the same interest, and by negotiating groups comprised of various sets of stakeholders negotiating agreements that could be taken forward into the Adjudication Process for incorporation into the final Adjudication Decree by the circuit court.

The first ADR monthly meeting was held in September 1997. For monthly meetings #4 through #6 (December 17, 1997 through February 11, 1998), a well-respected mediator experienced in environmental conflicts trained the participants in the ADR Process in the skills and principles of
interest-based collaborative rational problem-solving. In June 2000, an organization called Dividing-The-Waters provided dispute resolution training to participants in the ADR Process.

During the final monthly meeting of 2000, on November 14th, it was noted that the two negotiating groups that had formed had achieved agreements-in-principle. The Administrative Subcommittee said that it would have a draft basin-wide settlement template prepared by February 1, 2001. A negotiating session to be run by Dividing-the-Waters was scheduled for April 2001.

I do not think that it would be out of place to say that the ADR Process, by 2000, had not achieved as much as they had hoped they would. While a goodly amount of training had been done in interest-based collaborative rational problem-solving, dreams of swarms of agreements that could be brought forward to the final Court Decree dwindled down to two agreements-in-principle, and fear continued to run as an undercurrent that bubbled up in the form of accusations about and resistance to anything that participants perceived as a possible threat to their way of life.

2.2 Tools of Collaboration and Reconciliation

Four of the player groups – Tribal Nations, the private face of the Environmental movement in the Klamath, the private face of the Coastal Salmon Fishing community, and the public face of the Upper Basin Agriculture community – as well as the obligato participated continuously in collaborative efforts – organizations, conferences, plans, joint restoration projects, and so on. Both the Coastal Salmon Fishing and the Upper Basin Agriculture communities talked about their inclination to and preference for working things out among themselves within their respective communities, overlooking the ocean, standing on the land.
Summary of Chapter Eleven

Summary of Obligato and Player Group Tracks

Are you still listening to Ravel’s *Bolero* in your mind’s ear?

As the last beats of 2000 ticked down, the obligato of science-driven boundary-spanning collaborative efforts still pulsed under the now thrashing and tangling conflict tracks. In the obligato, there was no dearth of science, but now people were beginning to fight over whose science was the right science. And there was no dearth of boundary-spanning effort, but none of the efforts at the level of the watershed as a whole was successful and none of the efforts of whatever scope was immune to the ravages of conflict escalation as contentious tactics ripped at the threads woven across boundaries.

Table 11.3. The Public and Private Faces of the Five Conflict Tracks as 2000 Drew to a Close

<table>
<thead>
<tr>
<th>Track</th>
<th>Public Face</th>
<th>Relationship of Public Face to Private Face</th>
<th>Private Face</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental</td>
<td>Sue the bastards..!!</td>
<td>overshadows</td>
<td>Collaboration</td>
</tr>
<tr>
<td>Coastal Salmon Fishing</td>
<td>Collaborate if we can, but we must win --</td>
<td>overshadows</td>
<td>Collaboration</td>
</tr>
<tr>
<td></td>
<td>and then we will assist the vanquished</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Siskiyou</td>
<td>The Government has done us wrong..!!</td>
<td>overshadows</td>
<td>Collaboration</td>
</tr>
<tr>
<td>Tribal Nations</td>
<td>Collaborate with anyone and fight if we must</td>
<td>leaves at home</td>
<td>Betrayal by the white man</td>
</tr>
<tr>
<td>Upper Basin Agriculture</td>
<td>Collaboration</td>
<td>is confronted by Water War</td>
<td></td>
</tr>
</tbody>
</table>

The public face of two of the tracks – Environmental and Coastal Salmon Fishing – lived at the extremes of conflict, waging war in court – and they joined forces in the Klamath. The private face of a more moderate environmentalism in the watershed was overshadowed by the public face of ONRC and other radical environmental organizations, and the private face of enduring collaboration and boundary-spanning by the coastal salmon fishing community was overshadowed by the public face of PCFFA as militant leader of the community.
The polarized public face of the Siskiyou track was frozen in place, staring across a seemingly unbridgeable chasm at The Government, and overshadowing the private face of The State of Jefferson which was wrestling with differences of opinion about actually listening to boundary-spanning ideas.

The private face of the tribal nations expressed, in my opinion, the pain and anger at the white man for more than a century of threat and betrayal – but it lived at home, if you will, behind the public face of the tribal nations which was at one and the same time both eager to collaborate with anyone and alert to threat and ready to fight if they must.

And the private face of an escalating siege mentality in the Upper Basin Agriculture community pushed harder and harder against the public face of collaboration.

**Summary of Tracks of Tools of Conflict Resolution**

In Figure 11.2, I positioned the two tracks far apart, in order to paint a picture. As we begin to track the uses of the tools of conflict resolution, we have player groups in the Klamath who have responded to perceived threats to their ways of life by defaulting to the tools of mainstream conflict resolution, to win against Them. In turn, the adversarial practices weakened the web of relationships and mitigated against the effectiveness and scope of the tools of collaboration and reconciliation.

Over time, in the various fights to preserve their ways of life from perceived threats – either to try to force others to change or to try to stop change being forced upon them – player groups turned even more to coercive mainstream litigation and political influence. And there were definitely winners and losers. The more the winners won, the more the losers lost, the greater the sense of threat perceived by the losers, the greater the emergent siege mentality, the greater the use of coercive tools, and, ultimately, the less success in ADR and in collaboration and reconciliation. Hence the two tracks going even farther apart by the end of 2000.

As the final seconds of 2000 ticked down, the tension in the watershed was palpable. And the watershed was more than tense. It was as if everyone was holding their breath, locked in that seemingly endless moment between when the timer has ticked down to 0:00 and when the bomb explodes.
Chapter Twelve  
Time Period: 2001

The events of 2001 were experienced as chaos by those who lived through them – and they left almost no one unscathed from the top to the bottom of the watershed. To this day, the Upper Basin tells time by 2001. Player groups thrashed and tangled at the extremes of conflict, the use of the tools of mainstream conflict resolution reached a zenith, and the use of the tools of collaboration and reconciliation fell to a nadir.

1. The Player Groups and the Obligato

1.1 The Player Group Tracks

Upper Basin Agriculture

The player group at the epicenter of the chaos was Upper Basin Agriculture, and most especially the Project water users.

January-March 2001 – Impending Doom. Imagine yourself trapped in a room with a lit fuse burning down towards a huge bomb. That is what January through March 2001 must have felt like to Project water users as event piled upon event, each increasing the sense of impending doom.

2000 dawned with the decision pending in \textit{PCFFA v. BOR} (\textit{PCFFA I}), a decision which had the potential for turning the world upside down for the Project water users.

Add to that:

- Federal officials declaring a drought (Herald and News 2008a: Klamath Project Timeline 1882-2008)
- NMFS issuing a draft BO for 2001, finding \textit{jeopardy} with respect to the listed coho salmon and calling for higher river flows from Upper Klamath Lake
- FWS issuing a draft BO for 2001, finding \textit{jeopardy} with respect to the listed suckers and calling for maintaining a higher level in Upper Klamath Lake
• BOR warning that, given the drought, after allocating water for the protection of endangered coho salmon and suckers, there was the possibility that there would be no water left for the Project (Herald and News 2008a: Klamath Project Timeline 1882-2008)

The Project water users reacted angrily, at a rally (Bragg 2001d, Gibson 2001), at meetings (Bragg 2001f, 2001h-1; Herald and News 2001; Schutz 2001a), at a Congressional hearing (U.S. Senate 2001a), in newspapers (Russell 2001). At the heart of their response were three stories.

First, the promise: Absolutely fundamental to their sense of who they were was the promise that they considered was made to them by the Federal government when the Project was begun that if they fed the world, the Federal government would provide them all the water they needed to do that forever.

Secondly, the unspoken assumption: For many years now, the Project water user community had worked extremely hard on restoration projects, based upon the until now unspoken assumption that if they did the restoration projects, they would not be negatively impacted by the ESA. Even now as the fuse burned down, KWUA reached out in the Herald and News to offer its own array of sucker recovery measures in lieu of what FWS had proposed.

And finally, the impending doom: Now as it appeared that both those promises would be broken, Project water users painted a picture of impending doom.

Small communities, such as Tulelake, California; Bonanza, Merrill and Malin, Oregon, are being asked shut down their farms; to shut down their businesses; to close their schools; close their churches; and move on from the land. (U.S. Senate 2001a, 52)

Just over two weeks ago, we were told not to use any water until further notice and warned of the potential for severe shortage. For myself and my neighbors, this threat is devastating. Banks will not talk to farmers. Farmers have already let some workers go because of uncertainty. Seed salesmen, equipment dealers, car dealers, hardware stores, paint dealers, local government and schools, are at tremendous risk. The anxiety and tension throughout the community are tremendous. (U.S. Senate 2001a, 53)

Politicians jumped into the fray, taking up the cause of the Project water users. Senator Gordon Smith (OR-Rep), Senator Ron Wyden (OR-Rep), Representative Greg Walden (OR-Rep), and Senator Larry Craig (ID-Rep) held hearings in Washington, DC, to discuss Klamath Project operations. They took up the siege mentality of the Project Water Users and excoriated the Federal government and the ESA. Senator Wyden: “[I]t is not going to be just fish against farmers if there is no action here. There is going to be just chaos that is community-wide” (U.S. Senate 2001a, 3).
Representative Walden: “An entire community, entire species and a way of life are threatened, due to a lack of water and, I believe, mistaken Federal policy” (U.S. Senate 2001a, 4).

On March 31st, BOR’s 2000 KPOP expired and the KPOP for 2001 had yet to be issued. Project water users went to bed that night without a clue as to their futures, and the flame on the fuse licking at the bomb.

April 2001 – The Bomb Goes Off. April 1st dawned – the first day of the irrigation year for the Klamath Project – and there was nothing. No irrigation water flowed. And no 2001 KPOP had been issued.

Two days later, the bomb went off.

April 3rd, the decision finally came down for PCFFA I. Judge Armstrong ordered

that the Bureau of Reclamation hereby is enjoined from sending irrigation deliveries from Klamath Project whenever Klamath River flows at Iron Gate Dam drop below the minimum flows recommended in the Hardy Phase I report, until such time as the Bureau completes a concrete plan to guide operations during the new water year [i.e., a 2001 KPOP], and consultation [with NMFS] concerning that plan is completed, either by (1) formal consultation to a ‘no jeopardy’ finding by the NMFS, or (2) Bureau’s final determination, with the written concurrence of the NMFS, that the proposed plan is unlikely to adversely affect the threatened coho salmon. (PCFFA I, 138 F. Supp. 2d at 1251, underlines added).

April 5th, FWS issued its final BO for April 2001-March 2002, finding jeopardy with respect to the listed suckers and proposing RPAs for maintaining a higher level in Upper Klamath Lake.

April 6th, NMFS issued its final BO for April-September 2001, finding jeopardy with respect to the listed coho salmon and calling for higher river flows from Upper Klamath Lake.

April 6th, hard on the heels of the NMFS final BO, BOR issued its 2001 KPOP for April 2001-March 2002, “which incorporates the conclusions contained in the BiOps and implements the RPAs proposed by FWS and NMFS” (Kandra v. U.S., 145 F. Supp. 2d at 1199). This meant that, in order to satisfy the requirements for both higher lake levels and higher river flows, the 2001 KPOP allotted NO water to those Project water users serviced by water from Upper Klamath Lake.¹

¹ In addition, the 2001 KPOP allotted 70,000 acre-feet for irrigation purposes to the water users of Langell Valley Irrigation District and Horsefly Irrigation District serviced by water from Clear Lake Reservoir and Gerber Reservoir, and NO water to the leased lands in the Tule Lake NWR. There was also mention made that the Tule Lake NWR should receive 30,000 af from Clear Lake Reservoir and Gerber Reservoir, and that water would be delivered to the Lower Klamath NWR for the bald eagles only if there were water available after meeting the ESA requirements for Upper Klamath Lake, the Klamath River, and Tule Lake NWR (Benson 2002, 226n201). Unfortunately, I have read so much contradictory information that I cannot get a clear answer to how much either should have been delivered or actually was delivered to the refuges.
The shock waves rocked the Project water user community.

People on the estimated 1,400 farms covering about 200,000 acres served by the Klamath Project had widely expected the worst, but the actual announcement came as a shock. (Barnard 2001b, 1 of download)

The news ‘hit like an atomic bomb,’ said Steve Kandra. (Most 2006, xxviii)

Don Russell, chairman of the Klamath Water Users Association, said it’s too soon to tell what farmers will do next, but also too soon to count them out. ... ‘They feel absolutely betrayed, shocked. This is like a bomb going off,’ Russell said. ‘To the farmers, ‘It’s like Pearl Harbor,’ he continued. ‘But if I’ve learned one thing, it’s not to underestimate the will of the American people. We have just begun to fight.’ (Bragg 2001h-2, 1-2 of download)

Instantaneously, the Project water users filed *Kandra v. U.S.* in U.S. District Court in Eugene, OR. It is instructive to look closely at the full roster of litigants, because it is the first case that brings together litigants from throughout the watershed, top to bottom. It is also instructive to look at how many attorneys were involved in the lawsuit – a total of 27:

- **Plaintiffs:** Steven Kandra, David Cacka, Klamath Irrigation District, Tulelake Irrigation District, KWUA (five attorneys)
- **Plaintiff-intervenors:** City of Klamath Falls, Klamath County, Modoc County, and Lon Bailey (five attorneys)
- **Defendants:** United States; Gale Norton, Secretary of Interior; Don Evans, Secretary of Commerce (four attorneys)
- **Defendant-intervenors:** Klamath Tribes (attorneys from NARF and Native American Program Oregon Legal Services), Yurok Tribe, The Wilderness Society, Waterwatch of Oregon, PCFFA, IFR, ONRC, Northcoast Environmental Center, Klamath Forest Alliance (attorneys from Earthjustice for the on-going collaboration of PCFFA, ONRC, and others) (nine attorneys, in total)
- **Amicus curiae:** Siskiyou County (four attorneys) (*Kandra v. U.S.*)

The Project water users sought an order enjoining BOR from implementing the 2001 KPOP and requested that the court order BOR “to release 262,000 acre feet of water, ...which allocates roughly fifty percent of stored water and inflow to Project irrigators” (*Kandra v. U.S.*, 145 F. Supp. 2d at 1195).

While waiting for a decision in the court case holding their fate in its hands, Project water users and their allies started planning future political actions to wage war in the court of public opinion and
political influence and reached outside the Upper Basin for support from groups that were staunchly pro-property rights and anti-ESA. Town meetings were held (Bragg 2001h-1); demonstrations and rallies were staged (Barnard 2001c-2; Bragg 2001L; Juillerat 2001b; Schutz 2001b). Klamath Basin farmers, ranchers and agriculture-dependent businesses formed a Klamath Basin Crisis group which planned a national campaign to draw attention to decisions that resulted in no irrigation water for the Project water users (Juillerat 2001c).

On April 23rd, at the insistence of Judge Ann Aiken who was hearing the Kandra case, all of the attorneys (which would seem to have been at least 27) participated in three days of confidential mediation proceedings with Magistrate Judge Thomas Coffin. Neither the public nor the media were allowed to attend the mediation sessions (Bragg 2001i). “On the first day, Coffin called lawyers for each group into his chambers for private discussions as to what compromises they might, or might not, be willing to make” (Bragg 2001j, 1-2 of download). “The court-ordered mediation followed a pattern set Monday, with parties of lawyers meeting separately with the judge to lay out their cases” (Bragg 2001k, 1 of download). Tuesday’s session included a telephone conference call with officials in Washington, DC.

In other words, this mediation did not involve parties talking together, but rather involved third party attorneys separately presenting their clients’ positions to a third party judge, who would see what he could put together. This was not successful. “Despite intense and genuine efforts by Judge Coffin and the parties, no resolution for the 2001 water year could be agreed upon, although the parties expressed an interest in continued long-term mediation with Judge Coffin” (Kandra v. U.S., 145 F. Supp. 2d at 1200).

On April 27th, on the heels of the failure of the mediation that she had mandated, Judge Aiken heard oral arguments in Kandra. On April 30th, Judge Aiken rendered her decision. The agriculture community had filed Kandra in a desperate effort to fend off what they saw as certain doom, alleging a multitude of claims against the defendants. One by one, across the board, Judge Aiken ruled against all of their claims.

The law requires the protection of suckers and salmon as endangered and threatened species and as tribal trust resources, even if plaintiffs disagree with the manner in which the fish are protected or believe they inequitably bear the burden of such protection. (Kandra v. U.S., 145 F. Supp. 2d at 1211)

The scarcity of water in the Klamath River Basin is a situation likely to reoccur. ...Continued litigation is not likely to assist in such a challenging endeavor. This court hopes and expects that
the parties and other entities necessary to long-term solutions will continue to pursue alternatives
to meet the needs of the Klamath River Basin. \( (Kandra \text{ v. U.S.}, 145 \text{ F. Supp. 2d at 1211}) \)

The Project water users lost. Instantaneously, the siege mentality surged to the extremes of conflict, banishing collaboration from consideration, wielding symbols and hyperbole to escalate polarization to the point of demonization, and embracing heavy-handed political tactics.

**May 2001 to 9/11 – Civil Disobedience.** “We’ve got two options: to quit or fight,” said Merrill hay farmer Tim Parks” (Barnard 2001e, 1 of download). They chose to fight.

- **The May 7th Bucket Brigade Protest Rally.** Starting in April, the Project water user community and their allies began to organize to wage a fight in the courts of public and political opinion for the preservation of their way of life. Calling themselves the Klamath Bucket Brigade, they set their sites on staging a protest rally in Klamath Falls on May 7th. They reached out to pro-property rights, anti-environmental, and anti-government activists outside the Upper Basin, who picked up the story and spread it like wildfire throughout their communications network. In addition, professional activists from outside the region converged on Klamath Falls to work with the Klamath Bucket Brigade to make the May 7th Bucket Brigade a professional media event (Most 2006). Coverage by both mainstream and activist media abounded.

  On May 7th, more than 8,000 people turned out for the rally and another 5,000 lined Main Street “to pass along 50 blue and white buckets, each bearing a state postal code and a slogan, such as ‘Amend the ESA’” (Barnard 2001e, 1 of download). At the rally, Project water users said that they “now feel betrayed by the government” (Bailey 2001, 1 of download). “Federal and state lawmakers from both sides of the border took turns during a flag-waving ceremony to sympathize with the farmers” (Bailey 2001, 1 of download). “Addressing Monday’s rally, California Rep. Wally Herger said he suspects that the true agenda of environmental groups is to drive down the price of the farmland. ‘It’s really bankrupting the farmers in order to buy this land at bargain rates,’ Herger said” (Liberty Matters News Service 2001, 2 of download).

  Stephen Most summarized the moment eloquently.

Although the farmers had assistance from anti-environmental publicists and ideological activists from outside their region and although the Bucket Brigade was a professionally staged media event, this was not a synthetic expression of grassroots outrage; it was the heartfelt protest of people who felt betrayed by the federal government and who were determined to have the lifeblood of their livelihood, Klamath Basin water, flow into their fields and farms. (Most 2006, 232)
KWUA Takes on a More Militant Posture. Shortly after the Bucket Brigade, in the spirit of the increasingly radical posture of the Project water user community, Tessa Stuedli, the executive director of KWUA, made a presentation at a watershed conference held in Arcata, CA. Where KWUA had heretofore been staunchly supportive of collaboration on restoration projects, the position articulated by this presentation echoed the tone that had been employed for quite a while by PCFFA as militant leader of the Coastal Salmon Fishing community – the language of the extremes of conflict, characterizing Our situation in hyperbole, and demonizing Them.

Stuedli implied that FWS chose the hypothesis about lake levels in order to damage the Project (Stuedli 2002, Part 7, 26), and characterized NMFS as “willing to sacrifice our family farms and ranches to protect the commercial fishermen – who unquestionably kill adult coho salmon each year” (Stuedli 2002, Part 7, 27). She asserted that if they were really interested in saving the coho, all commercial and tribal fishing should be banned for a year, but then implied that the goal was not about the coho, but about forcing the Project to subsidize the harvesting of the coho (Stuedli 2002, Part 7, 27). “Our water users do feel betrayed because they have been to the table. They have supported actions that were promoted with the promise of regulatory relief. The promises have not been kept” (Stuedli 2002, Part 7, 27).

Politicians Hold Hearings on June 16th in Klamath Falls. The hearing was convened by the conservative Republican members of the House Committee on Resources, all of whom had taken up the cause of the Project water user community, not only because they really wanted to help (and tried hard to do so), but also because they saw it as a perfect opportunity for dismantling the ESA, which they had been trying to do for a long time now (Jehl 2001, Southern Poverty Law Center 2001).

Politicians blamed the ESA for “economic devastation” in the Upper Basin. “It is clear to me that ESA has been misused for years by some advocacy groups to threaten the rights of private property owners” (U.S. House 2001: Testimony of Hon. Richard Pombo, 1). “[T]he human species deserves the most important place in the ESA equation” (U.S. House 2001: Testimony of Hon. Richard Pombo, 2). “Ladies and gentlemen, we are at war with the extreme environmentalists. What they have done in the Klamath Basin is nothing short of a tragedy. ...The Endangered Species Act has been invoked to completely destroy an entire local economy under the pretense of saving a non-commercial sucker fish” (U.S. House 2001: Testimony of Hon. Wally Herger, 4-5).

Testimony – written and oral – from the Upper Basin Agriculture community was, to a person, couched in the language of relationships, filled with relational accounts, speaking of their way of life,
speaking of betrayal of the promise made to them by the Federal government (U.S. House 2001). The sense of this promise is embedded in every thread of the fabric of their way of life; it is as taken-for-granted as the sun coming up in the morning – which means that the dismantling of this taken-for-granted was experienced as the deepest of threats to their way of life and as the deepest of betrayals.

- **Outside Groups Try to Appropriate Local Rage to Serve Their Own Ends.** “More than anything, though, the Klamath Falls protests fed the flames of far-right, antigovernment fervor. Militia activists, cursing the ‘U.S. Gestapo’ in e-mails, volunteered to ‘fire the first shot at the feds’” (Southern Poverty Law Center 2001, 2 of download).

  [F]armers, merchants and residents are turning to ever more radical measures in their battle with the feds. ... ‘There’re a lot of people contacting us who want to do heavier stuff, but we’re telling them we’re not interested,’ said farmer Paul Arritolola. ...Property-rights groups from several states are coordinating events here, and conservatives in Congress see the region as a prime example for dismantling the federal Endangered Species Act. ...[F]armers and merchants are media-savvy, producing videotapes of their plight, and staging less-threatening demonstrations of civil disobedience. Klamath irrigators are even represented by a lobbying firm that employs former U.S. Rep. Bob Smith, R-Ore., the onetime chair of the House Agriculture Committee. (Welch 2001, 1-2 of download).

  Beginning in late June, local rage began to be expressed in acts of civil disobedience, and for two months during the summer of 2001, “the irrigators’ protest against the Bureau of Reclamation water cutoff became a series of scenes in which farmers and ranchers rose up against a tyrannical government that had deprived them of what they considered to be their God-given rights” (Most 2006, 230). Protestors set up camp at the headgates and maintained a vigil there 24/7. Repeatedly, farmers “cranked open one of the six headgates holding the waters of Upper Klamath Lake out of a main irrigation canal” (Barnard 2001f, 1 of download) – and repeatedly BOR, the local sheriff’s department, and then the U.S. marshals who had been brought in to guard the headgates exercised restraint (Schoch and Bailey 2001), letting the water run for a while before eventually closing the headgate.

  Scheduled rallies [on July 14th] drew hundreds of farmers and others to head gates... Under Saturday afternoon’s hot sun, about 100 people with protest signs crowded around fences enclosing the headgates while marshals stood watch inside. Farmers and their backers flew American flags upside down while signing each other up to stand vigil at the head gates until they are opened. (Milstein 2001i,2 of download)
On July 13th and 14th, activists arrived in town to participate at the forefront of the protests at the headgates. On July 15th, protestors rigged an irrigation line, placing a pump in Upper Klamath Lake and running the pipe along a fence into A-Canal.

Nearly a dozen federal officers guarding the head gate structure took no action. ...The small stream of water...will do little for dry cropland. But farmers said it advances their cause. ‘It’s proving a point that we care about our rights as Americans,’ said local farmer Doug Staff, who said he would risk arrest to keep the water flowing. ...Encampments grew on both sides of the fences around the closed federal head gates... Up to 200 farmers and their supporters flew American flags upside down outside the fence, illustrating their defiance of the federal government. (Milstein 2001j, 1-2 of download)

● **Phase II of the Kandra Mediation.** While, on the one hand, the April 30th court decision had sent the siege mentality skyrocketing to the extremes of conflict, on the other hand, subsequent to that decision, the attorneys and Judge Coffin set up a schedule to keep the mediation process going on – what became known as Phase II. Skepticism abounded in the Upper Basin about this process. “Steve [Kandra] sees no immediate relief coming from this process. Rich McIntyre [environmental community] asked if the judge had actually said, as he read in the paper, that nothing could be done until the local people work out their differences. Steve West [Klamath County Commissioner]...felt this was condescending because the local people have been doing exactly this for the last ten years” (UKBWG 2001b, 3 of download).

When Phase II commenced on July 18th, anybody with an interest could participate, not just the parties to the litigation; however, farmers were reluctant to spend dwindling cash to pay attorneys to pursue a process that they saw as possibly futile (Milstein 2001k).

After the July 18th mediation meeting, Judge Coffin hired CDR Associates to prepare an assessment of the prospects for a successful mediation process. Within mainstream conflict resolution practice, CDR Associates is iconic, as are CDR practitioners such as Christopher Moore and Bernard Mayer. Moore along with J. Michael Harty and Peter Woodrow comprised the CDR Associates team who did the situation assessment.

Before the next Phase II mediation meeting, numerous parties presented their own plans, strategies, and lists to the mediation – Oregon state officials (Milstein 2001L), Ronnie Pierce, biologist for the Karuk Tribe (UKBWG 2001e), the Bush administration (Milstein 2001m), and Senator Wyden (Milstein 2001n).

● **Water flows..!!** On July 24th, in an unexpected turn of events, Secretary Gale Norton of the Department of the Interior authorized the release of approximately 75,000 af from Upper Klamath
Lake for irrigation deliveries to the Project lands serviced by water from Upper Klamath Lake. On July 25th, the water flowed.

As the water flowed, while local protestors continued to maintain the 24/7 vigil at the headgates – even installing a mobile construction office nicknamed ‘The War Room,’ with seven phone lines and a new asphalt driveway (Associated Press 2001) – protests, rallies, civil disobedience dwindled to nothing and outside supporters went on home.

- **Voices of Threat and Voices of Concern.** On the one hand, threats were made by some who had embraced the siege mentality, not only against Them, but also against those of Us who did not “toe the party line.”

  *With respect to threats against Them,* “Federal reclamation officials...now work behind locked doors and thick security glass. Environmentalists...have been warned to stay out of town. Their lives may be in danger” (Milstein 2001d, 1 of download). “Larry Dunsmoor [fishery biologist with the Klamath Tribes]...had received threatening phone calls and...he no longer felt safe driving in a truck with the Klamath Tribes’ logo” (Most 2006, xxvii).

  *With respect to threats against members of Us,* “[w]hen a local company arrived with portable toilets for the federal officers, protesting farmers contacted the company and the toilets were hauled away” (Milstein 2001j, 1-2 of download).

John Anderson...and fellow farmers calling themselves the Klamath Project Property Rights Advocates are working with environmentalists to arrange government buyouts of land and water rights so farmers who remain will be able to count on assured irrigation supplies. ...The idea of changing to meet new demands has not endeared Anderson or fellow farmer Keith Buckingham to farmers and their supporters rallying this week in Klamath Falls... Buckingham was voted out as president of the Tulelake Growers Association last spring. (Barnard 2001h, 1 of download)

Unfortunately, those farmers willing to compromise have become targets of intimidation in their own communities. ‘We get death threats,’ says Jeannie [Anderson]. The Buckinghams have had similar experiences. (McCarthy 2001, 9 of download)

*On the other hand,* voices of concern also had begun to be raised by the private face of the Project water user community and their local allies that had been silenced by the escalating siege mentality.

“While residents...are quick to support each other, they’re deeply divided on tactics” (Welch 2001, 3 of download). Some want a political solution; others are tired of playing by the rules. “And everyone, it seems, is both courting – and fearing – attention from outside the region. ‘We want people to hear our story,’ said Commissioner West. ‘But I fear there have been some with no ties to this basin who’ve come in and tried to get people to buy into their beliefs and get them more worked
up” (Welch 2001, 3 of download). “While a few angry residents mutter about tyranny and not wanting a repeat of Waco or Ruby Ridge – the siren song of Western anti-government movements – most take pains not to even hint at violence” (Welch 2001, 2 of download).

And, contrary to those farmers who had said they felt that breaking open the headgates was what they had to do in order to win the war, “other farmers had said they were prepared to safeguard the headgates that block water they consider rightfully theirs because...[m]ost of all, they don’t want to turn off an American public they are trying to win over to their side. ‘Opening the gates right now doesn’t help us; it’s too late to do any good this year,’ said Donnie Boyd, a tractor dealer in the farm town of Merrill. ‘It frames us as a bunch of lawbreakers, and that’s the last thing we need’” (Milstein 2001h, 2 of download).

- The Second Kandra Mediation meeting. The next Phase II mediation meeting was held on August 15th and 16th. With participation expanded beyond the original attorneys, attendance numbered 75-80, and the CDR Associates team facilitated the mediation meeting. Phil Norton, FWS, said that “[h]e had reservations about attorneys driving the boat, but he was impressed with the mediators. A lot of time was spent on process” (UKBWG 2001f, 2 of download). Steve West, Klamath County Commissioner, said he “is not optimistic about the process because it is skewed toward parties (agencies) with funding to support their lawyers. Farmers are at a disadvantage because they lack the resources to keep their lawyers involved. He sees it as hugely flawed with a train wreck coming. He much prefers development of solutions in an environment like that of the Working Group” (UKBWG 2001f, 2 of download).

- The Convoy of Tears and the Freedom Day Rally. While the water flowed (albeit too little too late), the focus shifted from civil disobedience to relief. Local organizations collected donations; local food banks distributed food to stricken farmers and ranchers. On August 17th, USDA announced a $20 million aid package, which included a relief plan of direct grants to those farmers and ranchers who did not receive irrigation water (Milstein 2001o-1).

The Klamath Bucket Brigade incorporated as a nonprofit on July 31st “for the purpose of sponsoring the Klamath Relief Convoys that spread the message of the plight of the Klamath Basin farmers and ranchers” (Klamath Bucket Brigade 2003-2008, 1 of download). At the same time, concern about the role of outsider activists in the relief/protest activities continued to be voiced.

“In August, alerted by a series of Internet postings, convoys of antigovernment protestors made their way through Montana, Nevada, Idaho, Washington, California and Oregon and converged
on Klamath Falls for a large ‘Freedom Day’ protest. Yet while antigovernment activists were trying to turn the Klamath fight symbolically into another Waco or Ruby Ridge, some locals worried that their cause was being hijacked by outsiders with different interests than their own. ‘We’ve been contacted by the Freemen,’ said Klamath County resident Stan Thompson, referring to a well-known common-law group. ‘We don’t need those jerks in here.’” (Southern Poverty Law Center 2001, 2 of download)

The self-labeled Convoy of Tears, after having traveled the country hauling a ten foot tall metal bucket on a flatbed trailer to be filled with money, food, and supplies in support of the Klamath farmers, on August 21st, rolled into Klamath Falls and the Freedom Day Rally and a crowd of several thousand (Most 2006). A crane hoisted the giant steel bucket onto the steps of the Klamath County Courthouse. “The bucket will ‘stand as a testament to the ongoing battle to correct the injustice done on this basin,’ Bill Ransom, a Klamath Falls businessman who helped organize the convoy, told the crowd” (Barnard 2001g, 1 of download).

At the Freedom Day rally, “County commissioners, loggers, farmers, talk radio hosts and others from around the country lashed out at environmental groups, federal agencies, Gov. John Kitzhaber and others they blamed for either cutting off water to more than 1,000 basin farms or doing nothing to stop the cutoff” (Milstein 2001p, 1 of download). “Employing extreme hyperbole, former Idaho Congresswoman Helen Chenowith Hage compared the struggle to the American Revolution” (Doremus and Tarlock 2003, p. 321). “Environmental groups calling for farmland buyouts to reduce water demands were labeled ‘green bigots,’ ‘communists’ and ‘scumbags’ by speakers and signs” (Milstein 2001p, 2 of download). “No representatives of environmental groups or the Klamath Tribes were in attendance” (Milstein 2001p, 2 of download).

● A Shifting of Gears. The day after the heady times of the Freedom Day rally, on August 22nd, the release of water from Upper Klamath Lake ended. In reaction, some said they would take the headgates, but in a shifting of gears, the voices of concern carried the day, backing away from the siege mentality and calling for calm. “I think it has to end,” said Don Russell, president of the Klamath Water Users Association. ‘Climbing fences or tearing things up isn’t going to resolve anything at this point. We’ve done the best we could with what water we’ve had, and it’s time to work toward next year” (Milstein 2001q, 1 of download).

In another mark of shifting gears, shortly after the second Phase II mediation meeting, the Project Water Users took a major step towards abandoning the mediation effort, hiring Marzulla and Marzulla, a pair of prominent Washington, DC, property rights attorneys. On August 24th, the Marzullas filed a claim in the U.S. Court of Claims in DC, seeking compensation for irrigation
districts that did not receive expected water this summer. “Irrigators are advancing the claim in part because ongoing mediation of the Klamath water struggle promises no acceptable solution,’ Harrison [of Marzulla & Marzulla] said” (Milstein 2001r, 1 of download).

The litigant list of *Klamath Irrigation District v. U.S.* was huge and spanned the entire Klamath watershed. The plaintiffs represented by Marzulla & Marzulla were fourteen Project irrigation districts and thirteen individuals and entities from the Project.2 The defendant was the United States. PCFFA of the environmental collaboration was successful in its bid to intervene as defendant, but others were not, and so participated as *amicus curiae*.3 The environmental collaboration was represented, as usual, by Earthjustice Legal Defense Fund. In addition, the State of Oregon, the Klamath Tribes, and the Yurok Tribe also participated as *amicus curiae*.

- **The Third Kandra Mediation Meeting.** On September 4th and 5th, the third Phase II mediation meeting was held, again facilitated by the CDR Associates team and again with 75-80 participants, including Congressional staff that Judge Coffin had invited to attend. On September 5th, CDR also delivered an Interim Draft assessment report in which they emphasized the importance of mediation participants addressing key questions about their individual commitments of resources to a mediation (as opposed to lobbying and litigation such as the just filed *Klamath Irrigation District v. U.S.* (Moore, Harty, and Woodrow 2001).

- **The September 11th Attacks.**

What ended the confrontation were the terrorist attacks of September 11. With the federal officers guarding the headgates needed elsewhere, the farmers agreed to decamp and take their pipes with them. Patriot movement ideologues also left the scene, and their myth of federally abetted Green Nazi terrorists vanished in the face of the real thing. ‘We are all patriotic Americans,’ explained Bill Ransom, a local merchant who headed the Klamath Relief Fund, ‘and this national emergency takes precedence.’ (Most 2006, 237)

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2 Fourteen Project irrigation districts: Klamath Irrigation District, Tulelake Irrigation District, Sunnyside Irrigation District, Malin Irrigation District, Westside Improvement District, Shasta View Irrigation District, Klamath Drainage District, Klamath Hills District Improvement Company, Poe Valley Improvement District, Midland District Improvement Company, Enterprise Irrigation District, Pine Grove Irrigation District, Klamath Basin Improvement District, and Van Brimmer Ditch Company. Thirteen individuals and entities: Fred A. Robison, Albert A. Robison, Mark Trotman, Lonny Baley, Baley Trotman Farms, Michael Byrne, Daniel Byrne, Byrne Brothers, Daniel Chin, Deloris Chin, Wong Potatoes, Inc., James Moore, and Cheryl Moore.

3 ONRC, Institute for Fisheries Resources, Wilderness Society, Klamath Forest Alliance, WaterWatch of Oregon, Northcoast Environmental Center, Sierra Club, and Natural Resources Defense Council.
The next day, September 12th, farmers and their supporters agreed to end their protest at the headgates so that the federal officers guarding the headgates could be assigned elsewhere (Milstein 2001s). “‘We feel like we’ve been under siege here in Klamath, but we realize that the national emergency takes precedence over our cause,’ Bill Ransom of the Klamath Relief Fund told a reporter” (Southern Poverty Law Center 2001, 2-3 of download).

In summary, then, in the space of just a few months, Project water users and their local supporters had engaged in activities that, I would wager, if you had asked them a year earlier, they would never have imagined themselves doing – protests, rallies, civil disobedience. These were not things they did; these were things other people did. But circumstances came together such that these became exactly the things that they did, as the siege mentality took charge of the public face of the Project water user community. As the summer proceeded, however, concern mounted within the community about the possibility that outsider groups were hijacking their cause and voices rose calling for ratcheting down the confrontation, letting go of this year, and beginning to focus on next year. While the wound was still raw and pulsating, the voices of concern carried the day with respect to the reaction to the ending of the small, but symbolically important flow of water, and, I would think, helped to enable the letting go of siege tactics in the face of the attacks of September 11th.

The Final Days of 2001. During the final days of 2001, while, at the core, the entire Upper Basin community was suffering from the social, emotional, and psychological toll of the spring and summer, at the surface, the conflict tracks were actually relatively quiet.

After the terrorist attacks of September 11th, the public face of the Upper Basin Agriculture community packed up their protest and quite literally went home. In early October, “[t]he board of the Klamath Water Users Association...voted to drop its lawsuit demanding the U.S. Bureau of Reclamation restore water deliveries” (Barnard 2001k, 1 of download). Their dismissal of their case effectively ended the Kandra mediation effort. The Project Water Users abandoned the mediation because they felt it was not going to give them what they wanted, which was certainty about water delivery in 2002 and beyond.

In its stead, they reverted back to the tactics of political lobbying and litigation. They had filed the Klamath Irrigation District v. U.S. case in August, but that case was about compensation for water not delivered in 2001, not about water delivery in 2002 and beyond.4

4 And the case was still crawling along in 2009, yet to be decided, so this tactic was not something for the Project Water Users to hold their breath about.
In late October, Project farmers and ranchers who had not received water during 2001 began receiving shares of the $20 million in aid that had been allotted by Congress in August. “The $20 million added to $15 million provided by the state of California for emergency wells and other needs, and $2 million offered by the state of Oregon and other federal money for worker retraining and other needs” (Milstein 2001t, 2 of download). In addition, Senators Wyden and Smith won $15 million, including $5 million for screens to keep irrigation canals from sucking suckers into the canals (Milstein 2001t).

While the monetary relief certainly helped, it did nothing to address the uncertainty about water delivery in 2002 and beyond. For that, the Project Water Users staked their future on the National Academy of Sciences review of the 2001 biological assessments and biological opinions – hoping that the scientists would declare that the BAs and the BOs were wrong and that therefore the Project Water Users would receive their water in 2002 and beyond.5 “We’re laying all our guns on the National Academy review, and we’ll go on and fight our war from there,” said James L. Moore, interim director of the Klamath Water Users Association” (Milstein 2001t, 2 of download).

In summary, then, as December 31st rolled around, on the one hand, the year from hell for Upper Basin Agriculture came to an end, but, on the other hand, the certainty that the Project Water Users hoped for with respect to at least 2002 was, so far, nowhere to be found, and the new year loomed as a giant question mark – would it be a second year from hell?

The Tribal Nations Track

As 2001 dawned for the Klamath Tribes in the Upper Basin, they continued to be at one and the same time both eager to collaborate and ready to fight if they must. They felt that they must respond to the threat that they perceived in the 1999 letter from the Oregon Attorney General arguing to significantly reduce their water rights below that which had been decided in Adair II and so they reopened the Adair litigation in 2001 to make that threat go away.

Unfortunately, much of Upper Basin Agriculture perceived this litigation as a threat to their way of life, making real their long-festering fear that the Klamath Tribes wanted to keep all the water for themselves and to destroy agriculture. Relations between the Tribes and Upper Basin Agriculture in

5 In late 2001 (probably end of July beginning of August; the formal agreement was signed on October 2, 2001 (U.S. BOR 2002)), the Department of the Interior (the home of BOR, FWS, and BIA) and the Department of Commerce (the home of NMFS) asked the National Academy of Sciences to form a committee to evaluate the strength of scientific support for the biological assessments and biological opinions on the three listed species and to identify requirements for the recovery of the species. The committee was charged to complete an interim report in early 2002 and a final report in 2003 (NRC 2004).
the KBA ADR meetings of January, February, and March became extremely strained. The Tribes tried to explain that all they were doing was responding to what they considered an incorrect interpretation of the *Adair* case, but, as far as agriculture was concerned, the damage was done, trust had been betrayed, and there was no point in talking any further (Oregon WRD 2001a, 2001b, 2001c). One wonders how deaf were the ears of many in the group, closed by anger and fear that was certainly exacerbated by the impending drought and the impending court decision.

At the Congressional hearings in DC on March 21st, Allen Foreman, chairman of the Klamath Tribes, reminded everyone that the overuse of water in the Upper Basin had severely damaged the livelihoods of their families. “We have suffered for years. We are in the same situation. And I am not sure that there was [sic] any hearings concerning that at the time” (U.S. Senate 2001a: Testimony of Allen Foreman, 23). He presented their Settlement Framework at the hearing and iterated that “we are willing to work with anyone for a solution” (U.S. Senate 2001a: Testimony of Allen Foreman, 31).

During the tumultuous month of April, when the bomb exploded and the siege mentality of Upper Basin Agriculture roared to the extremes of conflict, the Klamath Tribes seemed to maintain a public silence, participating only in *Kandra* and the court-mandated mediation plus the continuing obligato of collaborative efforts.

During the months of protests, rallies, and civil disobedience from May up to September 11th, the public face of the Tribal Nations was wounded – wounded by accusations impugning the integrity of their collaborative efforts because they continued to fight as they felt necessary; wounded by accusations impugning the integrity of the efforts of their scientists; wounded by actual threats and violence leveled at them.

At the June 16th House hearings in Klamath Falls, both the Yurok Tribe and the Klamath Tribes articulated very forcefully their unwavering commitment to collaboration. Troy Fletcher, executive director of the Yurok Tribe, testified that “[f]irst off, I want to underscore and stress the willingness, the desire of the Yurok Tribe to continue to work toward resolution of the issues in the Basin. ...For any of this to be productive...there needs to be an acknowledgment that our interests are legitimate as well as the interests of others, and we acknowledge the legitimate interests of all the parties in the Basin that are dealing with this tough issue” (U.S. House 2001: Testimony of Troy Fletcher, 87). “This is going to be a Basin wide issue. It’s going to require Basin-wide solutions and resolutions, and it’s not fair to focus in on one group” (U.S. House 2001: Testimony of Troy Fletcher, 88). “The Yurok Tribe is committed to joining with our neighbors in the upper basin to find common ground and workable solutions” (U.S. House 2001: Testimony of Troy Fletcher, 90).
In addition, Fletcher addressed the accusations about their scientific efforts. “We hear a constant refrain that our carefully designed studies, conducted in conjunction with experts from other agencies, are ‘junk science,’ and that the needs of the fish are greatly exaggerated. We categorically reject this characterization. These unfounded attacks make cooperative efforts at long-term solutions difficult. ...Our objective has been, and continues to be, to develop credible, unbiased science to use when making important decisions about scarce Klamath Basin water resources” (U.S. House 2001: Testimony of Troy Fletcher, 89).

Allen Foreman, chairman of the Klamath Tribes, testified that “[i]n the present crisis we are watching our agricultural neighbors experience in part what has happened to the Tribes over and over: promises ignored, trust betrayed, severe personal economic damage, terrible pain, anguish, fear, and anger with no productive outlet. We do not revel in their misery, and did not try to engineer their demise. However, we cannot let their agony and anger obscure the pathway to successful resolution of our problems. We want what is best for all Klamath Basin residents, a healthy ecosystem with stable and prosperous economies for all” (U.S. House 2001: Testimony of Allen Foreman, 82).

With respect to the accusations and threats leveled at the Klamath Tribes, prior to the June 16th hearing, “[s]ome tribal members say they are afraid to shop in Klamath Falls. Racial taunts liken Native Americans to suckers. Some say local restaurants will not serve them. ‘I’m concerned it’s turning racial,’ said Tribal Chairman Allen Foreman. ‘It doesn’t need to be that way. We know what it’s like to lose your resources’” (Milstein 2001f, 2 of download).

At the June 16th hearing, Foreman tackled the accusations and threats straight on. “Recently, the tribes have been victims of unwarranted and unjustified attacks on both our public imagine [sic] and our character. Unfortunately, there have been personal attacks as well” (U.S. House 2001: Testimony of Allen Foreman, 76). “I want to make one thing perfectly clear. It is not now, nor has it ever been, in the interest of the Klamath Tribes to shut down or destroy agriculture in the Klamath Basin. It’s both incorrect and unfair to blame the Tribes for the current water shortage. The real problem is that demand for water in the Klamath Basin has been allowed to exceed the supply. I hope that everyone can understand why the Tribes continue to defend our water rights in the same way everyone else in the Basin seeks to reinforce their own rights and claims” (U.S. House 2001: Testimony of Allen Foreman, 77).

During the final days of 2001, on one hand, the public face of the Tribal Nations continued to be both eager to collaborate – as they expressed by continuing to participate in the obligato of collaboration – as well as ready to fight as needed – as they expressed by signing up to participate as
amicus curiae in the Klamath Irrigation District v. U.S. litigation. On the other hand, the Klamath Tribes made the intentional decision to avoid anything that could even be interpreted as confrontational by anybody else in the Upper Basin – both by turning down offers from outside Indian activist organizations to come in on their behalf as well as by remaining nonconfrontational in the face of any threatening behavior enacted towards them (Lach et al. 2002).

The Coastal Salmon Fishing Track

Throughout 2001, PCFFA continued unabated as the militant leader of the public face of the Coastal Salmon Fishing community. At the March 21st Congressional hearing in DC, Glen Spain of PCFFA testified that while the Klamath Project operations were not the sole factor leading to recent major in-river fish kills, they had certainly been a major factor (U.S. Senate 2001a: Testimony of Glen Spain), and that “[o]bligations to public resources must be met first, under the law, by public agencies before meeting the needs of private farmers to make a profit using public water” (U.S. Senate 2001a: Testimony of Glen Spain, 50). He “said that fishermen who rely on fish runs in the lower Klamath River will do everything they can to help Upper Basin farmers get through the looming drought – but that salmon must also be protected. ‘We know the people up there are going to get hurt,’ Spain said. ‘Let’s get some compensation to these people as soon as we can’” (Bragg 2001e, 1 of download).

As the bomb exploded during the month of April, PCFFA continued to express their militant public face. Commenting on their victory in PCFFA I on April 30th, Glen Spain of PCFFA said that “It’s unfortunate that we’re in a drought disaster, but we can’t allow the burden of this drought to be paid by important public resources such as salmon and the port communities that depend on them.’ …Fisheries and conservation groups also will fight as hard for drought relief for farmers as they have in court to protect salmon, he said” (Milstein 2001a, 1-2 of download). They offered the technically rational solutions of drought relief and “willing seller” buyouts to the vanquished – which “solutions,” in my opinion, would have only served to fan the flames of threat perceived by the Project water user community.

On May 9th, Zeke Grader, executive director of PCFFA, testified at a Senate hearing about the ESA.

It just makes no sense to keep irrigating croplands as usual in the midst of what has become the Klamath Irrigation Project’s worst drought in its entire 90 year history, particularly when the result will inevitably be a dried up river, dead lakes, the final extinction of several commercially valuable species and the total destruction of a whole downriver fishing economy that also supports thousands of coastal jobs – all this destruction just to keep feeding a bloated federal
irrigation project that produces federally subsidized surplus crops for which there is now little or no market. (U.S. Senate 2001b: Testimony of Zeke Grader, 126)

In the June 2001 *Fishermen’s News*, the authors – Pietro Parravano, president; Zeke Grader, executive director; and Glen Spain, northwest regional director – continued to speak to the threat to their way of life. “Over the decades the irrigators had simply taken too much. Now, thanks in part to the Endangered Species Act, they are being forced to give enough of it back so that coho salmon in the river can at least continue to exist. ...Too little water left in the Klamath River means the slow economic strangulation of fisheries, fishing families and coastal communities” (Parravano, Grader, and Spain 2001a, 1 of download). “The Klamath Irrigation Project is a typical bloated federal water project” (Parravano, Grader, and Spain 2001a, 2 of download) – subsidized and unnecessary. The authors once again proffered a “willing seller” buyout plan to the Project irrigators.

Grader testified at the June 16th House hearings held in Klamath Falls. From the transcript, it is obvious that the audience erupted loudly when Grader was called to testify, because Representative Pombo had to bring the audience back to order, reminding them of the rules that applied to Congressional hearings (U.S. House 2001). In his oral testimony, Grader proffered the same “willing seller” buyout plan as had been presented in the June 2001 newsletter, but added that the best solution was to bring everybody together (U.S. House 2001: Testimony of William F. “Zeke” Grader).

In the Q&A section after the panel’s testimony had been completed, the Congressmen raked Grader over the coals. Representative Hastings called Grader on the difference between the conciliatory tone of his oral testimony seeking solutions together, and the accusatory tone of his written testimony criticizing the irrigators and the Federal government. Representative Walden quoted some of the inflammatory language from the June 2001 PCFFA newsletter and said “I would suggest that that sort of rhetoric is probably not the kind of conducive verbiage that we need if we’re all going to sit at the same table and try to come to a result” (U.S. House 2001, 158). Representative Pombo pulled no punches in his comments to Grader, stating that “some of the most abusive testimony I have ever received as a Chairman of a Committee has come from your organization” (U.S. House 2001, 158-159).

The August and September 2001 *Fishermen’s News* continued unwaveringly in their militant posture.

For more than 90 years, upper basin irrigators have taken most of the water and said to hell with the fish and downriver fishermen. They profited and everyone else paid the economic price. ...However, the Klamath irrigator’s recent noisy political agitation to ‘get all their water back,’ is
nothing more than an effort to turn the clock back to the dark days when all the economic consequences of water shortages had to be paid by fishermen and wildlife. This is something that we will not accept. (Parravano, Grader, and Spain 2001b, 3 of download, italics in original)

Of course, playing to win also carries a heavy moral obligation to assist the loser graciously and compassionately. (Parravano, Grader, and Spain 2001b, 4 of download)

To that end, the authors offered to the Project water users “willing seller” buyouts and support for drought relief payouts.

**The Environmental Track**

Throughout 2001, ONRC continued unabated as the militant leader of the public face of the Environmental movement in the Klamath, continuing to file and threaten to file litigation to protect wildlife in the Upper Basin, and continuing to speak of Project agriculture in inflammatory terms.

Responding to the possibility that water users could ask that the ESA “ ‘God Squad’ be convened, Wendell Wood of ONRC said, ‘what’s at stake here is the decline of waterfowl and the whole fish and wildlife abundance of the Klamath Basin. ...What do we do – convene the God Squad as all these other species become endangered so we can still grow subsidized potatoes for which there are no markets?’” (Quinn 2001, 2 of download).

On April 18th, Wendell Wood of ONRC sent out an email to ONRC urging them not only to continue pressuring for their goals with respect to the Klamath River flows and the NWRs, but also to pressure government officials to “provide immediate financial relief to all irrigators in the Klamath Project this year [and] arrange to buy out willing sellers with leases in the Klamath National Wildlife Refuges” (Wood 2001, 3 of download).

Andy Kerr, Senior Counselor of ONRC, testified at the June 16th House hearings in Klamath Falls. He analyzed agriculture in the Upper Basin in terms of economics, declaring it economically and environmentally unsustainable – marginal, heavily subsidized. He asserted that “[a]ttacking the Endangered Species Act is a poor strategy for the ‘give-me-water-or-give-me-death’ crowd” (U.S. House 2001: Testimony of Andy Kerr, 97). And forget appealing to the God Squad, he said, promising their attorneys would jump on it.

He proposed a plan to acquire land or interest in water from willing sellers for fish and wildlife purposes or for the establishment of replacement lease land so commercial farming could end on the national wildlife refuges. “This joint proposal is ecologically rational, economically efficient, fiscally prudent, socially just and politically pragmatic” (U.S. House 2001: Testimony of Andy Kerr, 98). He said that conservationists had finalized negotiations on this proposal with local land owners on June
He also noted that “I’m sorry to have to note that these willing sellers have been verbally abused and threatened for their stance by some of their neighbors” (U.S. House 2001: Testimony of Andy Kerr, 96). He said they must band together “against bullies who would deny them their property rights and their future” (U.S. House 2001: Testimony of Andy Kerr, 99).

On October 10th, they and the rest of the environmental collaboration filed suit to intervene as defendants in the Klamath Irrigation District v. U.S. litigation, arguing that a decision granting compensation to the plaintiffs “would have significant impacts on the allocation of the water in the Klamath Basin and corresponding negative impacts on PCFFA’s fishing interests” (KID I., 64 Fed. Cl. at 332). ONRC was denied the right to intervene as defendant, and so took up the role of amicus curiae.

While the militant leadership of ONRC continued to be the radical public face of environmentalism in the Klamath watershed, there also continued to be a private face of environmentalism there. There were those organizations and those individuals who did not subscribe to the radical modus operandi of ONRC, who worked for the environment in different ways, boundary-spanning ways that ONRC would reject, and who had to live with being branded by many as being the same as ONRC because they were associated with the environmental movement.

For example, at the July 19th UKBWG meeting, we come to learn that the American Land Conservancy had been invited two years earlier to talk to some farmers about selling their land and by 2001 had bought options to purchase about 28,000 acres from 72 willing sellers (UKBWG 2001d) – more than 10 percent of the farmland in the Klamath Project. Their proposals were not met with open arms by everyone. Farmers “say buying their neighbors out would prey upon their weakened industry and pry apart communities” Milstein 2001g, 2of download). And at the July 19th UKBWG meeting, “Steve West ...expressed his opinion that these are not really willing sellers, but hostages who have had their property prices driven down by Federal actions” (UKBWG 2001d, 5 of download).

Even while concerned, even embarrassed, by actions taken by their farming community friends in the name of protest – from the installation of the bucket in front of the courthouse to the threats of violence, local conservationists continued to participate in the obligato of collaboration, hopeful that those protest actions would not create irreparable splits with those interested in resolving the region’s problems (Lach et al. 2002).
1.2 The Obligato

2001 took a particular toll on the obligato of science-driven boundary-spanning collaborative efforts not only from the social, emotional, and psychological repercussions of the activities of the times, but also from the fact that collaboration itself was sorely taxed.

*With respect to science,* gone were the days in which science reigned as unquestioned truth and authority, gone were the days of science as a collaborative effort, and here came the days of combat biology (Service 2003) in which science was taken up as a weapon in the service of one’s interests in the fight for the survival of one’s way of life. At the center of the fight were accusations flying fast and furiously about the adequacy of the biological assessments and biological opinions that were seen as having contributed, ultimately, to the water cutoff in April. To address this situation, outside scientists were called in to referee the fight, if you will. In late 2001, the Department of the Interior (the home of BOR, FWS, and BIA) and the Department of Commerce (the home of NMFS) asked the National Academy of Sciences to form a committee to evaluate the strength of scientific support for the biological assessments and biological opinions on the three listed species and to identify requirements for the recovery of the species. The committee was charged to complete an interim report in early 2002 and a final report in 2003 (NRC 2004). The National Research Council of the National Academies appointed an 11-member Committee on Endangered and Threatened Fishes in the Klamath River Basin. “The committee...will meet Nov. 6-8 in Sacramento, Calif., to hear from the public and outline their initial findings, which are due Jan. 31, 2002 in order to allow federal agencies to plan for next year's irrigation season” (Barnard 2001 L, 1 of download). The committee heard from federal agencies, farmers, Indian tribes, commercial fishermen, and environmentalists. I am sure there was a wide spectrum of expectations with respect to this report, depending upon whether one was a scientist or not, and upon whether one had experienced science in 2001 as either supporting or threatening one’s way of life. I can only imagine that the hope of the Departments of Interior and Commerce was that this effort would end the “combat biology” raging in the Klamath. Unfortunately, it would do anything but.

As 2001 drew to a close, combat biology continued to rule the day. Everybody now had their own scientists. While the Tribes, both Upper and Lower Basin, had long had their own science programs, now KWUA had hired their own scientists and were presenting their own scientific conclusions and plans everywhere they could. While there was no certainty about what role these scientific efforts would play in 2002 and beyond, everyone had invested a lot in the hope that *their* position would be supported by the results.
With respect to boundary-spanning collaboration, throughout 2001, there was no dearth of desire or effort to solve environmental problems collaboratively. Tools were taken from the mainstream conflict resolution toolbox, and outsiders were brought in to train groups in mainstream conflict resolution methods, to facilitate groups, and to evaluate the groups and the efforts they were making. But at the end of the day, the obligato was sorely taxed, its cracks and weaknesses revealed.

As representative of this situation, it is most instructive to look at what happened with the UKBWG and the KBA ADR in 2001.

The Upper Klamath Basin Working Group (UKBWG)

The April 19th meeting of the UKBWG was fraught with anguish. It is clear that the members of the Working Group have formed a strong bond with one another. It is clear that the perceived betrayal of the unspoken assumption that working on restoration projects would protect the Project water users is making those who have been working on restoration projects for a decade or more question whether they will continue. And it is clear that, for many, the commitment to ‘stay at the table’ and work for a solution continues to be extremely strong, even in the face of the perceived betrayal.

Add to this the fact that they were working under the specter of expiration of their FACA authorization on September 30th, without so far any assurance that they would be reauthorized.

Still, there were accomplishments.

They held joint meetings with the Lower Basin’s KRBFTF; they tried to activate the Coordination Group which had never met since it was created in 1996 at the same time that the Working Group was created.

They hosted the federal entourage headed by Bill Leary of the President’s Council on Environmental Quality at a special meeting on May 17th, and members were able to share with their federal guests their experiences of wrestling with the issues for five years.

Most impressively, at the August 16th meeting, the Working Group addressed the threats that were being levied within the community. The Working Group issued a Free Speech Resolution condemning “without exception, the attempts of anyone from within or outside of this community, to intimidate or threaten the persons or property of any citizen of the Klamath Basin, regardless of their political or environmental opinions” (UKBWG 2001e, 5 of download).

In addition, the Working Group had decided that they wanted to see if they could produce an overarching restoration plan for the Upper Basin. To that end, they wanted to have “a qualified consultant...provide an assessment of the Working Group’s organizational capacity for the
development of a planning process” (Jones & Stokes 2001, 2). On their behalf, the U.S. Institute for Environmental Conflict Resolution (USIECR) retained Jones & Stokes, a well-respected environmental conflict resolution organization, to do an assessment of the Working Group’s ability to pull off such a plan.

Jones & Stokes, under the leadership of David Ceppos, met with the Working Group in April 2001 to initiate the project. They conducted their evaluation from then through the summer, through extensive interviews of and questionnaires for members of the Working Group, and brought their Final Upper Klamath Basin Working Group Situation Assessment Memorandum to the August 30th meeting of the Working Group.

In my opinion, the Situation Assessment by Jones & Stokes was excellent. Their overarching assessment was that, while the Working Group has “successfully provided guidance and advice on the implementation of restoration-based projects in the Upper Basin that have been funded though ORCA (and other sources), ...no long-term, prioritized resource-based plan has been developed to serve as a framework for these recommendations. Therefore, project recommendations have been made in a well-intended but nonetheless ad-hoc fashion” (Jones & Stokes 2001, 1). In addition, the assessment noted that there were other groups operating under similar but unrelated mandates and independently of each other and of the Working Group who were also engaged in various processes to address resource issues in the Upper Basin. “Should these endeavors remain uncoordinated, this situation could complicate and confuse the Working Group’s role, mission, and presence in the Upper Basin community” (Jones & Stokes 2001, 2). So, in other words, no shared vision; lots of good, but ad-hoc work; and lots of other Upper Basin groups doing similar work.

After reviewing all their findings, Jones & Stokes believed there was “a strong likelihood that the Working Group can successfully initiate and complete a resource-based planning process” (Jones & Stokes 2001, 32). To do this, Jones & Stokes laid out twelve planning decisions that they felt the Working Group needed to make. At the August 30th meeting, the Working Group accepted the Situation Assessment and began working on the twelve required planning decisions.

Again in my opinion, it is interesting to note that (1) the Situation Assessment was conducted within the framework of mainstream conflict resolution, interviewing and evaluating their findings in terms of members’ interest groups; (2) there is nothing in the framework of mainstream conflict resolution that works directly with participants to construct a shared vision – rather, instead, shared vision is assumed to emerge on its own from stakeholders problem-solving together; (3) the Situation Assessment critiqued that the Working Group did not have a shared vision, which mitigated against their ability to accomplish their goals; and (4) none of the twelve required planning decisions
presented by the Situation Assessment involved working directly to construct a shared vision, but rather expected the shared vision to emerge on its own from the planning process. It is also interesting to note that five years of consensus – even loyalty and trust – achieved by the Working Group did not beget a shared vision. Clearly, while the framework of mainstream conflict resolution asserts that shared vision is important, the assumption that the shared vision will emerge on its own is a misplaced assumption.

On September 30th, the authorization for the UKBWG ended and reauthorization was completely up in the air. Over the course of the final days of 2001, the minutes of the Working Group revealed conflicting feelings: uncertainty about what to do and who to do it with; continuing strong commitment to the Group, to consensus, to coordination among agencies and throughout the watershed, and to long-term solutions; weakened commitment to collaboration because of the sense of having been betrayed; frustration that nothing was being accomplished; impatience with the planning process being facilitated by Jones & Stokes. In October, the Kandra mediation died, and members of the Working Group wondered if the Kandra participants might look to the Working Group as a place to continue the efforts. There is no indication in subsequent meeting minutes that this transpired.

In December, it was learned that the Working Group would continue to be authorized, but so far there was no money authorized for funding projects.

My sense of the Working Group during 2001 was that they were kind of flailing, in the sense of being very proud of the fact that everything was done by consensus, being loyal to the Working Group, but unsure of how to actually move forward. They were seriously shaken by what many experienced as the betrayal of the unspoken assumption that if they did restoration, there would be regulatory relief, which, of course, absolutely did not come to pass, what with the water cutoff. There was much discussion about whether to focus on short-term or long-term, and about the desired relationship to political decision makers, i.e., whether We bring a consensus to Them, or They participate with Us in reaching a consensus, or They make the decisions. They wanted to take a watershed-wide approach, but did not know how to do it. All in all, 2001 took its toll on the Working Group.

The Klamath Basin Adjudication ADR Meetings

2001 dawned for the ADR meetings with the reopening of the Adair litigation by the Klamath Tribes threatening to pull the rug out from under the KBA ADR process. Much of Upper Basin Agriculture perceived this litigation as a threat to their way of life, making real their long-festering fear
that the Klamath Tribes wanted to keep all the water for themselves and to destroy agriculture. Relations between the Tribes and Upper Basin Agriculture in the KBA ADR meetings became extremely strained. The Tribes tried to explain that all they were doing was responding to what they considered an incorrect interpretation of the Adair case, but, as far as agriculture was concerned, the damage was done, trust had been betrayed, and there was no point in talking any further (Oregon WRD 2001a, 2001b, 2001c).

Besides the Adair issue, there was also much talk in the monthly ADR meetings about the potential April negotiations session to be facilitated by the Dividing-the-Waters group. Back in June 2000, this group, with respected conflict resolution practitioners Stephen Snyder and Lucy Moore, had provided dispute resolution training to participants in the ADR process. During the July 11, 2000 monthly meeting, Snyder and Moore reported that many ADR participants had attended the June training workshop and stated that their organization was very interested in doing a follow-up intensive structured negotiating session with the ADR group. At the February 13th monthly meeting, Snyder presented his situation assessment of issues in the Upper Basin. At the meeting of the Administrative Subcommittee after the February meeting, Snyder “decided that the participants were not ready to proceed with the formal negotiation session [scheduled for April 2001]. More preparation needed to be done” (Oregon WRD 2001c, 1 of download). During the April 10th monthly ADR meeting, the negotiation session was postponed indefinitely, and the talk continued to focus on the perceived lack of trust with the Klamath Tribes because of their re-opening of the Adair litigation.

Bill Kennedy feels that until the working relationship and trust with the tribes is developed again, there is no reason to have another ADR meeting. ...Allen Foreman (Klamath Tribes) said that anyone can come talk at anytime. ...Ed Bartell...thinks that the Tribe is trying to drive the nail in the agricultural coffin. (Oregon WRD 2001d, 6 of download)

The monthly ADR meetings were on their last legs. The meeting notes for the June 12th monthly meeting were the last meeting minutes posted on the Internet. At the meeting, participants addressed the question Where do we go with the ADR?

Reed Marbut said the Administrative Subcommittee met and discussed how the ADR fits in with the Adair suit, the federal Mediation, the Fisheries Task Force, the Compact Commission activities, etc. ...The meetings are occurring because people show up for an opportunity for community discussion. ...Ed Bartell says it is unfortunate that some people have to show up because they have a gun held at their head. ...Ed Bartell asked if it is really necessary to have the meeting every month. Reed responded that maybe we don’t need to meet that often; however, this should be left up to the participants. (Oregon WRD 2001c, 5-6 of download)
And on that note, the meeting was adjourned...!!

According to the online schedule, the scheduled July meeting was cancelled; the August and September meetings were scheduled, but I don’t know if they actually occurred; the October meeting was postponed; the November meeting was scheduled, but I don’t know if it actually occurred – and then nothing. It was as if the last conversation between Ed and Reed opened the window for the possibility of discontinuing the meetings, and that seems to be exactly what happened.

Interestingly, Stephen Snyder and Lucy Moore (who had been the Dividing-The-Waters facilitators) convened an assessment workshop in 2003 concerning the ADR and the Kandra mediations, bringing together folks who had participated in either or both. With respect to the ADR meetings, among the participants there was no agreement on what had been the goal of the ADR process – which was certainly what I found in the meeting minutes. Some wanted just claims negotiation, while some wanted to address overarching issues. And the reopening of the Adair litigation still rankled for some. Even two years later, the boundaries between Us and Them were still deep and polarized, still being held on to (Snyder 2003). “Any prospect of salvaging the negotiations following the reopening of Adair vanished when” BOR announced the water cutoff (Snyder 2003, 17). “Reopening Adair felt like a breach of trust to many” (Snyder 2003, 17). And some felt that the “‘above-the-lake’ irrigation interests [i.e, Ed Bartell, Roger Nicholson and Resource Conservancy, Inc.], took advantage of the Adair situation to try to bring the negotiations to a halt” (Snyder 2003, 18).

Voices of the Web of Relationships

For as unpromising as the obligato may have felt at the time, there were still voices of hope in the obligato, calling for building a watershed-wide identity and for weaving and mending a watershed-wide web of relationships.

When I posited the overarching pattern that I expected to obtain in the Klamath watershed, I proposed that the default of Us and Them to the adversarial practices of mainstream conflict resolution would ultimately serve to tear asunder the web of relationships and to mitigate against collaboration and reconciliation to mend the tear, and that no matter how much We and They wielded the adversarial practices of mainstream conflict resolution, the problem would never be resolved until We and They mended the tear in the web of relationships from the top to the bottom of the watershed by means of the practices of reconciliation and collaboration.
As such, not unexpectedly from my perspective, throughout 2001, even during the chaos of protests, rallies, civil disobedience, lobbying, and litigation that started in April and continued throughout the summer, there were voices in the obligato that were beginning to call for building a watershed-wide identity and for weaving and mending a watershed-wide web of relationships. Unfortunately, no one was successful in making this happen. In some instances, the voices were drowned out by other voices raised in fear and anger against perceived threats to ways of life. In other instances, because they did not know of any other method for accomplishing the weaving of a watershed-wide web of relationships, folks just kept trying the old methods over and over and over again – without success. Ordinarily, the web of relationships grew organically out of living side-by-side and being involved face-to-face in each other’s lives. No one had experience of trying to build a web of relationship with people they had never met or did not live next to, yet whose lives were indissolubly intertwined.

Amidst the anger of the April 10th monthly ADR meeting, Becky Hatfield-Hyde spoke up about wanting to get beyond lawsuits and talk about relationships, children, and their future together (Oregon WRD 2001d).

Mike Connelly wrote of his anguish at the water cutoff.

We have been told by local environmental advocates that we deserve what has happened, that we brought this on ourselves, and we have been told by Indians and fishermen, “Welcome to the club.” Maybe they’re right, and maybe this is justice, a simple case of sons punished for the sins of fathers. But whether they’re right or not, there is a pressurized rage smoldering in my gut, and I cannot make it go away. I have spent years working to improve conditions on this river, and I have tried to persuade my neighbors that the downstream folks are just like us, their situation just like ours.

But watching my daughter’s eyes tear up as we tell her we may end up leaving, I feel like I want to punch someone in the face. I talk to my friends and neighbors, and every time I hear exactly the same thing: “I don’t know what I’ll do.” More than anything I feel lost, like the earth itself has disappeared from underneath my feet, like the blue, cloudless sky is a gun pointed straight at my head. I can’t go look at my restoration projects. I can’t help yelling at my friends in the agencies. When I think of the people downstream, people I know are just like me, I feel like I want to explode. I’m not like this. I don’t want to be like this. Right now, though, that’s how I am. (Connelly 2001a, 1-2 of download)

In the very same piece, Connelly also wrote about reaching out from within this anguish to people throughout the watershed to write different stories about who they all were together.

[People...] are demonstrating a willingness to have patience and faith without sacrificing passion, a willingness to allow a fresh set of stories to emerge from encounters between all different kinds of people, to allow their minds to be changed, even while they’re trying to change the minds of
others. This is not ‘consensus.’ This is not ‘compromise’ or ‘collaboration.’ This is culture, living, breathing, growing – a ceaseless cycle of splitting apart and fusing together, not everywhere at once but here and there, now and then. It is a sort of trial and error, by which we fine-tune our communities until they fit neatly into the landscapes where they’ve come to rest. ...It’s not a thing but a growing, an iteration, ongoing and ever-changing – a conversation between a people and a place which are both, themselves, ongoing and ever-changing. (Connelly 2001a, 6-7 of download)

At the April 19th meeting of the UKBWG, Mike Connelly spoke during the Public Comment portion of the meeting, noting “that some sort of support from the Federal government is required. The money, will not, however, help us get along with each other. The drive to get more and more money is skirting the issue. We need the time and space to get together on the land to work on the solution” (UKBWG 2001a, 8 of download).

At the May 3rd meeting of the UKBWG, “Jim Carpenter stated his belief that resolution will not come from a debate over the best science, but from a different part of our being, and offered a quote from the Dalai Lama of Tibet: ‘Ultimately the decision to save the environment must come from the human heart,’ We must base our decisions on more than intellect” (UKBWG 2001b, 6 of download).

The Klamath Basin Fish & Water Management Symposium that was held May 21-25, 2001, at Humboldt State University in Arcata, CA, was a remarkable first attempt to bring people together from throughout the watershed to try to build an integrated watershed-wide vision.

I found this conference remarkable in many different ways:

(1) That it happened at all. The water cutoff had just happened in April. The Upper Basin was in the throes of protests and rallies. I am sure that the convenors had been preparing for the conference from before April and I am sure that being located in the Lower Basin gave some distance from the sky-high stress in the Upper Basin, but, even so, I found it remarkable that people went forward with holding the conference, given the times.

(2) That it was well attended by people from throughout the Klamath watershed. Normally few people from the Upper Basin came to the biennial conference, yet this year many farmers and ranchers attended (Most 2006). I found it remarkable not only given the times, but also given where the conference was held – Arcata is a long drive from the Upper Basin – and given how long the conference was held – non-locals would have had to fork out for lodging for around 5 days.

(3) That the sponsorship of the biennial conference had expanded far beyond the ERO. The Symposium was convened by the Klamath River Inter-Tribal Fish & Water Commission and Humboldt State University, and sponsored by federal and state agencies (including ERO), local
nonprofits, local task forces, local universities, PacifiCorp, a local watershed council, and the Klamath River Compact Commission (Klamath Symposium 2001).

(4) That the scope of the Symposium was far, far broader than that of the previous ERO-sponsored conferences. The goal of the Symposium was “to share our current scientific knowledge, restoration experience, regulatory and socio-cultural perspectives, and to make recommendations to promote an integrated basin-wide approach to planning, research, restoration, management and funding efforts aimed at resolving resource issues in the Klamath basin” (HSU 2002, 4). Not only did the Symposium expand beyond Scientific Contributions and Restoration Activities to embrace “Statutory, Regulatory & Policy Influences” and “Social, Community & Cultural Influences” in the Klamath watershed (Klamath Symposium 2001), but it also expanded from looking at localized approaches to seeking an integrated basin-wide approach.

And, as if these were not enough, there were two features of the Symposium that I found even more remarkable – the keynote address by Bill Leary, Associate Director for Natural Resources, Council on Environmental Quality, and the facilitated discussions held on the final two days of the Symposium.

For at least a week before his keynote address, Leary and an entourage of federal officials from DC had been traveling throughout the entire watershed and talking with everyone. His keynote address at the Symposium was, in my opinion, superb. Pulling from his learnings from their travels about the Basin, Leary painted a picture of the situation in the Klamath that hit the nail right smack on the head. He acknowledged the efforts that people had been making throughout the Basin, and then, chastised and challenged everyone to do more and better.

This basin is replete with past efforts at planning. You can’t keep up with all the task forces and working groups and memoranda of understanding all designed to get agencies and levels of government and farmers and fishermen and tribes and environmentalists to sit down and figure out how to get from here to there. (Leary 2002, 9).

I have been surprised, up and down the basin, by the number of times people have told me, we cannot solve this ourselves, we need leadership from Washington. ...Has the local approach failed so miserably that there is no chance for its success, even though it never seems to have been tried on a truly basin-wide basis? ...I cannot keep myself from telling you how doable it all seems to me. A lot of planning has been done – you lack the power to pull it all together. (Leary 2002, 12-13)

Finally, the facilitated discussions. One of the goals of the Symposium was to “provide a forum in which different perspectives on the water distribution and restoration issues in the basin could be shared and possible next steps toward resolving these issues could be proposed” (HSU 2002, 15). In
direct service of this goal, “[t]wo facilitated discussions were held with participants during the last two days of the Klamath Basin Fish and Water Symposium with the goal of proposing next steps that could be taken to resolve the issues regarding water use and restoration in the basin” (HSU 2002, 15). To do the facilitation, the Symposium drew upon the services of well-known conflict resolution practitioner Betsy Watson, Ph.D. and her Institute for Study of Alternative Dispute Resolution (ISADR) right there at Humboldt State University in Arcata, CA.

The first facilitated discussion drew around 100 participants, including agency representatives, environmental activists, farmers, fishermen, scientists, tribal members and interested citizens (HSU 2002) and brainstormed to identify ‘Next Steps That Can Happen This Summer.’

The second facilitated discussion drew around 80 participants and focused on longer-term approaches to resolving water and restoration issues, particularly what the institutional structure for seeking solutions would be (HSU 2002). The participants in the second discussion “unanimously agreed to support the approach of developing a locally led solution with federal help for the Klamath River Basin as a whole. It was agreed that Alice Kilham of the Klamath Compact Commission would deliver this message to Bill Leary of the President’s Council on Environmental Quality and seek a summit for the immediate future” (HSU 2002, 16).

1.3 The UC-OSU Report

During the flurry of activity that gripped the Upper Basin over the spring and summer, faculty from both Oregon State University and University of California held and attended meetings throughout the region. “Many of the participants at those meetings expressed concern about the accuracy and completeness of information reported in the media and used in public debate...[and a] desire for more complete and reliable information, presented in one place with extensive references” (Braunworth and Castle 2002, 2). “The decision to prepare [such a] report was made in July 2001 by a group of scientists and administrators from Oregon State University (OSU) and the University of California (UC), together with university Extension and research personnel working in the Upper Klamath Basin. ...Several of the faculty had previously conducted research or educational activities in the Basin, and all were familiar with natural resource issues in the West” (Braunworth and Castle 2002, 3).
The Social, Emotional, and Psychological Toll

As part of this effort, during the months of September through November 2001, researchers from Oregon State University set out to take the pulse of the Project-area communities – to take a measure of the toll, socially, emotionally, psychologically. They acknowledged the newspaper reports of the spring and summer that “were not only of farmers challenging the decision through civil disobedience, but also of the increased need for community services, the ideological divisions emerging throughout the community, a sense of loss of a way of life, and a sense of betrayal by elected officials” (Lach et al. 2002, 177). They conducted interviews and focus groups of Project and non-Project farmers, social service providers, front-line federal and state agency staff, business people, and the Klamath Tribes (Lach et al. 2002). And, finally, using the words of the participants, the researchers painted “a portrait of a community under stress” (Lach et al. 2002, 178).

The portrait they painted was like that of a woven fabric that had been pushed and pulled from every imaginable direction. The researchers began by noting that “[f]or many reasons, life is easier in communities where multiple social organizations create networks and trust as people work and play together. ...These and other types of involvement with others in the community can create a dense web of relationships that cross political, economic, and ideological boundaries” (Lach et al. 2002, 188). The drought and the water cutoff, however, pushed and pulled on this web of relationships from every imaginable direction, with the result that simultaneously throughout the Upper Basin, some people felt that the situation brought them closer together, some people felt that the situation strained relationships, and some people felt that the situation ripped them apart.

With respect to the farmers and ranchers, the bonds of Us became wrapped very tightly around Us. Negative effects of this tight grip on Us were felt, on the one hand, within Us, where internal dissension from the party line of the siege mentality was not tolerated, and, on the other hand, between Us and Them, where once-strong bonds between farmers and former colleagues were weakened or even severed.

Others in the community – local conservationists, Klamath Tribes, local staff of state and federal agencies – “expressed frustration with the farmers and their supporters who insisted on claiming the right to continue current practices even though others were starting to recognize that multiple concerns would need to be considered for any permanent solution” (Lach et al. 2002, 202). “Other participants reinforced this perception that the farmers felt a sense of entitlement to a stable world that others had been asked to move past long ago” (Lach et al. 2002, 203).

With respect to the environmental community, community members who described themselves as conservationists – the private face of the Environmental movement in the Klamath watershed – were
embarrassed that the local media was presenting biased and one-sided information about what was happening. “‘There is an assumption that everyone in Klamath Falls feels this way and that it is fine to put down a big bucket in front of the courthouse and that it represents all of our feelings.’ A common response of these participants is a sense of embarrassment about these actions” (Lach et al. 2002, 193-194). They were surprised when they heard farming community friends talk about hanging certain prominent and active environmentalists (Lach et al. 2002). One conservationist “was concerned that after years of working with community members to find solutions for allocation of water, the farmers’ desperate response in 2001 would create irreparable splits with others interested in resolving the region’s problems” (Lach et al. 2002, 194-195).

With respect to the Klamath Tribes, “[m]embers of all focus groups noted incidents where tribal members were shunned or treated badly, and all disassociated themselves from this behavior” (Lach et al. 2002, 195).

Klamath Tribes members described how an intentional decision was made that individuals would stay as far from confrontational situations as possible. ...Instructions to remain nonconfrontational were hard on tribal members, according to one of our participants, ‘because we had guns pulled on us, were run off the road, there was one beating where a guy ended up in the hospital pretty bad.’ (Lach et al. 2002, 195)

Even with the violent behavior towards them, the Klamath Tribes members consistently said that “[j]ust as conservationists are willing to keep working with irrigators to find solutions that work for everyone, ...so are the Tribes” (Lach et al. 2002, 196).

With respect to the local staff of state and federal agencies, agency folks were frustrated – “frustrated by the anger from the farming community because they believed they had been supportive in many ways over the years” (Lach et al. 2002, 196), frustrated “that those of us at the local level have a clearer idea of what the problems are and what the possible solutions are, but have no authority to do anything” (Lach et al. 2002, 196), and frustrated that they were unable to express their own views, silenced by an “intimidation to express only the single view that the farming community ‘must be made whole’” (Lach et al. 2002, 196).

Across the board, everyone expressed a concern with what they termed a void in leadership – though there was no shared clear notion of what that meant, “concerns about slow responses from agencies and the courts to problems being experienced in the here-and-now” (Lach et al. 2002, 203), concerns about media that were suspect for sensationalizing the news and concerns about science that was suspect for not being able to solve community problems (Lach et al. 2002).
Policy Analysis

In their policy assessment of the 2001 Klamath Reclamation Project water allocation decisions, University of California policy analysts Woodward and Romm painted an overarching picture of what they saw as having transpired in 2001 (Woodward and Romm 2002).

