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NEWSLETTER *Issue No. 40*



# WaterWorks

**IN THIS EDITION**

THE AFFRONT OF THE 2023 OPERATIONS PLAN

FEDERAL WATER POLICY'S INCREASING RISK TO PUBLIC SAFETY

PRODUCTIVE TRI-COUNTIES MEETING

PROJECT IRRIGATIONS "LOOK FORWARD TO A FAIR FIGHT" ON UPPER KLAMATH LAKE ELEVATIONS AND FISH POPULATIONS

PUSHING BACK ON 4139.2 FEET

WHAT HAS THE BOARD BEEN WORKING ON

## **PUSHING BACK ON 4,139.2 FEET**

The 2023 Operations Plan states that Reclamation intends to "manage Project operations this water year to achieve 4139.2 feet elevation [on Upper Klamath Lake] on September 30, 2023." The purported reason is that "Reclamation believes that managing to this elevation this water year is appropriate to avoid conditions which could interfere with its ability to fulfill its ESA obligations throughout this irrigation season and the subsequent fall/winter period."

The term "ESA obligations" is a subjective term, but under Reclamation's current water management regime, it has quantifiable measures pertaining to certain hydrologic outcomes at certain times. A water surface

*Continued on page 3*

## **THE AFFRONT OF THE 2023 OPERATIONS PLAN**

In April 2020, the Bureau of Reclamation (Reclamation) adopted the so-called Interim Operations Plan (IOP). The IOP contains formulas that dictate the outputs and water allocations for each year's annual operations plan.

The IOP was scheduled to expire on September 30, 2022. Klamath Water Users Association (KWUA) considered the IOP to be a failure and was eager to see it go. ([See related story.](#)) Yet, over the objection of KWUA and others, Reclamation and other federal agencies extended the life of the IOP through October 31, 2024.

Under the IOP, the Natural Resources Conservation Services' (NRCS) median projected forecast for Upper Klamath Lake inflow is used to calculate "Project Supply," which is the quantity of water that can be diverted from Upper Klamath Lake and the Klamath River during March 1-November 15. The April 1 NRCS forecast is used to calculate Project Supply. Thereafter, the Project Supply can go up, but not down, based on May and June inflow forecasts.

As unlikely as the IOP may be, for 2023, the use of the April forecast produces a calculated Project Supply of 285,000 acre-feet (AF). Yet on April 13, Reclamation announced an "initial" Project Supply of just 215,000 AF. That is inconsistent with the IOP.

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*Aerial photo of Klamath River and Lake Ewuna, May 2023. Photo by Chelsea Shearer*



Irrigation water users were told that pending litigation was a key reason for the extremely low initial Project Supply and the deferred announcement of a real, final operations plan. In a lawsuit pending in federal court in San Francisco, the Yurok Tribe and other plaintiffs were requesting that the court order Reclamation maintain an Upper Klamath Lake elevation of 4139.2 feet above sea level. This elevation has never before been proposed, let alone used, as an operating parameter.

Elevation 4138.0 is the minimal elevation for the protection of endangered suckers in Upper Klamath Lake. The amount of water between elevation 4138.0 and elevation 4139.2 is approximately 80,000 AF.

On May 10, the court held a hearing on the plaintiffs' motion to require a minimum elevation of 4139.2. At the conclusion of the hearing, the court indicated that it did not intend to grant the motion and directed Reclamation to file its 2023 operations plan.

Nine days later, Reclamation issued the 2023 Klamath Project Operations Plan. Again, based on the ostensibly controlling IOP, the Project Supply should have been 285,000 AF. But it was just 260,000 AF, an arbitrary reduction.

In addition, the 2023 Operations Plan contains a second limitation: it provides that Reclamation will not allow Upper Klamath Lake to drop below elevation 4139.2. This is exactly what the plaintiffs had requested, and the court was not going to grant the request.



*Aerial photo of Upper Klamath Lake, Rattlesnake Point. May 2023. Photo by Chelsea Shearer*

KWUA and others do not understand why the government equivocated and delayed and why KWUA had to spend money to oppose the plaintiffs' motion if the government was going to do exactly what the plaintiffs wanted.

### **Is There a “Why?”**

Our spin will no doubt be spun about how this came to be, but these are political decisions made in a mysterious process in Washington, D.C. That process emphasizes political favor and not prudent nor effective water management. The agricultural community deserves better.



