

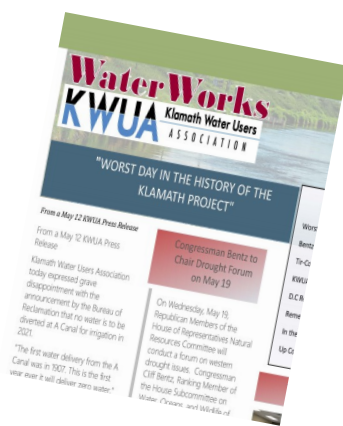
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## THE YEAR IN REVIEW: ACUTE PAIN FOR FARMS, NO GAIN FOR FISH (AGAIN)

The title of the lead article in the May 2021 edition of this newsletter was “Worst Day in the History of the Klamath Project.” That statement of fact applies for all of 2021, more powerfully now than it did then.



In April, the Bureau of Reclamation (Reclamation) announced that there would be but 33,000 acre-feet available for Klamath Project (Project) irrigation and wildlife refuges during the 2021 irrigation season. This would have represented the lowest volume of Upper Klamath Lake and Klamath River water ever in the 116 years since the Project was authorized.

Things got worse from there. In May, Reclamation directed that zero Klamath water could be diverted through Project facilities. Farms and farm communities paid the price.

2021 was a drought year. But there have been drought years in the past. The originally-announced meager irrigation water supply provided for far less than ten percent of the water that was diverted and used for irrigation in past, comparable drought years. Zero is less than that. Farms and ranches and wildlife suffered. Hundreds of rural residents had no water for drinking, cooking, or sanitation.

The “zero” allocation announced in May was unprecedented. The reason for the absolute curtailment of irrigation water was to provide increased water for threatened and endangered fish species in Upper Klamath Lake and the Klamath River and a species of whale that eats salmon in the



In 2021, Link River Dam, a feature of the Klamath Project, was operated exclusively to benefit aquatic species. The only parties charged for the costs of operating and maintaining the dam are farmer and ranchers, because irrigation is the only legally authorized purpose of the dam. (Only in the Klamath Basin...) Photo by Chelsea Shearer.

Pacific Ocean, hundreds of miles away. But there is no evidence that species benefitted from this management. Not in 2021. Not in other recent years where irrigation has been shorted in the name of the Endangered Species Act (ESA).

Lots of pain. No gain.

Adding insult to injury, the Project was targeted and attacked in traditional and social media. Legions of reporters, documentarians, and bloggers chose and perpetuated narratives that demonize farmers and ranchers who make a living in irrigated agriculture.

Cities exist on former wetland and wildlife habitat that is gone forever. But city dwellers and workers do not hesitate to condemn farmers who share space with wildlife. Distant voices, fed by stereotypes, explain that farmers and ranchers should just pack up and go; rural communities are not valued. We are fortunate and grateful that federal and state leaders did take action to ease the pain. Significant financial resources were brought to bear, offsetting some of the losses and

[Continued on next page](#)

allowing some operations to keep going and even to hang on to key employees.

But to a person, producers want to produce. Communities and the nation benefit when producers produce.

The narrative below provides a month-by-month breakdown of notable events in 2021 from a Klamath Project perspective, followed by thoughts about the future.

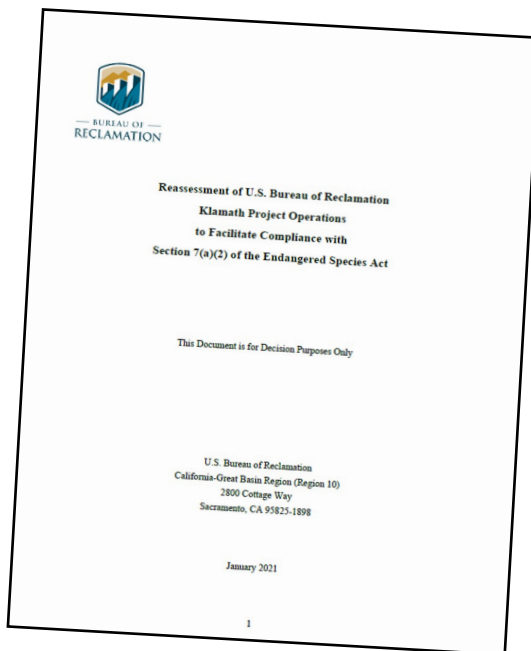
## January

Reclamation completed a “Re-Assessment” of its ESA obligations, updating 25-year old memoranda that were loosely the basis for Project operations over the last few decades. The Re-Assessment, based on recent legal developments and modeled on a successful approach taken in New Mexico, was grounded in three legal memoranda completed by the Office of the Solicitor. The Re-Assessment, long-advocated by KWUA, found that the recent approaches to ESA compliance in the Project were flawed. In essence, the Project has been over-regulated. The Re-Assessment was intended to serve as the basis for development of a new approach and plan for Project operations.

The Klamath River Renewal Corporation (KRRC) and the states of Oregon and California jointly filed applications for transfer of the Federal Energy Regulatory Commission (FERC) license from PacifiCorp to them, and for license surrender and decommissioning.