In effect, the events of 2001 brought to a flashpoint historic tensions between federal, state, and tribal governments; competing federal missions; and strongly polarized interests of farm communities, tribes, environmentalists, and fishers—with the powerful water interests of California as a backdrop. (Woodward and Romm 2002, 338)

In our exploration, we have concluded that the Klamath crisis emerged from the relationship between a strong and precise federal law [i.e., the ESA] and generally unformed capacities within the Basin to shape the law’s application and influence. Absent a clear, shared vision among the Basin’s various governments, agencies, and communities, the ESA gained a degree of control over water allocation that had been avoided elsewhere. (Woodward and Romm 2002, 360)

Finally, they posited that, while some may respond to these circumstances by trying to weaken the ESA, “[a]lternatively, these circumstances could motivate Klamath Basin interests to coalesce and build a social fabric that can shape how the ESA is implemented, and how the benefits and burdens of satisfying specific public interests are distributed, within a context of diverse and important basin interests” (Woodward and Romm 2002, 352).

Putting their analysis in my own words, the time of anyone living in isolation from everybody else was over. Everybody was indissolubly linked to everyone else – whether they wanted to be or not. Either they could keep on with the same ol’, same ol’ – and keep getting beaten up by the ESA – or they could come together and build a watershed-wide identity that acted proactively rather than reactively, ultimately taking the ESA out of the equation.

2. Tracks of Tools of Conflict Resolution

As people moved through the chaos of 2001, the use of the tools of mainstream conflict resolution reached its zenith while the use of the tools of reconciliation and collaboration descended to its nadir.

2.1 Tools of Mainstream Conflict Resolution

In a series of first-order changes, by the end of 2001, people in the watershed had dipped over and over and over into the toolbox of mainstream conflict resolution, taking up the tools of litigation, mediation, alternative dispute resolution, and congressional and public hearings.
Litigation

Over and over, player groups throughout the watershed – PCFFA, ONRC, Klamath Tribes, Project Water Users, Yurok Tribes, and others – picked up the tool of litigation in order to make a perceived threat go away. Their attorneys defined the problem in each case in terms of the denial or infringement of non-negotiable rights and/or the breaking of contractual rules that governed interactions among the litigants.

No matter the outcome of the litigation, in my opinion, the use of litigation was ultimately doomed to failure because (1) while third parties of the formal legal system – the judges, the lawyers for the litigants – framed the problem in the language of rights and rules, the litigants who were experiencing the threat to their way of life framed the problem in the language of relationships; (2) while the court could impose technically rational solutions that solved the problem as the legal system had defined it, the court was not equipped in any way to address the perception of threat to one’s way of life or to help people figure out how to live together, how to weave or mend the web of relationships in which they all lived; and (3) while the decision imposed by the court was a solution for the winners, it was experienced by the losers as a threat and often ripped asunder whatever web of relationships did exist.

Mediation

The Kandra mediation was an unique effort. The Kandra litigation was filed by the Project Water Users in an attempt to force delivery of water to the Project, and thus, by default, take it away from others. Judge Aiken defined the problem as one of water allocation that she felt needed to be resolved by the community, and so she mandated a mediation effort before she would hear oral arguments in the case. This mediation effort – which came to be called Phase I – was structured such that it replicated litigation – lawyers as third parties for the litigants presented positions and interests to Judge Coffin for interest-based rational problem-solving. Not surprisingly, this effort failed, but all the litigants expressed an interest in continuing the mediation effort, so while a decision was rendered in the case, the case remained open to enable the continuation of court-mandated mediation. Phase II was broadened to welcome more interest groups, but this may have been accomplished merely by inviting in more lawyers, which of course would have limited the interest group participation to those that could afford the lawyers. Judge Coffin brought in CDR Associates from outside the watershed not only to prepare an assessment of the prospects for a successful mediation process, but also to facilitate the mediation meetings. The mediation efforts flailed. In October, the Project Water Users dismissed their claim in Kandra, thereby abandoning the mediation
effort because they felt it did not offer hope for making the threat to their way of life go away, and resumed lobbying and litigation as their tactics in their fight for the survival of their way of life.

In their situation assessment, CDR Associates defined the problem as conflict among interests about resources and the solution as the technically rational allocation of those resources among interests, assumed that all interests in the watershed subscribed to this definition of conflict and resolution, and concluded that the stakeholders were not ready for interest-based problem-solving because they were divided by deep polarization, suspicion, and lack of trust and thus not ready to compromise at the table. In addition, they counseled that, without consensus-based mediation, things would go from bad to worse, with stakeholders pursuing their own interests and with relationships between stakeholders being damaged even further.

The court-mandated mediation involving player groups from throughout the watershed was doomed to failure, in my opinion, because (1) the mediation was structured such that it replicated litigation – lawyers as third parties for the litigants presented positions and interests to the judge for interest-based rational problem-solving; (2) the mediation tried to use rational problem-solving in order to negotiate technically rational solutions in the language of rules, for folks who were fighting for the survival of their identities in the language of relationships; (3) the expectation of compromise in the mediation was experienced as a threat to people’s ways of life, making mediation into a practice experienced as adversarial; and (4) the mediation did nothing about listening in the language of relationships to the perception of threat or about weaving or mending the web of relationships in which they all lived, or about enabling the construction in the language of relationships of an overarching watershed-wide identity.

**Alternative Dispute Resolution**

The Klamath Basin Adjudication ADR meetings began in 1997. Twice, outsiders were brought into the ADR to train the participants in interest-based rational problem-solving. By the end of 2000, however, dreams of swarms of agreements that could be brought forward to the final Court Decree had dwindled down to two agreements-in-principle, and fear continued to run as an undercurrent that bubbled up in the form of accusations about and resistance to anything that participants perceived as a possible threat to their way of life. In the chaos of 2001, the outsiders cancelled a scheduled formal negotiation session because they concluded in their situation assessment that, because the parties were deeply divided, the parties were not ready to participate in interest-based rational problem-solving. Ultimately, the siege mentality of Upper Basin Agriculture overran and then killed the ADR meetings.
The Klamath ADR process was based upon the default model of American conflict resolution. The problem was defined in terms of incompatible interests, the solution was defined as a compromise that satisfied all disputants’ interests, and the means for achieving this solution was defined as interest-based rational cost/benefit analysis. The situation assessment had concluded that the participants were not ready to proceed with formal negotiations, because there were issues dividing the parties that were not amenable to interest-based rational problem-solving—i.e., values, identity, emotions, world-views, culture, and other such non-negotiable items. In other words, the folks who had been participating in the KBA ADR mediation for about four years were still divided by values, identity, emotions, and the like. ADR had done nothing to address them, because ADR is only configured to deal with negotiable interests and has no way of dealing directly with non-negotiable issues. At best, the non-negotiable items had been stifled while people wrestled with interest-based details, but as soon as the non-negotiable items pushed to the surface—and this happened readily, given that the scab was very fragile over long-festering sore points—the interest-based negotiations fell apart.

**Congressional and Public Hearings**

Earlier in Chapter Eleven, I made the case for including testimony at Congressional and public hearings as a tool in the toolbox of mainstream conflict resolution, because these hearings have very much in common with litigation. The ultimate product that will come from a hearing is a rule—a decision, be it legislation or an agency rule, that will determine how something will be done. Witnesses argue their positions in an adversarial competition for winning or losing political support for their positions in the ultimate rule. The hearings pay more attention to those witnesses who present their positions in the language of rules than to those witnesses who present their positions in the language of relationships.

Public hearings are like litigation in that the organizations and/or agencies who hold the public hearings are ostensibly neutral with respect to the issue, seeking public input before they make their decision. Congressional hearings, however, are unlike litigation in that the politicians who convene the Congressional hearings have political agendas, are definitely not neutral with respect to the issue, and cross-examine witnesses in terms of those agendas.

Hearings suffer from the same limitations that litigation does—they provide no forum for listening in the language of relationships to the perception of threat to ways of life; they provide no forum for folks to work out together how to live together—for constructing an overarching identity, for weaving or mending the web of relationships in which they see themselves as living. If anything,
witnesses may leave hearings more divided from each other than when they came – in that We may experience Their position as a threat to Us, and They may experience Our position as a threat to Them.

In my opinion, all of the practices pulled during 2001 from the toolbox of mainstream conflict resolution – litigation, mediation, alternative dispute resolution, congressional and public hearings – were not appropriate to the people and the situation in the Klamath watershed, for a number of reasons:

• The Klamath watershed is a tapestry of ways of life that has the characteristic civic individualism of the Rural Middle Class interweaving extensively with the characteristic concern with security and relationship by the Working and Lower Classes and with the characteristic high-context collectivistic culture of the four tribal nations. This tapestry of ways of life in the Klamath watershed has a different ethnoconflict theory and ethnopraxis, that ultimately understands conflict as a tear in the web of relationships and conflict resolution as the mending of the tear. By contrast, mainstream conflict resolution practices are based upon the modern individualism of the Metro Middle Class. The ethnoconflict theory and ethnopraxis of the Metro Middle Class constructs conflict as a consequence of the breaking of rules, the abrogation of contractual obligations, the infringement of individual rights, and/or differences in individual interests, and conflict resolution as the application of technical expertise and rationality to create neutral technical solutions that satisfy the interests of all.

• The people of the watershed routinely speak of themselves and each other in the language of relationships. By contrast, mainstream conflict resolution practices routinely employ the language of rules.

• The situation in the Klamath watershed was experienced by the people of the watershed as threats to their various ways of life. They defined the problem as threat to way of life and defined the solution as make that threat go away. Talk about rights, rules, interests, science only served to camouflage the experienced threat to way of life. By contrast, mainstream conflict resolution practices defined the problem in terms of rights, rules, interests, and the solution in terms of either coercive decisions about rights and rules or negotiated compromises about interests.

• People in the watershed in the throes of threat to their ways of life often experienced the solutions provided by mainstream conflict resolution practices as yet more threat to their ways of life. Even mediation, which is understood by mainstream conflict resolution as a non-
adversarial, collaborative practice, was experienced as adversarial; for many of the people of the watershed, the expectation of compromise equaled threat.

2.2 Tools of Collaboration and Reconciliation

The events of 2001 deeply wounded the collaborative effort in the Klamath watershed.

Consensus-Based Task Forces and Working Groups

The Upper Klamath Basin Working Group is quintessentially representative of the seemingly indefatigable effort expended within the obligato to try to achieve boundary-spanning collaboration throughout the watershed. The members of the Working Group were very loyal to the Working Group and its mission, were very proud of the fact that everything was done by consensus, and were proud of the projects that they had recommended for funding. However, they were also flailing. On one hand, the sense of the betrayal of the unspoken assumption that restoration would beget regulatory relief had seriously weakened the motivation and trust necessary for continuing the collaborative effort. And on the other hand, the Working Group had its weaknesses revealed in the Jones & Stokes assessment.

The outsiders critiqued that the Working Group did not have a shared vision. In my opinion, they did not have a shared vision because nothing in the mainstream method of consensus and interest-based problem-solving does anything to build such a vision, assuming instead that it will emerge on its own. And, as well in my opinion, the Working Group failed in its efforts to do projects of larger scope, because nothing in the mainstream method of consensus and interest-based problem-solving enabled the Working Group to construct an overarching identity and web of relationships among groups that were divided by self-described conflicting interests.

Conferences and Science

In 2000 and 2001 both science and conference began to take on different shapes. Up till now, science had been configured as a collaborative effort and conferences as opportunities to share the science.

Over the course of events in 2001, science was wrenched from the isolation of the ivory tower and thrown into the field of battle as a weapon in the fight for the survival of people’s ways of life. Rather than something to be shared, science became something to fight over, with player groups having their own scientists and looking to have their science proven right and the others’ science proven wrong. Science was still assumed to provide the truth, but now Our science is the truth and protects Our way of life and Their science is junk and threatens Our way of life.
The 2001 conference tried to do it differently, both sharing the science and looking to the reworking of how people lived together and used the watershed. To that end, a mainstream conflict resolution practitioner facilitated two sessions using interest-based problem solving. The participants concluded that they wanted to develop a locally led solution with federal help. This message was delivered to the Federal government, but the federal help was ultimately not forthcoming, and a watershed-wide solution was not born in the Symposium.

**Beginning to Try to Do It Differently**

In my expected overarching pattern, I proposed that for the people in the Klamath watershed, no matter how much We wielded the adversarial practices of mainstream conflict resolution, the problem would never be resolved until We and They mended the tear in the web of relationships by means of the practices of reconciliation and collaboration. As such, not unexpectedly from my perspective, there were voices that were beginning to call for backing away from the default toolbox and doing it differently – for building a watershed-wide identity and for weaving and mending a watershed-wide web of relationships. Unfortunately, so far, no one was successful in making this happen. In some instances, the voices were drowned out by other voices raised in fear and anger against perceived threats to ways of life. In other instances, because they did not know of any other method for accomplishing the weaving of a watershed-wide web of relationships, folks just kept trying the old methods over and over and over again – without success.

I can appreciate the frustration. Consider that people in the watershed were accustomed to having the web of relationships grow organically out of living side-by-side and being involved face-to-face in each other’s lives. Never before had they been tasked with creating a web of relationships with people who lived far away or whom they had never met or, truth be told, by whom they felt threatened. For this task, the toolbox was empty. Yet it needed to be done. And nothing about doing this would be easy, because it would not be about rational problem-solving about who gets what, but rather it would be about being forced to rework their sense of who they were – and that is something that we humans do not embrace readily or easily.
Summary of Chapter Twelve

Summary of Obligato and Player Group Tracks

I see everything that happened on the player group tracks in 2001 as reactions to perceptions of threat, fed into an escalating feedback loop. First, We defined the problem as a threat to Us, and We defined the solution as make the threat go away – and They defined the problem as a threat to Them and They defined the solution as make the threat go away. Then, both We and They got caught in a feedback loop in which Our solution for making the threat to Us go away was perceived by Them as yet another threat to Them, and simultaneously, Their solution for making the threat to Them go away was perceived by Us as yet another threat to Us.6

Our Solution          Their Problem
Our Problem           Their Solution

Figure 12.1. Escalating Feedback Loop of Conflict

The events of 2001 were experienced as chaos by those who lived through them – and they left almost no one unscathed, from the top to the bottom of the watershed. To this day, the Upper Basin tells time by 2001. Player groups thrashed and tangled at the extremes of conflict.

The siege mentality of the Project Water Users roared to the extremes of conflict; PCFFA and ONRC kept fanning the flames as the militant leaders of their respective constituencies; local conservationists as well as the Klamath Tribes kept a low profile in the face of threats thrown their ways; and the obligato of science and collaboration was shaken to its core – all wrapping together as a deep wound to the heart of the Upper Basin.

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6 This is a perfect example of what I consider communication to be – not the exchange of information, but rather the triggering of categorizations. I present information to You in terms of categorizations that are meaningful to Me. You categorize this action in terms of categorizations that are meaningful to You. As such, there is a very great probability in all communication that what I say is not what you hear.
### Table 12.1. The Public and Private Faces of the Five Conflict Tracks during 2001

<table>
<thead>
<tr>
<th>Track</th>
<th>Public Face</th>
<th>Relationship of Public Face to Private Face</th>
<th>Private Face</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Basin Agriculture</td>
<td>Collaboration</td>
<td>is pressured by Siege Mentality</td>
<td>Siege Mentality</td>
</tr>
<tr>
<td></td>
<td>Siege Mentality</td>
<td>silences</td>
<td>Collaboration</td>
</tr>
<tr>
<td></td>
<td>Collaboration</td>
<td>trumps</td>
<td>Siege Mentality</td>
</tr>
<tr>
<td>Tribal Nations</td>
<td>Keep a low profile in face of threats while collaborating with anyone and fighting if we must</td>
<td>leaves at home</td>
<td>Betrayal by the white man</td>
</tr>
<tr>
<td>Environmental</td>
<td>Sue the bastards..!! Fan the flames</td>
<td>overshadows</td>
<td>Keep a low profile while collaborating</td>
</tr>
<tr>
<td>Coastal Salmon Fishing</td>
<td>Collaborate if we can, but we must win -- and then we will assist the vanquished</td>
<td>overshadows</td>
<td>Collaboration</td>
</tr>
<tr>
<td>Siskiyou</td>
<td>The Government has done us wrong..!!</td>
<td>overshadows</td>
<td>Collaboration</td>
</tr>
</tbody>
</table>

### Summary of Tracks of Tools of Conflict Resolution

In the chaos of 2001, the track of the use of the tools of mainstream conflict resolution reached its peak as people turned over and over to the practices of litigation, mediation, alternative dispute resolution, and congressional and public hearings – but none was successful in making the threats go away. The track of the use of the tools of collaboration and reconciliation reached its nadir as the collaborative effort itself was sorely taxed by the sense of betrayal and by weaknesses inherent to the mainstream tools of consensus and interest-based rational problem-solving. Voices began to call for trying to do things differently – for trying to build a watershed-wide identity and to weave and mend a watershed-wide web of relationships – but either they were drowned out by other voices raised in anger and fear, or they did not know how to make this happen and so kept on trying the old methods over and over again without success.
Chapter Thirteen
Time Period: 2002 up to the First Chadwick Workshop in July 2004

If I stood up in the bleachers and looked down first at July 2004 and then back at 2001, I would say that things had changed significantly in the watershed – not in the world turned upside down manner of 2001, but in the manner of change that happens one step at a time.

1. Tracks of Tools of Conflict Resolution

The tracks came into 2002 as they had left 2001, thrashing and tangling at the extremes of conflict, wielding the adversarial practices of mainstream conflict resolution in their fights to make the threats to Our way of life go away, while small voices in the obligato were beginning to call for backing away from the default toolbox and doing it differently.

As time moved forward, slowly but very surely, there was a significant decrease in not only the use, but also the impact of the use of the adversarial practices of mainstream conflict resolution. Folks came out of 2001 looking to the government as the deus ex machina, and to science and litigation as weapons. By July 2004, folks had found that the government had punted it back to the grassroots, that litigation was something that only served to tear them apart, and that science could be both a locus of and a tool of collaboration.

Simultaneously, also slowly but very surely, there was a significant increase in the attempts at mending the tear in the web of relationships by means of the practices of reconciliation and collaboration. In a pattern extremely reminiscent of the Problem-Solving Workshop, an increasing number of folks from throughout the watershed constructed an increasing number of opportunities for folks to get together – but always within the context of rational problem-solving. The emotions, the fears, the anger about the past were either purposefully omitted or were shared only serendipitously in the ‘in-between’ places – on the bus, in the corridors, over coffee. Repeatedly, however, the emotions not dealt with ultimately rose up to scuttle the attempts at rational problem-solving. However, in February 2004, a workshop was held which set aside problem-solving and instead provided the opportunity for folks to come together to deal only with the emotions. It tapped a hunger throughout the watershed, and by July 2004 the watershed was set to embark on a series of such workshops – the Chadwick workshops.
1.1 The Track of Decreasing Use of the Practices of Mainstream Conflict Resolution

Hyperbole in the House

What had been expressed at the Arcata conference in May 2001 as a desire for federal support for local solutions, by the dawn of 2002, had become an outcry for the Federal government to deliver a *deus ex machina* to the Upper Basin. And for those politicians who had long been fighting the ESA, the farmers impacted by the 2001 water shutoff instantly became their poster child and they went on the warpath to vindicate the wronged and dismantle the ESA.

The political rhetoric at the House Hearings in Klamath Falls on June 16, 2001 gives a powerful sense of the political environment at the beginning of 2002. All of the convening members spoke in the language of hyperbole at the extremes of conflict, some more than others. They were strongly anti-ESA, felt that people should trump species in the ESA equation, and wanted biological opinions to be based only on science that was incontrovertible.

First, we must do everything we can do to help the economic lives of those who are having their water taken away, their farms dried up and their livelihoods destroyed. ...The Committee’s focus today is on what happened and why it happened. It is on the reliability of the science and the openness of the process. It must focus on how the Endangered Species Act works and how it should be changed to work better. (U.S. House 2001: Testimony of Hon. Greg Walden Hearings, 3-4)

It is clear to me that ESA has been misused for years by some advocacy groups to threaten the rights of private property owners. ...I simply cannot stand by quietly as farmers, ranchers, families, and businesses...suffer for no constructive purpose. It is time to take back our economic and constitutional rights. After all, the human species deserves the most important place in the ESA equation. (U.S. House 2001: Testimony of Hon. Richard Pombo, 2)

Ladies and gentlemen, we are at war with the extreme environmentalists. What they have done in the Klamath Basin is nothing short of a tragedy. ...The Endangered Species Act has been invoked to completely destroy an entire local economy under the pretense of saving a non-commercial sucker fish. They used bogus science, misinformation and their political friends in the previous Clinton/Gore administration to bring an entire community to its knees, and nothing in the law prevented it. (U.S. House 2001: Testimony of Hon. Wally Herger, 4-5)

Litigation as Weapon

As 2002 dawned, litigation was still a weapon of choice.

The *Adair* Track and Tribal Water Rights. The *Adair* litigation track, begun in 1975 and decided in *Adair I* in 1979 and *Adair II* in 1983, affirmed that the Klamath Tribes had non-consumptive water rights sufficient to maintain their treaty rights to hunt and fish on the former reservation, and that these rights had a priority date of time immemorial, were not attached to land,
and not subject to use to maintain. In January 2001, the Klamath Tribes had reopened Adair in response to a perceived threat to their way of life in the 1999 letter from the Oregon Attorney General that had argued to significantly reduce the Tribes’ water rights below that which had been decided in Adair II. On February 27, 2002, Adair III was decided in favor of the Klamath Tribes, who hoped that the ruling in Adair III would hasten a state ruling on tribal claims by setting standards ahead of time (Klamath Tribes 2002b). Victory was short-lived, however, for on July 21, 2003, the decision in the U.S. v. Braren appeal remanded the case back to the district court, telling them to vacate their decision and to wait until completion of the Klamath Basin Adjudication before making any further ruling. Carl ‘Bud’ Ullman, water attorney for the Klamath Tribes, “noted that the appeals court did not say Panner’s ruling was incorrect, just premature. The appeals court decision did not undermine tribal water rights, he said” (Milstein 2003b, 2 of download). The Tribes’ request for review of the decision in Braren by the appeals court was denied on December 9, 2003 (Darling 2003ff).

So ultimately, on one hand, the entire court track of Adair III served to settle nothing with respect to tribal water rights, but, on the other hand, it served to trigger the disintegration of trust of the tribes by much of agriculture throughout the Upper Basin, which would in turn contribute to the demise of the ADR process in the Klamath Basin Adjudication in June 2001. This disintegration of trust was fueled by the fear long held by much of agriculture in the Upper Basin that the Klamath Tribes wanted to keep all the water for themselves and to destroy agriculture. This fear was not persuaded by the tribes’ continuous protestations that this was not their intent, and participated in the explosion of the siege mentality as the public face of agriculture during the chaos of 2001. And even though the siege mentality slid back into the private face of agriculture after the chaos, the fear continued to fester undiminished, surfacing to characterize the Braren rulings as a huge victory for irrigated agriculture (Darling 2003ff) – and then later in 2004 to scuttle various attempts at problem-solving.

**Litigation about ESA Listings.** Some rode the wave of the siege mentality of 2001 to try an end run on the ESA, attempting to get the suckers and the Klamath basin coho delisted.

The suckers track began on October 19, 2001, when James Buchal – the maverick attorney who had journeyed to Klamath Falls to participate in the events of the summer of 2001 – filed a petition on behalf of Walt Moden and five others1 with FWS for delisting of the suckers. After FWS denied their petition on May 14, 2002 (U.S. FWS 2002a, 67 FR at 34422-23), Buchal filed a court case on

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1 Merle Carpenter, Charles Whitlatch, John Bair, Tiffany Baldock, and Dale Cross
behalf of the six original petitioners, against FWS, claiming that FWS had acted arbitrarily and capriciously in denying their petition (Moden I). 2 On September 3, 2003, Moden I was decided in favor of the plaintiffs and FWS was ordered to either explain better or do a complete five-year review about the listing of the suckers. 3 Commenting on the decision in disparaging language that still smacked of the extremes of conflict, “Buchal said his clients don’t see how the suckers can be listed as endangered when they are found throughout the Basin. ‘Every body of water in the Basin is full of the damn things,’ he said” (Darling 2003k, 1 of download). On July 21, 2004, FWS responded to the decision of Moden I, both better explaining their May 14, 2002 response to the original petition and announcing the initiation of a five-year status review for both sucker species (U.S. FWS 2004). The litigation track crawled along through Moden II and Moden III until it ground to a halt in July 2007 with no change being made to the listing of the suckers.

The coho track began on February 5, 2002, when Pacific Legal Foundation filed Oregon Grange v. National Marine Fisheries Service in an attempt to have the Klamath basin coho delisted (Kramer 2002).

“The Fisheries Service is guilty of using junk science to advance a political agenda. Our rivers and streams are teeming with salmon, yet farmers have been pushed into bankruptcy, businesses are closing, and a way of life is being destroyed while government officials explain away listing fish that really aren’t endangered at all,” said Brooks [of Pacific Legal Foundation]. (Business Wire 2002, 1 of download) As best I can ferret out, nothing came of the lawsuit.

Science as Weapon

When we left 2001, science had become a weapon to be wielded in the fight for the survival of one’s way of life. Player groups were waiting with baited breath for the National Academy of Sciences to declare whose science was right and whose was wrong, and therefore who had the best weapon.

Two things became painfully obvious during this period: (1) that popular culture and scientists had very different notions of what science provided; and (2) that science was subjected to different standards in different arenas. With respect to the first set of differences, where scientists see the conclusions of science as something to be disagreed with and challenged, popular culture sees science as the

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2 An agency action is deemed to be arbitrary and capricious if the agency did not act within the scope of its authority, or did not adequately explain its decision, and/or did not base its decision on the facts in the administrative record (Moden I). In everyday parlance, the words arbitrary and capricious imply an intentional action that flagrantly violates common moral codes of fairness. In legal parlance, however, the words come down to simply meaning that the parties in question did not follow the rules.

3 The term ‘five-year review’ refers to a complete status review that is supposed to be conducted at least once every five years.
source of definitive, incontrovertible truth. *With respect to the second set of differences*, science will exact of itself a **scientific standard** that ensures that the research has followed the rules of the scientific method and has not drawn unsupportable conclusions from the data. The courts will exact of science a **legal standard** that ensures that the agency acts within the scope of its authority, that it adequately explains its decision, that all of the best available science is included in the administrative record, and that conclusions drawn from the research are based solely upon data included in the administrative record. And the ESA will exact of science a **management standard** that ensures that the management decisions made by agencies based upon the best available science served to avoid the extinction of the species at risk. It is easy to realize that, given the above sets of differences, science could be used by many different groups to serve many different purposes – and such was very much the case in the watershed during this period.

On February 6, 2002, the National Academy of Sciences disseminated a prepublication version of its interim report. The interim report involved a preliminary assessment of the scientific validity of the two BOs and their RPAs as well as of the two BAs upon which the two BOs were based, particularly as they related to the *near-term* operation of the Project. In other words, the NAS would use a **scientific standard** to review the science in the two BAs and the two BOs of 2001.

The interim report concluded, with respect to the FWS 2001 BO, that there was good scientific or technical support for all of the requirements listed in the RPA, except for the recommendation for higher lake-levels (NRC 2002), and, with respect to the NMFS 2001 BO, that there was good scientific or technical support for all of the requirements listed in the RPA, except for the recommendation for higher flows (NRC 2002). The committee also noted that if the higher river flows were warmer than the water to which it was added, they wouldn’t help the salmon (NRC 2002).

At the same time, the interim report concluded that the recommendations in the two BAs could not be followed because they could result in lake levels and river flows lower than those of recent historical experience (NRC 2002). Their final conclusion was that there was no convincing scientific justification at present for deviating from the lake levels and the river flows derived from BOR’s operational practices in place between 1990 and 2000 (NRC 2002).

In other words, based upon a **scientific standard** of review:

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4 The final report, expected by March 2003, would give the National Research Committee’s consensus view on the *long-term* requirements of the species.
5 In conducting their review, NAS did *not* consider the Draft Hardy Phase II Report because it was a draft (NRC 2002).
2001 BO requirements – too high

Historical Record between 1990 and 2000 – basically OK, but cannot follow it slavishly

2001 BA requirements – too low

Who would have thought that a slim, twenty-one-page report could have such a huge impact, but it slammed through the Klamath watershed.

On January 29th, BOR had issued a draft BA for April 1, 2002-March 31, 2012 for both suckers and coho salmon. “In the absence of other available data, Reclamation had used the same type of analytic approach in the draft BA as it had used in previous biological assessments” (U.S. BOR 2002, 52).

After the February 6th prepublication release of the NAS Interim Report, BOR reviewed their draft BA in the light of the report’s conclusions. They discarded their original draft and embraced the NAS report as the foundation of a final BA that they issued on February 25th. Quite literally, the NAS interim report became for BOR the best available science.

Project water users were elated by the conclusions of the NAS interim report. “The study allowed irrigators and their advocates to argue that the 2001 BiOps were ‘junk science’ and that the water cutoff was not justified” (Most 2006, 239).

“Farmers felt some vindication that what they have been saying along [sic] was scientifically valid...said Dan Keppen, executive director of the Klamath Water Users Association” (Barnard 2002a, 1 of download). “We feel very vindicated that what we’ve been saying the whole time, that there’s enough water to go around, was reinforced by the National Academy of Sciences,’ said Mike Byrne, a cattle rancher and hay and grain farmer in Tulelake, Calif’ (Revkin 2002, 2 of download). “It’s refreshing to see the truth,’ said Rob Crawford, a Tulelake farmer” (Juillerat 2002b, 1of download). ‘John Crawford, a Basin farmer...said that people who manipulate science to get a foregone conclusion have ‘made a desperate biological mistake.’ An operating plan based on that error destroyed habitat and communities and was ‘a tremendous moral wrong,’ he said. ...However, he said the academy report renewed his faith in the idea that truth will win out” (Burke 2002, 1 of download). “‘You can’t trust the science, because you can’t trust the scientists,’ [Chuck] Cushman [,executive director of the American Land Rights Association,] said. ‘They’ve got a biased point of view, and there’s no way for people to fight back’” (Grunwald 2002, 2 of download).

In other words, the water users and their supporters used the conclusions of the NAS interim report’s analysis of the science of the 2001 BOs with respect to the scientific standard to assert that the
management decisions of the 2001 BOs were therefore wrong and that the water should not have been cut off to the Project.

Many fisheries biologists who worked in the Klamath watershed took the National Research Council to task for the conclusions in their interim report. They asserted that (a) the NRC had not applied the scientific standard correctly, and (b) the scientific standard was not the standard that should have been applied with respect to the 2001 BOs. “These fishery biologists ‘contend that the report’s analyses were simplistic, its conclusions overdrawn, and – perhaps worst of all – that the report has undermined the credibility of much of the science being done in the region if not fueled an outright anti-science sentiment’” (Most 2006, 239).

Members of the NRC committee themselves came to their defense. “[Peter] Moyle [one of the NAS scientists involved in the interim report] said... allegations the decisions were brought about by ‘junk science’ are wrong and unwarranted. ‘It’s a real insult for people to call it junk science, because there has been a lot of good science done – it just hasn’t provided a clear-cut result,’ he said” (Milstein 2002a, 2 of download).

William Lewis, chair of the NRC committee, responded to the criticisms by saying that, while their mandate had been to apply a scientific standard to the BAs and BOs, the agencies are required by the ESA to operate by the management standard. “Where the science is questionable, they are supposed to err on the side of conservation to protect species already on the brink. In some cases, that means taking steps to preserve habitat or living conditions even if the steps haven’t been proven to work. ...The trouble...is that the NRC report has put pressure on agencies to mandate only those recovery actions that are scientifically well established. ... ‘All conservation goes out the window if you have to wait for fish to die to say there is an effect’” (Service 2003, 39).

But, in effect, none of these criticisms or comments mattered, because the NAS interim report had been anointed as The Truth.

Politicians picked up The Truth and used it as a weapon to whack away at the ESA.

No sooner was the report leaked to the press on Feb. 4 than members of Congress began shouting for ESA reform, saying the report is clear evidence of the act’s weaknesses. ...House Resources Chairman James V. Hansen (R-Utah) [said]...‘Now we find out that that decision was based on sloppy science and apparent guesswork. I am appalled. This latest travesty in the enforcement of the Endangered Species Act should be one more nail in the coffin of that broken law. The ESA has become a wrecking ball in this country, devastating personal finances and regional economies. We must reform this broken law.’ (Franz 2002, 2 of download)
“This new study proves that the government based its decision to deny water to farmers on junk science and in the process, unnecessarily hurt more than 1,500 family businesses in the Klamath Basin,” Bill Simon, a candidate for the Republican nomination in California’s gubernatorial race, declared in a news release.” (United Press International 2002, 1 of download)

“Rep. Wally Herger...characterized the water shortage as ‘nothing short of scientific sabotage. The radical environmentalists have hijacked the Endangered Species Act, a well-mean [sic] species protection measure, and are using it as a political tool, a bludgeon against rural Americans.’ ... ‘We must ...demand updates in the law that will guarantee that future species decisions will be solidly grounded in fact, justified by sound science, tested and supported by available evidence.”’ (Juillerat 2002d, 1-2 of download)

Comments from environmentalists, coastal salmon fishers, and the tribes were barely heard over the din.

“Mike Senatore, litigation director for Defenders of Wildlife...said the NAS report contradicts the federal agencies only because the academy assess [sic] NMFS’s and USFWS’s decisions using different criteria than the agencies used” (Franz 2002, 2 of download). “Zeke Grader [of PCFFA]...also had harsh words for farmers who might think the report vindicates their claims” (Juillerat 2002c, 1 of download). “ ‘My fear is that this report will be used to justify denial, delay and avoidance of a real issue: There are too many users and too little water’ [said Glen Spain of PCFFA]” (McMahon 2002, 2 of download). “ ‘It needs to be emphasized the report is also critical of the Bureau of Reclamation’s management proposals and is not a blank check to take unlimited amounts of water from Upper Klamath Lake,’ said Carl Ullman, an attorney for the Klamath Tribes” (Barnard 2002a, 2 of download).

In his written testimony for the July 17, 2004 House Hearings on the ESA, Foreman made the strong point that while the NRC report was motivated by the economic consequences of the 2001 water management decisions to the Project water users, there was “no equivalent expression of awareness of either (a) a century of previous water management decisions emphasizing the protection of agricultural water deliveries at great cost to the needs of fisheries, or (b) the economic consequences for Indian and other fishing communities. ...No equivalent awareness is expressed of the fact that the Klamath Tribes’ fisheries have been closed now for more than 17 years and that the economic and social consequences to the Tribes are as damaging, and of longer duration, than the 2001 losses to irrigators. ...The unavoidable conclusion is that the NRC Committee’s product is flawed in its inability to ‘see’ the social and economic values of Indian people as equivalent to those of irrigators who are seen as part of the ‘real’ economy and therefore deserving of protection. This is an unacceptable discrimination” (Foreman 2004, 4 of download).
In summary, then, the NAS interim report applied a scientific standard to the science in the 2001 BOs. The interim report was anointed as The Truth. BOR (as well as FWS and NMFS) picked it up and used it as the best available science for future BAs and BOs. The Project water users, their supporters, and many politicians picked it up and used it to say that it proved not only that the management decisions in the 2001 BOs were wrong and that the Project water users had been wronged, but also that the ESA was wrong.

Environmentalists, coastal salmon fishers, the tribes, and numerous fisheries biologists said not only that the interim report was not the best available science, but also that the management standard, not the scientific standard, should have been applied to the 2001 BOs. Their criticisms were ignored as just so much heresy in the face of The Truth.

Deus ex Machina

2002 dawned with the gods on Mount Olympus scurrying around doing godlike things, and the humans in the valley scurrying around beseeching the gods to direct those godlike things their way. By July 2004, the gods on high had done whatever they were going to do and had told the humans in the valley that it was really up to them.


None of these bills ever made it out of committee, with the result that, bottom-line, despite consistent effort by Oregon and California politicians, by the end of this period, no legislation for amending the ESA had been passed.

In addition to attempts at anti-ESA legislation, politicians also held hearings. On March 13, 2002, the House Committee on Resources held a hearing in Washington, DC, that focused on the NAS interim report that had just been released on February 6th. While many of the committee
members continued to speak in the language of hyperbole at the extremes of conflict, some more than others, interestingly, a couple of the politicians present were not members of the usual choir.

Rep. Greg Walden (OR-Rep) spoke of the tragic economic devastation and untold losses that the people that he represents have faced because as the NAS study reports, the actions taken by the agencies could not be backed up by the data that they had, and in some cases, the agency’s actions could actually harm the very fish that they were trying to protect. ...So great damage has been done. What we need to do, Mr. Chairman, is look forward now and actually do the projects and complete the studies that will improve water quality, that will improve fish habitat, that will improve water quantity, that will guarantee we will have water for farmers. (U.S. House 2002: Testimony of Hon. Greg Walden, 5)

Rep. Wally Herger (CA-Rep) declared that

This situation is the “poster child” for the need to update the Endangered Species Act! Almost 100% of the water was taken from 1,500 family farmers based only on the speculation of a few Federal scientists. A community of 70,000 people was brought to the brink of economic collapse at the stroke of a scientist’s pen. Thousands of people’s lives may never be the same. The National Academy of Sciences (NAS) study proves suspicions that this was political! People on the ground knew that the science was wrong and that the decision to take water away was not grounded in fact or science. We said it was nothing more than a parting gift by Clinton-era political appointees to the radical environmentalists, who want to run these hard working farmers and war veterans off this land! The NAS study proves it! (U.S. House 2002: Testimony of Hon. Wally Herger, 32)

Rep. Nick Rahal (Ranking Democrat, WV) presented a different viewpoint.

When [the NAS interim] report was released, the predictable firestorm erupted, with claims that the Federal biologists who prepared the biological opinions for 2001 had based their conclusions on “junk science” and political agendas. If such statements and interpretations of the report are not reflective of a political agenda, I do not know what is. The panel did not find that the Fish and Wildlife Service and National Marine Fisheries Service based their decisions on bad science, but instead that they did not have enough science. In the case of the Endangered Species Act, however, as is the case with any environmental law, the agencies do not have the luxury of waiting until they have all the science, but instead must rely on the science available to them and then err on the side of protecting the species. (U.S. House 2002: Testimony of Hon. Nick Rahal, 4)

**The Bush Administration Gets Involved.** On January 5, 2002, Rep. Walden and Sen. Smith (both up for re-election) talked for an hour with President Bush on Air Force One during a two-hour flight from Ontario, CA, to Portland, OR, about the Klamath Basin water crisis (Juillerat 2002a-1). “Only hours after Bush spoke in Portland, where he voiced support for Klamath Basin farmers,
Walden and Smith said they and their aides were deluged with telephone calls from federal officials on water-related concerns” (Juillerat 2002a-2, 1 of download).

On March 1, 2002, President Bush created the Klamath River Basin Federal Working Group, comprised of the Secretaries of Interior, Agriculture, and Commerce plus the Chairman of the Council on Environmental Quality, and giving it the mission to advise the president on immediate steps and long-term solutions to enhance water quality and quantity and to address other complex issues in the Klamath River Basin, in order to ensure that farmers get water while still complying with ESA and tribal trust obligations (Bush 2002). The President’s Working Group was slated to have an 18-month life (through August 2003), unless the president changed those parameters.

On March 29, 2002, the Secretaries of Interior and Agriculture plus Senator Smith traveled to Klamath Falls to open the headgates and release water into the Klamath Project. Sen. Smith said, “Farmers in the Klamath Basin can take this as a sign that their pleas are being heard at the highest levels” (Hudson 2002, 1 of download).

At about the same time, the President’s Working Group embraced two local projects, that were estimated to possibly free up as much as 30,000 af: (1) a ‘water bank’ proposed by Klamath Basin Rangeland Trust (KBRT) in which “ranchers who graze cattle above Upper Klamath Lake could voluntarily agree not to flood their cattle pastures with water from the Wood River north of Klamath Falls and instead lease the water to the U.S. Bureau of Reclamation for $50 an acre foot” (Milstein 2002e, 1 of download); and (2) an agreement by the Nature Conservancy to “to stop diverting water onto wetlands-turned-farmland it acquired at the north end of Upper Klamath Lake” (Milstein 2002e, 2 of download).

On October 29, 2002, Interior Secretary Norton announced that the President’s Working Group had accelerated the project to build the new head gate structure with an elaborate fish screen which had been sought by biologists for a decade but delayed by funding shortages. Construction was completed in time for the 2003 water delivery season beginning April 2, 2003.

At the February 19, 2003 meeting of KRBFTF, Sue Ellen Wooldridge, Interior, reported on the status of the President’s Klamath Basin Federal Working Group. “The task of the Working Group is to advise the President about what can be done regarding water quality and water quantity in the Klamath Basin. ...The Working Group would not necessarily provide a leadership role, but to help ongoing efforts. Another objective is to avoid unnecessary overlap of agencies and coordinate collective restoration efforts” (KRBFTF 2003a, 4).

On March 28, 2003, the President’s Klamath River Basin Federal Working Group published in the Federal Register a list of federal agency work plans and reports for the Klamath River Basin
(KRBF Working Group 2003). It is interesting that the list seems to imply that the President’s Working Group had created all these things from scratch. What they did, however, as I see it and in line with what Wooldridge said at the February 19th KRBFTF meeting, was either accelerate things already in the pipeline or sign on to things already being done by others. For example, the list mentioned the Conservation Implementation Program (CIP), which had actually already been mandated by the 2002 NMFS BO. It mentioned the new headgates and fish screen – which had been planned for years but couldn’t get the funding until the President’s Working Group exerted their influence. And it mentioned the KBRT ‘water bank’ which had been implemented by KBRT in 2002 and 2003.

On April 24, 2003, David Anderson of the President’s Council on Environmental Quality delivered the keynote speech at the annual meeting of KWUA. Anderson told them that they continued to have the attention and backing of the Bush administration from the top and that they would have a scientific rebuttal for the 2002 salmon die-off. He told them that the work ahead for the President’s Working Group would be that of integrating all the activities of the Federal government in the Klamath Basin and coordinating the Federal government’s work with that of the states of California and Oregon (Darling 2003d).

On June 25, 2003, the dreaded words Water Shutoff were heard, as BOR told the Project irrigators that irrigation would be halted until July 1, in order to maintain lake levels mandated by the FWS 2002 BO. Fax and phone lines between the Project and Washington, DC, fairly sizzled, with the result that by that afternoon, the White House had intervened to halt the water shutdown. “Walden said this morning that White House officials told Interior Department officials to find another way to manage the situation” (Darling 2003g, 1 of download). And they did – BOR negotiated with FWS about lake levels, and the water flowed. Nothing like having friends in high places.

In May 2003, the Department of the Interior had launched Water 2025, touted as a problem-solving initiative that would help manage scarce water resources and increase cooperation and collaboration among federal, state, tribal, and private organizations.6 On July 10, 2003, one of Water 2025’s regional consulting conferences was held in Sacramento, CA. The conference included a panel about the future of the Klamath and other Western watersheds. “The five member panel featured four irrigation districts but only one environmental representative and no tribal

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6 In May 2003, the Interior Department issued a press release about Water 2025. I downloaded the document on March 4, 2004 from [http://www.doi.gov/initiatives/water2025.html](http://www.doi.gov/initiatives/water2025.html) and still have the document. Since that time, the Interior Department has redesigned their website; that address is no longer functional; and the link on the redesigned DOI website to the archive of 2003 press releases does not work.
representatives. The panelists included Dan Keppen, Executive Director of the Klamath Water Users Association” (Bacher 2003, 1 of download). Representatives of the Yurok Tribe, the Hoopa Valley Tribe, Sierra Club, Friends of the River and United Anglers of California “denounced federal officials for not inviting them to participate in a panel about the future of the Klamath and other Western watersheds” (Bacher 2003, 1 of download).

In October 2003, Bill Bettenberg, the director of the Interior Department’s office of policy analysis, made the first of what would be many trips to the Klamath watershed between October 2003 and early 2004, during which he would meet with many different player groups – the Klamath Tribes, KWUA, the Root-Thomas talks (see below), FWS and BOR officials, and so on. Bettenberg shared information and got feedback, but made no proposals. ‘Our hope is, in the long run, that the solutions for the Basin’s problems will come from the communities there,’ [Sue Ellen Wooldridge, Interior] said” (Darling 2003m-1, 1 of download).

Follow The Money. It almost goes with saying that when one is talking about the Federal government, one is talking about money, so let’s follow the money.

- Loss to the Upper Basin from the 2001 water cutoff. In news article after news article up through March 2002, the statement was made that the loss in gross output from the 2001 water cutoff was $134 million.7 This number came from a May 2001 estimate provided by the team from OSU’s Department of Agricultural and Resource Economics, and was for the total impact of a critically dry year plus the 2001 BO without any mitigation from additional water, federal and state grants and expenditures, and loan-financed expenditures. In the final OSU-UC report that was released in 2002, in Chapter Thirteen “Impact of the 2001 Klamath Project Operations Plan on the Economy of the Upper Klamath Basin,” the initial estimate of loss was revised and the impact of mitigation was factored in.

<table>
<thead>
<tr>
<th>Description</th>
<th>$million</th>
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<tbody>
<tr>
<td>Original estimated impact of a critically dry year + the 2001 BO, without any mitigation</td>
<td>(134)</td>
</tr>
<tr>
<td>Revision to estimate</td>
<td>+18</td>
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<tr>
<td>Revised estimated impact of a critically dry year + the 2001 BO, without any mitigation</td>
<td>(116)</td>
</tr>
<tr>
<td>Impact of mitigation</td>
<td>+93</td>
</tr>
<tr>
<td>Net estimated impact of a critically dry year + the 2001 BO, after mitigation</td>
<td>(23)</td>
</tr>
</tbody>
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These figures mask the uneven distribution of the impact across the three counties of Klamath, Modoc, and Siskiyou; the fact that the grants were taxable income; the fact that the timing of the

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7 Gross output is defined as Direct Output (direct sales of agricultural products) + Indirect Output (secondary products made from agricultural products) + Induced output (local spending) (Weber et al. 2002).
taxable grants relative to offsetting expenses could result in a huge tax liability for 2001; the fact that
some times the grant went directly to the bank so that the recipients incurred a huge tax liability but
received no cash; and the fact that the borrowers had to deal with debt service (Weber et al. 2002;
Juillerat 2002a-3).

● The 2002 Farm Bill. In 2001, the time came due to start work on the next ten-year Farm Bill
to be passed in 2002. Politicians from Oregon and California took the opportunity to try to include
generous amounts of money earmarked for the Upper Basin. First, in December 2001, “Oregon
Sens. Ron Wyden (D) and Gordon Smith (R) and California Sens. Barbara Boxer (D) and Dianne
Feinstein (D) offered an amendment to the farm bill, which the Senate approved, to provide $175
million for water conservation, water quality improvements and reductions in water demand through
willing seller buyouts” and to create a federal working group to focus on the Klamath (Henry 2002, 2
of download). But Rep. Walden and KWUA would not support the Senate amendment unless it
“includes a guarantee of irrigation water and a ban on spending the money to buy out farms and
water rights to reduce demand” (Barnard 2002c, 1 of download). The Klamath Tribes, fishermen,
and conservationists supported the Wyden proposal and did not support the Walden proposal.

When conferees from the Senate and the House got together to hammer out the conferenced
version of the farm bill, they denied both the Senate version and the House version of the $175
million package and instead allocated only “$50,000,000 to carry out water conservation activities in
Klamath Basin, California and Oregon, to be made available as soon as practicable after the date of
enactment of this section” (Farm Security and Rural Investment Act of 2002, Sec 1240I). Wyden
was not happy about the cut from $175 million to $50 million. “‘Congress’s refusal to address the
long-term needs of the basin will virtually ensure years of counterproductive litigation’ from
fishermen, farmers, tribes and environmentalists” (Henry 2002, 2 of download). On March 26, 2003,
a press release from Agriculture announced that from the $50 million EQIP fund in the 2002 farm
bill, $7 million was released to assist farmers in the Klamath Basin in water conservation (USDA
2003).

Wyden sponsored S. 1824 with the goal of getting refunds to the Klamath Project irrigators for
operation and maintenance fees they had paid to BOR in 2001 for water they had never received
because of the water cutoff. After a number of hearings in 2001 and 2002, the Klamath Basin
Emergency Operation and Maintenance Refund Act of 2002 was passed on December 17, 2002.
Lest anyone might think that this money would be quick in coming, the actual money wasn’t appropriated until FY2004 (Oct 03-Sep 04), and was not dispensed to BOR until March 2004. BOR would deposit the money into the bank accounts of the irrigation districts, who would in turn refund it to the individuals in each of the irrigation districts (Darling 2004j).

**Last Gasp from the President’s Working Group.** On January 27, 2004, a press release from the President’s Working Group noted that recommendations from the Working Group had resulted in the president making a budget proposal for FY 2005 (Oct 04-Sep 05) in the amount of $105 million. This exceeded the expenditures that had been made in the the Klamath through the Departments of Interior, Commerce, and Agriculture of $76 million in FY 2003 and of $90 million in FY 2004 (Freedman 2004). “Though farmers and environmentalists have been adversaries over solving the Klamath Basin’s water problems, they agreed the projects identified in the president’s 2005 budget proposal represented progress in solving a difficult problem” (Barnard 2004a, 1 of download). Dan Keppen was glad that it had a watershed-wide focus, because one cannot continue to focus solely on the Project. Steve Pedery of WaterWatch noted that it was the first time he’s “seen a major public document from the administration acknowledge that commercial fishermen and lower basin communities have a strong right to water too” (Barnard 2004a, 2 of download). Both WaterWatch and PCFFA would rather have had the money used to buy farmland and water rights in order to reduce demand (Barnard 2004a).

**Who Will Dance with the President?** With all the political flurry, folks at the grassroots wrestled with how to position themselves in the relationship between the federal and the local levels.

In January and February 2002, folks in the Upper Basin were thrashing out the competing amendments to the 10-year Farm Bill fully as much as the politicians were doing back in DC. The Project Water Users wanted the Farm Bill to ensure that the Project would never again get no water, that money would be spent on the Project, and that the Project would not be downsized. To that end, they endorsed the Walden amendment. The UKBWG, on the other hand, after much deliberation, sent recommendations to Senator Wyden, and tried to position themselves as well as KRBFTF as the local groups to work with the federal-level Task Force proposed by Wyden.

With the formation of the President’s Working Group on March 1, 2002 – which for all intents and purposes obviated the need for the federal-level Task Force proposed in the Wyden amendment, the UKBWG now wrestled with how to position itself with respect to the President’s Working Group. When David Anderson, Associate Director of CEQ, attended the UKBWG’s May 1, 2002
meeting, once again, the Working Group tried to position themselves as the Upper Basin go-to group and the KRBFTF as the Lower Basin go-to group for the President’s Working Group. Anderson responded that (a) legal issues precluded the President’s Working Group from anointing any local group, and (b) the President’s Working Group did not have any funding to dole out (UKBWG 2002c).

In September 2002, members of the UKBWG traveled to Washington, DC, to visit the Congressional delegation and agency personnel. Bottom-line, it became clear (1) that the President’s Working Group was focused on higher level issues that could not be resolved locally and was looking to the UKBWG for local solutions; (2) that both Smith and Wyden publicly endorsed the UKBWG as the best opportunity for solutions in the Upper Basin; but (3) that there was no funding for doing the Restoration Plan and no funding for projects (UKBWG 2002e).

In its February 2003 quarterly meeting, KRBFTF, meeting jointly with the Klamath Watershed Coordination Group, had a similar experience when Sue Ellen Wooldridge of the Interior Department attended their meeting to report on the status of the President’s Working Group (KRBFTF 2003a). Reporting on this meeting back to UKBWG, “Alice Kilham reported that Sue Ellen Wooldridge advised the group to take care of its own problems because it can’t be done from Washington and if it was done at that level we wouldn’t like it” (UKBWG 2003b, 2 of download).

Sound of door closing, one might say...??

A Tangle of BAs, BOs, KPOPs, Litigation and a Massive Fish Kill in the Lower Klamath

The Tangle.

• **BOR’s BA for April 1, 2002-March 31, 2012.** On February 25, 2002, when BOR released a final BA that rejected the analytic approach that they had used in their draft BA and embraced the NAS report as the best available science, nobody was happy. The Project water users were unhappy because it did not provide an immediate guarantee of water (Barnard 2002b), and “fishing and conservation groups said that the 2002 BA would leave fish with too little waters in dry years, costing the livelihoods of fishermen downstream” (Milstein 2002b, 1 of download).

• **BOR’s Interim 2002 KPOP.** By the time the 2002 irrigation was set to begin, neither of the BOs had been issued, so, with the permission of FWS and NMFS, BOR produced an interim 2002 KPOP consistent with their 2002-2012 BA. On March 29th, the Secretaries of Interior and Agriculture as well as Senator Smith were on hand to ceremonially open the headgates.
The Project water users were glad that the administration had stepped forward and given them water (Milstein 2002d), but “although close to 500 farmers and their supporters cheered the renewed flow, there were strong signs that the Klamath Basin’s water struggles are not over. Nearly 100 Native Americans waved signs reading ‘Fish need water’ and ‘Shame on you.’ They contend that the Bush administration ignored their rights to water and healthy fisheries when diverting water to farms” (Milstein 2002d, 1 of download).

“As Yurok members beat drums in protest, cheering farmers displayed a red, white and blue banner reading, ‘Thank you President Bush for caring about rural America’” (Hemmingsen 2002, 1 of download). “At times the opposing worlds met. A small crowd stood around Susan Bowers Masten and Secretary Norton, who were having an intense discussion. A local woman shouted at Ron Reed [, cultural biologist for the Karuk Tribe], ‘You’re dead! Your people are dead!’ To this Reed replied in anguish, ‘We’ll never die!’” (Most 2006, 241).

Clearly, the scab had been ripped off the wound, and the pain and anguish and anger of 2001 gushed out.

● **PCFFA II.** Less than a month later, on April 24, 2002, a lawsuit was filed on the basis of the BOR Interim KPOP. **PCFFA II** promised to be Round Two of the mythic confrontation that **PCFFA I** had been in 2001, but this time, not only between player groups from throughout the watershed, but also between “best available sciences.” The defendant BOR claimed that the NAS Interim Report was the “best available science.” The plaintiffs PCFFA and ONRC and the rest of the environmental collaboration claimed that both Hardy I and draft Hardy II were the “best available science” and sought a Temporary Restraining Order to prevent BOR from implementing the Interim KPOP and to force BOR to release more water down the river. Not unexpectedly, tension in the watershed ratcheted up to the extremes as everyone held their breath waiting for the judge’s decision and what it would do to their lives.

● **Draft BOs from NMFS and FWS.** On April 1st and then on April 17th, NMFS issued draft BOs, both making jeopardy determinations. BOR rejected the proposed RPA as neither reasonable nor prudent. On April 25th, FWS issued its draft BO, also making a jeopardy determination and was greeted with the usual chorus of complaints sung by environmental groups (Milstein 2002g).

On April 29th and 30th, BOR and NMFS met to confer about the draft BO, which proposed higher flow rates than did the 2002-2012 BA. During these meetings, BOR made a brand-new proposal to NMFS. They asserted that the irrigated acreage in the Project was only 57% of the total acreage in the Upper Basin, so therefore BOR should only be responsible for 57% of the water going
down the river. To cover the 43%, BOR proposed a multi-agency task force (the Conservation Implementation Program) to develop the remaining 43% (PCFFA II).

On May 16th, NMFS issued another draft BO, this time containing the 57:43 split as well as phases of river flows over a 10-year period.

The Yurok Tribe, which has long depended on salmon and other Klamath River fish, immediately questioned whether the fisheries service could shift the burden beyond the Bureau of Reclamation and wait years to deliver more water to salmon. ... Glen Spain of the Pacific Coast Federation of Fishermen’s Associations said the opinion vindicates fishermen who thought the initial federal plan [BOR 2002-2012 BA] to deliver water to farmers left far too little for salmon downstream.” (Milstein 2002j, 1-2 of download)

On May 24th, CDFG submitted comments on the NMFS May 16th draft BO, contending that (1) the Hardy Phase II report is the best science currently available and should be implemented until future credible information indicates otherwise; and (2) they have little confidence that the program for supplying the 43% can be completed in eight years and would result in sufficient water to satisfy the Phase III long-term flow targets (Klamath Basin Coalition 2003).

● **Decision in PCFFA II.** First on May 3rd, and then again on May 22nd, the judge in PCFFA II denied the plaintiffs’ request for an injunction to force BOR to release more water down the river. In addition, the court approved BOR’s use of the NAS interim report as the “best available science” and declined to rely on the Hardy II draft as the “best available science” because it was a draft (PCFFA II).

The sigh of relief from Project water users could probably be heard throughout the Upper Basin, as the air fell out of the sails of the lawsuit that was on the path to being the Round Two mythic confrontation. But, when, on May 3rd, “[d]escending water levels in the Klamath River left hundreds of young, wild salmon stranded in isolated pools in California this week...Troy Fletcher, executive director of the Yurok Tribe, said the strandings prove the Reclamation plan [i.e., the 2002-2012 BA] left too little water in the river for fish” (Milstein 2002i, 1-2 of download).

● **Final BO from FWS.** On May 31st, FWS issued its final BO with respect to the BOR Biological Assessment for June 1, 2002-March 31, 2012, with a jeopardy determination. FWS based their BO on both BOR’s 2002-2012 BA and the NAS Interim Report. I find the following language in the BO to be an intriguing dance between not wanting to be seen by the public as violating the scientific standard that the public wants to judge them by and acknowledging the management standard that ESA requires them to live by. “Despite the lack of an empirical correlation between lake level and sucker welfare, the BO discusses the best available scientific information supporting a
relationship between lake level (as it relates to water depth, which is the factor affecting water quality) and factors that affect water quality, which directly impacts sucker health and survival. Acknowledging evidence that water levels directly or indirectly affect factors that affect water quality, and that water quality impacts suckers, is not contrary to the NAS Interim Report” (U.S. FWS 2002b, ii). The Klamath Tribes declared that “[a]t best, the Reclamation plan might keep the Lost River and shortnose suckers on the edge of extinction” (Klamath Tribes 2002c, 1).

- **Final BO from NMFS.** Also on May 31st, NMFS issued its final BO with respect to the BOR Biological Assessment for June 1, 2002-March 31, 2012, with a *jeopardy* determination. It is worth taking a moment to look at this BO, because its configuration turned the pecking order on its head. Where, by 2001, thanks to litigation and Solicitor’s Opinions, the Tribes had finally achieved a priority for their tribal trust rights over other water users, in 2002, the NMFS final BO said that the water to fulfill the tribal trust rights would have to be acquired by conservation and purchase through water banks.

  NMFS constructed an RPA to address the *jeopardy* determination and said that it used the draft Hardy Phase II report, the BOR 2002-2012 BA, and the NAS interim report in calculating the final RPA flows. NMFS identified five water-year types – Dry, Below Average, Average, Above Average, and Wet – and broke the ten water years into three phases with requirements for each phase:8

  **Phase I:** water years 2002-2005:

  - BOR will provide minimum flows equal to table 5.9 of the 2002-2012 BA. The data of the BA’s table 5.9 were based on the NRC Interim Report which stated that it would be alright for BOR to adhere to the flows that occurred during its operations during the ten-year period 1990 through 1999.
  - BOR will build water banks for each water year, starting with 30,000 af in water year 2002, and increasing to 50,000 af in water year 2003, 75,000 af in water year 2004, and 100,000 af in water year 2005.
  - BOR will begin the development of the Conservation Implementation Program (an intergovernmental task force).
  - BOR will conduct scientific studies.

8 Just to clarify: BOR wrote its BA in plan year parameters while NMFS wrote its BO in water year parameters. Just to jog the memory: earlier in Chapter Nine, in figure 9.4, I displayed the definitions of the various years. A water year runs from October through September, and is dated by the year in which September falls. A plan year runs from April through March, and is dated by the year in which April falls.
Phase II: water years 2006-2009:

- BOR will provide 57% of the BO’s table 9 RPA flows, but no less than 2002-2012 BA’s table 5.9. The data of the BO’s table 9 were based on the draft Hardy II report.
- BOR will build 100,000 af water banks for each water year.
- BOR will continue development of CIP, with the expectation that CIP will contribute additional flow.

Phase III: water years 2010-2011:

- BOR will provide 57% of the BO’s table 9 RPA flows. The flows recommended by the draft Hardy II report were considered sufficient to protect the coho from jeopardy.
- Yearly 100,000 af water banks will contribute towards the 57% that BOR must provide.
- The CIP will be responsible for providing the 43% of the BO’s table 9 RPA flows.

| Table 13.1. Comparison of Table 5.9 from BA to Table 9 from BO for Water Year Type DRY 9 |
|---------------------------------|---------------------------------|
| DRY | Table 5.9 from BA | Table 9 from NMFS BO |
| (converted to 5 water year types) | (sufficient to protect from jeopardy) |
| (Based on NRC Interim Report) | (Based on draft Hardy II) |
| (cfs) | (cfs) |
| April | 822            | 1500          |
|      | 739            |                |
| May  | 676            | 1500          |
|      | 731            |                |
| June | 641            | 1400          |
|      | 617            |                |
| July | 516            | 1000          |
|      | 515            |                |
| August | 560          | 1000          |
|  | 731            | 1000          |
| October | 907         | 1300          |
|  | 1300          |
| November | 899         | 1300          |
|  | 1300          |
| December | 916         | 1300          |
|  | 1300          |
| January | 1030         | 1300          |
|  | 1300          |
| February | 673         | 1300          |
|  | 1300          |
| March | 688           | 1450          |
|      | 695           |

9 The two figures provided for the months of March through July are not additive; rather, they represent flows, first, for days 1-15 and, then, for days 16 through the end of the month.
Just for interest’s sake, I thought it would be informative to compare the river flow levels from the BA’s table 5.9 with those from the BO’s table 9. To avoid overkill, I chose to do so for just for one water year type.

Just to clarify: the Phase III flow levels were defined by NMFS in its BO as sufficient to protect the coho salmon from jeopardy. During the two water years of Phase III, BOR would be responsible for 57% of these flows and the CIP would be responsible for the remaining 43%.

During the eight water years of Phases I and II, BOR would be responsible for providing no less than the flow levels from table 5.9 of the BA, based upon BOR historic operations.

I don’t think I would be out of place to note that the flows from table 5.9 are a lot less than the flows from table 9, yet it is the flows from table 9 that were defined as sufficient to protect the coho from jeopardy.

Unexpectedly, BOR notified both FWS and NMFS that it would not comply with their demands for the fish, claiming that the “opinions...impose unnecessarily steep demands, bureau officials said, and must be eased for future years. ...Dan Keppen of the Klamath Water Users Association said farmers were glad the bureau stood up to what they see as the unreasonable mandates of the fish agencies. Tribes, environmental organizations and fishing groups are likely to protest, though, because they contend that the fish agencies did not go far enough to help imperiled species” (Milstein 2002k, 1 of download).

● **Final 2002 KPOP.** On June 4th, BOR declared 2002 a Below Average Water Year and issued its final 2002 KPOP, which stayed within the operations regime observed from WY 1990 through WY 1999, consistent with NAS Interim Report, and with the two 2002 BOs. On July 10th, BOR changed the water year from Below Average to Dry and further reduced river flows. The Yurok and Hoopa Valley Tribes asked BOR to rescind that decision, but BOR refused (*PCFF-A III*).

**In summary, then,** from 2001 to 2002, a major shift took place in the management of the Project, from Tribes (and thus by extension the fish) trumps the Project in 2001, to the Project trumping the Tribes (and thus by extension the fish) in 2002. Even though Project water users continued to complain that they did not receive a guarantee of water delivery, ultimately they had been successful in effecting changes such that the scientific standard now could trump the management standard, and the NAS Interim Report trumped all other science. And to boot, the attempt to countermand this change through litigation fizzled.
**The Fish Kill.** Starting on September 19th, and continuing through the end of the month, more than 33,000 salmon died in the lower Klamath River.

- **Pain, Anguish and Anger.** The people of the watershed speak for themselves far more eloquently than I ever could.

  [Susan] Masten [chair of the Yurok tribe] recounted what happened... ‘You can’t even begin to imagine what thirty to forty thousand dead fish look like in a twenty-mile radius. ...In my wildest dreams as I was warning the federal government that there would be fish kills, I could not have imagined such a horrific scene. It made your heart sicken. Like my Uncle said, ‘It hurt the very soul of our people’ because it is who we are. Because of who we are as a people, spiritually and culturally, that’s a huge sign. You know that things are totally out of balance. And what was so disturbing to me is this wasn’t an act of nature. This kind of destruction happened to this endangered species of fish because of a government policy decision.’ (Most 2006, 131)

  As noted by the elders of the Yurok Culture Committee on October 3, 2002; ‘Never in our time have we, the elders of the Yurok Culture Committee, seen such a mass destruction of our salmon resource.’ Despite repeated inquiries, the Yurok Tribal Fisheries Program could find no evidence of such an event recorded in Yurok myth, legend, and stories that have been passed along from generation to generation, even though salmon have formed a central pillar of Yurok spirituality, culture, and society. (Yurok Tribal Fisheries Program 2004, 4)

  The carnage I’ve seen over the past week and a half is so utterly grotesque that I cannot sleep at night. ...[Y]ou cannot begin to imagine the smell. ...The water levels in the river have never been in such decline. Numerous tribal and non-tribal elders have assured me of this fact. In my lifetime, I have never seen the Klamath so shallow. (McCoy 2002, 1 of download)

  The Klamath is everything to me. It is my home, church, garden, highway, counselor, friend, brother, and provider. ...The people of the Klamath, and our way of life, deserve the same respect given to the farmers of the upper basin during their so-called water crisis. ...For the Yurok, and other tribal groups impacted by the current situation, this is not simply a struggle for water rights. It is a matter of life and death. (McCoy 2002, 2-3 of download)

The Klamath Tribes issued a Press Release about the fishkill.

  The loss of thousands of these fish is devastating to salmon-dependent communities up and down the river, as well as up and down the Pacific Coast. We...know that these fish are important to them, important beyond words, and that their loss is an enormous emotional, spiritual, and economic blow to our friends. ...When Klamath Project irrigators were denied full water supplies in 2001, the federal government responded rapidly with prompt attention from high-level officials and investment of well over a million dollars to investigate the situation and deal with the resulting social unrest. Will this situation receive equivalent treatment? Will the tremendous, tragic losses being experienced by salmon-dependent Tribes and other communities be viewed as being as important as the losses experienced by Klamath Project irrigators in 2001? What efforts will be made to help these communities survive? ...The Klamath River should be
viewed as a whole... The social fabric of this Basin is disintegrating along with the ecosystem. (Klamath Tribes 2002d, 1-2 of download)

- **Protest.** In protest about the fishkill, Rep. Thompson plus fishing groups and tribes heaped dead Klamath salmon in front of the Interior Department building in Washington, DC. “They blame the die-off on the administration policy that shifts water away from fish to supply Klamath Basin farmers with irrigation. ‘This is not an act of nature,’ said Susan Masten, chairwoman of the Yurok Tribe, as flies swarmed the decaying fish in 80-degree heat. ‘This is a result of the government’s bad water-management policy’” (Milstein 2002n, 1 of download).

After NMFS biologists recommended that a pulse of water be sent down the river, Secretary Norton ordered BOR to do so for two weeks (Milstein 2002m). The emergency pulses ended on October 10th. The next day, “hundreds of tribal members and concerned community members gathered at the dam where the water was shut off to protest and speak out. ...[T]he battle is not only about the money they will lose, but about their way of life. ‘Money is just money,’ Fletcher said. ‘But the fish mean more to us, and they’re at the center of our existence. We’re salmon people. We have a great dependence on the salmon and the river. ..We need to take care of the river system, and the river system will take care of the fish,’ Fletcher said” (Burruss 2002, 1-2 of download).

- **Political Action.** On October 11th, the Klamath Tribes issued a Press Release criticizing James Connaughton, CEQ, for “saying that these fish kills are an acceptable risk of BOR management. Damaging the cultures and economies of Indian people, destroying fisheries that are important to all people up and down the Klamath Basin, can never be acceptable” (Klamath Tribes 2002e, 1 of download).

FWS promised a rigorous scientific analysis of the fishkill (Milstein 2002n).

First on October 24, 2002 (Congressional Information Services, Inc. 2002c) and then again on April 10, 2003 (Congressional Information Services, Inc. 2004b), Rep. Mike Thompson (D-CA) introduced Klamath River Basin Restoration and Emergency Assistance Acts in the House, but both died in committee.

The California Department of Fish and Game had a lot to say to the Federal government about this fish kill. On September 26th, CDFG sent out a letter with respect to the Lower Klamath River September 2002 Fish Kill – contending that minimum flow should meet the Hardy Phase II flow
recommendations in order to reduce the current fish kill as well as to ensure future spawning (Klamath Basin Coalition 2003).

On October 1st, when Secretary Norton ordered BOR to send an emergency pulse of water down river for two weeks, CDFG said that two weeks was too brief and of such poor quality that it may do more harm than good. BOR responded that the pulse wasn’t to cool the river but to spread out fish so the disease declines (Milstein 2002m).

On October 11th, CDFG sent a letter to Interior Secretary Norton, noting that CDFG had sent letters to BOR in both February and May 2002 saying that the flows proposed by BOR and approved by NMFS would kill salmon (Nichols 2002). They noted that the flows throughout most of September had been as low as 760 cfs (ibid..). CDFG asserted that DOI cannot rely solely on the NAS Interim Report to support its policy – that it is “egregious...to base the 10-year Klamath Project operations plan on the Interim Report” (ibid., 2). And finally, CDFG urged DOI to complete the Hardy Phase II report (ibid..).

On November 14th, CDFG sent a letter to BOR, urging it to finalize the Hardy Phase II report and to do a new NMFS BO (Klamath Basin Coalition 2003).

On January 3, 2003, the date on which CDFG issued its report September 2002 Klamath River Fish Kill: Preliminary Analysis of Contributing Factors, CDFG sent a letter to BOR, using language taken directly from its report. “The DFG concludes that low flows restricted fish passages and increased fish density thereby causing the 2002 fish kill on the Lower Klamath River. Furthermore, of the conditions that can cause or exacerbate a fish kill, flow is the only factor that can be controlled to any degree. Flow is regulated by upstream reservoirs operated by the USBR on both the Klamath and Trinity Rivers” (Koch 2003, 2). Once again, CDFG urged BOR to immediately finalize Hardy Phase II report (ibid..).

The fish kill was the subject of intense discussion at numerous meetings throughout the watershed. Both the Klamath Fishery Management Council (KFMC) and KRBFTF held their quarterly meetings in October 2002, hard on the heels of the September fish kill.

During the discussion during the KFMC meeting, representatives from all the sectors of the fishing industry – California Offshore Recreational, In-River Sport, Oregon Commercial Salmon, California Ocean Commercial, Yurok Tribes to name a few – spoke of the economic, social, cultural and historical impact of the fish kill. “Paul Kirk said Humboldt County is deciding whether to request a Declaration of Disaster because of the economic impact to the County and Tribes” (KFMC 2002, 3). KFMC decided to send a letter to Interior Secretary Norton expressing KFMC’s
position with respect to the September fish kill, and expressing concern about the NMFS 10-year BO plan finalized in May and the effects of those spring/fall flows on future salmon production.

At the quarterly meeting of KRBFTF, it was noted that staff from FWS, CDFG, the Karuk tribe, the Yurok tribe, Hoopa Valley Tribe, and NOAA Fisheries had immediately cooperated to collect field data during the fish kill. When Dave Sabo of BOR gave an update of the Klamath Project, the anger expressed in the meeting minutes sizzled my fingers as I held the pages to read them. The members of KRBFTF grilled Sabo with questions. Bottom-line, the position that Sabo put forth for BOR was that they had followed the rules of the BO, that they had a primary responsibility to provide water to the Project, and that they fulfilled their tribal trust responsibilities by purchasing acre-feet for the water bank and by “trying to do all we could to conserve water and ask the irrigation districts to conserve water” (KRBFTF 2002, 5). The Task Force decided to send a letter to the Interior Department (1) expressing grave concerns about the fish kill and associated economic impacts on lower Klamath River and coastal communities; (2) requesting the Secretary to investigate the problem and to implement solutions; and (3) requesting financial aid for downstream interests devastated by the fish kill (KRBFTF 2002).

● And, Of Course, Litigation. The flaccid sails of PCFFA II were instantaneously swelled by gale force winds, as plaintiffs ran to join the case to get justice for the fish kill – and defendants ran to join in self-defense.

Plaintiffs filed the first amended complaint on September 25th, alleging violation of ESA. Between then and the decision of PCFFA II on July 14, 2003, many more complaints were filed, and the litigant roster swelled to the mythic proportions that PCFFA I had enjoyed.

The original plaintiffs were joined – either as plaintiff-intervenors or as *amicus curiae* – by the Yurok Tribe, the Hoopa Valley Tribe, the Klamath Tribes, the cities of Arcata and Eureka in California, the counties of Humboldt, Del Norte, Trinity, Siskiyou, and Modoc in California and of Klamath in Oregon, the Humboldt Bay, Harbor, Recreation and Conservation District, and Langell Valley Irrigation District and Horsefly Irrigation District (eastern Project water users). NMFS joined BOR as primary defendants, and both were joined by intervenor-defendants KWUA, Tulelake Irrigation District, William Heiney, and Amos Hoyt, all of whom were represented by Pacific Legal Foundation.

By the time of the July 14, 2003 decision, the plaintiffs wanted the court to declare the 2002 NMFS BO, RPA, & Incidental Take Statement (ITS) “arbitrary and capricious,” to order NMFS to rescind the 2002 NMFS BO, to declare that BOR had violated ESA, to order BOR to reinitiate
consultation with NMFS, and to order that no water diversion to the Project would cause flows to be less than 100% of the flows in the NMFA draft BO of May 16, 2002 until NMFS does a valid BO and BOR agrees to it (PCFFA II). By the time of the July 14, 2003 decision, the Tribes wanted the court to do all the above, plus to declare that BOR had violated their tribal fishing rights, and to issue an injunction requiring BOR to operate the Project in a manner that satisfied their tribal fishing rights (PCFFA II). Not surprisingly, by the time of the July 14, 2003 decision, the federal defendants wanted to keep the 2002 BO. In addition, the defendant-intervenors wanted the court to declare that BOR’s project operations complied with ESA and tribal trust responsibilities.

- **Project Water Users on the Defensive.** Not at all unexpectedly, the Project water users and their advocates were immediately on the defensive about the fish kill.

  Rep. Wally Herger challenged the claims that the fishkill stemmed from holding water for the Project, claiming that the fishkill was 200 miles away from the Project and the river flows are 90% of what they were last year (Juillerat 2002e).

  On October 23rd, Dan Keppen said that “‘using the fish die-off as a justification for imposing radical constraints on Klamath Project farmers is preliminary and irresponsible’” (Herald and News 2002, 2 of download).

  Because the Klamath Fishery Management Council wrote two letters to government leaders warning them that the 2002 salmon kill was linked to farming operations upstream, Rep. Wally Herger introduced an amendment to cut the council’s funding next year. While the primary purpose of the KFMC is to collect data, analyze it and make recommendations on how to restore and protect the Klamath fishery, “Herger says the council has become a mouthpiece for the advancement of an ‘anti-agricultural agenda.’ ...Herger’s action has outraged river advocates, including American Indians, commercial fishermen and recreationists” (Breitler 2003, 1-2 of download). 10

  On April 24, 2003, at the KWUA Annual Meeting, Dan Keppen said that David Vogel, the biologist employed by KWUA, believes that the fishkill was caused by warm water, an early run of salmon, and unusual warming and cooling in the lower Klamath River (Darling 2003d). Dan

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10 In March 2004, I originally printed this article out from the website of the Hoopa Valley Tribe – [http://www.hoopa-nsn.gov](http://www.hoopa-nsn.gov). When I went to find it again in 2009, it was no longer on the website. I could not locate the article directly through Lexis-Nexis Academic. I ultimately found the article posted in full on a Yahoo group website named Northern CA Native Events and News. The posting was verbatim what I had originally printed out from the Hoopa Valley Tribe website. I checked the Redding Record Searchlight and found that the article was listed in their online Archive. The Archive provided the first two paragraphs of the article, which were identical to that which I had printed out in 2004, and then wanted much money to purchase the full-text of the article if I wanted to see the rest of the article. I made the choice to cite the posting on the Northern CA Native Events and News website, given that I had verified the accuracy of the posting.
Keppen’s speech at that meeting is interesting because, while it constructs the boundary between Us and Them both wide and deep, it also plants a very tiny seed that would begin to blossom starting mid-2003 towards spanning boundaries and re-writing Us and Them.

There is no doubt we are fighting a war of our own here in the Klamath Basin. ...[L]ocal water users have fended off a very coordinated attack on Klamath Project agriculture, while at the same time striving to do the right things to protect the environment, improve water management, and sustain local economy. But I think everyone will agree: since the disastrous 2001 water cutoff, we have been in a defensive posture. (Keppen 2003, 1 of download)

He says that the 2002 fish kill only ramped the attacks even higher. “[C]ritics of Klamath Project agriculture instead intensified their efforts to discredit and sabotage our way of life. ...Thus – the defensive posture” (ibid., 1 of download). “We must get back on the offensive” (ibid., 2 of download).

He says that the Project should not bear the burden of recovering fish species.

To address the instability we currently are witnessing in the agricultural community, we need a long-lasting solution for the Basin that transcends party lines and administrations. ...Such a solution must ensure economic stability for communities reliant upon agriculture, fishing, and recreation. And finally, this solution must be equitably applied, without imposing disproportionate burdens on any one sector of the watershed. ...We can expect traditional foes of irrigated agriculture to try their best to derail our efforts. We must not let this happen, and we must continue to take the high road towards improving our destiny and contributing to effective species recovery. I believe, with time – and I already sense that this is occurring – that the general public will soon realize that there are two different means of addressing the problems we face. (ibid., 3-4 of download)

One is through the courts and the media; the other is to get things done on the ground. He wants unbiased assessment, sound science, and a more flexible policy that “would allow for slight adjustments in the minimum elevations of UKL or flow conditions at Iron Gate Dam if expected inflow or climactic conditions could cause curtailment of irrigation supplies” (ibid., 5 of download).

• The PCFFA II Decision on July 14, 2003. With respect to the complaints concerning violation of the ESA, the decision ruled that the ITS was arbitrary and capricious, because it did not follow the rules correctly. The court ruled that the Phase I (short-term flows), Phase II (short-term flows) and Phase III (long-term flows) were alright. The Phase III CIP, however, was ruled to be arbitrary and capricious because it required actions that may or may not happen to provide the 43% of flow rates necessary to avoid jeopardy. The court declined to set aside the NMFS 2002 BO, instead remanding it back to NMFS to address the deficiencies with respect to the CIP and the ITS.
With respect to the tribal complaints concerning the 2002 fishkill, the court said that it looked at the evidence from both sides and found them conflicting, so therefore it refused to do a summary judgement and told them to go to trial.

The world was decidedly not turned upside down by the decision in PCFFA II. On the one hand, the farmers were relieved that there was no court order reducing irrigation in the middle of the summer (Barnard 2003a). On the other hand, the plaintiffs were looking for something that would increase the flows down the river, and they got squat. Once again, the case that augured a second mythic confrontation turning the world upside down fizzled out to nothing.

Of course, the filing of appeals followed hard on the heels of the decision, as the PCFFA track started to look like the Short litigation track in its amassing of years and roman numerals.

As ordered, the tribes filed additional claims for relief with respect to tribal trust violations, which became PCFFA III. Decision on this would not be rendered until March 7, 2005.

On September 12, 2003, the plaintiffs filed an appeal with respect to the ESA claims. The appeal became PCFFA IV, and would not be decided until October 18, 2005, when the case was remanded back to the district court.

This remand became PCFFA V and by the time of its decision on March 27, 2006, the only thing remaining valid in the NMFS 2002 BO was the Phase III flow levels – everything else had been tossed out by the courts. Of course, this triggered appeals by the defendants, first PCFFA VI which was decided on May 24, 2006 and then PCFFA VII, which was decided on March 26, 2007 and upheld the injunction in PCFFA V that required BOR to meet Phase III flow-levels before it could divert water to the Project and until a new BO was issued by NMFS.

So, ultimately, this PCFFA track launched in the aftermath of the 2002 fish kill would be successful in rescinding the NMFS 2002 BO and thus increasing the river flow levels until NMFS did a new BO, but it took almost five years to do so.