*Photo of The a section of A Canal. This is one of several locations where short-term repairs have been made due to no water in 2021-related issues.*

## **FEDERAL WATER POLICY'S INCREASING RISK TO PUBLIC SAFETY**

Over recent years, federal water management decisions have deprived irrigated farmland of water. Much of the attention and concern has focused on the disastrous impacts on farm families and rural communities. These reflect only economic and socio-economic impacts. The damage includes wind erosion of dry soils and dustbowl conditions. Mental health also suffers. In addition, wildlife that depend on the farm and ranch land for food and cover, on the water delivery system, and on national wildlife refuges served by the irrigation delivery system has suffered. But that is not all. Increasingly, the

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## Pushing Back

Cont. from pg. 1

elevation of 4139.2 feet at the end of September is not among those requirements. To the contrary, the requirements under U.S. Fish and Wildlife Services' (USFWS) biological opinion is that the lake not be below 4138 feet.

The volume of water between 4138 and 4139.2 feet is slightly over 82,000 AF. So, in the 2023 Operations Plan, Reclamation has elected to take yet another block of water away from farms, ranches, and refuges, on top of the equally large blocks of water that have been increasingly allocated to the Klamath River in recent years.

The appropriate analogy would be throwing more good money after bad. The reallocation of water to the river started with 50,000 AF reserved for a flushing flow each spring. Then it was another 30,000 AF for augmenting Klamath River flows from May through June. More recently, under the IOP, it was another 60,000 AF for again augmenting river flows in certain year types, like this year.

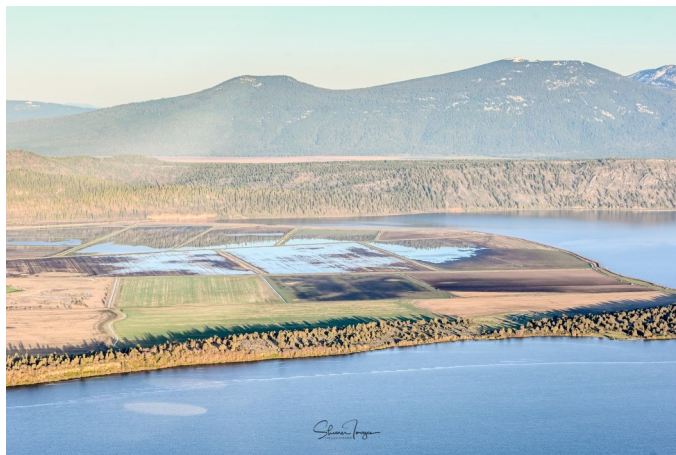
From where the Project started at the outset of this reallocation process, with the 2013 biological opinions, the minimum supply for the Project from Upper Klamath Lake and the Klamath River over the last four decades was 146,000 (1992). Over the long term, only one in ten years would the supply have been less than 300,000 AF.

Now, after all those blocks of water have been reallocated to the lake and river, the result is a near zero supply for the Klamath Project in years like 1992 or 2021. Over the long

term, through wet and dry periods, the supply would be less than 300,000 AF roughly every other year. These kinds of shortages would be expected operating the lake to a minimum water surface elevation of 4138 feet. Adding 1.2 feet to that requirement, or an additional 80,000 AF, would make shortages that much worse.

As we see in 2023, a supply of less than 300,000 AF means shortages for the Klamath Project and possibly an insufficient supply for Warren Act contractors. Adopting an end-of-year lake elevation of 4139.2 would appear to mean that Project-wide shortages would occur yearly and Warren Act contractors would unlikely ever have a sufficient supply.

Make no mistake, the adoption of 4139.2 feet as an end-of-year lake elevation not merely commits a large block of water to the river, it simultaneously effectively writes-off a large block of the Klamath Project. The fact that this lake level is not required, that the existing level accounts for year-to-year requirements, and that Reclamation adopted it without any biological justification, all warrant a firm and non-negotiable position – 4139.2 feet will not be accepted.



Upper Klamath Lake and Howards Bay, May 2023. Photo by Chelsea Shearer

Public Risk, continued from pg. 2

local community has been put at risk due to damage to infrastructure that is caused by dried-up soils.

There are acute needs for repairs in the A Canal water conveyance facility, which is part of the Klamath Project and runs through the urban area of Klamath Falls, Oregon. Klamath Irrigation District (KID) staff are working feverishly to address the problem.

The problem? Water is seeping through the earthen canal into urbanized areas and residents' basements. From all available indicators, the current problem is due to the complete shutdown of the canal in 2021, that was required under the federal administration of the Endangered Species Act (ESA). Earth that had been saturated for generations dried out, resulting in cracking, animal burrows, weed infestation, and other problems that have directly weakened the canal infrastructure.

