

**David A. Vogel, Senior Scientist  
Natural Resource Scientists, Inc.  
Red Bluff, California**

**Oral Testimony before the Committee on Resources  
(Subcommittee on Water and Power)  
United States House of Representatives  
July 17, 2004 Oversight Field Hearing on  
The Endangered Species Act 30 Years Later: The Klamath Project**

Mr. Chairman and other Congressional members, my name is Dave Vogel. Thank you for the opportunity to testify today. I'm a fisheries scientist with 29 years of experience and have served as a science advisor to Klamath Project water users for the past 12 years. Today, I'll be summarizing two topics that are further detailed in my written testimony.

The first point refers to the double standard used by the fishery agencies in implementing the ESA.

In 1988, it was assumed that the suckers would be extinct in just a few years. That anticipated population crisis never materialized. Either mistakes were made on the assumed population status or the sucker populations have demonstrated a remarkable improvement. I believe it was a combination of both. The suckers are now conclusively known to have much greater numbers, reproduction, and distribution than originally reported. Although this is this indisputable, empirical, and positive evidence, current implementation of the ESA does not provide the flexibility to downlist or delist the species. The process and rationale *to list* a species should not be held to a different standard for *de-listing*. The science on the suckers evolved with beneficial new information, but the Fish & Wildlife Service's application of the ESA did not.

Despite the so-called ecosystem approach to recovery advocated by federal agencies, their actions showed otherwise. In fact, the exact opposite took place: They focused on single-species management and Klamath Project operations.

In 1988, the Klamath Project was *not* identified as having known adverse affects on the sucker populations, yet 4 years later, using limited or no empirical data, the Service turned to the Klamath Project as their singular focus. Paradoxically, since the early 1990s, despite an abundance of scientific evidence on the species improvement *and* lack of relationship with Klamath Project operations, the agency *increased* restrictions on irrigators. This circumstance

caused tremendous expense by diverting valuable resources away from other known factors affecting the fish.

A similar circumstance occurred with NOAA Fisheries during and after the coho salmon listing. The Klamath Project was not identified as a significant factor causing declines in coho. But shortly thereafter, and with no supporting data, the agency chose to center its attention on the Klamath Project as the principal factor.

Both agencies adopted a single-minded approach of targeting the Klamath Project. What compelling, empirical scientific data would cause a broad-spectrum approach for species recovery to rapidly shift into a narrow, singular attack on Project irrigators?

The bottom line on the ESA double standard is this: The standard to list a species is vastly different than delisting a species, and what agencies say they will do *at the time of listing* is radically different *after listing*. The public was misled.

Now for the good news. My second point today pertains to the benefits provided by the NRC's final report. It's a long-overdue breath of fresh air. This outstanding effort and product must serve as a catalyst for balanced natural resource management and get our collective goals back on track. After reading the report, the benefits of an ESA peer review become obvious. The report advocates a watershed approach, peer review, stakeholder involvement, focus on *other* factors, and adaptive management actions. Notably, these recommendations were not new to the two agencies. We have reported much of the same information to those agencies over the past decade, but were, unfortunately, largely ignored.

We are beginning to see signs of progress in the basin. However, there are some individuals in a state of denial over the NRC report. The agencies *still* have too much focus on the Klamath Project. Instead, attention should return to a watershed approach and other, more creative and inclusive methods to satisfy the ESA.

If federal agencies meaningfully incorporate many of the NRC's recommendations, we expect positive results. However, if the agencies ignore it, we could again return to the disaster that transpired in 2001. The manner in which the ESA is administered in the Klamath basin *must change* or the species may never be delisted. This would not be a result of biological reasons, but of procedural inconsistencies with the ESA.

In conclusion, science is constantly evolving based on new information. Why *shouldn't* the ESA also evolve and adapt based on lessons learned such as those in the Klamath basin?

Thank you.