This action came about based on a memorandum of agreement entered by those parties and others in November of 2021 after FERC had declined to approve license transfer to KRRC exclusively.

Also, of course, there were major developments in federal leadership positions. Cliff Bentz was sworn into his first term as Representative for Oregon’s Second Congressional District. President Biden and Vice President Harris also took office. In turn, Alex Padilla was appointed as U.S. Senator from California, assuming Vice President Harris’s vacated seat. Oregon Senator Jeff Merkley, having handily won reelection to the U.S. Senate, began his third term in that office.



## February

KWUA published a guest opinion related to the January 2021 ESA Re-Assessment. We wrote: “Irrigators universally wonder whether the updated guidance will survive in President Biden’s Administration. It should. The updated guidance applies current principles that, undeniably, were recognized and advocated by President Obama’s Administration. Besides, any call for ‘undoing’ the new guidance would only reflect a philosophy of curtailing irrigation because ‘that is what we have done,’ not because it benefits ESA-listed species.”

The Klamath County Circuit Court issued legal rulings in the ongoing Klamath River Basin Adjudication (KBA) regarding the scope and standard for quantification of water rights of the Klamath Tribes. The rulings largely affirmed, with limited modifications or additions, the administrative determinations that had been issued by the Oregon Water Resources Department (OWRD) in its 2014 Amended and Corrected Findings of Fact and Order of Determination (ACFFOD) in the KBA. Future state court proceedings will review the actual quantities of the Klamath Tribes’ water rights recognized in the ACFFOD for waters on and bordering the former Klamath Reservation.

Based on a mid-March forecast, Reclamation estimated the most probable 2021 Project Supply (amount of water available from Upper Klamath Lake and the Klamath River during the irrigation season) to be 132,000 acre-feet. This came on the heels of 2020, the year which as of then was the second-worst-ever year of irrigation water availability in the Project.

## March

KWUA’s Board of Directors elected Ben DuVal and Ry Kliever as President and Vice President, respectively, for the coming 12 months.

KWUA submitted comments on a draft environmental assessment (EA) issued by the U.S. Fish and Wildlife Service (USFWS) concerning a proposed program based on water right transfers to Lower Klamath National Wildlife Refuge.

On March 12, Reclamation directed that, until further notice, no Project water was to be diverted from Upper Klamath Lake or the Klamath River. Based on mid-March forecast, Reclamation calculated the most probable Project Supply for 2021 to be 119,000 acre-feet.

In the KBA proceeding, Klamath Irrigation District (KID) filed a motion for preliminary injunction, asking the Klamath County



Ben DuVal (above) & Ry Kliever (below).



Circuit Court to issue an order requiring Reclamation to stop release of stored water from Upper Klamath Lake for non-irrigation purposes (i.e., to augment Klamath River flows). Under an automatic procedure, Reclamation removed the case to federal court. KID subsequently exercised its right to request that the federal court remand (send back) the case to the state court. The federal court has not acted on that request.

On the last day of March, Governor Brown issued a drought declaration for Klamath County.

## April

As an outgrowth of litigation filed by Klamath County in Marion County Circuit Court during 2020 against OWRD, OWRD issued an order directing Reclamation to stop the release of stored water from Upper Klamath Lake for non-irrigation purposes. To date, this order and related orders have not resulted in a change in Reclamation's operations and Reclamation takes the position that federal law requires the releases.

U.S. Secretary of the Interior Deb Haaland withdrew the January 2022 ESA Re-Assessment and Solicitor's memoranda that had been relied upon for the Re-Assessment.

Presidents of KWUA, KID, Tulelake Irrigation District (TID), and Klamath Drainage District (KDD) jointly published and disseminated an open letter to the Project irrigation community, forewarning their neighbors that there would likely be little to no water available from Upper Klamath Lake for irrigation in 2021. These leaders also said: "We ask our communities to do what we can to get through this year, and fervently hope that we can weather the storm together. We must not support or tolerate action that is counterproductive or unlawful, which only tarnishes the image of this remarkable community. Take care of your families. Take care of your neighbors."

On April 14, based on communications from Reclamation, KWUA announced at a public meeting that the "Project Supply" (amount of water available from Upper Klamath Lake and the Klamath River) would be only 33,000 acre-feet

during the 2021 irrigation season. KWUA also reported that Reclamation had announced that it would be making \$15 million available to the Klamath Project Drought Response Agency (DRA) for DRA programs in 2021 under the authority of the Klamath Basin Water Supply Enhancement Act of 2000, as amended.

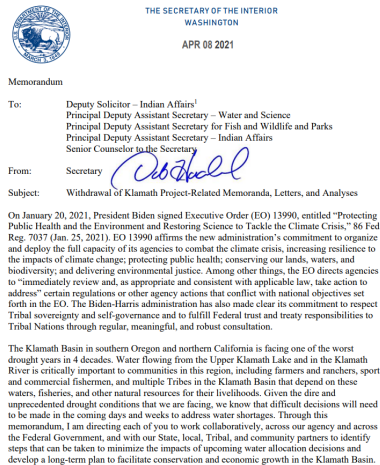
The Klamath Tribes filed a lawsuit against Reclamation in federal district court in Oregon and sought a temporary restraining order requiring Reclamation to retain more water in Upper Klamath Lake for endangered suckers. The court denied the motion.