Meanwhile, in the Tulelake area, the original soils in the area were once a lakebed. When the lake was drained to facilitate irrigated agriculture, shallow soils, high in organic material, were still saturated by underground seepage of water flowing in canals and by irrigation. Federally-ordered dewatering of the canals, and pressure to limit applied irrigation water to the absolute minimum, have resulted in the retreat of moisture from subsurface soils.

The best analogy is a sponge. When a sponge is wet, it is swollen by water that fills the small holes between the solid material. When the sponge is dried out, it shrinks.

So too, the soils in Tulelake; the loss of water in between soil particles causes the particles to compact. The compaction of soils is causing buildings to sink, endangering children and people.

The dewatering of the Klamath Project is unnatural and life-threatening.

**KWUA**  
Klamath Water Users  
ASSOCIATION



## PROJECT IRRIGATORS “LOOK FORWARD TO A FAIR FIGHT” ON UPPER KLAMATH LAKE ELEVATIONS AND FISH POPULATIONS

Klamath Project irrigators received good news on June 7. Judge Stephen Bushong, who is conducting the judicial phase of the Klamath Basin water rights adjudication, confirmed that the irrigation districts in the Project would be able to put on an evidentiary case opposing water rights claims for high Upper Klamath Lake elevations for the benefit of fish.

The ruling implements one aspect of the 2010 Klamath Basin Restoration Agreement (KBRA). Under that agreement, Project irrigators agreed to stand aside during the administrative phase of the water rights adjudication, allowing the Klamath Tribes and the United States to pursue whatever water right in Upper Klamath Lake they sought without opposition from Project interests.

In exchange, the United States and Klamath Tribes agreed that any administratively approved water right could not be asserted to curtail irrigation diversions. The parties additionally agreed that if the overall KBRA fell through and was not fully implemented, Project irrigators would be able to challenge the Upper Klamath Lake claims during the judicial phase of the adjudication, and only a water right adjudicated in that phase could ever be asserted against the Project.

Although the KBRA was terminated in 2016 due to the lack of congressional approval, this certain aspect of the KBRA remained in effect. Despite unanticipated opposition from the Klamath Tribes and the United States, the adjudication court has ruled that the Project water users will be able to put on an evidentiary case.

This is a welcome development for the Project, particularly since the technical issues overlap with those involved in the ESA of Project diversions. Currently, Reclamation is required to maintain certain elevations in Upper Klamath Lake for endangered suckers based on the opinion of the USFWS. Irrigation water users dispute the basis for those opinions but have few options to challenge “the science.”

“I just look forward to a fair fight,” said Luther Horsley, a Project irrigator who chairs the irrigation districts’ adjudication steering committee. “Under the ESA regulation, there is no real accountability or recourse for unjustified decisions. Now, we will have an outside, neutral decisionmaker hearing evidence that we think is important.”



The evidentiary hearing will take place before an administrative law judge, probably sometime in 2024 at the earliest. “We have a very impressive team of scientific



experts and are excited to be able to bring forth their evidence,” said Luther.

## FINAL WEEK TO APPLY FOR THE 2023 KPDRA NO IRRIGATION PROGRAMS



The Klamath Project Drought Response Agency (KPDRA) is currently accepting applications for its 2023 No Irrigation Programs to provide financial incentives to local farmers and ranchers who normally water through the Klamath Project, to align water supply and demand. **The application deadline is 5:00 p.m. on June 16, 2023.**

There are two programs:

- (1) qualified irrigators who do not apply irrigation water from any source to eligible Klamath Project lands from November 1, 2022, to October 31, 2023, may be eligible for Full Season Program Payments.
- (2) qualified irrigators who irrigated between November 1, 2022, and February 28, 2023, but do not apply irrigation water from any source to eligible Project lands from March 1, 2023, to October 31, 2023, may be eligible for Partial Season Program Payments.

Eligibility criteria are set forth in detail in the Programs Policy. Please review the policy carefully as the criteria have changed from prior years.

For unirrigated lands, the KPDRA will make a determination regarding the amount of compensation per acre based, in part, upon the funding available to it from Reclamation and the number of eligible acres participating in the program(s).

**The Programs Policy and additional information regarding the 2023 No Irrigation Programs and the application process can be found at the KPDRA website, [www.klamathwaterbank.com](http://www.klamathwaterbank.com).**

Questions and inquiries can be directed to [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com) or (541) 630-0752.

## PRODUCTIVE TRI-COUNTIES MEETING

On May 22, 2023, the Klamath County, Oregon, Board of Commissioners and the Siskiyou and Modoc Counties, California, Boards of Supervisors held a joint meeting focused on water and natural resources issues. The joint meeting, the second of its kind in the past two years, generated unanimous support for communications to state and federal decisionmakers.

