

107TH CONGRESS  
2D SESSION

# H. R. 5698

To establish water conservation and habitat restoration programs in the Klamath River basin and to provide emergency disaster assistance to fishermen, Indian tribes, small businesses, and others that suffer economic harm from the devastating effects of the Klamath River basin fish kill of 2002.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 2002

Mr. THOMPSON of California (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To establish water conservation and habitat restoration programs in the Klamath River basin and to provide emergency disaster assistance to fishermen, Indian tribes, small businesses, and others that suffer economic harm from the devastating effects of the Klamath River basin fish kill of 2002.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Klamath River Basin  
5       Restoration and Emergency Assistance Act of 2002”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COUNTIES.—The term “Counties” in-  
4 cludes—

5 (A) Lake, Klamath, and Jackson Counties  
6 in Oregon; and

7 (B) Modoc, Siskiyou, Trinity, Del Norte,  
8 and Humboldt Counties in California.

9 (2) KLAMATH BASIN.—The term “Klamath  
10 Basin” means the watershed areas in Oregon and  
11 California that drain into the Klamath River Sys-  
12 tem.

13 (3) PROGRAM.—The term “Program” means  
14 the Klamath River Basin Conservation Area Res-  
15 toration Program established under section 3.

16 (4) SECRETARY.—The term “Secretary” means  
17 the Secretary of the Interior, unless otherwise speci-  
18 fied.

19 (5) TASK FORCE.—The term “Task Force”  
20 means the Klamath Basin Restoration Task Force  
21 established by section 6.

22 (6) TRIBES.—The term “Tribes” means—

23 (A) the Klamath Tribes;

24 (B) the Hoopa Valley Tribe;

25 (C) the Karuk Tribe; and

26 (D) the Yurok Tribe.

1           (7) WATER CONSERVATION.—The term “water  
2       conservation”—

3           (A) subject to subparagraph (B), means  
4       actions taken to improve the efficiency of stor-  
5       age, conveyance, distribution, or use of water;  
6       and

7           (B) does not include the construction of  
8       any dam, reservoir, or well.

9       **SEC. 3. KLAMATH WATER QUALITY AND CONSERVATION**  
10           **PROGRAM.**

11       (a) ESTABLISHMENT OF PROGRAM.—The Secretary  
12       of the Interior, acting through the Commissioner of the  
13       Bureau of Reclamation and the Director of the United  
14       States Fish and Wildlife Service, shall, immediately upon  
15       the enactment of this Act, establish a program for pro-  
16       viding financial and technical assistance for water con-  
17       servation in the Klamath Basin. The program shall be  
18       known as the “Klamath River Basin Conservation Area  
19       Restoration Program.”

20       (b) ASSISTANCE.—The Secretary, under the Pro-  
21       gram, may provide loans, grants, and technical assistance  
22       to qualified applicants for preparation and implementation  
23       of plans for and short- and long-term eligible water con-  
24       servation projects and measures in the Klamath Basin.

25       (c) QUALIFIED APPLICANT.—

1           (1) IN GENERAL.—For purposes of subsection  
2           (b), a qualified applicant is any irrigation district,  
3           Indian tribe, nonprofit nongovernmental organiza-  
4           tion, or individual landowner that meets qualification  
5           requirements established by the Secretary under  
6           paragraph (2).

7           (2) QUALIFICATION REQUIREMENTS.—The Sec-  
8           retary shall issue regulations establishing qualifica-  
9           tion requirements for purposes of paragraph (1) by  
10          not later than 1 year after the date of the enactment  
11          of this Act.

12          (d) ELIGIBLE WATER CONSERVATION PROJECTS  
13          AND MEASURES.—For purposes of subsection (b), eligible  
14          water conservation projects and measures include the fol-  
15          lowing:

16                (1) Incentives for growing crops that require  
17                less water than crops grown on the date of the en-  
18                actment of this Act, in—

19                    (A) the Upper Klamath Basin above Iron  
20                    Gate Dam; or

21                    (B) the Scott and Shasta River Valleys  
22                    and other Lower Klamath Basin areas.