**Back on the Science Front**

**The Contest.** It was very much as if the agencies, after having been whacked by the NAS Interim Report, had to figure out anew how to do their work. A sort of contest, if you will, emerged among agencies with respect to how to answer the question “what should the agency do to protect the species?”

**Answer #1** said that the agency should use scientific evidence to select only those management steps that have been scientifically proven to do that which the steps are intended to accomplish.
BOR, FWS, and NMFS embraced NAS Interim Report as The Truth. BOR’s 2002 BA and FWS’s 2002 BO used only those steps supported by the NAS Interim Report, while NMFS’s 2002 BO used the NAS Interim Report for the short term and the draft Hardy Phase II report (which had been rejected by the NAS Interim Report because it was a draft) for the long term.

Project water users had an investment in the anointing of the NAS Interim Report as The Truth and the embracing of The Truth by the agencies because the NAS Interim Report gave them what they wanted – management for lower lake levels and lower river flows which translated not only into more water for the Project but also increased certainty with respect to water deliveries to the Project. Answer #2 below was experienced as a threat to the Project water users.

Politicians tried to make peer-reviewed science the only information that could be used for determining the management steps the agencies could take to protect the species. For example, Rep. Ken Calvert (CA-Rep) testified at the July 2004 House Hearings in Klamath Falls that “[t]here’s no reason why we can’t require by law independent, peer-reviewed science for every major aspect of the Endangered Species Act and use that science to make the best-informed decisions in the decisionmaking process” (U.S. House 2004: Testimony of Hon. Ken Calvert, 6).

**Answer #2** said that the agency should use both professional judgement and scientific evidence to select those management steps that have a likelihood of protecting the species. Specifically, when confronted by multiple scientific causes for a situation, the agency should focus on the cause about which the agency can actually do something and then choose management steps to do something about that cause.

CDFG embraced Answer #2, as evidenced by their numerous letters to BOR and the Interior Department and by their analyses of the factors involved in the 2002 fish kill (about which I shall deal below).

Tribes and fishers had an investment in the draft Hardy Phase II report and in Answer #2 because it gave them what they wanted – management for higher lake levels and higher river flows. Answer #1 was experienced as a threat to the tribes and fishers.

Many – including, again, the NRC itself – said that requiring ALL biological opinions to only use peer-reviewed science would make it impossible for the agencies to do anything at all in any sort of timely fashion. For example, during the Question and Answer portion of the July 2004 House Hearings in Klamath Falls, the witnesses were asked where they stood with respect to peer review. William Lewis, chair of the NRC committee, did not think that every single decision or proposal needed to be peer-reviewed. It could be very useful, but it could also be overdone, and one could
not possibly rule out the use of professional judgment in any sort of applied science. David Vogel, biologist employed by KWUA, felt that for major decisions, yes, but for minor decisions, no. Steve Thompson, FWS, testified that peer reviews were a healthy process, but that peer review actions would add 6 months to a year to every decision that was peer-reviewed, depending on the complexity and difficulty of the decision. Jim Lecky, NMFS, said that even if they don’t have the science, they have to make a decision (i.e., issue an opinion).

The 2002 Fish Kill. The 2002 fish kill triggered another round in this contest, as agencies generated reports trying to explain the fish kill.

From the camp of Answer #1, the NAS Final Report (about which I shall deal in further detail below), released in October 2003, looked for a scientific explanation of the fish kill. The report concluded that a “full and final explanation of mortality probably is not possible, however, given that the fish kill was not anticipated and therefore the conditions leading to it were not well documented” (NRC 2004, 237). And the report did say that while “[l]ow flow in the Klamath River main stem is the most obvious possible cause of stress leading to the lethal infections of fish in the lower Klamath River during 2002” (ibid., 238), it was unclear what effect additional flow would have had (ibid.).

The FWS report, released in November 2003, looked as well for a scientific explanation of the fish kill and concluded that “[t]he high density of fish, low discharges, warm water temperatures, and possible extended residence time of salmon created optimal conditions for parasite proliferation and precipitated an epizootic of Ich and columnaris, which resulted in the death of an estimated 34,056 fish” (U.S. FWS 2003, 42). The report noted “that September discharges at Iron Gate Dam were 59 percent of the average for the period 1960 through 2002” (ibid., 17), and that low flows contributed to adverse conditions for the fish.

“Groups from all sides on the ongoing debate about how the river should be managed have claimed that the new report supports their arguments” (Darling 2003z, 1 of download). KWUA felt that low flow was just one of the factors contributing to the fish kill and they didn’t see how increased flows would have helped at that point (Martin 2003). BOR would keep doing things the same (Martin 2003). WaterWatch defined ‘cause’ as that which one could control, so therefore they concluded that the low flows were the ‘cause’ of the fish kill. Troy Fletcher of the Yurok tribe said that low flows would wreck the salmon run (Darling 2003z). Glen Spain of PCFFA said, ‘...the one thing we can do immediately is put more water down the river. Fish and Wildlife is finally saying what we said all along – fish need water” (Martin 2003, 1 of download). In a November 7th press release, “Congressman Mike Thompson (D-CA) heralded the study as ‘what many experts have been
saying all along about the Klamath River – low flows killed thousands of fish and that immediate restoration is needed” (Thompson 2003, 1 of download).

In other words, players took from the report those features that vindicated Us and ignored those features that did not vindicate Us.

From the camp of Answer #2, CDFG released a preliminary analysis in January 2003 and a final peer-reviewed analysis in July 2004. CDFG concluded that an above average salmon run coupled with atypically low river flow and volume of water in the fish-kill area resulted in high fish densities, which coupled with warm water temperatures, resulted in ideal conditions for pathogens to infect the salmon. “Flow is the only controllable factor and tool available in the Klamath Basin (Klamath and Trinity rivers) to manage risks against future epizootics and major adult fish-kills. Increased flows when adult salmon are entering the Klamath River (particularly during low-flow years such as 2002) can improve” all the important conditions for the salmon run (California DFG 2004, iii).

Even before the CDFG preliminary report was released, “Dan Keppen, executive director of the Klamath Water Users Association, said his group is bracing for findings that blame the fish die-offs on Upper Klamath River water policies. ...’We’re concerned the report will be used by opponents of Upper Klamath River agriculture as justification for continuing the blame game’” (Juillerat 2002f, 1 of download).

Immediately upon the release of CDFG’s preliminary analysis, “Klamath farmers immediately questioned the [CDFG] report, saying that California officials, with few facts in hand, began blaming the Klamath Project within days of the fish kill. ‘They have been pointing the finger at us even before the biologists had assessed what was happening,’ said Dan Keppen” (Milstein 2003a, 1 of download). BOR spokesperson Jeff McCracken questioned the objectivity of CDFG’s report, “since state officials began blaming the federal government for the fish kill last September, when the fish were still dying” (Murphy 2003, 2 of download). Dave Solem, manager of Klamath Irrigation District, viewed the CDFG report with suspicion, certain that it would become scientific fact to be used in court just because they put it out (Murphy 2003).11

Commenting on the CDFG final report, “[e]nvironmental groups and Native American tribes blame irrigation diversions for causing the fish deaths by leaving so little water in the river that disease ran rampant among crowded fish” (Milstein 2004, 1 of download).

11 I don’t think that I would be out of order to note that the same accusation could have been made about the NAS Interim Report, which instantly became the best available science.
In October 2003, the State of Oregon released a review by the Independent Multidisciplinary Science Team (IMST) of the State of Oregon that had been commissioned by Governor John Kitzhaber on April 25, 2001 to “review the information and offer an independent assessment of the science used [in the 2001 BOs] to establish lake levels and instream flow targets for suckers and coho” (Oregon IMST 2003, 1). The IMST approached the question from the perspective of the management of the Klamath River and Upper Klamath Lake, rather than from the perspective of whether the scientific conclusions met scientific standards. Were the actions proven scientifically to accomplish what they were intended to do versus were the actions the best possible management steps to take to protect the species? The IMST concluded that “[t]he 2001 Biological Opinions prepared by USFWS and NMFS were based on the best available science. The types of data and information used in the Biological Opinions are appropriate and technically sound” (Oregon IMST 2003, 2). “The IMST finds that a high degree of uncertainty is related to complex phenomena and/or scarce empirical information. In the face of uncertainty, a precautionary approach to management is warranted” (Oregon IMST 2003, 2).

The IMST report said the federal agencies acted reasonably while the NAS Interim Report said they were not scientifically justified. “Both panels are advisory. But the Oregon report carries clout at the state level because state law requires Oregon agencies to address the findings as they work to resolve the arid basin’s emotionally charged water wars” (Milstein 2003c, 1 of download).

In February 2004, the Yurok Tribal Fisheries Program released their analysis, in which they concluded that “low flow from Iron Gate Dam was a substantial causative factor in the fish kill of 2002. It is also the only factor that is controllable by human action. Had the flow from Iron Gate Dam in August and September been at or above approximately 1000 cfs, as they were in all other years of above average escapements, it is likely that the fish kill would not have occurred” (Yurok Tribal Fisheries Program 2004, 2).

The NAS Final Report. Originally scheduled to be released in March 2003, the NAS final report was not released until October 21, 2003. There were, to my mind, five major components to the final report: (1) review of their conclusions about the 2001 BOs; (2) assessment of the long-term requirements of the species; (3) analysis of the 2002 fish kill; (4) review of the 2002 BA and BOs; and (5) commentary on the relationship between the scientific standard and the management standard as they applied to the BOs.

With respect to their conclusions about the 2001 BOs, the final report confirmed the conclusions that they had reached in the interim report.
With respect to their assessment of the long-term requirements of the coho and the suckers, the final report concluded that the “[r]ecovery of endangered suckers and threatened coho salmon in the Klamath basin cannot be achieved by actions that are exclusively or primarily focused on operation of USBR’s Klamath Project” (NRC 2004, 9), and recommended actions that needed to be done throughout the watershed and that a watershed-wide committee of cooperators needed to be formed to repair the watershed while sustaining ways of life. The committee acknowledged that the estimated price-tag of $25-35 million for this watershed-wide restoration were “high relative to past expenditures on research and remediation in the basin, but the costs of further deterioration of sucker and coho populations, along with crisis management and disruptions of human activities, may be far more costly” (ibid., 13).

With respect to their analysis of the 2002 fish kill, please see above.

With respect to their review of the 2002 BA and BOs, the final report briefly summarized the BA and both BOs and then offered their comments. As noted above, BOR took the NAS interim report and based its BA for 2002-2012 on it as the best available science, which meant that the historical record of lake levels and river flows over the period 1990-1999 would serve as the basis for the period 2002-2012. In their BOs, both FWS and NMFS accepted the NAS interim report as the best available science, but considered the actions proposed by BOR to be insufficient to avoid jeopardy, so added their own RPAs on top of the basic actions proposed by BOR in the BA. In summary of their analysis, the final report concluded that the BA and the two BOs reflected considerable constructive interaction among the agencies between 2001 and 2002. There is still a gap between the assessments and the opinions, but the gap has narrowed from 2001 through some carefully considered movement toward consensus among the three agencies. USFWS and NMFS are requiring some substantial actions beyond those proposed by USBR. In general, however, the actions adhere more closely than those given by the listing agencies in 2001 to the relevant available scientific evidence or to professional judgment reinforced by at least some scientific evidence. As explained in this report, USFWS and NMFS in a few instances have made requirements based almost entirely on professional judgment, without direct scientific support, as is their prerogative. In doing so, however, they appear to have made a special effort to frame their requirements in such a way as to cause minimal impairment of Klamath Project operations and, in contrast with 2001, have recognized the inevitable need to include parties other than USBR in modification of environmental conditions for the benefit of the endangered and threatened fishes. (ibid., 44-45).

With respect to their commentary on the relationship between the scientific standard and the management standard as they applied to the BOs, the committee noted that “[t]he listing agencies have been criticized for using pseudoscientific reasoning (‘junk science’) in justifying their requirements for the protection of species in the upper Klamath basin. The committee disagrees with this criticism. The ESA allows
the agencies to use a wide array of information sources in protecting listed species. The agencies can be expected, when information is scarce, to extend their recommendations beyond rigorously tested hypotheses and into professional judgment as a means of minimizing risk to the species (ibid., 9).

It is extremely interesting to look at how people responded to the NAS Final Report. Best way to put it: where the NAS Interim Report had landed like a boulder in a puddle, the NAS Final Report landed like a pebble in an ocean. Granted, every group immediately picked and combed through the report to flag or tout the parts of the report that supported their actions or their views (Darling 2003q-2) and everybody made the report serve their own purposes – but the low level of response to the release of the final report was due, in my opinion, not only to the fact that the storm had already blown through with respect to the conclusions about the 2001 BOs, so no one had much else to say about that in 2003, but also to the fact that things were changing in the watershed.

Given that, with respect to the analysis of the 2002 BA and BOs, NMFS was happy that the report praised the collaborative process used to develop the 2002 BOs and the approach used to protect the species (Darling 2003q-2). And, with respect to the long-term recommendations for species recovery, Dan Keppen of KWUA said the Project water users were happy that the report said that recovery could not be achieved solely by focusing on the Project. He said the water users could use the report as a ‘hammer’ to go after other groups, down the Klamath River and above Upper Klamath Lake, but he would rather work with the groups to get them online with restoration (ibid.). Glen Spain of PCFFA liked the long-term studies and recommendations for the river, but wanted to see more things that could be done in the short-term (ibid.). “Members of Congress said the report refocuses restoration efforts on the Basin as a whole. Federal officials said the report will change how the Klamath River is managed. The Klamath Tribes said the report shows the need for restoration of the ecosystem. ... ‘It’s a complete vindication of what the farmers and what I have been saying all along,’ said U.S. Rep. Greg Walden... ‘It is important that our primary focus continues to be preserving agriculture and the way of life in the Klamath Basin and elsewhere in Northern California,’ [U.S. Rep. Wally Herger] said in a press release” (ibid., 1-2 of download). U.S. Rep. Mike Thompson [sponsor of legislation focusing on the Lower Basin] said the report said what many experts have been saying all along – that the Klamath River needs immediate restoration (ibid.).

In summary, then, on the science front, even though the Project water users might say that they had not changed the ESA, even though they continued to complain that they did not receive a guarantee of water delivery, I would argue that, thanks to a national public response to the 2001
water shutoff and political attention in Congress and the Administration, as well as thanks to the anointing of the NAS Interim Report as The Truth, they had changed how federal agencies in the watershed implemented the ESA, and that definitely inured to their benefit.

Where, in the 2001 BOs, the tribes (and thus by extension the fish and the fishers) had trumped the Project, in the 2002 BOs, the Project trumped the tribes (and thus by extension the fish and the fishers). Not only did the NAS Interim Report validate lower lake levels and lower river flows, which translated into more water for the Project, but the fulfillment of tribal trust rights was reduced from water off the top to water that had to be either scraped together through conservation or outright paid for.

When the world turned upside down for the Project water users in April 2001 with the unprecedented water shutoff, they were able to get a national response to their tragedy that generated public outrage and political action – protests got national media attention, hearings were held, laws were passed; they were able to rework the scientific foundation of federal agency actions such that it favored them; they were able to get money; and they moved up to first place in the pecking order for water.

When the world turned upside down for the Lower Basin tribes and fishers in September 2002 with the unprecedented fish kill, there was no national response to their tragedy, protests went unheeded, no hearings were held, no laws were passed, science that challenged the scientific foundation of federal agency actions was dismissed, they got no money, and they slipped from first place to last place in the pecking order for water.

Interestingly, however, the seeds of change were planted on the science front. On one hand, for example, while the NAS Final Report concluded that the NMFS 2002 BO met the scientific standard and the management standard, the PCFFA litigation track that started in 2002 found, by the time of the decision in 2006, that everything in the NMFS 2002 BO failed the legal standard, except the river flows that were based on the draft Hardy Phase II report (PCFFA II, PCFFA IV, PCFFA V, PCFFA VI, PCFFA VII). In addition, while the NAS Final Report commended the inter-agency coordination, a NMFS whistleblower contended that the NMFS 2002 BO was the product of inappropriate political influence that overruled the conclusions of agency biologists that the BO as written would jeopardize the coho (Kelly 2002). Or in other words, The Truth was dethroned, at least as far as the NMFS BO was concerned.

And on the other hand, science and management began to reach out to each other to try to figure out how to collaborate rather than compete – about which I shall deal in detail in the section on the Increasing Track.
Odds and ends – KPOPs, ONRC, CIP, and FERC

KPOPs, Water Year Types, and Water Banks. At the heart of a deluge of details is the script of an annual drama. Set in the context of not enough water to make everybody happy, the script is an annual Tug-of-War over who gets how much when. Nobody is happy with the script or the parts they play. Whenever BOR announces and/or changes the water year type, We say We won’t get enough and They will get too much. Whenever BOR announces the year’s water bank, We say that We are not happy with a water bank as a permanent solution. Whenever BOR announces how much water will flow downriver and/or how much water will stay in the lake, We say it’s not enough and They say it’s too much. We say the science proves We should get such and such amount of water, and They say the science proves They should get such and such amount of water. When someone goes to court, both We and They hold our breaths, waiting for the day when the world may turn upside down.

Rippling through the annual enactment of this script, wearing on the minds and hearts and souls of everyone throughout the watershed, is the anxiety of living with constant uncertainty.

For Ty Kliwer, a Basin farmer, the uneasy feeling in his gut is all too familiar. ‘You feel like you live with a gun pointed to your head all the time and you pray to God there is not a bullet in the chamber,’ he said. ... ‘You have to be fearful, but at the same time you have to do your best to move forward,’ Kliwer said. (Darling 2003c, 1 of download)

Change a few nouns here and there, and the words could have been spoken by a fisher, by a member of a tribe, by anybody whose way of life was indissolubly linked to the waters of the Klamath watershed.

Oregon Natural Resources Council (ONRC). ONRC rode into 2002 riding the same litigation horse they had ridden in prior years. They began by filing suit against BOR for pesticide use in the Klamath Project. When the decision in ONRC v. Keys was rendered in 2004, because BOR was set to reinitiate consultation with FWS about the pesticides, the case was stayed pending the reinitiation. Also in 2002, ONRC and nine other environmental groups sued FWS once again seeking to end commercial farming on lease lands in the Tule Lake and Lower Klamath national wildlife refuges. In 2003, U.S. District Court Judge Garland Burrell ruled against the plaintiffs (Darling 2003e, 2003f). Also in 2003, ONRC filed intent to sue PacifiCorp about fish screens at the two old powerhouses at Upper Klamath Lake, but then held back from filing suit to see what PacifiCorp would do in its FERC application about decommissioning the powerhouses (Darling 2004a).
Clearly, the litigation no longer had the clout that it had had in the past. What they continued to be really good at was sowing discord.

In 2003, KWUA disseminated a report on the environmental restoration and water conservation projects they have done. In response, Wendell Wood, ONRC, spoke demeaningly of the report. “We appreciate the landowner’s efforts, and what they do helps. But don’t deliver us a beat-up jalopy and say it is a Rolls Royce,” he said” (Darling 2003a, 2 of download).

Also in 2003, ONRC sent an 8-page “letter to Project farmers urging them to support a federal buyout of farmland or water rights. Reaction to the letter ranged from immediate dismissal to serious consideration” (Darling 2003b, 1 of download). Dan Keppen, KWUA, said that “many of the problems outlined by the ONRC in the letter...come from litigation the group is involved with. ‘It’s cruelly ironic that after spending (eight) pages describing the problems in the Basin, they fail to disclose that they are driving many problems themselves,’ he said” (ibid., 2 of download).

And in the Increasing Track, I will detail actions of ONRC that served to trigger a fear response in that sector of the private face of agriculture in the Upper Basin that believed that the Klamath Tribes wanted to keep all the water for themselves and to destroy agriculture – a fear response that would work to scuttle various attempts at problem-solving.

All in all, despite their continuing to be able to push buttons and sow discord, I just get the impression that ONRC had played out their hand. Yes, they kept up their usual tactics about the usual matters – leased lands, buyouts, pesticides, and demeaning language and unwillingness to collaborate – but I think many people had dismissed them to the status of an expensive persistent annoyance that did nothing to make anything better.

**CIP and FERC.** CIP and FERC were processes that were taking place during this period that did not make it to the forefront of people’s attention, but that were in many ways competing for the role of The Answer to which people would hitch their wagons.

- **The Conservation Implementation Program (CIP).** The 2002 NMFS BO had stipulated that a multi-agency task force be created in order to provide the remaining 43% of the BO’s Table 9 RPA flows for Phase III. BOR’s Christine Karas came in from Colorado on the heels of success in implementing a CIP there – with the expectation of repeating the success in the Klamath. Such would not be the case. From the first public meeting about the CIP on November 14, 2002 all the way through more meetings, a first draft issued in June 2003 and then a second draft issued in February 2004, not only did it become abundantly clear very quickly that what had worked in
Colorado would not work in the Klamath, but it was also clear that people did not leap to invest in the CIP as The Answer.

- **The FERC License Renewal.** PacifiCorp’s 50-year license will expire on February 28, 2006. The company will need to file an application for renewal with the Federal Energy Regulatory Commission (FERC) in February 2004.

  In preparation, in 2001, PacifiCorp started collecting comments from player groups throughout the watershed. In 2002, they began what would become nearly 200 meetings with stakeholders about issues (Barnard 2004c). On July 3, 2003, they filed a draft application for license renewal with FERC as well as sent it “out to about 200 groups and people, including counties, federal agencies, conservation groups, native American tribes and other stakeholders in the process” (Darling 2003h, 1 of download).

  The power rate contracts between PacifiCorp and BOR will also expire in 2006. “Currently, the water users pay 0.6 cents or 0.7 cents per kilowatt hour, depending which of two contracts they have. But the going rate for agriculture use is between 6 cents and 7 cents per kilowatt hour, and so irrigators face sharply higher rates once the contracts have expired” (ibid., 2 of download). KWUA plans to hire a consultant to help with the rate issue; they’ve tried to be part of the discussions between PacifiCorp and BOR, but have been rebuffed so far (ibid.).

  On February 25, 2004, PacifiCorp filed its final application for a new license for the Klamath Hydroelectric Project. If a decision is not reached by the expiration date of February 28, 2006, the current license will be extended in annual renewals until a decision is reached. “PacifiCorp faces two major tests in the licensing process: whether it must restore salmon to the upper basin, and whether it must improve Klamath River water quality” (Barnard 2004c, 1 of download). “Relicensing is a tremendous opportunity for bringing the project up to the environmental standards of today’s laws... But it’s real difficult. It depends on the willingness of the operator, it depends on the agency prescribing mandatory conditions, and it also means reconciling a lot of different competing interests for the same project” (ibid., 1 of download). The final application did not include anything about allowing salmon upstream. “Indian tribes, sport and commercial fishing groups, environmentalists and the state of Oregon are pressing for FERC to take a close look at restoring salmon upstream of the dams for the first time since 1917” (Barnard 2004b, 1 of download). “It will be up to NOAA Fisheries...to decide whether restoring salmon passage would be required for PacifiCorp to get a new to-year operating license” (ibid., 2 of download).
All in all, then, as these processes would play out after this period, the CIP would fade into oblivion while many would hitch their wagons to the FERC relicensing.

In summary, then, putting all the odds and ends together, the drama of KPOPs, water year types, and water banks played out annually while people lived their lives in seemingly unending uncertainty. While the legal hammer of ONRC seemed to have lost its clout, its mouth still sowed discord. And people were uninterested in taking up CIP as The Answer, and began to play with hitching their wagons to the FERC relicensing.

Politicos at the End

By the end of this period, the quest for a political *deus ex machina* had been abandoned. At the federal level, the President’s Working Group seems to have disappeared into the sunset, and vitriolic diatribes by politicians had slid from the norm to the outlier. As exemplar, the opening statements for the House Hearings on July 17, 2004 in Klamath Falls are a far cry from the hyperbole of the opening statements for the House Hearings on June 16, 2001 in Klamath Falls.

Rep. Greg Walden (OR-Rep): “There have been threats not only to the species, but obviously to the way of life of many in this basin. And yet, through all of this, there has been the sense of the need to try and work together, even in very difficult times and with very different agendas. The need to try to find solutions to a very complex problem that, while triggered by a decision involving the Endangered Species Act, had been coming for some time. And it will be some time before all the problems are resolved. But there is a spirit in this basin of trying to find solutions” (U.S. House 2004: Testimony of Hon. Greg Walden, 2).

1.2 The Track of Increasing Attempts to Mend the Tear in the Web of Relationships

The thing that I find most impressive about this Increasing Track is that it involves a brand new cast of characters. The Decreasing Track involved the usual suspects – PCFFA, ONRC, the various tribes, KWUA, BOR, NMFS, FWS, and so on. The Increasing Track involves much of the private face of player groups in the watershed doing new things as well as some of the obligato and the public face of player groups in the watershed doing new things – or old things in new ways. In other words, the Increasing Track is at a level of bottom-up even more grassroots than that of the player groups in the watershed.
January 2002 – June 2003: Slow Beginnings, as Different People Start Doing Different Things

The Upper Klamath Basin Working Group (UKBWG) Reaches Out. During the first half of 2002, the Working Group worked on finishing their restoration planning document with Jones & Stokes as well as did some preliminary investigation on submitting a grant proposal to the Oregon Watershed Enhancement Board (OWEB) for doing an Upper Basin watershed assessment. By August 2002, the Working Group had submitted the grant proposal to OWEB and had finished Crisis to Consensus – Restoration Planning for the Upper Klamath Basin. They decided that they wanted to hold a media event to roll-out the restoration plan to the public. For the Working Group, Crisis to Consensus expressed their determination “to send a message to all community members and elected officials that the Working Group had the skills, the faith, and the dedication to lead the way for positive changes in the management of lands and water in the Upper Basin” (UKBWG/Jones & Stokes 2002g, chapter 2, 2).

The media event was a big wake-up call, as public response to the August 21, 2002 media event was decidedly underwhelming, and the Working Group realized very quickly that, rather than looking to the public to come to them, they would have to go out to the public. It was “suggested that a couple of Working Group members attend each of these meetings and collect some information about each group while discussing the Restoration Planning process” (UKBWG 2002f, 4 of download).

At the January 16, 2003 meeting, before a big turnout of guests and public, the Working Group announced that the proposal to OWEB had been approved (UKBWG 2003a). The watershed assessment was seen as the first step in developing the Ecosystem Restoration Plan. Mark Stern, co-chair of UKBWG, and Mike Connelly, executive director of KBEF,12 the nonprofit arm of the Working Group, noted that the process needs to be driven from the ground up, as the issues will not be addressed from the top-down. Mike Connelly noted that an OWEB assessment involves the community in doing the assessment, so that there is both the social and the technical/scientific component.

In April 2003, the Working Group and KBEF signed a MOA to jointly administer the OWEB grant – and KBEF received the money from OWEB. From the first moments of talking about the project, the members of UKBWG and Mike Connelly, executive director of KBEF, stressed two things.

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12 Mike Connelly had become executive director of KBEF on September 16, 2002.
First, community involvement was key to the OWEB assessment model – “This means visiting specific field locations where conversations can be held about the issues as seen at those spots from different viewpoints. It is not a matter of convincing landowners of anything, but rather of sharing viewpoints to come to common conclusions” (UKBWG 2003f, 3-4 of download).

Second, finding common ground on the science involved was key to the assessment project. To that end, they started talking about starting a science advisory board. “Relative to the need for the tech advisory committee Mike [Connelly] would like to see a facilitator bring all the warring techies together for face-to-face discussions. He added that there is more than pure science involved – there are also social issues involved” (UKBWG 2003b, 5 of download). “Marshall Staunton...asked how a broad scientific buy-in from various groups could be developed in support of this study. Marshall suggested a process is needed that would involve all the group’s scientists so that the conclusions would be broadly supported” (UKBWG 2003c, 5 of download).

In addition, the Working Group started planning a two-day event for July 2003 in which people with vested interests in the Upper Basin – from environmentalists to federal officials to tribal members to landowners – would be invited to participate in a tour of properties throughout the Upper Basin on day one and in a conference on day two.

The Private Face of Upper Basin Agriculture. The private face of agriculture in the Upper Basin was anything but uniform.

The 2002 Farm Bill revealed a division within the agricultural community between those who supported a ‘willing seller’ opportunity and those who did not. A ‘willing sellers’ movement, involving the sale of project land and project water rights to the Federal government, had been backed by the owners of some 30,000 acres during the summer of 2001, but “[w]hen Bush made the statement that farmers will get water, that took the wind out of our sails. Now the mind-set is that things are going to go back to the way they were, but that’s not going to happen. ...Besides, this is about more than just us, the farmers. There are other people on the system that have real concerns – the tribes, the fishermen and downstream users” (Brazil 2002, 2-3 of download).

Opponents of the willing seller opportunity, predominantly KWUA, considered buyouts an unacceptable threat to the long-term well-being of agriculture in the Upper Basin. Arguments coalesced around the Wyden version of the Farm Bill which had a more expansive willing seller provision and the Walden version which had a more restricted provision.

When the Farm Bill was finally passed on May 13, 2002 in its extremely stripped down version, about fifty Klamath Basin landowners with a total of more than 25,000 acres of farmland accused
KWUA of undermining their interests by opposing the Wyden proposal that contained federal money that might have gone to farm buyouts (Milstein 2002L).

Another component within the private face of agriculture was that of the siege mentality that had exploded as the public face of agriculture during the chaos of 2001. Even though the siege mentality slid back into the private face of agriculture after the chaos, the fear that agriculture was going to be destroyed continued to fester undiminished, surfacing when triggered.

Yet another facet of the private face of agriculture was that of the Klamath Basin Rangeland Trust (KBRT). Begun in 2002 by folks from above Upper Klamath Lake, the organization declared that the “mission of the Klamath Basin Rangeland Trust is to restore and conserve the quality and quantity of water in Oregon’s Wood River Valley and the upper Klamath Basin to enhance the natural ecosystem and supply needed water for downstream agriculture, ranching, native fish and wildlife populations. More specifically, the Klamath Basin Rangeland Trust seeks to strengthen its cooperative partnership with private property owners and government agencies” (KBRT n.d.). In 2002, the irrigation water rights for 3,161 acres of pasture in the Wood River Valley were left instream – and KBRT began a pilot project with BOR to evaluate the effectiveness of their efforts (KBRT n.d.: Year 1-2002 projects). In 2003, the irrigation water rights for 8,882 acres of rangeland were left instream (KBRT n.d.: Year 2-2003 Projects).

While the President’s Working Group touted the work of KBRT as their accomplishment, not everybody loved what KBRT was doing. On October 1, 2003, the Klamath County Cattlemen’s Association sent a letter to the Klamath County Commissioners accusing KBRT of buying out water rights on pastureland for the benefit of KBRT, and as such threatening to dissolve their industry. They were opposed to “rampant, inequitable, reductions in irrigated acreages, including irrigated pasturelands, in the Klamath Basin” (Klamath Basin Crisis 2003a, 2 of download).

The Private Face of Environmentalism. The Nature Conservancy was the other one of the two local projects embraced by the President’s Working Group in April 2002. “The Nature Conservancy has separately agreed to stop diverting water onto wetlands-turned-farmland it acquired at the north end of Upper Klamath Lake. Instead it will let the water flow down the Williamson River and into the lake to benefit fish and other wildlife” (Milstein 2002e, 2 of download).

The American Land Conservancy (ALC) had originally attempted to reduce water demand through government buyouts of farmland from willing sellers, but the rancor of the Farm Bill debate convinced them that the administration would not support private land buyouts (UKBWG 2002e).
At that point, ALC modified its position to eliminate the idea of purchasing agricultural properties, to withdraw its support for stopping leaseland farming in the refuges, and to replace those with a plan to purchase some water rights while still requiring continuation of farming on those lands (UKBWG 2002e). But KWUA opposed the ALC plan – they want a less permanent water bank – and are drawing up their own water bank plan that depends on temporary idling of farmland when there is not enough water to go around, but only until more permanent solutions are found. By February 2003, plans had morphed to the proposal for ALC purchasing Barnes Ranch next to Agency Lake Ranch at the north end of Upper Klamath Lake, where “53,000 acre-feet of water could be stored for beneficial uses by combining Barnes Ranch and Agency Lake Ranch. Cost of acquisition of the 3,000 acre Barnes property is $9.1 million” (KRBFTF 2003a, 7). At the June 2003 quarterly meeting of KRBFTF, it was noted that nothing had been decided about the proposal, that Wyden supported it, but Walden didn’t, and that the lack of full congressional support threatened the project (KRBFTF 2003b).

In summary, then, over the period January 2002 through June 2003, almost under the radar, people were beginning to do things differently. The Working Group began to actively reach out to the public and to focus strongly on both the social and the scientific issues – to enable community involvement at the level of standing on the land itself and scientific collaboration that could have broad support across groups. The private faces of both environmentalism and agriculture developed new ways of decreasing water demand above Upper Klamath Lake. Of course, the fear was still there, as KWUA was fearful of the creation of a permanent water bank, and the Klamath County Cattlemen’s Association was fearful that irrigated agriculture in the Upper Basin would be destroyed by the actions of KBRT.

July 2003 – July 2004: Things Take Off Exponentially

As the use of mainstream conflict resolution practices dwindled, an increasing number of folks from throughout the watershed constructed an increasing number of opportunities for folks to reach out to each other across boundaries and weave a web of relationships.

The UKBWG Reaches Out to Folks Above Upper Klamath Lake. On July 16, 2003, the tour organized by the Working Group visited properties above Upper Klamath Lake, including Agency Lake Ranch, Barnes Ranch, and Tulana Farms. About seventy people with vested interests in the Basin – from environmentalists to federal officials to tribal members to land owners participated in the tour. “During the tour, they piled into two tour buses to see the different
properties firsthand. ...At each stop, the invited participants got to hear a spiel about what is or could be done on each property to help improve the water situation from those involved with the different projects” (Darling 2003i, 1 of download).

The next day, on July 17, 2003, the Working Group hosted a conference at Klamath County Fairgrounds where the [tour] participants met and went through mental drills to see if they could come up with some possible solutions for the Basin. In the end, few agreements were reached, but some gaps were bridged. ...Throughout the two days, people from all ends of the spectrum – from staunch conservative agriculturists to adamant liberal environmentalists – walked, talked and even ate together. Staunton said he hopes the two days will be a building block for a lasting cooperation among groups to make progress in reviving the Basin above, and below, Upper Klamath Lake. ...The major conclusion of the two days was that more information is needed before decisions can be made and the participants weren’t ready to come to any agreements on the projects. ...’I think we are going to have to circle back and have some collaborative science groups,’ [Stern] said. ‘I think that is what we have to have or else we will be polarized and not understand the issues.’ (Darling 2003i, 1-2 of download)

When the Working Group debriefed the two-day event at their August 21, 2003 meeting, they noted (1) that participants found the field trip particularly useful, especially the open conversations and the sharing of the love of the land that they all held in common; (2) that at the conference people felt comfortable enough to state their opinions and discuss the issues openly without getting polarized, but were uncomfortable with ranking proposals because they felt locked into positions by doing that; (3) that people realized they needed more information; and (4) that people were not able to come up with a ‘mutual gains’ solution with respect to a management strategy for Upper Klamath Lake (UKBWG 2003d; UKBWG 2003e).

The Private Face of Fishers and the Public Face of Agriculture Reach Out to Each Other. In his written testimony for the July 17, 2004 House Hearings in Klamath Falls, Ralph Brown, Curry County Commissioner, recounted the story about his talking with Rep. Walden who commented that Brown sounded like the Klamath farmers, yet the farmers and the fishermen were at each other’s throats all of the time. “We agreed that farmers and fishermen probably had more in common than we had differences if we ever sat down and talked, and got to know each other. He asked me to try to find a way to bring fishermen and farmers together” (U.S. House 2004: Testimony of Ralph Brown, 29). When he got home, there was a voicemail from Dan Keppen, KWUA, who had been called by Walden’s staff and told about the conversation between Brown and Walden. Brown and Keppen met in Klamath Falls shortly thereafter. “We agreed to try to hold a series of
meetings between the fishing and farming communities and see if we could establish communication such that our common interests could be established and perhaps allow a more rational discourse on our differences. ...We had several meetings” (ibid., 29).

The first meeting occurred on August 1, 2003.

Commissioners from Coos and Curry counties, and representatives of the fishing industry on Oregon’s south and California’s north coast, toured the Klamath Reclamation Project Friday at the invitation of Klamath Basin water users and Klamath County commissioners. ...‘There is a lot more to this project than most of us understood from the coast,’ said Ralph Brown, a Curry County commissioner. ...Paul Kirk, a former Humboldt County commissioner,...said there needs to be dialogue among the groups at the beginning and end of the Klamath River to understand each other’s situation. ‘The reason we wanted to do it is to look to solutions other than litigation and government involvement,’ he said. ...Kirk said the differences can be resolved outside the courtroom. He said fishermen and farmers both depend on resources to make their livings and can build a bond from that. ‘That is the common denominator – we are all small businessmen,’ he said. ...[Klamath County] Commissioner Steve West said people from the Basin and from the coast started identifying things in common. ‘They are producers, and we are producers,’ he said. ‘Our folks make our living off the land and they make theirs off the ocean.’ (Darling 2003j, 1-2 of download)

‘My feeling is the most influence we can have as a coalition is direct dialogue with the people in the upper basin, because they are who we are,’ said Kirk, a member of the Klamath Management Zone Fisheries Coalition... Once content to go it alone in the battles over irrigation water from the Klamath Reclamation Project, farmers are now looking to build ties with groups on the coast who share their frustration with federal regulations under the Endangered Species Act. And though farmers still don’t have many nice words to spare about Pacific [Coast] Federation of Fishermen’s Associations...,they are looking for other allies among fishing interests, even hosting a get-together between farmers and coastal interests this week. ...‘There are a lot of fishermen who don’t think their interests compete with the farmers. As resource users, we need to figure out how to work out these conflicts or end up in court. Court is a very uncertain solution.’ (Barnard 2003b, 1-2 of download)

On October 28, 2003, farmers, ranchers and elected officials from the Upper Basin toured fishing docks on the Southern Oregon and Northern California coasts.

‘We are not blaming the farmers up in the Klamath,’ said Ralph Brown, a Curry County commissioner. ‘We’ve all got a stake in it. We need to understand each other’s points of view and where they differ.’ About 40 from the Upper Basin and 40 from the coasts participated in the tour, which “highlighted changes as the economic foundations along the coast shift from resources to tourism.” (Darling 2003s, 1 of download)

[Jim] Whitsett [Brookings fisherman] called the tour ‘a good education for all of us. They can go back and say there are some human beings on the coast who depend on these fish.’ ...One lengthy discussion focused on U.S. Rep. Wally Herger’s pulling funding from a council some in the coastal group belonged to. During the conversations, the fishermen and officials backed away from the stances taken by the Pacific Coast Federation of Fishermen’s Associations in the
court, saying the group doesn’t represent Oregon fishermen. Elliot Schwarz of the Rural Resources Alliance, a Brookings-based resource advocacy group, said he was encouraged by the results of the discussions and the tour. ‘The beginnings of resolution are really apparent,’ he said. (ibid., 1-2 of download)

The third meeting of coastal fishers and Project water users occurred at a meeting of the Pacific Fisheries Management Council, where KWUA representatives met with the Management Council’s Habitat Committee (U.S. House 2004: Testimony of Hon. Ralph Brown).

In his written testimony for the July 2004 House Hearings, Ralph Brown wrote that

For me, the tour of the Water Project was enlightening. I left feeling that I had a much better understanding of the pride that the farmers felt in the project and a better understanding of their view of the history of the river. ...I hope that the tour of the fishing industry gave the farmers a similar understanding of the importance of the salmon fishery to us and gave them some feel of the hardship that we have already felt. ...I have found a great deal of interest among individuals in continuing these meetings and in continuing to expand the circle of participants. Until the circle of participants is expanded considerably, the meetings will not significantly change the debate over the condition of the river. Funding to continue these meetings has become a problem, and finding a group that has the trust of both the farmers and fishermen to organize and take the lead is challenging. I suspect that the Klamath Taskforce was intended to fulfill this niche, but for some reason this is not working. (U.S. House 2004: Testimony of Hon. Ralph Brown, 29-30)

The Klamath Tribes and Upper Basin Irrigators Reach Out to Each Other. On September 25, 2003, about a dozen Klamath Tribal members, a handful of irrigators from above Upper Klamath Lake and about 20 Project irrigators participated in a day-long tour of the Project.

Alan [sic] Foreman...called Thursday’s tour an historic event. Although there have been attempts by the different sides to come together before, he said the competing interests have a new sense of urgency because of recent events. ‘The outcome, if we don’t do it, will be terrible,’ he said. John Crawford, a Tulelake farmer, said he has been involved with such attempts to find common ground before, but he never has been as excited about the opportunities as much as he is right now. ... ‘I can see this opportunity is too great to let this opportunity go by the wayside,’ Crawford said. ...Foreman said the different sides have been brought together by their common concerns. The Tribes want to get their sucker fishery back, and the irrigators want to get a constant flow of water. ‘People are talking at a people-to-people level – recognizing that we all have similar concerns,’ Foreman said. (Darling 2003L, 1 of download)

Throughout the tour small talk brushed on big topics. ...It was in these ‘one-on-one’ conversations that Gary Wright, Tulelake Irrigation District board member, saw hope of finding a solution. He said Thursday was a great opportunity because it was a meeting of stakeholders, and not of outside interests. ‘I know irrigators are tired of what’s been going on the last 10 or 12 years – you look up and see nothing but litigation,’ he said. ‘We want to move away from that.’ Jeff Mitchell...said he saw Thursday’s tour as a good first step toward the the [sic] different sides
agreeing to coexist and recognize the value of each other. ‘I’m sick of the legal, short-term, political fixes that haven’t resulted in certainty for any of us,’ he said. He said when groups try to get things done in the courtroom it leads to a contentious community. ‘Right now I seem to sense in the Basin that all the major stakeholders recognize that if there is a time to resolve the problems, it is now,’ he said. Bouncing around dusty back roads of the Basin together in a bus, the members of the different groups shared jokes and stories, and got to know each other. Becky Hyde, a Sprague River rancher, said the tours will help break down barriers between the different groups and get people working together. ‘I just think this is what we have to do to have a future in the Basin,’ she said. ‘We have forgotten what it means to be a community.’ (Darling 2003L, 2 of download)

On October 17, 2003, the Klamath Tribes “gave irrigators from above and below UKL and the Klamath County Board of Commissioners a tour of forestland that used to be a part of their reservation” (Darling 2003p, 2 of download).

The Klamath Tribes...gave irrigators and others an idea of how they would manage the expansive strands of pine that cover the former reservation lands they hope to gain control of someday. Participants in the tours say they want to know the people and the issues of other parts of the Klamath Basin. ‘We really hope to connect the broken lines between us,’ Foreman said. Conversations were casual as people got to know each other during the all-day tour taken on a caravan of vans and other rigs. There was talk of family histories, favorite hunting spots and sports. But tensions grew when conversations turned to contentious issues, such as deer hunting practices and water use. Becky Hyde...said the different sides are learning to listen to each other and respect each others’ wants. ...She said the groups could file lawsuits against each other until they go broke, but that wouldn’t solve anything. (Darling 2003p, 1-3 of download)

On November 3, 2003, irrigators above Upper Klamath Lake along with folks from Klamath Basin Rangeland Trust showed Klamath Tribes and Project water users around their lands and issues. The tour was the third in a series set up by the groups... The series of tours has helped the different groups involved in the land and water situation get to know each other on a personal level and understand each others’ view on things. ‘There is a lot of misinformation out there and I think these tours are a way to dispel those myths,’ Foreman said. Keppen said the tour helped clear up preconceived notions groups outside the Sprague River Valley have about what is going on up there. He said he was impressed by the amount of restoration projects he saw. ...Becky Hyde...said the big message of the tour, which she helped organize with the Rangeland Trust, was that the irrigators in the Sprague River Valley want to keep on farming and ranching. ‘For our family, we just want to continue in agriculture for many years,’ she said. ...To get what they want, upper irrigators are going to have to listen to the other groups and make some concessions, Sanders [Sprague River rancher] said. ‘If we could all give a bit we could really fix this thing,’ he said. (Darling 2003t, 1-2 of download)

The Root-Thomas Meetings. The Root-Thomas meetings grew out of talks that the Klamath Basin Rangeland Trust had been having separately with various groups, during which Kurt Thomas
and Jim Root, board members of KBRT, realized that “there were many things that the groups could potentially agree on” (Darling 2003u, 2 of download). Root and Thomas felt that “the current political climate makes it possible for a solution to be found in the Basin, but it is going to have to be one that comes from the people involved and not one that comes from above. ‘They are not going to come fix it. They will send it to the court,’ he said. ‘We are trying to get it away from the courts’” (Darling 2003t, 2 of download).

The meetings were organized around a few principles: (1) they were completely unofficial and informal – they were not formal negotiations – there were no minutes taken (Darling 2003t); (2) they were small, numbering at the most 16 participants, “because it would have the best chance of getting something substantial done” (Darling 2003u, 1 of download); (3) they excluded those who would have been disruptive, who benefit from delays in the adjudication process, who want things to stay the same (Darling 2003dd-2); (4) they were closed to press and public (Darling 2004b); and (5) they purposefully chose not to deal with the past and feelings about the past – “One requirement is, don’t talk about 2001 or all the bad things that have happened. We need to keep an eye on the future,’ Thomas said. ‘This thing is how do you get a comprehensive, proactive solution in front of the leaders of our country’” (Darling 2003u, 2 of download).

The meetings were sufficiently well positioned politically to have Bill Bettenberg, director of the Interior Department’s office of policy analysis, come to a number of the meetings in 2003, not in order to make any specific proposals, but in order to “share information with the group that it couldn’t come up with on its own” (Darling 2003y, 1 of download). In particular, the group worked with a computer model that showed “how tweaking different elements throughout the Basin affects everything as a whole” (Darling 2003y, 1 of download).

The meetings ultimately came to naught, scuttled in the final reckoning, in my opinion, by two of their organizing principles: keeping it closed-door and not dealing with the past and emotions about the past.

The first four meetings were held in, by my calculations, September and October 2003. After the last meeting in October, Kurt Thomas wrote down twelve points that the twelve participants felt were pretty good ideas (Klamath Basin Crisis 2003b; Darling 2003u). Thomas delivered copies

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13 The twelve participants were Chuck Bacchi (Wood River Valley water user), John Crawford (Tulelake farmer), Allen Foreman (Klamath Tribes), Becky Hyde (Sprague River rancher), Dan Keppen (KWUA), Jeff Mitchell (Klamath Tribes), John Sanders (Sprague River irrigator), Dave Solom (KWUA & KID), Sid Staunton (Tulelake farmer), Kurt Thomas (KBRT), Doug Whitsett (Water For Life), and Gary Wright (Tulelake farmer) (Klamath Basin Crisis 2003c).
of the Twelve Point Plan to various organizations as well as to Klamath Basin Crisis for posting on their website.

The Twelve Point Plan was:

1. Restoration of upper basin rivers/streams
2. Restoration of Klamath River tributaries
3. Recovery of sucker populations
4. Improved government management of currently owned wetlands and refuges
5. Develop new water via long-term leases in upper basin above UKL
6. Develop new water through storage
7. Support funding for acquisition of willing sellers in Straits Drain area (KDO)
8. Declare Upper Klamath Basin fully appropriated exempting new storage filled by winter flows
9. Return historical tribal forestlands to tribes.
10. Transfer title of project to private landowners.
11. Achieve a water rights settlement, which will supercede the current adjudication process.
12. Provide certainty of water deliveries to Project Farmers (Klamath Basin Crisis 2003c).

On October 21, 2003, Becky Hyde, who had been involved in the Root-Thomas talks, organized a meeting at the Beatty Community Center so that everyone could get a chance to speak.

A meeting of Klamath Tribes members, irrigators and others that was called to discuss a possible new reservation on national forest land, started with talk about working together. About 15 minutes later, half of the crowd of about 250 people at the meeting walked out of the Beatty Community Center. Becky Hyde...asked for people to break into small groups and to tell their concerns to group leaders. Many didn’t want to do it. Terri Mander, who has a ranch on the Sprague River, led the revolt. ‘You are treating us like a bunch of children – it should be a forum in front of everyone,’ she said before heading out the door. ‘This would make no progress at all.’

The people who stayed discussed their concerns in individual groups for about two hours and then shared their lingering questions and realizations with the larger group. Many said they wanted to know what exactly has been discussed in the last couple of months [in the Root-Thomas meetings]... Hyde said she has been involved in the talks and set up the meeting so everyone could get a chance to speak. ‘The idea is to express our worst fears so we come to the best outcome.’ she said. She said many of those who left weren’t ready to face their fears yet. ‘The people who walked out needed to walk out,’ she said. ‘We had a purpose for the meeting, and we had to go on.’ Outside, a group of those who left huddled by a pickup. Mander said the event had been billed as a public meeting, but the format turned out to be more like a workshop. She said she wanted a meeting where all participants got to speak to the group as a whole. ...Bob Sanders, a Sprague River irrigator,...said many are concerned about how the Klamath Tribes will manage the forests if the federal government gives them the land. ‘People are scared,’ he said. ‘We are all scared, and that hasn’t been answered.’ Before many of the questions about the
future can be answered, the people involved need to get settled about the past, said John Elliott, Klamath County commissioner. He said the Tribes, loggers, irrigators, anyone who uses natural resources in the Klamath Basin, need to explain to the others how they got into the situations they are in. ‘We need to understand that we are all responsible for where we are,’ he said. To find an understanding of what to do next, people will need to come together and share their concerns, he said. ‘It transcends legislation, it transcends litigation – it’s getting back to what a handshake meant in the Old West,’ Elliott said. (Darling 2003q-1, 1-2 of download)

In essence, while, on the one hand, the unattended-to emotions exploded in Becky’s face, on the other hand, people were beginning to talk very differently about themselves and each other, about Us and Them, reaching out across boundaries, and trying to weave the web of relationships as a basis for conflict resolution.

The next Root-Thomas meeting was on November 7, 2003. Prior to this meeting, participants in the Root-Thomas talks also participated in the tours involving the Klamath Tribes and the Upper Basin irrigators. Bill Bettenberg attended this meeting. Members were finding the work a hard row to hoe. “After the second meeting, Thomas said he didn’t think there would be any more because the groups had so many differences. ...‘I think a solution exists,’ he said. ‘I think a solution will have everyone sharing some pain’” (Darling 2003u, 1-2 of download).

Bettenberg also attended the next meeting on November 17, 2003, at which the group continued to struggle with what they called water balance, given that everyone and everything was linked, and hoped to have some recommendations to share with the public after the next meeting. “‘There is an air of optimism – what appeared to be a confounded problem has potentially a lot of solutions attached to it,’ [Jim Root] said” (Darling 2003y, 1 of download).

By the next meeting on December 1, 2003, the genie had been let out of the bag – protesters picketed outside the meeting at the Shilo Inn. The possibility that the Klamath Tribes might get a reservation had triggered an uprising from the undercurrent of fear that continued to percolate throughout the Upper Basin. Couple this fear with the “secrecy” of the Root-Thomas meetings, and the conclusion was made that the Root-Thomas group was making a deal about the reservation behind their backs. And the protests began.

The protesters were not convinced by Dan Keppen’s assurances that the group was not talking about a reservation land deal, but rather was going over computer models provided by BOR, to see how tweaking things upstream affected things downstream (Darling 2003bb). They planned to protest the next meeting on December 12, 2003.
On December 12, 2003, five members of the Root-Thomas group met with the Klamath Falls Herald & News editorial board, a reporter and a photographer. They said that the group would soon unveil a set of four initiatives aimed at resolving longstanding conflicts: (1) a balance of uses for water, (2) ecosystem restoration, (3) settlement of adjudication, and (4) re-establishment of a reservation for the Klamath Tribes (Darling 2003bb).

They emphasized the group has focused primarily on striking a balance of demands for water in the Upper Klamath Basin. ... An agreement could bring a re-established reservation for the Klamath Tribes, restored habitat for endangered suckers and threatened coho salmon, and increased certainty of water deliveries for irrigators in the Klamath Reclamation Project, group members said Friday. ...Root said members of the group know they aren’t going to get everything they want, but most are willing to settle for something less in order to get what is most important. (Darling 2003dd-2, 1-2 of download)

In addition to talking about the likely proposal,

[the members of the group said they are feeling heat about the meetings not just from outside, but also from their own constituents. Keppen and Foreman both said members of their groups are uneasy about the meetings. ...All the members said they thought about walking away from the meetings at some point. But all have stayed, and plan to keep going until they get the initiatives done. ...Foreman said he hopes the group completes its work, and doesn’t fall apart because of conflict or premature criticism. ‘I mean, termination was a terrible tragedy, but this would be even worse,’ he said. ‘If those groups are allowed to tear this apart, then the whole Basin will suffer for years.’ (Darling 2003dd-2, 2-3 of download)

At the next meeting on January 19, 2004, the group¹⁴ still wasn’t able to finalize an initiative to go public with. They were still struggling with

water balance, or how the precious supply of Klamath Basin water should be divvied up between irrigators and federally protected suckers and salmon. The topic is not easy, said Becky Hyde... ‘This is hard, this is hard as hell,’ she said. To get a balance, irrigators from above and below Upper Klamath Lake will need to cut their water use to meet [sic] federal water level and streamflow requirements for suckers and salmon or try to get the government to change the requirements, Hyde said. ‘The problem with the water balance is we all have to share the pain,’ she said. And trying to figure out how much each group should cut is becoming a long process with gradual progress at each meeting, she said. ‘Everybody agrees that if something is going to help us as a whole then there are things we are going to give up,’ he said. In trying to find an

¹⁴ By the January 19, 2004 meeting, the roster of participants had grown to sixteen – eight of the original twelve plus an additional eight: Chuck Bacchi (Wood River Valley water user), Joe Browder (Klamath Tribes advisor from Washington, DC), John Crawford (Tulelake farmer), Larry Dunsmoor (Klamath Tribes biologist), Allen Foreman (Klamath Tribes chairman), Joe Hobbs (Klamath Tribes vice chairman), Becky Hyde (Sprague River rancher), Dan Keppen (KWUA), Chrysten Lambert (KBRT executive director), Jeff Mitchell (Klamath Tribes), Jim Popson (Upper Basin irrigator), Jim Root (KBRT board), Gerald Skelton (Klamath Tribes cultural director), Marshall Staunton (Tulelake farmer and UKBWG), Kurt Thomas (KBRT board), and Doug Whitsett (Water for Life president) (Darling 2004b).
overall solution and determine what each stakeholder will need to give up, the group is counting its progress in baby steps, Keppen said. (Darling 2004b, 1-2 of download)

I cannot pass up the opportunity to make note of the huge change in the language from 2001 when there was no shared awareness that there was pain to be shared – it was all about Our pain and making it go away – to 2003 when there is a shared awareness that there is pain to be shared. To my mind, it bespeaks a reaching out across boundaries, a reconceptualization of the relationship of Us and Them, a weaving of the web of relationships.

The next meeting on **February 17, 2004** still was unable to come up with a draft for public review and were clearly feeling the effect of the protests. Dan Keppen said that, until the Klamath Tribes came up with a reservation proposal that the community could accept, the Root-Thomas group may just be spinning its wheels (Darling 2004f).

An editorial in the *Herald & News* on March 15, 2004 augured the demise of the Root-Thomas talks. “The not-so-secret talks at the Shilo appear to be in trouble. ...The secrecy has proved troubling to both participants and the public” (Herald and News 2004, 1 of download). Inside, participants hadn’t yet been able to agree on how to divvy up the Basin’s water. Outside, the Basin Alliance was protesting the possibility of returning the Klamath reservation to the Tribes.

The promise of the Root-Thomas talks was that their political connections to the Bush administration would provide the clout for local interests and cover for the Congress and the White House. In other words, if we here in the Basin can agree on things, the government would make them happen. That’s still the imperative: Unless we can agree here, nobody from the outside is going to settle things. Even with a local agreement, the Basin is so divided that a settlement might not stick. But solutions imposed from outside are certain to fail, or take so long as to guarantee failure. (Herald and News 2004, 1 of download)

And in fact the Root-Thomas talks ended, the window of opportunity closed, scuttled by its own organizational parameters. While the choices to operate behind closed doors and to not deal with the past and the emotions about that past were made in a sincere and earnest attempt to sidestep problems that had been experienced in past attempts and to just engage in rational problem-solving, those closed doors plus those unattended-to emotions coalesced to trigger an explosion of protest from the undercurrent of fear that had festered unslaked in the Upper Basin and that served to scuttle the talks.

**The Klamath Tribes Forest Plan.** For quite a while, the Klamath Tribes had been developing “Plan for the Klamath Tribes’ Management of the Klamath Reservation Forest.” In September
2003, they submitted a draft for peer review. The response was quite positive. “The plan passes review with flying colors” (Johnson, Franklin, and Johnson 2008, Appendix E, 209). “The Klamath Forest Plan has potential to demonstrate a new model for restoration forestry on federal forestlands in addition to the reservation” (ibid., Appendix E, 213).

Before the Tribes could even take the ship out for a test run, it was torpedoed while still tied up to the dock. ONRC sent out a letter in October 2003 to the Upper Basin proposing that the Federal government should use private lands, rather than Forest Service lands, to restore reservation lands to Klamath Tribes. “Former Chairman Jeff Mitchell said he wished the ONRC had consulted the Tribes before issuing the proposal. ‘I just hope what we see isn’t a tactic that is going to be divisive between the Tribes and the landowners up here,’ he said” (Darling 2003m-2, 1 of download).

Unfortunately, the ONRC letter sowed exactly that discord, and the long-smoldering siege mentality roared to life. The Resource Conservancy, the organization representing most of the Upper Basin irrigators who did not get water from the Project, were outraged by ONRC’s letter — and they were at the same time not happy about the idea of the government giving 690,000 acres of national forest land to the Tribes. Ed Bartell, president of the Resource Conservancy, “said many landowners above the Basin are uneasy about the possibility of losing their land or their water rights as a result of a negotiation process they haven’t been privy to. ‘With all these proposals, no one seems to be discussing community,’ he said” (Darling 2003n, 1 of download).

Dan Keppen, KWUA, countered, saying that “the ONRC is trying to divide the groups involved in the water issue with its proposal. ‘They are very effective at generating turmoil within rural communities by pitting one interest group against another...’ he said. ‘Now they are attempting to divide the Upper Basin community through a buyout of private lands that would be returned to the tribes.’ He said the ONRC has done nothing but file lawsuits that clog the progress of negotiating a solution. ‘We have pretty much dismissed the ONRC as being able to help find a solution,’ Keppen said” (Darling 2003n, 2 of download).

Thrust into damage control mode, the Klamath Tribes reached out through the media and press releases to flatly reject the ONRC proposal (Darling 2003o; Klamath Tribes 2003a) and to clarify that, while they were not interested in a land for water rights deal, they were considering foregoing some of their water rights in exchange for a restored sucker fishery (Darling 2003o).

On November 10, 2003, the Klamath Tribes held the first of what would be many public meetings about the reservation proposal. About 125 people showed up at the meeting in Beatty, “[b]ut many who live near or within the 690,000 acres in question left the meeting saying their concerns weren’t addressed” (Darling 2003v, 1 of download). Bartell of the Resource Conservancy
accused the Tribes of trying to destroy the community. Jeff Wessel, rancher near Bly, said “both
groups were bringing up gripes about the past to hurl at each other during the meeting. ‘I know we
are all digging deep in our pockets to find stones to throw at each other,’ he said” (Darling 2003v, 2
of download). “Throughout the evening there were several heated moments, most coming from
debates about the past” (Darling 2003x, 1 of download).

Once again, unattended-to emotions about the past scuttled efforts in the present.

Two days later, the Klamath Tribes held a second meeting in Chiloquin, where about 90 people
showed up. “While the tribes tried to keep the meeting focused on the future and what they would
do with a reservation again, questions about the past and how they lost the reservation kept coming
up” (Darling 2003w, 2 of download). The tribal representatives said that “the Tribes will do the best
they can to address the concerns. ‘We are not going to fight with people, we are here to find
solutions to problems in the Basin,’ [Bennett] said. ‘But some people are not going to agree with you
no matter what you do’” (Darling 2003x, 2 of download). The Tribes provided a 32-point paper
addressing issues at the Chiloquin meeting, plus it was printed in the Herald & News alongside Dylan
Darling’s article on November 17, 2003.

But, as I said above, the genie was out of the bag. Given the ONRC letter plus the two meetings
held by the Klamath Tribes, it comes as no surprise that about 50 people protested outside the Root-
Thomas talks on December 1, 2003, wanting to be represented in discussions that they were
convinced were making a reservation land deal behind their backs.

Monday’s protest was organized by Lynn Bayona, president of the newly formed Alliance to Save
the Winema and Fremont Forest. ...Bayona said members of his alliance don’t like the secrecy of
the meetings, and are worried that a deal for the land might be made without the public getting a
chance to comment. ...Allen Foreman...said he was surprised by Monday’s protest... ‘It’s
unfortunate that someone is spreading poison throughout the community, and someone is
listening to it,’ he said. (Darling 2003aa, 1-2 of download)

On December 11, 2003, about 160 people attended a meeting of the newly formed Alliance to
Save the Winema and Fremont Forests. In a statement that clearly invoked memories of the glory
days of yesteryear, “Barbara Martin, a Klamath Falls real estate agent who helped organize protests at
the A Canal headgates in 2001, said the group might have to engage in civil disobedience to get
recognized. She said the picket lines should be a good start” (Darling 2003cc, 1 of download).15

15 One cannot help but think of Vamik Volkan’s chosen glory (Volkan 1997).
Parenthetically, it is interesting to note that some Klamath Tribes members were at the Alliance meeting. While some were taking notes for the Tribes’ next meeting on December 13, others were complaining about current tribal leadership (Darling 2003cc) – a revelation of internal division in the private face of the Klamath Tribes that I had not seen before.

On December 13, 2003, the Klamath Tribes held meeting number three about the reservation proposal, this time in Klamath Falls. About 150 people attended the meeting, including about 30 tribal members – and about 100 people from the Alliance protested outside. The crowd was mostly skeptical. “While the mood was tense at times, the meeting was orderly and concluded abruptly” (Darling 2003dd-1, 1 of download). Interestingly, once again, internal dissension within the private face of the Klamath Tribes emerged, as some tribal members questioned the tribal leadership during the meeting (Darling 2003dd-1).

The Klamath Tribes next held a series of meetings outside the Upper Basin: December 13th in Portland, OR; December 15th in Salem, OR; December 16th in Eugene, OR; and December 19th in Medford, OR. On December 16th, the Tribes released the Forest Management Plan, opening it up for review and public comment until January 20, 2004. “The focus of the plan is restoration, which will improve wildlife habitat as well as social and economic conditions for the Tribes and others in the Klamath Basin, Foreman said” (Darling 2003ee, 1 of download). Whatever legislation would authorize the implementation of the plan would require that the plan be followed for 100 years. In addition, the Tribes issued a press release in which they announced that they had decided to waive their sovereign immunity from lawsuits in order to encourage public participation in the forest management process (Klamath Tribes 2003b).

And then, perhaps blessedly so, silence. I found nothing else mentioned about the Forest Plan through the remainder of this period.

A Shift on the Science Front from Competition to Collaboration and Conferences. The Department of the Interior convened the Klamath Basin Science Workshop from February 3rd through February 6th, 2004. Over the course of the four days, 150-200 scientists, agency managers, state officials, and observers talked together about the data, studies, and research that drove resource management decisions in the Upper Klamath Basin (Darling 2004c). Steve Kandra, KWUA, “said scientists from the different agencies need to work together on reports so the science can be sorted out before decisions are made. They [sic] way things are now, each group comes out with competing reports, and then things have to be settled in a court room, he said. [In addition, he said that] lay
members can bring something else. ‘I think we have some personal experience that we can bring to the issue,’ he said” (Darling 2004c, 2 of download).

The scientists talked about how they could set priorities and coordinate their research efforts. “But getting the priorities set and facts in line will just be a start, because there will still be social, economical and political issues. ... ‘We need to be reminded that there are real consequences to the stuff we are trying to sort,’ Lynch [, USGS,] said” (Darling 2004d, 2 of download). Scientists acknowledged that the managers need information as quickly as possible, but they also stressed that scientists need to think about setting up research that will help scientists and managers in the future. “There will have to be communication among the researchers and managers to make it all work. ‘Better science is not going to be the answer for us, it is going to be part of the answer,’ [Wedge] Watkins [, BLM,] said” (Darling 2004e-2, 2 of download).

The spirit was catching – at their meeting on February 18-19, 2004, KRBFTF said that they wanted to hold a similar science conference that focused on Lower Basin issues. It was held in early June 2004, and, at the June 23-24, 2004 meeting of the KRBFTF, was declared to have been a great success (KRBFTF 2004).

February 23-24, 2004, UKBWG brought together a broad-based science panel to talk together about the critical science issue of Evapotranspiration (ET) in the Upper Basin. On the heels of this panel, Marshall Staunton at UKBWG suggested bringing together a broad-based scientific panel (like the one used in the ET workshop) to discuss the science involved in prospective restoration projects in the Upper Basin and to make recommendations to the Working Group (UKBWG 2004b). At the June 24, 2004 meeting of the UKBWG, it was reported that the Science Team that had been suggested during the April 22nd meeting was tentatively set to meet on July 21 and 22. KWUA had agreed to be at the table, even though they were skeptical and wary, and concerned that there be no more than one expert from any particular interest group (UKBWG 2004d).

**In summary, then,** by July 2004, there had been a clear shift away from competition towards collaboration on the science. It was acknowledged across the board that there needed to be communication and coordination among scientists, agency managers, state officials, and local stakeholders. Efforts were made to make this happen – but the efforts were localized in either the Upper or the Lower Basin and did not yet transcend the split.
The 5th Annual Klamath Watershed Conference: Communities, Resources & Restoration: Putting What We Know to Work: February 24-26, 2004. This conference, more than any of its predecessors, sought to reach across boundaries and weave a web of relationships throughout the Klamath watershed.

The Klamath Basin has been a region in conflict for well over a decade, with endangered fish, irrigated agriculture, recreation, timber, commercial fisheries and tribal economies all vying for the waters that fall and flow in this watershed. While there are many unresolved questions about what the problems and solutions are, there is also a world of opportunity for bringing diverse communities together, focusing on what we know and changing what we can. There is also a staggering amount of good work that has already been done, improving conditions and stewardship from the headwaters in Oregon to the California coast. During this gathering we will celebrate these accomplishments, and build upon them by encouraging broader awareness, participation, support and coordination. We will span geographic, disciplinary and cultural boundaries to integrate what we know about our unique watershed with what we know about communication, conflict and communities. (OSU Extension 2004, 1 of download)

One of the sponsors of the conference, UC Cooperative Extension, issued a press release with respect to the conference that clearly expressed the distancing from the mainstream conflict resolution practices of legislation and litigation, and the reaching out across boundaries to embrace community-based, watershed-wide solutions. “While I stress the importance of science, there is a growing recognition that solutions need to be community based. Science, legislation and court decisions are unlikely to yield solutions to the problem. It is important that grass roots, community efforts be made to come to solutions” (UC Cooperative Extension 2004, 1 of download) said Harry Carlson, UC Cooperative Extension farm adviser about the upcoming Klamath Watershed Conference. “On Feb. 26, the conference will be devoted to sharing success stories and exploring new, Klamath Basin-wide, community-based methods for crafting solutions to problems in the Klamath watershed” (ibid., 2 of download).

And Mike Connelly, KBEF, said that “[u]nlike other conferences, the watershed conference is not completely technical... He said the conference could help people understand how the technical processes will affect their communities and the resources they depend on. ‘A lot of us have come to see that it is not just science that we need to get to where we need to go,’ Connelly said. And, he said, the conference will give people from different sides of the water issues a chance to get to know each other” (Darling 2004g, 1 of download).

On Day One, presentations were made with respect to CIP, PacifiCorp’s FERC application, TMDL’s, the Klamath Basin Adjudication, KRBFTF, and the UKBWG/KBEF Watershed
Assessment project. On Day Two, presentations were made with respect to the physical environment and the human environment. County officials from Klamath County, Siskiyou County and Humboldt County gave an overview of their counties’ socio-economic vital statistics and issues. “Humboldt County Supervisor Jimmy Smith said...the issues of the upper, middle and lower basin are all connected, so people need to be aware of what others are going through” (Darling 2004h, 1 of download). And keynote speaker Elizabeth ‘Betsy’ Rieke from BOR made a plea to federal agencies to work in concert towards a common goal (Darling 2004h).

Day Three, as Carlson had said, was devoted to weaving the web of relationships from top to bottom of the watershed. Mike Connelly, KBEF, introduced the first session, by saying that “‘It’s the stories that connect the people to this place, that makes [sic] us care about and stick to the land. This territory is me and I’m it’” (Klamath Bucket Brigade 2003-2005c, 1 of download).16 He says that we keep looking “‘to science to give us the answers and we’re just not getting there’” (ibid., 1 of download). “What is it that connects us to the land? ‘We need to create places and spaces for people to get together and really talk about what the really important things are to each of us. We need to understand each other and the way we each understand the land. Meeting on the river bank and talking about the family, his daddy, that cave, that tree; the stories help us share information about each other’” (ibid., 1 of download).

The session Collaborative Communities was a sharing of “general information and analysis regarding the emergence of collaborative, community-based natural resource management in the American West over the last two decades” (ibid., 4 of download), and the session On-the-ground Accomplishments was a sharing of Upper and Lower Basin projects.

In the session People of the Watershed – Getting to meet and hear family histories, a Lower Basin rancher, a Klamath Tribal member, a Project homesteader, a retired river guide, and a cultural biologist for the Karuk tribe shared their family stories. Moderator Ron Hathaway concluded the session by saying, “‘Talk and talk and talk and talk until the talking starts. Go to meetings, just go to meetings – that’s the easy part. The really hard part is to step out of the comfort zone and really start to talk, get to know and trust others’” (ibid., 3 of download).

In a continuation of People of the Watershed, Bob Chadwick facilitated a session of small group conversation and personal stories.

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16 Copious notes were taken by Barb Hall of Klamath Bucket Brigade on Tuesday, Wednesday, and Thursday of the conference. The notes were posted on both the Klamath Bucket Brigade website and the Klamath Basin Crisis website.
Thursday about 50 of the [150] conference attendees shared stories with each other about what role their resources play in their lives. Huddled in circles of about 10 people, the kayaker told of the joys of tumbling down a Class V rapid, the rancher told of the beauty of looking out the window at pasture land each morning and the biologist talked about falling in love with the study site. Will Haring, program coordinator for the mid-Klamath Watershed Council, said the conference helped change his perception of farmers. ...Haring said he had a chance to talk to an 85-year-old rancher who said he knew the Basin better than anyone. But to him the Basin ends at Iron Gate Dam on the Klamath River just across the California-Oregon border. Through their conversation, Haring said he hopes the rancher learned as much about the lower reaches of the Klamath River as he did about the upper Basin. ‘It takes us educating each other as to what is on the other side of the fence,’ Haring said. Bob Chadwick...said the conference was about the people of the Basin and their connections to its resources more than it was about the resources themselves. ‘What this conference is designed around is that in the end the local people have to come up with the solutions,’ Chadwick said. ...Denise Buck, conference coordinator...said she hoped the event got people started on working together by first getting to know each other. ‘I think there were some barriers dropped, or at least pushed aside a bit,’ she said. (Darling 2004i, 1-2 of download)

**Watershed-wide Reaction to the Chadwick Workshop.** Gauging by the immediate and powerful response to the Chadwick workshop, the workshop tapped a hunger throughout the watershed. Up till now, in all the earnest efforts at reaching out across boundaries, emotions were recognized only in the in-between spaces – on the bus, over coffee, in the corridors – or not at all, as people moved quickly to rational problem-solving – only to have those attempts scuttled by upsurgings of the unattended-to emotions. Chadwick, for the first time, gave space and time and process to just attending to the emotions without moving on to rational problem-solving. It was a safe place to tell one’s story with all its pain and anguish and anger and hope – and to listen to other’s stories with all their pain and anguish and anger and hope.

On March 22, 2004, the *Herald & News* published an Op Ed piece by Jim and Stephanie Carpenter about their experience in the Chadwick workshop at the conference.

The good news is that more and more people are taking up the task [of allocating our water resources]. Conferences, seminars, groups, agencies, councils, clubs and committees meet more or less constantly in search of solutions. Most recently,...[w]hat stood out for us at this year’s [Klamath Watershed] conference was the Basinwide purview of the discussions – ridgetop to river mouth. Increasingly, the conferences are taking on a watershedwide scope, recognizing that the old paradigm of upper and lower Basin planning does not fit the natural model of interdependent river basin. For us, the most encouraging development of the conference has been the inclusion of an interactive element in the agenda. We are recognizing that solutions will not be just data-driven, even if wrapped in the best science, but will need to engage the community as well in the planning process. The facilitator was Bob Chadwick... Chadwick has a format that engages everyone in the dialogue. Sitting in small circles, everyone gets a chance to talk and everyone listens with no interruptions. The conversations start with brief self-introductions. Participant[s] then write down short statements of the worst and the best possible
outcomes they imagine for the Basin. The group then explores the common themes. The results demonstrate a vision for the Basin beyond conflict. The exercise shows how much more we have that unites us than divides us. The process is based on values. The common thread is quality of life. What worked so well for the conference attendees could be expanded to a Basinwide dialogue to establish the shared vision for this sense of place, the brand of quality lifestyle and values organized around a river.” (Carpenter 2004, 1-2 of download)

Alice Kilham, wearing her hat as Chair of the Klamath River Compact Commission, was so impressed with the Chadwick process that she committed the resources of the Commission to organizing a series of such workshops throughout the watershed. At the March 18, 2004 meeting of the UKBWG, she reported that a team and funding had already come together to plan a retreat facilitated by Chadwick, with 30-40 invited people, for 3 days, focusing on watershed level working groups (UKBWG 2004a). At the May 27, 2004 meeting of the Working Group, she reported that “[t]he team is also planning three more workshops across the basin. ...Alice has been working with various groups around the basin and encouraging participation. The only requirement of participants is that they listen with respect” (UKBWG 2004c, 3 of download). At the June 23-24, 2004 quarterly meeting, she urged people to attend the “Beyond Crisis to Consensus” Chadwick workshop July 14-16 in Somes Bar, CA. “The goal of the retreat is to find a common voice for this river basin in order to get funding and go forward with a united plan. The Commission is trying to do as much outreach as possible to humanize the river. Steven West added that Bob Chadwick, the facilitator for this workshop, has some great tools” (KRBFTF 2004, 4).

The ball was rolling.

**Testimony of Witnesses at the July 17, 2004 House Hearings in Klamath Falls.** While the hearings happened the day after the 1st Chadwick in Somes Bar, CA, the testimonies by witnesses provide me with a perfect measure of where people were at the inception of the Chadwicks, so I will include them here.

In his oral testimony, Ralph Brown, Curry County Commissioner – who had gotten the ball rolling for the tours involving fishers and farmers – urged everyone to pay more attention to the social part of the reason people do things. ...We’re all people here, and we all need consideration, and we’re all affected by this. I remember...a friend of my dad’s...sitting there staring into his coffee cup and he finally, in a very quiet voice that I'll never forget said, I don't know what to do anymore, I don't fit anywhere. ...Remember the people. If I could sit here for 5 minutes and just say that, remember the people, that's what I would do. ...I came over and met with farmers here...and I saw the same fear, and I saw the same anger that I see in Tribal people, that I see in people on the coast. We have to get together if we’re going to fix this. We can fix it. ...I'm glad Troy [Fletcher, Yurok Tribe] made the offer that he made [to
work with any and all]. I hope that the farmers will take him up on it, sit down, and start working cooperatively, because that’s the only way we’re going to fix this. (U.S. House 2004: Testimony of Ralph Brown, 27-28)

I am going to end with the written testimony of Marcia Armstrong, Siskiyou county supervisor. In all my readings, Marcia Armstrong has consistently emerged as an indefatigable advocate for the interest of Siskiyou county. From that perspective, I find her testimony particularly powerful.

Immediately prior to the Committee Hearing in Klamath Falls, I met in Somes Bar with a group of resource users, tribal representatives, agency folk and interested people from all over the Klamath River system. All spoke of their love of the land, their treasured life styles and traditions, and the poverty and regulatory impact that had been felt in their various small communities. The current ESA pits us against each other in a win/lose tug of war over resources. Each of us was tired to the bone of fighting. We were all searching for a way to join together in respect, to help all of our communities to thrive and allow our lifestyles and traditions to flourish. (Armstrong 2004, 3 of download)

2. The Player Groups and The Obligato

The Environmental Track

The public face of the environmental conflict track, through 2001, had been that of ONRC as the militant leader who lived at the extremes of conflict and “sued the bastards.” ONRC rode the same litigation horse into 2002, but as time passed, their litigation no longer had the clout that it had had in the past. They were not even invited to testify at the July 2004 House Hearings in Klamath Falls. What they continued to be really good at was sowing discord within Upper Basin agriculture.

The private face of a more moderate environmentalism in the watershed, through 2001, still continued to seek out opportunities for collaboration, though during the chaos of 2001, they had to live with being branded as being the same as ONRC and other radical environmental organizations. As time passed, however, the brand dissipated, and they reached out to span boundaries and to collaborate in efforts to create more water by reducing water demand.

In summary, then, the public face of a fading militant leader who could, however, still sow discord, came to be overshadowed by the private face of boundary-spanning collaboration.

The Coastal Salmon Fishing Track

The public face of the coastal salmon fishing conflict track came into 2001 as that of PCFFA as the militant leader who lived at the extremes of conflict and obeyed the mandate of “collaborate if we can, but we must win – and then we will assist the vanquished. During 2001, PCFFA escalated to using aggressive hostile language against the Project water users. PCFFA rode the same litigation
horse into 2002, but, as had been the case with ONRC, as time passed, their litigation no longer had
the clout that it had had in the past. And, again as with ONRC, they were not even invited to testify
at the July 2004 House Hearings in Klamath Falls.

The private face of enduring collaboration and boundary-spanning by the coastal salmon fishing
community, through 2001, still continued to seek out opportunities for collaboration, though during
the chaos of 2001, they had to live with being branded as being the same as PCFFA. As time passed,
not only did the brand pass, but individual coastal salmon fishers began not only to distance
themselves from PCFFA, but also to reach out on their own to Upper Basin agriculture to weave a
web of relationships.

In summary, then, the public face of a fading militant leader came to be overshadowed by the
private face of boundary-spanning collaboration.

The Siskiyou County Track

As we came out of 2000, the polarized public face of the Siskiyou track was frozen in place,
staring across a seemingly unbridgeable chasm at The Government, and overshadowing the private
face of The State of Jefferson which was wrestling with differences of opinion about actually
listening to boundary-spanning ideas.

In my readings with respect to 2001 through July 2004, I found nothing that would lead me to
change this configuration except for, most powerfully, the written testimony that Marcia Armstrong,
Siskiyou County Supervisor, submitted to the July 2004 House Hearings in Klamath Falls. In all my
readings, I have consistently found Armstrong, whatever the hat she was wearing at the time, to be
an indefatigable and aggressive advocate for the interest of Siskiyou County. As such, I found it
particularly meaningful that she expressed in this testimony a hunger for connection with others
throughout the watershed that was fed by her experience at the July 2004 Chadwick workshop at
Somes Bar, CA.

In summary, then, I would propose that the polarized public face of the Siskiyou track was
perhaps tempered by the boundary-spanning that had been sought by some portion of the private
face of the Siskiyou track.

The Tribal Nations Track

When we left 2000, the private face of the tribal nations expressed, in my opinion, the pain and
anger at the white man for more than a century of threat and betrayal – but it lived at home, if you
will, behind the public face of the tribal nations which was at one and the same time both eager to collaborate with anyone and alert to threat and ready to fight if they must. Through the chaos of 2001, the public face of the Upper Basin Klamath Tribes continued to both collaborate and fight as needed, but was wounded not only by accusations impugning their integrity but also by actual threats and violence leveled at them. As time passed, the public face of the tribal nations continued to both collaborate and fight as needed, but was wounded not only by the fish kill, but also by the lack of response to the fish kill, and by the public uproar about the reservation.

In other words, the pain and anger that had lived at home in the private face of the tribal nations when we left 2000 began to take its toll on the public face. In addition, the private face of the tribal nations had its own internal dissensions, what with the Klamath Tribes wrestling with tribal elections and the Lower Basin tribes tangled in the latest wranglings about the Hoopa Yurok Settlement Act and in the Westlands litigation about the Trinity River.