County leaders heard a presentation on the 2023 Project Operations Plan and its history. Following the presentation, they sent a joint communication to Department of the Interior (DOI) Secretary Deb Haaland and Reclamation Commissioner Camille Touton.

In the [letter](#), the counties “strongly urge” DOI to “revise or amend the 2023 Operations Plan” to make it consistent with the IOP that ostensibly controls the development of annual plans. *See related story on page 1.*

County leaders also expressed frustration with DOI’s lack of compliance with the National Environmental Policy Act (NEPA), which requires a thorough analysis of the negative environmental impacts of proposed agency decisions. The 2023 Operations Plan provides even less water than the IOP, and “[u]nder the IOP, there have been major socio-economic impacts, farmland has dried up and literally blown away (causing negative effects on air quality), and the national wildlife refuges in our three counties were desiccated, for the first time ever.”

Another topic at the May 22 meeting was the damage to infrastructure that is being experienced due to the dewatering of canals and the soil profile. *See related story on p. 2.* The three counties have been deeply engaged in these issues for some time.

Over the last 18 months, the tri-Counties has been very active and vocal about the opportunities presented by appropriations in the Bipartisan Infrastructure Law, the Inflation Reduction Act, and other legislation. In particular, they have urged that the opportunities are not wasted by uncoordinated expenditures that do not yield positive results for the basin. Over this period, the counties have proposed a pause in funding until a consensus plan could be developed.

When that request was not honored, they proposed, in September of 2022, the creation of a joint advisory group consisting of all the tribes in the basin and all the counties in the basin. More recently, they *wrote* to Secretary Haaland,

asking for her support for the advisory committee. At the May 22 meeting, county leaders and staff discussed the status of this effort, the lack of responses from some key stakeholders, and planned next steps.

Finally, KWUA Water Policy Director Moss Driscoll gave a presentation on the Lost River Basin, including opportunities to increase the water yield of the basin and the potential role of the counties in spearheading further storage feasibility studies.

The three counties’ work and commitment are having beneficial impacts and are greatly appreciated.



*Dry supply ditch and eroding soils in Tulelake, 2021.*

**APPLY TODAY!**



### Director of Public Relations & Marketing

The KWUA is seeking an individual to provide lead marketing and public affairs to an established organization that serves the interests of member irrigation districts and their constituents with regard to natural resources issues, with emphasis on water resources and power costs.

- ✓ Full-Time Employment
- ✓ Salary Negotiable
- ✓ Flex & Remote work

Visit our website for full job announcement

[www.KWUA.org](http://www.KWUA.org)



# WHAT HAS THE BOARD BEEN WORKING ON:

KWUA's Board of Directors strives to keep member districts, their patrons, and other interested parties informed. Board members help with the dissemination of information received at our monthly board meetings, and staff produces a monthly newsletter.

The KWUA board held its regular business meeting on May 17, 2023. Below is a recap of the ongoing activities. If you would like more in-depth information, we encourage you to contact your respective district board member listed on our website.

## COMMUNICATIONS STAFFING

The board endorsed a staff-proposed job description for an in-house communications/PR position, with the modification that a remote working arrangement can be an available option. Staff were directed to move forward with advertising and filling the position.



## BYLAW AMENDMENT(S) FOLLOW-UP

The board directed that there be a follow-up meeting of the administrative committee to address: (1) qualifications for at-large positions, (2) qualifications for president and vice-president positions, and (3) voting by at-large members on board positions.

## FROM YOUR DISTRICTS UPCOMING MEETINGS

- Klamath Irrigation District will hold its Board of Directors meeting on July 13 @ 1:00 pm at the KID office. [www.klamathid.org](http://www.klamathid.org)
- Tulelake Irrigation District will hold its monthly Board of Directors meeting on July 10 @ 8:00 pm. [www.tulelakeid.com](http://www.tulelakeid.com)
- KWUA will hold its monthly Board of Directors meeting/Annual Planning meeting on June 22 @ 2:00 pm. [www.kwua.org](http://www.kwua.org)
- Klamath Drainage District will hold its monthly Board of Directors meeting on June 15 @ 1:00 pm. [www.klamathdrainagedistrict.org](http://www.klamathdrainagedistrict.org)

Klamath Irrigation District patrons, did you know that KID has a newsletter with all the current water happenings. [Click here to read the latest issues.](#)

## KPDRA UPDATE

The 2023 “No Irrigation” programs went live on May 12, with the application appearing online. The deadline for applications (postmarked or delivered to Parks & Ratliff) is June 16. Workshops were held in Merrill and at KWUA, on March 23 and 24, respectively.