23                (2) Purchase or lease, from a willing seller or  
24                lessor, of land, water rights associated with land,  
25                and other property interests in the Upper Klamath

1 Basin above Iron Gate Dam and within the Scott  
2 and Shasta River Valleys and other Lower Klamath  
3 Basin areas, including acquisition of nonirrigation  
4 conservation easements that preclude the grantor of  
5 such an easement from irrigating lands that are sub-  
6 ject to such an easement.

7 (3) Tail-water recovery programs, and lining or  
8 piping (or both) of earthen irrigation channels.

9 (4) Groundwater recharge and management  
10 systems.

11 (5) Restoration of in-stream habitat conditions,  
12 consistent with generally accepted stream improve-  
13 ment practices, in consultation with the California  
14 Department of Fish and Game stream improvement  
15 manual (for projects and measures in California) or  
16 the Oregon Watershed Enhancement Board stream  
17 restoration guidelines (for projects and measures in  
18 Oregon), as applicable.

19 (6) Field leveling, monitoring of soil moisture  
20 conditions, and irrigation scheduling.

21 (7) Restoration of riparian habitat for the pur-  
22 poses of improving water quality and conservation.

23 (8) Updating and installation of water moni-  
24 toring and metering facilities.

1       (e) WATER CONSERVATION FOR FISH HABITAT RES-  
2     TORATION.—The Secretary shall require that any water  
3     conservation project or measure for fish habitat restora-  
4     tion purposes that is carried out with assistance under this  
5     section shall be carried out in accordance with all applica-  
6     ble State and Federal laws.

7       (f) PROHIBITION OF USE OF FUNDS.—None of the  
8     funds made available under this Act may be used to plan,  
9     design, or construct new facilities that may be used to  
10    store, divert, distribute, or otherwise supply water from  
11    any source for the purpose of bringing newly irrigated  
12    lands into agricultural production.

13      (g) COST SHARING.—

14           (1) IN GENERAL.—The Federal share of the  
15     cost of any activity carried out with a loan or grant  
16     under this section shall not exceed 75 percent.

17           (2) IN-KIND CONTRIBUTIONS.—(A) The Sec-  
18     retary shall apply to the non-Federal share of the  
19     cost of any activity carried out with a loan or grant  
20     under this section (in addition to cash outlays), the  
21     value of in-kind contributions to the activity of real  
22     and personal property and voluntary personal serv-  
23     ices provided from non-Federal sources.

1 (B) Any valuation of property or services by the  
2 Secretary for purposes of this paragraph is final and  
3 not subject to judicial review.

4 (C) The Secretary shall by regulation estab-  
5 lish—

6 (i) the training, experience, and other  
7 qualifications that volunteers must have in  
8 order for their services to be considered as in-  
9 kind contributions under this paragraph; and

10 (ii) the standards under which the Sec-  
11 retary will determine the value of in-kind con-  
12 tributions of for purposes of this paragraph.

13 (3) LIMITATION.—The Secretary may not con-  
14 sider the expenditure, either directly or indirectly,  
15 with respect to the Program of Federal moneys re-  
16 ceived by a State or local government to be a finan-  
17 cial contribution by a non-Federal source for pur-  
18 poses of this subsection.

19 (h) OPERATION AND MAINTENANCE EXPENSES.—No  
20 Federal funds may be expended for operation or mainte-  
21 nance of any facility constructed under this Act.

22 (i) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—There are authorized to be  
24 appropriated to the Secretary to carry out this sec-  
25 tion \$200,000,000 for fiscal years 2004 through

1       2009, of which 50 percent shall be to provide assist-  
2       ance for eligible water conservation projects and  
3       measures described in subsection (d)(2).

4           (2)    AVAILABILITY.—Amounts     appropriated  
5       under this subsection may remain available until ex-  
6       pended.

