



Drought Plan Lead Entity  
c/o Ed Sheets, facilitator  
Klamath Basin Restoration Agreement  
Re: Draft Drought Plan comments

April 15, 2011

To KBRA Drought Plan Lead Entity:

Thank you for the opportunity to comment on the Klamath Basin Restoration Agreement (KBRA) Draft Drought Plan. On behalf of our thousands of members and supporters throughout the state of Oregon and the Klamath Basin, Oregon Wild and WaterWatch of Oregon respectfully ask for your consideration of the following comments on the draft plan.

Oregon Wild and WaterWatch have worked in the Klamath Basin for over two decades. With staff located in the Klamath Basin and throughout the state, our organization has worked to protect the needs of fish and wildlife, and improve water quality and quantity in the Klamath through outreach and education, tactical legislation, water quality monitoring, upper basin restoration projects, collaboration with regional allies, strategic litigation, and more. The challenges in the basin are many, and while balancing the needs of diverse stakeholders is difficult, Oregon Wild and WaterWatch remain committed to bringing demand for water resources in the Klamath Basin back into balance with what the region can naturally provide.

As original parties to the Klamath settlement negotiations, Oregon Wild and WaterWatch have long had concerns about the KBRA and its potential impacts to fish, wildlife, and the National Wildlife Refuges in the Klamath Basin. As such, we have long awaited the KBRA Drought Plan, in hopes the plan would provide more clarity on some of our longstanding reservations about the KBRA. As mentioned, we are pleased to have the opportunity to comment on the draft plan and appreciate the Drought Plan Lead Entity's willingness to share the draft document publicly.

### **KBRA Draft Drought Plan comments**

#### *Drought Plan Lead Entity guidance*

- The Natural Resource Conservation Service (NRCS) forecasts play a critical role in the Draft Drought Plan; however, our understanding is that NRCS has not been asked to review the draft plan. As a lead party to consult with the Oregon Water Resources Department (OWRD) during the Drought Declaration Process (Section 4.1.2) and the developers of the forecast, it seems imperative to consult with NRCS regarding this plan before final publication. We request that the Drought Plan Lead Entity seek a formal review of the Drought Plan by NRCS.

- The draft plan implies the use of “best available science” when evaluating drought risk (Section 5.2.1.B), however there is no evidence of the basin’s best available science being used in the development of the draft plan itself.

*Drought Plan framework, clarity, and goals*

- The Draft Drought Plan is notable for its generalness and lack of specifics regarding the nature and extent of any future response to drought or extreme drought under the KBRA. The plan does not identify the likely success of its programs or offer details on how they would function. Given its general nature, it is hard to envision how the plan would be used to address the significant flow deficits that could result from implementation of the diversion limitation in certain years.
- Given the complexity of the KBRA, some degree of detail and complexity is expected in the Draft Drought Plan. Unfortunately, review of the draft plan reveals that it is an intensely circular referencing document and is quite difficult to dissect; in order for proper peer and public review, this concern ought to be considered.
- Section 3.3 details the tasks of the TAT and reveals that the Draft Drought Plan is simply a framework or outline for a plan, rather than a plan itself. The draft plan identifies thresholds for determining a drought and who will make the determination, and tools for potentially addressing a drought, but not the actual and complete action steps that will be taken.
- In addition, it is clear the draft plan is insufficient based on the fact that Section 3.3 lists a number of tasks and critical research that have yet to be completed in order to adequately inform the team and a potential drought response (e.g., Section 3.3.1 Research and Analysis).
- Regarding the limited Drought Plan Goals (Section 8.2.1), how will the Drought Plan demonstrate that no party bears “an unreasonable portion of burdens imposed or the risk of loss or injury...”? How is “unreasonable” defined?
- Section 8.1 effectively identifies the National Research Council’s elements of an effective Adaptive Management Plan. Unfortunately, and ironically, the Draft Drought Plan does not adhere to the elements identified:
  - A. Clear restoration goals and targets;
  - B. Sound baseline/reference conditions;
  - C. An effective process for learning from restoration and management actions;
  - D. An explicit process for refining and improving future restoration actions (discussed further below under Adaptive Management); and
  - E. An effective peer review process.
- Without a clear set of goals, targets, baseline conditions, or a clear, effective, or explicit process for responding to a drought identified in the Draft Drought Plan, it is extraordinarily difficult to effectively evaluate the plan.
- We strongly encourage the Drought Plan Lead Entity to fully and clearly incorporate elements A. through E. above in your development of the Final Drought Plan.
- While we have considerable concerns about the development of the On-Project Water Plan, it is impossible to evaluate how the Drought Plan will affect surface water without a completed On-Project Water Plan (as dictated by the KBRA).
- A Final Drought Plan must address quantities; that is, it must define the scope of the issue to be addressed; consider and identify what the desirable water targets are for each