## WATER POLICY DIRECTOR REPORT

**PR Activities.** Moss Driscoll relayed that the video work by Nick Alexander Films is complete and that the board can expect to see an email about the proposed marketing campaign for that product. Additionally, Moss has developed a script for a video regarding this year’s water situation and the poor allocation from Upper Klamath Lake. The board directed staff to proceed with the film on this year’s situation without delay, subject to maximum cost.

Regarding the Ag Basin News, an editorial board is being comprised and will be involved in developing the June edition.

**Planning Update.** Multiple planning processes are currently underway that have some connection to the Project’s service area: (1) Klamath Watershed Partnership’s KDD-Tule Smoke planning process; (2) NMFS’ Klamath Reservoir Reach Restoration (K3R) Plan; (3) USFWS’ Lost River “resiliency and water security” planning process; (4) Klamath County’s aquifer storage and recovery investigation; and (5) KWUA’s Lower Klamath-Lost River Stewardship Process, the initial meeting of which will be held June 1 in Tulelake. Moss noted that the first two processes seem to be a good avenue to at least get the North Canal screened and possibly broader opportunities on the river. The last two processes, in conjunction with some other efforts, appear to be a good avenue to address storage opportunities in relation to Clear

Lake and the Lost River watershed.

**Science Update.** Moss spent two days in May in Yreka, California, at the spring meeting of the Klamath Basin Monitoring Program (KBMP) and the OSU-USFWS Arcata Office's fish health workshop. As a general point about the state of river science, presentations at the KBMP meeting tended to involve the cessation or increased regulation of irrigated agriculture.

## IN THE SPOTLIGHT: EXECUTIVE DIRECTOR'S REPORT

**D.C. Update.** KWUA staff and the Ferguson Group have prepared a very detailed section-by-section description of S. 482, the Klamath Power and Facilities Agreement Support Act. Paul Simmons said that if a companion bill is reintroduced in the House of Representatives in 2023, there could be some further tweaks, but for now we want to focus on the language that has been stable for some time. Paul also summarized a variety of budget and political issues from D.C. Other D.C. items from the written report were also briefly summarized.

**OPUC Update.** KWUA has intervened in the new rate-making case for the 2024 transition adjustment mechanism. Settlement negotiations will likely begin relatively soon. The due date for intervenor testimony is June 23. We will likely file focused testimony, and after OPUC (Oregon Public Utilities Commission) staff and all intervenors' testimony has been filed, the settlement negotiations will likely pick up. Langell Valley Irrigation District has agreed to contribute to the cost of last years and this year's rate cases on a pro-rata acreage basis.

**Bipartisan Infrastructure Law Funding.** USFWS has received pre-application proposals for the planned second round of funding out of the \$162 million in the Bipartisan Infrastructure Law (BIL) designated for ecosystem restoration in the Klamath Basin. It is our understanding that a fixed amount is being committed each year to the sucker-rearing facility, but overall, under the current approach, 40 percent of the total \$162 million will have been committed by this year. The pre-proposals seem to reinforce the lack of any focused plan based on achieving a desired goal or goals. This has been a major theme for the tri-counties group as well.

Another BIL matter is the recently announced funding available to KID for A-Canal work. This funding is difficult because it is reimbursable, and KID would need to enter a repayment contract. (This general issue/problem is present for all Reclamation dollars under the BIL.) KID has concluded that under the Oregon Revised Statutes, it will need the approval of its patrons to enter such a contract. There will probably be a vote on August 7.

**Rulemaking on Critical Groundwater Area Designation.** The board reviewed a draft comment letter for KWUA to submit regarding the Oregon Water Resources Department's proposed regulation that would define the process and criteria for designating critical groundwater areas in Oregon. Board members were asked to provide any input by noon on May 19.



*Tulelake looking over Sheepley Ridge, May 2023. Photo by Chelsea Shearer*

**Litigation Update.** Paul Simmons summarized his monthly written litigation update, including upcoming hearings of importance.

**Operations Report.** KID is accepting orders from all district patrons and Warren Act contractors. There are some problem areas. There are problems throughout the delivery system, including the results of the A Canal system having dried out in 2021. This year, we experienced the unusual problem of a fighter jet landing incident that put the jet in the Lost River Diversion Channel. Reclamation's initial proposal in responding to the jet in the Lost River Diversion Channel was to drain it. Brad convinced them to keep it running until they completed an investigation.

One issue was noted related to dam removal activities. Copco Road has been closed for road construction/dam removal activities.