In litigation in federal district court in San Francisco, KWUA filed a motion to lift a stay that had been entered in that case in 2020. KWUA also submitted a motion that it proposed to file if the stay were lifted; that motion would raise issues that were addressed in the now-withdrawn ESA Re-Assessment from January of 2021.

## May

The Klamath County Board of Commissioners and the Siskiyou and Modoc Counties Boards of Supervisors held a joint meeting; the only joint meeting of the three boards in memory. The elected leaders received information and briefings, and ultimately issued two letters from the three boards jointly related to needs for disaster relief.

KWUA received and disseminated information regarding anticipated costs that would be charged to Project water users for a new Klamath Basin Area Office building.



<sup>1</sup>The Principal Deputy Solicitor is recused from this matter.



*Joint meeting of Klamath County Board of Commissioners and the Siskiyou and Modoc Counties Boards of Supervisors.*

On May 10, Governor Newsom issued a drought emergency proclamation covering the Klamath River watershed. Jointly with Oregon Farm Bureau (OFBF) and Oregon Water Resources Congress, KWUA wrote to Governor Brown regarding the need for disaster relief. Parts of this letter focused on providing funds to Project districts for operation

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and maintenance costs (which must be paid by landowners whether they receive water or not) and the need for assistance for domestic wells that were failing due to the lack of Project deliveries.

Klamath County Commissioner Donnie Boyd testified at a Congressional drought forum chaired by Representative Bentz.

On May 12, Reclamation re-installed stoplogs at the headworks of the A Canal that had been removed by KID as part of its annual operations to prepare the canal system for diversion and water delivery.

Also on May 12, Reclamation directed that zero water was to be diverted through Project facilities in 2021.

Owners of private property next to the A Canal erected a circus tent that housed an information center and was a venue for public meetings. This development and some related information gave rise to some concerns about security or public safety, but there was no wrongdoing or other problems. The tent was removed in July.

delivering tanks and trucking water to affected residents. In California, TID performed those tasks.

Despite the devastating loss of irrigation water, TID, in partnership with USFWS, Ducks Unlimited, Cal-Or Wetlands, and others took extraordinary steps to protect endangered suckers and ducks. In particular, water from the 9,500-acre



Sump 1A was pumped into the adjacent, smaller Sump 1B. This successfully staved off an otherwise certain botulism outbreak that would have occurred due to low, stagnant, warm water in both sumps, and maintained an adequate depth of water for suckers that were relocated to Sump 1B.

Reclamation filed a motion in federal district court in San Francisco to lift the stay of litigation in an existing case for limited purposes. The motion was subsequently modified by a stipulation between the Yurok Tribe and Klamath Tribes and the United States. This is the same proceeding in which KWUA moved to lift the stay (see April, above) and ultimately the court heard the two motions concurrently.



*Photo by Arden Barnes H&N Staff / Report for America.*

## June

By this time, many rural residents were experiencing their private, domestic wells failing. The lack of surface water for irrigation meant there was no water in the delivery and drainage system to recharge the shallow domestic wells. Ultimately, there would be reports of over 300 domestic well failures. Once mobilized, the Oregon Office of Emergency Services, and Department of Human Services, in coordination with Klamath County, did an outstanding job procuring and



*State and local agencies did a great job dealing with the terrible problem of dried-up domestic wells.*

The 2021 media frenzy peaked in June. In all, reporters from almost every major news outlet in the region and the United States covered the water situation in the Klamath Basin. There were also international reporters and stories from the Netherlands, Switzerland, France, and Germany. Too many of the reports were based on a preconceived narrative. Others took time to understand complexities and nuances.



program using these funds distributed \$116 per acre to eligible producers in the Project area.

Reclamation Commissioner Camille Touton, in her first trip out of Washington, D.C. since joining the Biden Administration in January, visited the Klamath Basin and met with KWUA. She was accompanied by Anne Marie Bledsoe Downes, the Deputy Solicitor for Indian Affairs, as well as Reclamation's Regional Director Ernest Conant, USFWS Regional Director Paul Souza, and other Department of the Interior personnel. During the meeting at KWUA, Commissioner Touton announced that an additional \$5 million would be made available to the DRA in 2021.

## July

On Independence Day weekend, 1,200 people gathered in Malin Park at a barbecue sponsored by the organizers of Shut Down, Fed Up. The event celebrated rural traditions and communities for a population in need of a break from the difficulties and stresses caused by the federal irrigation curtailment.



*Hundreds of people lined up to get a plate. Staff photo by Arden Barnes / Report for America*

In a follow-up to a letter that KWUA, OFBF, and OWRD had sent to Governor Brown in May (see above), the same three parties, joined by Klamath County Commissioners, Oregon Cattlemen, and Trout Unlimited, wrote to the Emergency Board of the Oregon Legislature. The letter pointed to the critical needs in Klamath County and elsewhere that could be partly addressed with \$150 million of disaster funding that the Legislature appropriated at the end of June for allocation by the Emergency Board.



