

Klamath Water Users Association Annual Report 2011



Photo credit: Larry Turner Photography



Mission of KWUA

To preserve, protect and defend the water and power rights of the landowners of the Klamath Basin, while promoting wise management of ecosystem resources.

Klamath Water Users Association

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About Klamath Water Users Association

History

The Klamath Water Users Association (KWUA) is a non-profit corporation that has represented Klamath Irrigation Project farmers and ranchers since 1905. KWUA members include rural and suburban irrigation districts and other public agencies as well as private individuals who operate on both sides of the California-Oregon border. The Klamath Project is home to over 1200 family farms and ranches and encompasses over 170,000 of some of the best farm land in the West.

The mission of the organization is to preserve, protect and defend the water and power rights of the landowners of the Klamath Basin while promoting wise management of ecosystem resources.

The Klamath Water Users Association is governed by an 11 member board of directors who are representatives from Klamath Project districts. The association employs an Executive Director and staff to execute the policy decisions made by the board.

Irrigation and Drainage

The Klamath Project on the Oregon-California border was one of the earliest Federal Reclamation projects. In addition to providing irrigation, a major aspect of the project was drainage – the ability to remove water from a closed basin. The project was authorized by the Reclamation act of 1902 and construction began in May of 1905. According to a 1998 study conducted by Davids Engineering (“Klamath Project Historical Water Use Analysis”), effective efficiency for the overall Project is 93 percent, making the Klamath Project one of the most efficient in the country.



Water Supply

There are two main sources of water supply for the Klamath Project. One consists of Upper Klamath Lake and the

Klamath River, and the other consists of Clear Lake Reservoir, Gerber Reservoir, and the Lost River, which are located in a closed basin.



Photo Credit: Larry Turner Photography

Power

Power has always been an integral component to the Klamath Project. There are 5 major (drainage) pumping plants with power input ranging from 450 to 3,650 hp. In addition, there are 40 pumping plants of less than 1000 hp.

Canals, Laterals and Drains

There are 18 canals with a total length of 185 miles. Laterals total 516 miles and drains 728 miles.

Irrigation Season

The average irrigation season extends from April through September. The growing season varies considerably from year to year, but averages approximately



120 days.

Principal Crops

The primary crops grown in this area are alfalfa hay, beef cattle, irrigated pasture, cereal grains, onions, potatoes, mint, and horseradish. Dairy production is a major component of agriculture in the Basin. In recent years organic production of most of these crops has increased significantly and the market for organics appears to be strong. In addition, the Klamath Basin has shown tremendous potential for the development of crops for use in bio-fuels.

Homestead Lands

Oregon and California legislation, which

relinquished state title to project lands, and congressional action which directed the project undertaking, provided for disposition of the reclaimed lands in accordance with the 1902 Reclamation Act. Under provisions of the Act, the reclaimed public lands were to be opened for homesteading. The first public lands were opened for homesteading in March of 1917. Much of the Klamath project went on to be homesteaded by both World War I and World War II veterans.

Watershed

The Klamath River Watershed represents a landmass of over 10 million acres. Annual flows at the mouth of the Klamath River average over 15 Million acre feet per year. There are over 100 tributaries to the Klamath River that are located downstream of the Klamath Reclamation Project.

Habitat

The Upper Klamath Basin is home to 6 National Wildlife Refuges. Tulelake NWR and Lower Klamath NWR are two of the pre-eminent waterfowl refuges in the country. Water used by these refuges is delivered via the irrigation and drainage system of the Klamath Reclamation Project. Private lands in the Upper Basin are home to more than 400 species of fish and wildlife.

Conservation

In 2003 and 2004, the Klamath Water Users received the “Leadership in Conservation” award from the State of Oregon. The 2003 award recognized the organization for their continuing efforts and support of more than 250 conservation projects in the Basin since 1992. The 2004 award was given to KWUA for “exemplifying the spirit of the Oregon Plan for Salmon and Watersheds”.

In addition to these awards, numerous individuals and irrigation districts within the Klamath Project have been recognized for their contributions to conservation and cooperation.



Message From the Klamath Water Users President



Gary Wright, KWUA President

Dear Klamath water users community,

Here we are in yet another short water year. This year, the shortage appears to be more due to actual drought than past years where shortage was really driven by system management and Endangered Species issues. The good news is that Upper Klamath Lake is 2 feet higher than at this time in 2010, the bad news is lack of snowpack could lead to poor inflows in the late summer and will be a management challenge to say the least.

Again, we at Klamath Water Users Association (KWUA) are tasked to help irrigators work through what could be hard times for some. We, as a board and staff are dedicated to get the job done. That work started last fall as we pushed hard to prevent excessive releases, in order to fill Upper Klamath Lake through the winter months. We received great cooperation from Jason Phillips and Bureau of Reclamation (Reclamation) and appreciate their efforts.

Greg Addington has maintained good relationships with the Bureau of Reclamation, as well as with other agencies, tribes, and key parties. I believe this is the main reason we are still irrigating in lieu of significant pressures, including potential lawsuits and court battles.

We continue to have good board member participation which translates to hard working committees that take on some very difficult issues. Thanks to all of you!

Finally, hats off to a key staffer, Tara Jane Campbell Miranda, as she moves on to bigger and better things in her career. She has been a big part of our success over the last couple of years. On behalf of the board and members, we wish her good luck in her future endeavors.

In closing, KWUA is and will continue to be a powerful influence if we stick together and keep our eye on the prize of irrigation certainty in a world of environmental and regulatory uncertainty. We still can and will make it work for us.

Sincerely,

Gary Wright, President

Klamath Water Users Association



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Outlook for 2012

Water Supply

From a water supply stand point, it unfortunately looks like we are in for a very challenging and trying season in the Klamath Reclamation Project for the second time in the last three years. The "Order of Determination" in the State Water Adjudication process is still a year away, meaning there is no regulation of water use based on water rights and the Klamath Project is the only regulated source (due to ESA) (see more about adjudication, page 12).

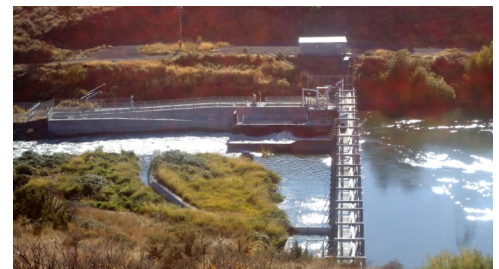
The Klamath Basin Restoration Agreement (KBRA), another valuable tool for managing water in these difficult times, remains stalled in Congress and only limited implementation is possible until Congress approves the KBRA. Had the KBRA been in place and fully implemented this spring, irrigators would be looking at a solid block of water and an ability to begin planning. Our initial estimates are that the KBRA block of water for this year would be 330 Thousand Acre Feet (TAF). Today, as of this writing, without the KBRA, the amount could be as low as 100 TAF or as much as 350 TAF (see more on KBRA, page 9-10). Currently, Project irrigators won't know actually how much they receive in 2012 until October, when the season is over.

As of mid-March, the Klamath Basin Area office of the Bureau of Reclamation has circulated a draft "drought plan" which describes the process by which they will allocate water within the Project. Historically, it has been referred to as the "A, B, C" method. Water managers within Project will undoubtedly have their hands full this year. Farmers within the Project

are having to make some very difficult management decisions.

Klamath Project leaders have worked hard to try and create options for landowners in an effort to keep the Project's family farms and ranches whole and viable. The Klamath Water and Power Agency (KWAPA) will once again administer funds on behalf of Reclamation in an effort to try and mitigate a shortage and stretch the available surface water supplies as far as possible.

Meanwhile, *we are pleased to report that significant progress was made regarding winter operations for the Klamath Project.* Upper Klamath Lake



Link River Dam

levels are one of the few bright spots so far this season. BOR managers have actively managed the system and have been very responsive to any precipitation events that would allow them to retain flows behind Link River Dam.

In addition, and after years of pushing the issue from KWUA, BOR worked with PacifiCorp and others resulting in *the National Marine Fisheries Service (NMFS) issuing a letter in October stating that flows at Iron Gate dam did not need to contain an unnecessary "buffer" flow (anywhere from 10 to 40 cfs) above and beyond the flows specified*



(Cont'd) *A Review of 2011, Outlook for 2012*

in the Biological Opinion for Coho salmon. Over time the savings here will be significant.

KWUA continues to meet regularly with the Fish and Wildlife Service, NMFS, and Reclamation in order to monitor conditions and seek maximum operational flexibility within the law. Since mid-January, the KWUA Operations committee has had weekly meetings with Reclamation management to monitor conditions and make recommendations on operational issues (see more on 2012 Water Supply Outlook, page 8).

Regulatory Issues

Once again there are myriad of regulatory issues that Klamath Project irrigators and others will need to be concerned about in 2012. Still pending from 2011 is the status of a petition to list Chinook salmon under the Endangered Species Act. This effort is being led by faraway special interest groups, including the Center for Biological Diversity (CBD). KWUA utilized the services of professional biological consultants to add important information to the record. We believe the information demonstrates that listing is not warranted. Subsequently, NMFS is being sued by these same groups, who allege the decision making by the agency has taken too long. We expect a final decision on the listing of Chinook sometime this spring (see more on ESA related issues, page 13-15).

Other regulatory issues that KWUA will remain engaged in and focused on for 2012 include the implementation of reasonable Klamath and Lost River TMDLs and related management actions for both Oregon and California.

The KWUA Water Quality Committee, chaired by Curt Mullis, has been actively engaged with regulators from both Oregon and California as they proceed with development of water quality plans. KWUA requested re-consideration of Oregon's Klamath and Lower Lost River TMDL and Implementation Plans as we have significant concerns with some of the assumptions and science behind these documents.

The TMDLs are in fact being reconsidered by Oregon Department of Environmental Quality (ODEQ). At the same time, the KWUA board believes that we should continue to move forward and investigate the development of plans that cover our member districts from any liability related to state or federal water quality action. KWUA has retained experts

TMDLs
Total Maximum Daily Loads

where needed to help guide us through this process in both states.

In its request for reconsideration, KWUA joined forces with the City of Klamath Falls, South Suburban Sanitary District, Columbia Forest Products, Klamath County, PacifiCorp and others. The outcome of this effort is not yet known and KWUA intends to keep all options available. Additionally, the organization, along with the Tulelake Irrigation District, has secured a seat on the North Coast Regional Water Quality Control Board's sub-basin implementation team. KWUA has attended two of these meetings and will continue its engagement in this arena as well (see more on TMDLs, page 11).

