
**KLAMATH WATER USERS ASSOCIATION'S
REQUESTS AND RECOMMENDATIONS TO U.S. FISH AND WILDLIFE SERVICE
AND NOAA FISHERIES**

APRIL 2024

Klamath Water Users Association (KWUA) is engaged with federal and state agencies, tribes, and other parties during this important time in the history of the Klamath Basin. As dams are coming down and with a “bridge” Section 7 Endangered Species Act (ESA) in progress for the Klamath Project (Project),¹ KWUA has several recommendations and requests for the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Agency (NOAA) National Marine Fisheries Service (NMFS) (collectively, “Services”). These requests are in the interests of promoting transparency, trust, and a stable and collaborative future, as follows:

1. Timely implement the Commitment in Section II.B.2 of the Klamath Power and Facilities Agreement (KPFA)² “to take every reasonable and legally permissible step to avoid or minimize any adverse impact, in the form of new regulation or other legal or funding obligation that might occur to users of water or land associated with the Klamath Reclamation Project from introduction or reintroduction of aquatic species to currently unoccupied habitats or areas, or from habitat restoration activities.”
2. Provide maximum transparency, review, and participation of KWUA and its members, tribes, and local governments in the preparation of biological opinions (BiOps) during the current ESA re-consultation process.
3. Commit to a scientific and adaptive management approach comparable to the Central Valley’s Collaborative Science and Adaptive Management Program (CSAMP), including structured decision-making.

DISCUSSION

1. Request: Timely Implement KPFA Commitment

On April 6, 2016, Secretary of the Interior Sally Jewell, Under Secretary of Commerce for Oceans and Atmosphere Dr. Kathryn D. Sullivan, Oregon Governor Kate Brown, California Governor Edmund G. Brown, Jr., and numerous other parties signed the KPFA. The KPFA

¹ KWUA has well-known concerns about the approach to ESA consultation for the Project. Those concerns are not restated here.

²

<https://www.oregon.gov/owrd/programs/WaterRights/Adjudications/KlamathRiverBasinAdj/Documents/Klamath%20Power%20and%20Facilities%20Agreement.pdf>.

includes commitments to protect irrigators from negative impacts of dam removal, including the following which speak for themselves:

[T]he Parties affirm that interests in the Upper Klamath Basin with potential exposure to regulatory obligations have in good faith over a period of time preceding this Agreement, and preceding the KBRA: played a substantial role in bringing about the circumstances that make reintroduction possible; and that the other Parties through such period have confirmed the need to provide such assurances; and, if there were to be adverse consequences for regulated parties due to reintroduction or restoration, it would undermine the general goal that regulated parties promote and facilitate environmental restoration

The Parties commit to take every reasonable and legally permissible step to avoid or minimize any adverse impact, in the form of new regulation or other legal or funding obligation that might occur to users of water or land associated with the Klamath Reclamation Project from introduction or reintroduction of aquatic species to currently unoccupied habitats or areas, or from habitat restoration activities

KWUA is aware of no specific action that has been taken to implement this commitment, which is in Section II.B.2.a. The KPFA identifies support for alleviation of fish entrainment measures specifically, but also recognizes that this support may not be enough to meet the commitment. KWUA believes that it is appropriate to focus at this time on the additional commitment that, if necessary, the parties will meet and confer: “to determine any necessary future actions, including but not limited to, consideration of whether narrowly tailored regulations or legislation is necessary to ensure the realization of commitments in the first sentence of this Section II.B.2.a of this Agreement.”

2. Request: Maximum Transparency and Participation in BiOps Development

Since the summer of 2023, federal agencies including the Services, tribal, state, and local governments, and KWUA are working under a “collaborative charter” that expresses the parties’ belief that “it is critical to ensure that these processes [i.e., Reclamation’s Proposed Action and new BiOps from the Services] are coordinated, collaborative, and transparent.” Technical teams and a management team have been established. To date, the primary focus of the collaborative has been the proposed action. In that context, the Services have been very involved in defining Reclamation’s proposed action, and the emphases have been on water allocation and modelling rather than the relationship between varying water levels and fish populations or the effects of operation of the Project on listed species populations.

Very soon, attention will turn to the Services’ development of BiOps. Those processes should be open to participation by parties to the collaborative charter. We request the Services

commit to maximum transparency and inclusiveness on an ongoing basis, and an opportunity to work with the Services to map out details and a schedule for that process.

3. *Request: Commit to Transparent Science and Adaptive Management*

During meetings of the collaborative charter in 2023, Reclamation discussed the inclusion of processes like the Central Valley of California's CSAMP in its proposed action. Structured properly, such a process could bring much-needed transparency to proposed or actual regulatory actions, including by subjecting hypotheses or assumptions to rigorous analysis. To be frank, KWUA perceives that the Services are not supportive of such a process, particularly if it involves Project interests, and that one or more of the Services believes such issues are better handled in separate contexts in which KWUA and local governments are not involved. We ask that this issue be addressed and resolved in favor of transparency for all interests affected by the operation of the Project and any attendant regulatory constraints.