In summary, then, the public face of the tribal nations which continued to be at one and the same time both eager to collaborate with anyone and alert to threat and ready to fight if they must, albeit pained by the fish kill and the reservation, overshadowed a private face of a certain amount of internal concerns and dissension.

The Upper Basin Agriculture Track

The private face of siege mentality which had pushed aside the public face of collaboration that had come forward from 2000 to become the public face of Upper Basin agriculture in 2001, slid back to the private face of Upper Basin agriculture in 2002. The public face of Upper Basin agriculture which emerged in 2002 was initially one of what I will call contingent collaboration – angry and defensive about the events of 2001, We will collaborate if We receive absolute certainty of water delivery. As time passed, however, the public face of Upper Basin agriculture moved towards a collaboration that recognized that there was not enough water to go around, that no one was going to get all they wanted, and that all would have to share in the pain.

The private face of Upper Basin agriculture embraced differences within the community about what to do about their way of life – spanning from those whose fear and anger about the perceived threat to their way of life had fueled the siege mentality of 2001, through those who reached out across boundaries to individuals in other ways of life in the watershed, all the way over to those who had concluded that changes to the watershed and their way of life supported a willingness to sell their property or lease their water rights.
In summary, then, the public face of Upper Basin agriculture which reemerged as one of collaboration – initially defensive and angry, ultimately recognizing that all will share in the pain – overshadowed a private face embracing differences within the agricultural community ranging from siege to selling.

The Obligato of Science-Driven Boundary-Spanning Collaborative Efforts

As the last beats of 2000 had ticked down, there was no dearth of science, but now people were beginning to fight over whose science was the right science. In 2001, science became a full-fledged weapon, wielded by players in the fight for the survival of their ways of life. In the early days of 2002, it became all-out combat biology, in which player groups either drew blood or were bloodied. In the midst of all this, science itself was sorely wounded, its integrity impugned, its credibility trashed. Over time, as folks came to realize that science as weapon did not deliver the certainty they thought it would, everyone – player groups, science, management – began to move towards a boundary-spanning collaboration that involved everyone in producing science that had wide support.

As the last beats of 2000 had ticked down, there was no dearth of boundary-spanning collaborative effort, but none of the efforts at the level of the watershed as a whole was successful and none of the efforts of whatever scope was immune to the ravages of conflict escalation as contentious tactics ripped at the threads woven across boundaries. In 2001, boundary-spanning collaboration was sorely taxed, its weaknesses revealed, and those who called for building a watershed-wide identity and for weaving and mending a watershed-wide web of relationships were never successful in making it happen.

Starting in 2002, at the institutional level, the Working Group and the Task Force were both stressed with issues of existence and they both tried to position themselves with respect to federal funding, with no success. The Working Group ultimately let go of trying to dance with the Federal government, and instead started to reach out to build webs of relationship from the ground up throughout the Upper Basin by means of a watershed assessment funded by the State of Oregon. At the institutional level, however, there was obviously a lot of work yet to be done, as revealed by the question posed by the politicians at the July 2004 House Hearings in Klamath Falls asking whether there was a watershed-wide forum today to solve the problem, to which everyone, without discounting the work by existing groups, answered No.

At the individual and group level, however, starting mid 2003, boundary-spanning collaboration welled up well beyond the obligato as an increasing number of folks from throughout the watershed
walked away from the default mainstream conflict resolution practices and constructed an increasing number of opportunities for folks to get together, to weave a web of relationships from top to bottom of the watershed.

In summary, then, by July 2004, science-driven efforts had moved towards collaboration, and boundary-spanning collaborative efforts had expanded well beyond the obligato to become, in one way or another, the focus for all the players groups throughout the watershed.
Summary of Chapter Thirteen

Summary of the Track of Decreasing Use of the Practices of Mainstream Conflict Resolution

In with a bang. Out with a whimper. So I would characterize the track of the decreasing use of the practices of mainstream conflict resolution over the course of this period. All in all, when folks moved into 2002 out of the chaos of 2001, they continued as they had in 2001 to wield the tools from the toolbox of mainstream conflict resolution as weapons in a fight to make perceived threats to their ways of life go away. But, as time passed, people found that ultimately these weapons did not make those threats go away, and they began to pick them up less and less.

Litigation. In 2001 and before, litigation won turned worlds upside down, and ripped apart webs of relationship. In this period, litigation more often than not was not won by those who had taken it up, did not turn worlds upside down, but did continue to rip asunder webs of relationship, and did nothing to make anything better.

Adair III ripped asunder relationships between the Klamath Tribes and Upper Basin agriculture. The delisting litigations did not succeed in getting either the coho or the suckers delisted. The ONRC lawsuits were not won, but were a continuing annoyance to folks in the Upper Basin. The PCFFA track did not turn any worlds upside down – though, in a time frame much akin to the drip-drip-drip that after a millennium produced the Grand Canyon, ultimately would reject all but the Phase III flow levels of the 2002 NMFS BO.

Mediation. There was none. Mediation as a tool had been killed off during 2001 and no one picked it up again.

I mentioned in Chapter Twelve that Stephen Snyder and Lucy Moore (who had been the Dividing-The-Waters facilitators) had convened an assessment workshop in 2003 concerning the ADR and the Kandra mediations as well as other watershed negotiations, bringing together folks who had participated in either or both, either as stakeholders or as practitioners (Snyder 2003). It is interesting to note that, while the Klamath stakeholders still talked about the emotions that still ranked between them, the practitioners talked about tweaks that could be made to the procedures of mediation and negotiation. Strictly first-order changes. And while the question was raised about whether or not the mainstream negotiation process was culturally appropriate to tribes participating in the negotiations,
there was no question raised about whether or not the mainstream practices of mediation and negotiation were culturally appropriate to the non-Indians participating in them.

**Science.** As 2002 dawned, player groups were waiting with baited breath for the National Academy of Sciences to declare whose science was right and whose was wrong, and therefore who had the best weapon.

The conclusions of the NAS Interim Report were interpreted by the Project water users, their supporters, and many politicians as proof not only that the management decisions in the 2001 BOs were wrong and that the Project water users had been wronged, but also that the ESA was wrong. The NAS Interim Report was anointed as The Truth, not only as the best available science, but also as the *only* available science, and was used to rip the credibility of the biologists and the agencies to shreds and to trash all of their work as junk.

In the short-term, those who wielded The Truth as a political weapon enjoyed some success, getting FWS and NMFS to bend their knees in obeisance to The Truth, and effectively turning the pecking order on its head, moving the Project from last to first. However, in the longer-term, the weapon did not provide the Project water users with the absolute certainty of water delivery that they wanted, and it did not solve the problem of not enough water to go around. And it was not enough to persuade legislators to make changes to the ESA.

By the time the NAS Final Report came out, the Project water users declined to pick up the weapon, and chose instead to work with groups throughout the watershed on restoration (Darling 2003q-2). And ultimately The Truth was dethroned by the PCFFA track, which slowly but surely rescinded all but the only part of the NMFS 2002 BO that had *not* been based upon The Truth. In other words, the reign of science-as-political-weapon ultimately came to an end – and was replaced with a more collaborative take on science, as we shall see in the Increasing Track.

**Congressional and Public Hearings.** Hearings started out in 2002 as they had ended in 2001 – adversarial competitions for political support for whatever We wanted. People in the Upper Basin wanted a federal *deus ex machina*. Politicians wanted to gut the ESA. When the NAS Interim Report was anointed as The Truth, House Hearings in March 2002 and Senate Hearings in June 2002 wielded it as weapon to rake the agencies, their scientists, and the ESA over the coals.

By the time of the House Hearings in July 2004, however, things had changed. Politicians were still looking for ammunition with which to change the ESA, but their vitriolic diatribes had slid from the norm to the outlier and testimony from scientists was even-handed. And even though locals still fought for the opportunity to testify before the Hearing, their testimonies generally said that we have to look to ourselves for the solutions. As Dan Keppen, KWUA, expressed in his written testimony,
“We should do this together, and not wait for the government or outside interests to do it for us. It's the only way we can protect the economic livelihood of our communities” (Keppen 2004b, 4 of download).

Clearly, people were backing away from the toolbox of mainstream conflict resolution because it was not working for them. As this use was decreasing, there was a simultaneous increase in the attempts at conflict resolution as it was understood in the ethnoconflict theory and ethnopraxis of the Rural Middle Class/tribal nations – at defining the problem as a tear in the web of relationships and the solution as mending the tear in the web of relationships by means of the practices of reconciliation and collaboration.

**Summary of the Track of Increasing Attempts to Mend the Tear in the Web of Relationships**

Over the scant thirteen months from July 2003 through July 2004, there was an extraordinary upswelling of attempts to reach out across boundaries, to rewrite Us and Them, to weave the web of relationships as a basis for conflict resolution. It was accompanied by an expression of an explicit desire to move away from litigation and government involvement, be it legislation, agencies, or politicians – from the practices of mainstream conflict resolution – which they saw as having solved nothing and hurt many.

More and more, people spoke of how they were all interconnected, from the top to the bottom of the watershed, of how nobody was going to be able to get all they wanted, and of how everybody was going to have to share the pain. More and more, people spoke of community. To my mind, it doesn’t matter that some said that We have forgotten what it means to be a community, while some said that They are destroying the community – because, for both, “community” had become the topic of concern – not rights, rules, or interests, but the webs of relationship that connected everyone.

The attempts all tried to focus on rational problem-solving, only to find increasingly that the emotions about the past – the pain, the anguish, the anger felt by everyone throughout the watershed – only swelled up to scuttle those attempts. When the Chadwick workshop at the Klamath Watershed Conference in February 2004 provided a safe space to deal only with those emotions without having to move on to rational problem-solving – not only safe to be able to share My pain and anguish and anger and hope, but also safe to be able to listen to Your pain and anguish and anger and hope – it tapped a hunger throughout the watershed. By July 2004, plans and funds were in place for a series of four Chadwick workshops to be held throughout the watershed.
The ball was rolling.

**Summary of The Player Groups and The Obligato**

This period came in with folks still riding the horse of default to the adversarial practices of mainstream conflict resolution, still talking about themselves and others in the language of rules, with the boundaries still wide between Us and Them.

By July 2004, things had changed such that people were talking about themselves and others in the language of relationships, had narrowed the boundaries between Us and Them, and were reaching out to span those boundaries. They were letting go of the default to the adversarial practices of mainstream conflict resolution and were beginning to define the problem as a tear in the web of relationships and the solution as the mending of that tear in the web of relationships.

The watershed was primed for the Chadwick workshops.
Chapter Fourteen

Time Period: The Chadwick Workshops in 2004 and 2005

I am going to talk about the Chadwick workshops from two different perspectives. In this chapter, I am going to look at the Chadwick workshops from the outside in, and in Chapter Sixteen, I am going to look at the Chadwick workshops from the inside out.

With respect to the “outside in” perspective, at the end of Chapter Thirteen, I positioned the people of the watershed in the playing out of my overarching pattern as at the point of letting go of the default to the adversarial practices of mainstream conflict resolution and beginning to define the problem as a tear in the web of relationships and the solution as the mending of that tear in the web of relationships, but frustrated with failures to accomplish this through the use of the tool of problem-solving and primed for the Chadwick workshops. In this chapter, I want to look, first, at who registered to attend which workshop, then, at how people talked about themselves and others as they went into their participation in the workshops, and finally, at the impact of their participation in the workshops on what they said and did with respect to themselves and others.

With respect to the “inside out” perspective, in Chapter Sixteen, I will, first, look at the Chadwick process as it is implemented, then, look at the experience of the Chadwick process from the point of view of the participant, and, finally, discuss the appropriateness of the Chadwick process to the people and the situation in the Klamath.

1. Who Registered to Attend Which Chadwick Workshop

I registered to attend two of the five Chadwick workshops – Tulelake and Chiloquin. I also subscribed to the KlamathStakeholders Listserve which was born in March 2005. As such, I received from the KlamathStakeholders Listserve a list of all the people who had registered to participate in all the workshops. This list indicated each individual’s name, affiliation, and all the workshops that each individual had registered for.

I have found it interesting to see what this list might have to say about who registered to attend, but before sharing this, I want to state four caveats: (1) not all registrants necessarily attended or attended all three days of each workshop; (2) not all attendees were registered; (3) some registrants would categorize themselves in more than just the one affiliation that is listed, say, for example,
someone who considered themselves as simultaneously a rancher, a member of an environmental organization, and an agency representative; and (4) the groupings of affiliations that I have created are mine and mine alone – the list did not group affiliations in any way whatsoever.

Now that the caveats are out of the way –

In terms of total registered participants, there was a total of 178 registrants for all five workshops. Of those 178 registrants, 96 registrants registered for only one workshop, while 82 registrants registered for more than one workshop. The total registration for each workshop increased steadily from the first workshop in Somes Bar.

<table>
<thead>
<tr>
<th>Location</th>
<th>Dates</th>
<th>Location in watershed</th>
<th>Total Registered Attendance at each workshop</th>
<th>Registered Participants at each workshop</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Attendance</td>
<td>Attended only 1 workshop</td>
</tr>
<tr>
<td>Somes Bar, CA</td>
<td>July 14-16, 2004</td>
<td>Middle</td>
<td>40</td>
<td>8</td>
</tr>
<tr>
<td>Scott Valley, CA</td>
<td>Nov 10-12, 2004</td>
<td>Middle</td>
<td>42</td>
<td>11</td>
</tr>
<tr>
<td>Klamath, CA</td>
<td>Feb 2-4, 2005</td>
<td>Lower</td>
<td>72</td>
<td>27</td>
</tr>
<tr>
<td>Tulelake, CA</td>
<td>Mar 16-18, 2005</td>
<td>Lower Upper</td>
<td>90</td>
<td>24</td>
</tr>
<tr>
<td>Chiloquin, OR</td>
<td>June 28-30, 2005</td>
<td>Upper Upper</td>
<td>82</td>
<td>26</td>
</tr>
</tbody>
</table>

Source: Numbers of registrants assembled from the list of participants which was sent out in an email dated June 24, 2005 by Terry Morton to the KlamathStakeholders Listserv (copy available upon request).

<table>
<thead>
<tr>
<th>Location</th>
<th>Elected Officials</th>
<th>Federal Agencies</th>
<th>State/County Agencies</th>
<th>Environmental Organizations</th>
<th>Tribes</th>
<th>Project Agriculture</th>
<th>Non-Project Agriculture</th>
<th>Local Groups</th>
<th>Commercial Fishers</th>
<th>Concerned Citizens</th>
<th>University</th>
<th>PacifiCorp</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somes Bar, CA</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>10</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Scott Valley, CA</td>
<td>1</td>
<td>8</td>
<td>4</td>
<td>4</td>
<td></td>
<td>1</td>
<td>7</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Klamath, CA</td>
<td>7</td>
<td>6</td>
<td>4</td>
<td>20</td>
<td>1</td>
<td>3</td>
<td>10</td>
<td>10</td>
<td>2</td>
<td>8</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Tulelake, CA</td>
<td>3</td>
<td>19</td>
<td>5</td>
<td>3</td>
<td>15</td>
<td>10</td>
<td>6</td>
<td>11</td>
<td>2</td>
<td>8</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Chiloquin, OR</td>
<td>5</td>
<td>22</td>
<td>2</td>
<td>5</td>
<td>10</td>
<td>6</td>
<td>6</td>
<td>8</td>
<td>1</td>
<td>10</td>
<td>6</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Numbers assembled from the list of participants which was sent out in an email dated June 24, 2005 by Terry Morton to the KlamathStakeholders Listserv (copy available upon request).

Not surprisingly, many of the one-time-only registrants came from the geographic area surrounding the location of a particular workshop – not surprisingly because, on the one hand, the
local workshop was personally relevant, and on the other hand, the local workshop was personally reachable – travel in the Klamath watershed is a cumbersome and expensive chore and not everybody’s personal circumstances allowed them to travel to workshops located elsewhere in the watershed. What was interesting, though, was that the one-time-only registrants at each workshop were not clustered in just one affiliation group, but were spread across all the affiliation groups.

Also interestingly, if one looks at the grouping with the highest number of registrants at each workshop, the preponderance of those in that grouping were participants who attended more than one workshop. For example, the workshop at Klamath, CA, was held at the Yurok Tribe’s community center, yet only seven of the twenty registrants in the Tribes grouping were one-time-only registrants, while the remaining thirteen attended more than one workshop.

In terms of registrants from federal agencies, representatives of BOR and FWS attended all five workshops and representatives of NOAA (NMFS) and NRCS attended four of the workshops. For the first three workshops, five federal agencies were represented by twenty registrants; for the final two workshops, eight federal agencies were represented by forty-one registrants. Clearly, the federal agencies increasingly decided that attendance at the Chadwicks was something they saw as important to do.

In terms of registrants from state and county agencies, representatives of the California Department of Water Resources attended all five workshops and representatives of the California Department of Fish and Game attended four of the workshops. Other state and county agencies sent representatives when the location of the workshop was local to them.

In terms of elected officials, local officials attended as well as did representatives from the offices of Senator Wyden, Senator Smith, Representative Doolittle, Representative Herger, and Representative Walden, each one-time-only.

In terms of environmental organizations, representatives from The Nature Conservancy and Mount Shasta Audubon each attended four of the workshops. Others seemed to have sent representatives when the location of the workshop was local to them, though I cannot honestly speak for the reasoning behind the attendance of the representative from WaterWatch of Oregon at the Chiloquin workshop.

In terms of local groups, there was a sizeable list of local groups represented, and while there was a certain degree of attendance when the location of the workshop was local to them, that reasoning did not obtain across the board, as sometimes representatives of one local group attended workshops throughout the watershed.
In my opinion, if the workshops had come to have been seen as one-sided or favoring one group over another, I would expect the registrations to have come to cluster in one or more affiliation groups and to dwindle to nothing in others. Interestingly, this was not the case, as the spread of registrants across the range of affiliation groupings was maintained throughout all of the workshops.

**In summary, then,** I would conclude that, given the self-select nature of attendance at the workshops, the steady increase in the number of registered participants for each workshop, the large number of registrants who attended more than one workshop, and the spread of registrants across a wide range of affiliations throughout all the workshops cumulatively serve as testament to the reputation that the Chadwick workshops had earned throughout the watershed as a place where folks from all ways of life in the watershed felt that Our story would be heard and where We felt it was safe to hear Their story and to talk together.

2. How People Talked About Themselves and Others as They Went into Their Participation in the Chadwick Workshops.

Without going into a full exploration of the Chadwick process – that will be subject matter in Chapter Sixteen – I will just say here that one of the very first things that Chadwick does in either the full circle or in small group circles is to have each person introduce themself, talk about their connection to the situation, express their expectations for the workshop, and their feelings about participating in the workshop.

Chadwick then asks each person to write down on a 3x5 card their answer to the question *What are the worst possible outcomes of spending three days in this workshop?* Each person would share their answer with the circle and then the 3x5 cards would be collected and transcribed verbatim into what Chadwick calls a “collective statement.”

And then Chadwick asks each person to write down on a 3x5 card their answer to the question *What are the best possible outcomes of spending three days in this workshop?* Each person would share their answer with the circle and then the 3x5 cards would be collected and transcribed verbatim into the collective statement.

I am going to take the answers to these two questions as written by the participants themselves and published verbatim in the collective statement for each workshop as the expression of how people were talking about themselves and others as they went into their participation in the Chadwick workshops.
I will preface this by recounting that the eloquence and nakedness of the words written by the participants has brought me to tears more than once and that the impact of these words is heightened exponentially when each speaks their words going around the circle.

2.1 Worst Possible Outcomes of the Workshop

In a nutshell, people said that it would be a waste of their time, that nothing would change, that trust would be lost or betrayed, that people would be afraid to talk about things, that understanding would not be gained, that what one said would be used against one, and that they would leave more entrenched and polarized, more drained and discouraged than when they came (Consensus Associates 2004a, 2004b, 2005a, 2005b, 2005c).

“This will be another waste of time Klamath Basin meeting!” (Consensus Associates 2004a [Somes Bar], 3). “That we sit here for three days and get nothing done! We don’t really have any results for this meeting and status quo is maintained. Another meeting – wasted life energy where we play victim-victim-victim” (Consensus Associates 2005a [Klamath], 3). “This is a waste of time. There is no forward progress on solutions to the water crisis in the basin. We are coming away not having learned anything” (Consensus Associates 2005c [Chiloquin], 3). “There is no progress and no accomplishment” (Consensus Associates 2004b [Scott Valley], 3). “People will be more angry than they were before, and I will have wasted my time” (Consensus Associates 2005b [Tulelake], 4). “The fighting continues, people don’t come together to solve the problem. That we go our separate ways with our own perspectives without some unified momentum to continue the process of communicating to solve the river’s problems, and we let a judge decide our fate” (Consensus Associates 2005a [Klamath], 4).

“We leave without building or increasing trust among members of the community, and that people leave discouraged without hope” (Consensus Associates 2005a [Klamath], 7). “We’ll have a loss of whatever trust we have in one another and loss of trust in the process” (Consensus Associates 2004a [Somes Bar], 4). “There is diminished trust among participants” (Consensus Associates 2004b [Scott Valley], 4). “We slip back into distrust and anger” (Chiloquin). “That we betray the trust the Tribes have shown by joining this circle” (Consensus Associates 2005a [Klamath], 10).

“There is a loss of willingness to communicate” (Consensus Associates 2004b [Scott Valley], 4). “If we are not talking about the things we are afraid to talk about” (Consensus Associates 2005a

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1 Please refer forward to Chapter Sixteen for the explanation of the italicized words in the collective statement. Also be advised that the verbatim transcription preserves whatever grammatical errors may have been present in the original.
"We listen to, we hear each other's pain, but we do not feel it!" (Consensus Associates 2005b [Tulelake], 4).

"Information divulged will be used against Klamath Project Farmers" (Consensus Associates 2004a [Somes Bar], 4). "We will be open and honest to the agencies and groups who feel farmers should not be in the basin, and our facts and words will again be used against us" (Consensus Associates 2005b [Tulelake], 4).

"That people remain entrenched in adversarial relations with one another... status quo" (Consensus Associates 2005b [Tulelake], 6). "People become more entrenched and polarized” (Consensus Associates 2004a [Somes Bar], 4). "Worst possible outcome would be to become more polarized, retreat to positions and lose the opportunity to continue communicating and understanding each other's interests” (Consensus Associates 2005a [Klamath], 6). "That people who fear moving toward solutions, prevent this approach from working in our communities” (Consensus Associates 2004a [Somes Bar], 4). "My worst outcome is that people will continue to react from a fear-basis” (Consensus Associates 2005a [Klamath], 7).

"We will come out of it drained and discouraged” (Consensus Associates 2005c [Chiloquin], 6). "People will leave feeling overwhelmed and hopeless” (Consensus Associates 2004b [Scott Valley], 4).

The pain that exudes from these words is palpable.

2.2 Best Possible Outcomes of the Workshop

By contrast, the desire for gaining understanding, for building trust, for building relationships and friendships, for building community, for building a watershed-wide identity – indeed, the desire, the hunger to hope – leaps out of the words people wrote about the best outcomes they wanted for the workshop they were attending. I have tried to select the most representative statements to include below.

"There is a willingness for opponents to talk openly with respect. We gain a better understanding of others positions. We have increased understanding and insight about the complexity of people's concerns” (Consensus Associates 2004a [Somes Bar], 6). "There will be a commitment to positive communication. Each person will be able to honestly and completely express their thoughts, ideas and emotions, then put those aside and listen to everybody else’s. We will gain understanding and trust of group participants, understanding about individuals perspectives, a greater understanding of the concerns at the core of our conflict” (Consensus Associates 2004b [Scott Valley], 5). "Everybody
leaves here with a better understanding of each others needs and works for a common goal which is a healthy river and watershed” (Consensus Associates 2005a [Klamath], 12). “People leave here with a greater respect and understanding of each other. Everybody participating will have an unprecedented understanding in regards to basin wide issues. We come to a mutual understanding that we can all live with” (Consensus Associates 2005b [Tulelake], 9).

“We create enough trust within this group to overcome our fears of potential loss and sketch out a common vision for restoring the health of our communities, the salmon runs and the river” (Consensus Associates 2004a [Somes Bar], 6). “Trust is built among people attending and it is contagious” (Consensus Associates 2004b [Scott Valley], 6). “We build trust, and once and for all, we keep our word!” (Consensus Associates 2005a [Klamath], 12, underline in original). “That trust and respect among all are deepened and widened to a point where folks are ready to risk an action/commitment. Fear of others will diminish” (Consensus Associates 2005c [Chiloquin], 8).

“We are forging new friendships and strengthened bonds, new and enhanced community and working relationships” (Consensus Associates 2004b [Scott Valley], 7). “We come away with new friends and relationships and a solution that meets everyone needs” (Consensus Associates 2005a [Klamath], 15). “We are foraging new relationships that result in tangible, concrete actions that restore fisheries, allow farmers and ranchers to continue their way of life, and we are more responsible stewards of land and water” (Consensus Associates 2005b [Tulelake], 9). “We build new relationships and strengthen others. People develop relationships that foster understanding of alternative viewpoints” (Consensus Associates 2005c [Chiloquin], 8). “Opening this network of communication will lead to lasting basin friendships and initiatives that are successful and widely supported” (Consensus Associates 2005c [Chiloquin], 8).

“We create a sense of community where we naturally look out for each other” (Consensus Associates 2004a [Somes Bar], 7). “Healthy, vibrant fishermen, farmers and ranchers, fish and wildlife, tribal, business, communities and intergovernmental entities are created, starting here, and we continue to come together annually to support the above” (Consensus Associates 2005b [Tulelake], 10). “Communities will provide more support to each other. Common ground is recognized. We work together and find a solution” (Consensus Associates 2005c [Chiloquin], 8).

“That new friendships will transform our sense of community to include the entire watershed and all its human and non human creatures, and this will be the ground for our values, decision, policies and actions” (Consensus Associates 2005a [Klamath], 12). “We are able to effectively start the entire Basin moving towards shared goals that will assure sustainability in the human and natural environments” (Consensus Associates 2004a [Somes Bar], 7). “Community at a Basin level emerges”
In summary, then, when people went into the Chadwick workshops, they expressed the pain they felt about how things were, the fear they felt that things would stay the same or even get worse, and the hope they felt that things would get better. The depth of their pain, their fear, their hope was palpable in their written words, and gut-wrenching in their spoken words.

3. The Impact of Their Participation in the Chadwick Workshops on What They Said and Did with Respect to Themselves and Others

In this section, I am going to look at (1) how people talked about their long-term vision for the watershed as a whole as well as for individual ways of life within the watershed; (2) what people said to others about their experiences in the workshops; and (3) what people did as a result of their participation in the workshops.

3.1 How People Talked about Their Long-term Vision

At the Somes Bar, Tulelake, and Chiloquin workshops, participants wrote on 3x5 cards their vision of the Klamath Basin in twenty years. After having gone round the circle one by one with people sharing what they had written, these cards were collected and transcribed verbatim into the collective statement for each workshop. Again, I have tried to select the most representative statements from the collective statements to include below.

“The Klamath Basin is the model for diverse and sustainable resource based communities. The Klamath Basin now supports a diverse set of communities that through years of conflict over how to best use their resources came to the realization that the only way to create resolution was to become one community and look after each others basic human needs and livelihoods” (Consensus Associates 2004a [Somes Bar], 18).

“Klamath River Basin is a place of vibrant communities, in the midst of breathtaking natural resources where interdependent folk are drawn to place, generations are well connected, families supported by and nurtured by community. A true sense of community exists among the individuals and communities from the headwaters of the Sprague to the mouth of the Klamath” (Consensus Associates 2004a [Somes Bar], 19).
“People from diverse backgrounds spend time visiting with one another up and down the basin in rich friendship, continuing to learn from one another” (Consensus Associates 2004a [Somes Bar], 19).

“The Klamath River Basin Community... a small town with really long streets” (Consensus Associates 2005b [Tulelake], 24).

“A United Basin–from the headwaters to the ocean–with sustainable fishery, agriculture and recreational opportunities” (Consensus Associates 2005b [Tulelake], 22).

“Upper and lower basin people will continue to communicate face to face when issues and concerns arise” (Consensus Associates 2005b [Tulelake], 25).

“A healthy, functioning ecosystem with prospering communities, an example of how powerful and successful grassroots efforts can be” (Consensus Associates 2005b [Tulelake], 26).

“From the headwaters of the Sprague to the mouth of the Klamath the watershed has retained its rural character. The basin is a rural place where most people make their livelihood stewarding the ecosystem–land, waters, plants & creatures (including domestic), and doing so sufficiently it supports them and the economies of their communities” (Consensus Associates 2005b [Tulelake], 28).

“The entire Klamath River watershed is thriving, once endangered species are abundant, family farmers prosper, tribes and people thrive in their own preferred ways either on their native lands or living in towns and cities” (Consensus Associates 2005c [Chiloquin], 14).

“The whole watershed is one safe, prosperous, harmonious community with a vibrant ecosystem” (Consensus Associates 2005c [Chiloquin], 14).

“There is a basin wide sense of community such that visions, purposes and strategies always embrace the entire community and the entire watershed. People cooperatively solve each challenge without allowing any one group to suffer” (Consensus Associates 2005c [Chiloquin], 14).

“That residents of the basin are a true community. There is instant communication and support in time of need across the basin” (Consensus Associates 2005c [Chiloquin], 14).

At the Somes Bar and Chiloquin workshops, participants were divided into small groups. Each group was assigned a ‘stakeholder identity.’ Each person in each ‘stakeholder identity’ group was asked to write on 3x5 cards their vision for the stakeholder identity in twenty years. After having gone round the circle one by one with people sharing what they had written, these cards were collected and transcribed verbatim into the collective statement for each workshop. Again, I have tried to select the most representative statements from the collective statements to include below.

While some of the words may have been written by workshop participants who were actual
members of the ‘stakeholder identity’ and happened to be in the group that was assigned their ‘stakeholder identity,’ the majority of the words were written by people who were not members of that way of life. To me, this bespeaks both a willingness and an ability to stand in the shoes of the other – and, as such, serves as testament to the ability of the Chadwick workshops to create a place where people who had up till now been huddled together in preservation of Us now felt safe enough to stand in Their shoes and envision a future for Them.

**With respect to community,** “Community members are involved, caring; willing to contribute time and talents to each other and community, working cooperatively and collaboratively on community projects” (Consensus Associates 2004a [Somes Bar], 26). “People welcome one another and help one another. *They will be* helping individuals and families in need of emotional support and skills to be good parents, self-sufficient adults, good citizens and stewards of the land” (Consensus Associates 2004a [Somes Bar], 26). “All communities from the headwaters to the sea are thriving due to the abundant resources, prosperous agricultural, timber and fishing industries” (Consensus Associates 2005c [Chiloquin], 25). “Communities will remain small, rural country towns that are close knit and interconnected and supportive of each other” (Consensus Associates 2005c [Chiloquin], 25). “A rich sense of community and collaboration will exist due to partnerships that span the entire watershed” (Consensus Associates 2005c [Chiloquin], 25). “Communities are entities within a larger basin ‘community’” (Consensus Associates 2005c [Chiloquin], 25).

**With respect to the tribes,** “20 years from now, the Tribe’s culture is thriving along with a recovered fishery. Tribal people are living in prosperous counties where they manage resources cooperatively with other groups in a manner of mutual respect, trust, empowerment benefit, and friendship” (Consensus Associates 2004a [Somes Bar], 25). “The tribes exercises its sovereignty in a cohesive manner that benefits all its members and works in concert and harmony with the surrounding community and the larger society. Decisions are made that recognize and show respect for non tribal love of land and community and a whole community sense of place is developed” (Consensus Associates 2005c [Chiloquin], 23).

**With respect to ranchers and farmers,** “We have sustainable communities that highlight ranching and farming but also have healthy, anadromous fish runs and other healthy resources that can be used free of guilt or viewed by all those who wish to see nature and people at their best” (Consensus Associates 2004a [Somes Bar], 27). “*We will be* great friends with old adversaries” (Consensus Associates 2004a [Somes Bar], 27). “*We create a* healthy habitat for people, animals and plants, harmony, a prosperous welcoming world” (Consensus Associates 2005c [Chiloquin], 28). “We will take care of our land with respect and honor, and don’t over use it” (Consensus Associates 2005c [Chiloquin], 28).
2005c [Chiloquin], 28).

**With respect to commercial fishers,** “The ocean salmon industry has a sustainably-sized (i.e. not large) fleet with a sustainable season because the Klamath, Trinity, E&L and Umpqua river basins are producing healthy salmon populations because the river basins have good integrated watershed plans that are being followed” (Consensus Associates 2004a [Somes Bar], 26). “The commercial fisherman will form a working culture with the tribes for fish in the Klamath Basin. We will cherish our neighbors (agricultural, tribal and conservation) for the work we have done together. We have creative, adaptive problem solving skills” (Consensus Associates 2005c [Chiloquin], 22).

**With respect to the agencies,** “Agency people are connected to community, and have developed trust and listening relationships. They know that they perform work that is valued and supported. They are respectful of people’s local on-the-ground knowledge and experience and are respected for their expertise and big picture perspective on issues. They are able to pro-actively involve communities in developing integrative solutions before problems become crises” (Consensus Associates 2004a [Somes Bar], 26). “Agency folks move from current role of regulatory (doing to people) to a role of working with folks providing information and community services” (Consensus Associates 2005c [Chiloquin], 27).

**With respect to elected officials,** “Elected officials are provided community-based, collaborative, consensus-reached resolution to Basin issues that can be supported at all levels of elected officials - county/city/state/federal - that provides direction for management of the Basin’s resources” (Consensus Associates 2004a [Somes Bar], 28).

**With respect to environmentalists,** “By working together as a part of the community, and not just as entities with agendas, the environmentalists will achieve their goals of creating a sustainable watershed. The environmentalists will be more of a partnership with the people of the basin, helping with funding and on ground projects, outreach to other people and areas and use proactive solutions instead of litigation” (Consensus Associates 2005c [Chiloquin], 26). “The environmentalists will talk and walk side by side with all the communities in the Klamath. They have walked in our shoes and realize their extreme views and ideas cannot be forced upon the cultures and working class. Together they will find workable solutions that will allow both healthy communities and a healthy environment. People no longer see them as the enemy” (Consensus Associates 2005c [Chiloquin], 26).

To my mind, there seem to be two changes in conceptualization expressed in these visions: (1) a change in the conceptualization of one’s relationship to the environment – gone seems to be the old
mindset of masters manipulating the environment as a limitless commodity, and in its stead seems to be the mindset of stewards living in sustainable harmony with the environment; and (2) a change in the conceptualization of one’s relationship to one another – gone seems to be the old mindset of just preserving my way of life, and in its stead seems to be the mindset of creating a transcendent basin-wide identity that sustains all the various ways of life and the environment.

3.2 What People Said to Others about the Experience of the Workshops

I want to begin by offering a moment from my own experience in the Klamath. In January 2005, my APT partner and I went on a field trip to the Klamath. During our trip, we both took note of – and were extremely impressed by – the fact that people from the top to the bottom of the Basin knew of and trusted the Chadwick process. Clearly Chadwick was doing something that had earned people’s trust and respect. At the time, the only thing I knew about Bob Chadwick was that he was basically a local who had been a conflict resolution practitioner for a very long time. I knew then that I wanted to know more about him and his process, and to participate if at all possible.

What people said to others about their experience of the workshops revealed, to my mind, a sense that something different was happening, a willingness to trust, and a sense of hope.

At the November 18, 2004 UKBWG meeting, “Mark [Stern] commented that the Chadwick circle facilitated genuine and earnest exchange among individuals with very different perspectives. He found it difficult to identify forthcoming concrete actions although getting people talking is a good thing” (UKBWG 2004e, 2 of download). At the January 27, 2005 UKBWG meeting, “Alice Kilham explained that the Chadwick workshops are getting people talking to each other and training them in effective listening” (UKBWG 2005a, 2 of download). “Alice explained that the workshops came together in February of [2004] when some people decided to shift from a science orientation to a people orientation. ...The meetings open people’s heart by helping people to understand that they aren’t ‘the’ victim, but we are all victims of many circumstances. The only way to win is to figure it out together. ...They are trying to get people to feel that they are a grassroots effort that can get together and gain the attention of Congress with a much more human way of dealing with the issues. ...Mark Stern added that it’s a pretty eye-opening experience where barriers fall rapidly. ...Christine Karas [BOR] explained that she thought these kinds of efforts tended to be personally painful, but once participating she found it was well worth her time” (UKBWG 2005a, 3 of download).

A river and ocean with no salmon run. Barren fields without water or crops. The federal government making the final call. These are some of the worst fears of stakeholders and tribes involved with the Klamath water issues. About 60 people whose lives are intertwined with the issues scribbled such fears onto 3- by-5-inch cards and then one-by-one they told each other what they had written while gathered Thursday in a big circle at the Yurok Tribe Administration and Community Center. ...After fears of the worst, came thoughts of the best. A robust salmon fishery for tribes and fishermen. Water for every farmer. These are what the stakeholders want. Now to figure out how to get there. Many at the workshop said they had hope that it could be the way to find a solution all can agree on. ‘I think the compromises we reach will be difficult, but they will be palatable and honorable,’ said Ric Costales, a timber faller from the Scott Valley. ...He said the people at the workshop were being sincere. They were speaking from their hearts. ...With hugs and handshakes, crying and laughing, the workshop isn’t like a standard stakeholder meeting where the sides often become entrenched. ...Dave Bitts, a commercial fisherman from near Arcata, Calif., said he’s been to many meetings about the Klamath issue. The question remains what the results of the workshop will be. ‘It’s different than the stuff I’ve been to before, and what I’ve been to before hasn’t worked,’ he said. (Darling 2005a, 1-2 of download)

At the February 2005 quarterly meeting of the KRBFTF, “Irma Lagomarsino [NOAA (NMFS)] added that...she attended the conference with Bob Chadwick at the Yurok Headquarters and it was an intense, moving experience. There is another session in early March in Klamath Falls that she recommends people attend to witness the diverse groups coming together to listen to each other” (KRBFTF 2005, 1).

Bob Chadwick attended the February 24, 2005 meeting of the UKBWG and spoke at length.

Bob asked everyone to get as many reluctant people as possible to [the Tulelake] meeting. He advised that when they do, everything in the basin will shift in a good way. He added that there is an amazing lack of knowledge about the work going on in the Upper Basin. Tribal members expressed their new understanding that farmers appreciate the land as much as they and that upper basin farmers were trying to get more water for the salmon. People are getting to know and understand each other at the workshops. They are seeing a movement to improve the basin and this is leading to positive energy. ...Bob added that there is a hunger in the basin for a larger sense of community. Each group has asked that this sense of community be further developed. He stressed a key in the basin is that promises made must be promises kept. This has been a past failure that has led to problems across the basin. He explained that there is strong support for an overarching group where everyone can speak their piece. (UKBWG 2005b, 6-7 of download)

On March 7, 2005, Ric Costales, the timber faller from Scott Valley that Dylan Darling had quoted, wrote a Guest Op Ed piece for the Herald & News.

Chadwick works with groups to resolve conflicts by helping to ground them in the honesty, openness, humanity, inclusion and rationality that – had we begun this way – would probably have avoided much of the heartache we now find ourselves experiencing. During the past eight months, ‘Chadwick sessions,’ as they have become known, have enough momentum to offer a glimmer of hope to more than 100 Basin residents who have availed themselves of the
opportunity – farmers, ranchers, tribal members, fishermen, agency people and other concerned citizens. These sessions are being held at various locations throughout the Klamath watershed to seek out people who need to be heard on these matters. Yet, this demonstration of good faith is only as successful as those affected and motivated by events in our Basin make it. While in no way are these sessions empowered to dictate or enforce solutions, they nonetheless can inform and inspire those that do have these powers. Lacking such input these managers are operating ‘blind.’ It is up to us to help them see. (Costales 2005, 1 of download)

On March 19, 2005, the Klamath Basin Crisis website published its report on the Tulelake workshop on their website.

After several years of vicious press bites, devastating biological opinions, broken promises and distorted science, around 100 Yurok, Karuk, Hoopa, and Klamath tribal members, farmers and ranchers from the Klamath Project and Upper Basin, government agencies, students, biologists, facilitators, and environmentalists, met at Winema Lodge and the Tulelake fairgrounds March 15 through 18th. Unlike every other event with this configuration, there were no cops and only one attorney. ...Chadwick had everyone get in a circle and tell his idea of the worst possible outcome of these sessions. With that behind, each person was able to tell everyone what he wanted. And every stakeholder spoke as if his community depended upon every word he spoke. (Klamath Basin Crisis 2005a, 1 of download)

[F]or the first time in four years, decision-makers from the government agencies expressed that the people and communities are important, and the rural victims of their biological opinions and demands saw that these government people are human too. A graphic example of the water situation was when Chadwick had Troy Fletcher of the Yurok Tribe and Steve Cheyne, irrigator and biologist, each take a hand of Irma Lagomarsino, supervisor of the National Marine Fisheries Service field office in Arcata, California. ...She is in the middle of the scenario, being physically pulled in opposite directions. The hope of Chadwick is that Troy and Steve, minus Lagomarsino, will be the ones holding hands. They have a long, long way to go, but at least now they are talking. John Crawford, Klamath Basin farmer, said that he has been going to meetings for fifteen years and at this forum, he learned about other cultures and expressed what being a project farmer meant to him. ‘I thought that people heard here.’ Cattle rancher Bill Krum President of the Siskiyou RCD, said that for the first time, all of the people of the Klamath who depend on the river for their lives and livelihood are meeting together and communicating as a community. ‘We finally have the possibility of resolving the many issues we face together.’ ...Another Chadwick session is being planned at Chiloquin with the Klamath Tribes. No water certainty was offered to the irrigators, and no dams have been removed, but at least the stakeholders are talking and trying to fix this mess. (ibid., 4 of download)

On July 6, 2005, Vivian Helliwell, who had attended the Chiloquin workshop as a representative of coastal commercial salmon fishers, wrote an email to Terry Morton, one of the organizing team for the workshops, through the KlamathStakeholders Listserv.

I got a lot out of the conference, met good people. I realized that few fishing people knew about it, and some could have come because of the closure. Larry Collins and Barbara Emly, who had an article in the NYT recently, would certainly have given a more hard-core impression of
fishermen than I did. I have been grouchy and almost mean since I got home. Listening to people is hard work. My dog tried to kill one of our cats while I was gone. As Dave Bitts, one fisherman, said: ‘There is definitely something powerful going on (at the Chadwick conferences), but it is happening in a parallel universe.’ (Vivian Helliwell, July 6, 2005, email posted on KlamathStakeholders Listserve)

To hear people talking, something different was happening in the Klamath watershed. Not only was the ‘usual cast of characters’ saying different things, but people never heard from before were speaking out. There is nothing more bright than hope shared and, to my mind, the eyes of those whom I have quoted above were glowing with a hope shared watershed-wide.

3.3 What People Did as a Direct Result of the Chadwick Workshops

And it was not just talk. There was ‘walk’ as well. As a direct result of their participation in the Chadwick workshops, people reached out to connect with each other in ways they had never done before.

On March 1, 2005, the KlamathStakeholders Listserve was born, set up and maintained by the folks at OSU Extension. In an email on March 4, 2005 on the KlamathStakeholders Listserve, Terry Morton said that already over 300 people had asked to be on the mailing list. I have no idea how many more were added over the ensuing months. For the first time, here was a way for folks from throughout the watershed to communicate with one another.

At the Tulelake workshop, I remember it well – the moment when Troy Fletcher, executive director of the Yurok Tribe, proposed that, in the light of the projection of drought for 2005, there be a ‘ceasefire’ between all parties in the Basin and that people work together to deal with the repercussions of a drought should it actually come to pass. There was a palpable hushed feeling in the room, which I interpreted as ‘Did I just hear what I think I heard?’ Well, yes we had. Chadwick immediately folded this proposal into the workshop, tasking two small circles to explore the proposal of the ceasefire, and two other small circles to explore the proposal of the working together to manage the drought.

In the two small circles focusing on the ceasefire proposal, some of the Best Possible Outcomes that people wrote down were the following.

That trust will be built between the Klamath Project irrigators and the Yurok Tribe so we can take the next step to building durable, long term solutions. Rob [Crawford, KWUA] and Troy [Fletcher, Yurok Tribe] serve as a model for all of us that it is truly possible for former adversaries to eat fish and potatoes together and mend the fences that have kept us from the path to solution. We are ignited by their example to do the same mending of fences in our own
communities to make a real success. (Consensus Associates 2005 b [Tulelake], 34, bold in original)

**Not only is a cease fire declared, but both sides walk the talk.** We speak jointly in response to the realities of the drought, stand up for each other when one is attacked by other groups or interests, find ways to actively help each other deal with the pain caused by the drought. (ibid., 34, bold in original)

**There is a sense of connectedness.** A deeper understanding of exactly how the ecosystem is interdependent for people, river, species and therefore how to heal it (the Basin.) (ibid., 34, bold in original)

And in the two small circles focusing on ways to manage the 2005 drought, some of the Best Possible Outcomes that people wrote down were the following.

The entire basin will come together to work as one, to gain entire community support to use for political strength and power for immediate and long term planning and results for community improvements, water development, fish habitat and restorations. (ibid., 40, bold in original)

Farmers, tribes and environmental groups conspire and develop balanced, compromise plan to make it through the drought without lawyers. (ibid., 40, bold in original)

If a fish kill happens we show up immediately! (ibid., 40)

**Communities throughout the basin treat each other with respect and we make the best of the situation together.** Lower and upper basin resource groups come together before April 15th and agree on an equitable and reasonable share of all the available water which leads to further mutual understanding. (ibid., 40, bold in original)

It seems clear that folks at the workshop were, as one person wrote, “ignited by their example.”

One of Chadwick’s practices within a workshop was that, when someone had to leave before the workshop was finished, he had them go to the center of the full circle and do a closure with the group, and then had someone else from the circle join them and honor them for their participation. At the Tulelake workshop, Jeff Mitchell had to leave early to help the Klamath Tribes prepare for their annual C’waam ceremony. In his closure, Jeff pointedly invited everyone there to come not only to the ceremony but also to the Feed at the community center in Chiloquin and then to the PowWow at the Chiloquin high school. From what I understood at the time, this was the first time that people ‘got it’ that they were really invited. Heretofore they had dismissed such invitations, assuming that the invitations were perfunctory and they they weren’t really invited.
Parenthetically, I will add that I was but one of a number of folks from the workshop who took
him up on that invitation on Saturday and were treated to a wondrous experience.

Jeff also took the opportunity of his closure moment to treat us all to some storytelling. He
‘performed’ (my word; that’s all it can be called...!!) a story about ‘Indian crabs’ – he walked up and
down in the middle of the circle, one hand holding the mike, the other sometimes in his pocket,
sometimes gesturing. His gait was slow and easy and comfortable, as if he had been in this position
many times before. It was a very powerful story.

To summarize and kill all the character of the experience of hearing it: the non-Indian crabs kept
crawling out of the bucket and scattering all over the pier, while the Indian crabs stayed in the
bucket. When someone asked the Indian why his crabs stayed in his bucket, he said that whenever
one of the crabs tried to climb up and out of the bucket, the other crabs pulled him back in.

There was, to my mind, an audible gasp in the circle as everyone realized what he was saying,
how he was characterizing Indians. He then extrapolated to farmer crabs, to fishermen crabs, to
ranching crabs – and on through all of the groups involved in the Klamath conflict, noting how each
was reaching up and holding others in their group back. He hoped that the Chadwick process would
enable all the crabs to climb up and out of the bucket...!!

The power of storytelling – and Jeff was very good at it. I cannot imagine that Jeff would have
felt that any of the default conflict resolution events of the past years upon years would have invited
such storytelling. The Chadwick workshop created a safe place that invited the sharing of such a gift.
And what an unforgettable gift it was.

One more small thing that I noted at the Tulelake workshop. In the next chapter I will describe
in detail the ‘sorting’ process by means of which Chadwick created the small groups. As a result of
the process, the small groups were intended to contain one representative from each of the different
player groups within the watershed. What was interesting at the Tulelake workshop was that when
the small circles first assembled after the ‘sorting’ process was completed, there were some groups
that realized that they had more than one from one player group. On their own, the groups reached
out to each other to switch folks so that each group had one representative from each of the
different player groups. In other words, it was important to the participants that all perspectives be
heard in each group. I found this extremely telling. Rather than trying to surround themselves with
Us, they sought to reach across boundaries and surround themselves with Them. When had this
happened before?
After the Tulelake workshop, an email on the KlamathStakeholders Listserve said that “[a] group came together as a result of the March Klamath Stakeholders meeting in Tulelake to address a need for a basin wide communication tool, specifically a website. To keep the momentum going we are encouraging the use of a current site; www.Klamathgroup.org” (Denise Buck, March 31, 2005, email to KlamathStakeholders Listserve). A subsequent email on April 13, 2005 reported that the website had been renamed www.onebasin.org and was intended to be a place where information from throughout the Klamath River watershed could be shared (Denise Buck, April 13, 2005, email to KlamathStakeholders Listserve).

On June 10, 2005, a June 7, 2005 letter from Alice Kilham was disseminated on the KlamathStakeholders Listserve. Alice reaches out to all who have participated and will participate in the Chadwick workshops and have shared their hopes and needs in the collective statements and asks them all to determine if they are willing to continue to work together to make those Best Possible Outcomes come to pass.

For over ten years, I have believed that the only way to restore the Klamath River Watershed is through the cooperation of federal, state, county, and city Governments working with landowners and small sub-basin communities. …For the past year we have been holding Klamath Basin Stakeholder workshops facilitated by Bob Chadwick. My purpose in these workshops is to bring people together in a forum that is inclusive of all peoples in the Klamath River Basin, from the headwaters to the mouth, and even into the ocean. I want us to determine, as a Basin, what we want to have happen.

This month we will meet in Chiloquin, Oregon for the last of these workshops, on June 28-30. We will come together for two key purposes:
1. To provide the stakeholders in the “upper Upper Basin” (Fort Klamath, Chiloquin, Sprague River, Beatty, Bly) the opportunity to express their views of the present water situation;
2. To provide all participants an opportunity to determine if we want to continue our effort and move forward to make the outcomes we have identified happen.

In the previous workshops, we have expressed our hopes and needs for the Basin in short- and long-term purpose statements. The short term purposes we developed are presented in the attached document, an integrated statement of all our expressions during these four workshops. The statements will become more inclusive as we add the voices of the upper Upper Basin people. We have summarized the purposes into 15 key statements, and the remainder of the document shows all the supporting statements. We will integrate the views of the upper Upper Basin people at the next workshop.

I want you to review this summary and determine if you are willing to continue to work together to make these outcomes happen. We will be asked to respond to this on the last day of the workshop.
We will decide if we want to become action-oriented, making our purposes become reality. If we are willing, then we can set up inclusive groups of people to develop strategies for key issues we have identified during the workshops, moving this effort forward as a Greater Basin Community, committing ourselves to making our purposes happen. I will send these key issues to you in a separate document. The next step would be to present our plans and strategies to a Klamath Basin Stakeholder Forum (Congress/Conference) that we will develop sometime in early 2006. At that time we will begin to influence the legislative people to support our efforts with programs and funding.

The participation in these workshops has far exceeded my expectations. I am encouraged by your willingness to meet together, your commitment to listening with great respect to one another, and your dedication to moving in positive directions that will create a healthy Klamath Basin. We are already seeing evidence of having a positive impact on the situation, and I look forward to continuing to work together to realize a collective vision of the Klamath Basin. (Alice Kilham, June 10, 2005, email posted on KlamathStakeholders Listserve, bold in original)

I have included much from Alice’s email because she does a superb job of summing up where they are and challenging people to move forward, to ‘walk’ the ‘talk’ from the Chadwick workshops.

During the Tulelake workshop, many folks had talked about wanting to have a separate Chadwick workshop that would focus on Tribal Trust issues and responsibilities. After having attended both the Klamath and the Tulelake workshops, Ric Costales, Chairman of the Scott River Watershed Council, stepped forward to organize a Tribal Trust Workshop, stating, “‘As Tribal Trust evolves, people need to move beyond the superficial emotional level that currently forms their opinions and seek a better factual historical and legal knowledge concerning that obligation. The SRWC will serve its responsibilities well, both to its natural resource focus and the communities we serve, by dispelling the ignorance and hereby at least help temper the emotion”’ (Klamath Basin Crisis 2005b, 1 of download).

Held on June 18, 2005, the one-day workshop facilitated by Chadwick took as its purpose both building bridges and common ground between stakeholders and tribes, as well as using a better understanding of Tribal Trust to set the foundation for agreeing on a process to accomplish watershed-wide restoration goals (Klamath Basin Crisis 2005c).

At the Chiloquin workshop, there were Focus Area sign up sheets posted on the walls, inviting folks to sign up according to their interests. On September 22, 2005, a September 20, 2005 letter from Alice Kilham was disseminated on the KlamathStakeholders Listserve.

At the Chiloquin meeting in June, you affirmed your willingness to move ahead with fostering the purposes we developed during the workshop. You know we have scheduled the next workshop for November 1–3 at the Miners Inn in Yreka. That doesn’t mean we have to wait
until then to get started. Your advice to us at the end of the meeting indicated you wanted to move as quickly as possible.

Attached is the list of Focus Areas we had on the wall at the Chiloquin meeting. We want you to select the areas on which you would be willing to work. Directions are provided to do that. We want to start these committees working right away, at the November workshop, or earlier if we can.

Please do this in a timely way. We would like to have the committees identified before the end of this month.

The magnitude of work is daunting. But we have already done what some would consider impossible with our five workshops over the past year. Who would have ever imagined we would have accomplished that? I believe that by each of us chipping in, we can make achieve [sic] the purposes we have agreed are so important to the future of the Klamath Basin.

It is once again time to move ahead. Thank you for making it happen.” (Alice Kilham, September 22,2005, email posted on KlamathStakeholders Listserve)

On November 1-3, 2005, more than thirty people met at the Miner’s Inn in Yreka to take the next step (Klamath Basin Crisis 2005d). The agenda for the workshop was ambitious: (1) develop a structure for basin-wide decision making; (2) form smaller Focus Area subcommittees; (3) agree to a process for developing an Integrated Plan; and (4) develop a Klamath Basin “Conference” or “Congress” (Alice Kilham, September 22,2005, email posted on KlamathStakeholders Listserve, attachment).

And finally, on November 14-18, 2005, Bob Chadwick offered a session to train people in his process for collaboration, community building and consensus building. It was sponsored by the Klamath National Forest, the Fremont-Winema National Forest, Ore-Cal RCD, NOAA and BOR (Klamath Basin Crisis 2005d).

In summary, then, as a direct result of participation in the Chadwick workshops, people reached out not only to span boundaries, but also to move forward together to make real what they had envisioned together. From a website and a listserv for watershed-wide direct communication, from an invitation that people actually took up on to attend the Klamath Tribes’ c’waam ceremony, feed, and powwow, from taking it upon themselves to put together an additional workshop on Tribal Trust issues and responsibilities, to getting trained in the Chadwick process, to planning the next steps to move forward to make real the short-term and long-term purposes they had shared together, people reached out to connect with each other in ways they had never done before.
Summary of Chapter Fourteen

As people moved into the period of the Chadwick workshops, they were at the point of letting go of the default to the adversarial practices of mainstream conflict resolution and beginning to define the problem as a tear in the web of relationships and the solution as the mending of that tear in the web of relationships, but were frustrated with failures to accomplish this through the use of the tool of problem-solving.

Over the scant thirteen months from July 2003 through July 2004, there had been an extraordinary upswelling of attempts to reach out across boundaries, to rewrite Us and Them, to weave the web of relationships as a basis for conflict resolution. It had been accompanied by an expression of an explicit desire to move away from litigation and government involvement, be it legislation, agencies, or politicians – from the practices of mainstream conflict resolution – which they had seen as having solved nothing and hurt many.

More and more, people had spoken of how they were all interconnected, from the top to the bottom of the watershed, of how nobody was going to be able to get all they wanted, and of how everybody was going to have to share the pain. More and more, people had spoken of community.

The attempts had all tried to focus on rational problem-solving, only to find increasingly that the emotions about the past – the pain, the anguish, the anger felt by everyone throughout the watershed – had only swelled up to scuttle those attempts. When the Chadwick workshop at the Klamath Watershed Conference in February 2004 provided a safe space to deal only with those emotions without having to move on to rational problem-solving – not only safe to be able to share My pain and anguish and anger and hope, but also safe to be able to listen to Your pain and anguish and anger and hope – it had tapped a hunger throughout the watershed.

In the Chadwick workshops, Chadwick stated very explicitly that folks must determine the purpose they shared before they could move on to trying to solve problems. To determine the purpose they shared, they must share their pain and fears, and then their hopes and dreams. Drawing from this collection of statements, people would move towards writing together a consensus statement of their shared vision and the strategies and actions they wanted to take to achieve that shared vision.
Over the course of just twelve months – July 2004 through June 2005 – people from throughout the Klamath watershed participated in five regularly scheduled Chadwick workshops plus an additional Tribal Trust Chadwick workshop. By the end of these workshops, people were reconstructing the boundary between Us and Them, moving back from Our polarized characterization of Them to a more personalized characterization of Them and ratcheting Our tactics back to the light touch of working together; were communicating face-to-face with Them; were reaching across to build cross-boundary bonds – friendships and relationships – and to build trust based upon those friendships and relationships; and were constructing a sense of watershed-wide identity and shared vision which both We and They could support.

In terms of my frame of conflict transformation, the Chadwick workshops were the second-order change, the transformative event which enabled people to re-configure their interactions. The ceasefire proposal was the first re-configuration of interactions, the construction of a completely different way of interacting. And by immediately focusing on the ceasefire and giving people the opportunity to talk together about the ceasefire and what they would like to see happen, by invoking the shared vision that people had been writing together in the workshops, Chadwick tilted the construction of the new pattern of interactions towards watershed-wide realization of the shared vision.

Were the problems solved? Not at all. Were all on board? Not at all. But had things changed? Absolutely yes. People had changed for the better how they thought and felt about themselves and about each other and were taking steps together to build a basin-wide identity and construct a basin-wide shared vision, strategies and actions.

It will be extremely interesting to see how this second-order change rippled through the watershed after the workshops.
Chapter Fifteen

Time Period: From the Chadwick Workshops to “The Present”

First, a tiny preface.

Writing about this time period is an extraordinary experience, because, after having written for more than two years about “The Past,” I have quite literally caught up with the “The Present” and am writing today about things that happened just a few days ago. I did not start pulling together source materials for this period until late November 2009 – and discovered immediately not only that much had been happening since I had been there in 2005, but also that much was just about to happen. I counted the moments till the events happened. I downloaded news articles minutes after events had happened.

I also very quickly realized that I would have to draw a line. Given that “The Present” – i.e., Now – is forever, I had to stop somewhere. I decided that I would take February 18, 2010 as that line, for reasons that will be readily apparent below, and I did not start to organize this section until after that date.

Tiny preface finished.

Now, let me provide you with a couple of bookends to this period.

On March 17th, 2005, on Day 2 of the Tulelake Chadwick session, Troy Fletcher, executive director of the Yurok Tribe, proposed that, in the light of the projection of drought for 2005, there be a ‘ceasefire’ between all parties in the Basin and that people work together to deal with the repercussions of a drought should it actually come to pass.

On February 18, 2010, in Salem, OR, in culmination of the ‘working together’ that had started in May 2005, more than forty signatories, ranging from Oregon Governor Kulongoski, California Governor Schwarzenegger, Secretary of the Interior Salazar, federal and state agencies, and county governments, through tribes and local agricultural and fishing groups from throughout the

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2 The only additional information I will add will be how many more groups ultimately sign the two agreements within the 60-day window after February 18, 2010.
watershed, to environmental groups, signed the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement.

Connecting those bookends is a track of ‘working together’ from which emerged a sense of a watershed-wide identity, a sense of Us and Them. In this section, first, I want to look at the Settlement Group on the settlement track, from the “beginning” of this track in the Chadwick workshops to the changes in the character of what became the Settlement Group, at the changes in how people talked about themselves and others and at the changes in how people dealt with events surrounding the settlement track, as the strength of the watershed-wide identity increased.

Next I want to look at the two final agreements in terms of (1) what people had said during the Chadwick workshops that they had wanted such an agreement to be; and (2) the coordination arrangements spelled out in the final KBRA and how they had changed from the draft KBRA.

Then I want to look at the changes in the Player Groups and the Obligato, as well as the changes in the Tracks of the Tools of Conflict Resolution over this period.

And finally a couple of thoughts about what transpired in the period from the Chadwicks to “The Present” and about what, in my opinion, still needs to happen.

1. The Settlement Group on the Settlement Track
1.1 The “Beginning” of the Settlement Track in the Chadwick Workshops

When the Chadwick workshops began in July 2004, people were talking about themselves and others in the language of relationships, had narrowed the boundaries between Us and Them, and were reaching out to span those boundaries. They were letting go of the default to the adversarial practices of mainstream conflict resolution and were beginning to define the problem as a tear in the web of relationships and the solution as the mending of that tear in the web of relationships. But there was still no watershed-wide forum and repeatedly the emotions, the fears, the anger about the past rose up to scuttle attempts at boundary-spanning and rational problem-solving.

After 2002, there were several attempts to talk about resolving the problems, but they went nowhere: The wounds were too raw. Sometime in the fall of 2004, however – after the farmers lost several key legal fights – things started to change.

The Bureau of Reclamation had sponsored a series of several-day ‘listening sessions’ meant to initiate some kind of dialogue. It was a woo-woo, pass-the-talking-stick sort of deal that the farmers and Indians normally wouldn’t be caught dead at. ‘They were really painful,’ says Troy Fletcher. ‘It’s hard to sit through two days of ‘talk about your feelings,’ It really sucked.’ Yet as
long as any one of the warring parties attended the sessions and spoke out, none of the others could afford to stay home. (M. Jenkins 2008, 14)

When the Chadwick workshops provided a safe space to deal only with those emotions without having to move on to rational problem-solving – not only safe to be able to share My pain and anguish and anger and hope, but also safe to be able to listen to Your pain and anguish and anger and hope – it had tapped a hunger throughout the watershed.

By the end of these workshops in June 2005, people were re-constructing the boundary between Us and Them, moving back from Our polarized characterization of Them to a more personalized characterization of Them and ratcheting Our tactics back to the light touch of working together; were communicating face-to-face with Them; were reaching across to build cross-boundary bonds – friendships and relationships – and to build trust based upon those friendships and relationships; and were beginning to construct a sense of watershed-wide identity and shared vision which both We and They could support.

In the safe space of the workshops, participants repeatedly expressed a shared vision for a bottom-up, locally-driven, basin-wide integrated management and coordination plan that would restore the watershed from the top to the bottom and would position the government in service to the grassroots.

And in the safe space of the Tulelake workshop, on Day One, Rob Crawford, Project water user, and Troy Fletcher, executive director of the Yurok tribe, for perhaps the first time ever, spoke and listened to each other face to face rather than ‘talked at each other’ through the media.3 On Day Two, Troy Fletcher proposed that, in the light of the projection of drought for 2005, there be a ‘ceasefire’ between all parties in the Basin and that people work together to deal with the repercussions of a drought should it actually come to pass.

Then, in March 2005, at a listening session in the town of Tulelake, the microphone came around to Fletcher. For reasons he still struggles to fully explain, he took a deep breath and said: ‘I don’t know all the answers here, but I do know that what we’ve been doing just isn’t working. Let’s do a ceasefire and start trying to work on some stuff together.’ ...[T]hat moment signaled the first real thaw in relations. (M. Jenkins 2008, 14)

3 These observations are drawn from copious notes I compiled over the course of the three days of the Tulelake workshop.
1.2 May 2005 through November 2006

Events Within the Settlement Group

‘About a week or two later we set a meeting, where we brought Greg [Addington, then new executive director of KWUA] and a bunch of people down,’ says Fletcher. ‘And that’s where I think we really started zeroing in. Us and the Karuk kind of jointly reached out to these guys, and fumbled through a couple meetings.’

They met in a room at the back of the Karuk tribal housing office in Yreka and ‘spent about four hours hashing it out,’ [Leaf] Hillman [, the vice-chairman of the Karuk Tribe,] says. ‘We started laying stuff out there honestly, away from any audience, where we didn’t have to posture for the media. It was the first attempt to bring the tribes and the irrigators in a room by themselves, away from the spotlight, to say, ‘Look, we all are in bad shape here.” (M. Jenkins 2008, 14)

As it happened, negotiations over the dams’ future had just gotten under way at about the same time the Indians and farmers began talking. ...PaciﬁCorp, hoping to head off lawsuits, began gathering practically everyone who had a stake in the river to negotiate the terms and conditions of its new licenses. (M. Jenkins 2008, 14)

One might look at the roster of participants in the Settlement Group – the “practically everyone who had a stake in the river” – and say simply that the litigants left the courtroom and sat down to talk together. And it was not just the attorneys for each litigant group who sat down to talk together (as had been the case in the failed Kandra mediations); it was also ‘just folks’ from each litigant group who sat down to talk together.

Let’s look at the roster of litigants and amici curiae in the then ongoing Klamath Irrigation District v U.S. which had originally been filed in 2001.4 Of the fourteen Project irrigation districts listed as plaintiffs, thirteen participated in the Settlement Group. Defendant PCFFA participated in the Settlement Group. And, of the eight amici curiae, five participated at some point in the Settlement Group. Or, in other words, a total of nineteen of twenty-three of the litigants participated in the Settlement Group, fifteen throughout the course of the Settlement Track, and four (ONRC,5 Klamath Forest Alliance, WaterWatch of Oregon, and Northcoast Environmental Center) for some portion of the Settlement Track before separating from the track.

Let’s look at the roster of what I called the environmental collaboration that wielded the hammer of litigation so frequently and strongly in the Klamath watershed. Always in that collaboration were ONRC, PCFFA, and Institute for Fisheries Resources. Accompanying them, in varying assortments

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4 To refresh: plaintiffs were claiming takings of personal property and breach of contract – when BOR did not deliver water to Project in 2001.
5 In the Fall of 2006, ONRC changed its name to Oregon Wild. When I start talking about the playing out of the Settlement Track, I will change to using the name Oregon Wild.
depending upon the particular case, was a host of national as well as local environmental organizations. Five of the environmental collaboration (PCFFA, Institute for Fisheries Resources, American Rivers, Federation of FlyFishers, and Trout Unlimited) participated throughout the course of the Settlement Track, while four others (ONRC, Klamath Forest Alliance, WaterWatch of Oregon, and Northcoast Environmental Center) participated for some portion of the Settlement Track before separating from the track.

The Klamath Tribes, the Yurok Tribe, the Hoopa Valley Tribe, the Karuk Tribe, as well as KWUA had been involved in countless cases over the years. The Klamath Tribes, Yurok Tribe and Karuk Tribe as well as KWUA participated throughout the course of the Settlement Track, while the Hoopa Valley Tribe participated for some portion of the Settlement Track before separating from the track.

In other words, of the twenty-eight different litigants listed above, twenty-two of them participated throughout the Settlement Track and were listed as signatories on the final KBRA and KHSA documents, while six of them (ONRC, Klamath Forest Alliance, WaterWatch of Oregon, Northcoast Environmental Center, the Hoopa Valley Tribe, and one irrigation district) participated for some portion of the Settlement Track before separating from the track.

I don’t know when the policy was instituted, but ultimately it came to be that all of the participants in the Settlement Talks signed confidentiality agreements which precluded them from talking about the substance of the talks until, I believe, the final drafts were ultimately presented for signatures.

One of the first steps that the Settlement Group took was to exclude PacifiCorp from the Settlement Talks, asserting that they needed to talk among themselves before talking with PacifiCorp. Ultimately, the Settlement Group came to include

the Klamath farmers, the Yurok, Karuk, Hoopa and Klamath tribes; commercial salmon fishermen; several federal [and state] agencies; [county representatives] and a number of environmental groups... Throughout 2005, their representatives holed up in hotels in various towns in Northern California and southern Oregon to negotiate. (M. Jenkins 2008, 15)

The period from May 2005 through November 2006 was a pivotal period in terms of the transition from an Us versus Them mindset to an Us and Them mindset – or, in other words, the construction of a watershed-wide identity that transcended while still sustaining each individual identity.
At first, the talks focused narrowly on the dams’ licenses. But in the evenings, after negotiations ended for the day, Addington and Fletcher occasionally shared a beer in hotel bars and had what Addington refers to as ‘off-line conversations.’ In the beginning, they stuck to safe subjects, like their kids. But eventually, they edged back toward the conversation that began in the back room in Yreka.

In one sense, the early talks were a way to run through some of the rumor and rhetoric that dominated each side’s pronouncements in the wake of the water showdown. ‘I got to a point where I just trusted Troy, and I knew he wouldn’t be offended by me asking stupid questions,’ Addington says. (Exempli gratia, ‘Troy, are you sure that fish kill in 2002 wasn’t caused by meth-lab leakage somewhere down on your end of the river?’)

For Fletcher, it was a chance to remonstrate gently about the way the farmers had framed their plight. ‘You’re telling me how bad off you are, that you’re gonna go bankrupt,’ he says. ‘My people can’t afford to go bankrupt. If you wanna talk about the poorest of the poor, we’re gonna win that one, alright? So let’s just not go there.’

But the thaw had begun, and it was starting to reach all the way to Fletcher and Addington’s respective communities. ...[Farmers and Indians alike] felt that the time had come to break free of the see-sawing legal wars. (M. Jenkins 2008, 15-16)

One of the key issues for the Klamath farmers was that of power rates. Since enactment of the contract with PacifiCorp’s predecessor in 1956, the farmers had paid extremely low rates for power: On-Project $0.006/kWh, Off-Project $0.0075/kWh. When the 1956 contract expired on April 16, 2006, the Public Utilities Commissions of both California and Oregon would have the right to alter the power rate structure. The current rates being paid were more than ten times what the farmers had been paying.

On July 21, 2005, the Oregon state senate had passed Senate Bill 81 – sponsored by Oregon state Senator Doug Whitsett (R-Klamath Falls). It provided for rate mitigation over a period of seven years, when the Oregon PUC set the new rates after the expiration of the 1956 contract on April 16, 2006 (Oregon Legislative Administration Committee Services 2005).

On January 20, 2006, FERC denied the Interior Department’s 2005 petition that sought that any annual license to PacifiCorp would require that the power rates in the 1956 contract would continue in effect. FERC said that the 1956 contract went into effect because California’s and Oregon’s Public Utilities Commissions agreed to the power rate structure. FERC said that the power rates expired on April 16, 2006, hence any annual license would not include the terms of the 1956 contract beyond April 16, 2006. When the 1956 contract expired on April 16, 2006, California and Oregon had the right to alter the power rate structure.
Soon after, KWUA filed a lawsuit challenging FERC’s decision, but it would not be ultimately decided until July 25, 2008, so it did not do much to address the farmers’ concerns in 2006.6

That ‘brought the farmers face to face with imminent disaster,’ says [Leaf] Hillman [, Karuk Tribe]. ‘If you can’t switch on a pump and move water in the Upper Basin from point A to point B, you don’t have an irrigation project.’

A year earlier [i.e., 2004], that would have seemed a heaven-sent opportunity for the tribes to pound a stake through the farmers’ collective heart. Now, though, the Indians agreed to do something that appeared to border on self-destruction: help keep their old adversaries in business.

‘Nothing brings two people together like a common enemy,’ says Troy Fletcher – and both sides realized that ‘we had a common opponent through this FERC negotiation, and that was PacifiCorp.’

The farmers planned an appeal to the Oregon and California Public Utility Commissions to block the hike [which would go into effect 4/17/06 after the original 1956 Contract expired], and quietly made it known that they could use all the help they could get. And, [at a meeting that would have taken place before February 2006,] Hillman says, ‘Troy Fletcher and myself stood up after they made that plea and said very publicly, in front of God and everybody, ‘We acknowledge (the farmers’) right to exist in this basin.’ The Karuk and Yurok tribes agreed to support the farmers’ quest for rate relief.

That was a turning point – and it suddenly put many negotiators in an uneasy relationship with the people they represented. When they returned home from the meeting, Hillman says, ‘We kept it low profile. Our respective communities were still not very hip on this whole notion of holding hands with our enemies.’ (M. Jenkins 2008, 16)

But the farmers were not the only ones with a key issue. The tribes had their own key issue as well. For years, they had been advocating for the removal of the dams on the Klamath River, as key to the restoration of the salmon fishery.

But soon after, the Indians had to make their own ‘ask’ of the farmers: clearing the path for salmon to get all the way back up the river. ‘The basin is basically cut in half,’ says Hillman. ‘To restore runs, we need that untapped productivity that fish aren’t able to access anymore – all that spawning habitat’ beyond the dams. (M. Jenkins 2008, 16)

At a February 2006 meeting in Sacramento, federal fish and wildlife managers asked Addington about the farmers’ position on re-opening the upper river to salmon. When Addington said that the farmers would stand with the tribes, ‘they were like, ‘Holy shit,’’ Fletcher says. ‘You could hear their jaws drop on the table.’ (M. Jenkins 2008, 17)

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6 KWUA v. FERC, plus PacifiCorp as respondent, and Hoopa Valley Tribe, PCFFA, and Institute for Fisheries Resources as intervenors.

On February 21, 2006, this statement by Yurok Tribe Chairman Howard McConnell, Karuk Vice Chairman Leaf Hillman and Klamath Water Users Association Executive Director Greg Addington was published in full in The Oregonian in an ongoing column entitled In My Opinion. I cite at length below because it represents the first publicly visible sign of steps being taken towards the transformation from an Us versus Them mindset to an Us and Them mindset, towards the construction of a watershed-wide identity and the weaving of a watershed-wide web of relationships.

The Klamath Basin has become famous for conflict. Tribes, irrigators, environmentalists and others have all had victories and losses in the ongoing legal and administrative battles. Yet no one is better off. We think there is a better way. We’re committed to resolve our differences in a constructive way – to our mutual benefit – and we’re talking. An important step in this progress is the proposed relicensing of the hydroelectric dams on the Klamath River. As part of the relicensing process, a settlement group has been formed. We and other tribes and irrigators – along with environmentalists, PacifiCorp and federal and state agencies – are all involved. It’s no secret that major concerns for water users are affordable power and water certainty. It’s no secret that the tribes want considerable improvements in their fisheries and, in fact, want the dams removed. These are all subjects with tremendous implications for the people who live in the Klamath Basin, and we’re listening to each other. The tribes don’t want to see upper-basin irrigators go out of business. And the irrigators share the tribes’ goals of increased fish population and understand that it is in everyone’s interest to improve current habitat and restore historical habitats. Where there is a will, there is a way, and this is a time when we can pool our efforts to do good for both tribal and irrigation communities. But we need help to promote an atmosphere that will allow our dialogue to bear fruit. In the near term, disagreements will continue on some issues. But we will seek to manage the disagreements and further catalyze our collaborative discussions. To do otherwise would not be in either the individual or collective interests of the people who live in the Klamath Basin and who rely on its resources. For many years the atmosphere has been us versus them, tribes versus irrigators, farms versus fish. We stand together to say the issue is not about farms or fish; it is about farms and fish. The dialogue that is occurring is not easy, but doing something meaningful rarely is. At this point there are neither guarantees nor agreements, but the fact that we’re talking and, more importantly, listening to one another is encouraging. The issues are complex; they go beyond merely what we think or agree to. And there are many other considerations, including the opinions of local communities and elected officials. We have not yet begun to do the heavy lifting that will be required to bring about broad support to some sort of settlement, but we agree that fighting one another constantly in the courts and media hasn’t worked out well for anyone. We are doggedly pursuing a collaborative approach for resolving some very tough issues, and we have genuine hope. (Addington, McConnell, and Hillman 2006, 1 of download, underlines added)
In other words, We and They re-constructed the boundary between Us and Them. We embraced Their needs as if they were Our needs and They embraced Our needs as if they were Their needs.

While the Settlement Group settled in to talk, much had happened and was happening elsewhere throughout the watershed.

Events Surrounding the Settlement Group

The CIP. The Conservation Implementation Program – remember that? Back during the Chadwick workshops, people had been talking about the CIP – a lot. People invested a lot of energy in trying to improve it. BOR scheduled public meetings in September and October to 2004 to solicit public input. UKBWG hosted a meeting about CIP in April 2005, which Bob Chadwick facilitated. In February 2006, BOR released Draft #3 of the CIP. Lots of effort expended, but bottom-line, it was just dying on the vine from lack of interest. No matter how BOR tweaked it, it still felt to many as just another top-down plan, and they didn’t want a top-down plan.

Litigation. Not new litigation, but rather, the languishing gasps of two litigation tracks that were dragging on like EKGs that only show the blip of a heart beat once every two or three years.

Remember the Klamath Irrigation District track that had been launched in 2001 with plaintiffs claiming takings of personal property and breach of contract – when BOR did not deliver water to Project in 2001? Finally, on August 31, 2005, the court ruled that while it was not a takings claim, it was a breach of contract claim (KID II). The decision on the breach of contract claim will not come until March 2007 (KID V).

Remember the PCFFA track that had been launched in the aftermath of the 2002 fish kill? Well, on March 27, 2006, the decision in PCFFA V said that, until a new Biological Opinion from NMFS was completed, BOR was required to meet Phase III flow-levels before it could divert any water to the Project. The NMFS Biological Opinion was declared invalid and BOR was told that it could not rely on it to meet its ESA duties.

Of course, KWUA filed an appeal, but the decision of that appeal on March 26, 2007 upheld the PCFFA V. Parenthetically, it is interesting to note that to date 7 NMFS has yet to complete a new Biological Opinion, which means that BOR continues to be required to meet Phase III flow-levels before it can divert water to the Project.

7 Date of writing this sentence = March 6, 2010.
Also interestingly, the comment that KWUA made to the press on the filing of the appeal of *PCFFA V* in April 2006 provides a measure of the progress participants in the Settlement Group had made at the time in the construction of a watershed-wide identity. “While we’re getting close to turning the corner and getting along a lot better, we’re not quite there yet. Until we get there, we have to keep our options open,” said Greg Addington, executive director of [KWUA]” (U.S. Water News Online 2006, 1 of download).

**License Expires; Contract Expires; PUCs Set New Rates.** On February 28, 2006, the PacifiCorp license with FERC expired, and on March 1, 2006, FERC issued an interim one-year license to PacifiCorp, renewable annually as needed while the re-licensing process continued.

On April 13, 2006, the California Public Utilities Commission adopted a four year transition plan, effective April 17, 2006, to bring Project customers up to full irrigation tariff rates, known as PA-20. On April 17, 2006, California On-Project power rates will be $0.026/kWh (California PUC 2006). In four years, the California On-Project power rates were projected to be $0.110/kWh.

The Oregon Public Utilities Commission held proceedings with respect to setting the new rates. At these proceedings, the following entities had status to testify: PacifiCorp, KWUA, Klamath Off-Project Water Users (KOPWU), BOR, FWS, ONRC, WaterWatch of Oregon, PCFFA, Hoopa Valley Tribe, and the Yurok Tribe. The goal rate at the time was Schedule 41, which had a rate of $0.0698/kWh. “The provisions of SB 81 require a utility to provide a rate credit for seven years to ensure that any such rate increase does not exceed 50 percent per year” (Oregon PUC 2006a, 18). It was understood that Schedule 41 rates would more than likely change during the eight-year transition period to the full rate. On April 12, 2006, the Oregon PUC determines that for the first year starting April 17, 2006 will be $0.00815/kWh for Oregon On-Project and $0.00991/kWh for Oregon Off-Project (ibid.). In seven years, the power rates could be in the neighborhood of 10-12 cents/kWh, depending upon rate increases.

**The Options Dwindle for PacifiCorp.** In their original re-licensing application to FERC, PacifiCorp had excluded anything about fish ladders for salmon, offering only to truck salmon around the impassable dams.

In a letter to FERC dated March 24, 2006, NMFS recommended removal of the dams and restoration of the riverine corridor (quoted in PFMC 2006b) as well as presented preliminary prescriptions, developed jointly with FWS, for the construction and/or modification of fishways at multiple dams in the Klamath Hydroelectric Project (*NMFS and PacifiCorp*). In other words, NMFS
and FWS prescribed that PacifiCorp had to construct fishways at their dams. “The company disagrees with the approach – which would almost certainly cost more than $100 million – and has appealed the matter. It wants to trap and haul them over the dam. Under the 2005 Energy Act, PacifiCorp will take its case to an administrative law judge at one of the agencies. There is no precedent” (Driscoll 2006, 2 of download).

On April 24, 2006, Pacific Fishery Management Council submitted to FERC its Essential Fish Habitat (EFH) Recommendation for the Klamath Hydropower Project, in which it recommended the decommissioning and removal of Iron Gate, Copco 1, Copco 2, and J.C. Boyle dams on the Klamath River and full restoration of habitat in and below the project dams and reservoirs (PFMC 2006b).

