

*** AMERICAN BIRD CONSERVANCY * AUDUBON SOCIETY OF PORTLAND *
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ACTION GROUP * ENDANGERED HABITATS LEAGUE * ENVIRONMENT
PROTECTION INFORMATION CENTER * GOLDEN GATE RAPTOR
OBSERVATORY * LANE COUNTY AUDUBON SOCIETY * MARYLAND
ORNITHOLOGICAL SOCIETY * OREGON WILD * SALEM AUDUBON SOCIETY *
SISKIYOU LAND CONSERVANCY * WATERWATCH OF OREGON ***

Senator Jeff Merkley
United States Senate
107 Russell Senate Office Building
Washington, D.C., 20510

July 18, 2011

Dear Senator Merkley,

On behalf of our members throughout the nation, we are writing to ask for your support of the Klamath Basin National Wildlife Refuges. As you consider legislation related to the Klamath Basin Restoration Agreement (KBRA) and partner, Klamath Hydroelectric Settlement Agreement (KHSA), the undersigned organizations request your help to ensure that pending legislation does not undermine the already limited freshwater and wetland habitat in the Klamath's remarkable National Wildlife Refuges.

In recent years, bird advocacy, state-based conservation, and grassroots organizations throughout the country have called on you to ensure the protection and restoration of these natural treasures while considering the Klamath Basin agreements. Today, as your office works to develop legislative language for the KBRA-KHSA package, a bill that may directly impact future opportunities for fish and wildlife that call this basin home, we ask once again for your support.

Lower Klamath and Tule Lake National Wildlife Refuges

Historically, the Klamath Basin hosted a vast expanse of 350,000 acres of wetlands, shallow lakes and marshes; half a century ago, during the peak of fall migration, over 7 million waterfowl and 1000 overwintering bald eagles could be found in the Klamath Basin at one time.

Home to invaluable wildlife species and remarkable territory, the basin wetlands drew the attention of conservationists from across the nation, including President Theodore Roosevelt. In 1908 President Roosevelt designated 81,000 acres of marsh and open water in Lower Klamath Lake as the first National Wildlife Refuge for waterfowl. Twenty years later, Tule Lake joined the Refuge System when Franklin Roosevelt authorized the protection of 37,000 acres in what was Tule Lake.

The most serious problem today facing wildlife on the entire Pacific Flyway and in the Klamath Basin is the lack of wetland habitat. While over two-thirds of the Pacific Flyway birds go through the Klamath Basin during spring and fall migration, the basin no longer supports a proportional number of breeding birds. This is a problem exacerbated in the Klamath Basin by the practice of leasing over 22,000 acres of publicly owned land on Tule Lake and Lower Klamath National Wildlife Refuges for private commercial agricultural operations.

Over time, 80% of the historic wetlands in the Klamath Basin have been drained, largely due to agricultural development. Similarly, peak numbers of migratory birds have also dropped by over 80% during approximately the last 60 years. In spite of Congress's passage of the National Wildlife Refuge System Improvement Act in 1997, which made conservation the primary purpose of system refuges, commercial agriculture continues to dominate the landscape on Tule Lake NWR, as a result of local USFWS managers interpretation of the 1964 Kuchel Act. Meanwhile, lease land agricultural development continues to place burdensome water demands on an already drought-prone basin. Worse, while wetlands are nature's most efficient system for filtering pollution, today Tule Lake and Lower Klamath NWR make water quality problems in the basin worse through run-off that includes pesticides and fertilizers, sparking algal blooms and other conditions toxic to fish.

Refuges in legislation

The KBRA and KHSA hold both great promise and great peril for the fish and wildlife of the Klamath Basin. These deals have been advertised as a plan to apportion the basin's water and resolve longstanding conflict, and to potentially remove the river's antiquated dams. Unfortunately, this process has in fact spawned significant divisiveness among the basin's tribes, conservation groups, rural communities, and landowners. Furthermore, the basin's National Wildlife Refuges (NWR) have been caught in the clash. Our concerns about the effects of the KBRA on refuges are outlined in the attached Appendix A.

As the heart of the Klamath Basin, the region's National Wildlife Refuges deserve an opportunity at real restoration under any Klamath-based legislation. To address potential harm to critically important wetlands, we believe Klamath legislation:

- Should remain neutral on refuges, save for inclusion in the Klamath Project. That is, Klamath legislation
 - Should not bind non-federal parties to approval of the leaseland commercial agriculture on NWRs in the KBRA.
 - Should not include harmful language such as, "The fish and wildlife and National Wildlife Refuges purposes of the Klamath Reclamation Project shall not adversely affect the irrigation purpose of the Klamath Reclamation Project..."
- Should not approve redirection of past or future payments for commercial agriculture on Tule Lake or Lower Klamath NWRs to pay for irrigators' operation and maintenance.
- Should not penalize refuges by reducing allocations from the Klamath Project should they acquire additional water elsewhere.

As you pursue KBRA-KHSA legislation, we also encourage you to address critical water allocation issues in the basin by:

- Requiring that any On-Project Water Plan and final Drought Plan under the KBRA be developed jointly by the Bureau of Reclamation and US Fish and Wildlife Service in an open and transparent process, subject to a full evaluation under NEPA.
- Require that during droughts, water allocations to commercially farmed refuge lands be redirected to meet the primary water needs of refuge wetlands and wildlife.