Political

KWUA's long-term strategic plan continues to include a variety of avenues to achieve stability including the continued support and implementation of the KBRA. The strategy does not preclude other viable options that might arise. The Association will remain engaged in all policy initiatives, science debates, legal options etc. related to our water supply and as always, ***KWUA will remain engaged with both Republicans and Democrats in order to do what is necessary to provide a dependable and predictable supply of water to our members.***

Election Year Politics



Currently in Washington D.C., Democrats are in control of the Senate and the White House (Administration) and the Republicans have control of the House of Representatives. From our vantage point, there appears to be gridlock on many important issues. Klamath issues, primarily the proposed KBRA and KHSAs legislation refueled several political debates. It seems unlikely there will be enactment of legislation concerning the settlements in 2012, but we hope to see hearings take place in Washington to allow a vetting of issues before Congress and have the foundation in place for enactment as soon as possible and when the opportunity exists. We will continue our push and our advocacy for progress on all fronts in Washington D.C., Salem and Sacramento.



(Cont'd) A Review of 2011, Outlook for 2012

Locally, KWUA has sought to reach out to opponents of the KBRA. It is disappointing when others do not desire to have dialogue with KWUA or to try and understand the complicated issues addressed in the settlement. One of our regrets is that the local Republican party has avoided KWUA's invitation to discuss the issues. KWUA will continue to take a practical approach to dealing with whatever the politics are. We know that regardless of what happens, we must be able to communicate effectively with either political party. We expect that there will always be a variety of local and national political initiatives that move forward. KWUA's board will evaluate those that have potential to impact our members and judge how to approach each of them. Regardless, we will continue to engage policy makers and administrators in a non-partisan manner in order to

maximize the ability to provide adequate water and power supplies to Klamath Reclamation Project irrigators (see more on KBRA, page 9-10).

Organization

Organizationally KWUA, like many entities in the public and private sector, has its share of challenges. Water shortages and threats of shortages (coupled with already poor economic conditions) lead to problems that go beyond crop production. They create tensions and exacerbate issues that might otherwise remain under the radar. If not addressed, the inevitable tension created amongst Project contractors who are forced to compete for an inadequate water supply could compromise much of the good work that has been done over the years by the Association and individual districts. Inexplicably it appears this divide amongst irrigators is actually encouraged by some in the community, but the KWUA board is intent on not letting this happen. The Association is strong and will remain that way as long as dedicated individuals continue to volunteer time to serve on district boards and on the KWUA board. Year after year we continue to see new faces and new leaders step up and get involved. The future for the Association is in good hands. The role of the Association is to do what is best for all of its members, play the role of intermediary and do what we can to help resolve any conflicts that may arise.

The KWUA board will remain engaged and do whatever needs to be done in order to keep Klamath Project irrigators viable and to speak as much as possible with one voice for those who get their water supply via Bureau of Reclamation facilities. We encourage Project irrigators to reach out and contact KWUA board members who represent them and share their concerns and ideas. We also support more active involvement from the irrigation community on some of our many advisory committees.

Full Water Deliveries in 2011 Result in Successful Harvest

With adequate hydrologic conditions for the 2011 water year and improved coordination between KWUA, the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS), the Klamath Reclamation Project irrigators received normal water deliveries which greatly aided a successful harvest.

Even though the Klamath Basin experienced a cool, wet spring which delayed planting, pushed potato harvest at least two weeks behind, and reduced first cutting alfalfa yields, overall crop yields remained average or above due to full Klamath Project Irrigation deliveries, favorable summer temperatures, and fall harvest conditions. ***Values for all crops increased significantly over last year resulting in the highest total gross value on record.***



(Cont'd) Full Water Deliveries in 2011 Result in Successful Harvest

Table 1. Compares the crop harvest statistics (within the Klamath Reclamation Project) for both 2010 and 2011. A much needed increase in crop productivity is seen between 2010 and 2011.

Crop Statistics (Acres)	2011	**2010	Change	% Change
*Water Rental	2,300	1,253	1,047	84%
IDLED LANDS	4,846	35,803	-30,957	-86%
ROW CROP (potato/onion)	16,938	12,475	4,463	36%
HAY	72,690	66,568	6,122	9%
GRAIN	55,142	39,213	15,929	41%
PASTURE	43,541	40,033	3,508	9%
GROSS CROP VALUE-OR	\$105,905,008	\$60,214,835	\$45,690,173	76%
GROSS CROP VALUE-CA	\$94,909,405	\$63,178,976	\$31,730,429	50%
TOTAL GROSS CROP VALUE	\$200,814,412	\$123,393,811	\$77,420,601	63%

NOTE: Totals do not account for cattle, dairy, or other animal products.

*Contracts for the use of water are for one years' use; therefore the area receiving this type of service varies from year to year.

**Groundwater pumping supplemented approximately 101.2 thousand acre-feet for crop production.

All values and yields for Oregon and California were obtained from the Oregon State University Klamath Experiment Station and Tulelake Irrigation District respectively.

Chart provided by the Bureau of Reclamation- Klamath Basin Area Office.

Figure 1. Depicts the share of retail food dollars that American farmers receive of the commodities they produce (based on Safeway brands and according to the United States Department of Agriculture– www.nfu.org: 2/29/12)



Snowpack for 2012 Below Average, Coordination Continues 2012 Water Supply Outlook

Last December's net inflow to Upper Klamath Lake (UKL) was the lowest on record (since December 1960). The mid-January series of weather disturbances that moved through the Klamath Basin, though they brought not an insignificant amount of rain and snow, still have not been enough. The overall precipitation and snowpack in the upper Klamath Basin, and inflows to UKL, have been well below average for the first several months of the 2012 water year. Substantial additional precipitation and snowpack are still needed in order for most Klamath Project irrigators to have any hope at a normal water supply year.

In the event that the Basin continues to experience limited precipitation, **KWUA is coordinating with the Klamath County Commissioners, who will send a letter to Oregon Governor John Kitzhaber requesting a drought declaration.** In preparation for a water short year, drought programs have been established through the Bureau of

Figure 2. Upper Klamath Lake Elevation Comparisons 09-12

Reclamation's Water Users Mitigation Program currently being administered by KWAPA (see more on KWAPA, page 15-17).

According to the March 1st NRCS forecast, "the late February storm brought much needed snow to the high elevations of the Klamath Basin. However, water supply conditions remain well below normal in this region of Oregon. As of March 1, the snowpack in the Klamath Basin was 66 percent of average, a slight improvement from last month's report. Several snow surveyors in the basin noted a very thick ice layer at the ground surface that made snow sampling very difficult. One survey team estimated the ice layer at Silver Burn snow course to be 1.5 to 2.5 inches thick. This ice layer was likely created by an earlier melt cycle of the shallow snowpack and then subsequent re-freezing at the ground surface.

Precipitation for the month of February was 82 percent of average in the Klamath Basin. Since October 1, precipitation in the basin has been 75 percent of average.

The March 1 storage at Upper Klamath Lake, Clear Lake (CA) and Gerber reservoirs was 81 percent of average and 49 percent of capacity.

The streamflow forecasts in the Klamath basin decreased significantly since last month's report, due to the continued dry conditions in the basin. The April through September streamflow forecasts for the basin range from 42 percent of average for Clear Lake inflow to 49 percent of average for the Williamson River below Sprague. Water users in the basin can expect well below normal streamflows for the summer of 2012."

Fig. 2. Graph developed by Tulelake Irrigation District referencing the United States Geological Survey: Water Data Reports for Oregon: http://waterdata.usgs.gov/or/nwis/dv?refered_module=su&format=html&period=31&site_no=11507001; Fig. 3 Source: United States Department of Agriculture, Natural Resources Conservation Service. (2012). Klamath time series snowpack summary as of March 15, 2012. Retrieved on March 16, 2012 from <http://www.wcc.nrcs.usda.gov/ftpref/data/water/wcs/basinsweplots/or/basinplotklamath12.gif>

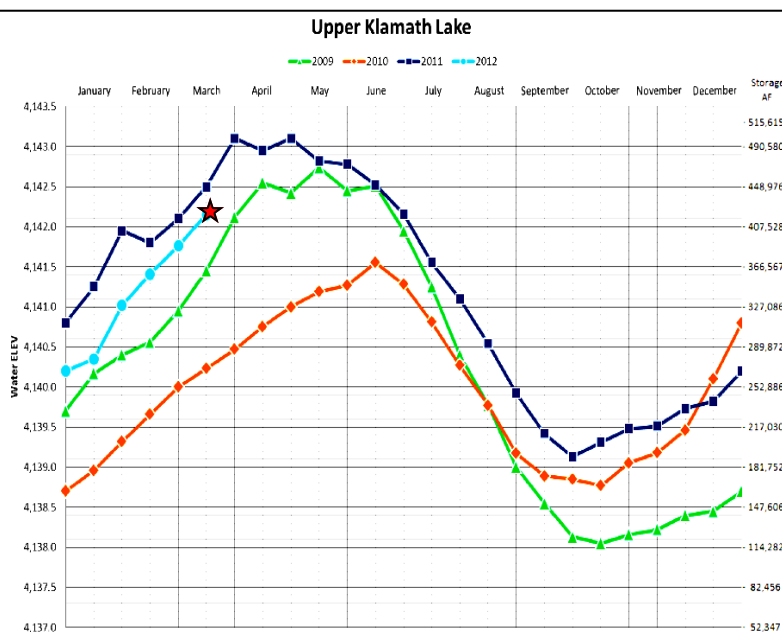
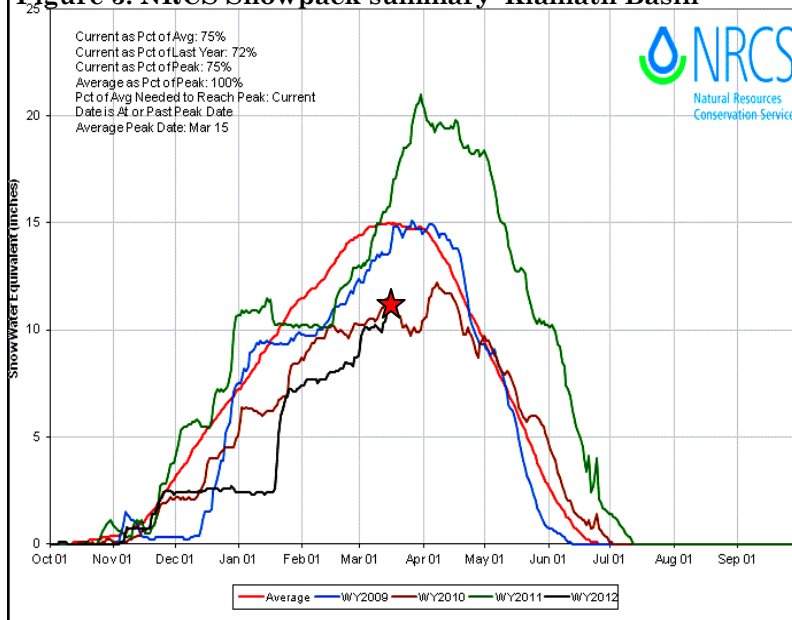


Figure 3. NRCS Snowpack summary-Klamath Basin



Klamath Basin Settlement Agreements

Draft Environmental Impact Statement on Klamath Settlement Agreements Released

Findings Include Positives for Agriculture, Economy and Environment

In the Fall of 2011, the Department of the Interior released a Draft Environmental Impact Statement (DEIS) which scientifically reviews the effects of the potential removal of four privately owned hydroelectric dams on the Klamath River. The DEIS also accounts for related actions including the KBRA. Initial indications of the DEIS are that actions called for in the Agreements will provide more economic, agricultural, social, environmental, and cultural benefits to the Klamath River Basin than the current status quo provides.