On September 25, 2006, FERC issued its Draft Environmental Impact Statement (DEIS) for the relicensing of the Klamath Hydroelectric Project, in which it recommended keeping the dams and trucking salmon around the four dams. The DEIS recommended “only modest changes to current dam operations and a ‘trap and haul’ program to drive fish around the Klamath dams” (Bacher 2006, 1 of download).

On September 29, 2006, Administrative law judge Parlen McKenna rendered his decision on PacifiCorp’s appeal of the recommendations which NMFS, FWS, and BLM had submitted to FERC with respect to the PacifiCorp license for the Klamath River dams.

Multiple parties had testified in support of the agency recommendations. “Troy Fletcher, FERC negotiator for the Yurok Tribe, said that the 45 hours of testimony were “‘an historic moment...For the first time all the Tribes, fishermen, environmentalists, and federal agencies were supporting one another as we fought off PacifiCorp’s challenge. We have never ALL been on the same page at once before’” (ibid., 1 of download).

Judge McKenna noted that the Energy Policy Act of 2005 amended certain sections of the Federal Power Act to provide certain federal agencies authority to include conditions and/or fishway prescriptions in any hydroelectric license issued/re-issued by the Federal Energy Regulatory Commission (‘FERC’). ...More specifically,... the Secretary of Interior (‘Interior’), acting through the Bureaus of Land Management (‘BLM’) and/or Reclamation (‘BOR’), may establish conditions deemed necessary for the protection of Indian reservations and public lands to be included in a hydroelectric license. ...Likewise,... the Secretaries of Commerce (acting through the National Marine Fisheries Service (‘NMFS’)), and Interior (acting through the United States Fish and Wildlife Service (‘USFWS’)) may prescribe fishways to provide for the safe, timely, and effective passage of fish. (NMFS and PacifiCorp, 9 of download)
In other words, what NMFS, FWS, and BLM wanted trumped whatever FERC and/or PacifiCorp may have wanted, and NMFS, FWS, and BLM wanted fish passages to be installed as a condition of re-licensing.

The KlamathStakeholders Listserve and the 2005 Salmon Disaster Letter. Remember the fish kill of 2002? Well, the salmon season of 2004 was drastically reduced as the repercussions of the 2002 fish kill began to be felt.8

During the Scott Valley Chadwick workshop in November 2004, Paula Yoon broached the idea to the workshop of folks signing on to a Request for Disaster Assistance for Pacific Coastal and Tribal Communities affected by Decreased Salmon to be sent to government officials. She drafted the letter and broached the idea this time to the Tulelake Chadwick workshop in March 2005. She then posted the invitation and the letter on the newly-birthed KlamathStakeholders listserve on April 19, 2005, listing those individuals, organizations, and businesses that to date had already signed on to the letter (Paula Yoon, April 19, 2005, email posted to KlamathStakeholders Listserve).

Within minutes of that initial posting, Jacqui Krizo of the Klamath Basin Crisis website raised the spectre that the letter had actually been drafted by Glen Spain of PCFFA (who was persona non grata for many in the Upper Basin, and particularly for Klamath Basin Crisis) and was being put forth to blame the irrigators for the fish kill (Jacqui Krizo, April 19, 2005, email posted to KlamathStakeholders Listserve). Emails started flying back and forth on the listserve. Some checked with Paula Yoon and confirmed that the letter had been her idea alone, that she had worked with three others from the Chadwick workshop who had volunteered to help her, and that she had gotten feedback from Glen Spain on language that was not neutral (Yvonne Rauch, April 19, 2005, email posted to KlamathStakeholders Listserve; Terry Morton, April 20, 2005, email posted to KlamathStakeholders Listserve; Alice Kilham, April 20, 2005, email posted to KlamathStakeholders Listserve). A previous signer of the letter was concerned that his organization had been duped (Blair Hart, April 20, 2005, email posted to KlamathStakeholders Listserve). Paula Yoon responded on April 21, 2005, apologizing for the consternation that the letter of request for disaster relief had caused, and acknowledging that “apparently we have to move through this process for clarification, which I believe will happen” (Paula Yoon, April 21, 2005, email posted to KlamathStakeholders Listserve).

Becky Hyde responded to Jacqui Krizo.

8 For the 2004 salmon season, commercial salmon fishing was limited to 142 days in the KMZ and closed in the KCZ, while recreational salmon fishing was limited to 47 days in the KMZ and closed in the KCZ (PFMC 2005).
It’s critical that you not confuse the cease fire that happened in Tule Lake as a cease fire with the environmental community. This was a cease fire between agriculture and tribes. It has nothing to do with the more extreme environmental community. However, in some of the press releases I’ve seen recently even the environmental community is softening their tone a bit. I should note that I feel deep anger about some of the myth making they’ve been in the middle of for the last several years. No doubt we have big problems – but attempting to address them with honesty is very important. I have no qualms about supporting ocean fishermen. (Becky Hyde, April 21, 2005, email posted to KlamathStakeholders Listserve)

Things seemed to die down for a while, then Glen Spain of PCFFA (who had attended the Tulelake Chadwick workshop) posted a lengthy and thoughtful response on the KlamathStakeholders listserve. He recounts the many instances in which PCFFA supported disaster relief for the farmers after the 2001 water shutoff, as well as other restoration projects supported by KWUA.

We stand ready to support any other similar projects in the future. In fact, PCFFA and KWUA and similar organization have much more in common, and can accomplish much more of these common goals working together, than those who are far more extremist in their views like to admit. Crop losses from 2001 have now been more or less compensated, but decades of fisheries economic losses in the lower basin have never been compensated. This year, Klamath-driven fishery losses will be devastating, perhaps topping $100 million in total losses throughout California and Oregon that rural, already depressed, fishing-dependent communities can ill afford. That fact is what motivated Paula’s efforts to both seek help as well as build bridges. Though we did not initiate that effort, and have written our own letters, we certainly support her very well-meaning efforts. Whether you do or not I leave to your own conscience.

There is no doubt that the Klamath Basin is gripped by problems of drought, water over-appropriation and resulting ecosystem collapse. One would have had to have been dead for decades not to have noticed these ongoing conflicts. We should not have to choose between devastated fisheries or devastated farms. ...We are not enemies, we are all good people caught in a very bad system. This is why neither I myself personally nor PCFFA as an organization blames Klamath Project farmers individually or collectively for the problems of water over-appropriation we all find ourselves having to confront, whether it be too little water in the river or too little in the fields. Nor should we have to make a choice between these two extremes. Ultimately we all have to work together in some way to bring water demand and water availability back into balance. ...

And if you have some good ideas for how this can realistically be done.... well, I am not hard to find, I am not as fierce as you may fear or you may have been told, and I always answer my email politely and with some thought. Feel free to drop me a note or give me a call and let's talk. (Glen Spain, May 2, 2005, email posted to KlamathStakeholders Listserve)

Jacqui Krizo responded with ‘dripping sarcasm,’ “Wow, what a sweet letter to the stakeholders” (Jacqui Krizo, May 3, 2005, email posted to KlamathStakeholders Listserve), then sought to discredit Spain’s words by posting a letter written by Spain to the Oregon Trollers “a couple weeks ago after
the water users and trollers were coming together to come to an understanding and work together” (ibid.), and concluded with “It was really special when I saw you last when you told me how much you like farmers” (ibid.). Tom Burns (who had been one of the folks helping Paula draft the letter [Terry Morton, April 20, 2005, email posted to KlamathStakeholders Listserve] responded to Krizo’s email, urging folks to get out all the “vitriol and dripping sarcasm” so that they can then “all move on to the constructive challenges represented by true cooperation” (Tom Burns, May 3, 2005, email posted to KlamathStakeholders Listserve).

Steve Kandra, of KWUA, responded to Spain’s email that “irrigated agriculture does have compassion for those that suffer under contrived regulatory onus and will be responding appropriately” (Steve Kandra, May 3, 2005, email posted to KlamathStakeholders Listserve). And indeed, on May 3, 2005, Greg Addington of KWUA posted on the listserv the letter that they would be sending and invited others to sign on or not as they saw fit (Greg Addington, May 3, 2005, email posted to KlamathStakeholders Listserve).

Mike Connelly, of KBEF, responded to Spain’s email.

Obviously Glen’s thoughtful response to our dialogue does not square with much of the official rhetoric we’ve seen from the PCFFA – in which the long history and vast complexity of the Klamath situation are routinely reduced to a matter of malicious crimes perpetrated by tyrannical plumbers, and the hardship experienced by farmers in 2001 is written off as just so much clamor from a bunch of ‘noisy irrigators.’

But something tells me Glen is being sincere, and I welcome him as he ventures into this conversation. Not long ago, litigious environmental organizations like the PCFFA were rarely caught talking this way. They were far too busy doing the Section Seven Tango with the Feds, and running around with their black and white paint buckets. But the times they are a-changing.

... Sure, there is a role for litigation. But for decades litigation was the star of the show, instead of the bit player it ought to be. Most thoughtful people have seen that a change is due. The transition from an advocacy based on simplistic, straightforward litigious demonization – toward an advocacy rooted in the rather more messy business of community, culture, and localized stewardship – will be a very difficult and painful transition for conventional confrontational environmental organizations to make. But they will make it eventually, or they will just fade away as the rest of the world moves on.

There are many of us who have been gently nudging such organizations (OK, sometimes not so gently) for a decade or so to nurture a more effective, compassionate, and community-based approach to advocacy, especially when it comes to small, rural, family-based economies. It is, very frankly, heartwarming to see the gradual shift in rhetoric and tactics within organizations that, not too long ago, only had one tool in the shed (and that they used as a weapon).
So keep on pushing the limits, Glen. We’ll see you when you get here. (Mike Connelly, May 3, 2005, email posted to KlamathStakeholders Listserv)

On May 4, 2005, Mike Connelly posted on the listserv the disaster letter that KBEF had sent to Governors Kulongoski and Schwarzenegger.

On May 4, 2005, Becky Hyde responded to Spain's email.

Glen, thanks for making an effort to say what you did here. In my mind 2001 was a catastrophe for the farming community in the upper basin. 2002 was a catastrope for the lower Klamath river tribes. Because of the politics, and the situation being blamed on the project, I did not have an opportunity to express my concern to the tribes for the losses they felt in 2002. I felt a lot of what we were hearing in 2002 was just more attempts to blame upper basin ag. The truth is there was a big loss to downstream tribes, and I’m sorry I wasn’t clear headed enough to realize or acknowledge that at the time. 2005 the catastrophe has moved to the people who make their living off the ocean fishery, and the lower river tribes commercial fishery. The subsistence fishery is cut. At this point, blame does little good. We have a big problem on our hands and we need to address it together.

I spent Friday through Monday talking with people in the lower river. Ocean fishermen, tribal fishermen, natural resource people etc. Also – met again with Troy Fletcher who confirmed his desire to work with the upper basin on solutions. It became clear to me that the lower river has been drawing straws to try to figure out where the problem is, and 2001 the Klamath project got the short straw. ...

What seems most important to me right now is to send a message to Ocean fishermen that we in ranching support them, and are doing what we can to alleviate the situation. (Becky Hyde, May 4, 2005, email posted to KlamathStakeholders Listserv)

On May 17, 2005, Marcia Armstrong, Siskiyou County Supervisor, posted on the listserv the letter that Siskiyou County sent to Governor Schwarzenegger.

Now, you may ask why I spent so much time recounting the back-and-forth of these emails. Because I think this is a conversation that had never happened before, and that the possibility of such a conversation had been born in the Chadwick workshops and facilitated by the launching of the KlamathStakeholders listserv. In this exchange, the “vitriol and dripping sarcasm” got out there and heretofore enemies got to reach out to each other in new and different ways, talking to each other directly rather than at each other in the media and in court.

Salmon Disaster and Salmon Relief – Eventually. In March 2006, Pacific Fishery Management Council announced the restrictions on the 2006 salmon season. Commercial salmon fishing was closed in both the KMZ and the KCZ, while recreational salmon fishing was limited to 57 days in the KMZ and was closed in the KCZ (PFMC 2007a).
Glen Martin’s article in the San Francisco Chronicle on April 2, 2006 about the 2006 salmon season also gives us a measure of the movement towards a watershed-wide identity. “These are times of both deep despair and unprecedented hope for the California’s $100 million salmon industry” (Martin 2006, 1 of download). Despair because of the expectation that the 2006 commercial and sport fishing seasons will be either cancelled or severely curtailed “because of collapsing stocks on the Klamath River. Hope, because for the first time in years, genuine progress is being made on a long-term solution to the problem” (ibid., 1 of download).

Though stakeholders have fought in the past, the current situation has drained much of the bile from the dialogue. If there is a silver lining to the cloud threatening the salmon season, it is this: Everyone is desperate for a solution, and compromise seems possible as never before. Two things have made an agreement possible. First, [the dam relicensing]…Just as significant as dam relicensing are discussions among farmers, fishermen, native tribes, environmentalists, federal and state regulatory agencies, and local governments. ‘For the first time, people in the watershed are having a tough, respectful dialogue about solutions,’ [Steve] Thompson [USFWS] said. … ‘I think it’s becoming clear that government isn’t going to be able to find a solution for this,’ said Mike Byrne, a cattle rancher from Malin… ‘I think the people are going to have to do it.’ Byrne…said the only way to devise a settlement is ‘to make sure everyone is taken care of, that no one group bears the entire burden.’ … ‘We need to know we have guarantees on water, and, if the dams come out, on power from other sources,’ [Greg] Addington [KWUA] said. ‘And if (federally endangered or threatened fish) return to the basin, we may need protection from endangered species regulation. But if we can be sure we have a safe harbor, nothing is off the table.’ (ibid., 2 of download)

In other words, the farmers and the tribes folded the fishers into the watershed-wide web of relationships that was being woven in the Settlement Group; the needs of the fishers were folded in with the needs of the farmers and the needs of the tribes as Our needs.

On April 24, 2006, Oregon Governor Kulongoski declared a state of emergency for coastal counties because of the upcoming closed salmon season. On June 6, 2006, California Governor Schwarzenegger declared a State of Emergency in ten California counties, including Humboldt, Del Norte, and Siskiyou caused by the closing of the commercial salmon fishing season. On July 6, 2006, the Department of Commerce declared a Fishery Resource Disaster with respect to the 2006 salmon season, and on August 10, 2006, declared a Commercial Fishery Failure due to the Fishery Resource Disaster with respect to the 2006 salmon season. On August 22, 2006, the Governors and Senators of California, Oregon, and Washington sent a letter to Congress asking for an appropriation of federal disaster relief funding with respect to the 2006 salmon season.

Applications for getting actual money in hand would not be taken until November 2007 – and who knows how long it would take after that for actually getting it.
Klamath Congress – and Klamath Summit. On April 6, 2006, Alice Kilham announced on the KlamathStakeholders listserv that the Klamath Basin Conference would be held on November 6-9, 2006 in Redding, CA.

The event will be a time for residents of each sub-basin to share accomplishments in restoration, as well as plans, needs and ideas. By the end of the conference we will have a restoration funding package with project needs from all the sub-basins and Tribes to present to political representatives. It can also demonstrate the need for better coordination and support among states, the federal government and agencies. Attendees will include stakeholders, land managers, state and federal agencies, and state and federal representatives. ...With all that is happening in the Klamath Basin, it is more important than ever that we help each other both restore the river and work to keep local communities alive and sustainable. The 2004 Conference in Klamath Falls made a big impact on how we work together as a Basin. It’s time to take this to the next level. Settlement talks are encouraging, but we need to keep working to build a common voice from the bottom up. We know that, over the long haul, only the people with the resources will be able to implement and sustain the changes needed to restore health and well-being to everyone. (Alice Kilham, April 6, 2006, email posted to KlamathStakeholders Listserve)

Clearly, people knew about the settlement talks that had emerged out of the Chadwick workshops and had morphed into the FERC relicensing talks, but there wasn’t the sense that the settlement talks were the horse to hitch their wagons to. People saw the November 2006 Conference as the Congress that people had envisioned during the Chadwick workshops wherein people could build a grassroots plan for the watershed.

On a separate track, Rep. Greg Walden wrote a letter on July 14, 2006 to the still extant President’s Working Group, in which he talked about “devastating impacts to communities and the environment which can occur as the result of federal decisions” (Walden letter attachment to: Lindsey Lyons, August 25, 2005, email posted to KlamathStakeholders Listserve, 1 of Walden letter) and cited instances of both the 2001 water cutoff and the significantly limited salmon season in 2006. He cited the National Research Council’s 2004 report that emphasized “that a watershed-wide approach to species recovery...is essential to improving the environment and saving local economies” (ibid., 2 of Walden letter). He asked the Working Group to pull together a Summit in southern Oregon in the near future as a step “toward a comprehensive, long-term solution to the problems in the Klamath River Basin” (ibid., 2 of Walden letter).

Almost immediately, on August 8, 2006, Lindsey Lyons, Planning Committee Coordinator of the Klamath Basin Watershed Conference 2006 Planning Committee, sent a letter to the President’s Working Group as well as to Senators and Representatives representing the Klamath River Basin. She noted that
we learned last week that the Secretaries are calling for listening sessions on cooperative conservation in various locations, including Redding, California and Redmond, Oregon. While stakeholders will attend and provide input, we believe that the issues of the Klamath Basin go beyond the agenda of these meetings and merit the explicit attention of the Secretaries. Because the Klamath Basin Watershed Conference exists, we invite you to work in partnership with us. It’s our hope that the Klamath River Basin Summit that Representative Walden has called for is the opportunity to bring together this vast array of efforts, and we agree this is necessary. We would happily offer the last day of the Klamath Basin Watershed Conference, September 1, 2006 to serve as your place to connect with Klamath stakeholders. (Lyons letter attachment to: Lindsey Lyons, August 25, 2005, email posted to KlamathStakeholders Listserve, 2 of Lyons letter)

On August 16, 2006, Alice Kilham, wearing her hat as chair of the Klamath River Compact Commission, wrote to the same set of people. She iterated the invitation to hold a Summit at the Klamath Basin Watershed Conference. If the timing doesn’t work for that, she asked if an additional “listening session” could be scheduled at the Summit specifically for the Klamath Basin (Kilham letter attachment to email posted to KlamathStakeholders Listserve).

On September 28, 2006, the Upper Klamath Basin Working Group was updated on the status of the various efforts that are in the works. On the Klamath Conference front, the Conference was scheduled for November 6-9, 2006. On the CIP front, a consultant had been hired to facilitate a meeting in Medford, OR on December 6-7, 2006. “An original notion to have USFWS, BuRec and NOAA Fisheries put the CIP together met with much public resistance, so development of the CIP moved toward a more public process” (UKBWG 2006a, 2 of download). On the Klamath Summit front, it looked like the Klamath Summit would happen the week of December 11, 2006. On the settlement talks front, the impression was that the Summit would also be a rollout for the results of the settlement talks.

Putting all this together, the Klamath Conference and the CIP meeting were seen as important precursors to the Klamath Summit, at which the results of the settlement talks would be rolled out.

On October 12, 2006, Oregon Governor Kulongski and California Governor Schwarzenegger announced that they would hold a Klamath Summit in Klamath Falls before the end of 2006.

The Klamath Watershed Conference 2006: Sustainable Watersheds Bring Sustainable Communities was held on November 6-9, 2006. According to the conference documents,

The 2006 Klamath Basin Watershed Conference will provide a forum for stakeholders to identify priority issues and areas of agreement. These are needed to move forward as a Basin and will be presented at the upcoming Klamath Summit called by Governor Kulongoski and Governor Schwarzenegger. To ensure that the Klamath Summit produces results, the Governors have asked stakeholders to present specific proposals and legislative concepts for consideration by the
states and the federal government. From this request, we have invited Oregonians and Californians to work to forge solutions on the complex Klamath River issues by attending the Klamath Watershed Conference. The 2006 Klamath Basin Watershed Conference will consist of three themed sessions: 1.) We are One Basin, 2.) Progress in the Basin, and 3.) Moving Towards Sustainability. These will integrate what we know about our unique watershed and what we know about communication, conflict, and communities.9

The Planning Committee provided its report on the conference on November 30, 2006. There were 245 registrants, 72.73% of whom had not attended any of the previous Klamath conferences. Seventy-nine evaluations were turned in. The sessions that received the highest ratings of usefulness to evaluants were: (1) the keynote address on Day 1 that shared “successes of the ground-up approach to resource management;” (2) Subbasin and Tribal Restoration on Day 2; (3) the Science Panel on Day 2; (4) the keynote address on Day 3 recounting how multiple ways of life came together to work cooperatively; and (5) Local Leadership on Day 3 (Attachments to: Zarah Thompson-Jacobs, November 30, 2006, email to KlamathStakeholders Listserve).

In personal email communication to me on June 9, 2007, Terry Morton wrote

The Conference in November was wonderful, although Bob Chadwick’s brother had passed away the day before & he wasn’t able to join us. Many subbasins gave updates on what they’ve been doing (which both encouraged others in the Basin who’d thought not much had been happening, and affirmed those who had been working so hard). There were a number of other presentations that were very good, but there was also a weird undercurrent because a number of high-level people were involved in FERC settlement discussions in a side conference room for most of the time, with various ones circulating in & out of the discussion. (Terry Morton, June 9, 2007, personal communication)

On November 22, 2006, the settlement talks moved to the “front page” – and in a very real sense, never left. First, the settlement group asked that the Klamath Summit be delayed in order for the settlement talks to resolve issues before the summit.

A summit meeting to consider removing four dams and help restore struggling salmon runs in the Klamath River will be put off a month to give farmers, fishermen, Indian tribes and conservation groups time to bargain. The groups contacted the governors of Oregon and California this week, saying they were making good progress on a settlement for re-licensing four hydroelectric dams widely seen as a major factor in the salmon collapse. They said they had talks nearly daily over the past two weeks and hoped to bring the fruits of those to the summit. ‘We just need some more time,’ said Steve Rothert of American Rivers, a conservation group participating in the talks. ‘We are addressing all of the issues that are of concern to those groups.

9 I downloaded – and still have – the Klamath Watershed Conference 2006 documents from the then official conference website – http://extension.oregonstate.edu/klamath/watershedconference06/. This website no longer exists. Copies available upon request.
We hope to basically resolve those issues, at least in principal [sic], by the time of the summit.’ (Barnard 2006, 1 of download)

The Governors and Secretaries of the State and Federal Klamath Basin Coordination Group (that had been established by the Klamath Watershed Coordination Agreement in October 2004, in case you had forgotten) said that they supported the delay if it brings solutions to the table that can win the support of the Federal government (Barnard 2006).

On November 27, 2006, BOR announced the postponement of the scheduled December 6-7 CIP meeting. “Klamath Basin stakeholders are currently engaged in ongoing discussions and negotiations related to the restoration of the Klamath River fishery, and Reclamation recognizes that each day in December is critical to these talks. In support of these continuing discussions, Reclamation is postponing the CIP working session until early spring 2007” (U.S. BOR 2006, 1 of download).

At the November 30, 2006 meeting of the UKBWG, Suzanne Knapp, staff from Governor Kulongski’s office, reported that the settlement group breathed a sigh of relief when the delay was decided. Parties of the settlement group have been working hard to reach some agreement on the key issues. They felt that they needed additional time to make progress to bring a proposal to the summit. Thus, they asked for a delay. [She] does not expect a full settlement proposal, but the goal is to have an agreement in principal [sic] to be presented to the summit. Settlement parties have been meeting very intensely for the last month or so. Another meeting in December should determine whether or not an agreement can be presented. (UKBWG 2006b, 2-3 of download)

1.3 December 2006 through January 2008

The Klamath Summit, initially postponed, ultimately never happened.

The CIP died. By 2009, when I last checked online, all the CIP websites were gone. I could find no further mention of CIP beyond a few tiny noises in 2007. In essence, then, the postponement of the December 2006 meeting was actually the end of CIP as an effort in the Klamath watershed.

The two Federal Advisory Committees, the Klamath River Basin Fisheries Task Force (KRBFTF) and the Klamath Fishery Management Council (KFMC), established in 1986, were sunseted September 30, 2006 – and were not renewed.

There have been no further Klamath Conferences after the November 2006 conference.

The last meeting notes published online by the UKBWG were for March 15, 2007. In personal email communication to me, Mark Stern, co-chair of UKBWG, told me that the UKBWG was effectively in hibernation; that they decided to hold off further meetings until it was more clear if and how settlement might occur (Mark Stern, April 14, 2009, personal communication).
Clearly, by December 2006, the Settlement Talks had emerged to become the horse for everyone to hitch their wagons to. As Terry Morton described in personal email communication to me on June 9, 2007,

We’ve all had the feeling of being ‘on hold,’ like things could come together any day, or it could not be for 2 or 3 years, or it could fall apart any day. It’s a very weird sense of being in abeyance, still working on restoration, but not on ‘the conflict,’ because other people are working on those issues who could very well resolve them & whose agreements would override any we might come to. (Terry Morton, June 9, 2007, personal communication).

The period from December 2006 through January 2008 was a pivotal period for the Settlement Group in that they began to have to contend with the question that ultimately comes to confront any group effort – do we change the vision in order to hold on to everyone in the group or do we let go of people in the group in order to hold on to the vision? The answering of this question would play out throughout this period.

Throughout December 2006, the Settlement Group was meeting continuously. They reached yet another turning point.

In the settlement negotiations – which by this point had ranged through practically every government-rate frontage-road hotel in Northern California and southern [sic] Oregon – a comprehensive package was emerging. ...The cornerstone of the entire deal was the question of how to divvy up the river’s water. During a string of back-to-back meetings in Sacramento in December 2006, the negotiating group agonized over how to balance the competing demands. Biologists from the tribes and an engineering consultant for the farmers ran a seemingly endless series of computer models to find a workable compromise. The farmers needed enough water to continue farming – and yet the tribes and environmentalists saw removing the dams as a hollow victory if there wasn’t enough water for the fish.

Ultimately, they closed in on a plan that would limit irrigators to 10 to 25 percent less than they’d used historically. The upside for the farmers was a greatly reduced threat of their water being completely shut off again to protect fish. ...

[I]t was a serious thing to commit to. ‘A lot of (the settlement) is very important, but that was locking in less water than we knew we needed in at least 50 percent of the years,’ Addington says. ‘We knew that once we committed to that, we weren’t going back.’

Crossing that threshold caused so much heartburn that Addington, together with several federal and state officials in the negotiations, requisitioned a plane and flew to Klamath Falls in a snowstorm to meet with the water users’ board.

‘It was raining, and spittin’ snow, and it was just horrible. It went all night long,’ says U.S. Fish and Wildlife Service regional director Steve Thompson. For several hours, the water users’ board deliberated in closed session; with nowhere else to go, Thompson says, the government
contingent ‘sat out in one of the ranchers’ Suburbans, with snowflakes falling the windshield wipers going. It was a tough, tough night.’

Finally, at some point late in the night, the entourage flew back to Sacramento, and started negotiating again the next morning. ‘It was just painful. It was terrible,’ says Addington. ‘You’re having to make a call that is gonna affect everybody up here, and you can’t foresee every possibility. There’s things you’re just having to make a gut call on, and hope you’re right.’ (M. Jenkins 2008, 17-18)

Bottom-line, the on-project farmers traded “all the water we might want, but no guarantee that we will always get it” for “not all the water we might want, but a guarantee that we will always get it.” This was a monumental step forward in the settlement talks. But no sooner had they taken that step but they were confronted with that seemingly inevitable dilemma – as Oregon Wild and WaterWatch held firm to their long-held insistence on the discontinuation of lease-land farming in the refuges.

During the first two weeks of January 2007, the pace of the negotiations peaked. Even with the linchpin of the settlement in place – at least in rough form – many other issues remained unresolved, and the pressure was rising.

Then something cracked. And suddenly the Indians and farmers had yet another common enemy: two of the environmental groups in the negotiations. ...

During the fall of 2006, in side discussions, Oregon Wild and Water Watch apparently broached the possibility of phasing out lease-land farming. But as the strands of the agreement began tightening in January 2007, the two groups insisted on a provision to phase out farming on the refuges.

The reaction from the farmers – and the Yurok and Karuk tribes – was decisive. Hillman...knew that an insistence on ending the lease-land program would break the entire deal.

‘(Oregon Wild and Water Watch) foreclosed an opportunity that all of us had been looking at and working on in little incremental bits and pieces for years,’ he says. ‘But (you have to) work with your allies and be strategic about the pace you address it at, instead of going nuclear and all the rest of us having to deal with the fallout.

‘There was no question from that day forward that they had to get out, or we were done,’ he says. ‘It put us in a bad position. And we led the charge to throw them out of the damn room.’ (M. Jenkins 2008, 18-19)

While inside the Settlement Group, participants were wrestling with the extremes of environmentalism in the watershed – i.e., Oregon Wild and WaterWatch – outside the Settlement Group, the extremes of agriculture – the private face of Upper Basin agriculture who still held on to a siege mentality – inserted themselves into the conversation. Matthew Preuschn reported in The Oregonian on February 4, 2007 that
Klamath County will take up the polarizing question this week of whether more than 1,000 square miles of federal forestland should revert to the Klamath Tribes as reservation land. But there’s one problem: No such proposal currently exists. While tribal members have long sought to re-establish their reservation...they shelved the plans more than a year ago to focus on other issues, said tribal chairman Allen Foreman. ‘We’re a little puzzled,’ he said. ‘But we understand (the county is) being pressured.’ That pressure is coming from the Klamath Basin Alliance. The group formed to fight the land transfer and last November submitted 1,100 signed petitions asking the county’s three commissioners to state their position. Alliance members fear that the public would lose access to the land for recreation or wood cutting, that private holdings within the forest would be cut off and that tribal management would harm the land. …Last month, the county commission voted 2-1 to consider a resolution opposing transfer of the tribal land. The commission has set a public hearing Tuesday and may vote on the resolution at the same meeting. While the county can’t determine whether the tribe gets the land, the commission’s voice would likely influence any ultimate decision made by the federal government.

…Commissioner John Elliott voted against considering the resolution and said bringing the issue up now puts the county in a difficult position. While it’s appropriate, he said, to acknowledge the alliance and its concerns, commissioners risk unnecessarily alienating the tribes, a major political player in the Klamath Basin. ‘It has the potential to divide the community further, and secondly it has the potential to marginalize Klamath County’s presence at the table if there are ever future negotiations’ between the tribes and federal government on the land, Elliott said. (Preusch The 2007, 1-2 of download)

The Klamath Tribes had put aside their plan about buying the reservation land in order to focus on two issues: the Oregon water adjudication, and “regionwide settlement talks over relicensing Klamath River dams, Foreman said. In both situations, the tribes are involved in delicate talks with irrigators, government agencies and conservationists. All are trying hard to get along. … ‘I see this as being really bad timing and counterproductive in the community gains that have been made,’ said Steve Kandra, a basin irrigator and director of the Klamath Water Users Association” (ibid., 2 of download).

It seems that the public face of agriculture in the Upper Basin was admonishing certain components of the private face of agriculture in the Upper Basin for waging an unwanted war against those with whom the public face was currently in negotiations. I doubt that this slapping-of-hands did anything to staunch the siege mentality of those off-Project farmers and ranchers who had constructed an unbridgeable boundary between Us and Them (the Klamath Tribes), imputing to the Tribes the unswerving intention of wanting to destroy off-project agriculture by taking Our land and Our water. As far as We were concerned, We were working unremittingly to preserve Our way of life by preventing Them from destroying Us. Perhaps publicly silenced at this moment, these voices would re-emerge later and loudly.
Back inside the Settlement Group, the question of Do we change the vision in order to hold on to everyone in the group or do we let go of people in the group in order to hold on to the vision was answered. “On April 6, the settlement group was dissolved. Then, within a matter of hours, the farmers and the two tribes created a new one and invited back all the parties except Oregon Wild and Water Watch” (M. Jenkins 2008, 19). Oregon Wild and Water Watch contended that the Bush administration hijacked the settlement process in order to deliver to the Klamath farmers, “[b]ut the participants still inside the process – including representatives of the environmental groups Trout Unlimited and American Rivers – say that simply isn’t true” (M. Jenkins 2008, 19).

The intensity of some of our meetings and discussions was just incredible. And I think it came to a point where the deadline (arrived), and the compromise was just too much for Oregon Wild and Water Watch,” says Thompson, the Fish and Wildlife Service regional manager. “It was pretty obvious that they couldn’t get to a resolution with us, and that they were not going to be supportive of any resolution. They said that. So then it was a matter of, ‘Well, OK: We need to move on with those parties that can.’

They just ran into issues that they weren’t willing to go any further on,” says Larry Dunsmoor, a biologist with the Klamath Tribes. “Those of us who committed to the process worked our butts off, and we worked it out with the irrigators, and they worked it out with us. It was one of the hardest things we’ve ever done.” (M. Jenkins 2008, 19)

As I interpret this occurrence, heretofore Oregon Wild and WaterWatch had been very successful at sowing discord, setting player groups against each other. In this moment, player groups who had worked very hard to construct a shared vision of a watershed-wide identity refused to allow Oregon Wild and WaterWatch to shatter that shared vision and so showed them the door. Where Oregon Wild and WaterWatch had succeeded before because player groups split apart, they now failed because the player groups came together and stayed together. A significant measure of not only the emergence of, but also the increasing strength of a watershed-wide identity.

“After two years, the end may be in sight for settlement talks in the dispute over water rights and four Klamath River hydroelectric dams operated by PacifiCorp” (Associated Press 2007, 1 of download). Greg Addington (KWUA) and Craig Tucker (Karuk Tribe) “said that some groups tied up the negotiations at times, causing old feelings to resurface and the process to get bogged down. …But the efforts are paying off, participants said. ‘It’s pretty damn impressive that it’s the farmers and the tribes that get along the best of any two groups in the room,’ Tucker said” (ibid., 1 of download).

Terry Morton’s personal email communication to me on June 9, 2007 painted a particularly compelling take on the Settlement Talks.
And it is those settlement discussions that have dominated the landscape in the Basin ever since. There are now 26 entities involved, including Tribes, irrigators, & various environmental groups, & the word is that they’re closer to agreement than they’ve ever been. The huge caveats are (1) it’s all been confidential & they’re only now going out to their constituents to try to convince them that what they’ve ‘given’ is worth what they’re getting, and (2) they have not included PacifiCorp up until now – presumably trying to align themselves before going up against Goliath – and they just recently set up a subcommittee to meet with PacifiCorp. Because primarily of the seeming positive progress of those negotiations, other efforts (like the Chadwick workshops & the Bureau of Reclamation’s CIP) have been on hold. It’s funny, but we seem miles away from Bob Chadwick’s workshops, although I do believe they laid the foundation for these settlement discussions, particularly in the way they empowered the Tribes. We’ve all had the feeling of being ‘on hold,’ like things could come together any day, or it could not be for 2 or 3 years, or it could fall apart any day. It’s a very weird sense of being in abeyance, still working on restoration, but not on ‘the conflict,’ because other people are working on those issues who could very well resolve them & whose agreements would override any we might come to. (Terry Morton, June 9, 2007, personal communication)

On July 24, 2007, the Klamath Settlement Group released their first press release, in which they announced their intent of having an agreement by November 2007. Like a debutante at a cotillion, the Settlement Group finally presented itself to the watershed.

A diverse group of Klamath River basin stakeholders, including Indian tribes, farmers, and conservation groups, and state and federal agencies have announced that they are committed to developing a detailed Klamath Settlement Agreement by November 2007. For the past two years this group has persevered towards the development of a proposal to restore the Klamath River fisheries, meet agricultural needs, protect water quality and sustain the ecology and economies of the Klamath Basin. Development of the framework of a Settlement has been demanding, but the group remains determined to prepare and present a balanced agreement. (Klamath Settlement Group 2007, 1 of download)

“For decades, heated disputes over irrigation water supplies and river health have divided the Klamath Basin, leaving its inhabitants and government agencies at odds with one another. Two developments brought these divergent peoples to one table” (ibid., 2 of download). First, PacifiCorp filed its application with FERC for license renewal. And then the company simultaneously offered the various regional representatives an opportunity to settle the dispute over the four dams. Representatives accepted this offer and formed a ‘Settlement Process’ group. This group is comprised of representatives from throughout the basin and within two states, and includes the four Klamath Basin Tribes, state and federal agencies, counties, fishermen’s groups, and agricultural and conservation organizations who are, in good faith, meeting to craft a settlement. Since 2005, this group has been evaluating ideas and proposals that can restore the fisheries, meet irrigators’ and local government needs, and protect water quality and agriculture. ... ‘We know that the key to solving our problems is to work with our neighbors instead of continuing to fight with each other, said Greg Addington of [KWUA].
‘If we do this thing right one day we’ll have a salmon and potato festival in Klamath Falls,’ added Troy Fletcher of the Yurok Tribe. (ibid., 2 of download)

Four days later, on July 28, 2007, Troy Fletcher and Greg Addington jointly authored a My Word column in the Eureka Times-Standard, which expanded upon the initial press release.

Since 2005, a diverse group of 26 stakeholders, referred to as the Klamath Settlement Group, have been engaged in the difficult task of developing a consensus-based solution for long standing disputes in the Klamath Basin. We want to report on the progress we are making. …The Klamath Basin has been a poster child for water conflicts for decades, too often pitting conservationists, tribes, farmers, fishermen, counties, and state and federal agencies against each other. Given this history, we believe that the formation of the Klamath Settlement Group represents significant progress. Our goal is to bring all of these interests together to find agreement on lasting solutions to the Basin’s social, economic, and conservation needs. While the particulars and discussions are confidential, representatives from Klamath Basin Tribes, state and federal agencies, counties, fishermen’s groups, agricultural and conservation organizations are, in good faith, meeting in a ‘settlement process.’ This group has evaluated ideas and proposals that restore the fisheries, meet the economic needs of irrigators, tribes, and local governments, and protect water quality and agriculture. The group has completed the difficult work of forging a framework based on principles outlining how we can address habitat needs for fish, balance river flows throughout the basin to meet economic and environmental needs, and ensure the economic stability of the entire basin’s rural communities; we are now working to draft these principles into a settlement agreement. …

The Klamath Settlement Group believes that the best hope for the Klamath River is to forge a comprehensive solution that provides for long-term sustainability and vitality of the place we call home. We remain committed to working together to solve this long-simmering crisis and look forward to announcing our agreement later this year. (Fletcher and Addington 2007, 1-2 of download)

The article lists all of the participants in the Settlement Group. Absent are Oregon Wild and WaterWatch.

The next development is very interesting to consider. Heretofore, Congressional hearings had been greeted as just one more tool in the toolbox of default mainstream conflict resolution – just one more place where each player group could try to win points with the Federal government, who was approached as both villain and deus ex machina.

This time around, however, things had changed. It seems that on June 27, 2007, a Washington Post article accused Vice President Cheney of meddling in science. Immediately, the House Committee on Natural Resources scheduled a hearing for July 31, 2007 on the Crisis of Confidence: The Political Influence of the Bush Administration on Agency Science and Decision-Making.
Rather than being greeted with open arms, person after person said to the Congress “don’t scuttle what we are doing out here...!!”

In an article on June 30, 2007 in the Eureka Times-Standard, “Troy Fletcher said the [Washington] Post article [questioning Cheney’s involvement in Klamath River issues in 2001 and 2002] is new spin on old news, and wondered if the expense of investigations wouldn’t be better spent on restoration projects. He said the real news is how the upper and lower basin is working together. ‘The Yurok Tribe hopes that this does not detract from efforts to resolve long-standing issues in the Klamath Basin,’ Fletcher said. …[Greg] Addington, [ED KWUA], said it’s not in anyone’s interest to start slinging mud again, and said the association’s members are committed to moving forward. ‘We’re a lot more interested in looking forward than we are about looking back at what happened in 2001 and 2002,’ Addington said” (Driscoll 2007, 1 of download).

In an article in The Oregonian on July 16, 2007, Craig Tucker and Leaf Hillman from the Karuk Tribe said that “[t]he real story on the Klamath is not what politicians did four years ago, but what Klamath basin residents and coastal fishermen are doing today to solve the Klamath crisis’’ (Tucker and Hillman 2007, as quoted by Hon. Greg Walden in U.S. House 2007: Testimony of Hon. Greg Walden, 25).

“In the letter [sent to Rep. Nick Rahall, the committee chair, and Rep. Don Young, its senior member], signed by 39 people from a range of farm, irrigation and cattlemen’s groups, the signers write, ‘It is imperative the stakeholder group be allowed to continue their discussions without outside political wrangling, so they may bring forward their comprehensive, grassroots solution’” (Juillerat 2007, 1 of download). In a post to the Klamath Bucket Brigade website, Greg Addington of KWUA thanked all the signers of the letter “who have stepped up to not only support Klamath Farmers and Ranchers, but who also have shown the faith to support the stakeholder driven process we are involved in” (Addington 2007, 1 of download).


As a congressional committee prepares once again today to grill government officials and activists on the events in the Klamath basin in 2001, I have a question for those who called the hearing: Why now? … [Besides the fact that the Interior Department’s inspector general] dismissed charges of political influence from the White House of the science used in the NAS report…[the] most significant development of the past few years is the historic formation of the 26-organization Klamath Settlement Group, which is comprised of competing interests including tribes, farmers and conservation groups. The group is just months away from a self-imposed November date to reach an agreement. ‘For the past two years this group has persevered towards the development of a proposal to restore the Klamath River fisheries, meet agricultural needs, protect water quality and sustain the ecology and economies of the Klamath Basin,’ states
a release from the group. ‘Development of the framework of a settlement has been demanding, but the group remains determined to prepare and present a balanced agreement.’ From the group’s own words one can tell how delicate and difficult its negotiations must be. Yet its work is of paramount importance. It’s the best hope we have of avoiding a resolution by way of litigation. Only the stakeholders can produce a long-term and locally driven resolution. Today’s hearing will contribute zero substance to their work. If anything, it risks renewing old rivalries and heightening tensions. Anyone who is serious about a comprehensive resolution for the Klamath Basin would not have called this hearing, especially at this time. (Walden 2007, 1 of download)

And finally, in his oral testimony at the House Hearings themselves, Rep. Walden testifies that

the Committee’s hearing today, to the extent it opens old wounds and reignites past conflicts, runs the risk of aborting a mediated settlement process that includes 26 parties in the Basin who in the past would have been at each other’s throats and for the last many months have been at each other’s tables trying to find a Basin-wide solution. (U.S. House 2007: Testimony of Hon. Greg Walden, 25)

Their goal is to recommend to Congress a comprehensive settlement plan that will work for the fish and the fishermen, for the tribes and for the farmers, and hope to have that ready to go by November of this year. While the talks remain confidential, I know they are complex, just as the problems are complicated. I wish them well in their work and would encourage them to ignore the political noise in Washington and stay focused on the long-term solutions they seek, and I implore this Committee and its staff to do the same. ...I implore this Committee to not go down the partisan path of political provocation but, instead, to rise above it and provide support to those good citizens who are laboring to find common ground in a basinwide settlement. Let us do what is best for the fish, the farmers, the tribes, and the fishermen. Let us encourage them to find common ground, not rub salt in old wounds, when they are so close to an historic agreement of enormous significance. (ibid., 27)

Fortunately for all concerned, the hearings seemed to have faded away and done no damage. What is interesting is the very clear indication of the change in the way that the grassroots viewed the government. From once having viewed it as deus ex machina, clearly, the grassroots now viewed it as in service to the wishes of the grassroots, wishes which the grassroots was in the process of articulating very precisely.

The hoped-for November 2007 date for release of an agreement came and went. Work continued throughout December 2007. On December 21, 2007, Oregon Wild and WaterWatch jointly authored In My Opinion for The Oregonian wherein they continued to make their key point that not only must the dams be removed, but leasing of refuge lands for commercial farming must be phased out (McCarthy and Hunter 2007).
Finally, the long-awaited day arrived. On January 15, 2008, “the agreement was finally released to the public. It was the first time that most of the people the negotiators represented got to see it for themselves, and Fletcher and Addington & Co. have since been busy campaigning to win the support of their communities” (M. Jenkins 2008, 19).

A deal...has been forged among farmers, Indian tribes, fishermen, conservation groups and government agencies battling over scarce water in the region. The plan announced Tuesday came after two years of closed-door negotiations overcame longstanding and bitter differences over how to divide Klamath Basin water between a federal irrigation project and fish protected by the Endangered Species Act. ‘What we’ve come up with is a blueprint for how to solve the Klamath crisis,’ said Craig Tucker, Klamath Campaign coordinator for the Karuk Tribe… ‘We wanted to put together a plan that keeps fishing communities whole and farm communities whole[.]’…Luther Horsley, president of the Klamath Water Users Association…said farmers achieved their goals of predictable irrigation deliveries, affordable power for irrigation pumps, and freedom from future lawsuits over endangered species. (Barnard 2008a, 2 of download)

On a conference call with the groups, Craig Tucker with the Karuk Tribe said that the parties agreed to civil talks when it was clear that the resources of the river would have to be shared. He called the settlement a means to do that. ‘I call it the fish and chips settlement,’ Tucker said, referring to potato farming in the basin. ‘We can have both.’ (Driscoll 2008a, 1-2 of download)


[T]he more compelling story...[t]he breakthrough is about the courage of people overcoming their differences, facing down controversy and taking leadership to protect their communities, restore the environment and create economic opportunity for their families. The collaboration that went into this effort points to a paradigm shift in our society’s approach to environmental conservation and economic development in the West. Less than a decade ago, the community-based process behind this negotiation was unthinkable. …The status quo was litigation and distrust, yielding few large improvements for fish and no greater security for agriculture. Today, the proposed Klamath agreement reflects a new approach to the West’s natural resources. Instead of attacks through lawyers or the press, the people have worked toward mutual understanding. It has taken thousands of hours of meetings and technical work to design the proposed solutions. And unlike previous conditions imposed by government or the courts, this accord was forged from the ground up. …For the past two years, negotiators grappled with hard choices as they crafted this historic agreement. Now it’s our turn to make a hard choice: Do we move forward into the territory ahead or perpetuate the status quo? (Goebel 2008, 1 of download)

And now it was time, finally, to take the talks to PacifiCorp. “A spokesman for the Klamath Settlement Group said the proposal would now go to PacifiCorp to be included in confidential talks over dam removal” (Sleeth 2008, 1 of download). “‘It hasn’t been easy; it was a tough several years
putting this proposal together, but I've got new-found respect for all the communities involved from tribal to environmental and farming,’ said Chuck Bonham of Trout Unlimited. ‘I am also hopeful we can develop a good business deal that works for PacifiCorp and for the river too. We can and should do both’” (ibid., 1 of download).

Not unexpectedly, opposition to the agreement was quick to be voiced by the expected players. “Like any thoroughly negotiated agreement between divergent interests, the Klamath settlement agreement isn’t totally to anyone’s liking” (Faulkner 2008, 1 of download). “Opposition to the agreement is coming from the Hoopa Tribe…; some farmers who are not part of the Klamath Reclamation Project; and two conservation groups tossed out of the talks last spring, Oregon Wild and WaterWatch” (Barnard 2008a, 1-2 of download). Hoopa Valley Tribe Chairman Clifford Lyle Marshall perceived the agreement as giving irrigation the top priority for water, trumping salmon water needs (Driscoll 2008a).

The Klamath Tribes’ proposal to rebuild its lost reservation with federal money is stirring old animosities here and threatening to upset a hard-fought agreement to tear down four Klamath River dams. …[T]he agreement supports the tribes’ request for $21 million from Congress over the next four years to buy 90,000 acres of private forestland. That amounts to about 2 percent of the $1 billion estimated cost of the Klamath Basin settlement. The only reference in the 241-page settlement proposal to re-establishing is Section 35.2 on Page 138, a brief mention of what it calls the Mazama Project. Restoring the reservation is a hot-button issue in Klamath County. With each new struggle in the basin, where farms go back generations and tribal lore to time immemorial, each new agreement recalls past prejudices. The tribal land proposal is no different. On a frigid Thursday night, about 50 people stood outside the Klamath County courthouse on Main Street holding placards protesting the tribes’ land deal and other portions of the agreement. At a three-hour meeting of the county’s Natural Resource Advisory Committee that followed, Edward Bartell of the Klamath Off-Project Water Users Association urged the committee to reject the settlement. ‘The way this has worked out is you stab everyone in the back and the last one standing has a settlement,’ Bartell said. (Preusch 2008, 1 of download)

Some of the same voices that fought [earlier attempts by the Klamath Tribes to return] national forest to tribal ownership now speak out against the Mazama forest purchase. ‘They sold it and now we’re going to buy it and give it back to them?’ said Glenn Howard of the Klamath Basin Alliance, a group of private landowners. (ibid., 1-2 of download)


What we found when we actually sat down and opened a constructive dialogue is that we could indeed forge a blueprint for restoration that addresses both the ecological and economic concerns for both communities [farms and fish]. Critics of the deal have emerged in recent days. On the left we have so-called environmentalists who allege that the deal gives up too much to
farmers. On the right we have radical property rights activists who allege that the deal gives up too much to Indians and fishermen. Neither group has their facts straight or their hearts in the right place. The reality is that many critics of the deal simply hate the other side more than they love their own self-interests. In other words, some hate farmers more than they love salmon. Others hate Indians and fishermen more than they love farming. Given the impact that a degraded river is having on people’s lives, this first response is understandable. ...But our goal should not be revenge. Our goal should be to fix our river. If we let hatred of our traditional political opponents guide us, we will fail. (Hillman and Tucker 2008, 1 of download)

As Greg Addington, executive director of the Klamath Water Users Association, added, “‘It took 2 ½ years to build this, and it seems like we’re trying to tear it down in 48 hours’” (Preusch 2008, 2 of download).

1.4 February 2008 to September 30, 2009

During the prior period, when the Settlement Group showed Oregon Wild and WaterWatch the door, they made the choice to let go of people in order to hold on to the shared vision of a watershed-wide identity that they were working very hard to construct together.

During this period, as the negotiations were opened up to include PacifiCorp and discussion of dam removal, and as the shared vision of a watershed-wide identity increased in strength, there were more shifts in the membership of the Settlement Group.

The Northcoast Environmental Center (NEC) wrestled with trying to reconcile their “nearly four-decade opposition to farming on wildlife refuges in the upper basin” with the agreement which would allow the lease-land farming (Driscoll 2008b, 1 of download). They commissioned scientific and legal reviews of the agreement. The scientific reviewers said that their concerns were allayed after meetings with federal, state, and tribal scientists. The legal reviewers said that signing the agreement would not deprive them of their right to sue under the ESA (ibid.). Ultimately, however, in April 2009, NEC backed out of the negotiations because they contended it “doesn’t do enough to ensure adequate flows for fish runs but guarantees water deliveries to farms that rely on irrigation water diverted from the river” (Preusch 2009, 1 of download).

The Klamath Forest Alliance, originally a signatory on the draft KBRA of January 15, 2008, was no longer a signatory on the agreements by the end of this period.

The Hoopa Valley Tribe, while they continued to raise their deep concern that the agreement would not adequately provide for salmon water needs in the Trinity, remained in the Settlement Group throughout this period.
In a very interesting development, two new organizations were formed and added to the Settlement Group.

The Klamath Water and Advisory Power Authority (KWAPA) was formed as a membership organization made up of irrigation, drainage and improvement districts within the Project and exercises the authorities that are common to each member district jointly for the benefit of all the member districts (KWAPA n.d.). In other words, as I understand it, one can deal with KWAPA as representative of all the districts, rather than having to deal with all of the districts individually.

A far more contentious development was the formation of the Upper Klamath Water Users Association (UKWUA) around October of 2008 and the addition of UKWUA to the Settlement Group.

Heretofore, the voice of off-Project agriculture on the Settlement Group had been that of the Klamath Off-Project Water Users organization (KOPWU). KOPWU, a 501(c)5 nonprofit founded in 2004, seems to be the most recently formed of a number of nonprofits formed by folks up in the Upper Basin off-Project area. Others include Water for Life (a 501(c)6 nonprofit founded in 1990), Resource Conservancy (a 501(c)5 nonprofit founded in 1991), Sprague River Water Resource Foundation, Inc. (a 501(c)3 nonprofit founded in 1999), and Fort Klamath Critical Habitat Landowners, Inc. (a 501(c)5 nonprofit founded in 2000).10 Interestingly, there has been much overlap of members of the Boards of Directors of Resource Conservancy, Water for Life, Fort Klamath Critical Habitat Landowners, Inc., and KOPWU. By 2008, however, none of the originally overlapping board members were still on the Board of KOPWU. These organizations have been over the years most consistently expressive of what I have called the siege mentality.

Bottom-line, UKWUA was formed by those who said that they wanted to distance themselves from those who would rely on litigation to “protect our water and maintain our way of life,” and instead said that they wanted to look to the KBRA to provide “a framework and resources to support settlement with the Klamath Tribes. ...We do not...believe a court can decide a better future than we can” (Scronce 2009, 1 of download). It is interesting to note that one person who had been a member of the board of KOPWU in 2006 and 2007 was now listed as a member of the board of UKWUA in 2008 (UKWUA n.d.; KOPWU 2006, 2007, 2008).

10 Data for these five nonprofits were found at www2.guidestar.org, which is a website that provides information about nonprofits throughout the United States. Much of the information provided comes from IRS Form 990 tax returns which are provided to Guidestar by the IRS. Mention has also been made about two other organizations – Sprague River Water Users and Save the Family Farm. Information about these two other organizations was not available on Guidestar. That does not mean necessarily that they don’t exist; only that, perhaps, their revenue was too small to require them to file a Form 990. I chose to only mention those five organizations whose IRS Form 990 tax returns I could download and review.
In direct relationship, and not at all surprisingly, the more UKWUA was welcomed into the brotherhood of those who shared a vision of a watershed-wide identity, the more the siege mentality of KOPWU and its supporters increased – and the more the siege mentality increased, the more a boundary of Us v. Them was constructed between UKWUA and their supporters and KOPWU and their supporters.

While all this internal jockeying was taking place within the Settlement Group, confidential negotiations continued with PacifiCorp. On November 13, 2008, Oregon Governor Kulongski, California Governor Schwarzenegger, Interior Secretary Kempthorne, and PacifiCorp Chairman and CEO Abel signed Agreements In Principle which provided “a flexible framework for the presumed transfer of four dams from PacifiCorp to a government designated dam removal entity (DRE), which would then undertake the removal of those dams, and [set] a timeline for the signing of a final agreement” (States News Service 2008, 1 of download).

On October 22, 2008, Jill Geist, Humboldt County Supervisor and participant in the Settlement Group, wrote an Opinion column for the Eureka Times-Standard about the Settlement Group and the Agreements in Principle.

What is unique about [the Klamath Settlement Group’s] approach is the scope, detail and commitment by federal, state, tribal, local government, fishermen’s groups, agricultural, conservation organizations and PacifiCorp to work not only toward dam removal, but a more comprehensive restoration plan that at the same time provides economic benefits to all of the basin’s rural communities. This marks a significant departure from the past where groups used litigation as the primary tool to affect [sic] change with little progress made by either side. The settlement agreement group has focused primarily on the resources and management of the Klamath River until we had conceptual dam removal agreement from PacifiCorp. There has been a tremendous amount of cynicism, skepticism and even hope by various outside parties that we would fail. But because we are committed to seizing this unique opportunity for Klamath River restoration we have developed understandings of differing views, worked toward providing assurances where uncertainty exists and found points of agreement. As readers will recall, the settlement group released a draft KBRA for public review in January 2008, and that a sub-committee was engaged with PacifiCorp regarding conceptual agreement for removal of four Klamath dams. Parallel discussions were also held between federal, state and PacifiCorp representatives in an effort to break through the dam removal stalemate. These discussions resulted in an Agreement in Principle for the removal of 4 Klamath River dams by 2020. The Agreements in Principle (AIP) are largely consistent with the draft KBRA principles and provisions. The AIP was presented to the group, and we now possess an agreement that recognizes and relies upon our initiative to coordinate and develop the final agreement. At first blush, the AIP contains language that could be construed as troublesome, but it is important to recognize that it provides the framework for removal of four dams, and that the onus is placed on settlement group members to solve these problems, work around constraints, recognize ‘off-ramps’ and work towards finalizing a comprehensive final agreement that the majority of parties
can accept. The Klamath Settlement Group will meet soon to further evaluate the AIP for consistency with the draft KBRA, establish a work plan for development of the hydropower chapter and further revise and refine the existing draft KBRA agreement. (Geist 2008, 1 of download)

On December 18, 2008, a major step was taken towards the purchase of the Mazama Forest by the Klamath Tribes through the provisions of the KBRA – a step which was sure to thrill the Tribes and further enrage and terrify those in the Upper Basin who were vehemently opposed to the Klamath Tribes ever regaining title to any land.

It seems that the Klamath Tribes, the Trust for Public Land, and Fidelity National Timber Resources, Inc. (which controls Cascade Timberlands, the owners of the Mazama tract) had been in negotiations for two years. On December 18th, the “Klamath Tribes and the Trust for Public Land, a national conservation organization, today announced the Klamath Tribes have signed an Option Agreement to buy the 90,000-acre Mazama Forest in south-central Oregon” (Trust for Public Land 2008, 1 of download). Part of the cost – $21 million – would be paid by the Federal government as part of the KBRA. The Trust for Public Land would raise any additional money for the purchase, with the total price to be determined by an independent appraisal (Milstein 2008). “Chiloquin Mayor Mark Cobb does not expect the tribes to ever get back the parts of their reservation that became the Winema and Fremont national forests too many old resentments among local folks [sic]. But he thinks most folks in the area support the Mazama sale because it will mean jobs at a time when mills in Klamath Falls have been laying off” (Barnard 2008b, 2 of download).

A short, but happy aside. Remember the Chiloquin Dam? Way back in 2002 the National Research Council had said that removal of the dam was key for helping endangered suckers. And in the 2002 Farm Bill, money was allocated to study whether or not it should be removed. Well, it seems that discussion actually had begun in 2002 and by 2006 had been going on for four years between BIA, FWS, BOR, tribes and private landowners (Kadel 2006b). And on September 26, 2006, the Modoc Point Irrigation District – which had received ownership of the dam from the Federal government in 1973 after the termination of the Klamath Tribes – voted to remove Chiloquin Dam. The Interior Department would pay for removal of the 92-year-old dam, as well as would pay for installation of a new pumping station and would give the district a $2.4 million mitigation fund (Kadel 2006a).

Long story short, on August 30, 2008 the removal of the Chiloquin dam was complete – and the suckers were reported as actually in fact going upstream (Juillerat 2008). In the midst of all the consternation, a happy ending. Nice.
I would like to take a moment here to mention something that didn’t happen.

The salmon continued to be devastated. Just witness: For the 2007 salmon season, commercial salmon fishing was limited to 141 days in the KMZ and closed in the KCZ, while recreational salmon fishing was limited to 49-74 days in the KMZ and closed in the KCZ (PFMC 2008). For the 2008 salmon season, commercial salmon fishing was closed in both the KMZ and the KCZ, while recreational salmon fishing was severely limited in the KMZ and closed in the KCZ (PFMC 2009). For the 2009 salmon season, commercial salmon fishing continued to be closed in both the KMZ and the KCZ, while recreational salmon fishing continued to be severely limited in the KMZ and closed in the KCZ (PFMC 2010).

On April 21, 2009, California Governor Schwarzenegger declared a state of emergency in California because of the closed and severely restricted salmon seasons in California and joined with Kulongoski of Oregon to send a letter requesting that the Commerce Department declare a federal disaster. In 2008, Congress had allocated $170 million in relief to keep fishing businesses afloat after the 2006 salmon disaster. It was expected that the $54 million of this aid that remained would be distributed this year (Bacher 2009).

It is obvious that the coastal salmon fishing communities in the Klamath watershed were being devastated economically. What did not happen was that PCFFA did not resort to litigation. In the past, before the launching of the Settlement Track, I would have expected PCFFA to have filed litigation to try to force somebody somewhere to do something to improve the salmon habitat in the Klamath watershed, so that someday the coastal salmon fishing communities could actually resume fishing.

In the midst of this economic devastation, however, PCFFA clearly remained committed to the Settlement Track and to the increasingly strong watershed-wide identity being forged by the Settlement Group and to the KBRA and dam removal as the path to follow for the ultimate restoration of salmon habitat in the Klamath watershed. To me, this speaks ever so eloquently as testimony to the change that was being wrought in the Klamath watershed.

On May 21, 2009, Jeff Barnard, Associated Press environmental reporter, reported that some Project water users and the Klamath Tribes signed agreements to drop their cases in the Klamath Basin Adjudication contingent upon the approval of the KBRA (Barnard 2009) – yet another step that was sure to thrill the Tribes and the Project water users but even further enrage and terrify those
in the Upper Basin who were convinced that the Klamath Tribes wanted nothing more than to take all of Our water.

What with the steps taken with respect to the Klamath Tribes and land and water in the off-Project area, KOPWU and its supporters stepped up their defense against these attacks against their way of life. It seems that state Senator Whitsett (R-Klamath Falls) and state Representative Garrard (R-Klamath Falls) took up their cause and it seems that a poll was taken in the Upper Basin. I have not seen the poll, so cannot comment on the presence or absence of bias within the poll’s questions, but the poll triggered a response from the Klamath Tribes that I can say is the most strongly worded response I have ever read from the Klamath Tribes. Entitled “A Time To Choose,” the May 27, 2009 press release from the Klamath Tribes said

It is time to choose between collaboration and conflict in the Klamath Basin. Rejecting settlement is choosing conflict, and will direct energy and resources into litigation and regulatory action, pathways the Klamath Basin has been experiencing for the past 20+ years. ...

Not surprisingly, strong emotions and opinions about the changes that would come with settlement have been widely expressed. ...

Two weeks ago, elected officials released results of a poll that was blatantly designed to elicit anti-tribal sentiment. ...

A question asked in the poll was whether respondents thought that ‘the KBRA will give the Klamath Tribes too much control over our water.’ ...Perhaps you can understand our gut reaction to the question asked by the poll, which clearly states that the water [to which the Tribes hold the most senior right in the Upper Klamath Basin] belongs to someone else. ...

We are working hard to collaboratively settle water rights issues in ways that meet our needs and the needs of others. The Klamath Basin Restoration Agreement is a remarkable example of such settlement with the irrigators in the Klamath Project. We remain committed to seeking similarly remarkable, collaborative outcomes with other Basin interests. We welcome the recent formation of the Upper Klamath Water Users Association because there has for too long been no voice for the rational, reasonable people who we know exist in the area outside of the Klamath Project. ...

Finally, to Senator Whitsett and Representative Garrard we say this: get out of the way. The mindset you represent is deadly to building collaborative solutions to complex problems. Stop expending all of your effort trying to tear down what others have built through years of supremely difficult work. We ask both of you, where are your solutions? After you tear down the settlement, what will you replace it with? If you succeed in your efforts to dismantle settlement, then you doom the Basin to the ensuing conflict as all parties turn to litigation as the only available pathway to meeting their needs.

The Klamath Tribes have neither seen nor heard from either of you during these negotiations. You have never shared your thoughts or ideas with us, or attempted to meet with our leadership
to help craft solutions. Citizens of Klamath County and the State of Oregon deserve much better leadership than you are giving them. You do not have to like the Klamath Tribes, and it is clear that you do not, but it is simply irresponsible to attempt to destroy what we have built with the Klamath Project irrigators and many other parties, especially when you offer no viable alternatives. (Klamath Tribes 2009, 1-2 of download)

On July 14, 2009, a press release from Oregon Governor Kulongski reported that the Governor had signed into law Senate Bill 76 passed by the Oregon state Senate. “Senate Bill 76 directs PacifiCorp and the Oregon Public Utility commission to work together to establish a trust that will hold funds from customers to cover the costs for dam removal. Other funds for removal would come from the state of California” (Oregon Kulongski 2009, 1 of download).

It is interesting to note that, in keeping with their support of KOPWU and its supporters, both Whitsett and Garrard repeatedly voted no on the bill, as it worked its way through the legislative process.

On September 30, 2009, a press release from the Interior Department Office of Public Affairs announced the release of a draft Klamath Hydroelectric Settlement Agreement (KHSA).

‘This agreement marks the beginning of a new chapter for the Klamath River and for the communities whose health and way of life depend on it,’ said Interior Secretary Ken Salazar. ‘Hats off to all the stakeholders who have worked so hard to find common ground on one of the most challenging water issues of our time. This agreement would establish an open, scientifically grounded process that will help me make a fully informed decision about whether dam removal is in the public interest.’ …

The parties negotiating the Klamath Hydroelectric Settlement Agreement include Federal, state, local and tribal governments, water users, environmental and fishing organizations, and power generators. Once the parties sign a final agreement, the Federal government will begin a formal public process that will provide additional opportunities for the general public to help inform the secretarial review process and the related environmental review.

‘If it was not for the good-faith efforts of a wide range of stakeholders and the engagement of the public, we would not have reached this milestone,’ added Salazar. ‘It is vital that all parties stay engaged, lend their ideas and views on this draft agreement and – importantly – complete the Klamath Basin Restoration Agreement as well.’ (U.S. Interior 2009, 1 of download)

The list of signatories to the draft KHSA still includes the Northcoast Environmental Center and the Hoopa Valley Tribe, includes the Institute for Fisheries Resources (the nonprofit sister of PCFFA) as well as the newly formed organizations KWAPA and UKWUA, but excludes both KOPWU and the Klamath Forest Alliance.
1.5 October 2009 through February 17, 2010: The Settlement Train Prepares to Leave the Station

With the release of the draft KHSA to accompany the draft KBRA, the likelihood that settlement would be anointed as the train that would be leaving the station became very strong.

Not everyone in the negotiating group has to sign the agreement for it to be formally approved. ‘The parties that agree to sign this will move forward with it, whether that’s four or 28, Brockbank said Wednesday [9/30/09]. ‘We hope it’s 28 ... my belief is you’re going to get way over 20.’ [Craig] Tucker [, Klamath coordinator and spokesman for the Karuk Tribe,] agreed. ‘My prediction is the vast majority will sign on,’ he said. (Slizewski 2009, 2 of download)

While Siskiyou County and Northcoast Environmental Center and the Hoopa Valley Tribe still wrestled with their concerns, the strongest response was triggered in KOPWU and its supporters. State Senator Whitsett (R-Klamath Falls) claimed that dam removal would destroy the cattle industry in Klamath County. Tom Mallams, president of KOPWU, opposed dam removal and said that “he and others refuse to give in to special interests seeking a precedent-setting plan” (Beaver 2009a, 3 of download).

The battle was taken to the webpages of the Klamath Basin Crisis website. On October 21, 2009, in round one of the exchanges, Becky Hyde posted a letter explaining the relationship between herself, UKWUA, and Sustainable Northwest (Hyde 2009a). On October 25, 2009, Roger Nicholson, president of both Resource Conservancy and Fort Klamath Critical Habitat Landowners, Inc., and Garrett Roseberry, president of Sprague River Water Resource Foundation posted their response to Becky Hyde’s letter. They agreed with state Senator Whitsett’s statement that the KBRA would destroy the Klamath County cattle industry. They accused Becky Hyde of being inappropriately involved in the KBRA negotiations, in service of ulterior motives and in conflict of interest with off-Project irrigators. “The Restoration Agreement is cultural genocide to ranchers and their families in Klamath County. An attempt has been made to discredit the Upper Basin representational organizations and replace them with individuals and organizations with conflicted ulterior motives. Our people stand united with Senator Whitsett in seeking a fair and equitable solution for all” (Nicholson and Roseberry 2009, 2 of download).

On October 28, 2009, Hyde posts her response to Nicholson and Roseberry on the Klamath Basin Crisis website.

There are at least seven other groups in the off-Project area: Resource Conservancy, Fort Klamath Critical Habitat, Sprague River Resource Foundation, Sprague River Water Users, Save the Family Farm, Water for Life, and Off Project Water Users/Off Project Power Users. They
take a different approach than the Upper Klamath Water Users Association. They rely on endless, costly and often-poorly thought-out litigation. They have a track record of misrepresenting facts to further stir people’s fears. These organizations are mostly run by the exact same people. ...For years these groups have targeted anyone outside their core group who challenges their approach and logic to decision making. I’m the latest to draw the short straw.

(Hyde 2009b, 3-4 of download)

On November 10, 2009, Senator Whitsett (R-Klamath Falls) and Representatives Garrard (R-Klamath Falls) and Gilman (R-Medford) hosted a forum in Klamath Falls in which people could sign up to make their comments in three to five minutes to the three lawmakers, who just listened without answer or comment to all. The forum drew between 250-300 people. Klamath Basin Crisis posted a report on the forum on their website, noting that

Hundreds of farmers, ranchers on and off the Klamath Project and others living on the Klamath River came to the Klamath Fairgrounds yesterday [11/10/09]. 100% of the people who spoke opposed the KBRA and/or dam removal at two listening sessions; not even one person supported it. More than 80 people spoke. ...Many had read this ‘agreement’ and told how it would destroy their livelihoods, their property value, and their water rights. ...The people were discouraged and offended that their county commissioners and Klamath Water Users did not want to hear their concerns and their ideas for solutions. ...The farmers and ranchers said they are not ‘complainers,’ ‘nonnegotiable,’ ‘detractors,’ as accused by the secret negotiators. They just want a voice and a seat at the table when their livelihoods and their children’s livelihoods are at stake. They said they are not being represented at the table, and that it should not be in secret.

(Klamath Basin Crisis 2009a, 1-2 of download)

At the same time as the

three area lawmakers hosted the public forums Tuesday, [Karl] Scronce [, president of UKWUA,] and other Klamath Basin Restoration Agreement proponents attended a quickly arranged luncheon at The Creamery for themselves and invited guests. At the luncheon, which was attended by about 50 people, including regional elected and agency officials, proponents gave updates on the water and dam removal agreements, fielded questions and dispelled rumors. ...Several of those attending expressed concern that proponents had no substantive campaign promoting the restoration and dam removal agreements, yet opponents have done quite a bit to spread their message. ...Lani Hickey of the Klamath County’s public works department asked how proponents would justify their invitation-only luncheon when there was a public meeting the same day. Proponents said public comment will be an important part of the agreement, but the document isn’t finished yet and such discussions would be premature. The forums across town provided three to five minutes per speaker, not enough time to fully explain the Klamath Basin Restoration Agreement, and the nature of the opposition made attending difficult, they said. ‘We just decided that wasn’t going to be a productive use of our time,’ Addington said.

(Beaver 2009b, 3-4 of download)

The battle returned to the Klamath Basin Crisis website, as on December 7, 2009, Becky Hyde responds to an article by former state Senator Steve Harper in the Herald & News on December 6th.
Harper points out his disappointment that proponents of a settlement in the basin did not attend Senator Whitsett’s listening session. I also feel deep sadness over the level of anxiety and fear that he feels were displayed by some of my neighbors in the off project, and others who are upset about the agreement. I have been to many of these sessions over the last ten years, where primarily off project irrigators, and other community members share their fears and concerns. It’s a discouraging and hopeless environment.

At some point though – living in a state of fear does not change your situation. You have to pull on the boots in the morning – head out the door and get to work changing your situation. In the Klamath Basin – unfortunately that means working very hard with people you may not get along with at all. It means seriously contemplating extremely tough, unpopular issues like dam removal. It means addressing issues that are complex, and also learning fully your opponent’s position, and trying hard to figure out if there are any glimmers of reconciliation available. ...

I certainly listen to concerns, and have for years. Many others who I work with continue to listen, and try very hard to address concerns that have come from opponents to the agreement. For the last two years many off project irrigators have worked to make changes in the Klamath Basin Restoration Agreement that address specifically the concerns of the off project. ...

I challenge our community to look deep into these agreements when they release – and not just allow thinking to be clouded by rampant fear. I challenge our community to also sit down with the folks who have worked hard to put these agreements together – and try to really understand the logic behind the document. Unfortunately – this cannot be done in three minute sound bites at fairground rallies. I certainly wish it was that simple. (Hyde 2009c, 1-3 of download)

In response to Becky Hyde’s column, a column from a KBC Editor who named him/herself “a neighbor” was positioned side-by-side with Hyde’s column. The KBC Editor characterized the meetings of the settlement group as “secret meetings negotiating our water rights” – and accused the members of the settlement group who were invited to the listening session, but did not attend, of choosing

NOT to listen to your neighbors and the people you claim to represent...[and instead meeting with] other secret negotiators behind closed doors that very afternoon. You devalue [them] because you don’t care enough to listen or include them. …You didn’t listen! You say they have ‘rampant fear’ and ‘anxiety’ and are ‘upset’ and ‘scared’ and blasted their pathetic ‘3 minute sound bites.’ You make me sick!

Klamath Resource Conservancy, a group representing every off project irrigator in the adjudication, and tens of thousands of acres of land, was not allowed at your elite KBRA negotiation table. Why? And why are you at the table with your new little group? Surely it has nothing to do with the fact that you were paid by Sustainable NW $63,835 in 2007. ...Yet you claim to be at the table representing those neighbors who you won’t listen to. Who did not elect you. Who do not want you, an employee of the groups trying to take their water and groundwater and land, to ‘represent’ them. Have you no shame, conscience or soul?
You condescendingly say they should pull on their little boots and change the situation, ‘work very hard’, and do important complex things like you do, while you ban them from the negotiations, and won’t let them read your plan for them. …

Now that you, in all your wisdom, have supported a closed-door, non transparent ‘settlement’, opposed legitimate stakeholders being at the table, …supported a group of government agencies, tribes and NGO’s and only 2 farm reps in a non-consensus, newly unelected government, decimating not only your community but also your neighbors, except for the few in your little group with attorney’s paid for by the environmental group you work for, rumor has it you’ve sold your soul. I’ll pray it ain’t so. (Klamath Basin Crisis 2009b, 1-3 of download, punctuation as in original)

On December 8, 2009, Water for Life, Inc., John Flynn, Eric Duarte, Chad Rabe, Bill Nicholson, Ambrose McAuliffe, and Gerald Hawkins filed suit against OWRD “for denying public access to the Tribal water rights negotiations surrounding the Klamath Basin Restoration Agreement in violation of Oregon law” (Moore 2009, 1 of download). Moving quickly because of the impending release of final versions of both the KBRA and the KHSA in early January 2010,

A judge rejected an attempt by some irrigators off the Klamath Reclamation Project to halt a water settlement between the Klamath Tribes and on-Project irrigators. James W. Han, an administrative law judge with the Oregon Water Resources Department, issued the decision on New Year’s Eve. In his decision, Han criticized those filing the motion, referred to as the Upper Basin Contestants, for doing so in an untimely fashion. He also rejected their arguments, which included claims that their rights to due legal process in the Klamath Basin’s water adjudication were denied by the settlement. ‘(The Upper Basin Contestants’) argument displays a fundamental misunderstanding of the adjudication process,’ Han’s ruling reads.” (Beaver 2010a, 1 of download)

On December 14, 2009, NEC announced officially that it was withdrawing from negotiations about the KBRA (Driscoll 2009) and then joined with WaterWatch, Oregon Wild and nine other local environmental groups to announce that they had formed a partnership which would be known as “The Klamath Conservation Partners.” The partnership opposed the commercial agriculture in the wildlife refuges (Nelson 2009). It also opposed the dam removal process, wanting the dam removal to happen faster and separately from the restoration, and set about drafting legislation to accomplish separation of dam removal from restoration agreement (Eureka Times Standard 2009).

While the battle raged between UKWUA and its supporters and KOPWU and its supporters, negotiations were ongoing seemingly nonstop in Sacramento and Portland to finalize the proposed settlement agreements. On January 7, 2010, the final draft of the KBRA was released to the public and on the next day January 8th, the final draft of the KHSA was released to the public. “The schedule calls for both agreements to be signed in February 2010; however, organizations that need
more time for review can sign the agreement within 60 days of the original signing date. After that
date, organizations that have participated in the settlement process and any other organization can
apply to become a party (Klamath Settlement Group 2010a, 1), with the stipulation that if a party
wants to sign the KBRA, they must also sign the KHSA.11

On January 13, 2010, The Oregonian published the following Editorial.

Anyone who stopped watching after the headlines faded away in the bitter 2001 war...would find
it hard to believe that things have risen to this point. But years of monstrously complicated
negotiations, shepherded by the nonprofit Sustainable Northwest, have produced a settlement
among the main combatants. Now in its final form, the Klamath Basin Restoration Agreement –
all 396 pages of it – is circulating among the 54 organizations involved for final signoffs.
Nothing is ever over until it’s over, of course, but it’s great news that the negotiators have arrived
at this stage. For some hard-line environmental groups on one side, and some (but not all, by
far) upper Klamath ranchers on the other, the agreement is deficient. It remains to be seen
whether those groups can somehow be brought on board a train that is clearly barreling down
the track, but nothing this complicated is likely to generate 100 percent approval.” (The
Oregonian 2010, 1 of download, underline added)

On January 14, 2010, the following letter from Steve Kandra of KWUA was published in the Herald
& News.

It’s time for irrigators to choose: Self-determination or conflict? ...The status quo is not one of
our choices – change is here. Special contract power rates are gone, whether dams are in or out.
Salmon will be reintroduced above Iron Gate Dam and into the Upper Basin, with the obligation
to address habitat needs, whether dams are in or out. The adjudication will happen and junior
water rights will be exposed to calls. The Endangered Species Act, tribal rights and trust
responsibilities, and the Clean Water Act are not going away. We can choose to manage these
changes, or we can choose to fight their inevitability. There will be a fire storm of information
and misinformation regarding elements of the KBRA. We can choose to believe fear and
misrepresentations, or we can choose to get the facts. We can choose to contact and support
folks who have built a plan for all to see and benefit from, or we can choose to follow those
without solutions. We can choose to lift each other up and build assurances together, or we can
tear down the KBRA and wallow in conflict forever. Choose.” (Kandra 2010, 1 of download)

On February 10, 2010, Ty Beaver reported in the Herald & News that

The majority of irrigator groups, fisheries, tribes and government agencies involved in crafting
the Klamath Basin Restoration Agreement say they will support the landmark settlement. But at
least four groups so far say they will oppose the document and a related dam removal agreement.
...It’s not clear yet how actively opponents will campaign against the agreements, but proponents
say they are determined to move ahead by seeking legislation and funding from federal
lawmakers. ...Opponents include the environmental groups Friends of the River and North
Coast Environmental Center and the Hoopa Valley Tribe, all of whom say that the agreements

11 While I have dutifully listed references, the best resource is http://www.edsheets.com/Klamathdocs.html,
which is the URL address for access to all of the documents produced by the Klamath Settlement Group.
don’t do enough to improve the condition of fish and the health of the Klamath and the Trinity rivers. (Beaver 2010b, 1 of download)

In my opinion, with the release of the final review drafts of the KBRA and the KHSA, there was a certain sense of inevitability in the air – settlement was anointed as the train that was going to leave the station. The train said that we are all in this together and the only way for us to move forward is together. The question became Are you going to get on board or are you going to try to stop the train and go back to fighting each other the way we used to?

There were those like KWUA and Klamath, Yurok, and Karuk tribes and PCFFA and UKWUA and American Rivers and a host of others who got onboard without hesitation.

There were those like Klamath County and Humboldt County who, while they thought that the train was not perfect, did not want to have the train leave without them onboard.

There were those like a number of irrigation districts as well as Siskiyou County and Del Norte County who weren’t sure whether the train would do enough for them and so intended to take advantage of the option to allow the train to leave but maybe get onboard a couple of stops down the track.

There were those like Northcoast Environmental Center and Friends of the River and the Hoopa Valley Tribe who in the end could not get onboard because, for them, there were non-negotiables that the train did not do for them.

And finally there were those like KOPWU who could not get onboard because, as they saw it, the train was headed to the destruction of their way of life.

1.6 February 18, 2010: The Train Leaves the Station

Hundreds of people – including Secretary of Interior Salazar, Oregon Governor Kulongski, and California Governor Schwarzenegger – assembled on February 18, 2010 in the Oregon’s Capitol rotunda in Salem, Oregon for the signing of the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement.

One by one, signers were called forward and each spoke of the meaning of the moment for them before putting pen to paper to “make a fifty-year commitment to work together to restore the Klamath Basin’s resources and communities” (Bacher 2010, 1 of download). “Each person who spoke at Thursday’s signing ceremony...acknowledged that the agreements were simply a beginning (Grube 2010, 1 of download). “Even with the signing, some conflicts remain and we hope that the agreement can be massaged enough to eliminate more of them. The process is also a long way from
over. But make no mistake. Thursday’s event in the Capitol rotunda was a lot more than a photo op” (Herald and News 2010, 2 of download).