7   **SEC. 4. EMERGENCY DISASTER ASSISTANCE.**

8       (a) IN GENERAL.—The Secretary of the Interior,  
9       subject to the availability of appropriations, shall provide  
10      emergency financial assistance to persons in northern  
11      California and Oregon coastal communities that were ad-  
12      versely affected by the Klamath Basin salmon kill disaster  
13      of 2002, including to Indian tribes, participants in the rec-  
14      reational and commercial fishing industries, owners and  
15      operators of fish processing facilities, and other businesses  
16      that were so affected.

17      (b) AUTHORIZATION OF APPROPRIATIONS.—There  
18      are authorized to be appropriated to the Secretary of the  
19      Interior \$20,000,000 to provide assistance under this sec-  
20      tion.

21   **SEC. 5. FLOW RATES.**

22      The Secretary of the Interior, acting through the  
23      Commissioner of the Bureau of Reclamation, shall modify  
24      operation of the Klamath Project to ensure that Klamath  
25      River flows as measured at Iron Gate Dam meet, as a



1 minimum, the levels set forth in the document entitled  
2 “Evaluation of Interim Instream Flow Needs in the Klam-  
3 ath River, Phase II, Final Report”, prepared for the De-  
4 partment of the Interior by Dr. Thomas B. Hardy and  
5 Mr. R. Craig Addley (Final Draft—November 21, 2001).  
6 This section shall not in any way limit or establish the  
7 Secretary of the Interior’s duties under the Endangered  
8 Species Act of 1973 (16 U.S.C. 1531 et seq.) or to Indian  
9 tribes.

10 **SEC. 6. KLAMATH BASIN RESTORATION TASK FORCE.**

11 (a) ESTABLISHMENT.—There is established a Klam-  
12 ath Basin Restoration Task Force.

13 (b) FUNCTIONS.—The Task Force shall—

14 (1) advise the Secretary in the formulation, co-  
15 ordination, and implementation of the Program;

16 (2) develop and propose water conservation  
17 projects and measures for receipt of assistance  
18 under the Program, and make recommendations on  
19 eligible water conservation projects and measures to  
20 be provided assistance under the Program;

21 (3) assist, and coordinate its activities with,  
22 Federal, State, and local governmental or private  
23 anadromous and resident native fish restoration  
24 projects within the Klamath Basin;

1           (4) conduct any other activity that is necessary  
2       to accomplish the objectives of the Program; and

3           (5) act as an advisor to the Klamath Fisheries  
4       Management Council.

5       (c) MEMBERSHIP AND APPOINTMENT.—The Task  
6       Force shall consist of 32 members, as follows:

7           (1) Nine members appointed by the Governor of  
8       California, as follows:

9           (A) A representative of the California com-  
10       mercial salmon fishing industry.

11          (B) A representative of the California in-  
12       river sport fishing or in-stream recreational in-  
13       dustry.

14          (C) A representative of the California De-  
15       partment of Fish and Game.

16          (D) A representative of the California De-  
17       partment of Water Resources.

18          (E) A representative of private land own-  
19       ers in the Lower Klamath River basin farming  
20       and ranching community, who reside in the  
21       State of California and who are not dependent  
22       on the Federal Klamath Irrigation Project for  
23       water supplies.

24          (F) A representative of private land owners  
25       in the farming and ranching community who re-

1 side in the State of California and who are de-  
2 pendent on the Federal Klamath Irrigation  
3 Project for water supplies.

4 (G) Two representatives of California-  
5 based environmental organizations, or of na-  
6 tional organizations having an office in Cali-  
7 fornia, with interests in ecosystem restoration,  
8 anadromous fisheries and wildlife refuges in the  
9 Klamath Basin.

10 (H) A citizen of California who resides in  
11 the Lower Klamath Basin to represent the gen-  
12 eral business community and who is drawn  
13 from the California business community of the  
14 Lower Klamath Basin.

15 (2) Nine members appointed by the Governor of  
16 Oregon, as follows:

17 (A) A representative of the Oregon com-  
18 mercial salmon fishing industry.

19 (B) A representative of the Oregon in-river  
20 sport fishing or in-stream recreational industry.

21 (C) A representative of the Oregon Depart-  
22 ment of Fish and Wildlife.

23 (D) A representative of the Oregon Water  
24 Resources Department.