Under the Klamath Hydroelectric Settlement Agreement (KHSA) itself, the Secretary of the Interior will use the DEIS and related studies to make a determination as to whether removal of PacifiCorp's four privately owned dams is in the public's interest.

The Agreements are not solely about dam removal. For the Upper Klamath Basin's irrigated agricultural communities, key goals addressed in the Agreements include significantly increased certainty and predictability for water, stabilization and creation of affordable power for agricultural and drainage pumping as well as establishment of regulatory assurances designed to increase stability and viability for the agriculture industry by proactively dealing with federal environmental laws and regulations in the Klamath Basin.

For a copy of the Draft EIS please see www.klamathrestoration.gov.

Legislation on Klamath bi-partisan Settlement Agreements introduced in House and Senate.

Klamath Economic Restoration Act (SB 1851 & HB 3398)

For KWUA and its member districts, the introduction of legislation on November 10, 2011 by Oregon US Senator Jeff Merkley and California Congressman Mike Thompson, pertaining to the Klamath Settlement Agreements, marked a critical step toward creating water supply predictability, affordable agricultural power programs, and regulatory assurances for farmers and ranchers within the Klamath Project. In a joint press release, KWUA and Settlement Agreement coalition partners stated that the proposed "*Klamath Economic Restoration Act (Senate Bill 1851 & House Bill 3398)* creates economic security for agricultural, tribal, and fishing communities."

A growing and diverse coalition representing thousands of people including farmers, ranchers, fishermen, Tribes, business owners, etc. stated that the negotiated bi-partisan Settlement Agreements deserve prompt Congressional action, to end the ongoing water crises in the Klamath River Basin. KWUA's member districts and the farmers and ranchers within the Klamath Project whose livelihoods are at stake, believe that now is the time to settle long-standing water rights disputes and avoid catastrophes such as the 2001 water shut-off, and 2010 water shortage.

Implemented legislation would authorize the Administration to carry out economic development and restoration activities laid out in the Klamath Settlement Agreements and provide the Secretary of the Interior with the authority to determine if

facility removal along the Klamath River is in the public's best interest.

The agreements are designed to provide security to agricultural, tribal, and commercial fishing entities that, when healthy, are worth more than \$750 million a year to the region, employing thousands of people in rural areas within the Klamath Basin. It is anticipated that hearings on the Klamath Basin Economic Restoration Act will take place both in Washington D.C. and within the Klamath Basin.

KWUA will continue to pursue the adoption of the Klamath Legislation and work with settlement parties to provide a reliable and holistic water management plan for the Klamath Basin.

Though there are challenges in Congress, the Agreements enjoy broad national support. It is important for the combined voices of the diverse supporters of the Agreements to contact their Representatives and Senators and express support for the Agreements.

More information about the status of the KBRA and KHSA is available at <http://klamathrestoration.gov/> and www.kwua.org.

Klamath Legislation and Secretarial Determination

Secretarial Determination Delay

On February 27, 2012, the Department of the Interior announced that the Secretary would not issue a determination by the end of March regarding whether removal of four hydroelectric dams is in the public interest. March 31, 2012, is the target date for the determination under the KHSA, but as the KHSA itself specifies, the determination cannot and will not be made until Congress →

(Cont'd) Klamath Legislation & Secretarial Determination

has authorized the KHSA and KBRA. KWUA issued a press release stating that irrigators on the Klamath Project urge elected officials to move forward with a legislative hearing in Washington D.C. for the Klamath Basin Economic Restoration Act. KWUA stated that the announcement from the Department of the Interior does not mean the process isn't moving forward and that Congress can act now on the Klamath legislation thus allowing the Secretary to have the authority he needs to make a final determination.

Klamath legislation and a secretarial determination are imperative as Klamath Project water users face yet another low water year. "Water levels are very low this year and another water shortage is pending," said Greg Addington, KWUA Executive Director. "While the Interior Department completes the final EIS it's the perfect time for a meaningful legislative hearing in Congress to solicit input from proponents and opponents alike on the Klamath legislation, which has many important benefits for agriculture – especially in drought years. We could be doing more to support one of the main economic engines for Klamath communities in Oregon and California."

KWUA emphasized that in Klamath County and the lands served by the Klamath Reclamation Project in Modoc and Siskiyou Counties, agriculture contributes more than \$600 million annually to local economies. The Klamath Settlement Agreements are the best, and only, solution with mechanisms that avoid the cyclical ups and downs and uncertain dependence on emergency crisis funding during water shortages.

"Agriculture is a business and we can't operate effectively without clear and more predictable water deliveries. The Klamath legislation reduces risk that will help farmers better do their jobs, support their families and contribute to the community. We have an opportunity to prevent problems from getting worse and we believe our elected officials should be acting on this right away" said Addington.

For more on the Klamath Basin Settlement Agreements please visit www.kwua.org or Klamathrestoration.gov.

Conflicting Biological Opinions : A New Consultation Process

In the last few decades, federal "action" associated with operation of the Klamath Project has been the subject of Biological Opinions under the Endangered Species Act. Recently, the Bureau of Reclamation has begun the preliminary work of developing a new "Proposed Action" that will be the basis of a new Biological Opinion beginning with the 2013 irrigation season.

"We all know the biological opinions that we have are uncoordinated and unsustainable," said Gary Wright, KWUA President. "Our goal, aside from seeing species removed from the ESA list, is that there is one coordinated, non-jeopardy opinion that covers Upper Klamath Lake and the Klamath River."

KWUA has been meeting regularly with other stakeholders, including tribes, in an effort to find win-win solutions and avoid the disasters that have plagued the basin in the past. KWUA and its Project Operations Committee will continue to monitor and be involved as much as possible in order to assure a positive outcome for Project irrigators.

For more on the New Consultation process please visit www.kwua.org or email adminkwua@kwua.org.



Upper Basin Water Quality Issues, 2011-2012

With Oregon and California regulators developing Implementation Plans for water quality in both States, KWUA has communicated to Oregon Department of Environmental Quality ODEQ, California's North Coast Regional Water Quality Control Board, and others that we are not opposed to appropriate actions needed for improvement and maintenance of water quality and recognize the need to set realistic water quality goals and strategies in a collaborative and cost effective manner. KWUA supports collaborative efforts to improve water quality in focused and cost effective ways. A broad array of stakeholders has endorsed just such an approach in the KBRA. However, KWUA remains quite concerned about the science, modeling and expectations related to conditions in Upper Klamath Lake. *As an organization, we believe that the natural condition is not being adequately represented and are concerned about the overall cost/benefit analysis as it relates to making meaningful improvements to quality in the system.*

Oregon

In December 2010, the Oregon Department of Environmental Quality (ODEQ) adopted Total Maximum Daily Loads (TMDLs) pursuant to the federal Clean Water Act for the Klamath River and Lower Lost River in Oregon. TMDLs are maximum pollutant budgets which were determined by ODEQ to be necessary to meet water quality standards in the Upper Klamath and Lost rivers in Oregon. Collectively, TMDLs for these sub-basins focus on dissolved oxygen, chlorophyll, pH, ammonia and temperature.

KWUA has submitted comments on ODEQ's draft TMDL's, joined by many of its member districts (Ady District Improvement Company, Klamath Irrigation District, Pioneer District Improvement Company, Malin Irrigation District, Midland District Improvement Company, Shasta View Irrigation District, Sunnyside Irrigation District, Tulelake

KWUA, working in collaboration with other potentially affected parties, also submitted a formal Request for Reconsideration to the ODEQ seeking reconsideration of their proposed TMDL. Other affected parties include the City of Klamath Falls, Klamath County, South Suburban Sanitation District, PacifiCorp, and Columbia Forest Products.

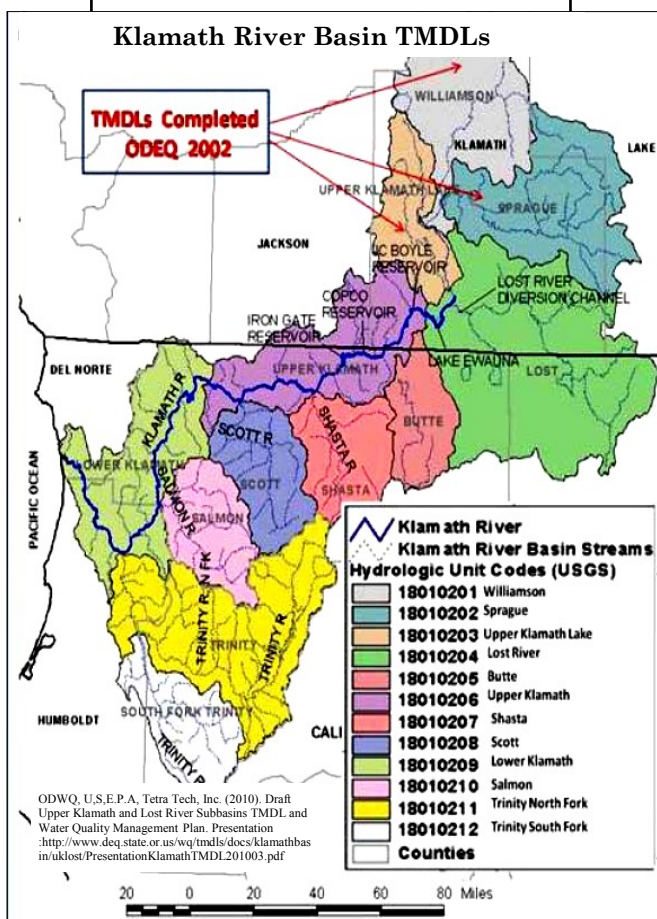
California

In California, KWUA staff and Board members met with state officials and other affected parties in December 2011 and began discussions relevant to pending TMDL Implementation Plans or other water quality management activities pursuant to the Clean Water Act and state rules and regulations. Meetings and discussions continued in early 2012 and KWUA hopes to be able to mirror efforts taken in Oregon in order to maximize efficiency and effort to meet both states' requirements and any federal requirements with a minimum number of plans.