Apprehension and worry were mixed with optimism at Thursday’s Klamath Basin Restoration Agreement signing in Salem. ...Stakeholders...pointed out...that the coming water year looks tough. ...Stakeholders said it’s crucial they continue working together until the restoration agreement is fully implemented. Even with the possibility of tough water years, they say the relationships they’ve cultivated will help get the Basin through them. ‘If anything, it would cement the relationship, not break it up,’ said Glen Spain, northwest regional director for Pacific Coast Federation of Fishermen’s Associations. (Beaver 2010c, 1-2 of download)

Table 15.1. Klamath Settlement Organizations, Sorted by Who Did and Did Not Sign the Agreements

<table>
<thead>
<tr>
<th>Klamath Settlement Organizations</th>
<th>Signed KBRA</th>
<th>Did NOT sign KBRA</th>
<th>Signed KHSA</th>
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<th>Klamath Settlement Organizations</th>
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<th>Signed KHSA</th>
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Sources: Klamath Settlement Group 2010b, 2010c.

Note: The Klamath Settlement Organizations that did not sign on February 18, 2010 could sign the agreements within sixty days of the signing date. After the sixty-day period, Klamath Settlement Organizations as well as any other organization can apply to become a party to the agreements. As of the sixty-day deadline, only four of the signatories had chosen not to sign.

2. The Coordination Arrangements in the KBRA

When I look at the KBRA, my eyes are looking, not for what does this do for me, but rather for what relationship does the final agreement bear to what people had said in the Chadwick workshops that they wanted?

Over and over, throughout the Chadwick workshops, participants repeatedly expressed a shared vision for a bottom-up, locally-driven, basin-wide integrated management and coordination plan that would restore the watershed from the headwaters to the ocean and would position the government in service to the grassroots.

With respect to the shared vision of the restoration of the watershed from the headwaters to the ocean, the Klamath Basin Restoration Agreement states on page 4 that it “is intended to result in effective and durable solutions which: (i) restore and sustain natural production and provide for Full Participation
in Harvest Opportunities of Fish Species throughout the Klamath Basin; (ii) establish reliable water and power supplies which sustain agricultural uses and communities and National Wildlife Refuges; (iii) contribute to the public welfare and the sustainability of all Klamath Basin communities through these and other measures provided herein to resolve the disputes” that had riven the watershed for years upon years (Klamath Settlement Group 2010b, 4). The Klamath Basin Restoration Agreement, in concert with the Klamath Hydroelectric Settlement Agreement, spells out a tapestry of intricately inter-woven components to accomplish the intended goals.

With respect to the shared vision of a bottom-up, locally-driven, basin-wide integrated management and coordination plan that would position the government in service to the grassroots, the 2008 draft Klamath Basin Restoration Agreement spelled out an initial framework for coordination and dispute resolution (Klamath Settlement Group 2008). In the interim between the draft and the 2010 final agreement, changes were made to this initial framework which, in my opinion, served the goals of ensuring local input and of ensuring that, while there was inter-agency coordination, local input retained a voice equivalent in influence to agency input. Most tellingly, where the initial framework had been comprised of two entities, both of which were FACA groups,12 the final framework expanded to be comprised of two FACA groups and two non-FACA groups. This change confronted, in my opinion, the limitations inherent in a FACA group – i.e., while it is chartered to give advice to the Federal government, that is also all that it can do.

I am going to take a bit of time here to lay out the framework for coordination, because, in my opinion, it is a clear and powerful expression of the desire for a bottom-up plan which positioned the government in service to the grassroots.

The Klamath Basin Coordinating Council (KBCC) is the coordinating body for all signatory parties of the Agreement. It does not provide advice to the Federal government and so is not a FACA group. “Its purpose is to promote continued collaboration, cooperation, coordination, and consultation among Parties and others as elements of the Agreement are implemented... [and] will serve as a primary forum for public involvement in implementation of the Agreement” (ibid., D.3).

All signatory parties to the Agreement as well as the general public may participate in the KBCC meetings; however, only designated representatives of the signatory parties are voting members. The designations for the KBCC are structured such that there are nine voting members from federal/state/county governments, and nine voting members from local input (which is comprised of the three tribes, two from the Klamath Reclamation Project, one from Off-Project signatories,

12 Groups chartered pursuant to the Federal Advisory Committee Act (FACA).
two from conservation and restoration group signatories, and one from the commercial fishing industry). In other words, a balance of nine agency input and nine local input. Decision-making in general will be by a super-majority (at least a ¾ vote of the voting members present), with provision for a minority report.

In terms of the roles and responsibilities of the KBCC,

The KBCC shall serve as an oversight forum to foster efficient and effective implementation of the Agreement, including tracking and reporting action progress, solving problems, establishing protocols and procedures, providing approvals, making decisions, resolving general issues within and among programs, promoting collaboration and coordination among groups and Klamath Basin partners, providing input to assist with prioritization of program projects, concertedly and cooperatively seeking grants and other funding for priority projects, reporting program expenditures, and developing an annual workplan. The KBCC (of which all members shall be deemed to be Disputing Parties) shall provide the forum for dispute resolution as described in Section 6 of the Agreement when issues cannot be resolved at lower scales within programs, subgroups, or among Disputing Parties. (ibid., D.4)

The Agreement establishes a Dispute Resolution procedure, which lays out a sequence of events over what could be as much as a seven-month period of time. Essentially, the Disputing Parties try to resolve it among themselves. If that is not successful, it is referred to the KBCC which tries to resolve the Dispute. If that is not successful, the Disputing Parties may choose to enter into mediation. The Agreement does not spell out the dispute resolution methods that either the Disputing Parties or the KBCC might employ, prior to mediation.

With respect to litigation,

These Dispute Resolution Procedures do not preclude any Party from Timely filing and pursuing an action to enforce a Contractual Obligation under this Agreement, or to appeal a Regulatory Approval inconsistent with the Agreement, or enforce a Regulatory Approval or Applicable Law; provided that such Party shall provide a Dispute Initiation Notice and, to the extent practicable, undertake and conclude these procedures before initiating such action. The Parties agree that litigation will be initiated as a last resort and only after careful consideration of the matters in dispute and the potential collateral consequences to this Agreement. (ibid., 27)

In my opinion, these provisions move litigation from tool of first resort to tool of last resort, and speak to the long and painful history with respect to litigation that was shared by all the parties to the agreement.

The Klamath Basin Advisory Council (KBAC) is a FACA group that provides advice and recommendations to the Federal government. “Only advice and recommendations for Federal
Agency Parties will be decided within the KBAC; all other decisions and deliberations will be performed within the KBCC” (ibid., D.8).

All signatory parties to the Agreement may participate in the KBAC meetings, as allowed by the FACA law. Public involvement will be as allowed and/or required by the FACA law. The voting members on the KBAC are the same as on the KBCC: nine agency input and nine local input. Decision-making will strive for consensus of a quorum. If consensus is not achieved, majority and minority reports will be developed and provided to the federal and state agency parties.

The Technical Assistance Team (TAT) is both a sub-group of the KBAC and a FACA group in its own right. “The TAT shall consist of the Parties with interest, expertise or authority in water management, water quality, or fish management and with the ability to contribute to restoring and maintaining the health of the waters of the Klamath Basin and the Fish Species” (ibid., D.9).

“Voting members of the TAT...shall be designated representatives of member Parties, (except that representatives for Federal Agency Parties, to which recommendations are directed, shall not be voting members for purposes of developing recommendations for Federal Agency Parties)” (ibid., D.10).

There will be eighteen voting members on the TAT. There will be five voting members representing the federal agencies of FWS, BOR, BIA, NMFS, and Forest Service. Given that these will be non-voting with respect to the recommendations to the Federal government, that leaves thirteen voting members: six voting members from state and county agencies, and seven voting members from local input (which is comprised of the three tribes, one from the Klamath Reclamation Project, one from Off-Project signatories, one from conservation and restoration group signatories, and one from the commercial fishing industry). Decision-making will strive for consensus, with provisions for a minority report when consensus is not achieved. The Dispute Resolution procedure will be available to the TAT.

The primary function of the TAT is to provide recommendations to the Secretary of the Interior with respect to Managed Environmental Water. In essence, the TAT will be involved in real-time management of water during the annual water season (from the last week of February up to at least September 30). The TAT will release a recommendation for an Annual Water Management Plan and will then meet at least twice a month during the season to issue recommendations for two weeks at a time based upon real-time hydrological and biological data on conditions within the Basin as well as upon comments from Basin stakeholders. There are also provisions for emergency meetings should
situations warrant immediate action. “[E]qual consideration will be given to Upper Klamath Lake and Klamath River flow issues, as they are part of the same ecosystem” (ibid., D.14).

During the off-season, the TAT will develop the recommendations for the Annual Water Management Plan, as well as recommend actions for winter lake and river management.

In my opinion, the TAT and the Managed Environmental Water program replaces the annual KPOP that BOR had been issuing, and accomplishes the watershed-wide perspective, the inter-agency coordination in real time, and the preservation of local input in real time, all of which had heretofore always eluded accomplishment.

The Upper Basin Team (UBT) is a brand-new addition to the final Agreement. It will be a sub-group to the KBAC, but not a FACA group. Its focus will be on the Off-Project area of the Upper Basin and its purpose will be to oversee the planning and implementation of a Water Use Retirement Program (WURP) to permanently increase the inflow to Upper Klamath Lake by an average of 30,000 acre-feet every year. Participation shall be voluntary by willing sellers and buyers and compensation shall be determined by market mechanisms and based upon values mutually agreed to by buyer and seller, as informed by appraisals (ibid., 111).

The four voting members of the UBT will be comprised of two representatives from the Klamath Tribes and two representatives from UKWUA. A federal agency representative will be a non-voting member of the UBT. Disputes can avail themselves of the Dispute Resolution procedure. Recommendations will be provided directly to the KBAC.

In my opinion, the UBT and the WURP subsume all the heretofore uncoordinated efforts to increase the inflow to Upper Klamath Lake. And it is, again in my opinion, clearly obvious that the UBT is comprised of those in the off-Project who had found a way to talk together, and excludes those in the off-Project who had not found a way to talk together.

In summary, then, the Klamath Basin Restoration Agreement spells out a tapestry of intricately interwoven components to accomplish the goals of restoring the watershed and sustaining the ways of life throughout the watershed, and lays out a structure for management of the implementation of the Agreement that operates from a watershed-wide perspective, establishes a balance between local input and agency input, enables inter-agency coordination in real-time water management, and enables local input in real-time water management.

In my opinion, the Agreement accomplishes the goals that were expressed in the Chadwick workshops.
3. Player Groups and the Obligato

At the beginning of the period in May 2005, with respect to the environmental track, the public face of the fading militant leader, ONRC, who could, however, still sow discord, was coming to be overshadowed by the private face of boundary-spanning collaboration practiced by the more moderate environmentalism in the watershed.

With respect to the coastal salmon fishing track, the public face of the fading militant leader, PCFFA, was coming to be overshadowed by the private face of boundary-spanning collaboration practiced by individual coastal salmon fishers reaching out to Upper Basin agriculture.

With respect to the Siskiyou County track, the polarized public face of the Siskiyou track that still distrusted The Government was perhaps somewhat tempered by the boundary-spanning that had been sought by some portion of the private face of the Siskiyou track.

With respect to the tribal nations track, the public face of the four tribal nations which continued to be at one and the same time both eager to collaborate with anyone and alert to threat and ready to fight if they must, albeit pained by the fish kill and by the public uproar about the Klamath Tribes’ forest plan, overshadowed a private face of a certain amount of internal concerns and dissension.

With respect to the Upper Basin agriculture track, the public face of Upper Basin agriculture had reemerged as one of collaboration – initially defensive and angry, ultimately recognizing that all will share in the pain – and overshadowed a private face encompassing differences within the agricultural community ranging from a willing seller to an undiminished siege mentality.

And, finally, with respect to the obligato of boundary-spanning collaborative efforts, by this May 2005, boundary-spanning efforts had expanded well beyond the obligato to become, in one way or another, a focus for all the players groups throughout the watershed.

In other words, while the Chadwick workshops were a second-order change that enabled folks to nucleate the seed of a new pattern of interactions for a watershed-wide identity, at the time of the conclusion of the Chadwick workshops, player group identity still predominated in the watershed.

During the period from May 2005 through November 2006, the Settlement Group took a first step towards constructing a watershed-wide identity when the tribes supported the farmers in their quest for rate relief and the farmers supported the tribes in their quest for dam removal. In other words, We and They re-constructed the boundary between Us and Them. We embraced Their needs as if they were Our needs and They embraced Our needs as if they were Their needs. Player groups began to write jointly of their shared vision.
During the period from December 2006 through January 2008, there were two major turning points within the Settlement Group. First, a monumental step forward was taken when the on-project farmers traded “all the water we might want, but no guarantee that we will always get it” for “not all the water we might want, but a guarantee that we will always get it.” Secondly, the Settlement Group answered the question Do we change the vision in order to hold on to everyone in the group or do we let go of people in the group in order to hold on to the vision? when they showed Oregon Wild and WaterWatch, the extremes of the environmental conflict track, the door, choosing to let go of people in order to hold on to the shared vision of a watershed-wide identity that they were working very hard to construct together. Player groups continued to write jointly of their shared vision.

In July 2007, when the people of the watershed rejected the intrusion of the Congressional Hearings, the Federal government was dethroned as *deus ex machina* and positioned in service to the grassroots.

During the period from February 2008 through September 2009, within the Settlement Group, as the strength of the watershed-wide identity grew from a trickle to a torrent, the siege mentality, the extremes of the agricultural conflict track, was progressively pushed out of the river onto the sidelines.

During the period from October 2009 through February 18, 2010, a watershed-wide identity emerged transcendent throughout the watershed and settlement was anointed as the train that was going to leave the station.

**By the end of this period** on February 18, 2010, I would say that, in terms of the framework that I have been using of *public face* and *private face*, the watershed-wide identity became the public face of the watershed. This overarching public face transcended while still sustaining the player group identities that had given rise to the conflict tracks and the obligato.

In some ways, one could think of the *obligato* as expanding to become the public face of the watershed, drawing into itself many of the conflict tracks.

The *coastal salmon fishing track*, public and private face alike, participated in the public face of the watershed-wide identity, as PCFFA, the once militant leader, became a staunch supporter of the settlement track.

The more moderate environmentalism of the *environmental track* participated in the public face of the watershed-wide identity, while the more extreme environmentalism of such as WaterWatch and
Oregon Wild, once the militant leader, was no longer able to derail as they once had and joined the private face of the watershed-wide identity.

Three of the four tribal nations of the *tribal nations track* participated in the public face of the watershed-wide identity, while one of the tribes rejected the settlement proposals because they felt the agreements provided insufficiently for salmon water needs in the Trinity and joined the private face of the watershed-wide identity.

The great majority of the *Upper Basin agriculture track* participated in the public face of the watershed-wide identity, while the siege mentality of the minority continued to feel that the settlement would destroy their way of life and joined the private face of the watershed-wide identity.

And, in very many ways true to character, in my opinion, while the private face of the *Siskiyou County track* participated in the public face of the watershed-wide identity, the public face of the *Siskiyou County track*, ever distrustful, ultimately chose not to sign the settlement proposals and joined the private face of the watershed-wide identity.

Table 15.2 summarizes the components of the public and private faces of the overarching watershed-wide identity.

<table>
<thead>
<tr>
<th>Table 15.2. The Public and Private Faces of the Overarching Watershed-Wide Identity</th>
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<tr>
<td>The Overarching Watershed-Wide Identity</td>
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<tr>
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<td>Boundary-spanning organizations of Siskiyou county</td>
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<td>Majority of Upper Basin agriculture</td>
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4. Tracks of Tools of Conflict Resolution

By February 18, 2010, the use of the tools of mainstream conflict resolution had dwindled down to almost nothing, while the use of reconciliation and collaboration had proliferated on the settlement track. (I would invite you to look back at figure 11.2 for a visual representation of this monumental change.)
When we last looked at these two tracks before the Chadwick workshops, on the one hand, people were explicitly moving away from litigation and government involvement, be it legislation, agencies, or politicians – from the tools of mainstream conflict resolution – which they had seen as having solved nothing and hurt many. And, on the other hand, people were beginning to define the problem as a tear in the web of relationships and the solution as the mending of that tear in the web of relationships, but were frustrated with attempting to accomplish this through the use of the tool of problem-solving, only to have the efforts repeatedly scuttled by the swelling up of emotions about the past.

Over the course of the twelve months from July 2004 through June 2005, the Chadwick workshops were the second-order change, the transformative event which gave people a safe place and process first to voice and share their pain and anguish and hope, and then to take the first steps to re-configure their interactions, to build a watershed-wide identity and construct a watershed-wide shared vision, strategies and actions.

During the period after the Chadwick workshops on up to February 2010, people went from not picking up the tools of mainstream conflict resolution to expressly rejecting those tools.

With respect to the use of litigation, in the first few months which were a period of transition from the old Us v. Them to the new Us and Them watershed-wide identity, KWUA filed two lawsuits in a manner which I would call pro forma. The first was filed, in the spirit of Us v. Them, to challenge FERC’s January 2006 denial of the Interior Department’s 2005 petition to require the continuation of the 1956 power rates in the license renewal. Very shortly thereafter, in the spirit of Us and Them, the Yurok and Karuk Tribes stood in support of the farmers’ quest for rate relief. In a very real sense, the practices of reconciliation and collaboration enabled the tribes to take on the needs of the farmers as their needs and delivered to the farmers a tool far more powerful than anything the practice of litigation could ever have delivered to them.

The second was filed in April 2006 in a pro forma appeal to the decision in PCFFA V. The comment that KWUA made to the press about this filing provides a measure of the progress participants in the Settlement Group had made at the time in the construction of a watershed-wide identity. “While we’re getting close to turning the corner and getting along a lot better, we’re not quite there yet. Until we get there, we have to keep our options open,” said Greg Addington, executive director of [KWUA]” (U.S. Water News Online 2006, 1 of download).

Later in this period, during 2007, 2008, and 2009, when the coastal commercial salmon fishing communities were being economically devastated by closed and severely restricted salmon seasons in California, it is very much worth noting that PCFFA did not resort to litigation. In the past, before
the launching of the Settlement Track, I would have expected PCFFA to have filed litigation to try to force somebody somewhere to do something to improve the salmon habitat in the Klamath watershed, so that someday the coastal salmon fishing communities could actually resume fishing. In the midst of this economic devastation, however, PCFFA clearly remained committed to the Settlement Track and to the increasingly strong watershed-wide identity being forged by the Settlement Group and to the KBRA and dam removal as the path to follow for the ultimate restoration of salmon habitat in the Klamath watershed. To me, this reads as an explicit rejection of the litigation of mainstream conflict resolution and an explicit embracing of the tools of collaboration and reconciliation.

With respect to government involvement, repeatedly such government involvement was explicitly rejected as unwanted. Previously Congressional hearings had been greeted as just one more tool in the toolbox of default mainstream conflict resolution – just one more place where each player group could try to win points with the Federal government as *deus ex machina*. Now, however, when in 2007 the House Committee on Natural Resources scheduled a hearing to deal with accusations in the Washington Post of Vice President Cheney meddling in Klamath River issues in 2001 and 2002, rather than being greeted with open arms, person after person after person said to the Congress “don’t scuttle what we are doing out here!!” Fortunately for all concerned, the hearings seemed to have faded away and done no damage. What is interesting is the very clear indication of the change in the way that the grassroots viewed the government. From once having viewed it as *deus ex machina*, clearly, the grassroots now viewed it as in service to the wishes of the grassroots, wishes which the grassroots was in the process of articulating very precisely.

Previously player groups had curried the support of politicians in yet another expression of government as *deus ex machina*. Now, in 2009, when local Oregon state politicians took up the cause of KOPWU against the Klamath Tribes, the Tribes responded very strongly, challenging everyone to choose between collaboration and conflict, and rejecting the unwanted and unproductive intrusion by the politicians. Where once political influence had been courted, now it was rejected as getting in the way of reconciliation and collaboration.

Previously public hearings had been embraced as ways of winning political support for positions. Now, later in 2009, when local Oregon state politicians organized a public forum during which people could present their positions to the politicians, those who were angry at the Settlement Group signed up in droves, but the Settlement Group declined to participate, calling it an unproductive use of their time (Beaver 2009b). Where once participation in public hearings had been sought, now it was rejected as a format that did not enable reconciliation and collaboration.
By February 18, 2010, the use of the tools of mainstream conflict resolution had dwindled down to almost nothing, with only those who comprised the private face of the watershed – a coalition of those from the more extreme environmentalism who had been deposed from the role of militant leader, the siege mentality of Upper Basin agriculture who felt threatened by the settlements, the Hoopa Valley Tribe who felt threatened by the settlements – picking up litigation and lobbying, albeit so far without success.

By contrast, the use of reconciliation and collaboration proliferated on the settlement track. Within the Settlement Group, We and They re-constructed the boundary between Us and Them as We embraced Their needs as if they were Our needs and They embraced Our needs as if they were Their needs. When they spoke of themselves and of each other – whether in individual or joint articles in newspapers, in press releases, in postings on the internet – they spoke in terms of Us and Them, of a watershed-wide identity that transcended while still sustaining the player group identities. In place of the old adversarial symbol system, they offered a new symbol system – a salmon and potato festival in Klamath Falls (Klamath Settlement Group 2007), the fish and chips settlement (Driscoll 2008a) – which bespoke the Us and Them watershed-wide identity.

When they took action, it was appropriate to a situation experienced as a threat to identity, seeking to build a watershed-wide identity that transcended while still sustaining the player group identities. And it was appropriate to a people who defined conflict as a tear in the web of relationships and conflict resolution as the mending of that tear by means of the practices of reconciliation and collaboration.

The Settlement Group worked together for almost five years to realize their shared vision for a bottom-up, locally-driven, basin-wide integrated management and coordination plan that would restore the watershed from the headwaters to the ocean and would position the government in service to the grassroots.

The final Klamath Basin Restoration Agreement spelled out a structure for collaborative management of the implementation of the Agreement that operated from a watershed-wide perspective, established a balance between local input and agency input, enabled inter-agency coordination in real-time water management, and enabled local input in real-time water management.

And the Klamath Basin Restoration Agreement spelled out a framework for dispute resolution that laid out a time frame but did not mandate the practices of conflict resolution to be used, that offered disputants the opportunity to hire a mediator if they wished, and that, most tellingly, moved litigation from tool of first resort to tool of last resort.
Summary and Discussion of Chapter Fifteen

In the period from the Chadwick workshops to February 18, 2010, a transformation was wrought in the Klamath watershed by the people of the Klamath watershed through the settlement track pursued by the Settlement Group. A watershed-wide web of relationships has been built and it is the public face of a watershed-wide identity. It embraces those who feel the settlement train is the only way for the watershed to move forward together. Is there a private face? Absolutely. It embraces those who disagree with where the train is going and those who are afraid that the train is heading toward the destruction of their way of life.

As the strength of the watershed-wide identity increased and as the settlement train was anointed as the train that was going to leave the station, those who climbed onboard, with or without hesitation, felt that those who were afraid were annoyingly and unrationally pessimistic. And those who were unwilling to get on a train that they were afraid was headed towards the destruction of their way of life claimed that they were being pushed aside and not heard. In other words, as the train leaves the station, a deep boundary between Us and Them is being constructed. This concerns me. This concerns me very much.

I think back to the Chadwick workshops where everybody came in feeling not heard, where everybody felt that Our way of life was threatened by Them. In some ways, of course, everything has changed – the majority of the Klamath watershed has joined together in an overarching watershed-wide identity. In another very real way, however, nothing has changed. There is still an Us and there is still a Them.

My thought is that one must not let the headiness of the emergence of the watershed-wide identity and the settlement train cloud the fact that there is a tear in the web of relationships, a tear that can widen if it is not tended to and mended. And it is oh, so very easy, for Us to say, Oh, why can’t They just get with the program? We’ve got it all figured out...!!

My thought is that one must never stop reaching out to those who feel left out, no matter how much We might wish They would “just get with the program.” My thought is that the need for Chadwick workshops in the Klamath watershed is not over, indeed will never be over, but rather needs to be ongoing in some sort of way, to provide a safe place for those who feel left out to come...
together with those who they feel are leaving them out in order to forge a shared vision and build the future together.

I feel not only that there need to be Chadwick workshops reaching out to the private face of the watershed-wide identity, and most especially to the off-Project folks, but also that the Dispute Resolution procedure of the KBRA needs to incorporate Chadwick workshops into their repertoire of dispute resolution tools, to be used as situations warrant.

As exhilarating as it is for me to witness the transformation in the Klamath watershed, I do not want to see the tear in the watershed-wide web of relationships threaten this transformation, and so I very much hope that, even as the settlement train moves forward towards implementation of the two Agreements, We will reach out to Them and mend the tear in the web of relationships.
Chapter Sixteen
The Chadwick Experience

I want to look at the Chadwick process itself. I want to look at the experience of participating in a Chadwick workshop. And I want to look at how the Chadwick process was appropriate to both the people and the situation in the Klamath.

Before I begin, however, I want to take a moment to deal with a concern about nomenclature. Taking a position that is completely in keeping with the Chadwick process, Bob Chadwick is adamant that it not be described or named as the Chadwick process. And truth be told, in every moment of every workshop, in every moment of enacting his process, Chadwick is giving away his process, wanting every person there to learn how to do it themselves, to take it with them, to make it their own. He wants it to be NOT his Consensus Process, but the Consensus Process that he and you and I and everyone and anyone uses.

It is, of course, patently obvious that I have been referring to it as the Chadwick process. On the one hand, I completely understand Chadwick’s position about wanting to relinquish ownership so that others can make it their own – it is a position I have taken and lived many times myself. And in respect for his position, I even toyed seriously with the option of changing from referring to it in this dissertation as the Chadwick process to referring to it as the Consensus Process that Chadwick uses. However, on the other hand, I use the term the Chadwick process in this dissertation NOT to assign ownership of the consensus process to Chadwick, but, rather, to differentiate the Chadwick process from the customary American conflict resolution process. And I felt that the term the Consensus Process that Chadwick uses did NOT serve that differentiation well.

So, I have decided, on the one hand, to continue to use the term the Chadwick process in order to serve the differentiation I want to make in this dissertation, and, on the other hand, to also make it continuously very clear in this dissertation that this Consensus Process that Chadwick uses is available to all to take and make their own.
1. Chadwick’s Consensus Process

The Chadwick conflict resolution practice is as different from the customary American conflict resolution practice as acupuncture is from a flu shot. Both use needles, but for completely different reasons and for completely different purposes. Both heal, but what each means by healing is completely different.

More specifically, the Chadwick conflict resolution practice is as different from the customary American conflict resolution practice as Art is from Science. Both may use the same words at times, but what each means by those words is completely different.

Given that I spent a lot of time constructing an epistemology of customary American third party conflict resolution practice, I want to take time here to construct an epistemology of the Chadwick conflict resolution practice – as a way of illuminating the differences between the two practices.

Before I do that, though, I want to take a few moments to touch on two things that are very important to me.

First, I need to give you a bit of personal background. Back in the 80’s, I had my own company doing Theatre in Education (TIE) in San Francisco. A TIE program is “a coordinated and carefully structured pattern of activities, usually devised and researched by the company, around a topic of relevance both to the school curriculum and to the children’s own lives, presented by the company, and involving the children directly in an experience of the situations and problems that the topic throws up” (Jackson 1993, 4). My team and I devised conflict-based simulations in which students in character, interacting with professional actors in character, had the opportunity to grapple with complex, multi-party, multi-layer situations, take action and deal with the consequences of their actions.

At the heart of the TIE process is the process used by professional actors in theatre for ‘creating a role’ in the liminal space of the play. A liminal space is an in-between place. The liminal space of the play is the space between everyday reality and the fictional reality presented by the play. Within the liminal space, there is permission to suspend disbelief in the fiction and to imagine new ways of thinking and feeling about everyday reality. There is a safety in the liminal space because ‘what happens there, stays there’ – in the sense that the act of imagining produces no direct consequence in everyday reality. It is a safe place to play.

For a professional actor in theatre, a role is the collection of the given circumstances of a character. The professional actor strives to do what that actor would do if s/he were in the character’s given circumstances. “The manner in which a professional actor ‘creates a role’ in a play
is, to my mind, exactly the way in which an everyday person ‘creates a role’ in everyday reality” (Messier 1998, 72).

A TIE program creates a liminal space in which the participants can take on the given circumstances of characters and can create together a reality that is different than the reality they live in everyday. Each TIE experience my team and I constructed was based on the theatre-based mantra that physical experience triggers emotional experience which triggers intellectual experience. Within the safety of the liminal space of each TIE experience, the participants could physically experience the given circumstances of characters, which would in turn give them the opportunity to imagine and explore ways of thinking and feeling that were different than those which they routinely experienced in their everyday reality. Whatever ways of thinking and feeling the students imagined and explored belonged to them; the program simply provided the opportunity for them to do so.

Now fast forward to my participation as participant-observer in two Chadwick workshops. In a word, I felt as if I had come home – home to the way in which I had worked in TIE – home to the creation of a liminal space in which participants felt safe enough not only to tell their own stories, but also to listen to others’ stories, and ultimately to write a new story together – home to a conflict resolution practice that finally made sense to me.

Second, when I read the very few things that Bob Chadwick has written about his practice, I immediately recognized the writings of an artist as opposed to the writings of a scientist – and I remembered so vividly the great difficulty I had had in trying to write about TIE in grant proposals. In Volume Three, I will deal more explicitly with the epistemologies of Art and of Science, so, suffice it here to say that the ways of knowing of Art and of Science are very different. In particular, Science requires that the Scientist be able to describe their process for producing their knowledge in some sort of written language, whether it be the language of words or the language of mathematical notation, so that that process is accessible to others. By contrast, the Artist’s process for producing their work-of-art (which is their knowledge) is deeply ingrained and nonverbal, and is expressed in the “language” of the medium in which the Artist works – in the instrument of the musician, in the stone of the sculptor, in the paint and canvas of the painter, in the body of the dancer, in the body and voice of the actor, and so on. The Artist is not required to be able to write down in the language of words their process for producing their work-of-art. They produce their work-of-art and it “speaks” for them.
Bob Chadwick considers what he does – “building consensus” – to be an art. When he writes about his art, he writes as an artist trying to explain his art, trying to put words to a process, his understandings of which are deeply ingrained and nonverbal. His way of teaching his process to anyone is to have them participate in a workshop, by means of which they will come to their own understandings. It is the teaching relationship between a Master and an Apprentice who works at the side of the Master, and over time comes to their own understandings.

In reading Chadwick’s writings, I am vividly reminded of the great difficulty I had when trying to describe in grant proposals how TIE did what it did. As an actor, I knew how it did what it did, but I did not have the words that described it as a scientist would have described it, because I did not know it in the epistemology of Science. I was always reduced to saying, “Come see it; then you’ll understand.” Those that did, did; those that didn’t, didn’t.

As preface to constructing an epistemology of the Chadwick conflict resolution practice, let me provide you with some background of the man. For this, I am going to quote liberally from a case study of the Founders of a New Northwest written in 1997 by Sustainable Northwest.

In the late 1960’s, long before it had become a public mandate, Bob Chadwick, district ranger for the Mount Hood National Forest, incorporated extensive public involvement into his decision-making processes. ‘I had the notion people shouldn’t be fighting,’ he says. That simple but powerful concept became the building principle of Chadwick’s subsequent work – now 35 years of building consensus and community – and he’s still going strong.1

‘The Forest Service emphasizes community stability, by which they mean economic stability,’ Chadwick says. ‘I posited that the primary goal should be social stability.’ (Sustainable Northwest 1997, 1 of download)

In the mid-1970s, Chadwick became the forest supervisor for the Winema National Forest in southwestern Oregon. There he took his ideas on consensus a step farther. ‘I realized that people didn’t want to have ‘input,’ they wanted to have ‘impact.’’ he says. ‘I believed we shouldn’t move ahead with issues affecting the community unless everyone agreed.’

‘When we looked at roadless areas, I brought county commissioners together with timber people, environmentalists, politicians, and community people, and told them they should decide where the wilderness area should be. ...In the end they did it – they drew up a bill that went through Congress virtually unchanged.’

‘Then we created a timber management plan by consensus. I believe it was the only timber and land management plan in the 1970s that was approved.’

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1 If it was 35 years in 1997, in 2010, it’s 48 years. Ostensibly, Bob is semi-retired, but...
‘In the late 1970s, on every major timber sale, I required that the inter-disciplinary team include an environmentalist, a timber representative, and a community resident, and if there was disagreement, there was no sale,’ Chadwick continues. ‘The rangers wanted to lynch me at first, but they learned to develop consensus and we sold every sale we planned.’ (Sustainable Northwest 1997, 1 of download)

After his stint at the Winema National Forest, Chadwick moved to Portland to work under the regional forester as his consensus builder. He worked there for seven years confronting resource conflicts while teaching Forest Service employees how to resolve conflict, all over the region and the country. ‘We had no failures,’ Chadwick says, ‘and by the time I left we were resolving about 30 or 40 appeals on timber or natural resource issues each year.’

‘Respect’ is a key term for Chadwick. ‘Where I find disrespectful relations between loggers and land managers, the land looks terrible,’ he says. ‘It works the other way around too.’ Respect is built into the methods he uses to show people the way to consensus. ‘I don’t solve people’s problems or mediate,’ Chadwick says. He asks participants to sit in a circle and to take turns speaking, before he leads them gently towards the subject of the conflict. They discuss possible solutions, and, finally, they come up with solutions.

For Chadwick, true consensus is not reached if individuals compromise what they want for the good of the group; it is attained only when the community asks how it can meet the needs of all of its individuals. ‘The biggest challenge is getting people to recognize opportunity and take risks. But if they do, problems can be solved, and you can meet 100 percent of people’s needs. ‘People say, ‘that is impossible,’ and I answer, ‘yes, and that’s what we’re here to do.’ I expect people I work with to do the impossible,’ Chadwick says.

He has worked to build consensus now with over 30,000 people, and his sense of excitement about the process only burns brighter. ...

Chadwick finally left the Forest Service in 1986, believing that its approach to forest management and public involvement was deeply flawed and incapable of change. He formed Consensus Associates, an independent consulting firm where he works with 40 to 60 conflicts a year. (Sustainable Northwest 1997, 2 of download)

By 2004, according to his bio for the 2004 Klamath Watershed Conference, he had “facilitated consensus solutions in over 1,500 situations involving more than 45,000 people, nationally and internationally” (OSU Extension 2004, 4 of presenter information download).

At the 2004 Klamath Watershed Conference, Chadwick did a workshop that resonated powerfully among those who participated (see Chapter Fourteen for details). One of the participants, Alice Kilham, then chair of the Klamath Compact Commission, was so impressed that she convinced Bob to come out of semi-retirement to convene a series of workshops in the Klamath. These workshops were the second-order change, the transformative event that enabled people to re-configure their interactions towards a watershed-wide realization of a shared vision.
So, at last, on to constructing an epistemology of the Chadwick conflict resolution practice. To enable direct comparison, I am going to use the same categories I used in the matrix of table 3.2 Epistemology of customary American third party conflict resolution practice. Here I am going to use Chadwick’s terms to populate the matrix. I am going to put quotation marks around those words which are also used in customary conflict resolution, in order to indicate that, in his practice, these words name experiences that are different than they are in customary conflict resolution. I will then provide a definition of those words within the frame of the Chadwick conflict resolution practice.

1.1 The Logic Around Which the Epistemology is Organized

The epistemology of the Chadwick conflict resolution practice is organized around a logic of “empowering” a “community of interest” to build “consensus.” Chadwick uses the phrase “community of interest” to refer to those folks who by self-selection feel themselves to be influenced or impacted by a situation (Chadwick n.d.[a]). He uses the word “empower” to refer to providing opportunities to participants “to behave in ways that they had not previously contemplated” (Chadwick n.d.[a], 8). And, for Chadwick, “consensus” is realized when people create a new and shared knowledge base and jointly construct a solution that meets everyone’s needs (Chadwick n.d.[a]; Consensus Associates 2004a, 2004b, 2005a, 2005b, 2005c). He adds that true consensus is expressed in behavior, not words. In other words, it is ‘walking the talk.’ If people speak the words of consensus, but their behavior belies their words, then they do not have consensus (Consensus Associates 2001).

1.2 Epistemology – How One Learns, How One Knows, How One Makes Meaning

In the Chadwick epistemology, one comes to learn through taking the risk to participate in experiences that give one the opportunity to feel and to think, as well as to behave in ways that one had not previously contemplated (Chadwick n.d.[a]).

1.3 Methodology – What One Does in order to Learn, to Know, to Make Meaning, Given How One Learns, Knows, Makes Meaning.

Methodologically, to enable this learning, the “facilitator,” by fostering an environment of “listening with respect,” creates a liminal space where it feels safe to take a risk.

The concept of “listening with respect” is central to Chadwick’s practice (Chadwick n.d.[a]). By “listening with respect,” Chadwick means to listen fully and without interruption to what someone has to say, trying to understand it even if you don’t agree with it. The rationale is that if I know that you are trying to understand me, I can trust you, and if you know that I am trying to understand you,
you can trust me, and if we trust each other, we can learn from each other, and can “develop a new
and richer perspective of the situation, and ultimately a new and shared truth” (Chadwick n.d.[a], 18).

I am going to describe the “facilitator” role below, but let me say here that Chadwick writes that
he really does not have a word that accurately defines what he does (Chadwick n.d.[a]). He is willing
to let people call him a “facilitator,” knowing full well that the usual understanding of what a
facilitator does is not what he does. “The best description of my role was provided by a workshop
participant: ‘You are not the sage on the stage, but the guide on the side” (Chadwick n.d.[a], 44). I
have called it “sheep dog.” More below.

1.4 Methods – Specific Activities That One Does in Order to Learn, to Know, to Make
Meaning

With respect to methods, while there is definitely a repertoire of activities that Chadwick has
developed over the years and while there are certain activities that will always be there in a workshop,
the ultimate configuration of each workshop is unique, taking shape organically as the “facilitator”
listens to what people are saying and in the moment shapes the experiences accordingly.

The Components That Will Always Be There (and Chadwick’s Rationale for the
Components)

- The circle. “The circle represents symbolically and behaviorally the move toward equity,
toward acknowledgment of diversity, toward the need for community, toward the need for
consensus. It is the centerpiece of the consensus approach” (Chadwick n.d.[a], 6). For
Chadwick, other arrangements have an inherent power structure, a script built into them. In
a circle, all people are equal, including the “facilitator.” In addition, it takes people out of
their familiar groupings, opening the possibility for new and different relationships
(Chadwick n.d.[a]).

“The circle is most appropriate in situations of emotional conflict with diverse needs. It is
most effective when communication is emotional, and the need to listen is high. It is not
appropriate if the purpose is to transfer non-emotional information, either to a small or large
group” (Chadwick n.d.[a], 6).

- Participant roles. Throughout the workshop, indeed, from the very first moment of the
workshop, the “facilitator” “shares the power,” offering opportunities to participants to help
facilitate the process. “I normally seek a person who is not as likely to be given this position
of prominence. ...The intent is to immediately and behaviorally send the message that we are all important in the circle, that we can all facilitate the process, that people are willing to risk the experience” (Chadwick n.d.[a], 7). If participants take the risk to accept the opportunities, they can function as “facilitators,” as “recorders,” as “honorers,” as “listeners” in the pairs configuration, as speakers on “panels” in the panels configuration, as speakers in the pairs configuration, as participants in a physical exercise, and so on. (I will deal with each of these roles as they come up in presenting the various activities.)

- **Honoring.** Throughout the workshop, opportunity is taken to honor participants for their participation. Whenever a subset of the participants has done something for the group as a whole – taken on the role of facilitator or recorder, been on a panel, done an exercise, and so on – or even when someone has to leave early..!! – they are asked to step forward into the center of the circle, and a fellow participant is asked to step forward and honor them for their participation.

- **Questions that engage both the rational and the emotional in adaptive learning:** Questions will be posed to the group and every set of questions will ask what you think about something and how you feel about that something. As Chadwick explains it, this engages the whole brain – both the rational and the emotional. And acknowledging the feelings about the old thinking makes it safe to entertain new thinking.

  In addition, as Chadwick explains it, asking the questions triggers the answers in each person. It is their choice whether or not to share their answers. Whatever meaning they make belongs to them. Whatever answers they share is their choice. All choices are accepted.

**The Sequencing of Components (and Chadwick’s Rationale for the Components and the Sequencing)**

- **Grounding circle.** As Chadwick explains it, the first two activities – the grounding and the greeting – are intended to deal with the feelings of disenfranchise ment that most people take into most customary problem-solving meetings, in which people either fight to have their point of view win, or tune out and stop listening and ignore whatever decision is reached (Chadwick n.d.[a]).
After the “facilitator” has done a brief introduction – which Chadwick says he does simply to help people get settled and to get the sound of a voice out in the room; he does not expect anybody to remember anything that he says – a previously selected participant-facilitator explains that they are all going to do a grounding, which consists of answering three questions. She reads the three questions:

- Introduce yourself and your relationship to (the situation that has brought them together).
- What are your expectations of this meeting?
- How do you feel about being here?

She answers the questions herself, reads the questions again, and then invites someone to the side of her to answer the questions. “If they appear to forget the questions, ask them to answer what they remember. I caution her about demanding that they answer all the questions. Her role after stating the questions is to listen” (Chadwick n.d.[a], 8). “She is to foster each person speaking in turn, while listening intently to what they say. The importance is to establish a model for listening, by assuring the speaker that at least one person in the group is listening to him” (Chadwick n.d.[a],8). “The process continues around the circle, each person answering the questions, in turn, their confidence gaining as the process continues. They are aware now that they will have their opportunity to speak unencumbered with the fear of interruption” (Chadwick n.d.[a], 9).

As Chadwick explains it, the Grounding Circle accomplishes the following:

- establishes an environment of Listening With Respect
- establishes a “verbal territory” for each participant, i.e., allows each participant to establish the presence of their voice in the room
- “puts the WHOLE BRAIN into action because it requires access to both the left and the right brain” (Chadwick n.d.[a], 13, caps in original)
- allows apprehensions and hopes about the meeting to be expressed, released out into the open
- provides initial information to the “facilitator.” “By listening closely, I can sense the major issues in the group. I can detect the tensions between people. This helps me create panels. I can learn the words they use to describe their situation. I use these words in framing the questions. I can sense who is nervous, who feels responsible,
who feels disenfranchised. This helps me decide who to empower” (Chadwick n.d.[a], 14)

- **Greeting circle.** “An old ritual with new purpose,” as Chadwick explains it (Chadwick n.d.[a], 19). The “facilitator” introduces the Greeting circle, asking all participants to stand in front of their chairs. “I explain to them that it is normal for people to sit with those they know, or are similar to, seeking a comfort zone. ...I describe how this limits their information sphere, how they alienate themselves from those who are not like them, whom they don't know” (Chadwick n.d.[a], 19). The “facilitator” explains that he will turn and greet the person to his left; then move on the next person; the people he greets will, in turn, follow him around the inside of the circle. Eventually he will return to his place, then those behind him in the inside circle will move by him, greeting him. Each person will be both the greeter and then the greeted. He tells them that after the greeting circle, he will ask two questions (which he often refers to as Life-Long Learning or Adaptive Learning questions):
  - How do you feel about doing the greeting circle?
  - What did you learn that will help you resolve the conflict we are here to confront (or the situation that is relevant to the specific workshop)?

If the group is small, Chadwick will let them complete the full circle. If the group is large, he will usually wait until at least 2/3 of the circle is inside the circle, and then ask them to return to their seats. “I do this to allow different parts of the group to have a different learning experience. Some have greeted and been greeted, others have greeted, others have just been greeted. Each is a different encounter. Normally I give the group a break at this time, because of the impact of the greeting circle on the kidneys. I repeat the two questions before the break: How did you feel and what did you learn? This allows those who want to an opportunity to greet those they haven’t yet met, and a break to think about what they felt and learned” (Chadwick n.d.[a], 20).

As Chadwick explains it, the Greeting Circle accomplishes the following:
  - establishes the opportunity for all participants to meet each other
  - confronts, encounters, and releases the participants’ anxiety and apprehension (Chadwick n.d.[a])
  - “allows people to meet the person, rather than the role, or stereotype” (Chadwick n.d.[a], 21)
• opens communication up, “allowing each person to seek a common interest or topic” (Chadwick n.d.[a], 21). And by being both a “greeter” and a “greeted person,” individuals can “go beyond the ritualistic first greeting, to finding a more real and common interest in the second contact” (Chadwick n.d.[a], 21)
• reduces the intimidation factor. “We will make contact, struggle through the uncomfortableness of the moment and see the humanity in each of us. I will see you in a different way” (Chadwick n.d.[a], 25)

And as Chadwick explains it, the Greeting Circle questions accomplish the following:
• “The activity is given new meaning when the two questions are asked and answered after the greeting. I would never do the greeting circle without the questions. The questions allow the individuals to be grounded again, and to learn from the experience” (Chadwick n.d.[a], 21).

• The questions about worst and best possible outcomes. The following set of questions will used in all workshops:
  • What is the worst possible outcome of __________ (situation relevant to the workshop)?
  • What is the best possible outcome of __________ (situation relevant to the workshop)?
  • What “beliefs/behaviors” and “strategies/actions” will foster the best possible outcomes?

The first question is asked, with opportunity for each person to share their answer to that one question. Then the second question, again with opportunity for each person to share their answer to that one question. And finally the third question, again with opportunity for each person to share their answer to that one question. The manner in which the answers are shared is dependent upon the configuration being used, e.g., the full circle, small circles, panel within the full circle followed by the full circle.

As Chadwick explains it, “Worst outcomes...are feared future outcomes, often based on past experience, with a presently experienced emotion and physical reaction. When people believe them, they affect their perceptions, beliefs, values, and strategies. They tend to be self-fulfilling prophecies when strongly held. Best outcomes...are hoped for future outcomes,
sometimes not previously experienced, but intensely imagined, with a presently experienced emotion and physical response. When people believe them, they affect their perceptions, beliefs, values, and strategies. They tend to be self-fulfilling prophecies when strongly held” (Chadwick n.d.[a], 36, bold and italics in original).

By asking about both the worst and the best outcomes of the situation, Chadwick explains that he is “suggesting that it is necessary in any situation to recognize and acknowledge the POSSIBILITY [of] both the worst AND the best outcomes. Both are inherent in the situation, because the outcomes have not happened, they are still in the future. ...Once your fears have been adequately expressed, then your hopes seem more possible, easier to express and believe. This leaves the images, emotions, and words of the best hopes in the minds of all the participants” (Chadwick n.d.[a], 35, caps in original). “In order to move ahead we need to honor...our fears and hopes, our past and potential future, our emotions and intellect. We must be reactive, then proactive. This consensus process allows you to do that” (Chadwick n.d.[a], 38).

And as Chadwick explains it, beliefs create the behaviors of a person. Strategies can be a way of actualizing a belief, and actions are the specific deeds for carrying out the strategy. But if the strategy or the actions are not congruent with a person’s belief, the person’s behaviors will nullify the strategy and/or the actions. “If the beliefs are not consistent with the plans, they will not be carried out” (Consensus Associates 2001, 72).

- **Recording participant statements verbatim.** As Chadwick explains it, when a participant’s message is recorded verbatim, it is an acknowledgement of that participant’s existence. “There is a history of my individual input, and it is made part of the group memory. This allows me to let go of the old information and move on to the new. I can now let new information flow into the space created by your acknowledgment of my old information. I can learn and grow. I can move toward my potential” (Chadwick n.d.[a], 46).

There are a number of different configurations for accomplishing this verbatim recording. The configuration used depends upon how the workshop is configured at that moment. The participants can be in the full circle or in small circles, and can write their answers on 3x5 cards which are collected, and transcribed by a staff-recorder verbatim onto easel paper. The participants can be in a small circle, and the participant-facilitator of the small group can
select a participant-recorder for the small circle to record their statements verbatim on easel paper.

“The recorder role is as important in facilitating the process as the facilitator. In order for consensus seeking to be successful, each person must feel listened to and acknowledged. These two attributes allow a person to learn and grow. The recorder’s actions facilitate this possibility” (Chadwick n.d.[a], 45). “Write every word the speaker says, exactly as he says it. Do not paraphrase, do not replace words with your own. Accept the message as given. Do not question the words of the speaker, or the intent. This is his point of view, not yours. Do not ask him to clarify... Just write down what is spoken. This allows the speaker to be focused, to move through his statements, to get closure” (Chadwick n.d.[a], 46).

- **Closure**. The “facilitator” will close with another round of the Life-Long Learning questions.
  - How do you feel about this workshop?
  - What did you learn that will make you successful with your conflict (or the situation that is relevant to the specific workshop)?

**Possible Alternative Configurations (and Chadwick’s Rationale for the Alternative Configurations)**

- **Panels of speakers within the full circle**. These can be used to model what the group is going to do, to present information to the group, to bring to the fore the issues of contention within the group. Chadwick also sees participation on a panel as yet one more opportunity for participants to take on new and different roles.

- **Pairs of speakers with listeners** (Chadwick n.d.[b]). Chadwick seems to use this configuration when there is tension between two groups. He will ask folks from each group if they would be willing to participate in the exercise; he pairs up one person from each group, then asks each to select someone to be their listener. The overarching format of the configuration is as follows:
  - The “facilitator” poses a question to the speakers.
  - Speaker A speaks to Speaker B, answering the questions.
  - After Speaker A has concluded, Listener B tells Speaker B what she heard Speaker A say.
  - After Listener B has concluded, Speaker B speaks to Speaker A, answering the questions.
  - After Speaker B has concluded, Listener A tells Speaker A what he heard Speaker B say.
Chadwick can run the pairs through a series of questions, with the pair going through the full format for each question:

1. What is your view of the situation and how do you feel about it?
2. What are the worst possible outcomes of this situation for you? What do you believe are the worst possible outcomes for the other person?
3. What do you want as best possible outcomes for yourself in this situation? What do you want as best possible outcomes for the other person?
4. What are you willing to do to foster those best possible outcomes for both of you? What do you need from the other person to make your best outcomes happen?

He can also just use one set of questions posed to multiple pairs. What he ultimately does is contingent upon what he feels the group needs at that moment.

- **Small circles.** “The consensus process seeks to create diverse groups with diverse viewpoints with the purpose of creating common decisions. This is done by assuring that all groups are represented in an equitable way at the problem-solving session” (Chadwick n.d.[a], 23).
  
  “This movement is purposeful, and part of consensus seeking. I am moving them out of established patterns of behavior, keeping a balance between comfort and discomfort. The small group climate will eventually become comfortable once again. That is the time to change the group makeup” (Chadwick n.d.[a], 41).

The “facilitator” uses a count-off process, which she can implement in a number of different ways, contingent upon which is most meaningful for the group. For example, at the Tulelake workshop, Chadwick called to the center of the full circle a series of groups. People self-selected their membership in however many groups were meaningful to them. As each group took its place center circle, a fellow participant stepped forward to honor the group for its participation in the workshop. Then Chadwick asked the group to count off to a particular number (five, I think), with those folks who had already counted off in a prior group stepping out of the counting-off.

The “facilitator” designates a participant-facilitator to each group. He tells each group what he is doing and why he is doing it. The role of the participant-facilitator “is to listen, to manage the process in a quiet, low-key guiding manner” (Chadwick n.d.[a], 30). The
participant-facilitator ensures that each person has an opportunity to speak, and models listening with respect. When the group is writing answers to the questions on 3x5 cards, “I point out the need for silence to the facilitator [while the group is writing their answers, and]... to wait until the last person is done writing. This sends a strong behavioral message, that each person is important. We will wait for everyone to participate” (Chadwick n.d.[a], 30).

The “facilitator” asks the first question to all small groups at the same time. Then he walks away from the groups and lets them carry on the task. He rarely intervenes in the task. It doesn’t matter if they do the facilitating and recording “right.” It is their learning experience (Chadwick n.d.[a]).

The “facilitator” may ask a group “Has everyone spoken at least once?” If the participant-facilitator signals that they haven’t, then the “facilitator” turns and walks away from the working group. “The message is clear...you are in charge. When the groups signal they have all spoken, then the facilitator moves the group to the next question [or] task” (Consensus Associates 2001, 36).

- Questions tailored to what happens in the workshop. Things may transpire during the workshop, and the “facilitator” may re-configure what happens next in the workshop in order to focus on those things.² For example, as I talked about in Chapter Fourteen, when the ceasefire proposal was made at the Tulelake workshop, Chadwick responded by configuring a set of questions which gave people the opportunity to talk together about the ceasefire: how did they feel about the ceasefire proposal; what was the worst possible outcome of a ceasefire; what was the best possible outcome of a ceasefire; what did they need to learn in order for the best possible outcomes to happen; what beliefs/behaviors/strategies/actions would help make the best possible outcomes happen; what were they willing to do to make the best possible outcomes happen. This opportunity to talk together about the ceasefire proposal invoked the shared vision that people had been building together in the workshops and tilted the construction of the new pattern of interactions towards watershed-wide realization of the shared vision.

² At one point in the Tulelake workshop, Bob commented to me that he had done that day only about 10% at most of what he had planned for the day, because he was flexibly re-configuring the workshop to deal with what was coming up.
• **Physical experiences.** Chadwick is particularly brilliant in constructing exercises that give participants a physical experience of an issue, which begets an emotional response and intellectual learning.

Sometimes these are planned beforehand to be used in a particular workshop, such as, for example:

- the Map Exercise that Chadwick used in the Tulelake workshop, in which he had a map of the entire watershed taped out on the floor center circle, had participants stand where they saw themselves on the map, and then pulled segments of the population off and on the map to give physical experience of their absence and presence
- the Scarcity Exercise, which, by means of the manipulation of the number of chairs available, gives participants a visceral experience of the notions of surplus and scarcity (Chadwick n.d.[c])
- the Stereotypes Exercise, in which people articulate and express the stereotypes they have of each other (Chadwick n.d.[c])
- the Power Exercise, in which participants physically represent and enact power relationships (Chadwick n.d.[b])
- the Community Story Exercise, in which participants enact the experience of each member of the community thinking that their individual story is the community story (Consensus Associates 2001, 2004a, 2004b, 2005a, 2005b, 2005c)
- the Conflict Exercise, in which people enact the experience of conflict emerging out of difference, or disagreement, with power attached, and escalating from the interpersonal to the intergroup (Consensus Associates 2001)

Sometimes these are configured in the moment, such as, the following example from the Tulelake workshop. At one point, Irma Lagomarsino of NOAA was sharing her answers with the full circle. Unexpectedly, Bob Chadwick asked her to step to the center of the circle. He then asked a Project farmer (Steve Cheyne) to step to the center of the circle and take one of Irma’s hands, and asked Troy Fletcher of the Yurok to step in and take Irma’s other hand. Then Bob asked the two guys to pull back on Irma’s arms in opposite directions. Irma burst into tears, saying that this was exactly how she felt all the time, a tug-of-war between the upper and lower basins through her. There was a palpable gasp of
understanding throughout the room as everyone “got it” – even the two guys doing the pulling. No amount of words could have equaled that physical experience.

1.5 Arenas

In the epistemology of the customary American conflict resolution practice, I looked at the methods in a number of different arenas. Within each arena, I looked at the conflict theory that was foundational to each arena, what counted as conflict resolution within each arena, who were the disputants in each arena, what were the third party roles and what did they do in those roles.

In the epistemology of the Chadwick conflict resolution practice, there are no distinguishable arenas. Rather, the same consensus process is used whether the participants have come together to confront a conflict or to be trained in the consensus process itself.

Conflict Theory

With respect to conflict theory, while I can tease out Chadwick’s conflict theory – “Conflict is difference, or disagreement, with power attached to it” (Consensus Associates 2001, 54), his conflict theory is not really relevant, because Chadwick does not in any way require participants to organize their experience around his definition of conflict. Rather, he listens to the words that the participants use to describe their own situation and uses those words to phrase his questions (Chadwick n.d.[a]), and he provides opportunity for the participants to define the situation for themselves, and if they define it as a conflict, to come up with their own definition of why it counts as a conflict to them.

Conflict Resolution

For Chadwick, conflict resolution consists of “building consensus.” For Chadwick, “consensus” is realized when people create a new and shared knowledge base and jointly construct a solution that meets everyone’s needs (Chadwick n.d.[a]; Consensus Associates 2004a, 2004b, 2005a, 2005b, 2005c). He adds that true consensus is expressed in behavior, not words. In other words, it is ‘walking the talk.’ If people speak the words of consensus, but their behavior belies their words, then they do not have consensus (Consensus Associates 2001).

In other words, Chadwick provides the opportunity for people to define the situation for themselves and to build the consensus for themselves – and then he gets out of their way.

Disputants

Chadwick would not use the word disputant because the word contains a definition of the situation that he would not impose upon people. He refers to them as participants and attendance is
by self-selection – they choose to attend because they feel impacted or influenced by the situation. They don’t have to attend; they can come and choose to do nothing; they can leave at any time if they choose to do so. Whatever level of participation they choose to do is honored and accepted.

**Third Party Role**

The third party role in the Chadwick conflict resolution practice is diametrically different from that of the customary American conflict resolution practice. In *Beyond Conflict to Consensus*, Chadwick writes at some length about his role.

I have often wondered how to describe what I do when people ask me. I do not regard myself as a mediator, because I seek to have the parties mediate themselves. I am not a negotiator, because the parties negotiate themselves to a consensus. The closest term that I have found to describe my role is a facilitator. Normally a facilitator is perceived as someone who eases a process. But I know that I do much more than that. There is not a term yet that describes what I believe to be a new role in resolving conflicts. So I am willing to settle for facilitator. The term is not as important as the beliefs and behaviors for what I do. I am willing to be called a negotiator, or mediator, or hired gun, or facilitator, as long as I get the opportunity to do what I do best... help people resolve their conflicts while learning to do it themselves. (Chadwick n.d.[a], 42)

Chadwick says that, customarily, the leader assumes a position of authority, taking charge of the process and the participants.

In the consensus process, this role is changed. The leader learns to detach from the group as soon as the task is given. Detachment means leaving the circle of participants, sometimes even turning your back on them, or leaving the room. This places the participants in control of doing the task. If there are questions, the participants are told to use their own judgment. If the questioner asks how to accomplish the task they are told: ‘Whatever you decide to do is up to you.’ If the facilitator is challenged about the task, the challenger is told to do what they feel is best. This leaves the power with the person, the group. They are empowered to do the task. (Chadwick n.d.[a], 44)

He lists some of the behaviors that describe what he believes is needed to facilitate people to a consensus:

- “I must be willing to take the risk of failing in bringing people to conflict. I must be willing to risk confronting a worst outcome during a session, and know that I can work it through to a best outcome.
- “I must be willing to acknowledge and confront my uncertainty about resolving an issue. I must be willing to learn, to accept my uncertainty as a condition for learning. If I am certain, I have no need to learn. I limit my opportunities to gain the information needed to facilitate the group to a consensus.
“I must be willing to let go of control, the desire for power in the lower brain sense. I must be willing to serve the group to meet their needs and not mine.

“I must be willing to be powerful in the higher brain sense. I must be able to confront the group if they begin to conform to avoid an issue. I must be willing to confront the group when they violate one of their own standards for honesty. I must be willing to let the group be apprehensive about the direction I am leading them, and still influence them in that direction.

“I must be willing to let the individuals and group experience freedom; the freedom to speak, to question, to confront, to learn, to be who they are. I must be willing to let them move the process in the direction that is right for them, giving up any predetermined direction of my own.

“I must be willing to open to what the group needs, observing, understanding, accepting their needs. I must be willing to accept that the group has its own organic needs separate from my own. They will tell me through their words and behaviors what that direction is.

“I must be willing to let the group learn through experience, accepting behaviors or actions that are still immature as they learn. I must be willing to trust that their time together will create the maturity needed to resolve the conflict, to create consensus.

“I must be willing to stay in the background, allowing others to move forward to represent, to learn, to facilitate, to share the power” (Chadwick n.d.[a], 43).

Third Party Strategies

In terms of third party strategies, Chadwick says that he will “carry out these behaviors by using the process, adapting it when necessary to respond to their organic and holistic needs.

“I will see that each person gets the opportunity to speak and be listened to with respect.

“I will see that each person has the opportunity to facilitate, to record, to be empowered in some way.

“I will ask the “right questions” based on my intuitive sense as the process progresses.

“I will remain on the outside, detached, observing for the group.

“I will provide insight to the group, or individuals in the group, to assist them in moving toward a consensus.

“I will push the group beyond the impasse, beyond their apprehensions and fears of the confrontation. I do this while being aware of, understanding their uncertainty and fears” (Chadwick n.d.[a], 43-44).

Putting it all together, I would say that the strategies of the “facilitator” in the Chadwick conflict resolution practice are to serve the group to meet their needs and not hers, to welcome the unexpected, to adapt to the situation as it changes, and then to get out of the way.

“The best description of my role was provided by a workshop participant: ‘You are not the sage on the stage, but the guide on the side’” (Chadwick n.d.[a], 44). I have described it as “cattle dog” or “sheep dog.” I admit that “guide on the side” probably has a much more appealing feel to it than “sheep dog,” but both descriptions are saying the same thing: someone who unobtrusively watches
the flock, lying quietly when everything is fine, moving only when needed to and doing only that which is necessary at the moment, then going back to watching unobtrusively, missing nothing and intruding minimally.

1.6 Knowledge Produced – That Which One Has Learned, One Has Come to Know, the Meanings One Has Made Through the Activities Which One Has Undertaken

The knowledge produced consists initially of the verbatim statements read back to the entire group. Then it consists of the collective statement that is the compilation of all of the verbatim statements made by every person about every question posed over the course of the workshop. As Chadwick describes it, a “collective statement process is based on the notion that we all have different views of a situation, and all views are right. Each of us perceives the world through our experiences, our values and beliefs and our desires. ...[S]tateements made by each individual participant are recorded as accurately as possible. These statements are first segregated into common groups. The individual statements are then added together, keeping each person's words to the best extent possible, creating a statement of the total group” (Consensus Associates 2004a [Somes Bar], 46). The collective statement serves as a written history of the richness of the stories in the “community of interest.”

Finally, the knowledge produced consists of a consensus statement which represents a shared vision of the group that meets everyone's needs. As Chadwick explains it,

There are circumstances where people insist on reaching consensus with words. ...In these circumstances, there is a process that is appropriate. It is a time consuming one, but will develop the emotional commitment that matches words with deeds. Reaching total accord and harmony with groups takes time, but it saves time in the long run. The reason? Because that which is agreed to, is committed to, is carried out. (Consensus Associates 2001, 87)

The recorder – be it staff or participant – is very important in the process of constructing the consensus statement. Starting with a collective statement, the goal is to Seek Disagreement and Resolve It.

In working with words, read a statement [in the collective statement], then see if anyone disagrees with it. If no-one disagrees, then go on to the next statement. Majority decisions rely on seeking agreement. Consensus seeks to find the disagreement so that agreement can be fostered. If there is disagreement with the statement, or the word, then underline it, or put it in (parentheses). Write the recommended word, or wording above it. Then ask if there is disagreement. If there isn't, move on. If there is, then the words are highlighted, and the new words put in. Continue this until an agreement is reached.” (Consensus Associates 2001, 87, bold and caps and underlines in original)
If there is an impasse between two people, ask the group to listen to the different needs or perceptions. The members of the group then give advice on a consensus solution to come up with a statement that meets both of their needs. Or, ask the parties to agree on wording that will meet their needs, based on feedback from the group. (Consensus Associates 2001, 87, bold and caps and underlines in original)

Have people define what they mean by the words they have used. Let the group identify words that will create the consensus between the parties. Or, reach agreement on what the word will mean to all the parties. (Consensus Associates 2001, 88)

The following questions can be used in this effort: What is the evidence of [the absence of the concept]? and What is the evidence of [the presence of the concept]? These two questions allow the participants to go beyond a definition to developing a set of criteria that describe when the condition is not present, or is present. The ‘presence’ is the condition they are trying to foster or develop.

If people get frustrated and impatient, it normally means that the issue being discussed is worthy of the discussion. “Acknowledge the impatience, the frustration. Then affirm the need to take the time to see that everyone agrees, the importance of seeking consensus. I remind those who are impatient that impatience often means; ‘I wish they would hurry up and decide.... my way!’” (Consensus Associates 2001, 88). And, Chadwick cautions, if people say that ‘we are all saying the same thing,’ this statement most often means that people are trying to avoid a conflict and normally signals that there is an issue of concern to be resolved.

1.7 Reporting of What One Has Learned, Come to Know, the Meanings One Has Made Through the Activities Which One Has Undertaken

As noted above, every participant’s statement is recorded verbatim. As Chadwick explains it, “[t]he recorder role is as important in facilitating the process as the facilitator. In order for consensus seeking to be successful, each person must feel listened to and acknowledged. These two attributes allow a person to learn and grow. The recorder’s actions facilitate this possibility” (Chadwick n.d.[a], 45). “Write every word the speaker says, exactly as he says it. Do not paraphrase, do not replace words with your own. Accept the message as given. Do not question the words of the speaker, or the intent. This is his point of view, not yours. Do not ask him to clarify... Just write down what is spoken. This allows the speaker to be focused, to move through his statements, to get closure” (Chadwick n.d.[a], 46).

There are a number of different configurations for accomplishing this verbatim recording. The configuration used depends upon how the workshop is configured at that moment. The participants can be in the full circle or in small circles, and can write their answers on 3x5 cards which are
collected, and transcribed by a staff-recorder verbatim onto easel paper. The participants can be in a small circle, and the participant-facilitator of the small group can select a participant-recorder for the small circle to record their statements verbatim on easel paper.

The initial verbatim statements are read back to the workshop on an on-going basis, with the reading becoming yet another participant role. The collective statement and the consensus statement are printed and distributed to anyone who wants them.

1.8 Criteria For Credibility – Criteria For Judging The Knowledge Produced

The credibility of the collective statement rests in the ability of each participant to find verbatim what they said. The credibility of the consensus statement rests in the fact that the participants have crafted it themselves.

Now that we have worked our way through constructing an epistemology of the Chadwick conflict resolution practice, I have created the following table to juxtapose this epistemology with that of the customary American conflict resolution practice that I constructed in Chapter Two, in order to illuminate as clearly as I can the differences between the two epistemologies. If I had to try to capture the difference in one sentence, I would say that the customary American conflict resolution practice is ‘about’ the third party, while the Chadwick conflict resolution practice is ‘about’ the people.
<table>
<thead>
<tr>
<th>logic around which epistemology is organized</th>
<th>Epistemology of Customary American Conflict Resolution Practice</th>
<th>Epistemology of Chadwick Conflict Resolution Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Logic of problem-solving by means of controlled communication</td>
<td>Logic of “empowering” a “community of interest” to build “consensus”</td>
</tr>
</tbody>
</table>

| epistemology | how one learns, how one knows, how one makes meaning | One makes meaning in engagement with a third party in a process constructed and controlled by the third party. | One comes to learn through taking the risk to participate in experiences that give one the opportunity to feel and to think, as well as to behave in ways that one had not previously contemplated. |

<p>| methodology | what one does in order to learn, to know, to make meaning, given how one learns, knows, makes meaning | Third party constructs and controls a process for communication between people in order that a solution to a problem will be reached. | By fostering an environment of “listening with respect,” “facilitator” creates a liminal space where it feels safe to take a risk. |</p>
<table>
<thead>
<tr>
<th>Methods</th>
<th>Epistemology of Customary American Conflict Resolution Practice</th>
<th>Epistemology of Chadwick Conflict Resolution Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>specific activities that one does in order to learn, to know, to make meaning</td>
<td>Methods range from litigation in the formal legal system, to interpersonal mediation ‘in the shadow of the law’ (ADR) and community, environmental, and public policy mediation in the informal system. Each method frames conflict in its own terms and establishes both the process and the product of problem-solving that will obtain in its arena. The third party in each method frames the particular conflict with which she is dealing in the terms relevant to that arena, establishes and administers rules for communication in that arena, controls the enactment of the process of problem-solving in that arena, and controls the construction of the solution of the problem.</td>
<td>There is a repertoire of activities, some always present in a workshop; however, the ultimate configuration of each workshop is unique, taking shape organically as the “facilitator” listens to what people are saying and in the moment shapes the experiences accordingly. Consistent components: the circle; “sharing the power,” i.e., multiple roles for participants in running the workshop; honoring questions that engage both the rational and the emotional in adaptive learning. Consistent Sequence: Grounding Circle → Greeting Circle → Worst Possible Outcome + Best Possible Outcome + Beliefs/Behaviors/Strategies/Actions to foster Best Possible Outcome → Verbatim recording of participant statements → Closure. The “facilitator” frames the questions using the terms used by the participants to define their own situation. “Consensus” is built when participants create a new and shared knowledge base and jointly construct a solution that meets everyone’s needs. The “facilitator” provides opportunity and then gets out of the way – “guide on the side” rather than “sage on the stage.”</td>
</tr>
<tr>
<td>Knowledge produced</td>
<td>The knowledge produced is the solution produced by means of the problem-solving process constructed and controlled by the third party, and ranges from court decisions to mediation settlement agreements.</td>
<td>The collective statement is a compilation of all of the verbatim statements made by every person about every question posed over the course of the workshop, and serves as a written history of the knowledge in the community of interest. The consensus statement is a statement constructed by the people of a shared vision that will meet everyone's needs.</td>
</tr>
<tr>
<td></td>
<td>Epistemology of Customary American Conflict Resolution Practice</td>
<td>Epistemology of Chadwick Conflict Resolution Practice</td>
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<td>-----------------------------------------------------------------</td>
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<tr>
<td>reporting</td>
<td>A written statement of the solution is produced.</td>
<td>The initial verbatim statements are read back to the workshop on an on-going basis; the collective statement and the consensus statement are printed and distributed to anyone who wants them.</td>
</tr>
<tr>
<td>of what one has learned, come to know, the meanings one has made through the activities which one has undertaken</td>
<td></td>
<td></td>
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<tr>
<td>criteria for credibility</td>
<td>The criteria for credibility range from, in the formal legal system, evaluation of the third party’s adherence to the rules of process, to, in the informal system, evaluation of the third party’s ability to achieve settlement. Secondarily, in the informal system, disputants may evaluate the process, the outcome and the mediators in terms that can range from perceptions of fairness and satisfaction to perceptions of improvements in relationships, problem-solving capacity, and social capital.</td>
<td>The credibility of the collective statement rests in the ability of each participant to find verbatim what they said. The credibility of the consensus statement rests in the fact that the participants have crafted it themselves.</td>
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<td>criteria for judging the knowledge produced</td>
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2. My Personal Experience of Chadwick Workshops

I want to take a few moments to talk about my personal experience of participating in two Chadwick workshops – Tulelake in March 2005, and Chiloquin in June 2005. At this moment of writing, it has been almost exactly five years since I attended the two Chadwick workshops – and my memories of them are still vivid and powerful.

I was truly both participant and observer. I felt as if I went through all the experiences of the workshop right alongside everyone else, while at the same time observing everything – Bob, the process, the participants, myself.

I came with so many goals and concerns. I wanted to learn about Bob’s process. I wanted to participant-observe the workshop and the participation of the stakeholders in the workshop – and at the same time contribute in a way that was deemed useful without being intrusive or controlling. I brought the smallest notebook that I could find – it fit in my shirt’s breast pocket, and tried to take as few notes as possible so as not to take away from their process. In no way did I wish to empower myself in relationship to the process or the situation. Yet at the same time I did not want to be invisible.

In the Grounding Circle on Day One at Tulelake, I heard a participant – Yvonne Rauch, a professor at the Oregon Institute of Technology – ask How could she be of service to the situation. I had been searching for a way to characterize my position without using the word ‘help’ – because ‘help’ can contain power differentials, empowering the helper and disempowering the helped. I immediately appropriated her expression.

In the first small group on Day One at Tulelake, I spoke about my nervousness because I did not want to be seen as an outsider coming in with all the answers; that I believed passionately that people were the experts on their own lives and able to find their own solutions, and that I would rather leave than be perceived as intruding; that I wanted to be of service (employing Yvonne’s phrase). When we did the Greeting Circle in the small groups after lunch, John Crawford, who was immediately to my right, said that he appreciated my perspective. I felt immensely relieved and told him how grateful I was that he had said that.

It was on Day Two at Tulelake that Troy Fletcher of the Yurok Tribe made his ceasefire proposal. In our small circles that day, we worked on many questions, one of which was What is your advice on how to make the Best Possible Outcomes happen (with particular attention to the

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3 July 11, 2010

4 In writing this section, I am drawing upon journals I wrote up at the time in addition to memories that still resonate clearly.
ceasefire that Troy had proposed). Parenthetically, I would add that I found ‘sharing my advice’ not the easiest of positions to occupy as an outsider; I found myself continuously acknowledging my outsider position, and offering ‘processual’ comments rather than specific issue comments. Anyway, it so happened that Troy was in my small circle. When it came to my turn to read what I had written, I said to Troy “when something happens, before you do anything, call the other guy first and get the facts straight.” When I looked up at Troy after having read it, his face had a look of epiphany on it, and he said, “don’t assume...” as if it were a complete revelation. Later, when we wrote down strategies on 3x5 cards, two other people asked me to repeat what I had said, because they wanted to write it down on their cards. And, in complete validation of Chadwick’s rationale, to this day, it still means a lot to me to find my words recorded verbatim in the collective statement for the Tulelake workshop. I read them and I feel ‘heard.’

Trust me, I could go on and on with anecdotes like this, moments that were meaningful to me. But I won’t. Rather I will segue to overarching impressions of what this experience was for me. I’ve already spoken above of the overwhelming and wondrous feeling of ‘coming home.’ As if that were not enough, it was listening to pain and anguish pour out of people. Listening to wisdom and hope pour out of people. Listening to people feeling safe enough not only to share their own stories, but also to acknowledge stories that had come before them in the circle. Listening to the slow but steady emergence of a watershed-wide story being jointly written. Witnessing boundaries being spanned and then re-constructed. Witnessing heretofore threatened identities feel acknowledged and honored. Witnessing a watershed-wide web of relationships being both mended and woven anew. Experiencing the group gasp in a new and visceral understanding of something. Bearing witness to the ceasefire proposal and its taking root. Having the growing feeling that, even though there was no ‘settlement,’ everything was different; something was ‘there’ that had not been there before.

3. Appropriateness of the Chadwick Process to the People and the Situation in the Klamath

Finally I want to look at how the Chadwick process was appropriate to both the people and the situation in the Klamath.

I have asserted many times before

• that the people in the Klamath watershed have an ethnoconflict theory and ethnopraxis that ultimately understands conflict as a tear in the web of relationships and conflict resolution as the mending of that tear;

• that the situation in the Klamath watershed is experienced by the people as threats to their various ways of life; and
that by the end of 2001, voices from the watershed were beginning to call for backing away from the default toolbox and doing it differently – for thinking differently about the bonds among people and place, for building a watershed-wide identity, and for weaving and mending a watershed-wide web of relationships; but

that nobody knew how to make this happen.

With Chadwick’s blessing,5 I am going to interpret the epistemology of the Chadwick conflict resolution practice. I see the epistemology the Chadwick process as organized around a logic of relationships. In other words, one knows by telling one’s own story, one learns by hearing others’ stories, one makes meaning in relationship with others. In the liminal space of the workshop, through participation in the opportunities made available, threatened identities are acknowledged and honored, boundaries are spanned and then re-constructed, an overarching community-wide identity is constructed which embraces while still honoring the individual identities, and a community-wide web of relationships is both mended and woven anew. Consensus consists, not of everyone trying to agree on the same thing, but of people literally rewriting the story of their community, such that they come to tell the same story and what is ultimately chosen to do flows out of that same story.

Putting it all together, I would say that the people of the Klamath watershed came to the Chadwick workshops looking for acknowledgement of the threat to their identities and wanting to mend and weave a watershed-wide identity and web of relationships – and that the Chadwick process provided them with the opportunity for exactly what they were looking for and wanted to do. In other words, the Chadwick conflict resolution practice was appropriate to the people and the situation in the Klamath watershed.

5 In Beyond Conflict to Consensus, Chadwick writes with respect to Copyright Information, “It is my hope this written information will become part of your life experience. ...If you can express it better, in your way, do so. Re-write it to say what you want” (Chadwick n.d., 1). This is in complete accord with his position that he wants it to be NOT his Consensus Process, but the Consensus Process that he and you and I and everyone and anyone uses.
Summary of Chapter Sixteen

First, I constructed an epistemology of the Chadwick conflict resolution practice and juxtaposed it point by point with the epistemology of the customary American conflict resolution practice that I constructed in Chapter Three, illuminating significant differences between the two epistemologies. If I had to try to capture the difference in one sentence, I would say that the customary American conflict resolution practice is ‘about’ the third party, while the Chadwick conflict resolution practice is ‘about’ the people.

Secondly, I shared with you my personal experience of participating in two Chadwick workshops and my overarching impression that, after the two workshops, even though there was no ‘settlement,’ everything was different; something was ‘there’ that had not been there before.

Finally, I concluded that the people of the Klamath watershed had come to the Chadwick workshops looking for acknowledgement of the threat to their identities and wanting to mend and weave a watershed-wide identity and web of relationships – and that the Chadwick process had provided them with the opportunity for exactly what they had been looking for and wanting to do. In other words, while the customary American conflict resolution practice had been *inappropriate* to the people and the situation in the Klamath watershed – and suffered failure, the Chadwick conflict resolution practice was *appropriate* to the people and the situation in the Klamath watershed – and enjoyed success.
Summary of Part Two

A transformation has occurred in the Klamath watershed – a turning of the page from one chapter to the next chapter, from a chapter of conflict more than a century in the making to a chapter of watershed-wide coordinated interaction to both restore the watershed and sustain all ways of life in the watershed.

When I began mapping out this dissertation in 2006, I fully expected that Part Two would be primarily a history of failed first-order changes in customary conflict resolution, capped by a second-order change in the Chadwick workshops of 2004-2005, which would enable the beginning of conflict transformation in the Klamath.

From the time of the last Chadwick workshop in June 2005 on up to November 2009 when I started working on Chapter Fifteen about the period from the last Chadwick in 2005 to “The Present,” I was basically out of the loop with respect to what had been happening in the Klamath from June 2005 on.

In November 2009, when I set out to ‘catch up’ on what had been happening since the last Chadwick in June 2005, I discovered that a lot had been happening – and was happening NOW, minute by minute. I discovered that the conflict in the Klamath had indeed been transformed. I also came to the conclusion that things had played out as I had expected them to. One of life’s WOW moments, I must say.

When I laid out my expected overarching pattern, I said that there would be a transition from the default use of the tools of mainstream conflict resolution to a transformation that would use the practices of collaboration and reconciliation on a watershed-wide basis. This transition did not happen overnight, but was rather a long – and difficult – progression on two sets of tracks: (1) the tracks of five player group tracks plus an obligato track beneath the player group tracks; and (2) the track of the use of the tools of mainstream conflict resolution and the track of the use of the tools of collaboration and reconciliation.

With respect to the five player groups and the obligato, we started out with player groups thrashing and tangling at the extremes of conflict, their talk and action constructing unbridgeably
wide boundaries between Us versus Them, and limiting the ability of the obligato to bridge those boundaries in collaborative efforts.

We ended with the obligato of boundary-spanning collaborative effort expanding to become the public face of an Us and Them watershed-wide identity, drawing into itself most of the player group tracks, and leaving out only those at the extremes of conflict who felt that the Us and Them watershed-wide identity was something in which they could not participate.

**With respect to the uses of tools of conflict resolution**, we started with player groups defaulting to the tools of mainstream conflict resolution – litigation, mediation, alternative dispute resolution, science as weapon, and political influence (Congressional and public hearings, lobbying, legislation, and regulations) – to try to force others to change or to stop change being forced upon them. The more the winners won, the more the losers lost, the greater the sense of threat perceived by the losers, the greater the emergent siege mentality, the greater the use of coercive tools, the more the webs of relationship were rent asunder, and the less success in efforts at collaboration and reconciliation.

We ended with the use of the tools of mainstream conflict resolution dwindled down to almost nothing, ultimately rejected by the public face of the watershed and taken up only by the private face of the watershed. In its stead, people picked up the tools of collaboration and reconciliation to construct a watershed-wide identity that transcended while still sustaining the player group identities, to mend the tear in the web of watershed-wide relationships, and to construct a bottom-up, locally-driven, basin-wide integrated management and coordination plan that would restore the watershed from the headwaters to the ocean and would position the government in service to the grassroots.

In the role of second-order change in the analogue, I identified the Chadwick workshops. In Chapter Fourteen, I looked at the Chadwick workshops as a transformative event which had enabled people to set the seed for re-configuring their interactions, and in Chapter Sixteen, I looked in detail at the Chadwick process itself.