Regarding subsidies:

- Klamath legislation should not promote wasteful irrigation practices by funding the KBRA's \$50 million in electricity subsidies. Simply allowing free market electricity rates in the Klamath could create a tremendous incentive for conservation.
- Ensure that funds are set up to prohibit co-mingling of On-Project Water Plan funds with Power for Water Management (power subsidy) funds. Prohibit appropriated On-Project Water Plan funds from being spent on power subsidies under any condition (App. C-2, item 66; §14.3.1; §14.3.1).

In the Klamath River Expert Panel's Final Report on the Scientific Assessment of Two Dam Removal Alternatives on Chinook Salmon (June 13, 2011), the panel made a number of recommendations regarding water quality improvements in the basin. They suggested that in order to "effectively remediate the water quality problem" in the Klamath River, agencies should "evaluate reductions in irrigated agriculture for lands draining to UKL and the Lost River for their feasibility to reduce summer and fall nutrient additions from those waters." The panel went on to recommend that agency staff "Consider managing the refuges to further emphasize their benefits for fish and wildlife, which can be in contrast to their agricultural objectives" (p.20).

The Klamath Basin National Wildlife Refuges are at the heart of the Klamath region. It is critical that as you contemplate significant fiscal and political investment in this region, we consider the needs and value of these important wetlands.

Thank you for your consideration of our concerns. Our organizations look forward to working with your office to improve the KBRA's provisions on refuges, and appreciate your willingness to review these issues as you develop Klamath legislation.

Sincerely,

Steve Holmer, Senior Policy Advisor
American Bird Conservancy

Bob Sallinger, Conservation Director
Audubon Society of Portland

Josh Laughlin, Campaign Director
Cascadia Wildlands

Noah Greenwald, Endangered Species
Program Director
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John DeVoe, Executive Director
WaterWatch of Oregon

cc: Senator Ron Wyden
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Earl Blumenauer
Congressman Peter DeFazio
Congressman Kurt Schrader

Appendix A: Summary of primary concerns regarding impacts of the Klamath Basin Restoration Agreement (KBRA) to Lower Klamath and Tule Lake National Wildlife Refuges

- *The KBRA requires all non-federal parties to support continued commercial agriculture on 22,000 acres of Tule Lake and Lower Klamath NWRs (§15.4.3 A.).* The purpose of this provision is an attempt to politically lock-in commercial agriculture on these important refuge lands for 50 years (the contractual term of the agreement, §1.6).
- The KBRA is being touted as providing a more secure and better water allocation to Lower Klamath and Tule Lake NWRs. This is inaccurate.
 - *No Change in Tule Lake NWR Water Management.* Under the KBRA, Tule Lake NWR would get the same water allocation it currently gets under existing contracts and biological opinions for the listed suckers that inhabit the open water sumps.
 - *The KBRA eliminates Best Tools to Secure Water for Lower Klamath NWR.* Lower Klamath NWR's water needs based on current refuge management goals are equal to 60,000 acre-feet during the irrigation season and 35,000 acre-feet in the winter. Under the KBRA, the irrigation season allocation is 60,000 acre-feet in wetter years and is progressively diminished to 48,000 acre-feet as water year types get drier, with a dramatic additional reduction in drought years.
 - *Puts Heavy Burden on Lower Klamath NWR Wetlands in Times of Water Shortage.* The KBRA locks in a drought year response that reduces the refuge's already low dry year allocation of 48,000 acre-feet down to 24,000 acre-feet and possibly lower (§15.1.2 F). (A prior biological opinion indicated a minimum of 32,000 acre-feet is necessary to support the waterfowl food base of the approximately 1,000 bald eagles in the basin.)
 - *Limits Lower Klamath NWR from Improving its Water Situation.* Though the KBRA gives Lower Klamath NWR a water allocation, it is not the full amount needed in many years. Furthermore, §15.1.2 E iii (e) provides that the allocation to Lower Klamath NWR shall be reduced by any delivery of surface water through Reclamation facilities from other delivery points. This would limit the ability of the refuges to increase their water supplies by developing other water sources by purchase, lease, or storage.
- *Under the KBRA, 80% of the revenue from leaseland commercial agriculture of public refuge land will go to the Reclamation fund for Klamath Project operations and maintenance, as well as to private irrigation districts (§15.4.4 B; Appendix A, Section H).* Through enactment of the KBRA, existing Project irrigator debt to the United States for unpaid capital costs of the Project facilities is cancelled, without first determining the quantity of debt. Approximately 60% of the revenue from refuge leases will go to the Reclamation fund and be applied to the benefit of Project irrigators, either by covering costs of maintaining and operating Keno and Link River Dams, by reducing future capital costs of the Project, or by subsidizing power costs to both on and off-Project irrigators. In addition, only 20% of the leaseland revenues would go to US Fish and Wildlife Service, while 10% would go to Tulelake Irrigation District and 10% to Klamath Drainage District. This funding scheme creates an agency dependence on farming the refuges with both the Bureau of Reclamation and USFWS.