KWUA supports a phased and incremental approach to TMDL implementation that takes into consideration improved scientific understanding, adaptive management, refined and realistic standards, an understanding

of "seasonality" of concerns and watershed based planning that provides enhancement for beneficial users.

KWUA will continue to monitor and act accordingly in the best interests of member districts. More information on the status of TMDL regulatory requirements will be available at www.kwua.org and in KWUA quarterly newsletters.



Irrigation District, Van Brimmer Ditch Company, and Westside Improvement District) who have been identified by ODEQ as "Designated Management Agencies" (DMA's) for purposes of implementing actions designed to meet these new water quality standards. The implementation component of the OR TMDLs is the Water Quality Management Plan (WQMP) which identifies how individual or collective DMA's will fund, implement, monitor, and report these actions.

Klamath Basin Adjudication

WHAT IS ADJUDICATION?

The Klamath Basin Adjudication is the legal process whereby water rights which vested before adoption of Oregon's water code in 1909 are quantified and documented through an adjudication proceeding in the Klamath County Circuit Court. The Department administers the initial phases of the Adjudication, including receipt of claims and contests, conduct of contested cases and preparation of the Adjudication findings of fact and order of determination of rights. The Circuit Court is then responsible for resolution of exceptions and issuance of the water right decree.

—Oregon Water Resources Department

By the end of this year, the Oregon Water Resources Department (OWRD) "Adjudicator" is expected to issue an order in the Klamath Basin Adjudication (KBA) that will determine and quantify the currently undetermined rights for the use of water diverted in or used in the Klamath Basin in Oregon. This order, known in full as the Finding of Fact and Order of Determination (FFOD), will provide the basis for regulation of water rights based on priority until the ultimate adoption of a court decree.

The FFOD is a significant milestone: its adoption means that if there is insufficient water to fulfill the rights of a senior water right holder, that water right holder can request that the state curtail junior water uses in order that the senior receives water he or she is entitled to under prior appropriation principles ("first in time is first in right").

Adjudication is a state law process that has been completed in many other basins. Water rights adjudications determine and quantify water rights based on appropriations that were initiated before the adoption of the state's Water Code in 1909. The KBA will also determine and quantify "federal reserved" water rights, which are recognized where water is necessary to meet the primary purpose of a reservation or withdrawal of land from the public domain, such as the Klamath Tribes' reservation and national wildlife refuges. Other water rights, those based on post-1909 appropriation procedures, could be acquired only by first obtaining permits from the state; they are not an issue in the KBA but could be subjected to regulation based on the rights ultimately recognized in the KBA.

The KBA began in 1975 when OWRD issued a notice of intention to adjudicate the waters of the Klamath River

and its tributaries. For various reasons, there were delays in the progress of the KBA through much of the 1990s. Ultimately, anyone claiming a pre-1909 right or federal reserved right was required to file a claim and 730 claims were filed. Contests of claims were filed in 2000; there were over 5,000 contests of claims.

Contested claims were referred to the Office of Administrative Hearings (OAH) for hearings by administrative law judges (ALJs), with each contested claim (or group of related claims) being the subject of a contested case hearing. After considering the evidence and legal issues, ALJs issue proposed orders for each contested claim. This process has consumed approximately a decade but should be entirely complete next month (April 2012) when the last of the proposed orders of the ALJs will be issued. Also, several proposed orders reflect settlements of contests of a number of claims.

Based on consideration of the ALJs' proposed orders and parties' exceptions to those proposed orders, the OWRD Adjudicator will issue the FFOD. As stated above, the FFOD is expected late this year or early in 2013.

The FFOD is subject to further review in the Klamath County Circuit Court and appellate courts, and only the court's final decree will be the last word on the determination of claimed water rights. However, ***until the court issues its decree, the water rights recognized in the FFOD are legally recognized as water rights in the basin, and the OWRD watermaster can regulate junior uses in order to ensure that water is available for senior water right holders.*** The only exception to this principle is that there is a procedure for the court to stay the FFOD pending the court's ultimate decree of the rights. However, state law provides that a party seeking to stay the FFOD or any part of the FFOD must file a bond or irrevocable letter of credit issued by an insured institution, in an amount the judge requires, "conditioned that the party will pay all damages that may accrue by reason of the (FFOD) not being enforced."

KWUA and its member districts have long advocated prompt completion of the KBA. The pending adoption of the FFOD is not the end of the KBA but it is truly a major milestone. KWUA congratulates OWRD on its diligent efforts over the past several years to keep the process on track.

Endangered Species: Implications for Basin Irrigators

Chinook Listing Petition



Chinook Salmon
National Marine Fisheries Service

In 2011, the National Marine Fisheries Service (NMFS) received a petition to list Chinook salmon (*Oncorhynchus tshawytscha*) under the Endangered Species Act (ESA) in the Upper Klamath Basin. Concerned about what the potential impacts to Klamath Reclamation Project irrigators might be if the species is listed, KWUA on behalf of its member districts, worked with Cramer Fish Sciences (CFS), an established and respected multidisciplinary science consulting firm, to technically review the points raised by petitioners.

The listing of Chinook salmon as endangered could have negative consequences for economic and cultural interest throughout the region. In addition to the obvious concerns for irrigated agriculture inside and outside of the Klamath Reclamation Project, the listing could have dire consequences for commercial salmon fishing, recreational angling, and tribal harvest opportunities.

In response to petitioner's claims and after careful review, KWUA submitted comments and documentation that refute the claims that a listing is warranted. KWUA President **Gary Wright, a Tulelake, CA rancher, summarized the Association's position by stating that "The current available scientific data does not support the petitioners' argument that spring/fall-run populations are similar to those populations found in the Sacramento Basin. The evidence proves that the Klamath-Trinity Chinook populations are not in general decline," as portrayed by the petitioners.**"

Greg Addington, KWUA's Executive Director, confirmed that the Association will continue to closely monitor the possible listing of Chinook in the Upper Klamath/Trinity Basins. "We will remain fully engaged in order to reduce the impacts to Klamath Reclamation Project family farmers and ranchers."

For more information on the petition to list Chinook in the Upper Klamath and Trinity Basins and KWUA scientific findings and comments please visit www.kwua.org.

Lost River/Shortnose Sucker Recovery Plan

On October 18, 2011, the U.S. Fish & Wildlife Service (Service) issued the Draft Revised Recovery Plan for Lost River and Shortnose Suckers. The plan, implementation of which would cost an estimated \$135 million over the course of 25 years, includes recovery actions for both Lost River and Shortnose Sucker species residing in Upper Klamath Lake, Gerber Reservoir, Tule Lake, Keno Reservoir, and downstream of the Klamath River. Though the Recovery Plan is not a regulatory document, KWUA, on behalf of its member districts, reviewed and submitted numerous comments.

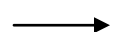
In short, KWUA stated concerns regarding the Recovery Plan's references to agricultural role in the basin's overall water quality and the total maximum daily load (TMDLs) allocations identified by Oregon Department of Environmental Quality (December, 2010). Other comments pertained to conversion and restoration of historic wetlands/riparian areas, inhibitors to sucker access to spawning habitat, entrainment concerns related to Project infrastructure and facilities, causes of seasonal fluctuations in lake levels (e.g. downstream interactions), etc. were also addressed by KWUA.



Shortnose Sucker
United States Fish and Wildlife Service

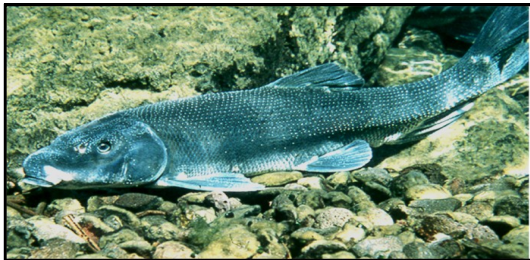
Overall, it is the belief of KWUA that the Recovery Plan should address the issues raised by the Association and that the focus on sucker recovery should promote a watershed-wide approach.

KWUA requested to be considered as a member of the Sucker Recovery stakeholder group and to be kept abreast of relevant information and implementation of the Recovery Plan. KWUA will keep its member districts aware of plans or actions that may impact Klamath Project agriculture.



(Cont'd) Endangered Species: Implications for Basin Irrigators

**Lost River/Shortnose Sucker
Sucker Critical Habitat**



**Lost River Sucker
United States Fish and Wildlife Service**

Shortly after comments were submitted on the USFWS' Revised Draft Sucker Recovery Plan, USFWS on December 7, 2011 released the Proposed Critical Habitat Designation for the Lost River and Shortnose Sucker. USFWS had originally proposed to designate areas as critical habitat in 1994 but that process never concluded. With the 2011 proposed habitat there was a reduction in the extent of proposed designated critical habitat for the two species.

Comparisons of the 1994 & 2011 CriticalHabitat Designations			
	<u>1994 Proposal</u>		<u>2011 Proposal</u>
Total	880,000 acres (6 units)	vs	241,438 acres (2 units)
LRS	424,000 acres	vs	117,848 acres
SNS	456,000 acres	vs	123,590 acres

KWUA reviewed the proposed listing decision and submitted comments on behalf of its member districts, emphasizing that the USFWS is acting prematurely in issuing the proposed rule for critical habitat absent the analysis of the economic implications (the USFWS Economic Analysis has not yet been released) and absent the overall impacts that designation may pose. KWUA specifically stated that the proposed rule should be withdrawn and a new proposed rule be issued only after full analysis of the implications and impacts are identified.