stakeholder or resource demand; how, during a drought, each demand is affected; and clearly identify the target or baseline that the plan is attempting to achieve.

- A Final Drought Plan should utilize the Limitations for On-Project irrigators as targets for irrigation demand; utilize ESA flows as targets for fisheries downstream; address Upper Klamath Lake levels needed for listed suckers; and utilize seasonal water demand goals for the National Wildlife Refuges—then examine how much water the system is lacking during drought (or extreme drought). If the draft drought plan does not sufficiently identify water to “make-up for” the resource shortage, then the plan must address exactly how to reduce each target equitably. The Draft Drought Plan does not achieve this.

#### *Drought Plan funding*

- The Draft Drought Plan apparently contemplates funds being spent on demand reduction during drought and extreme drought. Isn't one purpose of the proposed allocation of 92.5 million dollars of taxpayer funds to the On-Project irrigators for development of the On-Project Plan to alleviate the need for this type of Congressional expenditures in the future? What is the proposed source for the additional Congressional expenditures, and what amounts does the Drought Plan Lead Entity anticipate? How would the funding for these additional costs relate to the \$92.5 million proposed for the On-Project Water Plan?
- Under the Drought Plan, aside from managing federally allocated funds, how will the role of the National Fish and Wildlife Foundation (NFWF) be different from, essentially, the current role of the Bureau of Reclamation?

#### *Drought Plan enforceability*

- Clear and concise clarification in the Final Drought Plan on which document (Final Drought Plan; KBRA; KBRA Appendix E-1) is intended to control the determination and response to drought or extreme drought in the basin is recommended.
- Ultimately, the KBRA and Appendix E-1 control much of the drought plan. We are disappointed to see that the Draft Drought Plan does not provide any specificity beyond deferring the issues to these purportedly controlling documents.
- Appendix E-1 could take several years to be enforced. The KBRA also allows several pathways under which Appendix E-1 never goes into effect. How will the Drought Plan address droughts in the basin before Appendix E-1 is enacted, but after potential KBRA legislation is passed?

#### *Declaration of drought*

- How *exactly* were the thresholds in Table 1 (Section 4.1.3.) and Table 2 (Section 4.4.2.) developed? Why and how were they “adjusted” for the NRCS forecast? Have these thresholds been modeled, tested, or peer reviewed?
- We continue to be concerned that limiting diversion reductions below those shown in Appendix A-1 to Extreme Drought years (per the KBRA) is in error. Clearly, there are years that are not Extreme Drought years in which reductions are also needed to maintain river flows and other resources.
- The Draft Drought Plan's addition of specific amounts of water from the Water Use Retirement Project (WURP) to the drought inflow thresholds raises many questions, and the plan fails to provide any detail on this component. For example, how will OWRD

measure and quantify any gains from the WURP for purposes of determining whether the thresholds have been met? It would not make sense to assume that all WURP retirements are added inflow. Does OWRD have a plan to protect those flows instream and, if so, what is it? Further, adding WURP retirements to inflow during certain winter months seems odd and misleading, given that the rights to be retired are unlikely to have been used during those months. Again, what is the planned method for quantification of WURP “inflows”?