*Pictured left to right: Ernest Conant, Camille Touton, Ben DuVal, Paul Simmons, and Rob Unruh at KWUA's office.*

OWRD approved a temporary transfer (five-year) of a water right from a ranch in the Wood River Valley to Lower Klamath National Wildlife Refuge. The maximum amount allowed for transfer is currently 3750 acre-feet per year, and based on a memorandum of agreement between Reclamation and USFWS, will likely not exceed 2500 acre-feet in 2022. Due to the timing of the approval and other factors, the amount actual diverted under the water right in 2021 was a few hundred acre-feet. Transfers of this type have a significant risk of reducing irrigation water availability for the Klamath Project. KWUA has urged that any water diverted under the transfer be limited to the amount of water actually freed up in the hydrologic system and present at the transferee point of diversion.

## August

The U.S. Department of Agriculture (USDA), Farm Services Agency, announced that it would make available \$15 million to the DRA under the CARES Act. The grant was based on recognition that Project irrigators have endured successive years of severe water curtailments, with those impacts exacerbated by COVID-related problems. Ultimately, the DRA's

## September

KWUA filed a motion to intervene in a proceeding in the Oregon Public Utility Commission (OPUC). In that proceeding (UM 2183), PacifiCorp seeks OPUC approval of PacifiCorp recovering, in electric rates, costs of decommissioning coal plants. Under Oregon law, investor-owned utilities may not charge customers for coal-related power costs after December 31, 2029. KWUA intervened to minimize cost impacts for irrigation pumping.

The federal district court in San Francisco heard, and ruled upon, distinct motions that had been filed by KWUA and Reclamation, each seeking the lifting of a stay in that litigation so that certain issues could be litigated. The court granted Reclamation’s motion, which sought lifting of the stay for the limited purpose of litigation issues in a cross-claim to be filed by the United States, which subsequently occurred (see below). The Court did not grant KWUA’s motion to lift the stay unconditionally.

Reclamation denied a request that it authorize late-season diversion of a small amount of water. The request had been based on the fact that Upper Klamath Lake elevations were substantially higher than any regulatory requirement or earlier projections of lake elevations.

**October**

In the re-opened litigation pending in federal court in San Francisco (see April and September above, related to motions to lift stay), the United States filed a cross-claim, against KWUA and OWRD. OWRD had not previously been involved in the case, but the United States seeks a court ruling that OWRD’s orders related to release of stored water (see April above) are violative of federal law.

KWUA, OFBF, OWRD, County Commissioners, and others updated previous correspondence to the Emergency Board related to disaster needs in Klamath County and elsewhere.

The United States Court of Appeals for the Ninth Circuit heard oral arguments in four cases challenging USFWS’s Comprehensive Conservation Plan (CCP) for national wildlife refuges in the Klamath Basin. In the cooperative Klamath Project area, the national wildlife refuges have a relationship and unique legal history. The CCP, adopted early in 2017, defined the parameters for the (restricted) continuation of longstanding farming and grazing activities for a ten-year period. The four lawsuits all relate to whether agriculture is under or over-regulated under the CCP.

**November**

KWUA, KID, and KDD submitted comments on a draft EA concerning a proposed environmental restoration project on the Barnes and Agency Ranches in the lower Wood River Valley. The proposed project would inundate much of the ranches acreage and increase the size of Upper Klamath Lake by about 14,000 acres. Irrigation water users pointed out that USFWS had failed to evaluate the potential effects of the proposed project on water supply availability for Klamath Project irrigation and Klamath River flows, and that the best available information points to those effects being negative.

President Biden signed the Infrastructure Investment and Jobs Act. Family Farm Alliance (Alliance) Executive Director Dan

Keppen called this a “great victory for Western water users” and a “once-in-a-generation” investment (\$8 billion) in Western water infrastructure. The bill also appropriates \$162 million to USFWS for environmental restoration and enhancement activities in the Klamath Basin.

Over a dozen waterfowl organizations wrote to the Department of the Interior, urging that some water be made available for diversion to Lower Klamath National Wildlife Refuge. The request was not honored.

**December**

The Oregon Legislature approved \$99 million in disaster relief, approximately \$20 million of which was for rural and tribal communities in Klamath County. (See related article on p. 8, “Local Leaders Applaud State Funding Relief.”)

The U.S. Court of Appeals for the Ninth Circuit heard oral arguments in two related cases that were filed in 2019 by KWUA and Project districts. In those cases, irrigation parties sought rulings that Reclamation’s 2019 operations plan (originally adopted for 2019-2024) was not within Reclamation’s authority and provided for illegal Project operations. The trial court dismissed the two cases based on finding that tribes with interests in water are necessary parties to the suit and, because the tribes could not be joined due to their sovereign immunity, the case could not go forward. The Ninth Circuit Court will rule on whether the dismissal of the cases was proper.