1           (E) A representative of private land own-  
2           ers in the Upper Klamath Basin farming and  
3           ranching community, who reside in the State of  
4           Oregon and who are not dependent on the Fed-  
5           eral Klamath Irrigation Project for water sup-  
6           plies.

7           (F) A representative of private land owners  
8           in the farming and ranching community who re-  
9           side in the State of Oregon and who are de-  
10          pendent on the Federal Klamath Irrigation  
11          Project for water supplies.

12          (G) Two representatives of Oregon-based  
13          environmental organizations, or of national or-  
14          ganizations having an office in Oregon, with in-  
15          terests in ecosystem restoration, anadromous  
16          fisheries and wildlife refuges in the Klamath  
17          Basin.

18          (H) A citizen of Oregon who resides in the  
19          Upper Klamath Basin to represent the general  
20          business community and who is drawn from the  
21          Oregon business community of the Upper  
22          Klamath Basin.

23          (3) A representative of the Department of the  
24          Interior, who shall be appointed by the Secretary.

1           (4) A representative of the National Marine  
2 Fisheries Service and the Department of Commerce,  
3 who shall be appointed by the Secretary of Com-  
4 merce.

5           (5) A representative of the Department of Agri-  
6 culture who shall be appointed by the Secretary of  
7 Agriculture.

8           (6) A representative of the Environmental Pro-  
9 tection Agency, who shall be appointed by the Ad-  
10 ministrator of that agency.

11          (7) One individual who shall be appointed by  
12 the County Commissioners of Klamath County, Or-  
13 egon.

14          (8) One individual who shall be appointed by  
15 the Board of Supervisors of Del Norte County, Cali-  
16 fornia.

17          (9) One individual who shall be appointed by  
18 the Board of Supervisors of Siskiyou County, Cali-  
19 fornia.

20          (10) One individual who shall be appointed by  
21 the Board of Supervisors of Humboldt County, Cali-  
22 fornia.

23          (11) One individual who shall be appointed by  
24 the Board of Supervisors of Modoc County, Cali-  
25 fornia.

1           (12) One individual who shall be appointed by  
2           the Board of Supervisors of Trinity County, Cali-  
3           fornia.

4           (13) A representative of the Karuk Tribe, who  
5           shall be appointed by the governing body of the  
6           Tribe.

7           (14) A representative of the Klamath Tribes,  
8           who shall be appointed by the governing body of the  
9           Tribes.

10          (15) A representative of the Yurok Tribe, who  
11          shall be appointed by the governing body of the  
12          Tribe.

13          (16) A representative of the Hoopa Valley  
14          Tribe, who shall be appointed by the governing body  
15          of the Hoopa Valley Tribe.

16          (d) TERMS.—

17           (1) IN GENERAL.—The term of a member of  
18           the Task Force is 4 years, except that an individual  
19           may continue to serve as a member after expiration  
20           of the individual's term until a successor has taken  
21           office.

22           (2) SERVICE.—A member of the Task Force  
23           shall serve at the pleasure of the person having au-  
24           thority to appoint the member.

1           (3) VACANCIES.—(A) Any vacancy on the Task  
2 Force shall be filled in the manner in which the  
3 original appointment was made.

4           (B) Any member appointed to fill a vacancy oc-  
5 ccurring before the expiration of the term for which  
6 the member's predecessor was appointed shall be ap-  
7 pointed only for the remainder of such term.

8 (e) TRANSACTION OF BUSINESS.—

9           (1) PROCEDURES.—The Task Force shall es-  
10 tablish practices and procedures for the carrying out  
11 of its functions under subsection (b). The procedures  
12 shall include the requirement that a quorum of the  
13 Task Force must be present before business may be  
14 transacted. The Task Force shall make decisions by  
15 the unanimous consent of the members voting (with-  
16 out regard to any abstentions).