- It is also unclear whether it makes sense to include WURP additions in the NRCS forecast amount, given the methodology of the NRCS forecast. We request that this point be reviewed by NRCS.
- How exactly will various agency staff (NFMS; BOR; USFWS) and the public be informed of the drought declaration process and product under the KBRA Drought Plan? We suggest that, in addition to any federal or other notification processes, OWRD include information about its declaration decisions (including any adjustments) in its weekly Public Notice.

*Enactment of the Drought Plan: Targets, ESA, and groundwater*

- The Draft Drought Plan does not state flow targets for fish, but does identify flow targets (“limitations”) for irrigation.
- Without well-defined targets or goals related to actual water quantities, the Draft Drought Plan fails to meet its described intention.
- Any drought plan should be developed to ensure specified scientifically based minimum flows for fish are met. The draft plan does not achieve this.
- The Draft Drought Plan does not acknowledge the role of the Endangered Species Act (ESA), except to acknowledge that the draft plan is not intended to “limit the applicability of effect of the ESA...” (Section 1.1.). Otherwise, the draft plan appears to assume that the ESA will either disappear or simply adopt the terms of the KBRA, as its legal requirements of flows in the Klamath Basin are not further discussed. To the extent that neither of these occurs, the draft plan fails to clearly articulate how it will constructively interface with the ESA. We see this as a missed opportunity to reach a good result for the basin.
- The ESA and associated legally required flows for listed fish in the Klamath Basin ought to be included as a baseline for determining flows in and proper enactment of the Final Drought Plan.
- The Final Drought Plan must clarify a goal to minimize impacts to other users, *after* meeting ESA flows.
- The Draft Drought Plan states that there is no preference between actions under the plan or the KBRA, including groundwater substitution vs. water use reduction measures (Section 6.1.3.). The plan lumps groundwater substitution with other actual water use reduction measures (e.g. idling) for the purpose of measuring the quantity of water use reduction occurring as voluntary transactions. Due to the potential streamflow impacts of groundwater substitution, we urge that the Final Drought Plan require separate tracking and analysis of groundwater substitution (including mapping of wells, tracking of amounts pumped at each well, and analysis of projected impacts to streamflows, refuges and other resources).

- Furthermore, the Draft Drought Plan allows for the potential waiving of the groundwater standards (upon approval by the KBCC and TAT), which could adversely affect flows (Section 6.1.3.1.A.). This also highlights the fact that if the irrigators choose to have significant groundwater development in their On-Project Water Plan (yet to be developed) to replace the water they will no longer be diverting from the Klamath River, then groundwater may well not be available in an emergency drought.

#### *Enactment of the Drought Plan*

- Substantive reductions in surface water for irrigation (Section 6.1.3.) are limited by the implementation of KBRA Appendix E-1 and numerous regulatory assurances, which could occur in 2017, later, or not at all. Furthermore, limitations are of last priority in the Draft Drought Plan and partner KBRA and should be a primary consideration.
- Section 7.2 acknowledges that under the KBRA “response to Extreme Drought under this Drought Plan can include further limitations to the limitations on DIVERSION specified in Appendix E-1.” (Section 7.2.1.). However, the Drought Plan fails to fulfill this critical component of the KBRA.
- The Drought Plan presents two alternatives *purportedly* addressing the KBRA’s acknowledgment that in Extreme Drought years, further reductions in On-Project water deliveries will be necessary in light of the needs of the river and the lake.