KWUA also expressed concern that if the designation affects the ability to raise and lower the levels of Upper Klamath Lake, or to divert water from Link River, Lake Ewauna, Clear Lake or other Klamath Project-related waters or features, the economic, social, and environmental impacts may be very significant.

Overall, ***KWUA believes that the Proposed Rule for designation of sucker critical habitat should address issues regarding the relationship between federal agencies and their competing biological opinions.*** KWUA clarified that the piecemeal approach to the proposed rulemaking for both the Lost River and Shortnose sucker results in a lack of necessary and required disclosure, and is not an appropriate approach to the decision.

For all specific comments submitted by regarding the proposed critical habitat designation, please visit www.kwua.org or request a hard copy by emailing adminkwua@kwua.org

***Southern Oregon Northern California Coast
Coho- Recovery Plan***

On January 5, 2012, the National Marine Fisheries Service (NMFS) announced the availability for public review of the draft Recovery Plan (Plan) for the Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). Comments on the plan are to be submitted on or before May 4, 2012.

As the determination on the SONCC Recovery Plan includes a review of the current status, the severity of stresses and threats to the ESU, and includes plans, assessments, and an overall recovery strategy for the Klamath Coho populations, ***KWUA is currently reviewing and preparing comments on behalf of its member districts to ensure that Project water supply and operations are not inhibited and the Recovery Plan's recommended actions*** for activities downstream of Keno Dam do not cause undue harm to Project landowners and water users.

Formal comments from the KWUA on the Recovery Plan for the southern Oregon Northern California Coast Evolutionarily Significant Unit of Coho Salmon will be by the May 4, 2012 comment deadline. Electronic copies of the Draft Plan are available online at the following NMFS Web site: <http://swr.nmfs.noaa.gov/recovery>.



Coho Salmon, MNFS



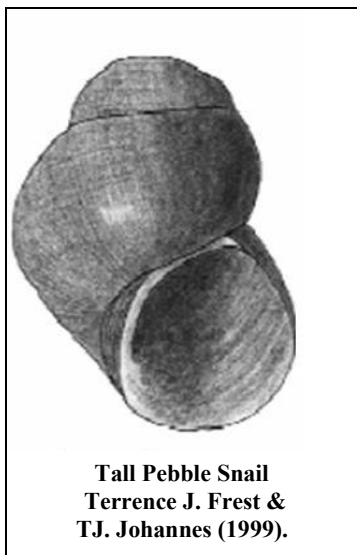
(Cont'd) Endangered Species: Implications for Basin Irrigators

Tall Pebble Snail

As reported in “Group petitions to list snail”—Sara Hottman, Herald and News, November 16, 2011—The Center for Biological Diversity is leading a petition to get Endangered Species Act protection for a species of snail that lives near Upper Klamath Lake. Petitioners say the Tall Pebble Snail (*Fluminicola spk*), found only in Harriman Spring, is threatened by habitat loss due to agriculture, grazing, irrigation, and pollution. The snail is one of 26 mollusks on the West Coast that the U.S. Fish and Wildlife Service are assessing for protection. It’s the only Klamath County species and one of 12 in Oregon, primarily in the western and northwestern counties. After completing status reviews for each species, the Fish and Wildlife Service will decide whether they should be protected by the Endangered Species Act. Listing could mean further restrictions for the irrigators, wetlands, and tribes that use Upper Klamath Lake and the Klamath River.

KWUA is monitoring the potential listing to ensure that its member districts’ interests are protected.

More specific comments by KWUA can be found www.kwua.org or by request.



Tall Pebble Snail
Terrence J. Frest & T.J. Johannes (1999).

Spotted Frog Petition

On February 22, 2012, the U.S. Fish and Wildlife Service initiated an evaluation to determine whether or not to list the Oregon Spotted Frog (*Rana pretiosa*) as threatened or endangered under the Endangered Species Act (ESA). The frog is currently known from at least nine different locations in the Upper Klamath Basin, specifically in wetland habitat along tributaries to Upper Klamath Lake.



Oregon Spotted Frog (*Rana pretiosa*)
Photo: Oregon Fish & Wildlife Service

If it determines that the Oregon Spotted Frog should be listed as threatened or endangered, USFWS will be required to designate critical habitat for the species. If the species is listed, the Service is required to complete a recovery plan within two years of listing.

KWUA will continue to monitor the Oregon Spotted Frog petition and will represent its member districts interests as needed.

(Source: Article adapted from the USFWS February 22, 2012 News Release: U.S. Fish and Wildlife Service to Review Oregon Spotted Frog ESA Status & Oregon spotted frog, Fact Sheet. February 2, 2012)

Klamath Water And Power Agency

Who is KWAPA?

The Klamath Water And Power Agency (KWAPA) is a joint intergovernmental agency under Oregon law and a joint exercise of powers agency under California law. KWAPA was formed in 2008 as a product of discussions among local irrigators, districts, and others in the community. KWAPA consists of public agency members in Oregon and California, all of whom are contractors of the Bureau of Reclamation (Reclamation) and provide water delivery within areas of the Klamath Reclamation Project.



On Project Water Management Plan

The following is a segment from the KWAPA October 2011 and February 2012 OPP Newsletters.

Over the course of the last year, KWAPA has begun to develop what is called the On Project Plan (OPP), called for with the Klamath Basin Restoration Agreement (KBRA). The purpose of the On-Project Plan (OPP) is to align water supply and demand in areas of the Klamath Reclamation Project that rely on the Klamath system (Lake and River) for water supply. “The OPP is not about water rights adjudication, it is not a rewrite of the Endangered Species Act, and it is not a forum to change contracts with the Bureau of Reclamation,” said Klamath Water And Power Agency (KWAPA) board member Dave Cacka, who owns land within Klamath Irrigation District.

(Cont'd) KWAPA -On Project Plan & Other Programs

“It’s simply a locally-driven effort to develop fair, equitable, and transparent strategies for aligning water supply and demand within the Klamath Project.”

OPP Mission Statement

Develop, through an open, transparent, and collaborative interdistrict approach, an integrated plan that provides a strategy with various options for aligning water supply and demand consistent with the KBRA to preserve the On Project Plan Area agricultural, industrial, and municipal economies, and environmental resources.

Need for the OPP

The OPP is needed to ensure a reliable water supply for the sustainability of agriculture in the Klamath Basin. The KBRA describes certain agreed upon “Diversion Limits” for water diverted from Upper Klamath Lake and the Klamath River for the Klamath Project and refuges. ***The overriding principals/goals of the OPP are that the plan be developed by irrigators and that no irrigator or district in the Project suffers involuntary water shortages, as has happened in the past.***

Who’s Doing the Work?

The OPP is being prepared by KWAPA who provides opportunities for irrigators through districts to work together to explore and develop locally based solutions related to energy and water management issues. The On-Project Plan Advisory Committee (OPPAC) was developed to assist with developing the OPP using an open, transparent, and collaborative inter-district approach,” said Hollie Cannon, Executive Director of KWAPA. “The OPPAC will provide guidance and advice to KWAPA staff and consultants during preparation of the OPP.” The OPPAC will also

On-Project Plan Advisory Committee

- ◆ *Bob Flowers -Ady District Improv. Co.*
- ◆ *Shane McDonald -Enterprise Irrigation District*
- ◆ *Ed Bair -Klamath Basin Improv. District*
- ◆ *Luther Horsley - Klamath Drainage District*
- ◆ *Rocky Liskey-Klamath Hills District Improv. Co.*
- ◆ *Dave Cacka -Klamath Irrigation District*
- ◆ *Luke Robison -Malin Irrigation District*
- ◆ *Curt Mullis -Pioneer District Improv. Co.*
- ◆ *Gary Derry -Shasta View Irrigation District*
- ◆ *Pat Patterson -Sunny Side Irrigation District*
- ◆ *Earl Danosky - Tulelake Irrigation District*
- ◆ *David Jensen -Van Brimmer Ditch Company*
- ◆ *Steve Kandra -Westside Improvement District*

make recommendations as needed to the KWAPA Board of Directors, including whether to approve and accept the final OPP.

After the OPP has been developed and approved, KWAPA will “implement” the OPP, over a period of about ten years, based on adequacy of funding. When OPP implementation has occurred, KWAPA will administer the OPP annually, employing the tools that have been developed in the implementation phase.

What’s Been Done?

After completing the process of hiring experienced consultants (MBK Engineers), in December 2011, KWAPA conducted its first two public meetings and provided Klamath Project irrigators with an opportunity to learn more about the development of the On-Project Plan (OPP) and to ask any questions they may have had.

At the public meetings, KWAPA staff and OPP consultants briefed audience members on: 1) Background of the KBRA and the OPP; 2) On-Project Plan Advisory Committee and Role; 3) Goals and Objectives of On- Project Plan; 4) Approach to OPP Development; 5) Environmental Review Process; and 6) Project Schedule.

The plan, which will also take into account water delivery obligations for National Wildlife Refuges, has been divided into four distinct phases to assist in the overall planning and resource allocation effort. Phase I – the preparation of Technical Memo (TM) 1 – was completed fall 2011. Phase 2 includes the work necessary to complete the foundational TM2 – Past and Recent Water Operations and Supply Contracts, Water Rights, and Project Operations, TM3 – Current and Future Water Requirements/ Demand, and TM4 – Baseline Conditions. This phase will also include the initial efforts for developing TM5 – On-Project Plan Area Water Need and Water Flow Path and TM8 – National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) Compliance Plan. Incorporated into the development of TM8 will be ongoing efforts to assess the level of detail and complexity of NEPA/CEQA compliance with Reclamation to implement the OPP. Also, as an ongoing effort, Phase 2 will include outreach efforts and implementation of an agreed upon communication plan. Phase 3 is scheduled to begin this spring.

For more information please visit www.kwapa.org.

Source: Klamath Water Power Agency (2011, October & 2012, February). OPPortunities Bringing You the Latest News on the OPP. Retrieved from www.kwapa.org.

(Cont'd) Other Important Programs Spearheaded by KWAPA

Other Important Programs Spearheaded by KWAPA:

- *Groundwater Efficiency Use Study*—for the future recommendations of how groundwater can be used more effectively within the Klamath Reclamation Project through establishment of Geographic Information Systems (accessible by Project irrigation districts and managers).
- Completion of the *2010 Domestic and Municipal Well Mitigation Program*.
- *Power Interconnect Program*—Development of an affordable power program for on and off Project agricultural pumpers (as per the requirements in the *Klamath Restoration Agreement*).
- *Geothermal Investigation*—to evaluate potential geothermal power capabilities on a piece of property in the Olene Gap area to which KWAPA has a lease. If there is a likely resource, a drill target will be selected. Staff is in the process of preparing a grant application for funds to drill an exploratory well.
- Revision of the 2010 *Water Users Mitigation Programs* (i.e. Groundwater Pumping and Land Idling Programs) for the 2012 water year in the event that Project water deliveries are inadequate.