First, I constructed an epistemology of the Chadwick conflict resolution practice and juxtaposed it point by point with the epistemology of the customary American conflict resolution practice that I constructed in Chapter Three, illuminating significant differences between the two epistemologies. If I had to try to capture the difference in one sentence, I would say that the customary American conflict resolution practice is ‘about’ the third party, while the Chadwick conflict resolution practice is ‘about’ the people.
Secondly, I shared with you my personal experience of participating in two Chadwick workshops and my overarching impression that, after the two workshops, even though there was no ‘settlement,’ everything was different; something was ‘there’ that had not been there before.

Finally, I concluded that the people of the Klamath watershed had come to the Chadwick workshops looking for acknowledgement of the threat to their identities and wanting to mend and weave a watershed-wide identity and web of relationships — and that the Chadwick process had provided them with the opportunity for exactly what they had been looking for and wanting to do. In other words, while the customary American conflict resolution practice had been *inappropriate* to the people and the situation in the Klamath watershed — and suffered failure, the Chadwick conflict resolution practice was *appropriate* to the people and the situation in the Klamath watershed — and enjoyed success.

When we ended Part One, as the last seconds of 2000 ticked down on New Year’s Eve, the patient in my health care analogue — the Klamath ecosystem and the ways of life dependent upon the Klamath watershed — was clearly not well. The Klamath ecosystem was degraded beyond the capacity of the environment to compensate for the degradation, and all the ways of life whose identities had been forged over time in their relationship with the watershed were threatened by the degradation of the Klamath ecosystem.

As we have moved through Part Two, we have witnessed the threatened ways of life take up the practices of mainstream conflict resolution as weapons and desperately thrash and tangle with each other at the extremes of conflict. We have witnessed their growing realization that the practices of mainstream conflict resolution were not resolving the conflict. We have witnessed their growing desire to do it differently, and their growing frustration with failing in their attempts to do it differently.

We have witnessed the transformative event of the Chadwick workshops which provided a safe space and a process wherein people of the watershed could share their stories — their pain, anguish, fear, and hope — and could jointly write a new story, a new vision, a new way of living together and working together.

We have witnessed the slow and painstaking transformation of the conflict. We have witnessed a change to the mindset of stewards living in sustainable harmony with the environment. We have witnessed the weaving of a watershed-wide web of relationships and the construction of a watershed-wide identity. And we have witnessed the enactment of watershed-wide settlement agreements,
which spell out a structure for collaborative management of the implementation of the agreements that operates from a watershed-wide perspective.

A page has been turned in the Klamath watershed – from a chapter of conflict more than a century in the making to a chapter of watershed-wide coordinated interaction to both restore the watershed and sustain all ways of life in the watershed.

Harkening back to the health care analogue which I used in Chapter One to frame and position this dissertation, where the first-order changes in the customary practice of mainstream conflict resolution had not been successful in improving the well-being of the Klamath watershed, the second-order change to the alternative practice of the Chadwick workshops has been successful in enabling the improvement of the well-being of the Klamath watershed.

Is it perfect? No. Will there be new conflicts? Yes. But it will not be the old conflict. People have written a new and different story, have constructed a new and different way of living and working together, of resolving conflict, that is appropriate to the people and the situation in the Klamath watershed.

And I am of the firm opinion that this transformation could not have happened were it not for the transformative event, the second-order change, provided by the Chadwick workshops.

And now, at long last, it is time to bid a very, very fond farewell to the Klamath watershed, and move on to Volume Three, where, for the role of alternative practice, I will propose an alternative method of and framework for conflict transformation.
VOLUME THREE

Alternative Method of and Framework for Conflict Transformation

In the role of alternative practice...
Introduction to Volume Three

In Volume Three, I will accomplish the second and third goals of my dissertation – construct an alternative framework for conflict transformation based upon relationship-building, and propose a partnership between the relationship-building framework and the problem-solving framework.

Everything that I will present in Volume Three is informed by and builds inductively upon what I presented in Volumes One and Two:

- the ethnoconflict theory and ethnopraxis of the Metro Middle Class – upon which mainstream American conflict resolution practice is based, and in which conflict is understood as the consequence of the breaking of rules, the abrogation of contractual obligations, the infringement of individual rights, and/or differences in individual interests and conflict resolution is understood as rational problem-solving

- the ethnoconflict theory and ethnopraxis of the people of the Klamath – in which conflict is understood as a tear in the web of relationships and conflict resolution is ultimately understood as a mending of the tear in the web of relationships through reconciliation and collaboration

- the history of conflict resolution in the Klamath – in which the people of the Klamath initially defaulted to mainstream conflict resolution practice, but ultimately turned to the preferred practices of reconciliation and collaboration, and in which, while they knew how to reconcile and collaborate with people with whom they had already woven webs of relationship through the face-to-face interactions of daily life, they did not know how to weave webs of relationship with people with whom they did not interact in daily life – indeed most of whom they might never meet face-to-face – and so were frustrated in their efforts at watershed-wide reconciliation and collaboration

- the experience of the Chadwick workshops – in which Chadwick provided a safe liminal space in which people could not only share their personal stories of pain, anguish, fear, and hope, but could also begin to hear the stories told by others and to write new stories of a watershed-wide identity and a watershed-wide vision, to weave a web of watershed-wide relationship
• my analysis of the epistemology of the Chadwick process – which enabled me to understand the tools that Chadwick employed in his process

• my experience of the crucial importance of providing a safe space for the expression of emotions – as borne witness to by situations in which attempts to employ the rational cost/benefit analysis of mainstream conflict resolution practice were scuttled by the eruption of unattended-to emotions, and by the Chadwick workshops in which people felt safe enough to share their stories and emotions, to listen to others’ stories and emotions, and to move towards writing a joint story.

Everything in Volume Three is grounded upon the above analyses and experiences. My litmus test in constructing my alternative framework for conflict transformation was asking myself would this work with the people of the Klamath given my understanding and experience of them, their identities, their ethnoconflict theory and ethnopraxis, their history, their passions. I feel strongly that the alternative framework that I create in Volume Three passes this litmus test.

In the very opening paragraphs of this dissertation, I asserted that, when multiple ways of life are dependent upon the same resource – and that resource is threatened – and all wish to sustain their ways of life, then the way in which people related to the resource and to each other must be transformed, such that both the resource would be restored and the people’s ways of life would be sustained.

In Part One, I will present a formal articulation of a different epistemology and framework for theory, research and practice. In Chapter Seventeen, I will construct the alternative epistemology and framework of theory, practice, and research, which I will characterize as a Relationship-Building epistemology. In Chapter Eighteen, I will juxtapose this alternative epistemology and framework with the epistemology and framework of the academic discipline of Conflict Analysis and Resolution. In Chapter Nineteen, I will first juxtapose the customary American conflict resolution practice and the epistemology and framework of the discipline of Conflict Analysis and Resolution, and will characterize the two epistemologies as variants of an overarching Problem-Solving epistemology. I will then construct a juxtaposition between customary Problem-Solving epistemology and the alternative Relationship-Building epistemology. And, finally, in the spirit of the health care analogue, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, I will propose a repertoire of customary and
alternative epistemologies which could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

In Part Two, building upon the above alternative epistemology and framework for theory, research and practice – and inspired by Lederach’s framework for building peace, the unfolding of the journey will culminate in the articulation of a framework that provides opportunity for transforming protracted environmental conflict, for people to build the relationships that can serve as a foundation upon which they can stand together to set goals and take action towards sustaining both the environment and their ways of life. In Chapter Twenty, I will describe all the components of the Conflict Transformation framework and in Chapter Twenty-One, I will lay out the phases and tracks of the Conflict Transformation framework.
PART ONE

An Alternative Epistemology and Framework

and a Proposal for a Repertoire of Epistemologies
Chapter Seventeen
An Alternative Epistemology and Framework
for Theory, Practice, and Research

First, a skinny skeleton – the architecture of this framework.

If I am interested in transforming the manner in which people relate to the environmental resource and to each other, or in other words for transforming ways of life, then I would do well to look at how ways of life are constructed and reconstructed. And if I think of a way of life as tantamount to an identity, then I am led to identity theories.

The Theory that undergirds this framework is a Theory of identity that asserts that people construct and reconstruct identity and boundaries between identities in social interaction – in talking and doing together.

If people construct and reconstruct identity and boundaries in talking and doing together, then Practice grows directly out of Theory, with Practice providing a liminal space in which people, through talking and doing together, can reconstruct identities and boundaries.

And if Research is understood as an instance of the people talking and doing together in order to monitor for themselves the changes over time in how they talk and what they do, then an instance of Research becomes simultaneously an instance of Practice, because in the process of learning about themselves through talking and doing together, they are also changing themselves through talking and doing together.

Now to hang some meat on this skinny skeleton.

1. Theory

In framing this Theory, I have woven a tapestry of threads culled from an extensive array of influences. I have chosen to cite all of those references here in the beginning, because I have found that trying to unravel the parentage of a single sentence is truly impossible. I honor here the contributions of all of these influences – and take full responsibility for how I have taken from them and woven them together.
Theory presented here will expand upon the notions of social identity which I presented in Chapter Ten Social Identity and Conflict Escalation.


From Discourse Analysis, I have drawn upon Cynthia Hardy, Thomas Lawrence, Steve Maguire, and Nelson Phillips (Hardy, Lawrence and Phillips 1998; Lawrence, Phillips, and Hardy 1999; Maguire, Phillips, and Hardy 2001).


And unexpectedly but gratefully, from Psychiatry, I drew from an interesting contribution by Carlos Sluzki (1992).

A social identity is constructed when We feel the need to make a distinction between Us and Not-Us (or in other words, Them) whom We confront in social interaction. The saliency of Our social identity to Us is less about the substance of the supposed distinction and more about Our need to make the distinction – in other words, less about who We are; more about who We are not. The line of demarcation between Us and Them constitutes a symbolic boundary constructed by Us between Us and Them.

There is a repertoire of symbols – words, social behaviors, gestures, dress, icons, etc. – which all of Us share. On one hand, the symbols represent the public or typical face of the distinction between Us and Them – Our sense of how They typically perceive Us and of how We typically present Ourselves to Them. On the other hand, there is a private or idiosyncratic face of Us, in that
while We would all agree that We share the symbols, We would not necessarily agree on the meanings attached to those symbols. We can experience the semblance of uniformity among Us when We are engaged with Them, and the differences among Us when engaged with each other.

Our identity and the boundary between Us and Them is expressed in the stories that We tell. The stories tell Us who does what with whom, when, where, how, and why. In other words, the stories tell Us what We should do and have done as interactants within a particular set of circumstances.

Figure 17.1 below is a visual representation of what I see as happening in each moment every day. The word ‘actor’ is used in the figure to represent an interactant in a social interaction, a human being taking action in service of her intention and in terms of her categorizations. The word ‘situation’ is used in the figure to represent a moment of social interaction.

In each moment of every day, we human beings bring to that moment our stories, our rules, our categorizations, our meanings about the objects and events in that moment. We do so, for the very most part, at the level of the taken-for-granted, the routine.

In each moment of every day, from the mundane to the monumental, we human beings are defining the situation of that moment, to determine whether the situation is something we have done before or whether something about the situation is new.

If the interactants of the situation jointly define it to be routine, then the interactants invoke and enact their already-written stories that are routine and automatic for that situation. For example,
when we go to buy a cup of coffee at the Starbucks we have been going to for years, and when we get there we find everything is the same as it has been, then we just do what we have always done. The stories that we enact remain at the level of ‘ground,’ of the taken-for-granted, below awareness. Nothing changes.

Or for another example that tiptoes into the conflict arena, when We go to meet with Them with whom We have been in conflict for years, and when We get there We find everything is the same as it has been, then We just do what We have always done. The stories that We enact remain at the level of ‘ground,’ of the taken-for-granted, below awareness. Nothing changes.

If, however, the interactants of the situation jointly define it to be novel, then the situation is raised from ‘ground’ to ‘figure,’ raised from the taken-for-granted to conscious awareness, and the interactants must jointly craft a new rule, write a new story, that tells each of them who does what with whom, when, where, how, and why.

A situation can be novel in two ways. It can be a situation which none of the interactants has ever encountered before, which means that all the interactants must figure out jointly what to do in this new situation. For example, a diagnosis of cancer is for most people a situation they have never dealt with before and they must figure out jointly how to rearrange their lives to deal with this new situation.

Or it can be a situation in which the routine is breached, or broken. For example, when we go to buy a cup of coffee at the Starbucks we have been going to for years, and when we get there we find everything in the store is completely rearranged, then the routine no longer works, and we must think about what we need to do in order to get our coffee. We will need to write a new story about getting coffee at Starbucks. And in very short order, if the once-new situation stays the same, the new story will become the taken-for-granted, routine rule.

Or to return to the example that tiptoed into the conflict arena, when We go to meet with Them with whom We have been in conflict for years, and when We get there We find that They are doing things that They have not done before, then Our routine no longer works. We must think about what We need to do in order to meet with Them. We will need to write a new story about Us and Them. And in very short order, if the once-new situation stays the same, the new story will become the taken-for-granted, routine rule.

The character of the boundary We construct between Us and Them changes with Our perception of threat to Us by Them. Or to put it another way, We experience the change in perceived threat as a breach of the routine, which requires Us to write a new story that expresses Our
new identity and the new boundary between Us and Them in relation to the change in perceived threat.

As perceived threat increases, even waxing to fear of extinction, Our stories increasingly speak of Us and Them in polarized terms and of the boundary between a victimized Us and a demonized Them as an unbridgeable chasm.

As perceived threat decreases, even waning to zero, Our stories increasingly speak of Us and Them in complementary terms and of the boundary between a mutually understood Us and Them as a trustably bridgeable backyard fence.

In summary, then, I have laid out a Theory of identity that asserts that people construct and reconstruct identity and boundaries between identities in social interaction – in talking and doing together.

If people construct and reconstruct identity and boundaries in talking and doing together, then Practice grows directly out of Theory, with Practice providing a liminal space in which people, through talking and doing together, can reconstruct identities and boundaries.

2. Practice

In constructing my epistemology of Practice, I am deeply influenced by my own experience as a professional actor, my own experience as a producer of and actor-teacher in Theatre in Education, and my own experience as a participant in and student of the Chadwick conflict resolution practice. To fortify these experiences, I have also drawn upon Victor Turner, Daphna Ben Chaim, Tony Jackson, William Sauter, Jacqueline Martin, Gay McAuley, Philip Taylor, and Lisa Schirch (Turner 1982, 1986; Ben Chaim 1984; Jackson 1993; Martin and Sauter 1995; Sauter 2000; McAuley 1999; Taylor 2003; Schirch 2004).

The *sine qua non* of my epistemology of Practice is the liminal space. A liminal space is an in-between place. It is the distance between everyday reality and a fictional reality. It exists because interactants have tacitly agreed among themselves to suspend disbelief in the fiction and have tacitly given themselves permission to engage the fiction physically, intellectually, and emotionally – to make meaning, to come to know, within the context of the fictional reality. There are as many meanings made in a liminal space as there are interactants within the liminal space. There is safety in the liminal space because ‘what happens there, stays there’ – in the sense that the act of meaning-making produces no direct consequences in everyday reality. It is ... a safe place to ‘play.’
The character of what happens in a liminal space varies by the purpose for which the liminal space was created as well as by the relationship among the interactants. Table 17.1 below represents a matrix of possibilities given these variables.

With respect to purpose, a liminal space can be created as a space in which to confirm old meanings about everyday reality, or it can be created as a space in which to make new meanings – to imagine new ways of thinking and feeling, to write new stories, about everyday reality.

With respect to relationship, interactants within a liminal space can be separated into performers and audience, or there can be no separation and all interactants are performers within the liminal space.

<table>
<thead>
<tr>
<th>Separation between performers and audience</th>
<th>Confirm old meanings</th>
<th>Make new meanings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance Ethnography</td>
<td></td>
<td>Art</td>
</tr>
<tr>
<td>NO separation between performers and audience; all interactants are performers</td>
<td>Social Drama Breach → Crisis Confirmation Novelty</td>
<td>Resolution ← Redress Ritual Chadwick Process The TIE Team¹</td>
</tr>
</tbody>
</table>

I have embedded within table 17.1 Victor Turner’s concept of *social drama*, which he proposes is comprised of the sequence of Breach of normal routine then Crisis then Redress then Resolution (which can eventuate in either reconciliation or separation – in other words, figure out how to live together or go your separate ways) (Turner 1982, 1986). In every way conceivable, this incorporates – simply in different language – what I proposed above in Theory – i.e., that when the taken-for-granted routine is breached, or broken, interactants must write a new story to account for the

¹ The TIE Team – my company – did Theatre in Education, but did it in a way that was unique, in that there was no separation between performers and audience, but rather students-in-character interacted directly with professional actors-in-character in a theatre piece, and there was no audience. Theatre in Education as it was usually done retained the separation between performer and audience and as such lived, not in this quadrant, but in the Art quadrant.
unexpected novelty. The liminal space associated with Crisis and Redress is one in which new meanings are made by all interactants in order to imagine a new story that might account for the unexpected novelty. The liminal space associated with Resolution is one in which all interactants confirm the newly made meanings that will quickly slide to ground into the taken-for-granted.

In each quadrant of the matrix, I have entered an exemplar of that particular possible liminal space. I am going to spend some time looking at each quadrant, and at what influence that quadrant might have had for my epistemology of Practice.

The liminal space of Performance Ethnography lies at the intersection of the purpose of confirming old meanings and the separation of performers and audience. Performance Ethnography was born in Anthropology in the throes of the ‘crisis of representation’ in which social scientists agonized over how to represent the voice of the informants. In essence, in Performance Ethnography, the voice of the informants is represented by a piece that can range from taking the informants’ life as inspiration for a fictitious presentation, all the way over to presenting informants’ statements verbatim, and can be performed by actors, students, informants, or any combination thereof. The audience of the performance – which is often comprised of the informants themselves – is invited to feedback to the performers after the performance whether the performers ‘got it right,’ after which the performers may amend the performance in order to ensure that they faithfully represent the voice of the informants.

Given that Performance Ethnography focuses on the confirmation of old meaning and that I am looking for a liminal space in which interactants can imagine new ways of thinking and feeling about everyday reality, Performance Ethnography is not an influence upon which I drew for my epistemology of Practice. Interestingly, however, I will draw upon Performance Ethnography in crafting a method of reporting in my epistemology of Research.

The liminal space of Art lies at the intersection of the purpose of making new meanings and the separation of performers and audience. The epistemology of Art is organized around a logic of engagement in a liminal space. In other words, one makes meaning in engagement with a work-of-art in a liminal space.

With respect to methodology, Art is a relationship between artist and audience in a liminal space. An artist makes meaning for herself in engagement with her medium of art, creating a work-of-art which is her commentary on everyday life. The work-of-art exists at a distance from everyday life. That distance is a liminal space between everyday reality and the fictional reality presented by the
work-of-art. Within the liminal space, there is permission to suspend disbelief in the fiction and to imagine new ways of thinking and feeling about everyday reality. There is a safety in the liminal space because ‘what happens there, stays there’ – in the sense that the act of imagining produces no direct consequence in everyday reality. An audience member makes meaning for himself in engagement with the work-of-art in the liminal space created by that work-of-art.

**Methods** for the artist encompass all art media, and for the audience member all manner of engagement with a work-of-art. The engagement of the audience member with the work-of-art varies by time and place. The audience member can engage with the work-of-art at the same time as the artist creates the work-of-art, or can engage with the work-of-art at some time after the artist has created the work-of-art. And the audience member can engage with the work-of-art at the same place as the artist creates the work-of-art, or can engage with the work-of-art at some place other than where the artist created the work-of-art. Table 17.2 presents a matrix of the types of works-of-art that represent each of the four possible relationships between creation and experience of a work-of-art as they vary by time and by place.

<table>
<thead>
<tr>
<th></th>
<th>Same time</th>
<th>Different time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Same place</td>
<td>Creation and experience</td>
<td>Creation and experience</td>
</tr>
<tr>
<td></td>
<td>Same time, same place</td>
<td>Same place, different time</td>
</tr>
<tr>
<td></td>
<td>Theatrical and musical performances</td>
<td>Artifacts, architecture, archaeological sites</td>
</tr>
<tr>
<td>Different place</td>
<td>Creation and experience</td>
<td>Creation and experience</td>
</tr>
<tr>
<td></td>
<td>Same time, different places</td>
<td>Different time, different places</td>
</tr>
<tr>
<td></td>
<td>Radio &amp; live TV allow experiencing in one place what happens in another place</td>
<td>Things that travel; things that were recorded. Movies, non-live TV, painting, sculpture, literature</td>
</tr>
</tbody>
</table>

*Source: Adapted from Sauter 2000*

The knowledge produced for the artist is the meanings she made in engagement with her medium of art in creating her work-of-art. The knowledge produced for the audience member is the meanings he made in engagement with the work-of-art in the liminal space created by that work-of-art. The work of art in itself has no inherent meaning. There are only the meanings made in engagement with the work-of-art, and each engagement will yield different meanings. The artist will put forth her work-of-art with the hope that the audience will engage her work-of-art, and will get whatever they will get from it. There will be as many meanings made in engagement with the work-of-art as there are those who engage with the work-of-art. There is no requirement to nail down who
made what meaning where; whatever meanings were made belong to those who made them. The artist may report on the meaning that the work-of-art had for her; the audience member may report on the meaning that the work-of-art had for him. There is no requirement that those meanings bear any relationship to each other, and there are no criteria by means of which the meanings made are evaluated for credibility.

Theatre is a work-of-art that lies at the intersection of the purpose of making new meanings and the separation of theatre-worker and audience, with the creation and experience of the theatre happening at the same time and same place. Traditionally, theatre happens in a physical space that has been designated as “a theatre.” Applied Theatre, however, takes theatre to non-traditional sites in the community, such as classrooms, hospitals, streets, business organizations, museums, wherever. Most Applied Theatre invites direct communication between the performers and the audience to deal with the dilemmas posed in the theatre piece, while retaining the separation between performer and audience.\(^2\)

The relationship between performer and audience in Theatre is unique in Art in that there is a feedback loop between performer and audience – the performer guides and is guided by the audience, adjusting to the minute signals emitted by the audience. Each performance is unique because each audience is unique.

I am sure it is not surprising for me to say that Art in general and Theatre and Applied Theatre in particular are enormous influences upon which I drew for my epistemology of Practice. Specifically, I took (1) engagement in a liminal space; (2) the purpose of imagining new ways of thinking and feeling about everyday reality; (3) safety in the liminal space; (4) the meanings made belonging to those who made them; and (5) engagement at the same time and same place.

Interestingly, in my epistemology of Research, I will tap into works-of-art created and experienced at different times and different places – in that the original creation is an expression of the creator about everyday reality at the time and place of her creation and the subsequent experience of the creation by others at a different time and place invites thinking and feeling in new ways about the everyday reality that the creator had commented upon in her work-of-art.

The liminal space of **Ritual** lies at the intersection of the purpose of confirming old meanings and no separation between performers and audience. The meanings confirmed in Ritual represent

\(^2\) The Applied Theatre in which all participants are performers and there is no audience – such as the Theatre in Education that I did – moves out of this quadrant and into a different quadrant. See prior footnote.
either old meanings taken-for-granted or the meanings newly made in Resolution in the Social Drama cycle that will quickly slide to ground into the taken-for-granted.³

As was the case with Performance Ethnography, given that Ritual focuses on the confirmation of old meaning and that I am looking for a liminal space in which interactants can imagine new ways of thinking and feeling about everyday reality, Ritual is not an influence upon which I drew for my epistemology of Practice. Interestingly, however, I will draw upon looking at changes in rituals, as expressions of changes in the stories that people are telling about themselves and each other, as a method in my epistemology of Research.

The liminal space of the Chadwick Process and of The TIE Team lies at the intersection of the purpose of making new meanings and no separation between performers and audience. While both experiences share the characteristics of all interactants participating in imagining new ways of thinking and feeling about everyday reality, there are distinct and interesting differences between The TIE Team and the Chadwick Process.

In The TIE Team, my team and I devised conflict-based theatre events in which students in character, interacting with professional actors in character, had the opportunity to grapple with complex, multi-party, multi-layer situations, take action, and deal with the consequences of their actions. In other words, The TIE Team created explicitly fictional realities in which both students and professional actors participated directly – there was no audience – and which required students not only to imagine new ways of thinking and feeling within the fictional reality, but also to take action within the fictional reality based upon those new ways of thinking and feeling and to deal with the consequences of those actions within the fictional reality.

³ I took up Lisa Schirch’s ICAR dissertation Ritual and the Symbolic Dimension of Peacebuilding with great anticipation. I found that, in so many ways, Lisa and I have so many of the same dots on the page, but that we ultimately connect them differently. We are in agreement that peacebuilding must transform worldviews, identities, and relationships among the participants in order for problems to be solved. We are in agreement in noting that rational problem-solving seeks to suppress the emotional and to separate the people from the problem, and that, when identity is a major factor in the conflict, people will react negatively to both of these efforts. But from then on we connect the dots differently.

Lisa talks about liminal space, but labels it ritual space. And she defines ritual as both confirming the old and creating the new (which she calls transformation). And she asserts that ritual – by which, in this instance, she means transformation in a liminal space – must simultaneously accompany problem-solving, as purposeful interludes of ritual between sessions of problem-solving.

I separate confirming the old from creating the new, and I restrict the meaning of ritual to confirming the old. And I am firmly of the mind that, especially when identity is a major factor in the conflict, folks must build a new web of relationships among themselves, before they can even begin to think about problem-solving of any stripe.
In the Chadwick Process, participants come to the Chadwick workshop in the throes of Crisis in the Social Drama cycle and are “empowered” to write new stories to Redress the Crisis. In the sense that what happens in a workshop is definitely not everyday reality, it is an implicitly fictional reality.

In The TIE Team, my team and I could be seen as enacting third party roles of producer and of co-participant. In the Chadwick Process, the third party role is that of “facilitator” – guide on the side – who creates the liminal space, provides opportunity, and then gets out of the way.

The Chadwick Process and The TIE Team were both enormous influences upon which I drew for my epistemology of Practice. In addition to taking the same things that I had taken from Art in general and Theatre in particular: (1) engagement in a liminal space; (2) the purpose of imagining new ways of thinking and feeling about everyday reality; (3) safety in the liminal space; (4) the meanings made belonging to those who made them; and (5) engagement at the same time and same place, I also took from The TIE Team: (6) the third party roles of producer and co-participant, and from the Chadwick Process: (7) the implicit fictional reality; (8) the third party role of “guide on the side;” (9) the logic of “empowering” a “community of interest” to build “consensus;” (10) the collective statement and the consensus statement as reports; and (11) the credibility of reports resting in their either being recorded verbatim or being crafted by the participants themselves.

Drawing upon all these various influences, I can now propose my epistemology of Practice. But before I do, I want to take a moment to make an explicit distinction. You will note that I have not referred to this as an epistemology of my practice. That is because I am not writing about Practice from the perspective of a third party, i.e., what my practice as a third party might be. Rather I am writing about Practice from the perspective of the people, i.e., what a Practice that is by the people for themselves might be.

My epistemology of Practice is organized around a logic of engagement in a liminal space. In other words, people make meaning in relationship with others by engagement together in a liminal space. Methodologically, people would seek to produce and participate in liminal spaces. Methods would range from the production of liminal spaces to the participation in liminal spaces:

- The production of liminal spaces would range from producing community workshops that employ the Chadwick process to producing art:

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4 The quotation marks around the word ‘empowered’ are intended to reference back to the epistemology of the Chadwick conflict resolution practice in Chapter Sixteen.
• Producing community workshops can be done by anybody. Implementing the Chadwick process can be done by anybody trained in the Chadwick process.

• Producing art can be done by anybody and can involve both producing events at which others create the work-of-art as well as creating the work-of-art oneself. Creators of the works-of-art will express their commentaries on their everyday reality, from personal stories to community stories. The art media can involve music, visual art, photography, dance, poetry, festivals, celebrations, rallies, theatre, applied theatre, and any combination of the above or something not even mentioned here.5

• The participation in liminal spaces can range from participating in the Chadwick community workshops to participating in the liminal space of any work-of-art produced:

• The participation in Chadwick community workshops is by self-selection, by those who feel that they are members of the “community of interest” and that the workshop might be useful to them.

• The participation in the liminal space of the work-of-art is also by self-selection, by those who feel that their participation might be useful to them. It will incorporate Chadwick-style questions, conversations, and reporting into the experience of the work-of-art, allowing participants to imagine new ways of thinking and feeling – to write new stories – about the everyday reality that is commented upon in the work-of-art. The work-of-art can be experienced:
  o at the same time and place as the creation of the work-of-art – as in, for example, live performances of any work-of-art
  o at a different time and place than the creation of the work-of-art – as in, for example, exhibits or books of photography or visual art or poetry or writings
  o at the same place but different time than the creation of the work-of-art – as in, for example, a community mural

The knowledge produced consists of the meanings made in relationship with others in engagement together in a liminal space. Reports produced consist of collective statements of verbatim

5 I feel the need to make very explicit that when I speak of creating a work-of-art, I am not speaking of something done by a so-called professional artist but by anybody producing something that comments on their stories from their everyday reality. It can be a photo taken, a story written down, a story performed, music played, a mural painted, whatever. It’s just that in our American culture, we think of art as only that which is done by professional artists and we don’t think of what we do as part of our everyday lives as art. In my epistemology of Practice, I am speaking of the art that we do as part of our everyday lives, even if we don’t call it that.
answers to questions posed during engagement together in a liminal space. In addition, the collective statements are collected continuously, and recursively fed back into ensuing engagements. Ultimately, a report produced can consist of a consensus statement that is constructed by the participants out of their collective statements and expresses a story ‘written’ in common among all the participants. The credibility of the collective statement rests in the ability of each participant to find in it verbatim what they said. The credibility of the consensus statement rests in the fact that the participants have crafted it themselves.

This Practice does not require a third party. This Practice is done by the people for themselves. If there is a third party, it is as one who is hired by the people, as one who is in service to the people, as one who enables engagement, as one who provides opportunity for people to make meaning together in a liminal space, so that they can produce their own knowledge for their own use, can generate and enact their own goals, and thus can resolve their own conflict. The third party can enable engagement as a producer of liminal spaces, as an artist, as a Chadwick process facilitator, as a coach and tutor.

The knowledge that the third party takes from her practice is heuristics of practice, feedback that would enable her to improve her ability to enable engagement. Such feedback is culled from evaluations conducted by the people in which the people evaluate the third party’s efficacy in service to them, as well as from collective statements of participants in which they reflect upon their experience of engagement with each other in the liminal spaces.

The values that should guide the work of the third party would be transparency and efficacy. As such, the ethical implications of third party participation within my epistemology of Practice concern being unduly controlling, being less than transparent, being less than efficacious in her work. If the third party has been transparent to parties about his intentions, values, and assessments, and if the third party feels he has enabled engagement to the best of his ability, and if the people evaluate the third party as being and having been transparent and effective, then the third party shall consider himself as having been effective. And if the third party feels that he has been similarly transparent and has enabled engagement, but the people do not evaluate the third party as having been transparent and/or effective, then the third party shall not consider himself as having been effective. In other words, the third party efficacy is user-defined and user-evaluated.

I want to take a moment here to address that voice out there raised in criticism saying that “Oh, you are just too Pollyanna. People in conflict will never do this on their own; third parties must intervene in order to lead people to reconciliation.” Well, I disagree. Putting aside the fact that I
have seen it happen, I am firmly of the mind that in order for people in the throes of an identity conflict to reconstruct their identities and the boundaries between their identities and to transform the way they relate to each other, the people must reach out to Practice because on some level they want to. Only then will the transformation actually happen because the people have done it themselves. If, instead, Practice reaches out to the people and tells them that they should transform, the likelihood of that happening at all, much less successfully, is, in my opinion, between the proverbial slim and none. It just won’t happen.

In summary, then, I have constructed an epistemology of Practice that is implemented by the people for themselves. It is grounded on a Theory of identity that people write stories that express their identity and the boundaries between identities, and that people construct and reconstruct those stories in talking and doing together. It is organized around a logic of creating liminal spaces in which people in the throes of Crisis in the Social Drama cycle can safely imagine new ways of thinking and feeling – can write new stories – about their everyday reality, as a step towards reconstructing their identities and the boundaries between their identities. It looks, on the one hand, to employing the Chadwick process in community workshops, and, on the other hand, to employing the Chadwick process in the experience of works-of-art which people have created in commentary on their everyday reality. In both instances, the knowledge produced – the new stories that people write – is initially reported verbatim in collective statements, and subsequently can be reported in consensus statements that the people construct themselves.

No third party is required for this Practice. If there is a third party, she is hired by the people to enable engagement in liminal spaces, and is evaluated by the people in terms of her efficacy in doing so.

3. Research

In framing my epistemology of Research, I have, as with Theory and Practice, woven a tapestry culled from an extensive array of influences. I want to take a few moments to locate these influences under the umbrella of research in general. And I am going to organize what lives under that umbrella in terms of the answers to the question Whose research is it? Who’s in charge?

The answers range as below:

The Academic Researcher  Collaboration between The Academic Researcher and The People (The Researched)

The Academic Researcher
A research project can be seen as comprised of a series of decision points, the answers to which determine where that research project lies on the spectrum of control from the researcher to the researched.

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<th>Table 17.3. Decision Points in a Research Project</th>
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<tr>
<td>Initiation</td>
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<td>Goal</td>
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<td>Epistemology</td>
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<td>Question(s)</td>
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<td>Design</td>
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<td>Data Analysis</td>
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<td>Report</td>
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<td>Action</td>
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Source: Expanding upon ideas presented in Stoecker 2003.

There was a time when the answers to all the decision points were The Academic Researcher. The Academic Researcher initiated his research project; decided the goals of his research, what questions would be asked, what data would be collected, how, from whom, and when it would be collected; implemented his research; analyzed his data; wrote his report; and decided what if anything would be done with his results.

Then there came the time when the ‘crisis in representation’ married up with the activist academic, and collaboration between the academic researcher and the people, of some stripe or another, became the order of the day. Social scientists in the throes of the ‘crisis in representation’ anguished over not only how to truthfully and accurately represent the voices of their informants in the reporting, but also how to embrace participation of their informants in all aspects of the research itself. And the 1960s gave birth to the activist academic who wanted to take academic research into the community in the service of social action to solve problems and right wrongs.
Academic researchers wrestled mightily with just how to effect this collaboration. For every decision point in a research project, there can be found a spectrum of answers that range from *the academic researcher* being the more dominant party in the collaboration, all the way over to *the people* being the more dominant party in the collaboration. And each research project can be seen, not as falling on the same dot on each range in all answers, but rather as connecting dots that jump back and forth on the range as one moves from decision point to decision point. And there was precious little interdisciplinarity, as each individual discipline wrestled in isolation from the other disciplines, and assembled its own compendium of labels for its various attempts at collaboration.

That said, all of the influences upon which I have drawn for crafting my epistemology of Research fall under the collaboration part of the umbrella.


From Education, I drew upon Community-Based Ethnography (Stringer 1997), Action Research (Stringer 1999), and “performing” the report (Jeffries 1998).

From Sociology, I drew upon Participatory Research (Stoecker and Bonacich 1992; Park 1992, 1997, 1999, 2001; Park and Williams 1999; Stoecker 1999), the “talking circle” (Picou 2000), and the sociologist as producer of artistic performances (Kotarba 1998).


From Communication, I drew upon Participatory Photography (Singhal et al. 2004).

And from Human Organization, I drew upon “identity through stories” (Kitchell, Hannan, and Kempton 2000).
In every one of these sources, there is a role for the academic researcher in the research project. Every author wrestled with how an academic researcher should collaborate with the people being researched, but not one wrote themselves out of the research altogether. In other words, because they wanted a role for themselves, no one spoke of research in which all the answers to all the decision points were The People.

Stoecker (2003) actually posed the question Are Academics Irrelevant?, but concluded that they were not irrelevant and laid out a number of roles available to the academic, with each role contingent upon the level of the involvement of the people in the research project. Kotarba (1998) came the closest to relinquishing any role for the academic when he took on the role of producer – arranging the venue, assembling a cast of musicians, presenting a general outline of what the event was intended to be about, but then allowing the musicians to do what they wanted to do with the performance. The musicians, as artists, simply wanted to play their music, and let the audience get whatever they got from it. His role as a researcher was limited to being an observer of the performance, analyzing in traditional sociological terms the various cultural texts displayed in the staging and the actual performance.

For research where all the answers to all the questions are The People, where The People initiate their own research project; decide the goals of their own research, what questions would be asked, what data would be collected, how, from whom, and when it would be collected; implement their own research; analyze their own data; write their own report; and decide what if anything they would do with the results of their own research, we must turn to my epistemology of Research.

My epistemology of Research is organized around a logic of bringing the taken-for-granted from ‘ground’ to ‘figure.’ In the course of accomplishing everyday reality everyday, people come to know, to learn, to make meaning together through talking and doing together. As such, for Research, methodologically, people produce instances of people talking and doing together, in the course of which, that which the people come to know, to learn, to make meaning about remains in ‘figure’ for their consideration, rather than slides to ‘ground’ into the taken-for-granted. Methods involve the production of opportunities for physical and verbal engagement in liminal spaces. These opportunities are comprised of activities that draw to shared awareness the stories that the people are telling and have told about themselves and about others, how their stories have changed over time, how they might wish their stories to change in the future. The activities range from:

- people engaged in simple conversation, through
• people expressing their stories through photography, writing, performance, song and other modes of expression, to
• people pulling together materials expressive of their stories – photos, newsletters, website documents, press releases, internal group documents, correspondence, speeches, announcements, fundraising materials, annual reports, court documents, court judgments, and the like

As a component of every activity, questions are posed for the purpose of drawing people’s attention to their stories as well as to their feelings about their stories.

The data collected include:
• people’s written responses to all the questions posed during the activities
• the photos, materials, etc. provided by the people for the activities
• people’s written reflections on their photos, their materials, etc. – written both before and after the activities

The knowledge produced consists of that which the people have come to know, to learn, to make meanings about through the activities in which they have participated. The *sine qua non* of the knowledge produced is that it is useful to the people who have produced it. In other words, the knowledge is produced *of, by, and for* themselves.

There could be as many as three forms of reporting:
• verbatim presentation of all the data collected in a collective statement which is updated continuously and disseminated widely
• text written collaboratively and reciprocally by means of ongoing dialogues among the people (and whatever third party might be involved), such that the final written text reflects the negotiated result of that dialogical process and is what the people want to say about themselves
• performance that becomes yet another instance of people talking and doing together, coming to learn, to know, and to make meaning together

The *criteria for credibility* of the reports rest in the ability of each participant to find in it verbatim what they said as well as in the fact that the people have control over what is presented and represented.

As with Practice, the Research does not require the presence of a third party. This Research is done by the people for themselves. If there is *third party*, the third party is hired by the people and the third party roles are in service to the people and can encompass:
• coach and tutor
• producer of the Research activities
• producer of the collective statement as report
• producer of the performance as report
• co-writer of the written text as report

The ultimate role of the third party in any Research is defined by the people in terms of their goals for the Research and is evaluated by the people in terms of the third party’s efficacy and transparency.

A central feature of my framework is that an instance of Research is simultaneously an instance of Practice, because in the process of learning about themselves through talking and doing together, they are also changing themselves through talking and doing together. Parenthetically, just to be very clear, I would make the point that this is not a situation of doing the practice and then reflecting on and learning from the practice. It is a situation wherein the learning and the changing are happening at one and the same time. The act of learning together who we are changes who we are together.

In summary, then, I have constructed an epistemology of Research that is initiated, designed, and implemented by the people of and for themselves. It is organized around a logic of producing liminal spaces in which, that which the people come to know, to learn, to make meaning about in talking and doing together in the liminal space remains in ‘figure’ for their consideration, rather than slides to ‘ground’ into the taken-for-granted. Data are collected from the activities in which people express their stories and their reflections. The knowledge produced consists of a shared monitoring of the stories that the people are telling and have told about themselves and about others, how their stories have changed over time, and how they might wish their stories to change in the future. It is reported in verbatim collective statements, in collaboratively produced texts, and/or in performance.

No third party is required for this Research. If there is a third party, he is hired by the people in service to the implementation of the Research and is evaluated by the people in terms of his efficacy in doing so.

4. Summary

Theory undergirds my alternative framework, asserting that people construct and reconstruct identity and boundaries between identities in social interaction – in talking and doing together.
Practice grows directly out of Theory, providing liminal spaces in which people, through talking and doing together, can reconstruct identities and boundaries between identities.

Research provides the people with a way to monitor changes in identities and boundaries between identities over time, and in the course of so doing, to continue to imagine new identities and boundaries. In this sense, an instance of Research becomes simultaneously an instance of Practice, because in the process of learning about themselves through talking and doing together, they are also changing themselves through talking and doing together.

Consideration of the role of the third party provides a perfect segue to Chapter Eighteen, for, where in my alternative framework, both the third party of mainstream conflict resolution practice as well as the third party academic researcher, activist or otherwise, have been written out of the play, in the frameworks of customary American practice and of Conflict Analysis and Resolution, the third party of mainstream conflict resolution practice and the third party academic researcher play leading roles.
Chapter Eighteen

Juxtaposition of the Alternative Epistemology and Framework with the Epistemology and Framework of the Discipline of Conflict Analysis and Resolution

1. The Epistemology and Framework of the Discipline of Conflict Analysis and Resolution

Both applied social theory and, if you will, applied conflict theory – or in other words, the discipline of Conflict Analysis and Resolution – can trace their roots to the foment of the 1960s. However, where the 1960s gave birth to the activist social scientist who wanted to take extant social theory and research into the community in the service of social action to solve problems and right wrongs, the 1960s saw academics from many different disciplines and practitioners of various conflict resolution modalities reach out to each other to build conflict theory and to improve conflict resolution practice. In 1981, the separate strands joined together in the creation of the discipline of Conflict Analysis and Resolution, in the emergence of the ideal-type of the scholar-practitioner, and in the assertion of the core principle that conflict analysis by the scholar-practitioner is the key to conflict resolution.

In the almost thirty years since its birth, while there has been dispute, debate, disagreement, and development about, well, everything, the *sine qua non* of the discipline of Conflict Analysis and Resolution continues today to be the central role of the third party in Theory, Research, and Practice, and the principle that conflict analysis is the key to conflict resolution.

1.1 Epistemology of the Discipline of Conflict Analysis and Resolution

The academic discipline of Conflict Analysis and Resolution is grounded in and governed by the *epistemology* of Science, which is organized around a logic of inquiry. In other words, one learns by asking questions about what is happening out there in some situation one has chosen to pay attention to. *Methodologically*, one seeks out ways of interrogating what is happening out there. One can seek answers ranging from explanation (an outsider’s characterization of a pattern that explains observed behavior) to understanding (an outsider’s attempt to understand the meanings of the actions taken by the insiders). *Methods* can range from the anonymity of experiments, surveys and archival research to the intimacy of participant observation and interviews. The *knowledge produced*
is that which one has learned about what is happening out there by means of the activities which one has undertaken. Different activities will yield different knowledge. The reporting of what one has learned can range from dispassionately objective accounts to anguished attempts to tease out who has made what meaning where about what is happening out there. And lastly, the knowledge produced must be deemed credible by colleagues who ask similar questions about similar sorts of situations and who use similar ways of interrogating those situations. The criteria for credibility can range from objective calculations of reliability and validity to subjective estimations of persuasiveness, plausibility, correspondence, and coherence (Riessman 1993).

1.2 Framework for Theory, Research, and Practice in the Discipline of Conflict Analysis and Resolution

Below is a figure that represents the relationship among the core elements of the discipline of Conflict Analysis and Resolution.

![Figure 18.1. Framework of the Discipline of Conflict Analysis and Resolution](image)

In their introduction to *Conflict: From Analysis to Intervention*, Cheldelin, Druckman, and Fast (with Clements) provide us with words that very clearly bespeak what I have tried to represent with the above figure.

After identifying the sources of conflict..., it is possible to design intervention strategies capable of addressing the structural sources of conflict, specific triggers, and accelerants.... Without this diagnostic facility, however, much of what passes for conflict resolution is simply good neighborliness or enlightened friendship extended to others in time of need. Awareness of some of the underlying sources of conflict is critical to its effective resolution in terms of designing partnerships and intervention strategies that will enable a wide variety of social and political
actors to increase the positive and diminish the negative features of conflict. Different theories of conflict will determine what sorts of processes are designed to deal with its management, resolution, or transformation. This book builds on the assumption that successful interventions are dependent upon thoughtful and accurate analysis of conflict. (Cheldelin, Druckman, and Fast with Clements 2003, 11)

The discipline of Conflict Analysis and Resolution looks to Theory to provide conflict analysis with the causes and the dynamics of conflict. “Somewhere between the Scylla of grand theory and the Charybdis of abstracted empiricism...lie opportunities for synthesis and evolution of middle-range theories” (ibid., 16). Such theories range from micro-level psychological and social-psychological explanations on up to macro-level structural explanations, back down to meso-level explanations that look at the interplay between “social and psychological disposition, structural location, and critical precipitants” (ibid., 15), and finally to explanations that look at the dynamics of the conflict over time. For every position on this range there are both advocates and critics. And, for any particular conflict, different Theoretical assumptions will beget different analytical diagnoses which in turn will beget different prescriptions for interventions and Practice (ibid.).

Research in the discipline of Conflict Analysis and Resolution reaches out to both Theory and Practice. On the one hand, Research seeks to support Theory, in terms of providing opportunity for confirmation or disconfirmation and subsequent amendment of Theory. And, on the other hand, Research seeks to improve Practice, by looking at various sorts of intervention and inquiring how various features increase or decrease the effectiveness of the interventions.

The discipline of Conflict Analysis and Resolution understands practice in general as what professionals do (ibid.) and as such conflict resolution Practice as what third party conflict resolution professionals do. And what these third parties do is intervene in conflicts. “Conflict ‘intervention’ occurs when an outside or semi-outside party self-consciously enters into a conflict situation with the objective of influencing the conflict in a direction the intervenor defines as desirable” (Laue 1987, 20). Laue’s definition captures the essential elements of Practice as conceptualized by the discipline of Conflict Analysis and Resolution: a professional outsider-impartial third party analyzes a conflict, prescribes a process of controlled communication by means of which to resolve the conflict, and intervenes in the conflict in order to implement the process and resolve the conflict.

Interestingly, however, though not at all unexpectedly, differences in conflict Theory reveal themselves in differences in conflict resolution Practice, with advocates and critics for each method of intervention.

The **problem-solving workshop** is, in my opinion, the quintessential expression of the discipline of Conflict Analysis and Resolution (DeReuck 1983; Doob 1974; Kelman 1996; Mitchell
1993a, 1993b, 2003; Mitchell and Banks 1996). It is grounded on the premise that conflict analysis is the key to conflict resolution. Conflict analysis for the problem-solving workshop focuses on the structural causes of the conflict and conflict resolution for the problem-solving workshop focuses on structural transformation.

It intervenes at the level of large-scale (usually but not always international) protracted violent conflict. It diagnoses the problem as parties engaged in a winner-takes-all war among adversarial positions. It prescribes the solution as parties engaging in interactive rational analysis of the causes of the conflict in order to resolve the conflict by transforming the structural causes of the conflict.

A panel of scholar-practitioners carefully selects a small roster of participants from Track 2 and brings them together for one-two weeks in a setting that is geographically at a distance from the conflict, and thus as such isolates and insulates them from the conflict. The panel of scholar-practitioners implements a confidential process by means of which the panel shares its analytical insights and relevant theoretical explanations, and assists the participants in moving from adversarial positions to interactive analysis of the causes of the conflict. The expected impact of the problem-solving workshop is that, upon their return home, the participants will be able to influence the Track 1 leaders to incorporate the analysis about the causes of the conflict into their negotiations, and thus be able to engage in structural transformation that will decrease conflict and promote peace.

Mediation is only slightly less iconic than the problem-solving workshop in the discipline of Conflict Analysis and Resolution. It is, as well, grounded on the premise that conflict analysis is the key to conflict resolution; however, conflict analysis for mediation focuses on the interests of the individual parties and conflict resolution for mediation focuses on a win-win settlement of those heretofore incompatible interests.

It can intervene at multiple levels of conflict, from the interpersonal to the large-scale. It diagnoses the problem as parties engaged in a winner-takes-all contest among adversarial positions. It prescribes the solution as parties engaging in collaborative rational cost-benefit analysis of the range of interests the parties have in order to resolve the conflict by constructing a mutually satisfying settlement of their interests.

As the level of the conflict to be mediated increases, the number of participants moves from just two folks involved in interpersonal mediation, to a much larger roster of participants carefully selected by the mediator as representative of all stakeholders in the large-scale conflict. At all levels of conflict, the mediator implements a process (often confidential) in which the mediator educates the parties about the issues and each other’s interests in the conflict, and then educates and assists the parties in rational cost-benefit analysis of their interests and in collaborative problem-solving.
The expected outcome of the mediation is a settlement which effects a mutually satisfying reconciliation of all parties’ interests.

Critics of the problem-solving workshop and of international mediation (Avruch 1998; Lederach 1991, 1995; 1997; Nader 1972) claim that it is inappropriate to privilege an outsider’s analysis of the conflict over an insider’s analysis of the conflict, as well as to privilege an outsider’s prescriptive process that is “culturally situated within a North American, male, white, and middle-class world” (Avruch 1998, 78) over the conflict theory and process that is culturally situated in the insider’s world – what Avruch and Black term the ethnoconflict theory and ethnopraxis (Avruch 1991; Avruch and Black 1991, 1993; Black and Avruch 1989).

In response to this critique of the prescriptive model of the problem-solving workshop and international mediation, Lederach developed an elicitive model of the problem-solving workshop and international mediation in which an outsider third party serves as a catalyst and a facilitator, rather than as an expert, working with and trusting the participants “to identify, name, critique, create, and recreate conflict resolution models that correspond to needs they experience and identify” (Lederach 1997, 57). Or in other words, the outsider third party, by means of a process of problem-posing, elicits the parties’ ethnoconflict theory and ethnopraxis and catalyzes the parties to analyze and resolve their own conflict in their own terms. In addition, Lederach proposes a role for insider-partial third parties to work with their own people within their own ethnoconflict theory and ethnopraxis.

There are also critics who say that there must be more than just conflict resolution; there must be conflict transformation. Response to this critique depends upon what the critic means by transformation. On one end of the spectrum, Bush and Folger claim that mediation should be about personal moral transformation (Bush and Folger 1994). In other words, the goal of the mediator should be, not to reach settlement, but to empower each party to recognize not only their own capacities, but also the capacities of the other parties, whether or not settlement is reached.

On the other end of the spectrum, Lederach claims that one must look beyond conflict resolution to peacebuilding which must involve relational and structural transformation across all levels and over time. He proposes a framework for peacebuilding that moves from crisis management in the moment through elicitive conflict resolution training and problem-solving in the mid-term to long-range vision-building, conflict prevention, and reconciliation (Lederach 1997).

Under the umbrella of conflict resolution Practice, one finds a goodly number of third party interventions – not only the above-mentioned problem-solving workshop, mediation, transformative mediation, elicitive mediation, peacebuilding, but also such alternatives as conciliation, facilitation, narrative mediation, and appreciative inquiry. Fisher and Keashly advocate for multiple and different
intervention methods over time and at different stages of the conflict (Fisher and Keashly 1991). Mitchell proposes thinking of mediation, not as a one-time event, but as a process over time (Mitchell 1993), and both Mitchell and Lederach propose compendiums of different roles that third party intervenors might play in a conflict (Mitchell 1993; Lederach 1997). Nan asserts that coordination among third parties by the third parties can improve the overall effectiveness of multiple conflict resolution interventions, yet at the same time acknowledges that a number of practical and ethical considerations – such as, to name only one, differences in analyses (theories) and goals for intervention – can mitigate against such coordination (Nan 1999, 2003).

1.3 Summary

The discipline of Conflict Analysis and Resolution aspires to be both diagnostic and prescriptive, and has a strong commitment to effecting structural changes that decrease conflict and promote peace (Cheldelin, Druckman, and Fast 2003).

The *sine qua non* of the discipline of Conflict Analysis and Resolution is the central role of the third party in Theory, Research, and Practice, and the core principle that conflict analysis is the key to conflict resolution.

The discipline of Conflict Analysis and Resolution is grounded in and governed by the epistemology of Science. It looks to Theory to provide conflict analysis with middle-range explanations and understandings of the causes and the dynamics of conflict, and it looks to Research both to support Theory by providing opportunity for confirmation or disconfirmation and subsequent amendment of Theory, as well as to support Practice, by providing information that can be used to improve Practice.

Practice is conceptualized as a professional outsider-impartial third party analyzing a conflict, prescribing a process of controlled communication by means of which to resolve the conflict, and intervening in the conflict in order to implement the process and resolve the conflict.

2. Juxtaposition with the Alternative Epistemology and Framework

I am going to present the juxtaposition in a side-by-side, point-by-point format, because I believe that it visually highlights the similarities and differences between the two epistemologies and frameworks.
From an overarching position, the CAR epistemology and framework is grounded in and governed by the epistemology of Science. Most essentially, the knowledge produced about the insider belongs to the outsider.

The core principle of the CAR epistemology is that conflict analysis is the key to conflict resolution.

Problem-solving is foundational to the CAR epistemology; relationship-building is serendipitous.\(^1\)

The central figure in the CAR epistemology is the third party. The third party controls the problem-solving process and educates the people in the problem-solving process. While there is much conversation in the CAR epistemology about whether or not third party neutrality is even achievable, at heart, the third party intervenor is understood as an ‘outsider-impartial’ who should not unduly influence the outcome of the intervention.

From an overarching position, the alternative epistemology and framework is grounded in and governed by the epistemology of Art. Most essentially, the knowledge produced about the insider belongs to the insider.

The core principle of the alternative epistemology is that in a situation in which people feel their identities are threatened yet in which they must continue to live together, the people must transform their relationships before they can transform their situation.

Relationship-building is foundational to the alternative epistemology; if and when problem-solving is done, it will be done by the people after relationships have been built and will be grounded in their ethnoconflict theory and ethnopractice.

The central figure in the alternative epistemology is the people. If there is a third party, she is hired by the people and performs tasks determined by the people. If there is a third party, he will be evaluated by the people in terms of the transparency of the third party with respect to his intentions, values, and assessments, and in terms of his efficacy with respect to accomplishing the tasks set by the people.

From an overarching position, Theory, Research, and Practice are hung together in very different manners in each of the two frameworks.

In the CAR framework, Theory drives the framework. Practice implements Theory. Research supports both Theory and Practice.

In the alternative framework, Practice drives the framework. Theory undergirds Practice. Research monitors Practice.

In both frameworks, Theory is foundational and impacts Practice, but the manner in which this transpires is very different in each of the two frameworks.

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\(^1\) Parenthetically, I would add that, in characterizing the epistemology and framework of the discipline of Conflict Analysis and Resolution as problem-solving, I am speaking of its central tendency towards problem-solving and as such short-shrifting the so-to-speak ‘outliers’ of the transformative mediation of Bush and Folger on one end and the peacebuilding framework of Lederach on the other end.
<table>
<thead>
<tr>
<th><strong>Theory is the Answer that is implemented in Practice.</strong></th>
<th><strong>Theory is the foundation for constructing Practice.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>In the CAR framework, given the core principle that conflict analysis is the key to conflict resolution, and given that Theory provides conflict analysis with explanations and understandings of the causes and the dynamics of conflict, then Theory is, in essence, the Answer that will enable conflict resolution. Different Theoretical assumptions will beget different conflict diagnoses which will in turn beget different prescriptions for conflict resolution intervention.</td>
<td>In the alternative framework, given the core principle that in a situation involving threatened identities, the people must transform their relationships before they can transform their situation, a Theory of identity that asserts that people construct and reconstruct identity and boundaries between identities in social interaction provides the foundation for the construction of a Practice that provides a liminal space in which people, through talking and doing together, can safely reconstruct identities and boundaries, and thus transform their relationships.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Research is a tool of the third party, used to support Theory and to improve Practice.</strong></th>
<th><strong>Research is a tool of the people and is also simultaneously an instance of Practice, in that, in the course of providing the people with a way to monitor changes in identities and boundaries over time, it also provides opportunity to continue to imagine new identities and boundaries.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Practice is understood as intervention in a conflict by a professional outsider-impartial third party. The third party analyzes a conflict, prescribes a process of controlled communication by means of which to resolve the conflict, and intervenes in the conflict in order to implement the process and resolve the conflict.</td>
<td>Practice is understood as the production of and participation in liminal spaces. People in the throes of Crisis in the Social Drama cycle engage together in liminal spaces in which they can safely imagine new ways of thinking and feeling about their everyday reality, as a step towards reconstructing their identities and the boundaries between their identities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>The core modes of third party intervention are the problem-solving workshop and mediation, supplemented by such as facilitation, arbitration, narrative mediation, and appreciative inquiry.</strong></th>
<th><strong>People produce and participate in the liminal space of Chadwick community workshops and in the liminal space of works-of-art created by people commenting on their everyday reality.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Intervention occurs at levels of conflict that can range from the interpersonal to the large-scale. As the level of the conflict expands, the number of participants moves from just two folks involved in interpersonal mediation, to a much larger roster of participants carefully selected by the third party as representative of all stakeholders in the large-scale conflict. At all levels of intervention, the choice will be made as to whether the proceedings will be confidential or open.</td>
<td>Participation in the liminal spaces is by self-selection by those people who feel that the experience will be useful to them. All instances of Practice are open.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>In the intervention, the third party uses the words 'conflict' and 'resolution,' 'problem' and 'solution' in accordance with the theoretical assumptions which the third party brings to the intervention.</strong></th>
<th><strong>The Chadwick process facilitator uses the people’s words for defining the situation.</strong></th>
</tr>
</thead>
</table>
In summary, then, I think it safe to say that the alternative epistemology and the CAR epistemology are grounded in very different ways of knowing, which eventuates in very different positions and very different activities with respect to people and situations.
Chapter Nineteen
A Proposal for a Repertoire of Epistemologies

The third goal of my dissertation is to make the case that, in the spirit of the health care analogue that has given form and position to my dissertation, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, so customary and alternative epistemologies of conflict resolution could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

It’s an instance of trying to expand the thinking from ‘customary is the only way’ to ‘customary is but one of many ways’ – of trying to change the set of glasses through which one looks at people and situations from those that look for how to apply the customary to the people and the situation, to those that look for what from a repertoire of options might be the most appropriate to apply, given the people and the situation.

I see the repertoire of options as comprised of customary and alternative epistemologies of conflict resolution. I see the customary epistemology as a Problem-Solving epistemology and the alternative epistemology as a Relationship-Building epistemology. I am going to juxtapose the customary Problem-Solving epistemology with the alternative Relationship-Building epistemology in order to illuminate how each has its own way of knowing and working with people and situations, and to make the point that, while the configuration of people and situation that is appropriate to one is not appropriate to the other, used hand-in-hand, they can cover all configurations of people and situation.

I need to build this juxtaposition incrementally. So far I have presented the customary American conflict resolution practice and the epistemology and framework of the discipline of Conflict Analysis and Resolution, and I have proposed an alternative epistemology and framework. What are the steps to the ultimate juxtaposition of the customary Problem-Solving epistemology with the alternative Relationship-Building epistemology?

First, I am going to characterize the alternative epistemology and framework that I have proposed as a Relationship-Building epistemology.
Second, I am going to propose that the customary American conflict resolution practice and the epistemology and framework of the discipline of Conflict Analysis and Resolution are variants within the Problem-Solving epistemology, and will juxtapose them in order to illuminate what they have in common and where they are different.

Third, I am going to construct a juxtaposition between the Relationship-Building epistemology and the Problem-Solving epistemology, after which I shall specify the people and the situations which would be appropriate to each.

And finally, based upon the juxtaposition between the Relationship-Building epistemology and the Problem-Solving epistemology, I am going to propose a repertoire of epistemologies which could work hand-in-hand with people in conflict situations.

1. Juxtaposition of Customary American Conflict Resolution Practice and the Epistemology and Framework of the Discipline of Conflict Analysis and Resolution as Variants within the Problem-Solving Epistemology

When I turned my attention to juxtaposing these two epistemologies, I came to the conclusion that the epistemology and framework of the discipline of Conflict Analysis and Resolution flows out of the same *ethnoconflict theory* and *ethnopraxis* of the modern Metro Middle Class as does the customary American conflict resolution practice. For example, both epistemologies understand conflict as a problem to be solved through the application of scientific expertise and technical rationality, and both epistemologies expect any professional involved in the solution of the problem to be an outsider to the problem, the people, and the situation, and impartial to the solution.

It was for that reason that I labeled them as variants of an overarching Problem-Solving epistemology. In figure 19.1 below, I have depicted how the two variants overlap within the overarching Problem-Solving epistemology.
First, what they share in common.

| Both epistemologies are organized around a logic of problem-solving by means of a process of communication constructed and controlled by a professional outsider-impartial third party. |
| In both epistemologies, the central figure is the third party. |
| In both epistemologies, the third party analyzes and frames the conflict, intervenes in the conflict, educates the participants in the issues of the conflict, establishes and administers rules for communication, controls the enactment of the process of problem-solving, and controls the construction of the solution of the problem. |

Figure 19.1. The Problem-Solving Epistemology
Now, how they overlap.

<table>
<thead>
<tr>
<th>The American Problem-Solving practice includes the formal legal system as well as mediation and all its related variants at all levels of conflict from interpersonal to the large-scale.</th>
<th>The CAR Problem-Solving epistemology and framework embraces mediation and all its related variants at all levels of conflict from interpersonal to the large-scale, as well as the problem-solving workshop at the large-scale and international levels of conflict.</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is an implicit inclusion of Theory in the American Problem-Solving practice, in which third parties frame conflict in terms of the breaking of rules, the infringement or individual rights, the abrogation of contractual obligations, and/or differences in individual interests.</td>
<td>There is an explicit inclusion of Theory in the CAR Problem-Solving epistemology and framework, in which third parties frame the conflict in terms of differences in individual interests and/or in terms of structural causes of conflict.</td>
</tr>
<tr>
<td>The solution of the conflict is understood as either the revelation of truth about the rules, rights, and/or contracts at issue through argumentation and confrontation or the creation of neutral technical solutions for the satisfaction of the individual interests at issue through science and rationality.</td>
<td>The solution of the conflict is understood as either the satisfaction of the individual interests at issue through science and rationality or the ultimate transformation of the structural causes of the conflict.</td>
</tr>
<tr>
<td>Practice is improved through reflection upon Practice by third party practitioners.</td>
<td>Research seeks to support Theory as well as to improve Practice.</td>
</tr>
</tbody>
</table>

In summary, then, within the overarching Problem-Solving epistemology, the customary American conflict resolution practice and the epistemology and framework from the discipline of Conflict Analysis and Resolution share a way of knowing and overlap significantly in theory and practice, which eventuates in very similar positions and very similar activities with respect to people and situations.

2. Juxtaposition of the Problem-Solving Epistemology and the Relationship-Building Epistemology

I would say, then, that the Problem-Solving epistemology and the Relationship-Building epistemology are grounded in very different ways of knowing and do not overlap with each other. In other words, the people with whom and the situations in which the Problem-Solving epistemology would be appropriate would be very different from the people with whom and the situations in which the Relationship-Building epistemology would be appropriate.

I would say that the Problem-Solving epistemology would be appropriate when everything about the situation and the people involved in the situation was in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the Problem-Solving epistemology is based. This would mean that the situation would be one which could be successfully decontextualized, in the sense of being constructed as being about rights, rules, contracts, individual interests, and/or structural causes, rather than as being about the web of social relationships that is the context from which the situation
has been extracted. It would mean that the people who were involved in the conflict conceptualized conflict resolution as something achieved through the application of rationality supplemented by scientific expertise, as needed. And it would mean that the people who were involved in the conflict accepted the role of outsider impartial third party experts in the process of conflict resolution.

And I would say that the Problem-Solving epistemology would not be appropriate when something about the situation and the people involved in the situation was not in agreement with the ethnoconflict theory and ethnopraxis upon which the Problem-Solving epistemology is based. This ‘something’ can be that the people involved in the situation have a different ethnoconflict theory and ethnopraxis. It can also be that, even if the people involved in the situation happened to share the ethnoconflict theory and ethnopraxis upon which the Problem-Solving epistemology is based, the situation was not about rights, rules, individual interests, or structural causes, and so as such not appropriate for the Problem-Solving epistemology.

By contrast, I would say that the Relationship-Building epistemology would be appropriate with people and situations with which the Problem-Solving epistemology would not be appropriate. Specifically, I would say that the Relationship-Building epistemology would be appropriate with people whose ethnoconflict theory and ethnopraxis conceptualized conflict as a tear in a web of relationships and conflict resolution as the mending of that tear. It would be appropriate in situations in which something has been perceived as a threat by people whose lives are intertwined in a web of relationships, whose lives will continue to be intertwined in a web of relationships, and therefore who must transform their relationships before they can transform the situation. It would be appropriate in situations involving identity, ways of life, world views, religion, and other such non-negotiable issues. In both of these situations, the people involved could very well share the Metro Middle Class ethnoconflict theory and ethnopraxis, but the situations are not appropriate to the Problem-Solving epistemology based on the Metro Middle Class ethnoconflict theory and ethnopraxis, and so need to be addressed with an epistemology appropriate to those situations.

3. The Proposal

The Problem-Solving epistemology and the Relationship-Building epistemology are grounded in very different ways of knowing and working and would be appropriate for very different people and situations. As such, there are situations in which the Problem-Solving epistemology might have the most to offer, and there are situations in which the Relationship-Building epistemology might have the most to offer. For example, there might be situations involving threatened identities that might
require relationship-building before problem-solving, and so the Relationship-Building epistemology might have much to offer in those situations. And there might be situations that may be able to go directly to problem-solving without needing to build relationships, and so the Problem-Solving epistemology might have much to offer in those situations. The point is that there is a choice.

I would also propose that if one has become engaged with a situation in which one of the epistemologies is being employed without success (as that epistemology measures success), one might perhaps back away and consider changing to a different epistemology – a second-order change – rather than simply tweaking the implementation of the current epistemology – a first-order change.

In addition one could perhaps alternate epistemologies as the situation might warrant, or even overlap the two epistemologies should the situation warrant.

In other words, to repeat my point yet again, there is a choice. It is not that one epistemology is by definition better than the other epistemology, but rather that at times one may be more appropriate for a situation and at times the other may be more appropriate for a situation, and at even other times it may be appropriate to switch from one to the other as the situation may warrant. The Problem-Solving epistemology and the Relationship-Building epistemology can work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.
Summary of Part One

I proposed an alternative epistemology and framework for theory, practice, and research – and I characterized it as a Relationship-Building epistemology.

I presented the epistemology and framework of the discipline of Conflict Analysis and Resolution, and juxtaposed it with the alternative epistemology and framework that I proposed, illuminating the differences between the two.

I brought forward the epistemology of customary American conflict resolution practice and characterized both it and the epistemology and framework of the discipline of Conflict Analysis and Resolution as variants of an overarching Problem-Solving epistemology.

I juxtaposed the Problem-Solving epistemology with the Relationship-Building epistemology, finding that they were grounded in very different ways of knowing and working.

I proposed that, while the configuration of people and situation that is appropriate to one is not appropriate to the other, used hand-in-hand, they can cover all configurations of people and situation.

In summary, then, I conclude that, in the spirit of the health care analogue that has given form and position to my dissertation, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, so the Problem-Solving and Relationship-Building epistemologies could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.
PART TWO

Framework for Transformation of Protracted Environmental Conflict
Introduction to Part Two

This dissertation will come to its culmination in Part Two where, as Lederach envisioned a framework for peacebuilding based upon a Problem-Solving epistemology, I want to envision a framework for conflict transformation based upon the Relationship-Building epistemology. This framework provides opportunity for transforming protracted environmental conflict, for people to build the relationships that can then serve as the foundation upon which they can stand together to set goals and take action towards sustaining both the environment and their ways of life. Parenthetically, I would add that while I have articulated the Relationship-Building epistemology and envisioned the conflict transformation framework with domestic protracted environmental conflicts in mind, there is nothing to preclude applying any or all components to any conflict, domestic or international, environmental or otherwise, protracted or otherwise.

As with any Lederachian-inspired framework, this framework is complex, involving multiple levels across multiple time periods. In addition, it also incorporates recursivity, in that the evaluation of each phase’s activities is fed back into the next phase, and in that the evaluation of the entire framework is fed back into the institutionalization of the framework.

In Chapter Twenty, I will describe all the components of the conflict transformation framework and in Chapter Twenty-One, I will lay out the phases and tracks of the conflict transformation framework. But first, in order to lay out my framework, I need to establish some terms for levels. The terms I will use combine the influences of Lederach (1997), d’Estree (2001), and Dugan (1996).

- **Macro** ≡ this term embraces Larger System and Track 1, and represents broader societal structures and systems, such as governmental institutions and agencies.\(^1\)
- **Meso** ≡ this term embraces Immediate System, Subsystem, and Track 2, and represents civil society, and especially those boundary-spanning people and institutions who can achieve both vertical and horizontal integration (vertically Track 1 and Track 3, and horizontally across lines of division). Embedded within the Larger System, it is the locus that connects the other levels.

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\(^1\) Just a note in order to avoid confusion. Lederach talked about Tracks 1, 2, and 3 in his analysis of levels in society. Later in this chapter I will refer to Tracks 1 through 5 in my conflict transformation framework. These are not the same tracks.
• **Micro** = this term embraces Grassroots and Track 3, and represents the level of everyday transactions among individuals.
Chapter Twenty

Components of the Conflict Transformation Framework

First, a tiny review of groundwork. Given that this conflict transformation framework is based upon the Relationship-Building epistemology, then, the theory upon which it is grounded asserts that people construct and reconstruct identity and boundaries between identities in social interaction – in talking and doing together. The practice activities in the framework create liminal spaces in which people in the throes of Crisis in the Social Drama cycle can safely imagine new ways of thinking and feeling – can write new stories – about their everyday reality, as a step towards reconstructing their identities and the boundaries between their identities. The research activities in the framework create liminal spaces in which people, in talking and doing together, can bring the taken-for-granted from ‘ground’ to ‘figure’ for consideration. And a central feature of the Relationship-Building epistemology and as such of this conflict transformation framework is that an instance of research is simultaneously an instance of practice, because in the process of learning about themselves through talking and doing together, they are also changing themselves through talking and doing together.

Finally, as indicated above when I spelled out the Relationship-Building epistemology, Third Parties are not required for the framework. As such, in presenting this conflict transformation framework, for each activity, I will indicate what a Third Party could do if there were a Third Party involved.

Below is a list of practice activities (P) and research activities (R) included in the conflict transformation framework.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordinating Committee</td>
<td>P</td>
</tr>
<tr>
<td>Chadwick workshops</td>
<td>P</td>
</tr>
<tr>
<td>Community-Based Ethnography</td>
<td>P R</td>
</tr>
<tr>
<td>Community-Based Discourse Analysis</td>
<td>P R</td>
</tr>
<tr>
<td>Community-Building Activities</td>
<td>P</td>
</tr>
<tr>
<td>Congress</td>
<td>P R</td>
</tr>
<tr>
<td>Community-Based Ethnoconflict Theory and Ethnopraxis</td>
<td>P R</td>
</tr>
<tr>
<td>Vision-Building Workshops</td>
<td>P</td>
</tr>
<tr>
<td>Peer Dispute Resolution Program</td>
<td>P</td>
</tr>
<tr>
<td>Training</td>
<td>P</td>
</tr>
<tr>
<td>Evaluation</td>
<td>P R</td>
</tr>
</tbody>
</table>
1. Coordinating Committee (practice)

The Coordinating Committee is an essential component of the framework. This committee will be comprised of Meso level people and groups that are representative of the conflict. It is extremely important that the framework commence at the Meso level, because it is that level that connects the Micro and Macro levels, and is capable of boundary-spanning vertical and horizontal integration. It is also extremely important that the Coordinating Committee have legitimacy and credibility throughout the three levels. And finally it is extremely important that the Coordinating Committee not be either a top-down creation or be perceived as such by anybody.

I could just leave it at that – create a Coordinating Committee – but I felt that doing that would cast the mandate into that bucket of useless mandates – “sounds great in theory, but in reality will more than likely not happen or will die an ugly death.” I felt, instead, that it was important to gain an understanding of what might impact the effectiveness of a coordinating committee, and so I turned to research on the effectiveness of collaborative efforts.

Nicole Allen analyzed factors contributing to the effectiveness of community coordinating councils as perceived at both the individual member level and the council level (2005). She found that the effectiveness of the councils was comprised of internal effectiveness and external effectiveness. Internal effectiveness represented “the extent to which council members function effectively as a group or facilitate relationships among stakeholders” (ibid., 61), and external effectiveness represented “the extent to which [the councils] produce needed community change” (ibid., 61). The most important factor with respect to the achievement of external effectiveness was the breadth and number of active members on the council, as distinguished from members who were official but not active. The most important factor with respect to the achievement of internal effectiveness was the presence of an inclusive climate in the council. An inclusive climate was principally the result of the presence of “effective leadership that was organized, efficient and skilled at encouraging the voices and input of all stakeholders” (ibid., 58). In addition, the presence of a shared mission as well as shared power in decision-making were also included in an inclusive climate, however, the extent to which either of these additional components would be achieved was dependent upon the presence of effective leadership.

Putting it together, Allen found that a community council with active members that are externally effective was most likely also to be internally effective. However, the converse was not true: a council that was internally effective but without active members may or may not achieve external effectiveness.
To these considerations, Phillips and Hardy and their colleagues add their own contributions (Lawrence, Phillips, and Hardy 1999; Maguire, Phillips, and Hardy 2001). They assert from their discourse analysis research that the prerequisite of collaboration is identity-based trust, and that both identity-based trust and collaboration are accomplished discursively. Identity-based trust is a trust based upon one’s ability to identify with, to empathize with others and they with you (Maguire, Phillips, and Hardy 2001). This trust is developed when people can talk and act together, in the course of which stories and narratives are re-written, new identities are constructed, boundaries are moved. Similarly, collaboration is negotiated in the same sort of ongoing communicative process (Lawrence, Phillips, and Hardy 1999).

Putting all these considerations together, with respect to the external effectiveness of the Coordinating Committee, the Coordinating Committee should not only have a Meso-level membership that spans the geographic territory and boundary-spans both vertically and horizontally, but also should have that membership be active, not just figurehead, and should have membership that continues to be active throughout the project.

With respect to the internal effectiveness of the Coordinating Committee, we get directly to why I have considered the Coordinating Committee as a practice activity, because in the course of talking and doing together the work of the Coordinating Committee, the Coordinating Committee will be moving boundaries and reconstructing their identity as the Coordinating Committee which in turn will increase the identity-based trust within the Coordinating Committee which will increase their capacity for collaboration which will improve the internal effectiveness of the Coordinating Committee.

When we get to the evaluation component of the conflict transformation framework, not only will we look at measures of the internal and external effectiveness of the Coordinating Committee, but also the Evaluation itself will be an ongoing research and practice activity which will in itself contribute to the internal effectiveness of the Coordinating Committee. And the ongoing active membership of the Coordinating Committee will feed this evaluation directly back into how the Coordinating Committee implements the project as a whole which will improve the likelihood of the success of the project as a whole.

2. Chadwick Workshops (practice)

After the formation of the Coordinating Committee, the first activity produced by the Coordinating Committee is a series of Chadwick workshops, that will be held at various locations.
throughout the geographic territory of the conflict and at various times throughout the year so as to maximize the ability of people to attend.

The Chadwick workshops will provide a safe place where people can take the first step of talking and listening together and beginning to rewrite the story of who they are together. Attendance will be by self-selection, and ultimately there will be as many Chadwick workshops as people say they want to have. Admonitions for the Chadwick workshop series include: (a) dates that fit with the seasonal demands of the various ways of life; (b) locations that span the territory; (c) scholarships; and (d) child-care.

The method employed in the Chadwick workshops is, of course, the Chadwick process. I will let Chapter Sixteen stand as the description of the Chadwick process. The ultimate configuration of any one workshop is unique, taking shape organically as the Chadwick facilitator listens to what people are saying and in the moment shapes the experiences accordingly.

The questions at the heart of the Chadwick workshops focus on feelings, worst and best outcomes, strategies and actions, and life-long learning. Additional questions will more than likely suggest themselves as each workshop progresses.

The products of the Chadwick workshops are threefold:

1. Collective statements of verbatim answers to the questions posed during engagement together in the liminal space of the workshops. The collective statements are collected continuously across all workshops, disseminated widely, and recursively fed back into ensuing workshops. In addition, the collective statements will serve as source data for the Community-Based Discourse Analysis, the Congress, and the Vision-Building workshop series (see figure 21.2).

2. Consensus statements created by the workshop participants during the workshops. The consensus statements are collected continuously across all workshops, disseminated widely, and recursively fed back into ensuing workshops. In addition, the consensus statements will serve as source data for the Community-Based Discourse Analysis, the Congress, and the Vision-Building workshop series (see figure 21.2).

3. A Resource Directory. Over the course of the series of Chadwick workshops, people will be sharing about the projects they have already done and/or are currently doing that work to sustain both the resource and their ways of life. All this information will be compiled in a Resource Directory which will be published continuously and disseminated widely.
The Coordinating Committee can tap Third Parties to produce or to assist in producing the workshops, to be Chadwick facilitators, to publish and continuously disseminate the collective and consensus statements, and to compile, publish and continuously disseminate the Resource Directory.

The next two activities produced by the Coordinating Committee are the Community-Based Ethnography and the Community-Based Discourse Analysis. One might ask why both ethnography and discourse analysis. I would answer that discourse analysis looks not only at the territory covered by ethnography but beyond, and that it looks at it all wearing a different set of glasses than does ethnography. Where the Community-Based Ethnography asks what is the story we tell about ourselves, the Community-Based Discourse Analysis asks not only what is the story we tell about ourselves, but also what is the story we tell about others, and what is the story they tell about us. From the perspective of the theory upon which the Relationship-Building epistemology is grounded, the Community-Based Ethnography focuses on the identities and the Community-Based Discourse Analysis focuses on the boundaries between the identities.

3. Community-Based Ethnography (practice and research)

This activity represents a combination of influences from Photovoice (Wang and Burris 1994, 1997; Wang 1999, 2003; Wang, Cash, and Powers 2000; Wang et al. 2004), Participatory Photography (Singhal et al. 2004), Performance Ethnography (Mienczakowski 1995), Collaborative Ethnography (Lassiter 2000, 2001, 2005; Papa and Lassiter 2003), and the Relationship-Building epistemology. It is simultaneously research and practice because in the process of coming to know about their identities, people are also changing those identities. It provides opportunity for people (a) to become aware of how they talk about themselves to themselves (the private face of identity), (b) to become aware of how they talk about themselves to others (the public face of identity), (c) to become aware of how they feel about themselves, and (d) to become aware of how their identities may have changed over time.

The central component of the method for this activity is a “moving get-together” – get-togethers that move throughout the geographic territory of the conflict like frames in a never-ending movie.²

Each get-together should take place in a space that feels safe to all attending, and that feels like a conversation among friends over coffee or dinner. It should take place in the equivalent of living

² I am assiduously avoiding words like ‘meeting,’ or ‘group’ because each has a ‘script’ attached to it, with roles that people presume they are supposed to play – and I do not want those scripts to be invoked. Parenthetically, I might also add that I shall in my framework use words like ‘conflict’ and ‘problem’ with great care because each word has its own script and triggers default responses which I wish to avoid.
rooms and coffee shops – definitely not sitting around a ‘meeting table’ – preferably in the natural grouping that might occur in a living room.

Prior to each get-together:

- Three people will have taken photos that addressed the questions:
  - Who am I?
  - Who are we?
- Each of the three people will select three of their favorite photos and write up about each photo their reflections on the questions:
  - What's the story that this photo tells?
  - How does this story relate to your life?
  - To the lives of others?

For each get-together:

- Six people will have been invited to get-together. They will span not only all the player groups but also age and gender. Three of them will have taken photos and three will not have. Copies of the 3 photos and the reflections by each of the 3 phototakers will have been given at the get-together to the other 3 attendees.
- A Chadwick facilitator will attend each get-together, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.
- The get-together will begin with a Grounding Circle – going around the circle and having each person respond to the questions:
  - Who am I?
  - What would be the worst possible outcome for participating in this get-together?
  - What would be the best possible outcome for participating in this get-together?
- Each of the three phototakers will then share their 3 photos and “their interpretations and thoughts regarding the meaning and significance of their own selected images” (Foster-Fishman et al. 2005, 279).
- Then the six people will jointly select up to four to five photos to discuss together. The facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - When I look at the photo of _______, I find myself thinking about ______.
  - When I look at the photo of _______, I find myself feeling ________.
The responses will be heard by going around the circle and allowing each person to share their responses.