The DRA decided and announced payment levels for approved applications in the programs that it operated in 2021: \$450 per acre for the “no irrigation” program and \$116 per acre for the CARES Act program.

Reclamation announced that \$10 million would be available for drought relief and resiliency in the Klamath Project. It is expected that this funding would go toward DRA programs in 2022, if needed. The source of the funds is a supplemental appropriation of \$210 million to Reclamation (west-wide) that was approved by Congress in September of 2021.

The Oregon Court of Appeals issued a stay of orders and the judgment of the Marion County Circuit Court. The Marion County



October 12, 2021

Ms. Camille Touton, Deputy Commissioner  
U.S. Bureau of Reclamation  
1849 C Street NW  
Washington DC 20240-0001

Ms. Martha Williams, Principal Deputy Director  
U.S. Fish and Wildlife Service  
1849 C Street, NW, Room 3148  
Washington, DC 20240

RE: Surplus Water From Upper Klamath Lake/Klamath Refuges' Water Needs

Dear Deputy Commissioner: Touton and Principal Deputy Director Williams:

We are writing you to strongly urge that a significant portion of the surplus water in Upper Klamath Lake be made available starting this fall for delivery to the Lower Klamath and Tule Lake National Wildlife Refuges (Refuges), as well as for other Klamath Project Project purposes.

The plight of the Refuges is a national tragedy. Lower Klamath, the first waterfowl-specific National Wildlife Refuge (NWR), is now a dry, dusty wasteland. This year, Tule Lake NWR, which in one winter in the 1950s hosted more waterfowl than any other in North America today, experienced drought that revealed bare ground never before exposed to the light of day. Wetlands and waterbirds need water to



Lower Klamath National Refuge. Photo by Chelsea Shearer.

orders had required OWRD to direct Reclamation to stop the release of stored water from Upper Klamath Lake for purposes other than irrigation. OWRD appealed the Marion County decision to the court of appeals and requested the stay. The stay will remain in effect until the court of appeals resolves the questions on appeal.

**Now What?**

As 2021 comes to a welcome close, KWUA believes that involved parties, and especially federal decisionmakers – must learn from the past. There are major issues about the past and present that require attention and reconciliation.

But on the subject of water management and the Klamath Project, consequences for agricultural interests are illogical and unfair.

A mere three years of history help crystallize the problems. In 2019, Reclamation adopted an ESA-driven operations plan that was intended to last five years.

In 2020, Reclamation adopted a hastily-negotiated “Interim Plan”. This occurred after a consultant working for the federal agencies preparing the 2019 operations plan made a mistake that affected the plan in ways that were objectionable to California tribal interests. In his subsequent consulting job, working for one of those same tribes, he discovered the mistake he had made in his past job working for the federal government. The tribe filed a lawsuit over the flawed plan, relying on their new consultant’s finding about his own mistake. The Interim Plan that resulted was adopted as a three-year plan. In the two years since the Interim Plan was adopted, three parties have gone to court to argue that Reclamation was not actually following the Interim Plan.



In January 2021, the Interior Department’s ESA Re-Assessment discussed above found that the legal and regulatory basis for the 2019 plan and the 2020 Interim Plan and all plans since was fundamentally flawed.

In (April) 2021, that Re-Assessment was withdrawn .

In April of 2021, Reclamation found that it would not be able to adhere to the Interim Plan, and adopted a “Temporary Plan,” intended to apply in 2021 only.

In June of 2021, Reclamation issued a modification of the “Temporary Plan.”

On September 30, 2021, the Interim Plan was reinstated. Thankfully, the Interim Plan has - at most - nine months remaining before it expires.

Yet, some parties and agency staff are proposing to essentially re-adopt the disastrous Interim Plan, extending it indefinitely.

We are not making this up. It's clear as mud and very disappointing. Underscoring our disappointment is that the 2021 Re-Assessment was not withdrawn because it had been found to be legally incorrect, or a determination that the planning and operations had not been done “right.” Elections certainly have consequences, and new administrations have new ways of doing business. Still - merely “undoing things” is not a helpful or constructive policy.

As 2021 draws to a close, it’s clear that the past year has brought suffering to Klamath Basin agriculture and wildlife. Sadly, depriving agriculture and terrestrial wildlife of water has not been of benefit to the aquatic species in whose name the Project irrigators were denied water.

Surely no one could believe that this is a good thing, let alone good policy. But the basin has devolved to a condition where “winning” is everything, even if winning (or someone else’s losing) does not translate to succeeding.

Only strong, honest leadership will solve the problem. Federal decision-making must not be conducted in a black box, generating ad hoc policy responses to the issues of a given day

or week. All parties in the basin need help understanding that they can do more together, and more for themselves by working together. We need incentives that help that understanding come into focus.

Again, KWUA is very grateful for the unprecedented federal and state financial assistance that Project water users received this year. Unfortunately, this only represents a bandaid that does not truly heal the deep-festering wound caused by recent federal water management decisions. The status quo remains unacceptable. Until all of the relevant parties can develop a collaborative, cooperative, and incentive-driven approach to solving the Klamath River watershed's challenges, those festering problems will remain.