More On 2012 Water Users Mitigation Programs:

As the Basin is potentially facing a water supply shortage for the 2012 growing season, groundwater pumping is vital to all districts receiving some level of water deliveries. KWAPA's established Groundwater Pumping Program will pay eligible well owners for power use of 200kWh per acre foot plus \$10 per acre foot. Well owners must have a legal right to produce water to irrigate Project land.

To reduce demand and utilize available surface water to the best extent possible, KWAPA established a Land Idling Program which pays some irrigators to not irrigate so their allotment of water can supplement the overall water supply picture. It is a competitive bid process with a 5 acre minimum. Land must have used surface water and grown a crop in 2011. Only Project land is considered. Applications can be found online or at the KWAPA office. Deadline for all land idling program applications is 12:00 noon on March 30, 2012.

For more information on the Klamath Water And Power Agency please visit www.kwapa.org 541.850.2503

Klamath Water and Power Agency
KWAPA

Working together towards locally based solutions to energy issues, water management issues, and coordination in other areas to the benefit of the whole community.

About Programs Resources Contact Home

- Joint Powers Inter-governmental Agency
- Members are water agencies within the Klamath Reclamation Project
- Provides programs to align water supply and demand generally within the Project
- Identifies areas for efficient use of energy
- Exercises authority of a PUD
- Obtain and provide transmission and delivery of Federal preference power for eligible On-Project and Off-Project Power Users

Current Projects/Programs:

- [2011 Groundwater Pumping Program](#)
- [Groundwater Data Collection](#)
- [Groundwater Efficiency Use Plan](#)
- [On Project Plan](#)
- [Power Network Interconnection Assistance](#)
- [Domestic and Municipal Well Mitigation Program](#)

Agricultural Brands/Logo Display
We would like to create a wall display at the KWAPA office of our local agricultural "brands" or "logos". If you are willing to let KWAPA display yours, please call Jen at 541-850-2503.

Open SOQ's/RFP's

- There are currently no open RFP's

Volunteer Opportunities
If you would be interested in serving on a KWAPA committee or advisory panel in the future, please let us know. Provide us with:

- Name
- Area of Interest
- Knowledge summary or Work Background
- Contact Information

Email: info@kwapa.org

KWAPA News

- Board of Directors meeting - July 5th at 12:30 p.m. in KWAPA conference room. See [Agenda](#)
- MBK Engineers was selected as the firm for the Groundwater Efficiency Use Analysis Project.
- Robertson-Bryan, Inc. was selected as the contractor for the Power Network Interconnection project.
- MBK Engineers was selected as the contractor for the On Project Water Plan.

© Klamath Water & Power Agency (KWAPA) 735 Commercial St, Suite 4000 / P.O. Box 1282 / Klamath Falls, OR 97601 / Phone: (541) 850-2503 / Fax: (541) 883-8893
Pictures and maps are courtesy of Klamath Water Users Association



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www.kwapa.org

Straits Drain Litigation: A 15 year Struggle

A major step was recently taken towards resolution of the litigation filed by ONRC Action in 1997 against the Bureau of Reclamation in the U.S. District Court of Oregon, Medford Division. In the litigation, ONRC Action complains that Reclamation's operation of the Klamath Straits Drain violates the Clean Water Act because it discharges water from the Klamath Straits Drain into the Klamath River without the necessary permit. Given the important issues at stake in the litigation for the operation of the Klamath Project, the Klamath Water Users Association (KWUA) and Klamath Drainage District intervened. After years of technical studies evaluating various physical solutions, the parties to the litigation gave up on the possibility of settlement. The legal issues finally came before the court on motions for summary judgment.

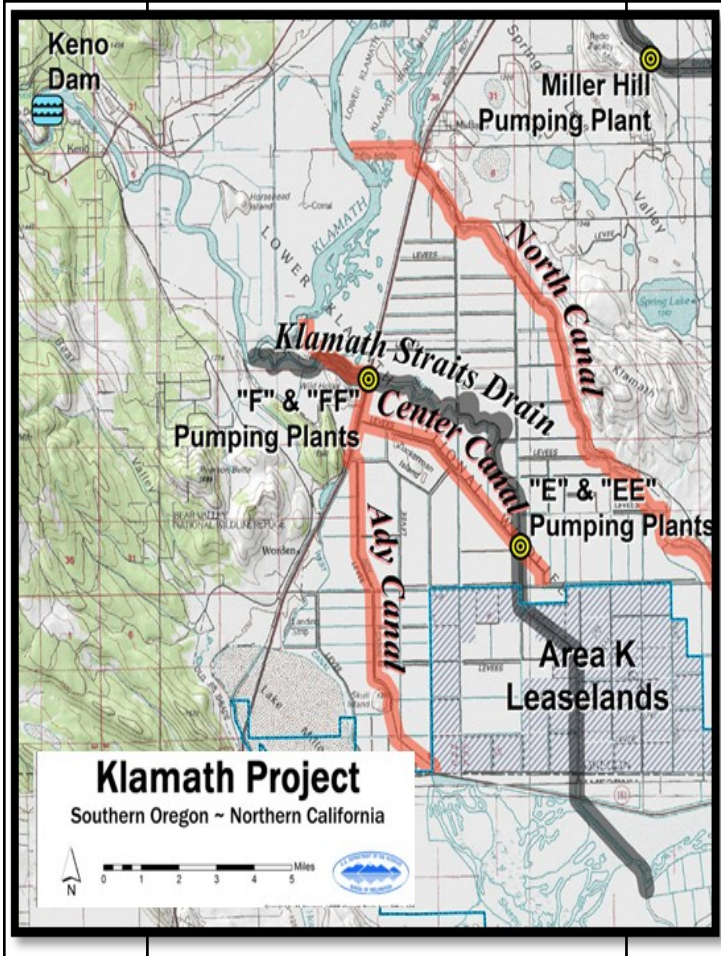
The legal question before the court is whether pumping water from Klamath Straits Drain into the Klamath River constitutes a water transfer or a discharge from a point source. In 2008, the Environmental Protection Agency (EPA) issued a regulation – the Water Transfer Rule – clarifying that transfers of water from one navigable waterway to another are not subject to the Clean Water Act's NPDES permitting program. Reclamation maintains that the Klamath Straits Drain is navigable and, as such, the Water Transfer Rule exempts the Klamath Straits Drain from having to obtain an NPDES permit. On the other hand, ONRC Action claims that EPA did not have authority to issue the Water Transfer Rule and even if it did, the

water in the Klamath Straits Drain contains pollutants from intervening upstream uses and therefore, constitutes a discharge of pollutants from a point source into the Klamath River.

Klamath Drainage District responded requesting that the Magistrate's Report and Recommendations be upheld. The parties are currently awaiting a final decision by the district court.

The Straits Drain is vital to the operations of the Klamath Project. With the exception of those lands lying west of Hwy 97 and south of Lake Ewauna, it provides drainage for the entire project, Lower Klamath National Wildlife Refuge and Tule Lake National Wildlife Refuge.

Because of this important function and knowing that the irrigation contractors will pay a significant portion of the remedy, the interveners have closely monitored this lawsuit. Now after more than 15 years, we are hopeful for a positive outcome to this litigation.



On January 17, 2012, the Magistrate Judge issued its Report and Recommendation regarding the motions for summary judgment. After a thorough review of the history of the Klamath Straits Drain, the Magistrate Judge concluded that the Klamath Straits Drain is navigable water. Moreover, the Magistrate Judge found that the Water Transfer Rule is reasonable and should be upheld. The Report and Recommendations were referred to the district court judge for a final ruling on the motions for summary judgment. ONRC Action filed objections to the Magistrate Judge's Report and Recommendations. Reclamation and KWUA/

Straits Drain: *The drain conveys drainage water from Lower Klamath National Wildlife Refuge and from irrigated land which has been reclaimed from Lower Klamath Lake. The drain extends from the State Line Road approximately 20 miles north-easterly to Klamath River. The drain removes the excess winter flows and the drainage from the lower closed basin to the Klamath River.*

—U.S. Bureau of Reclamation, Straits Drain Hydrology and map.

Litigation Finds Fertile Ground in the Klamath Basin KWUA

A summary of recent litigation involving irrigators, districts and/or KWUA Updated: September 2011

In the recent past, there have been a number of lawsuits affecting the interests of the Klamath Project and the Upper Klamath Basin. KWUA has prepared the following summary of some of those cases. This summary is compiled using KWUA information dating back to 2002 and is from various sources. It is intended only to provide a brief overview. KWUA, project districts and/or individual Klamath Project irrigators have been party to most, but not all of these cases listed here; however, all could - directly or indirectly - have implications for the Klamath Project as well as the Upper Klamath Basin. In most of the cases below there has been some financial contribution made by water users in some capacity.

At least three of the proceedings listed below are ongoing and continue as budget items to the districts, either individually or through KWUA (Takings Case # 16, Straits Drain Litigation #22 and Adjudication). It should be noted that over the years there have been numerous "legal" venues where KWUA has been the lead as well as cases such as the adjudication where it has been handled on a district by district basis or by the Joint Prosecution Agreement (JPA), a coalition of Project irrigation districts.