17          (2) CHAIRMAN.—The members of the Task  
18 Force shall select a Chairman from among its mem-  
19 bers. The term of membership as Chairman shall be  
20 one year. The chairmanship shall rotate annually be-  
21 tween appointees from California and appointees  
22 from Oregon. Any member who is an employee of a  
23 Federal agency shall be considered, for purposes of  
24 this paragraph, to be an appointee from both States,

1 and may serve as Chairman without regard to the  
2 member's State of residence.

3 (3) MEETINGS.—The Task Force shall meet at  
4 the call of the Chairman or upon the request of a  
5 majority of its members, but not less than 4 times  
6 each year. At least one meeting each calendar year  
7 shall be held in or near Klamath Falls, Oregon, and  
8 at least one meeting each calendar year shall be held  
9 in or near Eureka, California.

10 (f) STAFF AND ADMINISTRATION.—

11 (1) ADMINISTRATIVE SUPPORT.—The Sec-  
12 retary, through the United States Fish and Wildlife  
13 Service and other relevant agencies, shall provide the  
14 Task Force with the administrative and technical  
15 support services necessary for the effective func-  
16 tioning of the Task Force.

17 (2) INFORMATION.—The Secretary shall furnish  
18 the members of the Task Force with relevant infor-  
19 mation concerning the Klamath Basin.

20 (3) ORGANIZATION.—The Task Force shall de-  
21 termine its organization, and prescribe the practices  
22 and procedures for carrying out its functions under  
23 subsection (b).

24 (4) SCIENCE ADVISORY TEAM.—(A) The Task  
25 Force shall establish a Science Advisory Team to ad-



1       vise it on technical issues referred to it and to review  
2       and advise the Task Force on the scientific merits  
3       of proposed projects and measures.

4               (B) The Task Force shall—

5                       (i) provide staff support for the Science  
6               Advisory Team; and

7                       (ii) reimburse travel expenses of members  
8               of the Science Advisory Team in the same man-  
9               ner such reimbursement is provided to Task  
10       Force members.

11       (g) MEMBERS WHO ARE FEDERAL OR STATE EM-  
12   PLOYEES.—Any Task Force member who is an officer or  
13   employee of the United States, the State of California, or  
14   the State of Oregon at the time of appointment to the  
15   Task Force, and who serves on the Task Force as a rep-  
16   resentative of a State or Federal agency, shall cease to  
17   be a member of the Task Force within 14 days after the  
18   date on which the member ceases to be employed by such  
19   agency.

20       (h) EXPENSES.—

21               (1) TRAVEL EXPENSES.—(A) Except as pro-  
22       vided in subparagraph (B), while away from their  
23       homes or regular places of business in the perform-  
24       ance of services for the Task Force, Task Force  
25       members shall be allowed travel expenses, including

1 a per diem allowance in lieu of subsistence, in the  
2 same manner as persons employed intermittently in  
3 the Government service are allowed travel expenses  
4 under section 5703 of title 5, United States Code.

5 (B) Any Task Force member who is an em-  
6 ployee of any agency or governmental unit and is eli-  
7 gible for travel expenses from that agency or unit  
8 for performing services for the Task Force is not eli-  
9 gible for travel expenses under this paragraph.

10 (2) LIMITATION ON SPENDING AUTHORITY.—  
11 Amounts appropriated under section 6 of the Klam-  
12 ath River Basin Fishery Resources Restoration Act  
13 (16 U.S.C. 460ss–5) may not be used to reimburse  
14 any agency or governmental unit that has a rep-  
15 resentative as a member of the Task Force with re-  
16 spect to the performance of such member’s duties on  
17 the Task Force.

18 (i) MEMORANDUM OF AGREEMENT REGARDING EN-  
19 FORCEMENT.—In order to strengthen and facilitate the  
20 enforcement of Klamath Basin fishery harvesting and  
21 wildlife hunting regulations, the Secretary shall enter into  
22 a memorandum or agreement with the California Depart-  
23 ment of Fish and Game and the Oregon Department of  
24 Fish and Wildlife that—

1           (1) specifies the enforcement activities within  
2           the Klamath Basin for which the Department of In-  
3           terior and the California Department of Fish and  
4           Game and Oregon Department of Fish and Wildlife  
5           are responsible; and

6           (2) contains such provisions as are necessary to  
7           ensure coordinated implementation of Federal and  
8           State enforcement activities.