We hope for a better year in 2022 and a better future for all the communities in the basin.

## FAREWELL JARED BOTTCHER, THANK YOU



Jared Bottcher, Deputy Area Manager for the Klamath Basin Area Office (KBAO) of the Bureau of Reclamation, has accepted a different job in a different agency. Effective December 6, he started work as Deputy Regional Director for the USFWS's Pacific Region. Jared and his family will continue to live in Klamath Falls for the rest of the school year, and then move to the Portland area.

Jared has lived in Klamath Falls since 2009 and started work at KBAO in 2015. He climbed a steep learning curve very fast and rose to leadership. For most of 2021, an extremely trying year, he served as Acting Area Manager.

Jared is a smart and hard worker, and trustworthy and honest dealer. KWUA regrets but understands his decision to accept a new role.

Thank you, Jared. KWUA wishes you continued success.



A dry irrigation canal in KDD. Photo by Chelsea Shearer.

### IN THE KNOW

- KWUA offers notary services. Chelsea Shearer is a certified Notary Public and KWUA offers her notary services free to all members and patrons of member districts. To schedule an appointment with Chelsea, call the office at 541-883-6100.
- KWUA offers meeting room facilities for member districts, Monday–Friday 8 am–5 pm, based on availability. To schedule a meeting, call the office at 541-883-6100.
- KWUA Office will be physically closed from December 28 through January 2. Staff will be teleworking during this time.



# LOCAL LEADERS APPLAUD STATE FUNDING RELIEF

*From a December 14 KWUA Release*

The Oregon legislature has approved \$20 million in funding for critical needs in Klamath County caused by water curtailments and wildfire. “This is welcome news,” said Klamath County Commissioner Kelley Minty Morris, who was on point for local interests pursuing the funding. “We are grateful for this action, and for Governor Brown’s support for this desperately needed funding package.”

The Commissioner also noted that Senator Dennis Linthicum and Representatives Vicki Breese-Iverson and E. Werner Reschke, Klamath County’s legislative delegation, “were strong backers all the way.”

The Klamath County funding package is part of a larger, nearly \$100 million drought relief approval that will provide funds statewide and is awaiting the Governor’s signature.

For Klamath County, funding will be provided to address domestic well failures that resulted from Klamath Project canals and drains being deprived of irrigation water that normally recharges the shallow groundwater relied upon by residents of rural areas. “We now have \$4 million coming to the County that can be used for reimbursement of costs residents have incurred and for improving wells or drilling new wells,” said Commissioner Morris.

Klamath Water Users Association (KWUA) Executive Director and Counsel Paul Simmons echoed appreciation for the legislature’s action. He identified funding of an additional \$4 million to irrigation districts for operation and maintenance expenses as especially welcome. “This year, countless water

users paid expenses for maintaining an irrigation system that delivered them no water,” he said. “On top of that, canals and drains are cracked, and infested with weeds and animal burrows, which will impose major, additional costs on water users in order to make the system operable again and protect public safety.”



*Photo of canal with weeds and animal burrows in KID.*

Both Commissioner Morris and Mr. Simmons said that Klamath-Lake County Farm Bureau and Oregon Farm Bureau Federation were instrumental in bringing about this action. “I have been very impressed with the Farm Bureau’s expertise in Salem and diligence in getting this done,” said Commissioner Morris.



*Photo provided by Jason Adams, Garrett Steensland, assistant water master for the Oregon Water Resources Department, measures the water level in a dried-up well in Klamath County, Or., on July 22, 2021. Steensland’s agency has been responding to dozens of complaints of dry wells in the county along the California-Oregon border amid an historic drought.*

Other parties who supported the Klamath County agricultural relief package include Trout Unlimited, Oregon Cattlemen’s Association, Water for Life, and Oregon Water Resources Congress. Each Klamath County Commissioner signed letters requesting the request, which also received support from the Klamath County Chamber of Commerce, Klamath County Economic Development Commission, and Klamath County REALTORS.

A third element approved for Klamath County is \$3 million for livestock water wells and off-channel water facilities. The legislature approved a separate request by the Klamath Tribes for nearly \$10 million to address issues related to wildfire, drought, and tribal resources.

Klamath-Lake County Farm Bureau President Jason Flowers said that the legislature also funded a statewide \$40 million direct assistance program for Oregon producers who experienced less than average farm income in 2021 due to drought. Producers in Klamath County will be eligible to apply for the aid, structured as a loan that will be forgiven based on demonstration of lost revenue.

“I am thankful that our producers in Klamath County will be eligible for the statewide funding and that we were able to secure direct assistance for irrigation districts and domestic well users,” he said.

In June of this year, the Oregon legislature appropriated \$150 million to the Emergency Board for allocation before the next regular session in 2023, to mitigate impacts of drought, fire, and other disasters. Today's action is the first distribution of that funding. Today's action by the full legislature will allocate most of that funding, though the fund may be resupplied in the legislature's short session next year. Separately, last week, the Klamath Project Drought Response Agency decided on per-acre payments to producers in the Klamath Project eligible for a total of \$35 million from the Bureau of Reclamation and U.S. Department of Agriculture, Farm Services Agency. Mr. Simmons said KWUA worked over several months to obtain that funding.