Summary list of litigation in recent decades:

1. *Rio Grande Silvery Minnow v. Keys*
(KWUA was intervenor)
2. *Pacific Coast Federation of Fisherman's Associations, et al. v. U.S. Bureau of Reclamation and National Marine Fisheries Service (NMFS)*
3. *Threatened litigation concerning Rogue Diversions*
4. *The Wilderness Society, et al vs. Norton,*
5. *United States v. Braren*
6. *Oregon Natural Resources Council, et al. v. Keys*
7. *Oregon Natural Resources Council, et al. v. Hallock, et al*
8. *Klamath River Adjudication*
9. *Water for Life v. State of Oregon*
10. *Lost River Adjudication Supplemental Proceedings*
11. *Oregon Natural Resources Council v. USBR*
12. *Bennett v. Spear / Bennett v. Badgeley*

13. *Klamath Water Users Association v. Patterson*
14. *Langell Valley Irrigation District v. Babbitt*
15. *Pacific Coast Federation of Fisherman's Associations v. Bureau of Reclamation*
16. *Kandra v. United States*
17. *Klamath Irrigation District, et al. V. United States*
18. *United States v. Adair*
19. *Northwest Coalition for Alternatives to Pesticides and ONRC v. Babbitt*
20. *Klamath Forest Alliance, et al. v. Babbitt,*
21. *Tulelake Irrigation District, et al. v. Stewart, et al.,*
22. *Tulelake Irrigation District, et al. v. Norton, et al.*
23. *Klamath Forest Alliance, et al. v. Bureau of Reclamation*
24. *Department of Interior v. Klamath Water Users Association*
25. *Contested case at Oregon PUC following expiration of 1956 power contract*
26. *Contested Case hearing at California PUC following expiration of 1956 Contract*
27. *Federal Energy Regulatory Commission intervention*
28. *Validation Proceedings by individual districts to confirm KBRA and KHSA Obligations*
29. *Water for Life et al v. Oregon Department of Water Resources*

For more information on this list and/or how KWUA was involved please contact adminkwua@kwua.org or call 541.883.6100.

KWUA Public Outreach: KWUA 2011 Fall Harvest Tour

On October 5, 2011, the Klamath Water Users Association held its fourth annual Fall Harvest Tour where forty participants representing federal agencies, local businesses, and citizens interacted with area farmers and ranchers as the group toured the Klamath Reclamation Project. Tour stops included the Headworks of the "A" Canal, Liskey Farms, Cal-Ore Produce, local farmer—David King's alfalfa operation, and Chapman Ranch.

Klamath Irrigation District Manager Mark Stuntebeck started the day by taking the group on a tour of the "A" Canal Headworks and fish screen. He explained how the infrastructure diverts water from Upper Klamath Lake to irrigators within the Project during the April through mid-October irrigation season.

The tour continued at Liskey Farms, a

A Canal Headworks & Fish Screen



geothermal-heated farm, located on Lower Klamath Lake Road. Utilizing the renewable resource, multiple geothermal heated greenhouses are leased and used to grow micro greens, peppers, strawberries, tomatoes, and a variety of other produce sold through Community Supported Agriculture (CSAs). In a separate greenhouse, Liskey farms produce the more unique spider mite (for use in beneficial predator insect production). Tour participants were also shown Oregon's only tilapia farm which is found in Liskey Farms' geothermal heated ponds. Each week the ponds produce

1,000-1,200 pounds of tilapia for Portland, Oregon's fish market.

During lunch, William Riggs, Director of the Oregon State University



Liskey Farms Greenhouse

Klamath Basin Research Extension Center, discussed how vital the \$600 million Klamath County agricultural industry is to local and regional economies. Riggs compared agricultural revenues in years in which water shortages were experienced, like that of 2001/2010 to years where adequate supplies were delivered 2008/2011. ***Riggs anticipated that for 2011 (a full water delivery year), revenues from agriculture in the Klamath Project will surpass other full delivery years like 2008.***

Turning to potatoes, which contribute to 7%¹ of the agricultural commodities in the Basin, the group toured Cal/Ore Produce (Tulelake, California) where 1.5 million 10 pound boxes of potatoes are shipped out each year. John Crawford, local farmer and a co-owner of the facility, educated the group on the potato co-op, the potato market, the importance of the Klamath Basin Restoration



Cal Ore Produce Inc.

Agreement; and how, if implemented, farms and ranches could once again see affordable power rates, water supply stability, and environmental/regulatory assurances.



David King's Hay Sheds

With forage crops like alfalfa hay (11 % of the agricultural commodities in the Basin²) being an essential part of the agricultural economy in the Klamath Basin, tour participants met with David King who produces 13,000-14,000 tons of alfalfa hay each year on more than 2,000 acres within the Klamath Basin. King, like many other Basin farmers, exports alfalfa hay to domestic dairies and cattle ranches. ***Because the alfalfa from the Basin has such high levels of nutrients, King has also been a supplier to the San Diego Zoo in California.*** In addition, as international demand increases, King stated that he has exported his hay to countries like Japan, South Korea, and Saudi Arabia.

***"Every student in the Klamath Basin should go on this tour.
What a valuable experience."
—2011 Participant***

Cattle and calves contribute to more than 48%² of agricultural commodity sales in Klamath County. Tour participants were introduced to Jason Chapman of Chapman Ranch located in South Poe Valley, Klamath County. The Chapman Ranch is a

(Cont'd) KWUA Public Outreach: 2011 Fall Harvest Tour



Chapman Ranch— Jason Chapman

member of Country Natural Beef which is an Oregon-based company that offers one of the most comprehensive certifications for sustainably produced food in North America³. Chapman showed the group the ranch's newly installed \$70,000 state of the art remote livestock handling facility that is top ranked for meeting animal compassion standards and ensuring Chapman cattle (Charolais and Angus) are healthy and happy.

"If all the critics and self proclaimed experts took the tour and realized the complexities and technologies faced by those involved in our agriculture economy, our water wars might just go away"

—2011 Participant



2011 KWUA Fall Harvest Tour Participants

KWUA would like to thank those individuals, families, and local businesses that contributed to the event and helped make the 2011 Fall Harvest Tour a great success. Thank you to all of our sponsors and volunteers. To see pictures from the tour, visit www.kwua.org and click on the [Facebook](#) icon.

Valued Sponsors of the KWUA 2011 Fall Harvest Tour



**** GARY & JOAN DERRY ** LISKEY FARMS ** STAUNTON FARMS ** OSU KBREC **
 CHAPMAN RANCH ** LUKE ROBISON ** DAVID KING FARMS **
 ** GOLD DUST FARMS ** BALEY- TROTMAN FARMS ** STAUB PETROLEUM PRODUCTS**
 DIAMOND S MEATS**

If you or someone you know would be interested in attending or contributing to the 2012 Fall Harvest Tour, please contact adminkwua@kwua.org or by calling the office at 541.883.6100

1-2. William Riggs, Director, Oregon State University – Klamath Basin Research and Extension Center, Oregon Agricultural Information Network (<http://oain.oregonstate.edu/>), IMPLAN 2010 Model. Retrieved from <http://oain.oregonstate.edu/charts/10%20KLAMATH.pdf>.

3. Country Natural Beef. (2011). Principles, standards and audits- a 25 year commitment to our customers: Graze well principles, food alliance certification, raise well principles, and global animal partnership standards. Retrieved from <http://www.countrynaturalbeef.com/CNB%20Standards.php>.

KWUA Public Outreach: Forums, Panels, and Events

Each year KWUA participates in numerous forums, panels and events to discuss and advocate for Klamath Project irrigators and water use in general. Forums and panels that KWUA participated in this past year include:

- *This Week in Klamath County (Community Television)*
- *Klamath County Board of Commissioners' Meetings*
- *Various Radio interviews and talk shows*
- *Regards to Rural-Rural Development Initiative (Corvallis, OR)*
- *Eugene Law School Public Interest Law Conference (Eugene, OR)*
- *California Water Policy Conference (Los Angeles, CA)*
- *Oregon Water Resources Congress Annual Meeting (Hood River, OR)*
- *Mid-Pacific Water Users Conference (Reno, NV)*
- *Tribal Trust, CLE Law Conference (Seattle, WA)*

KWUA Public Outreach & Education Online

WEBSITE www.kwua.org

It is a goal of the Klamath Water Users Association to keep its Member Districts and overall Klamath Project water user constituents up-to-date on the latest information affecting the Klamath Basin agricultural community. ***KWUA's website at www.kwua.org is the best tool for the community to see important news releases, Project operations plans, water supply and quality information.*** KWUA's website is a useful platform that provides overall information about KWUA and details about what the organization is doing for the agricultural community, your irrigation district, and you as an individual. For more specific information and to become involved with the irrigation district in which you reside or ranch/farm, KWUA encourages you to visit www.kwua.org and click on the available district link for further information.

Any suggestions and/or requests on how to make our website more user-friendly are always welcome.

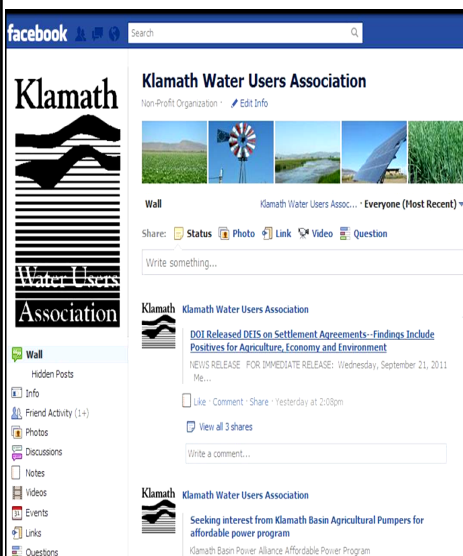
To do so please contact KWUA at adminkwua@kwua.org or by calling 541.883.6100.



FACEBOOK



By searching Facebook under "Klamath Water Users Association" or by following the link on our website www.kwua.org, you will find daily entries, comments, pictures and up-to-date topical information that affect your daily life as it relates to agriculture in the Klamath Basin.



RADIO



Tune in to KFLS 1450 "Klamath Talks" at 8:30am every 4th Thursday each month to hear KWUA staff and a Reclamation Project guest give news, status updates and upcoming events.

If you would like to be a featured guest in KWUA's monthly radio spot please email adminkwua@kwua.org or call 541.883.6100.

NEWSLETTERS

Through the distribution of the quarterly newsletters, KWUA strives to keep our member districts, landowners, water users, and the public informed about what the Association is involved with and accomplishing.

If you would like to receive a hard-copy of our newsletter or have a neighbor who would like to subscribe, please contact: adminkwua@kwua.org.

Hardcopies are also available in our office and an online version can be found on our website:

www.kwua.org/about.

Thank you for your continued interest in Klamath Basin water issues and the work of KWUA on behalf of Klamath Basin irrigators.

Klamath Water Users Association: What Membership Provides

KLAMATH



Water Users Association

Mission of KWUA

To preserve, protect and defend the water and power rights of the landowners of the Klamath Basin, while promoting wise management of ecosystem resources.

