



**Testimony by  
Jim McCarthy, Communication Director and Southern Oregon Program  
Manager, WaterWatch of Oregon**

**Before the  
Senate Energy and Natural Resources Committee  
Oversight Hearing on Water Resource Issues in the Klamath River Basin**

**June 20, 2013**

Thank you for the opportunity to present testimony on behalf of WaterWatch of Oregon concerning Water Resource Issues in the Klamath River Basin. Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. WaterWatch works to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes, and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants, and the effects of water laws and policies on these resources.

The Klamath River Basin is one of the nation's great ecological treasures. Considered a western Everglades, this area in southern Oregon and northern California once contained some 350,000 acres of shallow lakes and wetlands. Only 75,000 acres of these wetlands exist today, and significant portions of these wetlands now lack enough water in many years to keep them viable. The upper basin is home to remarkably large native trout, and once contained thriving populations of spring chinook salmon, steelhead, and Kuptu and Tshuam (Lost River and Shortnose suckers). These fish once provided a major source of food for Native Americans. The Klamath Basin attracts nearly 80% of the birds migrating in the Pacific Flyway and supports the largest seasonal concentration of bald eagles in the lower 48 states. As Secretary of the Interior Stewart Udall stated in 1962, "There is probably no more important waterfowl area in the country than these refuges in the Upper Klamath Basin."

While water is vital to maintaining the ecological integrity of the Klamath Basin, fishery-dependent economies, and tribal trust resources, irrigated agriculture became the dominant use of water in the Klamath Basin over the last century. To date, more than 75% of the basin's wetlands have been drained and converted to agriculture. Damming and diversion of rivers and draining of wetlands have taken an enormous toll on the basin's ecology. The hydrology of the basin has been radically altered and water quality has been severely degraded. These conditions have contributed to the decline of federal Endangered Species Act-listed species, the failure of streams and lakes to meet water quality and temperature standards, the failure to meet Native American hunting and fishing rights, the failure to protect valuable commercial and recreational fisheries, and insufficient water to maintain the wetlands on the basin's national wildlife refuges.

The Klamath once was, and still remains, the third most productive salmon river in the western United States. For decades, Klamath salmon declines impaired salmon harvest opportunities both in-river and along the Oregon and California coast. Thousands of fishing dependent jobs, tens of millions of pounds of seafood production, and years of world-class recreational enjoyment have been lost as a direct result of the water problems in the Klamath Basin. A devastating 2002 fish kill in the lower Klamath River – sparked by low flows – led to a further collapse in salmon populations and disastrous fishing closures along hundreds of miles of coastline. This marked one of the lowest points in the Klamath’s recent history. Since a court order was entered in 2006 enforcing science-based flow management in the Klamath River for threatened coho salmon, we have witnessed a dramatic positive biological response from the Klamath’s non-endangered, commercially-valuable fall chinook salmon run. Now, fishing-dependent communities in Oregon and California are enjoying new economic vitality as a result of resurgent Klamath fall chinook. This example underscores the benefits of science-based management, and should encourage us to continue to follow the best available science in addressing the many facets of the Klamath’s ongoing water woes and species declines.

Two facts are absolutely certain in the Klamath debate: 1) The government has promised too much water to too many interests; and 2) The nation cannot afford to allow the Klamath Basin’s fish, wildlife, and human communities to continue lurching from one water crisis to the next. In order to protect and restore the basin’s incredible fish and wildlife resources, meet tribal trust responsibilities, obtain secure water supplies for the basin’s wildlife refuges, and to make a transition to a sustainable level of agricultural and fisheries production in a fair and equitable manner, it is necessary for the federal government to make a significant financial investment in the basin.

WaterWatch has supported federal legislation in the past, such as the 2002 Farm Bill’s Klamath amendment, passed through the United States Senate with the leadership of Senator Wyden. This measure would have provided \$175 million in funding, and sought to achieve adequate stream flows to meet long-term recovery needs for Klamath fish and other wildlife through reduced water use and better water management. If this measure had passed into law the Klamath Basin’s communities would be on much better footing to address this year’s drought. We hope to support similar legislation in the near future, and WaterWatch believes that any new legislation should implement the following concepts:

1. **Phase-out Commercial Farming on the Basin’s National Wildlife Refuges.** The federal government leases over 22,000 acres of publicly-owned lakebed within the Tule Lake and Lower Klamath National Wildlife Refuges for commercial agriculture. Phasing-out this lease land program and restoring these 22,000 acres of refuge to wildlife habitat would allow recovery of up to 100,000 additional acre-feet of much-needed water storage capacity, reduce irrigation water demand by some 50,000 acre-feet, improve habitat, food production, and water quality for fish and wildlife, reduce toxic pesticide use, and reduce refuge dependence upon polluted agricultural runoff as a water supply. This solution could also increase aquifer recharge and reduce pumping costs for well users in the Tule Lake sub-basin, an area plagued by dramatically dropping groundwater levels due to over-reliance on groundwater pumping to compensate for over-appropriated surface water supplies. Removing the government from the local farmland rental market would end unfair competition with private landowners, and shift lease revenues from federal government coffers to local farmland owners, boosting the local economy. As refuge habitat, these lands could provide

comparable levels of county tax revenue as currently provided by the leaselands program. This significant step towards sustainability could be achieved administratively, at low cost in comparison with other options, and without transferring any private lands to the public domain. Indeed, we believe that dollar-for-dollar, acre-for-acre, there is no more beneficial option available for addressing the Klamath's water woes than ending the damaging commercial use of the basin's National Wildlife Refuges and restoring these areas of publicly-owned lakebed.

2. **Fund and Implement a Voluntary Demand Reduction Program.** Water has been severely over allocated in the Klamath Basin. Any meaningful long-term solution will require some downsizing of the Klamath Irrigation Project and the retirement of other water rights throughout the basin. A voluntary program to give one-time financial assistance to agricultural landowners, by buying their lands or water rights at a fair price would be an equitable way to reduce agricultural demand, while giving more security to those who want to stay in business. A federally funded buyout program should be developed and implemented in this regard. The water rights adjudication process in Oregon, where the state completed the Final Orders of Determination in March, 2013, has created new opportunities for demand reduction solutions in the basin. For the first time, the details of who holds Klamath Basin water rights in Oregon – and in what quantities – has been formally recognized, allowing durable market-oriented transactions through the work of water trusts and others to become a critical part of the solution.
3. **Reform Management of the Klamath Project.** The statutory purposes of the Klamath Project should be amended to include providing the water necessary for recovering threatened and endangered species, recovering salmonid and sucker populations to harvestable levels, meeting the needs of other fish and wildlife, meeting tribal trust responsibilities, meeting the needs of the basin's national wildlife refuges, and meeting water quality standards.
4. **Restore Fish and Wildlife Habitats and Meet Water Quality Standards.** Although fish and wildlife habitats have been degraded throughout the Klamath Basin, it remains one of the few major river systems in the United State where substantial restoration is still possible. Reclaiming and restoring wetlands, especially in the publicly-owned Lower Klamath and Tule Lake National Wildlife Refuge areas and around Upper Klamath Lake, are important to obtaining a more natural hydrological regime, improving and increasing fish and wildlife habitat, and improving water quality. Riparian areas need to be protected and restored. Dams and diversions need to be screened and provided with appropriate fish passage facilities, or removed. The water retention and flow regulation capability of upland forested ecosystems need to be restored through reforestation, canopy retention and work to reduce the impact of extensive unpaved road systems. A basin-wide, twenty-year restoration program under the direction of the Fish and Wildlife Service should be established, funded, and implemented.
5. **Implement Water Conservation Measures and Improve Water Management.** There should be a thorough analysis of irrigation needs in the basin. Opportunities for saving water and improving conveyance systems and on-farm efficiencies should be carefully assessed, funded, and implemented within and outside of the Klamath Irrigation Project.

## **Dam Removal**

Removal of the PacifiCorp's four lower hydropower dams on the Klamath River is essential to basin restoration. WaterWatch supports the removal of these dams, and urges a swift return to the Federal Energy Regulatory Commission relicensing process for these facilities – now suspended by the Klamath Hydroelectric Settlement Agreement (KHSAs). Because it is more economically sound to remove the dams than to try and relicense them, there is a high degree of likelihood this process will end in dam removal, without requiring federal legislation. We do not support holding needed dam removal hostage to try to leverage passage through Congress of the hopelessly expensive, complex, and controversial Klamath Basin Restoration Agreement (KBRA).