"We are very grateful for that federal assistance, which will reduce impacts to many producers and help them keep some employees on. At the same time, that funding equates to about only ten percent of the annual economic activity generated by Klamath Project and Upper Basin agriculture in a year when we are at full production," he said.

Commissioner Morris and Mr. Simmons both said that dry-year allocation of essentially all surface water in Klamath County to non-irrigation uses, as happened this year, will have catastrophic consequences. "We need federal decision-makers to know what is happening here," said Commissioner Morris.

"The emergency funding is a tourniquet. The cause of the injury is misguided federal water management," added Mr. Simmons.

Reclamation continues to hold "listening" sessions on its portion of funding provided by the Infrastructure Investment and Jobs Act (IIJA). The first two sessions dealt with how Reclamation is approaching using these funds under existing and new programs, with the final session scheduled for January 7, 2022. More information is provided at [www.usbr.gov/bil](http://www.usbr.gov/bil).

In addition, just before the Thanksgiving break, the House passed the latest version of the \$1.8 trillion Build Back Better Act (BBB) (summary provided [here](#) – often referred to as the reconciliation bill) and sent it to the Senate where it is expected to undergo substantial changes, both due to policy and funding differences between key Democratic leaders of the two chambers as well as procedural rules governing Senate consideration. These rules may disqualify some House provisions not allowed under Senate requirements.

On the Monday before Christmas, following months of negotiations, Senator Manchin (D-WV) announced he would vote "no" on the House passed version of BBB. Senate Leader Schumer quickly announced that the Senate would vote on the bill in early January, once the Senate returns from their holiday break.

Given the Senate's current partisan make up of 50 Democrats and 50 GOP Senators, and with Senator Manchin's expected no vote, the bill would then fail on a 49-51 vote, leaving the future of the BBB uncertain.

On December 7, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) published in the *Federal Register* their proposed "interim" definition of "waters of the United States" (WOTUS), kicking off a 60-day public comment period over the federal government's regulatory reach under the Clean Water Act (CWA). The comment period ends February 7.

The Biden Administration's WOTUS definition is being issued after a federal district court judge vacated the Trump-era Navigable Waters Protection Rule (NWPR) defining the CWA's scope. The Administration says their new definition aims to provide "stable implementation" of the law while EPA and the Corps seek to develop a "durable" definition that will avoid policy pendulum swings with changes in Administrations.

This proposed "interim" rule interprets WOTUS to mean the waters defined by a collection of Corps and EPA regulations referred to as the "1986 regulations," with amendments to reflect the agencies' interpretation of the statutory limits on the scope of WOTUS as informed by Supreme Court decisions, including the fractured *Rapanos v. United States* ruling in 2006. EPA and the Corps are still planning a second WOTUS rulemaking "that they anticipate proposing in the future" and "which would build upon the foundation of this proposed rule," the agencies say in the proposed rule.

## D.C. Report—The Ferguson Group



KWUA and TFG continue to work with your delegation on Capitol Hill and the federal agencies to address shortcomings of Klamath Project operations, prepare for 2022 operations and address any funding needs, and to address operational needs through legislation related to the potential dam removal on the Klamath River.

Regarding appropriations for fiscal year 2022, the House and Senate have not completed their work on passage of the twelve traditional appropriations bills, so two temporary continuing resolutions (CR) were needed to keep the government running past September 30, the last day of the fiscal year. The most recent CR runs through February 18. The funding level provided in the first CR – and continued in the second – included \$200 million for Reclamation to spend on Western-related drought activities. A plan for how Reclamation will spend those funds [has been released](#) with the Klamath Basin receiving \$10 million in additional drought funding.

## ADDITIONAL FUNDING OPPORTUNITIES WITH OTHER AGENCIES



### Oregon Disaster Assistance Payments (ODAP)

Oregon Disaster Assistance Payments (ODAP) On December 13, 2021, the Oregon Legislature approved SB 892, which established the framework for a unique

forgivable disaster loan program for Oregon's farmers and ranchers recovering from natural disasters in 2021. The forgivable loan program intends to provide direct assistance payments to producers where there are gaps in federal funding or act as bridge loan for when the USDA FSA disaster program begins. ODA has begun implementing SB 892, which involves rulemaking, contracting with financial institutions, and creating program details. ODA shares the urgency to implement Oregon's Disaster Assistance Payments (ODAP) quickly and prioritize the program according to state law. ODA intends to announce an early 2022 launch for ODAP.

#### PROGRAM AT A GLANCE

- ODAP will assist eligible farmers and ranchers in Oregon who suffered losses due to natural disasters in 2021. Loan amounts are based on gross farm income reported on the IRS Schedule F Form. ODAP will measure 2021 loss by establishing a three (3) year baseline of expected gross farm income based on an eligible producer's mean income from 2017, 2018, and 2019.
- ODAP is structured on whole-farm gross income, recognizing producers had standard expenses into their operations while receiving depressed income due to unpredicted disasters. These payments are intended to extend financial support to help producers remain solvent and continue to produce Oregon quality products for years to come.