9           (j) TERMINATION OF EXISTING ENTITIES.—

10           (1) TERMINATION.—The Upper Klamath Basin  
11           Working Group referred to in section 1024 of the  
12           Omnibus Parks and Public Lands Act of 1996 (Pub-  
13           lic Law 104–333; 110 Stat. 4224) and the Klamath  
14           Basin Fisheries Restoration Task Force established  
15           by section 4 of the Klamath River Basin Fishery Re-  
16           sources Restoration Act (16 U.S.C. 460ss–3) are  
17           terminated.

18           (2) CONFORMING AMENDMENTS AND RE-  
19           PEALS—(A) Section 1024 of the Omnibus Parks and  
20           Public Lands Act of 1996 (Public Law 104–333;  
21           110 Stat. 4224) is repealed.

22           (B) The Klamath River Basin Fishery Re-  
23           sources Restoration Act is amended—

1 (i) in section 2(b)(1) (16 U.S.C. 460ss–  
2 1(b)(1)) by striking “, in consultation with the  
3 task force established under section 4,”;

4 (ii) in section 2(b)(2) (16 U.S.C. 460ss–  
5 1(b)(2)) by striking “, in cooperation with the  
6 task force established under section 4,”;

7 (iii) in section 6(a) (16 U.S.C. 460ss–5(a))  
8 by striking “and 4(i); and

9 (iv) by repealing section 4 (16 U.S.C.  
10 460ss–3).

11 **SEC. 7. TRINITY RIVER FLOW IMPLEMENTATION.**

12 (a) IN GENERAL.—Subject to subsection (b), the Sec-  
13 retary shall implement, upon enactment of this Act, the  
14 flow release requirements for the Trinity River set forth  
15 in the record of decision by the Department of the Interior  
16 entitled “Trinity River Mainstem Fishery Restoration”,  
17 issued by the Secretary of the Interior with the concur-  
18 rence of the Hoopa Valley Tribe on December 19, 2000  
19 (referred to in this section as the “record of decision”).

20 (b) MODIFICATION.—The Secretary may modify a  
21 flow release to the Trinity River to a level other than as  
22 required in the record of decision only with the concur-  
23 rence of—

24 (1) the Hoopa Valley Tribe; and

25 (2) the Yurok Tribe.

1 **SEC. 8. REPORTING REQUIREMENTS.**

2       The Secretary of the Interior, acting through the  
3 Commissioner of the Bureau of Reclamation, shall submit  
4 to the Congress by no later than March 31, 2003, and  
5 quarterly thereafter, a report describing the progress of  
6 the conservation programs in the Klamath Basin imple-  
7 mented pursuant to this Act.

8 **SEC. 9. KLAMATH PROJECT IMPROVEMENT.**

9       In addition to the purposes of the Klamath Reclama-  
10 tion Project under the Act of February 9, 1905 (chapter  
11 567; 33 Stat. 714), and other applicable law, the Sec-  
12 retary of the Interior shall operate and maintain the  
13 Project for the purposes of—

14           (1) fish and wildlife, including the conservation  
15 of species listed under section 4 of the Endangered  
16 Species Act of 1973 (16 U.S.C. 1533) as endan-  
17 gered species or threatened species and the mainte-  
18 nance and restoration of national wildlife refuges in  
19 the Klamath Basin (as that term is defined in the  
20 Klamath River Basin Restoration and Emergency  
21 Assistance Act of 2002);

22           (2) tribal trust responsibilities; and

23           (3) water quality.

24 **SEC. 10. TRIBAL RIGHTS NOT DIMINISHED OR AFFECTED.**

25       Nothing in this Act is intended to in any way dimin-  
26 ish the water, fishery, or other rights of the Tribes as con-

1   firmed by treaty, Executive Order, or other judicial, ad-  
2   ministrative, or legislative authority, or to diminish the ob-  
3   ligations of the Secretary of the Interior on behalf of the  
4   United States to assert and protect such rights.

○