► Advocacy & Representation on Water Quantity Issues

- Tracking and documentation of lake, river and diversion amounts and conditions
- Monitoring biological opinion requirements
- Monitoring relevant material and meetings associated with Water Quantity
- Assistance and coordination on Klamath Basin Adjudication issues
- Professional technical review of hydrology and impacts related to various biological opinion and operational outcomes
- Effective advocacy with state and federal lawmakers and agency personnel
- Significant efforts to ensure water is available to all Project districts
- Monitoring and evaluating state and federal laws and regulations related to water supply
- Working with other stakeholders including tribes, conservation and fishing groups and local community interests to better ensure a predictable and adequate supply of surface water
- Monitoring and evaluation of groundwater information and state law regarding same
- Legal advocacy when needed
- Regular and persistent contact with federal and state agencies including Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Geological Service, Oregon Water Resource Department, California Department of Water Resources and others to improve ability to divert adequate water supply
- Attendance and advocacy at forums and meetings
- Compilation and retention of studies and other data related to water supply

► Advocacy & Representation on Power Related Issues

- Monitoring new and ongoing Public Utility Commission activity in Oregon and California as it relates to Klamath Project irrigation rates
- Intervention in state rate-making cases to keep proposed power cost increases at a minimum
- Professional staff working with and directing consultants to provide input into rate-making cases in the most cost efficient manner
- Review and retention of relevant written material related to energy issues
- Investigation and evaluation of a variety of potential long-term solutions to increasing energy costs
- Liaison to Klamath Water and Power Agency on related issues

► Advocacy & Representation on Water Quality Issues

- Advocacy for realistic and achievable water quality standards
- Professional staff working with established consultants and experts to develop written comments and otherwise affect positive outcomes on regulatory plans and proposed Total Maximum Daily Loads (TMDL) that can affect all irrigators/diverters of water
- Monitoring timelines and critical dates for comment or implementation targets
- Thorough review of relevant written materials, information and science
- Represent interests of Klamath Project irrigators in related meetings and forums
- Staff monitoring and knowledge of state and federal laws and regulations related to water quality
- Legal advocacy regarding water quality issues that have a direct impact on all Klamath Project irrigators, such as the Straits Drain litigation
- Commitment to assist (where needed) member districts with issues related to TMDL implementation and monitoring

► Internal & Operational Issues

- Increased role in working with districts and others on Reclamation's Reserved Works budget issues
- Regular updates and discussions with Reclamation management
- Increased efforts to assist member districts with conservation, efficiency, power or other grant/assistance opportunities
- Professional staff available to meet or work with district boards on a variety of topics
- KWUA committees and other meetings provide a forum for district boards and personnel to gather information and data
- Members notified (through their board representation)

(Cont'd) Klamath Water Users Association: What Membership Provides

of other relevant local meetings with USFWS, BOR, Refuge or others

- Ongoing efforts to improved electronic and other communications with the KWUA Board of Directors, Member Districts and Project irrigators in general

► **Public Relations & Marketing**

- Organization of, and lead for dozens of “Klamath Project/irrigation/agriculture” related tours each year that increase awareness and exposure
- Professional staff responding daily to written, in person and phone inquiries from press, academia, elected officials and others regarding water related issues in the Klamath Basin
- Website development and maintenance
- Options for members to have information page on the KWUA website
- Opportunities for social media and other networking to increase awareness locally, regionally and nationally
- On-going outreach, education and communication within the local community – Harvest Tour, Webpage, other internet marketing, etc.
- Effective work with local and regional media

► **Government Relations/Advocacy**

- When necessary, advocate for just compensation (takings) related to water shortage
- KWUA work over the last several years resulted in significant funding brought to the region, through KWAPA.
- Proven development of relationships with elected officials and their staff
- Proven development of relationships with federal and state agency officials
- Consistent and effective representation in Washington, D.C. from local staff and professional advisors
- On-going meetings with elected officials, government officials and others to educate and advocate for the interests of KWUA Member Districts – A willingness and ability for Klamath Project Irrigators to be heard in Salem, Sacramento and Washington, D.C., at any time it is needed
- Provide written or verbal testimony in public hearings as needed and directed
- Submission of numerous written comments on a variety of issues including ESA listing petitions, critical habitat designations, recover plans etc.
- Participation and membership in state and national organizations that advocate for irrigated agriculture and have specific knowledge of Reclamation Projects and issues

► **Klamath Settlement Agreements** (KBRA/KHSA)

- Comprehensive understanding of the two agreements and how they relate to all topics mentioned above
- On-going efforts on this front to further the goals of affordable power and a secure water supply
- Advocacy with members of Congress and the Administration to pass implementing legislation
- Oversee proper function and implementation of the agreements

► **Examples of Specific Benefits Realized**

- Despite a lake level nearly two-feet lower than in 2001, Klamath Project irrigators did receive between 30%-40% supply of surface water in 2010
- KWUA staff was directed to seek funding to “compensate” for lack of full delivery. In 2010, KWUA efforts significantly helped in the acquisition of over \$13 million in funding for affected districts and ground water substitution
- Funding for KWAPA will remain in place and assist Project irrigators in 2012
- Worked with BOR, PacifiCorp and National Marine Fisheries Service to eliminate unnecessary “buffer” flows at Irongate Dam
- KWUA is actively engaged with some of the federally recognized Klamath tribes in modeling and hydrologic exercises that will be used as part of a new consultation (Biological Opinion)
- Working with Reclamation in 2011 and 2012, KWUA helped identify ways that Reclamation could more actively manage the system in order to increase opportunities for refill of Upper Klamath Lake
- Despite very poor fall and winter hydrology, Upper Klamath Lake will be full in the Spring of 2012
- KWUA collaboration and drafting of the stipulated Adjudication settlement with the Klamath Tribes has resulted in substantial out-of-pocket savings to districts (several hundred thousand \$\$ in our estimation).



KWUA/District Board Meetings

KWUA understands the importance of keeping Project districts up-to-date on activities, issues, and operations that are impacting the Klamath Reclamation Project. KWUA staff is more than willing to visit with district boards and review progress and concerns about how KWUA can improve representation of Project districts.

If you would like to set up a meeting to discuss what KWUA does for your district, please contact adminkwua@kwua.org or call the office at 541.883.6100.

KWUA Board of Directors



As KWUA kicks off 2012, we welcome new KWUA board members and alternates. Gary Derry, Marc Staunton, Ross Fleming and Dennis Dunlea all began serving in February of this year and we are pleased to have them on board. With new challenges before the water user community we look forward and welcome new perspectives, ideas and involvement from our new board members.

As we welcome new Board members, KWUA must also say goodbye and extend our sincere thanks to those who are no longer serving on the KWUA Board. Holding a position on KWUA's Board of Directors is voluntary and can be arduous and time consuming job. The hard work, dedication and personal sacrifice that Jason Chapman, Shane McDonald, Jon Hobbs, and Tim Cantrell gave to support the Water Users has not gone unnoticed by the organization or the water user community.

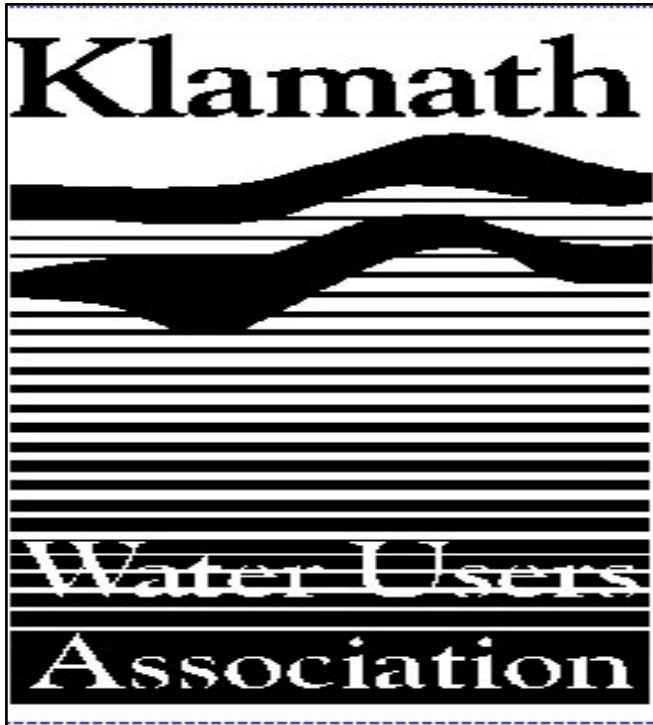
KWUA, on behalf of all our constituents, thanks all of the KWUA Board Members past and present for their superior service to our community and hope that their participation and involvement with Klamath Water Users Association will continue.

KWUA Staff Changes

After more than two years of combined service to KWUA and KWAPA, it is with mixed emotions that we bid farewell to our Policy and Program Coordinator, Tara Jane Campbell Miranda. Tara Jane is moving on in her career and for that we are excited for her. She has been a tremendous asset to the organization and we have enjoyed watching her grow in the job and we are confident she will do great things in her career. The good news is that she will continue to work on natural resources issues here in the Basin. She will start in April as a Natural Resource Specialist with the Bureau of Reclamation's Klamath Area Office. Thanks Tara Jane, we will miss you.

Thank You Supporters of KWUA!

Klamath Water Users Association would like to say a special thank you to all the Members of the Association and to our individual constituents for the continuous support, vision and foresight in seeking solutions for a sustainable future in the Klamath Basin. We also recognize and acknowledge the many partner businesses and organizations that support us and collaborate with us on a daily basis. Thank you for helping us preserve, protect and defend your water and power rights.



**735 Commercial Street,
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Klamath Falls, OR 97601
Phone: 541-883-6100
Fax: 541-883-8893
www.kwua.org**



KWUA Board of Directors Position	Member	Alternate
Position 1 (TID)	Earl Danosky	Brad Kirby
Position 2 (KID/ Warren Act)	Ross Fleming	Greg Carleton
Position 3 (Midland ID)	Luther Horsley	Frank Anderson
Position 4 (At Large) *	Gary Wright	Mike Byrne
Position 5 (Shasta View and Malin ID)**	Rob Unruh	Luke Robison
Position 6 (At Large)	Gary Derry	Dennis Dunlea
Position 7 (Sunnyside/ Van Brimmer/ Westside ID)	Steve Kandra	Rob Crawford
Position 8 (Ady/ Pioneer District IC)	Curt Mullis	Bob Flowers
Position 9 (KBID)	Bill Kennedy	Ed Bair
Position 10 (At Large)	Tricia Hill	Karl Scronce
Position 11 (At Large)	Scott Seus	Marc Staunton

* Indicates KWUA Board President

** Indicates KWUA Board Vice President