#### NEXT STEPS

Please sign up for additional information as ODA implements SB 892 and application timelines. A federal program is expected in 2022, which will provide assistance based on crop and acreage that typically is a more favorable program than a whole farm assistance program. ODA will share federal information when applicable.

Email update sign up: <https://oda.fyi/DAP>



### The Livestock Forage Disaster Program (LFP)

provides payments to eligible livestock owners and contract growers who have covered livestock and who are also producers of grazed forage crop acreage (native and improved pasture land with permanent vegetative cover or certain crops planted specifically for grazing) that have suffered a loss of grazed forage due to a qualifying drought during the normal grazing period for the county.

LFP also provides payments to eligible livestock owners or contract growers who have covered livestock and who are also producers of grazed forage crop acreage on rangeland managed by a federal agency if the eligible livestock producer is prohibited by the federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire.

LFP is administered by the Farm Service Agency of the U.S. Department of Agriculture (USDA). For more information, call the local office at (541) 887-3495.

### USDA Builds Pandemic Support for Certified Organic and Transitioning Operations

*WASHINGTON, Nov. 4, 2021— The U.S. Department of Agriculture (USDA) will provide pandemic assistance to cover certification and education expenses to agricultural producers who are certified organic or transitioning to organic. USDA will make \$20 million available through the new Organic and Transitional Education and Certification Program (OTECP) as part of USDA's broader Pandemic Assistance for Producers initiative, which provides new, broader and more equitable opportunities for farmers, ranchers and producers.*

During the COVID-19 pandemic, certified organic and transitional operations faced challenges due to loss of markets, and increased costs and labor shortages, in addition to costs related to obtaining or renewing their organic certification, which producers and handlers of

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conventionally grown commodities do not incur. Transitional operations also faced the financial challenge of implementing practices required to obtain organic certification without being able to obtain the premium prices normally received for certified organic commodities.

“Producers and handlers of organic commodities incur significant costs to obtain or renew organic certification each year,” said Agriculture Secretary Tom Vilsack. “The economic challenges that arose due to the pandemic made obtaining and renewing organic certification financially challenging for many operations. This is one more instance of USDA continuing to provide support for those who need it most, invest in the food supply chain and Build Back Better.”

### Applying for Assistance

Signup for 2020 and 2021 OTECP will be Nov. 8, 2021, through Jan. 7, 2022. Producers apply through their local Farm Service Agency (FSA) office and can also obtain one-on-one support with applications by calling 877-508-8364. Visit [farmers.gov/otecp](https://farmers.gov/otecp) to learn more.

[Click here to read the full press release](#)

### USDA Offers Online Tool for Drought-Stricken Ranchers to Estimate Compensation for Feed Transportation Costs

Assistance also available for water hauling expenses  
WASHINGTON, Oct. 13, 2021— An online tool is now available to help ranchers document and estimate payments to cover feed transportation costs caused by drought, which are now covered by the [Emergency Assistance for Livestock, Honeybees and Farm-raised Fish Program \(ELAP\)](#).

The U.S. Department of Agriculture (USDA) updated the program this year to include feed transportation costs as well as lowered the threshold for when assistance for water hauling expenses is available. USDA’s Farm Service Agency (FSA) will begin taking applications this fall.

“Drought has had a tremendous impact on producers, and we are thinking outside the box to help producers mitigate the effects of drought, which is a necessary first step to realizing the Secretary’s vision of ensuring agricultural producers get a fair share of the food dollar,” said FSA Administrator Zach Ducheneaux. “From climate change to COVID-19, we are continuously working to make our programs as flexible as possible and so they effectively help producers face today’s challenges.”

### Eligibility

To be eligible for ELAP assistance, livestock must be intended for grazing and producers must have incurred feed transportation costs on or after Jan. 1, 2021. Although producers will self-certify losses and expenses to FSA, producers are encouraged to maintain good records and retain receipts and related documentation in the event these documents are requested for review by the local FSA County Committee.

*For specifics on the FSA programs, please contact Laura Hall  
County Executive Director, Klamath County Office  
USDA - Farm Service Agency (541) 887-3495*

## FROM YOUR DISTRICTS

### UPCOMING MEETINGS

- Klamath Irrigation District will hold its monthly Board of Directors meeting on January 13 @ 10 am at the KID office
- Tulelake Irrigation District will hold its monthly Board of Directors meeting on January 10 @ 10 am at the TID office
- Klamath Project Drought Response Agency will hold its monthly Board of Directors meeting January 12 @ 10 am in the KWUA boardroom
- KWUA will hold its monthly Board of Directors meeting on January 12 @ 2 pm in the KWUA boardroom
- Klamath Drainage District will hold its monthly Board of Directors meeting on January 25 @ 1 pm at the KDD office
- Pioneer District Improvement Co. will hold its monthly Board of Directors meeting on January 3 @ 5:30 pm