- At the end of the get-together, the facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - What did you learn that you didn’t know before?
  - How do you feel about what you learned?
  - What, if anything, might you do differently because of what you learned?

The responses will be heard by going around the circle and allowing each person to share their responses.

- The three people who did not take photos will be asked to take the photos for the next get-together (so everybody will attend two get-togethers).

- In addition, the facilitator will ask everyone there for suggestions about who might be invited to the next get-together, within the requirements of spanning groups, age, and gender, AND of moving the get-together further along geographically in the territory.

After each get-together:

- The facilitator will gather together all the photos and reflections as well as the index cards filled out by everybody.

- The reflections and index cards will be transcribed verbatim.

- All of these items will be assembled in a collective Ethnography.

Overarching all get-togethers:

- The collective Ethnography will be published and disseminated widely, so that it will be available to all the people involved in the conflict.

- In addition, in the spirit of the recursive nature of the framework, the collective Ethnography can be continually updated, to reflect the changes in identities over time.

- The collective Ethnography will serve as a data source for the Congress, the Vision-Building workshops, and the Peer Dispute Resolution Program (see figure 21.2).

The ‘moving get-together’ can keep moving throughout the geographic territory of the conflict until it has covered the complete geographic territory as well as all player groups – and even then can continue should people want to keep it going.
A ‘reporting’ of the collective Ethnography can be done at conferences, meetings, and other such gatherings. It will be done as part of the Congress, and so I will describe the reporting of the collective Ethnography as part of describing the Congress.

The Coordinating Committee can tap Third Parties to produce or to assist in producing the ‘moving get-togethers,’ to be Chadwick facilitators at the get-togethers, and to compile, publish and continuously update and disseminate the collective Ethnography.

4. Community-Based Discourse Analysis (practice and research)

Discourse analysis “focuses attention on the processes whereby the social world is constructed and maintained” (Phillips and Hardy 2002, 2). It “tried to explore how the socially produced ideas and objects that populate the world were created in the first place and how they are maintained and held in place over time” (ibid., 6). It understands identities as “constructed on a continuous, interactive, discursive basis” (ibid., 14). As a research method, discourse analysis is perfectly positioned to pay attention to the ways of talking and acting, the social transactions, that continuously produce and reproduce the boundary between ‘us’ and ‘not us.’

Community-Based Discourse Analysis represents a combination of influences from Discourse Analysis (Phillips and Hardy 2002) and from the Relationship-Building epistemology. It is simultaneously research and practice because in the process of learning the discourse through talking and doing together, people are also changing the discourse – moving the boundaries – through talking and doing together. It provides opportunity for people (a) to become aware of the transactional process of boundary-production, (b) to plumb the past for how they have produced boundaries, (c) to interrogate the present for how they are currently producing boundaries, and (d) to envision the future in terms of how they would like to produce boundaries.

As with Community-Based Ethnography, the central component of the method for this activity is a “moving get-together” – get-togethers that move throughout the geographic territory of the conflict like frames in a never-ending movie.

In essence, each get-together could be thought of as a mini-Chadwick workshop. Each get-together should take place in a space that feels safe to all attending, and that feels like a conversation among friends over coffee or dinner. It should take place in the equivalent of living rooms and coffee shops – definitely not sitting around a ‘meeting table’ – preferably in the natural grouping that might occur in a living room.
These get-togethers are comprised of 3 “Chadwick pairs” – i.e., 2 people who come from different player groups. The pairs will span the geographic territory of the conflict both vertically and horizontally, as well as by age and gender.

Prior to each get-together:

- Each person will be asked to assemble some materials that respond to the questions:
  - What is the story we tell about ourselves?
  - What is the story we tell about ______ (a specific group)?
  - What story do they tell about us?

The sources of these materials can be photos, newsletters, website documents, press releases, internal group documents, correspondence, speeches, announcements, fundraising materials, annual reports, court documents, court judgements, and so on – as well as the collective statements and consensus statements from the Chadwick workshops, and the collective Community statements from the Community-Building activities (see below). Each person will write up their reflections on how these materials respond to the questions.

For each get-together:

- Six people in three pairs will have been invited to get-together. Everyone will get copies of each person’s materials and written reflections.
- A Chadwick facilitator will attend each get-together, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.
- The get-together will begin with a Grounding Circle – going around the circle and having each person respond to the questions:
  - Who am I?
  - What would be the worst possible outcome for participating in this get-together?
  - What would be the best possible outcome for participating in this get-together?
- In each pair, each person will share their materials and their reflections. The other person will feedback to the first person what they have heard them say. Then each person will respond to the statement:
  - When I hear you say X about Y, I feel Z.

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3 The Chadwick process usually assigns two Listeners to each Pair, and it is, for example, Listener A who will feedback to Person B what they have heard Person B say to Person A. In this method, I am starting out with having Person A feedback what they have heard Person B say to them. If a particular get-together becomes emotionally charged, one can always enroll other participants to function as Listeners.
After the three pairs have finished, the facilitator will ask each person to both respond to and write on index cards their responses to the questions:

- What differences have you heard between the story a group tells about itself and the story another group tells about it?
- How do these groups feel about this difference?
- How do you feel about this difference?
- How would you like things to change in the future?

The responses will be heard by going around the circle and allowing each person to share their responses.

At the end of the get-together, the facilitator will ask each person to both respond to and write on index cards their responses to the questions:

- What did you learn that you didn’t know before?
- How do you feel about what you learned?
- What, if anything, might you do differently because of what you learned?

The responses will be heard by going around the circle and allowing each person to share their responses.

After each get-together:

- The facilitator will gather together all the materials and reflections as well as the two sets of index cards filled out by everybody.
- The reflections and the index cards will be transcribed verbatim.
- All of these items will be assembled in a collective Discourse Analysis.

Overarching all get-togethers:

- The collective Discourse Analysis will be published and disseminated widely, so that it will be available to all the people involved in the conflict.
- In addition, in the spirit of the recursive nature of the framework, the collective Discourse Analysis can be continually updated, to reflect the changes in the boundaries between identities over time.
- The collective Discourse Analysis will serve as a data source for the Congress and the Vision-Building Workshops (see figure 21.2).
The ‘moving get-together’ can keep moving throughout the geographic territory of the conflict until it has covered the complete geographic territory as well as all pairings of player groups vertically and horizontally. People can participate in multiple pairings, as they may self-identify with multiple player groups, though each person will only participate in one pairing per get-together. In addition, people can return at a future date to participate in a repeat of a pairing, bringing new materials and new reflections. This will provide opportunity to talk together about any changes that have happened in the stories being told.

A ‘reporting’ of the collective Discourse Analysis can be done at conferences, meetings, and other such gatherings. It will be done as part of the Congress, and so I will describe the reporting of the collective Discourse Analysis as part of describing the Congress.

The Coordinating Committee can tap Third Parties to produce or to assist in producing the ‘moving get-togethers,’ to be Chadwick facilitators at the get-togethers, and to compile, publish and continuously update and disseminate the collective Discourse Analysis.

5. Community-Building Activities (practice)

There is a goodly number of Community-Building Activities which can be implemented. For example, arts-based activities (such as participatory photography, Theatre in Education, applied theatre, storytelling, mural painting, to name only five of very many) as well as festivals, celebrations and rituals provide opportunity for engagement in the liminal spaces of art and ritual. At each of these activities, participants could write on an index card their answer to questions like:

- What did this _____ mean to you?
- What did this _____ make you feel?
- What did you learn that you didn’t know before?

For another example, schools could do a “Day in the Life of.....” project, wherein students would ask local folks to take pictures expressive of their ways of life, then would interview the local photo-takers to find out the stories wrapped around their photos, and finally would write up and present their interviews at school.

Whatever materials were produced at these activities could be assembled into a collective Community statement that could be published and displayed and/or disseminated widely. The collective Community statement could serve as a data source for the collective Ethnography as well as for the collective Discourse Analysis (see figure 21.2).
The Coordinating Committee can tap Third Parties to provide tutoring and coaching for such activities, to produce or to assist in producing such activities, and to compile, publish and disseminate the collective Community statement.

6. Congress (practice and research)

With the experience of the series of Chadwick workshops under their belts, the Congress will flow out of the Chadwick workshop series as the next step in which the people of the conflict can come together to articulate a unified voice for what they want for themselves throughout the geographic territory of the conflict.

At a minimum, the Congress will include (1) a Chadwick workshop; (2) a Report on the Collective Ethnography; (3) a Report on the Collective Discourse Analysis; (4) display of the Resource Directory as well as all the products of the Chadwick workshop series, the Ethnography series, the Discourse Analysis series, and the Community-Building Activities; and (4) a workshop for gathering data on the Community-Based Ethnoconflict Theory and Ethnopraxis.

The Coordinating Committee can tap Third Parties to produce or to assist in producing the Congress as a whole as well as any or all of the individual components of the Congress, to function as a Chadwick facilitator, to analyze or to assist in analyzing the products of the Community-Based Ethnoconflict Theory and Ethnopraxis workshop, and to compile, publish, and disseminate all the products of the Congress.

6.1 The Chadwick Workshop

The products of the Chadwick workshop at the Congress will minimally include (1) a consensus statement of what the people of the geographic territory of the conflict want from the Macro level; and (2) a consensus statement of what the people of the geographic territory have done, are doing, and are willing to do towards both restoring the ecosystem and sustaining their ways of life; and may also include (3) an consensus agreement on the science and the law that should apply to all the ecosystem issues.

A great deal of this will have already been articulated during the series of Chadwick workshops, and recorded verbatim in the collection of collective and consensus statements emanating from each of the workshops. In addition, they will have at their disposal the results of the Community-Based Ethnography series and Community-Based Discourse Analysis series, to fold into their deliberations. Even so, it could take a series of Congress meetings to accomplish everything. As such, similar
admonitions apply here as they do for the Chadwick workshop series: (1) dates that fit with the seasonal demands of the various ways of life; (2) in this case, a location that is central to all; (3) scholarships; and (4) child-care.

6.2 Reporting on the Community-Based Ethnography

Prior to the report at the Congress:

- The collective Ethnography will be duplicated to be handed out to attendees.
- A number of the phototakers from the get-togethers will be asked to come to the meeting, each with one photo that they have selected. The phototakers will be selected so that they span the entire territory in terms of player groups and geography, as well as age and gender. Copies of their photos will be distributed to all the attendees.

For the report at the Congress:

- A Chadwick facilitator will facilitate the workshop, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.
- Using masking tape, a map of the geographic territory of the conflict will be created on the floor.
- Attendees will sit in a circle around the map. The collective Ethnography and the photos will be distributed to all the attendees.
- The phototakers will position themselves where they live on the map on the floor.
- Replicating what was done in the get-togethers, the phototakers will begin by sharing their reflections with respect to the questions:
  - Who am I?
  - Who are we?
  - What’s the story that this photo tells?
  - How does this story relate to your life?
  - To the lives of others?
  - What did you learn that you didn’t know before.
  - How did you feel about what you learned?
  - What if anything did you do differently because of what you learned?
- Then the meeting attendees will select four or five photos to talk about together. The facilitator will ask each attendee to both respond to and write on index cards their responses to the questions:
After the report at the Congress:

- The facilitator will gather together the index cards filled out by everybody.
- The index cards will be transcribed verbatim.
- The responses from the index cards will be added to the collective Ethnography.

### 6.3 Reporting on the Community-Based Discourse Analysis

Prior to the report at the Congress:

- The collective Discourse Analysis will be duplicated to be handed out to attendees.
- People will have been recruited who span the geographic territory vertically and horizontally. They will have assembled some materials that respond to the questions:
  - What is the story we tell about ourselves?
  - What is the story we tell about each of the other groups in the geographic territory?
  - What story do they tell about us?

The sources of these materials can be photos, newsletters, website documents, press releases, internal group documents, correspondence, speeches, announcements, fundraising materials, annual reports, court documents, court judgements, and so on – as well as the collective statements and consensus statements from the Chadwick workshops. Copies of their materials will be distributed to all the attendees.
For the report at the Congress:

- A Chadwick facilitator will facilitate the workshop, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.

- Using masking tape, a map of the geographic territory of the conflict will be created on the floor.

- Attendees will sit in a circle around the map. The collective Discourse Analysis and the materials will be distributed to all the attendees.

- The recruited people will position themselves on the map on the floor in a position that is expressive of their player group.

- Among the people positioned on the map, what will commence then is a series of “Chadwick pairs” – Person 1 and Person 2 address each other and replicate what was done in the get-together. Then Person 3 and Person 4, and so on, until all pairings have been done.

- In a pairing, each person will share their reflections on their materials with respect to the questions:
  - What is the story we tell about ourselves?
  - What is the story we tell about ______ (the specific group with which they are paired in that pairing)?
  - What story do they tell about us?

  The other person will feedback to the first person what they have heard them say. Then each person will respond to the statement:
  - When I hear you say X about Y, I feel Z.

- After all the pairs have finished, the facilitator will ask each person in the circle to both respond to and write on index cards their responses to the questions:
  - What differences have you heard between the story a group tells about itself and the story another group tells about it?
  - How do these groups feel about this difference?
  - How do you feel about this difference?
  - How would you like things to change in the future?

  The responses will be heard by going around the circle and allowing each person to share their responses.
Finally, the facilitator will ask each person to both respond to and write on index cards their responses to the questions:

- What did you learn that you didn’t know before?
- How do you feel about what you learned?
- What, if anything, might you do differently because of what you learned?

The responses will be heard by going around the circle and allowing each person to share their responses.

After each get-together:

- The facilitator will gather together all the materials as well as the two sets of index cards filled out by everybody.
- The index cards will be transcribed verbatim.
- All of these items will be added to the collective Discourse Analysis.

6.4 Workshop on Community-Based Ethnoconflict Theory and Ethnopraxis

This workshop will be done in order to gather data that will be used to create a Peer Dispute Resolution Program that is grounded in the ethnoconflict theories and ethnopraxes that are used by the people throughout the conflict.

For the workshop at the Congress:

- A Chadwick facilitator will attend the workshop, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.
- The workshop will begin with a Grounding Circle – going around the circle and having each person respond to the questions:
  - Who am I?
  - What would be the worst possible outcome for participating in this get-together?
  - What would be the best possible outcome for participating in this get-together?

- The facilitator will ask each attendee to both respond to and write on index cards their responses to the questions:
  - In all the relationships you have in your everyday life, what counts as a problem to you?
  - When there is a problem, what do you do to try to mend the problem?
  - If you ever turn to someone else to help with mending the problem, who is that person and what do they do?
The responses will be heard by going around the circle and allowing each person to share their responses.

- At the end of the workshop, the facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - What did you learn that you didn’t know before?
  - How do you feel about what you learned?
  - What, if anything, might you do differently because of what you learned?

The responses will be heard by going around the circle and allowing each person to share their responses.

After the workshop:

- The facilitator will gather together the two sets of index cards filled out by everybody.
- The responses on the index cards will be transcribed verbatim.
- The responses will be assembled in a collective statement that the Coordinating Committee will use to discern the ethnoconflict theories and ethnopraxes that obtain for all the people throughout the conflict.
- The collective Ethnoconflict Theory and Ethnopraxis statement will serve as a data source for the establishment of the Peer Dispute Resolution Program (see figure 21.2).

7. Vision-Building Workshops (practice)

These workshops are conceptualized as the next step after the Congress. They will involve participants from the Macro and Meso levels. Their goal will be to provide opportunity for

1. the Meso level to speak with the unified voice constructed during the Congress
2. the Meso level to share results of research and practice with the Macro level, especially the results of the Community-Based Discourse Analysis, and the Community-Based Ethnoconflict Theory and Ethnopraxis workshop
3. the Meso level to engage with the Macro level towards addressing discourse at the Macro level and the relationship of that discourse to any sense of threat that people might be experiencing at the Meso and Micro levels (in other words, for example, how Macro level practices might impose external definitions on groups)
4. the Meso level to engage with the Macro level towards addressing the structural changes necessary to implement what the people of the geographic territory of the conflict want
from the the Macro level (in other words, bottom-up rather than top-down governmental policy)

(5) the Meso level to secure more explicit commitment from the Macro level to legitimate and provide space for the range of activities to sustain the infrastructure over time

This will entail a series of vision-building workshops, using the Chadwick process, to ultimately construct an overarching consensus agreement that embraces all levels over time and to which all levels can commit.

In my opinion, while the vision will become stronger and stronger over time as the participants work to construct the consensus agreement, the participants must be continuously vigilant about getting so attached to this vision that they exclude those who may still feel threatened and as such not able to sign on to the vision. To address this concern, I would contend that throughout the course of the series of Vision-Building workshops, whenever it becomes apparent that there are those whose perception of threat to their ways of life overrides any ability to participate in vision-building, all of the Vision-Building workshop participants should participate in a Chadwick workshop in which those fears can be heard in full and the vision can be jointly re-written to address those fears. It may sound like a time-consuming nuisance – as in, “oh why can’t they just get with the program...??” – but one does not want, in the pursuit of the consensus agreement, to plant the seeds of another conflict, by ignoring the needs of the few.

The Coordinating Committee can tap Third Parties to produce or to assist in producing the series of vision-building workshops, to function as Chadwick facilitators, to provide information as consultants with respect to specific issues, and to assemble and disseminate the various drafts to the participants over the course of the series of Vision-Building workshops.

8. Peer Dispute Resolution Program (practice)

The reasoning behind this activity draws from many contributors. Both Burton (1990) and Coser (1956) make the distinction between differences based upon identity and associated values – which Burton calls conflicts – and differences based upon details within a context of a superordinate identity and associated values – which Burton calls disputes. Even if the goal of conflict transformation is achieved – a superordinate identity and vision is socially constructed, all levels commit to an overarching consensus agreement across time – there will always be disputes that will arise – disagreements based upon the details. There needs to be a mechanism whereby people can
address these disputes expeditiously and directly, and as such avoid the possibility of unresolved
disputes festering into conflicts.

The data collected from the Community-Based Ethnoconflict Theory and Ethnopraxis
workshop at the Congress will provide the ethnoconflict theories and ethnopraxes in terms of which a
Micro-level Peer Dispute Resolution Program will be designed, and will provide a resource for
understanding the differences in interpreting situations that might turn into a dispute. In addition,
while I would contend that the Peer Dispute Resolution Program should be spelled out as an integral
part of the overarching consensus agreement, I would also contend that the Peer Dispute Resolution
Program can be established and up and working long before the completion of the overarching
consensus agreement.

In the same spirit as school-based Peer Mediation programs, local folks will be trained in
techniques that are drawn from the ethnopraxes identified in the Community-Based Ethnoconflict
Theory and Ethnopraxis workshop. The establishment of the Peer Dispute Resolution Program will
be advertised in the locally appropriate channels of information dissemination, which could range
from usual modes such as newspapers, radio spots, etc. to other-than-usual modes such as posters in
local gathering places, notices in local newsletters, announcements in churches, and presentations at
local groups.

The Coordinating Committee can tap Third Parties to construct or assist in constructing the Peer
Dispute Resolution Program from the data collected from the Community-Based Ethnoconflict
Theory and Ethnopraxis workshop at the Congress, to recruit and train local folks in the ethnopraxes,
to coordinate the logistics of the implementation of the Peer Dispute Resolution Program, and to
monitor the effectiveness of the Peer Dispute Resolution Program.

9. Training (practice)

The Coordinating Committee – or Third Parties recruited by the Coordinating Committee – can
train local persons as Chadwick facilitators, peer dispute resolution practitioners, researchers,
evaluators, and whatever other role that is necessary for the institutionalization of the research and
practice framework into the infrastructure by means of which people can recursively build
relationships and re-construct boundaries in order to be able deal with the past, the present and the
future of change.
10. Evaluation (practice and research)

Said most succinctly and simply, my goal here is to provide a user-friendly way for people to keep track of things. Now, for more words.

10.1 Evaluation of Practice and Research Activities

Given the theory upon which the Relationship-Building epistemology is grounded, the activities would be expected to produce changes in how people talked and felt about themselves and the situation, and changes in what they did. The goal of the evaluation framework is therefore to monitor such changes across activities, across time, across levels.

In pulling together this evaluation framework, I have been strongly influenced by Tamra Pearson d’Estree and her colleagues (2000, 2001) as well as by Norman Uphoff (1991). d’Estree et al. constructed a most impressive framework for evaluating practice interventions (2001). They assert that evaluation is used to “provide feedback to allow for midcourse adjustments to better meet goals or to alter goals based on field realities (formative evaluation)...[and to] provide summary information on project or program outcomes and processes for making choices, decisions, or policies (summative evaluation)” (d’Estree et al. 2001, 103).

They incorporate within the framework two different but complementary perspectives that they feel are essential to a complete and useful evaluation: (1) they assert that one must know the goals of the intervention in order to be able to decide which criteria to apply in evaluating the outcomes; and (2) they assert that the framework must incorporate both multiple time frames and multiple levels, in order to be able to infer Meso and Macro level changes from Micro level processes.

Norman Uphoff developed a grassroots-oriented methodology that would enable a grassroots group to strengthen “its ability to meet its members’ needs through collective action” (Uphoff 1991, 271). “[T]he first step in participatory self-evaluation is for the group to decide what things it thinks it should be accomplishing and how it should be carrying out its activities” (ibid, 273). The group can choose from a list of possible questions about performance and capacity as well as can come up with their own questions. The next step is to present responses to a question in four alternative formats.

The first...represents a most satisfactory situation, with little or no room for improvement. The second...describes a satisfactory situation, but with some room for improvement. The third...characterizes an unsatisfactory situation with considerable room for improvement, while the fourth...presents a very unsatisfactory situation with very great room for improvement. For the sake of giving some simple scores for the answers, the first answer is counted for 3 points, the second for 2 points, the third for 1 point, and the fourth is zero. ...Numbers are not the
most important result of self-evaluation. More important is the discussion that goes into agreeing on them. (ibid, 273)

The group can keep track of its evaluation of a question over time, noting how the scores have changed or not changed over time.

So, as the first component of the evaluation framework, I constructed four categories of changes:

- changes in thinking and feeling
- changes in visions
- changes in actions taken
- changes across levels

As the second component of the evaluation framework, I constructed a matrix of the categories of changes spread across four alternatives. Below is a generic representation of this matrix of changes.

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>2</th>
<th>1</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ideal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Good</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bad</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The alternatives are configured such that, in essence, Bad expresses conflict at its worst, and Ideal expresses peace at its best, Good is not as ideal as Ideal, and Poor is not as bad as Bad.

To fill out this matrix, I created a number of options within each category of change and then spread each of those options across the four alternatives. People will be strongly encouraged to feel free to create other options that they feel are appropriate to their circumstances.
Table 20.1. Matrix of Changes Across Four Alternatives

<table>
<thead>
<tr>
<th>Changes in Thinking and Feeling</th>
<th>Ideal Score = 3</th>
<th>Good Score = 2</th>
<th>Poor Score = 1</th>
<th>Bad Score = 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes in how people talk about themselves to themselves (private face of identity)</td>
<td>People talk in a balanced fashion about both their good and their bad points</td>
<td>People talk more about their good points than their bad points</td>
<td>People talk almost exclusively about their good points, defensively omitting their bad points</td>
<td>People characterize themselves defensively as blameless, and victimized by others</td>
</tr>
<tr>
<td>Changes in how people talk about themselves to others (public face of identity)</td>
<td>People talk in a balanced fashion about both their good and their bad points</td>
<td>People talk more about their good points than their bad points</td>
<td>People talk almost exclusively about their good points, defensively omitting their bad points</td>
<td>People characterize themselves defensively as blameless, and victimized by others</td>
</tr>
<tr>
<td>Changes in how people talk about others</td>
<td>People work to understand others in their terms and not to assume character or intentions</td>
<td>People may characterize others stereotypically, but can be dissuaded by evidence to the contrary</td>
<td>People routinely characterize others stereotypically and are not easily dissuaded by evidence to the contrary</td>
<td>People instantly interpret actions of others in worst possible light, assuming malevolent intentions and character</td>
</tr>
<tr>
<td>Changes in how people talk about the relationship between us and others</td>
<td>All people characterize self and others as available for boundary-spanning collaboration</td>
<td>Most people would readily engage in boundary-spanning collaboration, but some feel it is not possible, too much of a risk</td>
<td>Most people consider boundary-spanning collaboration as not possible, but some consider it as something they would do.</td>
<td>People characterize Us as victimized by Them whom We demonize; any of Us who do boundary-span are branded traitors</td>
</tr>
<tr>
<td>Changes in how people feel about themselves</td>
<td>All feel safe and energized</td>
<td>Most feel safe and energized, but some don’t</td>
<td>Most don’t feel safe and energized, but some do</td>
<td>All feel threatened and defensive</td>
</tr>
<tr>
<td>Changes in how people feel about others</td>
<td>All people feel that they can trust others to have their back</td>
<td>Most feel that they can trust others to have their back, but some don’t</td>
<td>Most don’t feel that they can trust others, but some do</td>
<td>All feel that others are their enemies and in no way trustworthy</td>
</tr>
<tr>
<td>Changes in Visions</td>
<td>Ideal Score = 3</td>
<td>Good Score = 2</td>
<td>Poor Score = 1</td>
<td>Bad Score = 0</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>----------------</td>
<td>----------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Changes in how people talk about the situation</td>
<td>All people talk about the situation in terms of opportunity for best possible outcomes</td>
<td>Most people talk about the situation in terms of opportunity for best possible outcomes, but some focus on worst possible outcomes</td>
<td>Most people focus on the worst possible outcomes, but some talk about the situation in terms of opportunity for best possible outcomes</td>
<td>All people talk about the situation in terms of extreme threat to identity</td>
</tr>
<tr>
<td>Changes in visions of what to do about the situation</td>
<td>All people talk about a shared vision that sustains both the ecosystem and the ways of life</td>
<td>Most people talk about a shared vision that sustains both the ecosystem and their ways of life, but some don't share that vision</td>
<td>Most people don't share a vision that sustains both the ecosystem and their ways of life, but some do share that vision</td>
<td>All people feel they must fight others in order to preserve their ways of life.</td>
</tr>
<tr>
<td>Changes in sense of existence of an overarching superordinate identity</td>
<td>All people talk about a sense of the existence of an overarching superordinate identity, within which all ways of life retain their identities</td>
<td>Most people talk about a sense of the existence of an overarching superordinate identity, within which all ways of life retain their identities, but some feel that their identities are threatened by this overarching superordinate identity</td>
<td>Most people feel that their identities are threatened by this overarching superordinate identity, but some people feel that their identities are safe within the overarching superordinate identity</td>
<td>All people feel threatened by even the notion of an overarching superordinate identity</td>
</tr>
<tr>
<td>Changes in expressions of trust</td>
<td>All people feel that they can trust each other to support each other's needs and ways of life, and are willing to forego opportunistic behavior in order to do so</td>
<td>Most people feel that they can trust each other to support each other's needs and ways of life, and are willing to forego opportunistic behavior in order to do so, but some do not feel this trust</td>
<td>Most people feel that they cannot trust others to support each other's needs and ways of life, and are not willing to forego opportunistic behavior in order to support their own needs and ways of life, but some do feel this trust</td>
<td>All people feel that they must take care of themselves first because they cannot count on others to support their needs and ways of life.</td>
</tr>
<tr>
<td>Changes in how people and groups talk about the ecosystem and about resources</td>
<td>All people view the situation of resource scarcity as one in which people work together to share the resource, sustain the ecosystem, and sustain their ways of life</td>
<td>Most people view the situation of resource scarcity as one in which people work together to share the resource, sustain the ecosystem, and sustain their ways of life, but some feel compelled to fight for their own interests</td>
<td>Most people feel compelled to fight for their own interests, but some view the situation of resource scarcity as one in which people work together to share the resource, sustain the ecosystem, and sustain their ways of life</td>
<td>All people view the situation of scarcity as a zero-sum situation in which people must fight for their piece of the limited pie.</td>
</tr>
</tbody>
</table>
### Table 20.1 continued

<table>
<thead>
<tr>
<th>Changes in Actions Taken</th>
<th>Ideal Score = 3</th>
<th>Good Score = 2</th>
<th>Poor Score = 1</th>
<th>Bad Score = 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes in how people and groups are characterizing the web of vertical and horizontal relationships</td>
<td>All people feel that they are part of a web of relationships, not only among others at the Micro level, but also among Meso level groups and Macro level agencies</td>
<td>Most people feel that they are part of a web of horizontal and vertical relationships, but some do not feel a part of such a web of relationships</td>
<td>Most people feel that they are not a part of a web of horizontal and vertical relationships, but some do feel part of such a web of relationships</td>
<td>All people feel that they are part of a web of relationships that extends only within their own way of life, and feel separate from and threatened by others at the Micro, Meso, and Macro levels</td>
</tr>
<tr>
<td>Changes in actions people and groups are taking within the web of relationships in response to the situation</td>
<td>All people are taking action which boundary-spans both vertically and horizontally</td>
<td>Most people are taking action which boundary-spans both vertically and horizontally, but some are only taking action with respect to their own way of life</td>
<td>Most people are taking action only in terms of their own way of life, but some are taking action that boundary-spans both vertically and horizontally</td>
<td>All people are taking action only in terms of their own way of life, and consider boundary-spanning as traitorous to their interest</td>
</tr>
<tr>
<td>Changes in what people are doing in everyday life</td>
<td>All people reach out to include others from other ways of life in the events and rituals of their everyday life</td>
<td>Most people reach out to include others from other ways of life in the events and rituals of their everyday life, but some people do not want to include these others.</td>
<td>Most people do not want to include others from other ways of life in the events and rituals of their everyday life, but some people do</td>
<td>All people interact in the events and rituals of their everyday life only with those within their own way of life and avoid contact with those outside their way of life</td>
</tr>
<tr>
<td>Changes in the symbols used by people and groups</td>
<td>All people work to create symbols expressive of the overarching superordinate identity, to respect symbols of other ways of life, and to eschew symbols that are divisive or disrespectful</td>
<td>Most people work to create boundary-spanning symbols, but some feel the need to retain the divisive symbols.</td>
<td>Most people use divisive symbols to make distinction between Us and Them, but some work to eschew such divisive symbols and to replace them with boundary-spanning symbols</td>
<td>All people employ divisive symbols, serving to demonize others and validate themseves.</td>
</tr>
<tr>
<td>Changes across Levels</td>
<td>Ideal Score = 3</td>
<td>Good Score = 2</td>
<td>Poor Score = 1</td>
<td>Bad Score = 0</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-----------------</td>
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<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Changes in relationship between Micro and Meso levels</td>
<td>All Meso groups express the changes that have happened at the Micro level</td>
<td>Most Meso groups express the changes at the Micro level, but some Meso groups do not</td>
<td>Most Meso groups do not reflect the changes at the Micro level, but some do</td>
<td>No Meso groups reflect the changes that have happened at the Micro level</td>
</tr>
<tr>
<td>Changes in relationship between Meso and Macro levels</td>
<td>All Macro agencies express the changes that have happened at the Meso levels</td>
<td>Most Macro agencies express the changes at the Meso and Meso levels, but some Macro agencies do not</td>
<td>Most Macro agencies do not reflect the changes at the Meso and Meso levels, but some Macro agencies do</td>
<td>No Macro agencies reflect the changes that have happened at the Meso and Meso levels</td>
</tr>
</tbody>
</table>
Let’s work through an example, just to see what it might look like. Let’s say the Coordinating Committee decided that it wanted to evaluate a Discourse Analysis get-together in terms of Changes in How People Talk about the Relationship between Us and Others. The four alternatives are:

- **Ideal (Score = 3)** ≡ All people characterize self and others as available for boundary-spanning collaboration.
- **Good (Score = 2)** ≡ Most people would readily engage in boundary-spanning collaboration, but some feel it is not possible, too much of a risk.
- **Poor (Score = 1)** ≡ Most people consider boundary-spanning collaboration as not possible, but some consider it as something they would do.
- **Bad (Score = 0)** ≡ People characterize Us as victimized by Them whom We demonize; any of Us who do boundary-span are branded traitors.

After reviewing the data gathered from the get-together, the Coordinating Committee discusses it and decides to rank the data from the get-together as Bad, with a score of 0, meaning that the people at the get-together characterized themselves as victimized by others with whom they want nothing to do.

The Coordinating Committee collects and reviews data for the short-term follow-up after the get-together (see figure 21.3), and after discussing it, concludes that there had been changes in how people were talking about the relationship between themselves and others, and decides to rank the data now as Poor, with a score of 1, meaning that while most of the people who had attended the get-together were still not ready to do any boundary-spanning, some were ready to do so.

And finally the Coordinating Committee collects and reviews data for the long-term follow-up after the get-together (see figure 21.3), and after discussing it, concludes that there had been even more change in how people were talking about the relationship between themselves and others, and decides to rank the data now as Good, with a score of 2, meaning that, while some of the people who had attended the get-together were still unwilling to do any boundary-spanning, most of the people were now interested in boundary-spanning collaboration.

As the third component of the evaluation framework, I constructed a matrix across levels and across time. For the levels, I use the Micro, Meso, and Macro levels I established earlier. For the increments of time, I established Now (as in, in the moment of the activity), Short-Term (as in, a month or so after the activity), and Long-Term (as in, six or more months after the activity).
Below is a graphic representation of this matrix across levels and across time.

![Figure 20.1. Matrix of Changes Across Levels and Across Time](image)

The expectation implicit within the graphic representation is that changes will initially occur at the Micro level during the activity, and then over time will osmose, if you will, to the Meso level and then to the Macro level.

Carrying forward the results from the example above, the Coordinating Committee would put a 0 in the cell Micro: Now, a 1 in the cell Micro: Short-Term, and a 2 in the cell Micro: Long-Term.

### 10.2 Evaluation of Third Parties

The evaluation of the Third Parties involved in the implementation of the conflict transformation framework will be completely contingent, first, upon whether or not the Coordinating Committee tapped Third Parties for taking on any roles in the implementation of the conflict transformation framework, and then, second, upon the criteria which the Coordinating Committee decides that it wants to use in evaluating the performance of the Third Parties in those roles. At a minimum, given, in the Relationship-Building epistemology, the position of Third Parties as in service to the people, there will be questions to determine whether the Third Party has been transparent to all about his intentions, values, and assessments, and whether the Third Party has been effective in enabling engagement and in carrying out the duties associated with his assigned roles.

### 10.3 Evaluation of the Coordinating Committee

There will be a series of Coordinating Committee evaluation workshops, one for each phase of the conflict transformation framework. At each of these workshops, the Coordinating Committee will not only do evaluations of the practice and research activities and of the Third Parties, but also will do evaluations of itself.
For the evaluation of the Coordinating Committee, I will use the two measures that I spelled out above – external effectiveness and internal effectiveness.

The measure of external effectiveness of the Coordinating Committee will be found in keeping track of the number of active Meso-level, boundary-spanning members on the Coordinating Committee, from the creation of the Coordinating Committee all the way through to the institutionalization of the conflict transformation framework – and beyond through recursive implementations of the framework.

The measure of internal effectiveness will be based upon the idea that changes in the stories the members of the Coordinating Committee tell about themselves and the Coordinating Committee reflect changes in the identity-based trust and inclusive climate of the Coordinating Committee and thus in the internal effectiveness of the Coordinating Committee. As such, the measure of internal effectiveness will be found in looking at the same indicators of changes in identities and boundaries as are employed in the evaluation of the research and practice activities.

Data collection of the measure of internal effectiveness will employ a classic Photovoice methodology (Wang 1999) coupled with Chadwick-style questions recorded on index cards.

Prior to the evaluation workshop of the Coordinating Committee:
• Members will be asked to take photos that answer the question:
  o Who are we as the Coordinating Committee?
• Each member will select three of their favorite photos and write up about each photo their reflections on the question:
  o What’s the story that this photo tells about us as the Coordinating Committee?

At the evaluation workshop of the Coordinating Committee:
• A Chadwick facilitator will attend each get-together, unobtrusively attending to the logistical details, and ensuring that everyone is heard in full.
• The workshop will begin with a Grounding Circle – going around the circle and having each person respond to the questions:
  o Who am I?
  o What would be the worst possible outcome of serving on the Coordinating Committee?
  o What would be the best possible outcome of serving on the Coordinating Committee?
• Each member will then share their 3 photos and their reflections.
• Then the members will jointly select up to four to five photos to discuss together. The facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - *When I look at the photo of _______, I find myself thinking about _______.*
  - *When I look at the photo of _______, I find myself feeling ________.*
The responses will be heard by going around the circle and allowing each person to share their responses.

• At the first evaluation workshop in Phase One (see figure 20.2), the facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - *What did you learn that you didn’t know before?*
  - *How do you feel about what you learned?*
  - *What, if anything, might you do differently because of what you learned?*
The responses will be heard by going around the circle and allowing each person to share their responses.

• At the evaluation workshops in Phases Two through Six (see figure 20.2), the facilitator will ask each person to both respond to and write on index cards their responses to the questions:
  - *What, if anything, has changed since the last workshop – the stories, the actions, the number of active members of the Committee?*
  - *What, if anything, have you done differently since the last workshop?*
  - *How do you feel about those changes?*
  - *If the number of active members of the Coordinating Committee has decreased, what are two strategies that you would support for increasing and maintaining the active membership of the Coordinating Committee?*
  - *How does the story that we are telling today in the Committee compare to the story that people are telling in the activity or activities that we just evaluated at this workshop?*
  - *How do the actions we have taken in the Committee compare to the actions that people in the activity or activities that we just evaluated at this workshop say they have taken?*
  - *How do you feel about those comparisons?*
  - *What did you learn that you didn’t know before?*
  - *How do you feel about what you learned?*
  - *What, if anything, might you do differently because of what you learned?*
The responses will be heard by going around the circle and allowing each person to share their responses.
At the end of each evaluation workshop of the Coordinating Committee, the facilitator will ask the members to score the Coordinating Committee by responding to and writing on index cards their answers to the following questions:

- How would you score the external effectiveness of the Coordinating Committee?
- How would you score the internal effectiveness of the Coordinating Committee?
- How would you score the correspondence between the changes in the Coordinating Committee and the changes in the participants in the activities?

Table 20.2 below is a matrix of alternatives for each set of questions. The responses will be heard by going around the circle and allowing each person to share their responses.

After having heard all individual responses, the facilitator will ask the Coordinating Committee as a whole to come to consensus on the score for the Committee for each of the questions.

The facilitator will ask each member to both respond to and write on index cards their responses to the question:

- What could the Coordinating Committee do differently based upon what we have learned?

The responses will be heard by going around the circle and allowing each person to share their responses.

After the evaluation workshop:

- The facilitator will gather together all the data sources produced during the evaluation workshop in evaluating the activities, the Third Parties, and the Coordinating Committee itself. The reflections and index cards will be transcribed verbatim.
- Should the Coordinating Committee wish to produce a written report for its own uses, in the spirit of collaborative ethnography (Lassiter 2000, Papa & Lassiter 2003, Mienczakowski 1995) and reciprocal ethnography (Lawless 1992), the content of any written report will be discussed in regular dialogues among the Coordinating Committee, such that the final written text will reflect the negotiated result of that dialogical process.

The Coordinating Committee can tap Third Parties to be Chadwick facilitators at the evaluation workshops, and to assist in producing whatever report the Committee may decide to write.

Putting it all together, in the light of the consideration that the success of the project is directly contingent upon the effectiveness of the Coordinating Committee in implementing the project, a
Table 20.2. Matrix of Changes in Coordinating Committee Across Four Alternatives

<table>
<thead>
<tr>
<th>Changes in External Effectiveness</th>
<th>Ideal Score = 3</th>
<th>Good Score = 2</th>
<th>Poor Score = 1</th>
<th>Bad Score = 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meso-level Membership</td>
<td>All members are Meso-level</td>
<td>Most represent Meso-level, but not all</td>
<td>A few represent Meso-level, but most don't</td>
<td>Membership not Meso-level</td>
</tr>
<tr>
<td>Geographic territory</td>
<td>The geographic territory is fully represented</td>
<td>Most but not all of geographic territory spanned</td>
<td>Representation of geographic territory is disproportionately clustered in only some of the regions</td>
<td>Representation of geographic territory is disproportionately clustered in just one or two regions</td>
</tr>
<tr>
<td>Boundary-spanning vertically and horizontally</td>
<td>All members boundary-span both vertically and horizontally</td>
<td>Most members boundary-span, but some just represent their own groups</td>
<td>Most members do not boundary-span, representing just their own group, but a few do boundary-span</td>
<td>Membership represents just their own organizations, with no boundary-spanning</td>
</tr>
<tr>
<td>Active membership</td>
<td>All members active</td>
<td>Most active, but not all</td>
<td>Many not active</td>
<td>Members figurehead only</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Changes in Internal Effectiveness</th>
<th>Ideal Score = 3</th>
<th>Good Score = 2</th>
<th>Poor Score = 1</th>
<th>Bad Score = 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes in sense of existence of an overarching superordinate identity</td>
<td>All members talk about a sense of the existence of an overarching Coordinating Committee identity</td>
<td>Most members talk about a sense of the existence of an overarching Coordinating Committee identity, but some do not feel so</td>
<td>Most members feel more connected to their Meso-level groups than they do to the Coordinating Committee</td>
<td>All members feel connected, not to the Coordinating Committee, but only to their Meso-level groups</td>
</tr>
<tr>
<td>Changes in expressions of trust</td>
<td>All members feel that they can trust each other to support each other's needs and ways of life, and are willing to forego opportunistic behavior in order to do so</td>
<td>Most members feel that they can trust each other to support each other's needs and ways of life, and are willing to forego opportunistic behavior in order to do so, but some do not feel this trust</td>
<td>Most members feel that they cannot trust others to support each other's needs and ways of life, and are not willing to forego opportunistic behavior in order to support their own needs and ways of life, but some do feel this trust</td>
<td>All members feel that they must take care of their Meso-level groups first because they cannot count on others to support their needs and ways of life</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Changes in Correspondence of Coordinating Committee to Activities</th>
<th>Ideal Score = 3</th>
<th>Good Score = 2</th>
<th>Poor Score = 1</th>
<th>Bad Score = 0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Correspondence between the Coordinating Committee and the participants in the activities</td>
<td>There is complete correspondence between the changes seen in the participants in the activities and the changes seen in the Coordinating Committee</td>
<td>There is a strong, but not complete correspondence between the changes seen in the participants in the activities and the changes seen in the Coordinating Committee</td>
<td>There is only a weak correspondence between the changes seen in the participants in the activities and the changes seen in the Coordinating Committee</td>
<td>There is no correspondence between the changes seen in the participants in the activities and the changes seen in the Coordinating Committee</td>
</tr>
</tbody>
</table>
simultaneous research and practice activity has been proposed that would enable the Coordinating Committee not only to learn about its effectiveness and the relationship of that effectiveness to the results of the project’s research and practice activities, but also to feed the knowledge that it produces of, by, and for itself directly back into its implementation of the project, thereby increasing the likelihood of the success of the project.

In summary, then, in what has become a lengthy section on Evaluation, I sincerely hope that I have presented what will ultimately be a user-friendly way for people to keep track of things. I readily acknowledge that what I have proposed is a completely subjective evaluation method – because what is important is the talking and doing together, and not the purported objectivity of any answer. And even if, in reality, folks don’t implement everything I have proposed, whatever they do implement will give them a far richer sense of what is going on than they would have had if they implemented nothing.

11. Summary

In Chapter Twenty, I have presented in significant – and perhaps mind-boggling – detail all the components of the conflict transformation framework. In Chapter Twenty-One, I will locate these components on the tracks and in the phases of the conflict transformation framework – and I trust it will become blindingly clear how everything hangs together.
Chapter Twenty-One
Phases and Tracks of the Conflict Transformation Framework

Figure 21.1 is a graphic representation of the conflict transformation framework, locating all of the components in their respective phases and tracks. There are five tracks tracked across six phases. The overarching organization is that Phase One creates the project infrastructure, Phases Two and Three deal directly with moving boundaries, with constructing a superordinate identity, a superordinate sense of community, Phases Four and Five use this superordinate identity as the foundation for both vision-building at the Macro level and dispute resolution at the Micro level, and Phase Six institutionalizes the project infrastructure and prepares for the second ‘round’ of enacting the framework. The initial enactment of the framework could take at least five years; subsequent enactments probably much less.

Figure 21.2 is a graphic representation of the flow of data within the conflict transformation framework, as the products of one activity become the data sources of an ensuing activity. The specifics of this data flow have been spelled out in detail in Chapter Twenty and will be spelled out in further detail in this chapter; this graphic representation is simply a visual aid to keep track of a flow that may be obscured in the blizzard of words.

1. Phase One: The Formation of the Track One Coordinating Committee.

The first task before the Coordinating Committee will be to formulate its membership, mission, goals, activities, and evaluation framework. In order to do so, it will (a) take an inventory of people and groups within the local situation on all three levels (Macro, Meso, Micro), identifying the various initiatives already taking place, and expanding the membership of the Coordinating Committee as it feels appropriate; (b) determine the mission and goals of the project in terms of levels, research and practice activities, and time; (c) determine how the Coordinating Committee will coordinate and implement the research and practice activities across levels and across time, create links among the levels and tracks, and orient the overall process toward building the infrastructure for dealing with change; and (d) determine the evaluation framework for each of the activities, for the project as a whole, for the Third Parties, and for the Coordinating Committee itself, and how the results will be recursively fed back into the research and practice activities, the project as a whole, the Third Parties,
<table>
<thead>
<tr>
<th>Track</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Phase 3</th>
<th>Phase 4</th>
<th>Phase 5</th>
<th>Phase 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Coordinating Committee formation</td>
<td>Evaluation of activities</td>
<td>Dissemination of products</td>
<td>Evaluation of activities</td>
<td>Evaluation of activities</td>
<td>Evaluation of activities</td>
</tr>
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<td></td>
<td></td>
<td>Evaluation</td>
<td>Evaluation</td>
<td>Evaluation</td>
<td>Evaluation</td>
<td>Evaluation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chadwick Workshop Series</td>
<td>Congress</td>
<td>Vision-Building Workshops</td>
<td></td>
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<tr>
<td>2</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3</td>
<td>Community-Based Ethnography</td>
<td></td>
<td>Ethnoconflict Theories &amp; Ethnopraxes Workshop</td>
<td></td>
<td>Peer Dispute Resolution Program</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Community-Based Discourse Analysis</td>
<td></td>
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<tr>
<td>5</td>
<td>Community-Building Activity</td>
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</tbody>
</table>

**Figure 21.1. Tracks and Phases of the Conflict Transformation Framework**

![Figure 21.2. Flow of Data Within the Conflict Transformation Framework](image-url)
and the Coordinating Committee.

At the end of Phase One, the Coordinating Committee will conduct an evaluation workshop to evaluate itself to date. The evaluation findings will be assessed and fed into the implementation of Phase Two activities.

The Coordinating Committee could tap Third Parties to advise in the establishment of the Committee as well as to coach and tutor the Coordinating Committee over time as it carries out its tasks. Other possible Third Party roles with respect to each of the activities within the conflict transformation framework have already been spelled out in Part One.

2. Phase Two: The Initiation of the Activities of Tracks Two through Five by the Track One Coordinating Committee.

Track Two is Chadwick workshop series → Congress → Vision-Building workshops. In Phase Two, the Coordinating Committee will implement the Chadwick workshop series. The products of the Chadwick workshops are the collective and consensus statements which will serve as data sources for the Track Four Community-Based Discourse Analysis, as well as the Resource Directory (see figure 21.2).

Track Three is Community-Based Ethnography → Ethnoconflict Theories and Ethnopraxes workshop → Peer Dispute Resolution Program. In Phase Two, the Coordinating Committee will implement the Community-Based Ethnography. The product of the Community-Based Ethnography is the collective Ethnography which will serve as data source for the Track Two Congress and Vision-Building workshops, and the Track Three Peer Dispute Resolution Program (see figure 21.2).

Track Four is Community-Based Discourse Analysis. In Phase Two, the Coordinating Committee will implement the Community-Based Discourse Analysis. The product of the Community-Based Discourse Analysis is the collective Discourse Analysis statement which will serve as data source for the Track Two Congress and Vision-Building workshops (see figure 21.2).

Track Five is the Community-Building Activity. In Phase Two, the Coordinating Committee will implement the Community-Building Activity. The product of the Community-Building Activity is the collective Community statement, which will serve as data source for the Track Three Ethnography and the Track Four Discourse Analysis (see figure 21.2).
<table>
<thead>
<tr>
<th>Data Sources</th>
<th>Products</th>
<th>Evaluation</th>
<th>Evaluation</th>
<th>Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chadwick workshops</strong></td>
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<tr>
<td>Workshop # n</td>
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<tr>
<td></td>
<td>index cards</td>
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<tr>
<td><strong>Ethnography</strong></td>
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<tr>
<td>Get-together # n</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>photos &amp; Reflection #1 by 3 phototakers; 2 sets of index cards by all 6 participants</td>
<td></td>
<td>Reflection #2 by all 6 participants to life-long learning questions from get-together (see footnote for actual questions)</td>
<td>CC chooses questions in terms of which to evaluate each Ethnography get-together; reviews data at each interval</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Reflection #3 by all 6 participants to life-long learning questions from get-together (see footnote for actual questions)</td>
<td></td>
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<td>photos, reflections, index cards</td>
<td>CC chooses questions in terms of which to evaluate Ethnography series; reviews data sources and products from all get-togethers; reviews the Now Scores across all get-togethers to see the Changes in baseline indicators that occurred between earlier and later get-togethers</td>
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<td><strong>Discourse Analysis</strong></td>
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<td>Get-together # n</td>
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<td>materials, Reflection #1, &amp; 2 sets of index cards by all 6 participants</td>
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<td>Reflection #2 by all 6 participants to life-long learning questions from get-together (see footnote for actual questions)</td>
<td>CC chooses questions in terms of which to evaluate each Discourse Analysis get-together; reviews data at each interval</td>
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<td>Reflection #3 by all 6 participants to life-long learning questions from get-together (see footnote for actual questions)</td>
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**Figure 21.3. Framework of Phase Two Evaluations**
Phase Two could take upwards of two years to complete. During Phase Two, the Track One Coordinating Committee will conduct evaluation of each instance of the Tracks Two through Five research and practice activities. At the end of Phase Two, the Coordinating Committee will evaluate each activity as a whole, all activities (i.e., the project) as a whole, the Third Parties, and the Coordinating Committee itself. The evaluation findings will be assessed and fed into the implementation of Phase Three activities. Figure 21.3 presents the framework of the Phase Two evaluations.1

3. Phase Three: The Dissemination of the Products of the Phase Two Activities by the Coordinating Committee.

The Coordinating Committee will oversee the publishing and dissemination of the products of the Chadwick workshops, the completed Ethnography, the completed Discourse Analysis, and the Community-Building Activities. The content of the final collective statements from all of the activities will discussed in regular dialogues among the Coordinating Committee such that the final written text will reflect the negotiated result of that dialogical process.

The Coordinating Committee will also coordinate the presentation of the completed Ethnography and the completed Discourse Analysis – perhaps by storytelling, by performance, by photographs, by exhibit, and/or by whatever is locally appropriate. (The reports on the Ethnography and the Discourse Analysis that are components of the Congress represent two such presentations.)

And finally, the Coordinating Committee will implement the establishment of permanent and traveling exhibits of the photos and writings from the Ethnography, the Discourse Analysis and the Community-Building Activities.

Phase Three could take six months or more to complete. At the end of Phase Three, the Coordinating Committee will participate in an evaluation workshop in which they will evaluate the dissemination activities, the Third Parties, and the Coordinating Committee itself. The evaluation findings will be assessed and fed into the implementation of Phase Four activities.

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1 For the Short-Term Reflection #2 as well as for the Long-Term Reflection #3, the participants will be asked to respond to the life-long learning questions:
   o What did you learn that you didn’t know before?
   o How do you feel about what you learned?
   o What, if anything, have you done differently because of what you learned?
4. Phase Four: The Convening of the Congress by the Coordinating Committee.

The Coordinating Committee will convene and implement the Track Two Congress, and will see to the incorporation of the results of the Chadwick workshops, the Ethnography, and the Discourse Analysis into the deliberations of the Congress. The Committee will compile the statements reflecting the voice of the people of the geographic territory of the conflict, which statements will in turn serve as data source for the Track Two Vision-Building Workshops (see figure 21.2).

The Committee will also implement the Track Three Ethnoconflict Theory and Ethnopraxis workshop as part of the Congress. The product of the Ethnoconflict Theories and Ethnopraxes workshop held is the collective Ethnoconflict Theory and Ethnopraxis, which will serve as data source for the Track Three Peer Dispute Resolution Program (see figure 21.2).

Phase Four could take a year to complete. At the end of the Congress, the Coordinating Committee will conduct an evaluation of the Congress by the participants. At the end of Phase Four, the Coordinating Committee will participate in an evaluation workshop in which they will review the evaluation of the Congress, as well as will evaluate the Ethnoconflict Theory and Ethnopraxis workshop, the Third Parties, and the Coordinating Committee itself. The evaluation findings will be assessed and fed into the implementation of Phase Five activities.

5. Phase Five: The Convening of the Vision-Building Workshops and the Establishment of the Peer Dispute Resolution Program by the Coordinating Committee.

The Coordinating Committee will convene and implement the Vision-Building workshops, and will see to the incorporation of the statements from the Congress. The product of the Vision-Building workshops will be an overarching consensus agreement that embraces all levels over time and to which all levels can commit.

The Coordinating Committee will also establish and implement the Peer Dispute Resolution Program, drawing upon the products of the completed Ethnography and the Ethnoconflict Theory and Ethnopraxis workshop for locally appropriate ethnopraxes.

Phase Five could take anywhere from a year to a number of years to complete depending upon the dimensions of the conflict being transformed. During Phase Five, the Coordinating Committee will conduct on-going evaluations of the Vision-Building workshops as well as of the Peer Dispute Resolution Program. At the end of Phase Five, the Coordinating Committee will participate in an evaluation workshop in which they will evaluate the Vision-Building workshops, the Peer Dispute
Resolution Program, the Third Parties, and the Coordinating Committee itself. The evaluation findings will be assessed and fed into the implementation of Phase Six activities.

6. Phase Six: The Evaluation of the Entire Project and the Institutionalization of the Project, including Training of Local Personnel, by the Coordinating Committee.

The Coordinating Committee will participate in an evaluation workshop in which they will evaluate the entire project, the Third Parties, and the Coordinating Committee itself. These evaluation findings plus the evaluation findings about all of the research and practice activities will be assessed and fed into formulating plans for the institutionalization of the infrastructure of the framework and the enactment of ‘round two’ of the framework. The Coordinating Committee will also coordinate and implement the training of local persons in whatever roles would be necessary for the institutionalization of the framework.

Phase Six could take six months or more to complete.

One may ask Why institutionalization? Isn’t it enough to have constructed the overarching agreement? Isn’t everything set? I would say No. I would say that while everything may be set for today, tomorrow things can change in unexpected ways – and there needs to be an infrastructure in place that people know that they can turn to to deal with that unexpected change without having to sink into conflict. That’s why institutionalization.

7. Summary

In Chapter Twenty-One, I have laid out the five tracks and six phases of the conflict transformation framework. I have also spelled out the flow of data from activity to activity within the conflict transformation framework. And I have laid out a comprehensive evaluation framework that conducts on-going evaluation and then feeds the evaluation findings recursively back into the framework as one is moving along across time.
Discussion and Summary of Part Two

Practical considerations

Or in other words, reality check time.

While reality will intervene and tell one instantly what works and what doesn’t in a particular situation or at a particular moment in time, while failure can strike at any time and at any place, I feel that I have constructed a framework that is adaptable and resilient, and so can be shaped to work in a multitude of different situations. The barebones skeleton of the conflict transformation framework is the Track One Coordinating Committee plus the Track Two Chadwick workshops → Congress → Vision-Building workshops. The other tracks serve to optimize the moving of boundaries and the building of relationships in Phases Two and Three and the vision-building in Phases Four and Five.

As I ruminate on the question of what could go wrong, I find my thoughts coalescing on four things. First, the Coordinating Committee is essential to the implementation of the conflict transformation framework. It is no stretch to imagine that the Committee could start out with high energy, but could fizzle over time. It is also no stretch to imagine that those who started things up could over time let go and be replaced by others who have a fresh head of steam – in other words, a midstream changing of the membership that maintains the effectiveness of the Committee.

Second, it is no stretch to imagine that the investment of the people in the framework – that investment that prompts people to self-select to participate in activities – could start out with high energy, but could fizzle over time. It will always be a delicate balance between giving the relationship-building the time it absolutely requires and acknowledging the impatience of those who want to solve the problems immediately. It seems to me that the more positive the experience in the relationship-building activities of Phase Two, the more willing people will be to invest the time that the conflict transformation framework needs to be successful.

Third, it is no stretch to imagine that when the people get to the Vision-Building workshops, the issue of closed versus open workshops will raise its ugly head. Should the workshops be open? Or should they be confidential until the ultimate agreement is reached? There are valid arguments for both. However, what I will say is that if there are people who feel threatened, as soon as others go
behind closed doors – even for all the best of intentioned valid reasons, the sense of perceived threat will be ratcheted up to the roof and the people who feel this threat will work to destroy the efforts of those who have gone behind the closed doors, even if those efforts could have been beneficial to everyone. Bottom-line, in my opinion, it’s not about the closed doors; it’s about the threat that the closed doors represent. To that end, I would say that the question of confidential versus open should be the subject of as many Chadwick workshops as necessary until everyone involved can construct a joint agreement, not only about whether to be confidential or open, but also if confidential, a way to manage the confidentiality that so that no one feels threatened by the closed doors.

Fourth and finally, it is no stretch to imagine that, even while the sense of superordinate identity and vision is growing stronger and stronger for many, there will still be some who feel threatened and want no part of this superordinate identity and vision. And the closer the many get to the overarching agreement at the Vision-Building workshops, the stronger may be the impulse of the many to exclude “the annoying few whose fear is getting in the way of completing the agreement.” In every way, within the very heart of conflict transformation the very seeds of conflict are there for the planting. The few feel threatened by the many and at the very same time the many feel threatened by the few – a new set of identities, a new set of Us and Them, a new set of boundaries. In my opinion, if this happens, within the headiness of the completed agreement will have been planted the seeds of conflict that will ultimately rise up and destroy the completed agreement. To that end, I would say that throughout the course of the series of Vision-Building workshops, whenever it becomes apparent that there are those who still feel threat to their ways of life, all of the Vision-Building workshop participants should participate in as many Chadwick workshops as necessary until those who feel threatened feel that their fears have truly been heard, and the vision can be jointly re-written to address those fears.

Summary

In Part Two, I have laid out a framework for conflict transformation based upon the Relationship-Building epistemology. This framework provides opportunity for transforming protracted environmental conflict, for people to build the relationships that can then serve as the foundation upon which they can stand together to set goals and take action towards sustaining both the environment and their ways of life.

The framework is comprised of five tracks of practice and research activities over six phases of time and across Micro, Meso, and Macro levels. In addition, it also incorporates recursivity, in that
the evaluation of each phase’s activities is fed back into the next phase, and in that the evaluation of the entire framework is fed back into the institutionalization of the framework.

And, while I have articulated the Relationship-Building epistemology and envisioned the conflict transformation framework with domestic protracted environmental conflicts in mind, there is nothing to preclude applying any or all components to any conflict, domestic or international, environmental or otherwise, protracted or otherwise.
Chapter Twenty-Two

Conclusion

In the Introduction to this dissertation, I characterized it as the unfolding of a journey – and it has been that in every way. I first scratched at the surface of this way back in 2004, and since then, through a vast number of experiences, slowly but surely, I have inductively developed what I have had to say in this dissertation.

With the very first scratching in 2004, I took a stance and it has guided everything that has unfolded since then. I stated it in the first three paragraphs of the Introduction – and it is appropriate to bring it forward to the Conclusion.

My interest is protracted environmental conflict in the United States. My stance with respect to environmental conflict is that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource.

When people experience their ways of life – their identities – as threatened, no amount of negotiation or science or law will resolve the conflict if the threat to identity is not addressed. If jeopardized identities are not recognized and reconciled, the environmental conflict will become protracted, escalating and stabilizing at a pattern of conflict interactions comprised of contentious tactics coupled with economic and psychological tolls on all parties. The longer the conflict languishes at a hurting stalemate, the greater the potential detriment to the well-being of both the people and the environment.

When multiple ways of life are dependent upon that same resource – and that resource is threatened – and all wish to sustain their ways of life – then the manner in which they all relate to the resource and to each other must be transformed, such that both the resource is restored and the ways of life are sustained. In other words, it is a situation of conflict transformation, rather than of conflict resolution.

From that beginning stance, I then positioned the subsequent unfolding of the journey by means of an analogue drawn from health care, using the health care analogue to provide both a structure for what I would present, as well as a way of thinking about what I would present. Bottom-line, I wanted your familiarity with customary medicine and alternative medicine working hand in hand to restore the well-being of the person better than either could have accomplished alone to invite you to position the proposal of an alternative epistemology and framework of conflict resolution as an
opportunity for Problem-Solving and Relationship-Building epistemologies to work hand in hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

In this Conclusion, I will summarize what I presented in each volume for each of the roles in the health care analogue, highlighting the positions taken, the cases made, the conclusions drawn, the assertions made.

In **Volume One**, in the **role of customary practice**, I cast conflict resolution as it is customarily practiced in America. To learn about this customary practice, I posed a number of questions. In order to answer these questions, first I looked extensively at American culture to find out what were the various segments of the American population and what was the *ethnoconflict theory* and *ethnopraxis* that each segment had. Then I looked at conflict resolution as it is customarily practiced in America, in order to define the *ethnoconflict theory* and *ethnopraxis* that it expressed.

In answer to the question *What is the ethnoconflict theory and ethnopraxis on which the American model of conflict resolution is based and where does it come from?*, I asserted that customary American conflict resolution practice flows unerringly from the attitudes, aspirations, expectations that characterize the modern American Metro Middle Class. Put another way, the modern American Metro Middle Class culture is the source of the construction of the *ethnoconflict theory* and *ethnopraxis* that is the basis of customary American conflict resolution practice.

In answer to the question *With whom and in what situations is the American model appropriate within America?*, I asserted that the American model would be appropriate within America when everything about the situation and the people involved in the situation was in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based. I proposed the Metro Middle Class professional as the quintessentially appropriate disputant, and proposed situations that involved negotiable interests that Metro Middle Class professionals could deal with by means of technical rationality and scientific expertise as candidates for quintessentially appropriate situations.

And finally, in answer to the question *With whom and in what situations might it not be appropriate?*, I asserted that it would be inappropriate when something about the situation and the people involved in the situation was NOT in agreement with the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based. I proposed that this ‘something’ could be that the people involved in the situation had a different *ethnoconflict theory* and *ethnopraxis*. I also proposed that it could be that, even if the people involved in the situation happened to share the *ethnoconflict theory* and *ethnopraxis* upon which the American model is based, the situation was not about rights, rules, and/or individual
interests, and so as such not appropriate for the American model. I provided multiple candidates for both the people and the situations for which the customary practice of conflict resolution in America might be inappropriate. And lastly, I characterized the manner in which the American model customarily deals with instances in which the model doesn’t fit the people or the situation as a series of first-order changes, i.e., changes that tweak the model without questioning the model.

In Volume Two, in the role of the person who is not well, given my stance with respect to environmental conflict that a threat to a resource very quickly becomes experienced as a threat to the ways of life dependent upon that resource, I presented in Part One of Volume Two a history of the Klamath ecosystem and the ways of life dependent upon the Klamath watershed, from historic times of pristine environmental well-being to the current times of environmental degradation.

With respect to this history, I took the position that when a history is written of a conflict, it should be written as the people would write it of themselves, because how they write it is an expression of their ethnoconflict theory and ethnopraxis. This meant that the history of the Klamath would be written in the language of relationships (Conley and O’Barr 1990a, 1990b, 1998) involving not only the historical facts, but also the stories wrapped around the facts, the meanings made about the facts, the emotions invested in the facts.

As such, in writing this history, I took the position that I was honorbound to tell the story of the Klamath in such a manner that if (and when) any member of any player group in the Klamath may read this history, they would be able to say “You have heard Our story – not only the events and experiences that We bring together to define Our sense of who We are and have been over time, but also the emotional investment in being who We are and the emotional turmoil We feel when We experience who We are as threatened.”

This “patient history” began in the millennia in which the Indian tribes and the Klamath watershed flourished together in harmony. However, the incursion of non-Indians into the Klamath watershed with the Gold Rush in 1848 became a brutal collision between an indigenous way of life that sought to make a life in harmony with nature and the way of life of the American invaders that sought to make a living by conquering nature (McEvoy 1986; Blake, Blake, and Kittredge 2000; Most 2006). Over the period from 1848 through 2000, I looked at the history of the Klamath watershed as the playing out of the consequences of that brutal collision on both the ways of life in the Klamath watershed as well as on the Klamath watershed itself.

The well-being of the watershed was seriously degraded during the Gold Rush, beginning then a decline that has continued over the next 160 plus years to the present. As the watershed slid down
the slope of degradation, a bill was totting up that was initially only delivered to the Indian ways of life, remaining hidden to the non-Indian ways of life, but that over time, as the degradation increasingly exceeded the capacity of the environment to compensate for it, was delivered to all ways of life – Indian and non-Indian alike – throughout the basin, who now had to “pay up.”

The well-being of the Indian ways of life initially plummeted precipitously towards extinction, then struggled over the decades to stay afloat in the face of concerted efforts to get rid of them, one way or another. By 2000, even though three of the tribes had finally won recognition of some of their tribal rights, gaining some actual clout that could not be ignored, all still languished at a level of poverty that fell far below that of the nation, not only bereft of adequate infrastructure, employment, health care, social services, and education, but also bereft of the ability to rely upon the resources of the watershed that had sustained them for millennia because those resources had been decimated by the degradation of the watershed.

The well-being of the non-Indian ways of life rose as they conquered the lands they claimed during the Gold Rush, thrived as they consolidated their mastery of their new lands, and soared as they expanded on a foundation of technological and infrastructural improvements. Initially mindless to the repercussions of their ways of life on the Klamath ecosystem, they began to have to pay the price, first just for mining and timber, then with increasing ferocity for ocean fishing and agriculture and ranching, such that as 2000 drew to a close, all the non-Indian ways of life in the Klamath ecosystem were threatened because the resource upon which they were dependent was deeply degraded.

As the last seconds of 2000 ticked down on New Year’s Eve, the patient in my health care analogue – the Klamath ecosystem and the ways of life dependent upon the Klamath watershed – was clearly not well. The Klamath ecosystem was degraded beyond the capacity of the environment to compensate for the degradation, and all the ways of life whose identities had been forged over time in their relationship with the watershed were deeply threatened by the degradation of the Klamath ecosystem.

In Part Two of Volume Two, I asserted that the people of the Klamath watershed had an ethnoconflict theory and ethnopraxis that ultimately understood conflict as a tear in the web of relationships and conflict resolution as the mending of that tear. I proposed an overarching pattern of talk-boundaries-action-face-and-transformation in the Klamath watershed,

- in which the people of the watershed would initially default to the adversarial practices of mainstream conflict resolution,
but that ultimately the problem would never be resolved until We and They created a watershed-wide sense of Us and Them and mended the tear in the watershed-wide web of relationships by means of the practices of reconciliation and collaboration,

and that it would take a second-order change to enable We and They to accomplish this transformation of the conflict

Within this context, in the role of the history of unsuccessful first-order changes, I presented a history of first-order changes in the customary practice of mainstream conflict resolution, from before 2001 through the chaos of 2001 on up to 2004, just before the Chadwick workshops. The threatened ways of life took up the default practices of mainstream conflict resolution as weapons – litigation, Congressional and public hearings, mediation, ADR, science and conferences – and thrashed and tangled with each other at the extremes of conflict. None of these weapons was successful in resolving the conflict. As time passed in this period, we witnessed their growing realization that the practices of mainstream conflict resolution were not resolving the conflict. And we witnessed their growing desire to do it differently, and their growing frustration with failing in their attempts to do it differently.

In the role of second-order change, I presented the Chadwick workshops which occurred in the twelve month period of July 2004 through June 2005. I looked at the Chadwick workshops as a transformative event which enabled people to set the seed for re-configuring their interactions.

The Chadwick workshops provided a safe space and a process wherein people of the watershed could share their stories – their pain, anguish, fear, and hope – and could jointly write a new story, a new vision, a new way of living together and working together. By the end of these workshops, people were re-constructing the boundary between Us and Them, moving back from Our polarized characterization of Them to a more personalized characterization of Them and ratcheting Our tactics back to the light touch of working together; were communicating face-to-face with Them; were reaching across to build cross-boundary bonds – friendships and relationships – and to build trust based upon those friendships and relationships; and were constructing a sense of watershed-wide identity and shared vision which both We and They could support.

The Chadwick workshops were the second-order change that enabled people of the watershed to relinquish the default use of mainstream conflict resolution practices and to take up the practices of reconciliation and collaboration – in keeping with their ethnoconflict theory and ethnopraxis – in order to both mend and weave anew a watershed-wide web of relationships. The people of the Klamath
watershed came to the Chadwick workshops looking for acknowledgement of the threat to their identities and wanting to mend and weave a watershed-wide identity and web of relationships, and the Chadwick process provided them with the opportunity for exactly what they had been looking for and wanting to do. In other words, while the customary American conflict resolution practice had been *inappropriate* to the people and the situation in the Klamath watershed – and suffered failure, the Chadwick conflict resolution practice was *appropriate* to the people and the situation in the Klamath watershed – and enjoyed success.

To round out the “patient history,” subsequent to the Chadwick workshops, we witnessed the slow and painstaking transformation of the conflict. We witnessed a change to the mindset of stewards living in sustainable harmony with the environment. We witnessed the weaving of a watershed-wide web of relationships and the construction of a watershed-wide identity. We witnessed the enactment of watershed-wide settlement agreements, which spelled out a structure for collaborative management of the implementation of the agreements that operated from a watershed-wide perspective. We witnessed the turning of a page in the Klamath watershed – from a chapter of conflict more than a century in the making to a chapter of watershed-wide coordinated interaction to both restore the watershed and sustain all ways of life in the watershed.

Is it perfect? No. Will there be new conflicts? Yes. But it will not be the old conflict. People have written a new and different story, have constructed a new and different way of living and working together, of resolving conflict, that is appropriate to the people and the situation in the Klamath watershed.

Finally, I looked in detail at the Chadwick process itself. I constructed an epistemology of the Chadwick conflict resolution practice and then I juxtaposed it point by point with the epistemology of the customary American conflict resolution practice that I constructed in Chapter 3, illuminating significant differences between the two epistemologies. If I had to try to capture the difference in one sentence, I would say that the customary American conflict resolution practice is ‘about’ the third party, while the Chadwick conflict resolution practice is ‘about’ the people.

Volumes One and Two in their entirety – from the characterizations of the different *ethnoconflict theories* and *ethnopraxes* of different segments of American culture to the real-life story of conflict in the Klamath where customary American conflict resolution practice suffered failure and the Chadwick conflict resolution practice enjoyed success – accomplished the goal of raising awareness that, while for many people in America and for many situations in America, conflict resolution as it is
customarily practiced in America is completely appropriate, there are those situations in America and those people in America for which conflict resolution as it is customarily practiced in America is not appropriate.

Volume Three in its entirety accomplishes the second and third goals of proposing an alternative framework for conflict transformation based upon relationship-building and proposing a partnership of the relationship-building framework with the problem-solving framework that that could work together hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

In Volume Three, in the role of alternative practice, first, I proposed an alternative epistemology and framework for theory, practice, and research, which I characterized as a Relationship-Building epistemology, and then, I proposed a framework for conflict transformation based upon this Relationship-Building epistemology.

In Part One of Volume Three, I presented the epistemology and framework of the discipline of Conflict Analysis and Resolution, and juxtaposed it with the alternative epistemology and framework that I had proposed, illuminating the differences between the two.

I brought forward the epistemology of customary American conflict resolution practice and characterized both it and the epistemology and framework of the discipline of Conflict Analysis and Resolution as variants of an overarching Problem-Solving epistemology.

I juxtaposed the Problem-Solving epistemology with the Relationship-Building epistemology, finding that they were grounded in very different ways of knowing and working.

I proposed that, while the configuration of people and situation that is appropriate to one is not appropriate to the other, used hand-in-hand, they can cover all configurations of people and situation.

In Part Two of Volume Three, I envisioned a framework for conflict transformation based upon the Relationship-Building epistemology. This framework provided opportunity for transforming protracted environmental conflict, for people to build the relationships that could then serve as the foundation upon which they could stand together to set goals and take action towards sustaining both the environment and their ways of life.

And I noted that, while I articulated the Relationship-Building epistemology and envisioned the conflict transformation framework with domestic protracted environmental conflicts in mind, there is nothing to preclude applying any or all components to any conflict, domestic or international, environmental or otherwise, protracted or otherwise.
So now here we stand as the very last layer of the journey has unfolded, and I still feel as strongly now at the very end as I did at the very beginning that, in the spirit of the health care analogue that has given form and position to my dissertation, as customary and alternative medicine can work hand-in-hand to restore the well-being of the person better than either could have accomplished alone, so the Problem-Solving and Relationship-Building epistemologies could work hand-in-hand to restore the well-being of the people involved in a conflict situation better than either might have accomplished alone.

As my last word for this dissertation, my deepest thanks to the people of the Klamath who inspired me, and to you the reader who has walked with me through the unfolding of this journey. It has been a pleasure.
REFERENCES

For the ease of readers’ access to citations, references have been categorized according to type of reference.

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In order to facilitate the search for the publication associated with a citation in the text, I have (1) included in parentheses and highlighted in yellow any abbreviated name of the publication or organization which I may have used for citation in the text; (2) alphabetized by the abbreviated name if I used one, otherwise by the full author’s name; and (3) red-lettered the date of news publications.

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In order to facilitate the search for the government publication associated with a citation in the text, I have (1) included in parentheses and highlighted in yellow the abbreviated name of the government publication which I used for citation in the text; (2) alphabetized by the abbreviated name if I used one, otherwise by the full author’s name; and (3) red-lettered serial numbers of House and Senate publications.

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In order to facilitate the search for the legal case associated with a citation in the text, I have (1) included in parentheses and highlighted in yellow the abbreviated name of the case which I used for citation in the text; and (2) alphabetized by the abbreviated name of the case that I used for citation in the text.

Public Laws ...................................................................................................................................................... 878

There is precious little consistency in how people refer to laws. Some laws have names, some don’t. Some people refer to laws by their public law number, some don’t. Because every law can be referred to as an Act of the Date it was passed, I have decided to list all of the laws by the date they were passed, and then providing for each such act, all relevant additional information, such as name (if it has one), public law number (if it has one), and location in U. S. Statutes at Large (which all have). It is done in tabular format, simply for the ease of readers.

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PUBLICATIONS


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GOVERNMENT PUBLICATIONS


U. S. Congress. Senate (U.S. Senate). Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs. 1957. Amendments to the Klamath Termination Act of 1954. Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs on S. 2047, a Bill to Provide for the Acquisition by the United States of all Tribal Lands of the Klamath Tribe of Indians. 85th Cong., 1st sess., October 2 and 4.


LEGAL CASES


Brad Bennett, Mario Giordano, Langell Valley Irrigation District, Horsefly Irrigation District v. Marvin L. Plenert, Regional Director, Region One, Fish and Wildlife Service, John F. Turner, Director, Fish and Wildlife Service, and Bruce Babbitt, Secretary of the Department of the Interior [Bennett v. Plenert II]. No. 94-35008, 63 F.3d 915 (United States Court of Appeals for the Ninth Circuit, August 24, 1995).
Brad Bennett, Mario Giordano, Langell Valley Irrigation District, Horsefly Irrigation District v. Marvin L. Plenert, Regional Director, Region One, Fish and Wildlife Service, John F. Turner, Director, Fish and Wildlife Service, and Bruce Babbitt, Secretary of the Department of the Interior [Bennett v. Plenert III]. No. 94-35008, 112 F.3d 402 (United States Court of Appeals for the Ninth Circuit, April 23, 1997).


William F. Elser et al., as Fish and Game Commissioners, etc. v. Gill Net Number One, Defendants Grover Reed and Dewey George [Elser v. Gill Net No. 1]. No. 23058, 23059, 246 Cal. App. 2d 30. (Court of Appeal of California, First Appellate District, Division Two, October 31, 1966).


Charles E. Kimball, Stephen L. Lang, Allan Lang, Leonard O. Norris, Jr., and James Kirk v. John D. Callahan, Allan L. Kelly, Pat J. Metke, Frank A. Moore, and James W. Whittaker, each individually, and as a member of the State Game Commission of the State of Oregon; John McKeen, individually, and as Director of the Oregon Game Commission; and Holly Holcomb, individually, and as Director of the Oregon State Patrol & Oregon Game Enforcement Division [Kimball I]. No. 73-1512, 493 F.2d 564 (United States Court of Appeals for the Ninth Circuit, February 26, 1974).
Charles E. Kimball, Stephen L. Lang, Allan Lang, Leonard O. Norris, Jr., James Kirk, and the Klamath Indian Game Commission v. John D. Callahan, Allan L. Kelly, Pat J. Metke, Frank A. Moore, and James W. Whittaker, each individually, and as a member of the State Game Commission of the State of Oregon; John McKeen, individually, and as Director of the Oregon Game Commission; and Holly Holcomb, individually, and as Director of the Oregon State Patrol & Oregon Game Enforcement Division [Kimball II]. No. 77-2628, 590 F.2d 768 (United States Court of Appeals for the Ninth Circuit, January 26, 1979).


Mattz v. Arnett, Director, Department of Fish and Game [Mattz v. Arnett]. No. 71-1182, 412 U.S. 481 (Supreme Court of the United States, June 11, 1973).


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Jessie Short et al. v. The United States [Short I]. No. 102-63, 202 Ct. Cl. 870; 486 F.2d 561 (United States Court of Claims, October 17, 1973).

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Jessie Short and 104 named Plaintiffs, and Rethema I. Barber and 2,499 other named Plaintiffs, and Dennis W. Barnes and the remaining 1,139 Plaintiffs v. The United States and the Hoopa Valley Tribe [Short VII]. No. 93-5193, 93-5208, 93-5209, 94-5016, 94-5020, 94-5025, 50 F.3d 994 (United States Court of Appeals for the Federal Circuit, March 14, 1995).


The Sierra Club, Oregon Wilderness Coalition, Ogden Kellogg, Jr., Gayle Kellogg, and Diane N. Meyer v. John Block, Secretary of Agriculture, R. Max Peterson, Chief, United States Forest Service, Jeff Sirman, Regional Forester for Region VI, William H. Covey, Siskiyou National Forest Supervisor, and Plumley, Inc. [Sierra Club v. Block I]. No. 82-1006, 1982 U. S. Dist. Lexis 18154 (United States District Court for the District of Oregon, August 30, 1982).
The Sierra Club, Oregon Natural Resources Council, Middle Santiam Wilderness Committee, and John Patt v. John Block, R. Max Peterson, Jeff Sirman, Michael Kerrick, James Pierce, Willamette Industries, Inc. [Sierra Club v. Block II]. No. 82-1576, 576 F. Supp. 959 (United States District Court for the District of Oregon, November 30, 1983).

United States v. Forty-Eight Pounds of Rising Star Tea etc. 38 F. 400. (Circuit Court, N. D. California, April 1, 1889).


## PUBLIC LAWS

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TREATIES

United States. 1864. Treaty with the Klamath, Etc., October 14, 1864. 16 Stat. 707, ratified July 2, 1866, proclaimed February 17, 1870.

EXECUTIVE ORDERS

The three Executive Orders of interest are:

- Executive Order of November 16, 1855 by President Franklin Pierce
- Executive Order of June 23, 1876 by President Ulysses S. Grant
- Executive Order of October 16, 1891 by President Benjamin Harrison

All three Executive Orders are found in the following reference and will be cited as such, if needed:

CURRICULUM VITAE

Judith Y. Messier was born on October 3, 1944 in Baltimore, MD. She graduated Summa cum Laude from Santa Catalina School in Monterey, CA, in 1962. She received her Bachelor of Arts in Theatre and Music from Stanford University in 1966. For 1985 through 1989, she was Founder, Producing Director, Writer, Researcher, and Actor-Teacher for The TIE Team, doing education through theatre in Social Studies classes in senior public high schools in San Francisco, CA. She received her Master of Arts in Interdisciplinary Social Sciences from San Francisco State University in 1998. She was the 1999 recipient of The Hood, San Francisco State University’s highest award for academic excellence at the graduate level.