#### *Enactment of the Drought Plan: Alternative 1*

- Limitations included in Alternative 1 are meaningless as they are determined by a majority vote of the Restoration Agreement Fish Managers—not by best available science, demonstrable need, etc.
- Alternative 1 offers that the “amount of reduction from the otherwise applicable March-October DIVERSION will not exceed the greater of” the following:
  - **i)** “The DIVERSION Adjustment Quantity,” which is earlier described as “the forgone consumptive use of water resulting from forbearance or lease agreements entered into by KWAP under Section 6.1.3.1.A” (p. 20).
  - In other words, “the DIVERSION Adjustment Quantity” is the amount of water that is *not* consumed on the basis of voluntary transactions described in Section 6.1.3.1.A. Basically, if (i) is greater than (ii), then the KBRA’s so-called further diversion limitation during Extreme Drought will be equal to whatever amount has accrued through voluntary transactions.
  - There does not appear to be any biological basis to this method, nor any assurance that the amount would fill any identified need for river flows.
  - **Or, ii)** An amount of water calculated by the noted formula (Section 7.2.2.); this equation appears to ensure that at (and for a range below) the Extreme Drought threshold (as defined in the Draft Drought Plan), no further diversion limitation will be implemented.
  - The Extreme Drought threshold is calculated pursuant to the Drought Plan as (a) + (b), thus even if (c) is zero, at the Extreme Drought threshold no further demand reduction would apparently be required under (ii).
  - No further diversion limitation would occur under this formula unless, even after adding in estimates for the quantity of water expected (from voluntary transactions, conservation, etc.), October through March Upper Klamath Lake inflows plus the April 1 forecast still put inflows below the Extreme Drought

- threshold. At that point, if (ii) is greater than (i), the On-Project diversion would be limited only enough to hit the Extreme Drought threshold.
- The plan does not explain the basis or the expected streamflow benefits of this approach. What is the basis for an approach that strives to maintain the amount of water equal to the extreme drought threshold? How would this approach achieve the goals of the Drought Plan or meet the relevant biological or flow needs? We request that if this alternative is carried forward, the Final Drought Plan include analysis of the effects of this approach, including a table showing the likely IGD flows that would result.
  - This approach does not appear to require meaningful On-Project diversions capable of addressing water balance issues during Extreme Drought.

*Enactment of the Drought Plan: Alternative 2*

- Alternative 2 is limited by provision h. and KBRA Section 15.3.1.A., making Alternative 2 irrelevant for the immediate and foreseeable future.
- That is, Alternative 2 would delay formulation of the KBRA's further diversion limitation during Extreme Drought until not later than October 31, 2020.
  - Given that this is a critical piece of the Draft Drought Plan, it is troubling and puzzling that a further delay of nearly a decade is proposed.
  - Given that one goal of the KBRA is purportedly to provide certainty, quantifying and planning the extent and nature of the further diversion limitation during Extreme Drought should be a high priority.

*Adaptive Management*

- One of the required elements of an Adaptive Management program is an explicit process for altering future actions if learning warrants.
  - Section 8.2.4. has as its heading "An explicit process for refining and improving future Drought Plan action," but 8.2.4 does not describe any such process.
  - Instead, it only allows that the TAT makes recommendations to the KBCC or "other appropriate entities" regarding certain scientific issues.
  - A process to allow recommendations to be made simply does not conform to this element of an Adaptive Management process. The process must explicitly provide for modifying actions under the drought plan or it does not contain the NRC elements.
- Adaptive management section, though referencing NRC elements, completely lacks specificity.
  - The goals identified reference KBRA Section 19.1, which equally lack specificity, particularly as it applies to fish restoration (no flow or numerical targets)

*Additional questions for consideration by the Drought Plan Lead Entity*

- What is the role of climate change in the development of a Final Drought Plan?
- Regarding implementation of the drought response after KBRA Appendix E-1 comes into effect; what does "as soon as practicable" mean, as it applies to 6.1.3C?

Oregon Wild and WaterWatch appreciate the Drought Plan Lead Entity's consideration of these and like comments on the Draft Drought Plan. While our organizations recognize that any

restoration agreement in the Klamath will require compromise by all stakeholders, we remain concerned that the KBRA and the partner Draft Drought Plan does not sufficiently consider the needs of fish and wildlife as an equal priority to those of irrigation. Considering the region's tenuous future in the face of climate change, we must implement and demonstrate strategies that balance the water budget in the basin, retain and restore wetlands, and preserve wildlife in the Klamath.

Thank you for your consideration of our concerns. Please contact us with questions or concerns.

Sincerely,



Ani Kame'enui, D.C. Legislative Coordinator  
Oregon Wild



John DeVoe, Executive Director  
WaterWatch of Oregon