## **Key Problems with the Klamath River Basin Restoration Agreement**

While WaterWatch fully supports Klamath dam removal, WaterWatch does not support the KBRA and does not support linking the KBRA to the KHSAs for the following reasons:

1. The KBRA attempts to guarantee water deliveries for the Klamath Project Irrigators first, without requiring any water guarantees or minimum stream flow levels for fish (including three fish species listed under the Endangered Species Act). This clearly undermines the Endangered Species Act. The KBRA water guarantees for the Klamath Project Irrigators in wet years would deliver more water to the irrigators than they historically used in wet years, and in dry years would deliver more water to the irrigators than allowed under current Endangered Species Act protections for coho salmon;
2. The Klamath River flows which are predicted by KBRA proponents to result from the KBRA would be at levels below those needed for salmon, including the river flow levels currently required under the Biological Opinion for coho salmon and the flows recommended for salmon by the best available science;
3. The KBRA perpetuates and intensifies Klamath water conflicts by failing to downsize the Klamath Irrigation Project, continuing to over-promise water, and by placing undue political pressure upon Endangered Species Act enforcement and implementation;
4. The Klamath Project Irrigators would receive \$92.5 million under the KBRA to develop and implement their own private water plan without appropriate guidelines or public oversight. A significant concern is that much of this money could be used for unsustainable groundwater development rather than meaningful demand reduction;
5. The KBRA requires all non-federal KBRA parties to support commercial farming on 22,000 acres of Lower Klamath and Tule Lake National Wildlife Refuges for another 50 years, when this practice should be phased out as soon as possible, for the reasons described above. The KBRA creates undo pressure on refuge officials to continue to allow commercial farming under the Comprehensive Conservation Plan now under development;

6. The KBRA's attempted water allocation to Lower Klamath National Wildlife Refuge may never occur, is insufficient, and puts a heavy burden on the refuge during droughts.
7. The KBRA would eliminate the best options to secure water for Lower Klamath National Wildlife Refuge. These options include: 1) Phasing out commercial farming on the refuges; 2) Using those lands to store winter water; and 3) Using the 1905 priority date water rights associated with the leaselands for refuge habitat purposes;
8. The KBRA limits the ability of the refuges to increase their water supplies through development of other water sources by purchase, lease, or storage. These provisions conflict with common sense, and with the National Wildlife Systems Improvement Act's requirement that the Secretary of Interior secure needed water supplies for all refuges.
9. Klamath Project Irrigators would receive \$41 million in power subsidies, plus lower cost Bonneville Power Administration power, plus special contracts that allow them to continue to drain important National Wildlife Refuge lands for commercial agriculture; and
10. The KBRA's price tag is nearly \$1 billion, yet it fails to address key problems in the basin and none of this money is for dam removal, which is to be funded separately by PacifiCorp's Oregon and California ratepayers and California state bond monies.

### **Key Problems With The Klamath Hydroelectric Settlement Agreement (KHSA)**

Though the KHSA could theoretically lead to dam removal, it is not an agreement to remove any dams, but to study whether or not the dams should be removed. The KHSA is hobbled by the following problems:

1. Dam removal is unnecessarily linked to the damaging provisions and unrealistic budget of the KBRA and if KBRA legislation does not pass, dam removal would be derailed;
2. There is no concrete agreement to remove dams, only to go through a new process to determine whether dams should be removed or not. The Department of Interior initiated this new process, but has been prevented from completing it by the many preconditions of the KBRA and KHSA;
3. No dam removal would occur before 2020, while PacifiCorp would be allowed to continue operations that degrade water quality and harm salmon, including Endangered Species Act listed coho with minimal operational changes in the interim;
4. There are a large number preconditions that provide PacifiCorp with many opportunities to abandon dam removal; and
5. There is no definite date to return to the Federal Energy Regulatory Commission dam relicensing process – now suspended by the KHSA – even if the agreements do not become law.

### **Further Detail on KBRA/KHSA Problems**

WaterWatch would be happy to provide a more detailed written critique on specific problem points of both these agreements, and previously introduced legislation, if requested by this committee or interested members of Congress.

### **In Closing**

Thank you again for the opportunity to testify, and thank you for focusing attention on the important water challenges of the Klamath River Basin. We hope this hearing will serve as a catalyst for restarting the kind of dialogue between Klamath stakeholders and Congress that is sorely needed to find true common ground and build support for viable, equitable, and science-based solutions. WaterWatch stands ready to work with you towards this end. I would be happy to answer any of your questions and look forward to the roundtable discussion.